

(2021) 10 DEL CK 0187

In the Delhi High Court

Case No : Civil Writ Petition No. 4333 Of 2021, Civil Miscellaneous Application No. 13238, 15235 Of 2021

Manoj Jain

APPELLANT

Vs

Gnct Of Delhi And Ors

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Employee's Compensation Act, 1923 — Section 4, 10A(1)

Citation : (2021) 10 DEL CK 0187

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Gaurav Mittal, Satyakam, Rishi Pal Singh

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner challenging the notices dated 21st January 2018 and 29th January 2018, issued by the Commissioner under the Employees' Compensation Act, 1923, directing the Petitioner to pay the computed compensation amounts to the legal heirs of the employees who died out of during the course of employment in the Petitioner's site/ establishment.
3. The brief background of the matter is that a fire occurred on 20th January, 2018 in a factory manufacturing firecrackers, located at F-83, DSIIDC, Sector-5, Bawana, Delhi - 110039, which was being run by the Petitioner. The said fire accident is admitted by the Petitioner in paragraph 3 of his writ petition. The said fire turned fatal and resulted in the death of 17 workmen and injuries to two workmen. An FIR dated 21st January 2018 was also registered under the IPC and The Explosive Substances Act, 1908. The authority under the Employee's Compensation Act, 1923 ("the Act"), i.e., the Commissioner, issued notice to the Petitioner, under Section 10A(1) of the Act, on 21st January 2018, and after

identifying the deceased employees, took action under the provisions of the Act. The following compensation amounts were awarded in terms of Section 4 of the Act.

S.

No.

Name Deceased

of

Compensation calculation

Amount of death compensation

1

Afsana W/o Mukhtiar Khan

178.49 X Rs.4000/-

Rs.7,13,960/-

2

Rajjo Suresh

W/o

99.37 X Rs.4000/-

Rs.3,97,480/-

3

Rita D/o Raju

226.38 X 4000/-

Rs.9,05,520/-

4

Madina Nasruddin

W/o

135.56 X Rs.4000/-

Rs.5,42,240/-

5

Debi Devi W/o Girdhari Das

184.17 X Rs.4000/-

Rs.7,36,680/-

6

Dharma

W/o Raju

Devi

169.44 X Rs.4000/-

Rs.6,77,760/-

7

Sonam Bantu Lal

D/o

219.95 X Rs.4000/-

Rs.8,79,800/-

8

Suraj S/o Shyam Bihari

224.00 X Rs.4000/-

Rs.8,96,000/-

9

Ravi Kant S/o Devender Pratap

226.38 X Rs.4000/-

Rs.9,05,520/-

10

Ranjeet

215.28 X Rs.4000/-

Rs.8,61,120/-

11

Pintu S/o Lucky Pandit

Age yet not known

12

Sukhda Mahipal

W/o

178.49 X Rs.4000/-

Rs.7,13,960/-

13

Kusma W/o Vishwanath

163.07X

Rs.4000/-

Rs.6,52,280/-

14

Soni Sobhran

D/o

222.71X

Rs.4000/-

Rs.8,90,840/-

4. The present writ was filed challenging the award of the said compensation under Section 10A(1) of the Act, for the first time in April 2021. A preliminary objection in respect of delay and laches in filing the writ petition was taken by the Respondents, and thereafter, a condonation of delay application was filed by the Petitioner, which is pending before this Court. The total delay in filing the writ petition is more than 1100 days as per the Petitioner but more than 1900 days as per the Respondent no.1. As per the Application for condonation of delay, the delay is attributed to the Counsel, who is stated to have advised the Petitioner that the criminal trial, in respect of the FIR that was filed, was more important, and proceedings under the Employees' Compensation Act are civil in nature. The explanation given in the application for condonation of delay completely seeks to blame the lawyer concerned for the delay in filing the present petition.

5. Vide order dated 26th April, 2021, it was directed that the two preliminary issues as to the delay and laches as also alternative remedy would be examined by the Court. It was further directed that no coercive action shall be taken pursuant to the impugned notices and the consequential notices issued for recovery, in the meantime.

6. Counter affidavit is stated to have been filed on behalf of the GNCTD, however the same is not on record. Let the same be brought on record. It has however also emailed to the Court Master and has been perused by the Court. Mr. Rishi Pal, Id. Counsel has also entered appearance today, along with legal heirs/family members of seven of the deceased victims being:

S. No.

Name of LR/Relative

Name of Deceased

1

Shamshudin (M:8130937441)

Madina

2

Durjan (M:7840898023)

Reema

3

Mukhtiyar (M:7830931844)

Afsana

4

Raju (M:8587057738)

Rita

5

Harish (M:8766387573)

Rajo Devi

6

Vaishali (M:8506820847)

Sonam

7

Reema (M:9682943390)

Baby Devi

7. Considering the nature of the matter, Id. counsel for the Petitioner was asked to seek instructions in the first half, when arguments were heard, as to how much money would his client be willing to deposit as a ground for continuation of the interim order and for condonation of delay. The matter was passed over for him to seek instructions.

