
(1991) 07 MP CK 0043
In the Madhya Pradesh High Court

Administrator of Indore Nagar Palika

APPELLANT

Vs

Rann Singh and Others

RESPONDENT

Date of Decision : 04-07-1991

Acts Referred:

Employees Compensation Act, 1923 — Section 10, 12

Citation : (1993) 1 ACC 287

Hon'ble Judges : A.G. Qureshi, J

Bench : Single Bench

Judgement

A.G. Qureshi, J.—This civil miscellaneous appeal is directed against the judgment of the Commissioner for Workmen's Compensation, Indore (Labour Court) in Case No. 4/W.C.Act/78-Fatal.

2. The facts leading to this appeal, in short, are that one Rannsingh and Bhura, wife of Rannsingh, had filed an application u/s 10 of the Workmen's Compensation Act before the lower Court claiming compensation of Rs. 13,500/- on the ground that the Municipal Corporation, Indore owns the Nehru Stadium and the land adjacent to that stadium. On the land adjacent to the stadium the Corporation decided to construct a badminton hall, the construction of which started in the month of April, 1977. The contract for the construction of the aforesaid hall was given to respondent Nos. 3 and 4. That one Suratiya was employed as a labourer by the contractors and while working as such labourer he fell down from the scaffolding due to which he received injuries to which he succumbed. The monthly income of the deceased was Rs. 150/-. Therefore, the death of the workman having been caused during the course of employment, the application was filed by the legal heirs of the deceased against the present appellant and respondent Nos. 3 and 4.

3. The lower Court after recording the evidence allowed the application holding that the contractor and the Municipal Corporation are jointly and severally liable to pay the compensation to the applicants. It was further held that the Municipal Corporation entitled to be indemnified by the contractor is Kailashchandra. The

contractors have not filed any appeal. However, the Administrator of the Municipal Corporation has filed this appeal aggrieved by the impugned judgment holding the Municipal Corporation responsible for paying the compensation.

4. The learned Counsel for the appellant, Mr. Dhanji, has assailed the finding of the lower Court mainly on the ground that the Municipal Corporation had although given the contract for the construction of the badminton hall to the contractor, but the Corporation could not be held liable for payment of compensation as principal in view of the fact that the work of construction of the badminton hall is not ordinarily apart of the trade or business of the Municipal Corporation. The Corporation actually makes the stadium or other sport facilities available to the citizens of Indore as a welfare scheme and not for profit or gain. Under the law also it is not a part of the trade or business of the Corporation. Mr. Dhanji in support of his arguments has placed reliance on a judgment of the Allahabad High Court in *Municipal Board, Almora Vs. Jasod Singh and Another*, wherein it was held that when the Municipal Board entrusted the electrification work of the town to the State and during the course of employment if an employee of the State suffers injuries then it is the State which is liable to pay compensation and not the Board because execution of electrical project is not ordinary business of the Board. In *New India Tannis Ltd. Vs. Aurora Singh Mojbi and Another*, it has been held that if the work is entrusted to a contractor to do a particular job by a company which is not ordinarily a part of the trade or business of the principal company, then the company cannot be held liable to pay the compensation as a principal.

5. On the other hand, the learned Counsel for the respondent Nos. 1 and 2, Mr. G.K. Neema, has placed reliance on a Division Bench decision of the Gujarat High Court reported in *Vimlaben Vashrambhai v. Gujarat Housing Board* 1975 ACJ 84 (Gujarat) wherein it has been held that when a contractor of the Gujarat Housing Board was entrusted with the job of constructing the building of the Board and a labourer employed by the contractor falls from a height resulting in his death, then the Housing Board is liable to pay the compensation to the labourer employed by the contractor being the principal.

6. In view of the aforesaid authorities the only question which has to be decided in this appeal is whether the construction of a badminton hall can be treated as a work which is ordinarily part of trade or business of the Municipal Corporation, Indore. In this respect first of all the powers and duties and functions of the Municipal authorities have to be looked into. u/s 66 of the Municipal Corporation Act, the obligatory duties of the Municipal Corporation have been defined and u/s 67 the discretionary powers of the Corporation have been enumerated. In Clause (b) of Section 67 it has been provided that the Corporation may in its discretion provide wholly or in part constructing, establishing or maintaining public parks or gardens, library, museums, halls, theatres, stadiums, offices sarais, rest houses and other public buildings. In Clause (y) of Section 67 a provision for pools, public wash-houses, bathing places and other institution designed for the

improvement of public health has been provided. As such under both the aforesaid clauses construction of a badminton hall is within the discetionary functions of the Municipal Corporation under which a stadium has already been constructed and the badminton hall was being constructed when this incident occurred.

7. Now according to Mr. Dhanji although the Act provides for construction of the sport facilities for the citizens and the Corporation has done the same, still this activity cannot be treated as ordinarily a part of trade or business of the Corporation because this activity was not undertaken with a motive to earn profit out of it. I am unable to agree with the aforesaid argument of Mr. Dhanji. The work of construction of a stadium or sport facilities is definitely an ordinary part of the business of the Corporation. The words used in Section 12(1) of the Workmen's Compensation Act are not the work which is ordinarily part of the trade and business of the principal, but the emphasis is that the principal shall be held liable if the work which was carried on is ordinarily part of the trade or business of the principal. As such if the work which is being carried on is ordinarily a part of the trade or the principal or business of the principal then in either case the principal shall be liable. Now business in a welfare State and under the provisions of the M.P. Municipal Corporation Act would include all the activities enumerated in Sections 66 and 67 of the Municipal Corporation Act and that would definitely include the construction of the sport facilities and providing playgrounds to the citizens.

8. In a Gujarat High Court judgment in Bai Mani and Others Vs. Executive Engineer, Irrigation Project, Division Six, it was held that construction of a canal is ordinarily a part of the business of the State and, therefore, the State was held liable to pay the compensation to the labourer of the contractor as principal. In a recent judgment of the Bombay High Court in Sarjerao Unkar Jadhav Vs. Gurindar Singh and another, , it was held that when the Electricity Board gave a contract for painting the electrical poles and the workman employed by the contractor was injured while painting poles, it was ordinarily a part of business of the principal, that is the Electricity Board and, therefore, the principal was held liable for compensation. Therefore, in view of the fact that the activity of construction of a badminton hall of the Municipal Corporation, was ordinarily a part of the business of the Corporation has rightly been held liable jointly and severally with the contractor to pay the compensation and I see no ground for interfering with the finding of the lower Court on this point. However, if the Municipal Corporation may so choose, it can recover the amount of compensation from the contractor as has already been held by the lower Court.

9. No other point was raised before me.

10. In the result, I find no force in this appeal. It is accordingly dismissed with costs. Counsel's fee Rs. 150/- or according to certificate filed, whichever may be less.