
(2006) 03 MP CK 0052

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4931 of 1998

P.K. Shukla

APPELLANT

Vs

Executive Engineer and Others

RESPONDENT

Date of Decision : 14-03-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 12(1), 12(2)

Citation : (2007) ACJ 1

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Narendra Chouhan, for the Appellant; Seema Agrawal, GA, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—In this petition petitioner has prayed for the relief for quashment of order (P-1) passed by the Executive Engineer on 1.5.1998 requiring the petitioner to deposit a sum of Rs. 90,338/-. which was paid by the State Government on account of death of a worker as per order passed by the Commissioner for Workmen's Compensation.

2. Petitioner has submitted that petitioner is a contractor. On 14.5.1995 one labourer called Shiv Prasad Choudhary was working at Deoghat on Banganga river while repairing the bridge when he was pulling the pipe tied with a rope fell from the bridge and died on the spot. Deceased was 19 years old receiving salary of Rs. 1170/- per month. A case was filed by the dependents of the deceased before Commissioner for Workmen's Compensation for grant of compensation on account of death of their son. Shri Dinesh Shukla who was power of attorney holder of the petitioner, was impleaded as party not the petitioner Shri P.K. Shukla. In certain construction contracts Mr. P.K. Shukla and Mr. Dinesh Shukla have worked together. No award was passed against Shri P.K. Shukla or Shri Dinesh Shukla, award was passed against respondents State of M.P. and Executive Engineer, they were held liable to make payment of compensation. The

Executive Engineer has issued a communication (P-1) dated 1.5.1998 crossing all the boundaries, committing contempt of Court thereby shocking and surprising to the petitioner to recover the amount . It was submitted that death was unrelated. to the job of the petitioner. Petitioner was not a party before the Commissioner for Workmen's Compensation as such order of deduction of compensation paid from payment of petitioner, was improper. As Commissioner has directed the award to be paid by State and Executive Engineer, liability could not have been in turn imposed upon the petitioner. Act of the respondent No. 1 was thus, illegal,

2. A return has been filed by the respondents, it is contended that petitioner has suppressed the factum of execution of an agreement in favour of Government under which he was carrying out the work, as Clause 21 of the said agreement make the petitioner liable to make entire payment to the Government, which Government has incurred towards making payment to the labourer under the provisions of Workmen's Compensation Act. Petitioner is bound by the said term of the agreement. Petitioner was assigned with the repairing work of Banganga bridge on Palari-Kahani. road. For this purpose agreement (R-1) was reached on 16.1.1995. Clause 21 of the Agreement provides for liability of worker to be borne by the contractor. It is submitted that as per clause 21 Government shall be at liberty to recover the amount or any part thereof by deducting it from the security deposit or from any sum due to the Government. Thus a sum of Rs. 90,338/- was ordered to be recovered from the petitioner as the said amount has been paid , by the Government on 27.4.1998. Amount is recoverable from the petitioner. Shri Dinesh Shukla was power of attorney holder, order passed by Commissioner for Workmen's Compensation cannot be assailed in this petition.

3. Shri Narendra Chouhan, learned Counsel for the petitioner has submitted that Commissioner for Workmen's Compensation has fastened the liability on the State and Executive Engineer not on Shri Dinesh Shukla. Shri P.K. Shukla was not made party before Commissioner for Workmen's Compensation as such recovery of the amount is contrary to the order passed by the Commissioner for Workmen's Compensation. Once liability of contractor was not found. amount could not be ordered to be recovered from the petitioner. He has further submitted that death has not taken place in relation to the work of agreement entered into by the petitioner with the State of M.P. thus the order (P-1) is bad in law.

4. Ms. Seema Agrawal. GA has Dressed into service Clause 21 of the agreement. She has submitted that liability has been rightly passed on as per agreement on Shri P.K. Shukla, Death of worker took place on the work under the agreement entered into by the petitioner with the State thus no case for interference is made out.

5. It is clear from the averment made that Shri Dinesh Shukla was the power of attorney holder of the petitioner Shri P.K. Shukla. I am satisfied that the death took place on 14.5.1995 at Deoghat on Banaanga river while work of repairing

the bridge was undertaken by the petitioner as per the agreement (R-1), which clearly indicates that said work was assigned to the petitioner Shri P.K. Shukla. He was the main contractor:

6. Clause 21 of the aforesaid agreement is quoted below :

Clause 21- In every case in which by virtue of the provisions of Section 12, Sub-section (1) of the Workman's Compensation Act, 1923, Government is obliged to pay compensation to a workman employed by the contractor in execution of the work, Government will recover from the contractor the amount of compensation so paid and without prejudice to the rights of Government u/s (1) Sub-section (2) of the said Act, Government shall be at liberty to recover the amount or any part thereof by deducting it from the security deposit or from any sum due by Government to the contractor whether under this contract or otherwise Government may not be bound to contest any claim made against them u/s 12, Sub-section (1) of the said Act except on the written request of the contractor and upon his giving to Government full security for all cases for which Government might become liable in consequence contesting such claim.

It is clear from the bare reading of Clause 21 that in every case in which Government is required to make payment of sum under Workmen's Compensation Act, 1923, Government will recover from the contractor the amount of compensation so paid . Thus it is clear that once petitioner has entered into a contract and death took place during the execution of the contract, the amount becomes recoverable from him as per clause 21. merely by the fact that Commissioner for Workmen's Compensation has not observed it in the order, it cannot be said that death did not take place while work was under progress. There is absolutely no discussion in the order of Commissioner with respect to liability of the petitioner. Out rightly an order was passed that State of M.P. and Executive Engineer were responsible. There is no finding recorded for exonerating Shri P.K. Shukla or Shri Dinesh Shukla who was the Dower of attorney holder of the petitioner, thus it cannot be said that action of the State is in derogation to the order passed by the Commissioner in any manner. Action has rightly been taken to recover amount as per clause 21 of the agreement.

8. I find no merit in this petition, same is hereby dismissed. Parties to bear their own costs as incurred of this petition.