
(2008) 07 J&K CK 0019
In the Jammu And Kashmir High Court

Executive Engineer	Vs	APPELLANT
Mohammad Sultan Ganie and Others		RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 17

Citation : (2008) 3 JKJ 34

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Judgement

M. Yaqoob Mir, J.—Impugned are the orders dated 29.4.2006 and 20.6.2006 passed by the Authority under Payment of Wages Act.

Pursuant to order dated 29.4.2006 delay in filing the application for wages has been condoned and at the same time an amount of Rs. 1,14,000/-

deducted wages together with compensation of Rs. 30,000/- has been ordered to be paid to the respondents. Petitioner had participated in the

proceedings but subsequently had absented, resultantly ex parte order came to be passed. For setting aside the order dated 29.4.2006 application

has been filed by the petitioner, which too has been dismissed, pursuant to order dated 20.6.2006.

2. The precise factual position is required to be noticed.

Work construction of road from Chittay Banday to Gori Hajan by way of R.S/CD works, WBM, GI, GII and R. wall for K.M. Ist and IInd under

PMGSY in block Bandipora,"" has been allotted in favour of late Ghulam Nabi Ganai s/o Abdul Kabir Ganai R/o Bandipora, Attorney holder is

Khurshid Ahmad Ganai- respondent No. 2. It is attorney holder Khurshid Ganai, who had engaged the respondent No. 1 for supply of labour and

material. The work has been executed but in excess to the allotted-work; payment has been made except for the excess work executed and it is

on that count wages to the tune of Rs. 1,14,000/- have been deducted, prompting respondent No. 1 to file the application before the authority

under Payment of Wages Act, the authority has passed the order impugned. Application has been filed after lapse of four years, when the

application was required to be filed u/s 15(B) of the Payment of Wages Act within twelve months, so three years delay has been condoned.

3. According to positive stand of the petitioner, while allotting the work it was made clear that no excess work shall be allowed without approval

from the Competent Authority. The Contractor not adhering to that, has executed the excess work, same has been taken up with the Director

Rural Development department and Assistant Commissioner Development vide No. xen/REW/Baramulla/1940 dated 21.10.2003 and No.

xen/REW/Baramulla/1717-19 dated 30.7.2005 and the contractor has been asked to follow the matter before the Director Rural Development.

This position is reflected in the communication bearing No. xen/REW/Baramulla/561-64 dated 29.5.2006 addressed by the petitioner to the

authority under the Payment of Wages Act.

4. The appearing counsel for the petitioner, firstly contended that the respondent No. 1 had no locus standi to file the application u/s 15 of the

Payment of Wages Act, as there is no privity of contract between the petitioner and the respondent No. 1. The Learned authority has exceeded

the Jurisdiction in entertaining the application. Petitioner was the employer, whereas one Ghulam Nabi was the contractor (employee) represented

by Attorney holder Khurshid Ahmad respondent No. 2. When the respondent No. 1 (applicant before the authority) was not the employee, he

had no right to file an application, if he had any claim, that was in between him and respondent No. 2. The submission is plausible, but has not been

taken note of by the authority.

5. Next contention as raised is that Contractor had exceeded the execution of work without approval and it is because of that wages to the tune of

Rs. 1,14,000/- were deducted and the matter was taken up with Director Rural Development for accord of necessary sanction, so in absence of

sanction the amount could not be released, results from the Director Rural

Development should have been awaited, that aspect of the matter has also been lost sight of. The order impugned has been passed in haste, without appreciating the contours of the controversy.

6. It is true that the object of Payment of Wages Act is labour friendly, no detailed inquiries are required. Matter has got to be disposed of in a summary manner, but it is not to be stretched to the extent of defeating all the norms and canons of law. The authority has not addressed the issues, firstly locus standi of the respondent No. 2, then the execution of excess work and then requirement of necessary approval from the Director Rural

Development.

7. Though the appearing counsel for the respondents contended that the petition is not maintainable, as the petitioner has by passed the remedy of

preferring appeal as permissible u/s 17 of the Payment of Wages Act, with the sole object of avoiding deposit of the awarded amount. This

contention has already been set at rest by this Court in the Judgment reported in 2007(1) SLJ 256, KLJ 2007 256, 2004(1) SLJ 199, 2004(1)

SLJ 322, wherein it has been laid down that when the order is without jurisdiction or the authority has exceed the jurisdiction, writ is maintainable.

In the Judgment reported in 2004 (1) SLJ 199 facts are identical. In the reported Judgment the person who supplied labour and material had

lodged the claim, authority had passed the order, same was held without jurisdiction. That being so writ was held to be maintainable. In the instant

case it is neither the contractor nor his attorney who has lodged the claim but it is supplier of the material and labour, who had lodged the claim. In

what capacity he had lodged the claim, whether authorized or not, is not clear from the records.

8. In the backdrop of the aforesaid factual and legal position, petition succeeds. Both the orders under challenge are set aside. Case is remanded

back to the Authority for deciding the matter afresh, after hearing both the parties, the observations made hereinabove shall be kept in mind. Copy

of the order alongwith Subordinate court record be send back forthwith. Appearing counsel for the parties shall appear before the authority

concerned on 14.7.2008.

Disposed of alongwith the connected CMP(s).