

(1972) 01 AP CK 0003
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1091 of 1970

Y. Srinivasa Rao

APPELLANT

Vs

The Commissioner for Workmen's Compensation and Others

RESPONDENT

Date of Decision : 24-01-1972

Acts Referred:

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

Citation : (1972) 01 AP CK 0003

Hon'ble Judges : Parthsarathi, J

Bench : Single Bench

Advocate : K. Raghava Rao, for the Appellant; Govt. Pleader for Nos. 1 and 2 and B.V. Subharayadu, for Nos. 3 to 7, for the Respondent

Final Decision : Allowed

Judgement

Parthsarathi, J.—During the execution of the work connected with the excavation of channels under the Nagarjunasagar Project, on 11th July, 1969, an accident occurred as a result of which several workers received injuries some of which proved fatal. The Petitioner was the contractor at whose instance the work was being done, under a contract entered into by him, with the Public Works Department.

2. The Executive Engineer-in charge of the Division notified the Petitioner on 14th October, 1969, that the Commissioner for Workmen's Compensation, Hyderabad, awarded a sum of Rs. 4,800 as compensation in respect of each of the deceased workmen. The Executive Engineer also intimated the Petitioner that the payment of the compensation was intended to be made from out of the amounts payable by the department to the Petitioner. The Petitioner alleges that no opportunity was given to him to make any representation to the Commissioner for Workmen's Compensation and that the decision or award of the latter was given without notice to the Petitioner. It would appear that the Commissioner had decided the matter solely on the basis of a statement made by the Executive Engineer.

3. The Petitioner then made representations to the Commissioner for Workmen's Compensation, who is cited in this proceeding as the first Respondent. It was pointed out by the Petitioner that a decision had been made without notice to the party affected thereby and that no order could be made prejudicial to his interest without hearing him. The order was made in contravention of the provisions of law which make notice to the affected party and hearing imperative. The Petitioner also submitted to the Commissioner that the decision did not accord with the principles of natural justice and that the order was liable to be set aside. The Commissioner, however, did not accede to the request of the Petitioner. The reply of the Commissioner negating the request of the Petitioner was dated 25th February, 1970. The Petitioner impugnes the validity of the proceeding. It may be mentioned that the compensation in respect of each deceased worker was enhanced from Rs. 4,800 to Rs. 6,000.

4. The counter-affidavit of the Executive Engineer, impleaded herein as the second Respondent, alleges inter alia that the Petitioner was apprised by a letter, dated 14th October, 1969, that the amount of compensation was calculated in accordance with law and that the amount so fixed was being paid by debiting the amount to the Petitioner's account. The amount was subsequently deposited with the Commissioner of Workmen's Compensation on 16th December, 1969. The Respondent urges that the fixation of the compensation and the deposit made with the Commissioner were made strictly in conformity with the provisions of Section 12 of the Workmen's Compensation Act, 1923. It is pointed out that the Petitioner did not lodge any protest either in writing or verbally regarding the determination of the amount of compensation and the deposit made by the second Respondent. The counter-affidavit repudiates the allegation that the quantum of compensation was fixed without the knowledge or behind the back of the Petitioner. On their application, five persons who are the legal representatives of the deceased workers, were impleaded as Respondent by order of this Court, dated 1st February, 1971.

5. The third section of the Act provided that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II. u/s 4 the amount of compensation payable in the case of death or disablement has to be computed in the manner specified in Clauses (a) and (b) thereof. The liability to pay compensation is cast on the employer which expression is defined by Clause (e) of Section 2.

6. It is beyond dispute that it is the Petitioner that employed the workmen who sustained fatal injuries. It is also not in dispute that the Petitioner did not have any notice of the award made by the first Respondent. It was a result of the data furnished by the second Respondent and on the admission of the liability made by him, that the Commissioner made the award directing the payment of the specified amounts to the Legal Representatives of the deceased workmen.

