

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12946 of 2017

=====

Hindustan Media Ventures Ltd. through Sri Deepak Sharma, Son of Sri Kamala Shankar Sharma, at present Regional Commercial Manager, Budh Marg, P.S.- Kotwali, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Labour Resource Department, Government of Bihar, Patna.
2. The Labour Commissioner, Department of Labour Resource, Government of Bihar, Patna.
3. The Deputy Labour Commissioner, Patna Division, Government of Bihar, Patna.
4. The Deputy Labour Commissioner-cum-Controlling Authority (under Payment of Gratuity Act, 1972), Patna Division, Government of Bihar, Patna.
5. The Presiding Officer, Court of the Deputy Labour Commissioner-cum-Controlling Authority (under Payment of Gratuity Act, 1972), Patna Division at Patna.
6. Ram Naresh Singh, S/o Late Bhrigunath Singh, Resident of Village- Chakesou, P.O. & P.S.- Mahnar, District- Vaishali.
7. Dinesh Kumar Singh S/o late Sri. Gabga Prasad Singh, resident of East Saristabad, P.S. Gardanibagh, District- Patna.

.... Respondent

=====

Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Advocate
For the State : Mr. Shashi Shekhar Kumar Prasad, Advocate
For the Res. No. 6 & 7 : Mr. Anurag Saurav, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-06-2018

Heard Mr. Sanjay Singh, learned counsel for the



petitioner, Mr. Shashi Shekhar Kumar Prasad, learned counsel appearing for respondent nos. 1 to 4 and Mr. Anurag Saurav, learned counsel for respondent nos. 6 and 7.

2. In the instant writ petition, the petitioner has prayed for issuance of a writ of certiorari for quashing the notice as contained in Memo No. 1337 dated 13.06.2017 (Annexure-1) issued under the signature of respondent no. 3 whereby having taken cognizance of a complaint filed by an ex-employee of the petitioner, he has issued notice to the petitioner to present itself with the enumerated documents/papers pertaining to its employees for an enquiry into the allegation of sham implementation of Majithia Wage Board recommendation.

3. It is submitted by the learned counsel for the petitioner that on 11.05.2017, respondent no. 7 an ex-employee who retired from the Company more than four years back claiming himself to be the General Secretary of a non-existing HT Employee's Union made a bogus complaint to the respondent Labour Commissioner stating therein that the petitioner company and its associated companies are involved in sham implementation of the recommendation of the Majithia Wage Board and that records specified in the complaint be called and an enquiry be made through a competent officer. The complaint has been filed only with a view to harass the petitioner



company and to extract money. It is submitted that the petitioner submitted its reply on 30.06.2017 raising objection to the legality and validity of the proceeding. It also raised objections to the jurisdiction of the Labour Commissioner in the matter. It is submitted that Section 17 of the Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short “Act”) provides for recovery of money due from an employer. Sub-section (1) of the Section mandates that if any amount is due under the Act to a newspaper employee from an employer, the employee will make an application to the State Government for the recovery of the amount due to him and on being satisfied that the amount is due the State Government shall issue a certificate for that amount to the Collector who shall proceed to recover that amount as an arrear of land revenue. Sub-section (2) of Section 17 provides that if any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government on its own motion or on application made to it refer the question to a Labour Court under the Industrial Disputes Act to investigate and settle the Industrial Dispute. The said section provides for a procedure to recover the amount due from an employer, not for the determination of the question as to what amount is due. The condition precedent for the application of Section



17(1) is a prior determination by a competent authority or the court of the amount due to the employee from the employer. Thus, the impugned notice dated 13.06.2017 is patently illegal and has been issued in excessive exercise of jurisdiction and powers as respondent no. 3 has neither the authority in law nor jurisdiction to embark upon the enquiry as is sought to be undertaken on complaint dated 11.05.2017.

4. On the other hand, Mr. Anurag Saurav, learned counsel for contesting private respondent nos. 6 and 7 submitted that the writ petition is premature as the respondents have only issued notice to the respondents for production of certain documents which were required to be maintained by the petitioner company under Section 17 of the Act and on notice, the petitioner company appeared before respondent no. 3 and participated in the proceeding. He submitted that since the petitioner has already filed objection petitions, it would not be proper for this Court to entertain the writ petition even before the objections raised by the petitioner are adjudicated by respondent no. 3 Deputy Labour Commissioner.

5. I have heard learned counsel for the parties and carefully perused the record.

6. At this stage, when a proceeding has been initiated by respondent no. 3 and notices have already been issued to the



petitioner pursuant to which it has already appeared and filed its objections and has raised question regarding the jurisdiction of the Deputy Labour Commissioner in the matter, I do not think it proper to give any finding on the objections raised by the petitioner before the respondent no. 3. It has rightly been pointed out by the learned counsel for the respondent nos. 6 and 7 that the writ petition is premature. The question of availability or want of jurisdiction is to be decided by the authority before whom it has been raised first.

7. However, in fairness of the matter, this Court thinks it fit and proper to direct respondent no. 3 to decide the issue of jurisdiction first before adjudicating upon any other issue raised in the proceeding pending before him.

8. With the aforesaid observation, the writ petition is disposed of.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.06.2018
Transmission Date	NA