8. Mr. Mittal has reverted with instructions and submits that an FIR was registered against Mr. Ashish Jain - son of the Petitioner. In the course of the criminal trial, Rs.34 lakhs has been deposited by Mr. Ashish Jain, which shows his

bonafides in the matter. In the FIR Mr. Ashish Jain was arrayed one of the accused and was also arrested and as a condition of bail, he had deposited a sum of Rs.34 lakhs, which is captured in the order dated 7th September, 2018 passed by Special Judge, NDPS, North, Rohini Courts, Delhi, in Bail Application No. 1566/18 arising out of FIR No. 36/18. In the said order, it is recorded as under:

".... The amount as deposited shall be taken into consideration in case any order for compensation has to be passed by the Id. Trial Court. In case, if the amount is not deposited as per the proposal submitted by the applicant himself then, it will be misrepresentation on behalf of non-applicant and prosecution will be at liberty to move appropriate application in accordance with law.

Hence, the present application for cancellation and setting aside bail order dated 25.05.2018 stands dismissed in view of the above observations."

9. Mr. Mittal further submits that the Petitioner himself has suffered from a severe stroke recently, and he is not in financial condition to deposit further money.

10. On behalf of the GNCTD, Mr. Satyakam, Id. ASC has pointed out the various admissions made by the Petitioner in the writ petition, in paragraphs 3 and 13. He has also taken the Court to the application for condonation of delay filed by the Petitioner, wherein it is clearly admitted that the Petitioner was well aware of the order passed by the authority. He further submits that the Petitioner, after the closure of the factory in Bawana, opened another factory at Kundli, Haryana where, again, an FIR was registered against him, and he was arrested and thereafter released on bail.

11. Mr. Rishi Pal, Id. Counsel appearing for some of the victims, also submits that there is a third incident where the Petitioner set up a factory at Ghaziabad, UP. Both the factories at Kundli and Ghaziabad, dealt with illegal manufacture of crackers, where again a fire is stated to have taken place, and FIRs were registered. The last incident of fire is disputed by Mr. Mittal, Id. Counsel.

12. Be that as it may, the fact that the fire occurred in the factory of the Petitioner is, clearly, admitted in paragraph 3 of the writ petition, which reads as under:

"3. On dt 20.01.2018, an extremely unfortunate fire accident occurred in the factory managed by the Petitioner Manoj Jain & his partner Lalit Goyal at F-83, DSIIDC, Sector-5, Bawana, Delhi - 110039 which turned fatal & claimed the lives of 17 persons and 2 persons injured."

13. Under such circumstances, and due to the fact that delay in the present case is more than 1100 days as per the Petitioner, and almost 2000 days as per the Id. Counsel for the GNCTD, some conditions would be liable to be imposed for the continuation of the interim order and for condonation of delay.

14. Keeping in mind that 17 persons lost their lives in a fire in the factory, which

was owned by and under the control of the Petitioner, at this stage, the following directions are issued:

(i) The Petitioner shall deposit a further sum of Rs. 34 Lakhs with the Commissioner, Employees' Compensation Act, 1923) District North-West, Labour Welfare Centre, Nimri Colony, Ashok Vihar, Phase-IV, Delhi-110052.

(ii) The said amount shall be deposited in two installments. Rs. 17 Lakhs shall be deposited by 30th November 2021 and the remaining 17 Lakhs shall be deposited by 15th January 2022.

(iii) Subject to these two deposits being made, delay in the filing of this petition shall stand condoned and the interim order shall stand continued.

(iv) Upon the said deposits being made, the Commissioner shall release a sum of Rs. 2 Lakhs to each of the victims/legal heirs of the victims upon verification. The verification in respect thereof, shall be conducted within one week after deposit being made, and the amounts shall be released within one week thereafter. The Commissioner may choose the manner of disbursal, if required in two instalments, one lakh after the first deposit of Rs. 17 lakhs and another Rs. 1 lakh after the second deposit.

15. The deposit and release of the amounts as set out above, is being directed to provide some succour to the families of the victims who lost earning members. One of the victims was a 13 year old girl. The above deposits shall be subject to further orders in the present petition.

16. It is made clear that if the deposits, as directed above, are not made by the Petitioner, the application seeking condonation of delay shall automatically stand dismissed and the obvious consequence of that would be that the writ petition shall itself stand dismissed without any further orders of this Court.

17. Let a status report be filed by the Commissioner, Employees' Compensation Act, 1923 in respect of the directions above, before the next date of hearing.

18. Let rejoinder to the counter affidavit filed by the GNCTD be also filed within four weeks.

19. At this stage, Mr. Rishi Pal, Id. Counsel, submits that he has moved three applications for the impleadment of legal heirs of the victims. Let all the legal heirs of the victims be impleaded in this petition. None of the victims or the legal heirs need to file any counter affidavit in the petition, however if they wish, they are permitted to do so. Let the names of the victims, their legal heirs and addresses be supplied by Mr. Rishi Pal, Id. Counsel, to Mr. Mittal, Id. Counsel, to enable him to file the amended memo of parties within 15 days.

20. List on 10th February 2022. This shall be treated as a part-heard matter.