

(2015) 02 AHC CK 0110

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10068 of 2015

Kashmiri Lal Construction Pvt. Ltd.

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-02-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 12(2)

Citation : (2015) 3 ADJ 118

Hon'ble Judges : Arun Tandon, J;S.B. Singh, J

Bench : Division Bench

Advocate : R.K. Srivastava, for the Appellant; Pranjali Mehrotra, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents. The respondent No. 2 i.e. Executive Engineer Eastern Electricity Distribution Division under the letter dated 20th July, 2014 has required the subordinate authorities to ensure that the sum of Rs. 7,33,200/- paid to the legal heirs of Khubi Singh under the provisions of the Workmen Compensation Commissioner dated 5.5.2014 are recovered from the contractor namely the petitioner. For the purpose the said amount has been directed to be recovered from the bills which are to be paid to the petitioner.

2. Learned Counsel for the petitioner submitted before this Court that the Workmen Compensation Commissioner under order dated 5.5.2014 has determined the liability in the matter of payment of compensation upon the Electricity Distribution Division, therefore, Executive Engineer cannot insist upon the money being recovered from the petitioner.

3. This Court after examination of the records required the counsel for the petitioner to inform as to what were the terms and conditions of the contract between the petitioner and the Electricity Urban Distribution Division. Counsel for

the petitioner submitted that the contract is irrelevant for the dispute in question and the corporation must abide by the orders of this Workmen Compensation Commissioner.

4. We on examining the order of the Workmen Compensation Commissioner and Annexure 1 to the present writ petition, find that the Workmen Compensation Commissioner has specifically recorded that what ever may be the contract between the petitioner and the Electricity Urban Distribution Division, it is of no concern vis-a-vis the compensation to be paid for the death of the employee under the Workmen Compensation Act as the Electricity Distribution Division was the principal employer.

5. It therefore, necessary follows that the workman compensation consumer has not gone into the terms and conditions of the contract between the petitioner and Electricity Distribution Division in respect of the liability to be incurred due to death/injury to the workmen of the contractor while performing the contracted work. The order of the Workmen Compensation Commissioner cannot be read in the manner to fore clause the inter-se terms of the contract between the petitioner and the Electricity Distribution Division.

6. The rights between the petitioner and Electricity Distribution Division in the matter of payment of compensation in respect of death/injury of an employee engaged for the contracted work has necessarily to be declined with reference to the conditions of the contract. We have not hesitation to hold that if the contract entered into between the petitioner and Electricity Distribution Division contains a clause in the shape of indemnity for payment of such compensation then this Court cannot grant the relief as prayed for in this petition.

7. Learned Counsel for the petitioner submits that the Electricity Distribution Division did not file any appeal against the order of Workmen Compensation officer the issue of transferring the liability stands closed against the Electricity Distribution Division.

8. The submission so raised also has no merit inasmuch as the Electricity Distribution Division is not questioning the award of the workmen Compensation Commissioner it is only informing the conditions of the contract entered into between the petitioner and the department.

9. The petitioner ought have brought on record the terms and conditions of the contract entered into between the parties.

10. Learned counsel for the respondents has made rightly referred Section 12(2) of the Compensation Act which provides that Principal contract or would be liable to be indemnified by the contractor and where the such contract entered, the matter has to he examined by the Commissioner. For the said reason, the writ petition is disposed of.