

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No.719/2002

CMP No.751/2002

Date of decision:25.03.2010

Shree Mata Devi Shrine Board & anr. vs. Gandarb Singh and
ors.

Coram :-

Mr. Justice J. P. Singh, Judge.

Appearing Counsel:

For Petitioner(s) : Mr. D.C.Raina, Sr. Advocate with
Mr. Anil Verma, Advocate.

For Respondent(s) : Mr.B.S.Bali, Advocate.

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| i) | Whether approved for reporting
in Press/Journal/Media | : Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : Yes/No |
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Gandarb Singh Katoch-respondent filed a Claim
Petition under Section 15(2) of the Payment of Wages
Act, 1936 with the Authority under the Payment of
Wages Act (Labour Officer), Reasi saying that the
Additional Chief Executive Officer of Shree Mata
Vaishno Devi Shrine Board, Katra had allotted work for
construction of widening of road from Katra to Shree
Mata Vaishno Devi Shrine in the year 1996 in favour of
Kanth Lal-Contractor, who approached him for supply of
labour for execution of the work. He along with 51
others workers, accordingly, worked for the construction

of road from RD-595 to RD-740 from 13.11.1996 to August, 1997. The labourers were, however, paid only in part by the contractor.

A claim for Rs.2,46,464/- was thus laid before the Authority under the Payment of Wages Act by Gandarb Singh Katoch for and on behalf of the labourers employed by Kanth Lal-Contractor for execution of the work of Shree Mata Vaishno Devi Shrine Board.

The Contractor appeared before the Authority in response to the Notice issued to him in this behalf and agreed to settle the dispute amicably by making payment of wages by the next date of hearing fixed for July 26, 1999. He, however, failed to honour his commitment opting to remain absent from the proceedings. The Contractor and the other respondents including the Board were later set ex-parte when after appearing before the Authority, they opted not to file any objection to the Claim Petition and remain absent.

On the basis of the ex-parte evidence produced in the case, the Authority under the Payment of Wages Act held the claimant entitled to Rs.1,71,474/- as per the

details appearing in the Muster sheet placed on records of the Authority.

In terms of the Award of the Authority, all the respondents i.e. the Contractor, Shree Mata Vaishno Devi Shrine Board and its functionaries were held liable to satisfy the Award.

Statutory remedy of Appeal does not appear to have been resorted to either by the Contractor or by the petitioners who have filed this Writ Petition seeking quashing of the Award of the Authority.

Mr. D.C.Raina, learned Senior counsel, appearing for the Board submitted that the Board had discharged its contractual obligation by paying the Contractor for the work he had done for it and in view of the Contractor's admission to pay the claimant and his labourers, the Board was not under any obligation to satisfy the Award, which the learned counsel says, was without jurisdiction in so far as it held the Board liable to satisfy the labourers' claim.

Per contra Mr. B.S.Bali, referring to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 submitted that Board, being the Principal employer

for whom the contractor had engaged the labour, the Authority had not committed any jurisdictional error in holding the Board liable to satisfy the labour Claim.

Mr. Bali further submitted that having agreed to satisfy the Award during the execution proceedings, the Board was not entitled to invoke the Extra Ordinary Writ Jurisdiction of the Court, because the Board cannot be permitted to approbate and reprobate.

Learned counsel referred to interim orders passed on 28.02.2002, 18.03.2002, 25.04.2002 and 4.06.2002, copies whereof have been placed on records, to urge that having all along agreed to satisfy the labour claim, the petitioners' approach to this Court was not bonafide.

I have considered the submissions of learned counsel for the parties and perused the records.

To determine the issue raised by the learned Senior counsel that the Board was not under any obligation to satisfy the Award of payment of wages to the labourers engaged by the Contractor employed by the Board, regard needs to be had to the provisions of Section 3 of the Payment of Wages Act 1936, which for facility of reference is reproduced hereunder:-

“[RESPONSIBILITY FOR PAYMENT OF WAGES.--(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed—

- (a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948);*
- (b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment;*
- (c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;*
- (d) in the case of contractor, a person designated by such contractor who is directly under his charge; and*
- (e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act;*

the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.]”

