

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1522 OF 2020

1. Shri Shakti Singh Shekhavat,
Aged : Major, Occ. Business.
2. Shri Moolsingh s/o Hanuman Singh
Shekhavat, aged about : Major, occ.
: Business, Both r/o Katol, Nagpur
Road, Near Uddan Pool, Katol,
Nagpur.

Also 15B Devinagar Aloda House,
New Sananer road, Sodala, Jaipur
(Rajasthan)

.... **PETITIONERS**

// **VERSUS** //

1. Shri Raghunath Singh s/o Mahabali
Singh Gaherwar, Aged about 65
years, Occ. : Nil
2. Smt. Chandrakala w/o Raghunath
Singh Gaherwar, aged about 55
years, Occ. : Nil
3. Ku. Puja Alias Padma d/o Raghunath
Singh Gaherwar, aged about 22
years, Occ. : Nil

All R/o Dodakipura, Near Kanya
School, Katol, Tahsil Katol, District ;
Nagpur.

4. Shri Rajendra s/o Kashinath Patil,
(deceased) Aged : Major, R/o
Panchari Sawanga, Tahsil Katol,
District : Nagpur

a) Shantabai Kashinath Patil, Aged

75 years,

- b) Padma Rajendra Patil Aged 70 years.
- c) Seema Rajendra Patil, Aged 25 years.
- d) Pragati Rajendra Patil, Aged 20 years.
- e) Ankit Rajendra Patil Aged 23 years.

Applicants a to e are all r/o Panchari
Sawanga, Tahsil Katol, District :
Nagpur.

.... **RESPONDENTS**

Dr. Mrs. R.S. Sirpurkar, Advocate for the petitioners.
Shri S.A. Kalbande, Advocate for respondent nos. 1 to 3.

CORAM : ROHIT B. DEO, J.
DATED : 09.03.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The short grievance of the petitioners is that while setting aside the *exparte* order dated 01.10.2014 in ECA Application (C). 127 of 2013, the Commissioner, under the Employees Compensation Act (the Act), Fourth Labour Court, Nagpur, has directed the petitioners to deposit Rs.6,35,360/- (Rupees Six Lakhs Thirty Five Thousand Three Hundred and Sixty only).

3. The deposit of Rs.6,35,360/- (Rupees Six Lakhs Thirty Five Thousand Three Hundred and Sixty only) is directed on the premise that the *exparte* order quantifies the compensation as Rs.8,47,160/- (Rupees Eight

Lakhs Forty Seven Thousand One Hundred and Sixty only) and out of the said amount, Rs.2,11,800/- (Rupees Two Lakhs Eleven Thousand and Eight Hundred only) are deposited by the petitioners on 23.08.2017.

4. The learned Counsel for the petitioners Dr.Mrs. Sirpurkar points out that after the deposit of Rs.2,11,800/- (Rupees Two Lakhs Eleven Thousand and Eight Hundred only), the petitioners have deposited further amount of Rs.2,00,000/- (Rupees Two Lakhs) and therefore, as of now, the order impugned obligates the petitioners to deposit Rs.4,35,360/-(Rupees Four Lakhs Thirty Five Thousand Three Hundred and Sixty Only). The short submission of the learned Counsel Dr. Mrs. Sirpurkar is, that after having set aside the *exparty* order, recording that the notices were served on different addresses, and that the service is defective, such onerous condition could not have been imposed. Dr. Mrs. Sirpurkar invites my attention to the provisions of Section 4-A of the Act, to buttress the submission that if an employer disputes the liability without reason and does not deposit the amount, he cannot be compelled to do so and the only consequence which would follow is that as and when the liability is determined, the employer shall be liable to pay penalty and interest. The submission is that while setting aside the *exparte* order, it was not appropriate to ask the petitioners to deposit the entire compensation amount, which is determined in the *exparte* proceedings.

5. While Mr. Kalbande would have a different perspective, I am

inclined to agree with the submissions canvassed by the Dr.Mrs. Sirpurkar. I note that the petitioners have already deposited Rs.4,11,800/- (Rupees Four Lakhs Eleven Thousand and Eight Hundred Only). It certainly would be unjust to ask the petitioners to deposit entire amount, which is determined in the *exparte* proceedings. The *exparte* order is recalled on the ground that the summons is not served. In any view of the matter, the amount which is already deposited by the petitioners, is sufficient. Needless to observe, if ultimately, the Commissioner finds that the petitioners ought to have deposited additional amount in view of the provisions of Section 4-A of the Act and that the petitioners have without sufficient cause, denied the liability, the petitioners shall be vulnerable to the statutory consequences.

6. The order dated 31.12.2019 is quashed and it is directed that condition for restoration shall be deposit of the amount of Rs.4,11,800/-, that is the amount which is already deposited by the petitioner before the Commissioner.

7. The Commissioner, Fourth Labour Court, Nagpur, is requested to decide the compensation case as expeditiously as possible, and in any event, within the next six months.

8. The petition is allowed in the afore-stated terms.

(ROHIT B. DEO, J.)

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