

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 76 of 2012

M/s. D.P. Agrawal, (Railway Contractor), Through: its Proprietor Uma Shanker Agrawal, Aged about 61 years, S/o. D.P. Agrawal, R/o. Jaistambh Chowk, Dongargarh, District Rajnandgaon

---- Petitioner

Versus

1. Union of India, Through: its Secretary, Railway Department, New Delhi.
2. The General Manager, South East Central Railway, Bilaspur, Chhattisgarh
3. The Divisional Railway Manager, South East Central Railway, Bilaspur, Chhattisgarh
4. Divisional Railway Manager Personal, South East Central Railway, Nagpur, Maharashtra
5. Senior Divisional Engineer (E), SEC Railway Nagpur, Maharashtra.

----Respondents

For Petitioner	:	Mr. Parag Kotecha, Advocate
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/01/2018

1. None for the respondents though served. The matter was taken up yesterday. Since there was no representation on behalf of the Railway department, the matter was taken up today. Today also there is no representation on behalf of the Railway department. Since the petition is of year 2012, we proceed to decide the petition with the available record and the assistance provided by the counsel for the petitioner.
2. The present petition is by the employer/contractor. Challenge is to the order dated 03.01.2012 (Annex.P/4) passed by the respondent No.5 whereby they have ordered for recovery of the amount of Rs. 5,34,880/- from the petitioners.

3. From the admitted factual matrix what has been reflected is that an accident had taken place on the 29.05.2009, in which Panchram Chandrawanshi, the deceased succumbed to the injuries that he suffered. The present petitioner was a contractor engaged by the Railway department for some work, which was relating to the tracks..
4. Since, neither the petitioner /the employer of the deceased nor the Railway authorities/principal employer (where the present petitioner/contractor was discharging his duties) deposited the compensation under the Workmen's Compensation Act, the legal representatives of the deceased filed a claim application before the Commissioner for Workmen's Compensation, Rajnandgaon. The case was registered as Case No. 40/W.C.Act/2009/Fatal. The present petitioner and other respondents contested the case on merits and finally an award was passed after about 2½ years from the date of accident i.e. on 27.09.2011. While passing the award, the learned Commissioner has also imposed a penalty of 25% of the compensation amount upon the present petitioner.
5. Subsequent to the award being passed, the Railway authorities have deposited the principal amount of compensation along with interest to the tune of Rs.5,34,880/- before the Labour Court and have subsequently initiated steps to recover the same from the present petitioner /contractor under whom the deceased/employee was working, when he met with an accident death vide Annex.P/4. It is this recovery order which is under challenge in this petition.
6. The contention of Mr. Kotecha, Advocate is that firstly the recovery so being made from the present petitioner is **per se** illegal for the reason that there was no specific observation by the learned Commissioner for Workmen's Compensation while the award was

passed for recovering the same from the present petitioner /the contractor. It was also the contention that no such grounds or pleadings were raised by the Railway authorities before the Commissioner for Workmen's Compensation. It was also the contention of the counsel for the petitioner that in the instant case the entire contract has been completed and the settlement has also been made so far as financial liabilities are concerned between the present petitioner and the Railway department and therefore the Railway authorities would be precluded from the raising the bills or recovering the same from any subsequent contracts or dues payable to the petitioner-establishment.

7. It was also the contention of the counsel for the petitioner that the agreement which has been executed into between the petitioner and the Railway department do not have a condition whereby the present petitioner /the contractor or the employer of the deceased would be required to comply with the provisions of the Workmen's Compensation Act indemnifying the Railway authorities in the event of employment related accident. Thus whatever amount payable under the provisions of Workmen's Compensation Act has to be fully borne by the Railway department themselves in the light of Section 12(2) of the Workmen's Compensation Act.
8. Though there is no representation of the Railway department, but they have filed their reply to the petition. In the reply they have categorically taken the stand that they have deposited the amount of Rs.5,34,880/- as compliance of the award passed by the Labour Court on 27.09.2011 in the capacity of a principal employer. The Railway department have also in their reply categorically stated that the general conditions of the contract governing the field. Clause 57

specifically envisages a clause where responsibility of payment of compensation falls directly upon the contractor or the petty contractor, who engages an employee. Likewise, it is also contended that clause 52 and 52A of the said General Conditions of Contract also empowers the Railway department to withhold or recover any dues recoverable from a contractor arising out of some other contract as well. To the said reply filed by the Railway department, the petitioner has not rebutted in any manner nor has he filed any rejoinder in rebuttal to the contentions put forth by the Railway department.

9. Given the aforesaid factual matrix, the undisputed facts, which come out are, the accident that took place on 29.05.2009, the resultant death of a worker engaged by the petitioner namely Panchram Chandrawanshi, the present petitioner not paying the compensation under the Workmen's Compensation Act to the legal representatives. The legal representative filed a claim application before the Commissioner for Workmen's Compensation where the case is registered as Case No. 40/W.C.Act/2009/Fatal, the claim case being decided after more than 2 years i.e. on 27.09.2011. The Railway department who had awarded the contract to the petitioner being the principal employer was held liable of payment of compensation and at the same time the penalty part was imposed upon the petitioner/the employer, under whom the deceased was working.
10. If we look into the provisions of the Section 12 of the Workmen's Compensation Act, which for ready reference is being reproduced herein under:

12. Contracting.-

(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the

purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any [employee] employed in the execution of the work any compensation which he would have been liable to pay if that [employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the [employee] under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, [or any other person from whom the [employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the [employee] could have recovered compensation,] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a [employee] from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management."

11. A bare perusal of sub-section (2) of Section 12 of clearly envisages the fact that where the principal has been held to pay the compensation (as is the case in the present context). The principal shall be entitled to be indemnified by the contractor. This provision of law is very clear that in the event if the principal employer has been asked to pay the compensation, the principal employer has the right under sub-section (2) of Section 12 to recover/demand the same

from the contractor, petty contractor or sub-contractor, as the case may be, under whom the deceased employee was working.

12. In the instant case also the undisputed fact reveals that the present petitioner was awarded a contract. The deceased was engaged by the present petitioner, thus the present petitioner becomes the employer and the deceased becomes the contractor's employee, and the Railway department becomes the principal employer. Even otherwise it is pure logic that the responsibility of a principal employer comes only when the immediate employer fails in discharging his duties/responsibilities. The role of the principal employer under such circumstances is to ensure prompt payment to be made, so that the distressed family gets the financial assistance at the earliest and the principal employer stands protected under Section 12(2) of the Workmen's Compensation Act, whereby the principal employer can demand or recover the said amount from the employer.
13. Given the facts and circumstances of the case, this Court is of the opinion that the petitioner does not have any right whatsoever to challenge the demand notice made by the Railway department. Moreover, the general conditions of contract, more particularly clauses 52 & 57 also comes in the way of the present petition in challenging the impugned demand notice.
14. The writ petition thus fails and stands dismissed.

Sd/-
(P. Sam Koshy)
Judge