7. The award though made without notice to the Petitioner who employed the

deceased workmen is sought to be justified by invoking the aid of Section 12 of the Workmen's Compensation Act, 1923, (referred to hereinafter as the Act). The provisions of Section 12(1) read thus:

Where any person (hereinafter in this section referred to as the principal) in the course or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him, and where compensation is claimed from the principal, this Act shall apply as if reference to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

It is submitted by the Government pleader that the State of Andhra Pradesh is the principal employer within the meaning of Section 12(1). It is also urged that the Petitioner was employed as contractor for the execution of a work which is ordinarily part of the "trade or business" of the State Government. It is said that the State Government is Constituted the principal employer on whom the liability is fastened u/s 12(1), the compensation had been claimed from the principal and there was no legal impediment to the principal's acknowledgment of the liability and the award made on the basis of such admission. It is further submitted by the Government pleader that under Sub-section (1) of Section 12, the State Government is entitled to be indemnified by the contractor. In setting off the compensation paid by the State government against the dues to the Petitioner the Executive Engineer was only giving effect to the right of indemnity to which obligation the Petitioner is subjected by Section 12(2). That is how the stand taken by Government is defended.

8. The argument centred round the two-fold submission of Mr. Raghava Rao, First he contended that the reliance on Section 12(1) is misplaced and that the State Government cannot be said to be a principal employer within the meaning of that section. His second and alternative contention is that even assuming that the State Government's position was that of a principal employer nevertheless, the procedure prescribed by the rules framed under the Act ought to be followed before indemnity can be claimed or enforced on the application of Sub-section (2) of Section 12.

9. The first submission raises a question of considerable importance. The intention of the Legislature in enacting Section 12(1) is not difficult to guess. The main contracting party is sought to be made liable for the payment of workmen's compensation, although the injuries, fatal or otherwise, may have been sustained by persons actually employed by a sub-contractor. The clue to the legislative intendment is furnished by the words "any work which is

ordinarily part of the trade or business of principal". Was the construction of the irrigation project in any sense of the trade or business of the State ? It appears inappropriate to equate the function of the Government to construct irrigation works to a trade or business. The use of the words "trade or business" necessarily points to the conclusion that the words cannot be synonymous with the Government or State or Sovereign function to the execution of an irrigation work.

10. The reason in making the main contracting party liable for payment of compensation is that the sub or ancillary contract is an off shoot of the main contract. There may be more than one sub-contactor and the determination of the genesis of the accident or the proximate cause thereof might give rise to intricate or prolonged controversy. The payment of compensation cannot obviously be deferred till the adjudication of conflicts inter se among the several parties. The Legislature has therefore thought it expedient to make the main contracting party liable in the first instance. The party is, invariably, if not in many cases, a more substantial and solvent person than the sub-contractor who may have employed the workmen that met with accident. It is to facilitate the easy and prompt recovery of the compensation that the Act has chosen to make the main contracting party primarily liable.

11. In interpreting the Sub-section, it must be borne in mind that the stress ought to be on the words "trade or business". These two words signify that the obligation with reference to the execution of the work should partake of the character of trade or business as ordinarily understood. One must also not lose sight of the fact that the section clearly contemplates the assignment of a part or whole of the contractual obligation or function. The opening part of the Sub-section is material. It clearly contemplates the assignment by the principal in the course of and for the purpose of his trade or business a part or whole of the function to any other person for the execution of the work. The Sub-section makes it a necessary condition for the accrual of liability as principal employer that the latter should have assigned a part or whole of his function to some other person. There is an unmistakeable provision in Sub-section (1) of the Section 12 that the condition precedent for the liability of the person designated as principal is that he must have assigned a function relating to his trade or business. The connotation of the expression trade or business is well known. It is not unreasonable to exclude in the context the Government or Sovereign functions from the category of trade or business. It is true that Governments do undertake and carry out trade or business projects. However, here we are concerned with the construction or execution of an irrigation project, which, in my opinion, is outside the purview of a trade or business activity of the Government. There is considerable force in the submission of learned Counsel for the Petitioner that in regard to the accident which has given rise to this proceeding, the State Government was not invested with the character of principal employer.

