

(2024) 02 OHC CK 0233

In the Orissa High Court

Case No : Writ Petition (C) No. 34828 Of 2023

Pratap Chandra Mohanty

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 26-02-2024

Acts Referred:

Citation : (2024) 02 OHC CK 0233

Hon'ble Judges : Arindam Sinha, J;M.S. Sahoo, J

Bench : Division Bench

Advocate : S. Mahapatra 1, Suman Pattanayak

Judgement

Arindam Sinha, J.

1. Mr. Mahapatra, learned advocate appears on behalf of petitioner and submits, his client was engaged under the scheme. However, minimum wages as per Labour and Employment Department notifications of Government of Odisha, disclosed as annexure-5 series, were not paid. He draws attention to paragraph 7 in the petition and introduced thereby annexure-4 being letter dated 14th December, 2021 issued by the District Labour Officer to his client. Text of the letter is reproduced below.

"With reference to your letter dated 13.12.2021 on the above subject, I am to say that on verification of the records pertaining to the payment of wages act, 1936 and other labour laws there is no adverse found against you during the period from 15.12.2020 to 18.06.2021.

In this connection, the undersigned has issued no objection certificate in favour of Sri Pratap Chandra Mohanty, Special class contractor, at/Po-Rahama, Dist-Jagatsinghpur, having Contract Labour License No. 374/2008 who executed different development works in the district of Kandhamal."

In this context he refers to office memorandum dated 3rd March, 2017 disclosed as annexure-G/3 in the counter filed by State. Reproduced below is clause (i) in

paragraph-10.

"10. The modalities as framed for the purpose are as follows:

i) Reimbursement of enhanced minimum wages of labour in completed/ongoing PMGSY works may be considered only in respect of cases where Hon'ble Court have passed order to that effect."

2. Mrs. Pattanayak, learned advocate, Additional Government Advocate appears on behalf of State and submits, paragraph 7 was dealt with by State in paragraph-8 of the counter. The Divisional Labour Commissioner, Kandhamal was not made party. As such, the claim remains unsubstantiated. We reproduce below paragraph 8 from the counter.

"8. That in reply to the averments made in Para-7 and 8 of the writ petition, it is humbly submitted that for the reasons best known to the petitioner, the Divisional Labour Commissioner, Kandhamal, Phulbani has not been arrayed as a party to the present writ petition, who can certify and/or explain about the certificate enclosed by the petitioner under Annexure-4 to the writ petition. Hence, the writ petition is liable to be dismissed due to non-rejoinder of necessary party."

3. State's own case is reliance on office memorandum dated 3rd March, 2017 requiring, inter alia, order of Court for consideration of reimbursement of enhanced minimum wages of labour in, inter alia, completed Pradhan Mantri Gram Sadak Yojana (PMGSY) works. We have seen that the District Labour Officer has issued 'No Objection' certificate in favour of petitioner to effect that there is no adverse finding against him during the period from 15.12.2020 to 18.06.2021. The only way the officer could have made or found adverse remarks against petitioner in the period was if he had not paid notified minimum wages to the labour workers. The document was introduced in paragraph 7 of the writ petition. It is good affidavit evidence, not disputed by State. It matters little that the District Labour Officer was not made a party. A necessary and proper party would be one, against whom some relief is claimed. Petitioner does not have any claim against the District Labour Officer.

4. Petitioner's claim for enhanced minimum wages paid on works executed between 15.12.2020 to 18.06.2021 is to be examined by opposite party no.3. Petitioner will communicate this order along with copy of his claim on reimbursement of enhanced minimum wages, to said opposite party. Clause (i) under paragraph 10 in office memorandum dated 3rd March, 2017 stands satisfied on us making direction upon said opposite party to examine, verify and reimburse on the claim. This must be done within four weeks of communication.

5. The writ petition is disposed of.

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