Perusal of Section 3(2) quoted above indicates, unambiguously, the responsibility of the employer to make payment of all wages required to be made under the Payment of Wages Act in case the Contractor or any other person designated by the employer fails to make the payment of wages to the employed persons i.e. the labourers.

Learned Senior counsel is thus not right in saying that the Board was not liable to satisfy the

Award which remained unsatisfied by the contractor engaged by it.

This apart, the Board cannot even otherwise deny its liability to satisfy the Award in view of the express provisions of Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 which hold the principal employer, liable to pay the wages of the labourers, which for facility of reference are reproduced hereunder:-

“21. RESPONSIBILITY OF PAYMENT OF WAGES—(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principle employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.”

In view of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970

reserving right with the employer, like the Board to recover the wages payable to the labourers by the contractor, from the contractor in the event of its making payment of unpaid wages to the labourers, the Board's Writ Petition is clearly misconceived, in that, in view of the statutory provisions referred to hereinabove, the Board cannot deny its liability to satisfy the Award of the Authority.

Mr. Bali's plea that the approach of the Board to this Court was not bonafide, appears to be well merited, in that, having all along agreed in execution proceedings before the Authority under the Payment of Wages Act, to pay the wages to the labourers, the Board's approach to this Court denying its liability to make payment of wages to the labourers, cannot looked from any angle, be said to be bonafide.

Shree Mata Vaishno Devi Shrine Board's Writ Petition is, thus, found to be misconceived and without merit.

The Writ Petition, therefore, fails and is, accordingly, dismissed with costs quantified at Rs.5000.

Registrar Judicial is directed to release the amount deposited by the Board in this Court in favour of Gandarb Singh Katoch-respondent no.1, along with interest accrued thereon.

(J. P. Singh)
Judge

JAMMU:
25.03.2010
Vinod

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU
CMP No.134/2010 in OWP No.719/2002
Date of decision: 25.03.2010

M.K.Dwivedi and anr. vs. Gandarb Singh and ors.

Coram :-

Mr. Justice J. P. Singh, Judge.

Appearing Counsel:

For Petitioner(s) : Mr. D.C.Raina, Sr. Advocate with
Mr. Anil Verma, Advocate.

For Respondent(s) : Mr.B.S.Bali, Advocate.

iii)	Whether approved for reporting in Press/Journal/Media	: Yes/No
iv)	Whether to be reported in Digest/Journal	: Yes/No

CMP No.134/2010:-

Petitioners have moved this Motion for amendment of the Writ Petition seeking substitution of petitioner No.1 M.K.Dwivedi, the then Additional Chief Executive Officer, Shree Mata Vaishno Devi Shrine Board, Katra, by “Shree Mata Vaishno Devi Shrine Board through Additional Chief Executive Officer, Katra,” on the ground that M.K.Dwivedi, the then Additional Chief Executive Officer was inadvertently indicated as petitioner No.1 in the Writ Petition in place of Shree Mata Vaishno Devi Shrine Board, Katra, which had infact filed the Writ Petition to question Award dated 17.02.2001 of the Authority under Payment of Wages Act(Labour Officer), Reasi.

After having heard learned counsel for the Board and Mr. Bali for respondent No.1, the claimant, I find that omission of Shree Mata Vaishno Devi Shrine Board, Katra as petitioner in the Writ Petition appears to be inadvertent.

Looking to the long pendency of the Writ Petition in the Court, it is considered appropriate to determine the Writ Petition finally, after hearing Shree Mata Vaishno Devi Shrine Board in the matter which has been adjudged liable to pay the awarded amount.

Accordingly, finding merit in the Motion, it is allowed permitting substitution of Shree Mata Vaishno Devi Shrine Board, Katra as petitioner no.1 in place of Mr. M.K.Dwivedi, in OWP No.719/2002.

Registry to make necessary corrections.

(J. P. Singh)
Judge

JAMMU:
25.03.2010
Vinod