12. The Government Pleader drew my attention to Sardara Singh Narinjan Singh

Vs. Sub Divisional Officer, Chandpur and Another, , to support his contention that the Government can be deemed to be the principal employer in a case like the instant one. That was also a case where certain work had to be carried out in regard to a channel. The work was taken up on contract basis by a number of contractors. When an accident occurred, the Government paid the compensation and sought to tender the amount payable to contractors. There was a dispute between the two contractors as to the liability. It was found by the Court of first instance that both the contracting firms were liable and that both of them had to indemnify the Government. In that context, a single Judge of the Punjab High Court applied the provisions of Section 12(1) and sustained the view that the Government was the principal employer. The learned Judge, however, did not address himself to the question whether the words "trade or business" used in Section 12(1) did not exclude from their purview the sovereign or governmental function in respect of construction of irrigation or electricity projects. Neither the decision of the Punjab High Court in the case cited above, nor the decisions adverted to therein dealt with the precise question whether the execution or construction of an irrigation project could be deemed to be trade or business of the Government so as to constitute it a principal employer within the meaning of Section 12(1).

13. As indicated by me earlier, I am unable to accede to the contention of the Government Pleader that the provisions of Section 12(1) are applicable so as to make the Government, the principal employer. However, I need not rest my decision on this aspect because of my decision on the second question which shall presently indicate.

14. As pointed out by Rajamannar, J. (as he then was) in *Mulla Madina Saheb Vs. The Province of Madras*, , the order awarding compensation is distinct and different from the order allowing or disallowing a claim for indemnity for the amount of compensation paid. The fact that the Government had assumed the liability as the principal employer and paid the compensation does not ipso facto entitle the Government to have recourse to the process of indemnification. There must be a separate adjudication allowing the claim for indemnity.

15. The position is that the right of the Government to withhold any sum due to the contractor is traceable to the provisions of Sub-section (2) of Section 12. But that Sub-section provides that "all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the: Commissioner.

16. In the instant case the Petitioner raised a dispute about the right to and also the amount of indemnity. It is not open to the Government to enforce the obligation when the claim is challenged by the other party. The rules clearly prescribe the procedure that is to be followed in default of agreement. The conflict, if any between the principal employer and the employer becomes a justiciable issue under Sub-section (2). The provision embodies a declaration of the right to and the liability of the principal employer and the employer

respectively. But when the liability is put in issue, an adjudication is necessary before it can be enforced. The Rules have prescribed the procedure. Rule 39 makes it obligatory that when the principal employer is sought to be proceeded against, he shall, when first called upon to answer, present a notice of claim as to indemnity to the Commissioner accompanied by the prescribed fee. Thereupon, the Commissioner shall issue notice to the person from whom indemnity is claimed. This procedure was admittedly not followed in the present case. It was suggested that the claim for indemnity should be presented by the principal employer "when first called upon to answer". I need not pause to consider the effect of the omission at this stage. It is for the Commissioner to consider whether the Government is principal employer and on that basis whether it can now initiate a proceeding for the recognition of the right of indemnity.

17. It is clear that the withholding of the amount due to the Petitioner by the second Respondent lacks legal sanction. The right to claim indemnity can be enforced only when there is an adjudication by the Commissioner because the employer has disputed his liability to indemnify the principal employer. The Petitioner has raised a contest with reference to all the matters. Unless the procedure prescribed by Rule 39 is followed and the Petitioner had been given an opportunity to show cause against the enforcement of the liability in regard to indemnity, the mere award of compensation by the Commissioner is of no avail to the principal employer. The alternative prayer of the Petitioner is accordingly allowed and the rule nisi is made absolute in terms of the alternative prayer as per W.P.M P. No. 438 of 1972. The Petitioner will have his costs. Advocates fees Rs. 100.