

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2372 of 2013

Managing Director, M/s. Sita Cement Petitioner
Ltd., Sundergarh

Mr. Somanath Mishra, Advocate

-versus-

Milan Kumar Roy Opposite Party

Mr. Bikram Pratap Das, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

ORDER
19.07.2022

Order No.

06. 1. This is a petition by the Management challenging an order dated 13th December, 2012 passed by the learned Labour Court, Sambalpur dismissing its restoration Misc. Case No.2 of 2011.
2. The background facts are that the Opposite Party-workman was engaged in the Unit of the Management at village Telighana, P.O./P.S. Kutra, District Sundergarh. On 4th February, 2009 an application was filed by the Opposite Party workman in the Labour Court, Sambalpur being Misc. Case No.4 of 2009 under Section 33 (C) (2) of the Industrial Disputes Act, 1947 (ID Act) claiming the wages for the period from April, 2002 to 28th February, 2005 and some other dues. When the said application came up for hearing before the Labour Court on 4th February, 2009 notice was issued to the Petitioner herein made returnable on 17th March, 2009.

3. As it is seen from the impugned order of the Labour Court, the notice was sent to the Petitioner by registered post with acknowledgment due. The postal acknowledgement was received by the Court before the next date of hearing i.e. 17th March, 2009. On that date, the Labour Court noted that the Opposite Party i.e. the present Petitioner-Management was absent despite service of notice by registered post. Accordingly, the Petitioner was set ex parte. The case was then fixed for hearing on 16th April, 2009 for ex parte hearing. Ultimately, on 19th October, 2009 Misc. Case No.4 of 2009 filed by the workman was allowed and an order was passed directing the Petitioner to pay the Opposite Party-workman a sum of Rs.2,50,852/-.

4. Soon thereafter, the workman wrote a letter to the Petitioner's Managing Director (MD) in the head office at P.S. Rajgangpur district Sundargarh asking for implementation of the order of the Labour Court. On 3rd March, 2010 under the letter head of "Chariot Cement Company" a letter was addressed to the Petitioner referring to his letter seeking implementation of the order of the Labour Court and asking him to meet the signatory of the letter "to have a discussion to settle the issue".

5. With the order not being implemented, the workman moved for execution of the order and on 21st October, 2011 the Petitioner received a show cause notice/direction to the Certificate Officer-cum-Sub Collector, Sundergarh to deposit the said amount. Thereafter, on 15th November, 2011 the Petitioner filed restoration Misc. Case No.2 of 2011 in the Labour Court stating inter alia that they became aware of the ex parte order passed on 19th October,

2009 only on receiving the show cause notice-cum-direction on 21st October, 2011 from the Certificate Officer-cum-Sub-Collector, Sundargarh. It was contended that the establishment of the Petitioner situated at village Telighana had been closed in 2005 and all the paper works and communication were shifted to the Head Office at Rajgangpur. There was only one casual female worker engaged in the said office premises at village Telighana. It was contended that the non-appearance of the Petitioner before the Labour Court in Misc. Case No.4 of 2009 who was “neither deliberate nor intentional”.

6. The Opposite Party workman filed a reply to the said petition pointing out that the Petitioner had not come to the Court with clean hands “because in past he wrote a letter to the Opposite Party on 30th March, 2010 to meet the representative of another establishment to sort out the claims of the Opposite Party.”

7. The Labour Court then proceeded to record the evidence of witnesses. It was sought to be contended by the MD of the Petitioner in his cross-examination that he had intimated the Excise Department about the closure of the factory at village Telighana although the copy of such letter was not produced. Interestingly, the second witness for the Petitioner Management was Sudhansu Sekhar Das Sharma who in the cross-examination admitted that after closure of the Petitioner’s cement factory at Telighana, the company had placed the services under “Chariot Cement Company Ltd.” He further admitted that the personal officer of the said Chariot Cement Company Ltd. had instructed him to appear in the Court on behalf of the Petitioner. The workman filed his affidavit of evidence where he

again mentioned about the letter written to him on 30th March, 2010 and this was marked as Ext.1.

8. The impugned order was passed on 13th December, 2012 by the Labour Court discussing elaborately the entire evidence led by the Petitioner in support of its contention that it was not aware of the order dated 19th October, 2009 in I.D. Misc. Case No.4 of 2009. The Labour Court was not convinced that the Petitioner was not aware of those proceedings particularly since the service of notice upon it in the said ID Misc. Case No.4 of 2009 was confirmed by the AD card received by the Court and on the basis of which the Petitioner had been set ex parte on 17th March, 2009.

9. As rightly pointed out the Petitioner failed to explain “as to who received the registered post notice issued from this Court and under what circumstances the notice did not reach to the Managing Director of the Company.” On examining of all the other documents, the Labour Court came to the conclusion that the Petitioner industry had not been closed on the alleged dates as claimed by it i.e. 5th October, 2005 and 1st November, 2005. Importantly, there is no compliance shown of the provisions of Section 25(o) or 25(r) of the ID Act and particularly since no document was filed to show that the Petitioner had not employed more than 50 to 60 persons in its industry.

10. Further, although the Petitioner claimed to have received the notice from the Certificate Officer on 21st October, 2011 yet it did not file a copy of the said notice in the present proceedings. Therefore, the plea that the Petitioner was aware of the order dated

19th October, 2009 only after receiving that notice was also disbelieved by the Labour Court.

11. This Court has heard the submissions of Mr. Somanath Mishra, learned counsel for the Petitioner and Mr. B.P. Das, learned counsel for the Opposite Party.

12. Mr. Mishra, again took the Court to the evidence led by the Petitioner to show that it was aware of the order dated 19th October 2009 only on 21st October, 2011 when it received a copy of the show cause notice/direction to the Certificate Officer. A copy of such notice has not been placed on record. The Labour Court therefore was justified in not accepting that plea. Importantly, there was no explanation for two important facts i.e. one that notice in Misc. Case No.4 of 2009 was duly served on the Petitioner with the A.D. card having been received by the Labour Court prior to the hearing date 17th March, 2009. Therefore, the Labour Court could not be faulted for setting the Petitioner for ex parte on that date. Secondly, there is no denial that an employee of Chariot Cement Company had in fact written to the Petitioner on 13th March, 2010 asking him to come and discuss for the settlement arising out of the order dated 19th October, 2009 in ID Misc. Case No.4 of 2009. The connection between the Petitioner and the Chariot Cement Company got established from the evidence of the second witness examined on behalf of the Petitioner itself.

13. All these facts go to show that the Petitioner was indeed aware of the order dated 19th October, 2009 much before it approached the Labour Court for restoration of the said case. Consequently, the

Court is not satisfied that any ground has been made out for setting aside the impugned order of the Labour Court.

14. The writ petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.

