

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 26 of 2019**

Rajkumar Sahu S/o Jivrakhan Sahu Aged About 39 Years R/o Bhatagon, Tehsil And District Rajnandgaon Chhattisgarh.

---- Petitioner**Versus**

1. Tilakram Sahu S/o Shri Bikhram Sahu Aged About 43 Years R/o Village Bisahutola, Tehsil And District Rajnandgaon Chhattisgarh.
2. P. C. Georgekutti A-2 Contractor, C.G. Housing Board Corporation Rajnandgaon R/o Tatibandh Tehsil And District Raipur Chhattisgarh.
3. Chhattisgarh Housing Board Corporation Rajnandgaon Division Tehsil And District Rajnandgaon Chhattisgarh.
4. Commissioner For Employees Compensation Cum Presiding Officer Labour Court Rajnandgaon Exercising The Powers Of Commissioner For Employees Compensation Rajnandgaon Chhattisgarh.

---- Respondents

For Petitioner : Shri Tanuj Patwardhan, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**21/02/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. A writ application has been filed not only challenging the order of the Commissioner of Employees' Compensation-cum-Labour Court, Rajnandgaon, Chhattisgarh dated 16.10.2018, but also to declare the third Proviso of Section 30 of the Employees' Compensation Act, 1923 (hereinafter referred to as the 'Act of 1923') to be *ultra vires* Article 14 and 21 of the Constitution of India.

2. So far as challenge to the order dated 16.10.2018 is concerned, there is provision of appeal under Section 30 of the Act of 1923 within the framework of the law, therefore, there is no reason for us to go into the correctness or otherwise of the said decision at this juncture.

3. Only to get a foot hold before the Constitutional Court, in the relief portion para-10.3, a prayer has been made for declaration of the third Proviso to Section 30 of the Act of 1923 to be *ultra vires*.

4. We have gone through the petition. The whole effort of the Petitioner through the writ application is to somehow wriggle out of the obligation and duty cast upon him by way of pre-compliance in preferring the appeal and that there is not a whisper in the petition as to how the said provision which have withstood its ground for almost 90 years, should be declared to be *ultra vires*.

5. A Court will not declare a provision *ultra vires* at mere asking.

6. The Court will also like to record that such condition of deposit of the liability fixed is not unknown to law and not a single judgment has been brought to our notice to show that any Court in this Country has ever held such provision to be *ultra vires* or unconstitutional. In fact, many similar provisions in different Acts have been challenged unsuccessfully.

7. Writ application is misplaced since it is an effort on the part of the Petitioner to avoid the legal obligation and duty cast upon him in the adjudication made under the Act of 1923. It is misconceived and misdirected writ, which is fit to be dismissed.

8. The writ application is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE