

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No. 1147 OF 2017

WITH

W.P.(L) No. 57 of 2017

In W.P. (L) No. 1147 OF 2017

Hindustan Media Ventures Limited, through its authorized representative
Neeraj Shukla, son of Sri Avadhesh Chandra Shukla, Office at – 7,
Industrial Area, Kokar, P.O. – Kokar, P.S. – Sadar, District - Ranchi

... .. **Petitioner**

V E R S U S

1. The State of Jharkhand.
2. Principal Secretary, Department of Labour, Employment, Training and Skill Development, Nepal House, Doranda, Ranchi.
3. The Labour Superintendent, P.O. and P.S. – Godda, District – Godda.
4. The District Certificate Officer, P.O. and P.S. – Godda, District – Godda, Jharkhand.
5. Manoj Kumar, son of Shree Nageshwar Pandit, Resident of – Village – Kushumi, P.O. – Chandadih, P.S. – Dhoraiya, District – Banka, Bihar – 813109.

... .. **Respondents**

In W.P. (L) No. 57 of 2017

Hindustan Media Ventures Limited, an existing Company under the Companies Act, having its registered office at Budh Marg, Patna, Bihar and Unit Office situated at Bhelatand Road, Dahiya, P.S. – Barwadda, District – Dhanbad, Jharkhand represented through Authorised Signatory namely Mr. Neeraj Shukla, son of Sri Avadhesh Chandra Shukla, Office at – 7, Industrial Area, Kokar, P.O. – Kokar, P.S. – Sadar, District - Ranchi

... .. **Petitioner**

V E R S U S

1. The State of Jharkhand through Principal Secretary, Department of Labour, Employment, Training and Skill Development, Nepal House, Doranda, Ranchi.
2. The Labour Superintendent, office of the Assistant Labour Commissioner, P.O. and P.S. – Town P.S., District – Dhanbad.
3. The District Certificate Officer – cum – Additional Collector (Supply), Dhanbad, P.O. and P.S. – Town P.S., District – Dhanbad.

4. Shre Naveen Kumar, son of Late Jagdish Prasad Lal, Resident of J.P. Lal House, Devipara, Durga Mandir Road, Hirapur, P.O. and P.S. – Town P.S., District – Dhanbad.

... .. **Respondents**

CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK

For the Petitioners : Mr. Rajeev Kumar Sinha, Advocate.
For the State : Mr. Sreenu Garapati, SC-III
Mr. Bhaskar Trivedi, Advocate

09/31.08.2020

In view of outbreak of COVID-19 pandemic, these cases have been taken up together through Video Conferencing and heard at length. Concerned lawyers have no objection with regard to the proceeding which has been held through Video Conferencing and there is no complaint in respect to audio and video clarity and quality and after hearing at length, the matter is being disposed of finally.

PRAYER

2. Petitioner in W.P.(L) No. 1147 of 2017 has approached this Court with a prayer for setting aside order dated 16.06.2016, passed by the Labour Superintendent, whereby the order of recovery of Rs.3,13,686/- against the petitioner Company has been passed. Petitioner has further prayed for setting aside order dated 18.11.2016, passed by District Panchayat Raj Officer – cum – District Certificate Officer, Godda whereunder warrant of arrest has been issued against ‘Manager’ of the petitioner Company in pursuant to Certificate Case No. CC III 114/ 2016 – 17. Petitioner has further prayed for setting aside any proceeding emanating from or related to the Certificate Case No. CC III 114/ 2016 – 17, pending before the Court of Certificate Officer, Godda.
3. Petitioner in W.P.(L) No. 57 of 2017 has approached this Court with a prayer for setting aside notice/ letter dated 17.03.2016, passed by Labour Superintendent, Dhanbad served to the petitioner on 14.12.2016, whereby request has been made to the Certificate Officer, Dhanbad to recover arrears from the petitioner claimed to be arrears due under Section 13 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 for the payment to

respondent no. 4, as per provisions of Bihar and Orissa Public Demands Recovery Act, 1914. Petitioner has further prayed for setting aside notice dated 12.04.2016, issued by District Certificate Officer – cum – Additional Collector (Supply), Dhanbad in Certificate Case No. 22 (WC) 2016 – 17, served to the petitioner on 14.12.2016, whereby respondent no. 3 directed the petitioner for payment of Rs.4,56,068/- as per letter issued by the Labour Superintendent, Dhanbad. Petitioner has also prayed for setting aside letter no. 1651, dated 08.08.2015, issued by the Labour Superintendent, Dhanbad, served to the petitioner on 14.12.2016, whereby respondent no. 2 directed ex-parte to the petitioner to make payment of Rs.4,56,068/- to the respondent no. 4 as per his own claim without any determination/ adjudication of said amount due in terms of Majithia Wage Board Recommendations by the statutory authority as prescribed under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and submit the evidence of said payment to the Labour Superintendent. Petitioner has also prayed for setting aside further proceedings emanating from or related to the Certificate Case No. 22(WC) 2016 – 17, pending in the Court of Certificate Officer – cum – Additional Collector (Supply), Dhanbad.

FACTUAL MATRIX

4. The factual exposition as has been stated in the **W.P.(L) No. 1147 of 2017** is that petitioner Company came to know that pursuant to Certificate Case No. CC III 114/ 2016 – 17, warrant dated 18.11.2016 had been issued against them by the District Certificate Officer, Godda. The concerned respondent directed the petitioner for making payment in accordance with the recommendations made by Majithia Wage Board. After receipt of information about the said warrant, petitioner came to know that the Labour Superintendent, Godda had issued order dated 16.06.2016, whereby matter was transferred to the Certificate Officer for recovery of amount claimed by the respondent no. 3.
5. In **W.P.(L) No. 57 of 2017**, case of the petitioner is that they received notice dated 12.04.2016 on 14.12.2016 from the Court of District Certificate Officer – cum – Additional Collector (Supply), Dhanbad in Certificate Case No. 22 (WC) 2016 – 17 whereby a direction was made to

them for payment of Rs.4,56,068/- as per the letter issued by the Labour Superintendent, Dhanbad within a period of thirty days from the date of issuance of notice. Petitioner has also come to know that a letter no. 1651, dated 08.08.2015 was issued by the Labour Superintendent, Dhanbad directing the petitioner to deposit the amount claimed by respondent no. 4 at his own. Petitioner has further come to know that a letter dated 17.03.2016 was issued by the Labour Superintendent, Dhanbad for recovery of arrears from the petitioner, which is claimed to be due under Section 13 of the Act. Case of the petitioner is that the letter dated 08.08.2015 was never sent to them and as such no opportunity was given to the petitioner to submit their reply.

ARGUMENTS ON BEHALF OF THE PETITIONER-WORKMAN

6. Mr. Rajeev Kumar Sinha, learned counsel appearing on behalf of the petitioner vehemently argues that Office of the Certificate Officer failed to issue notice under Section 7 of the PDR Act, which is apparent from the record of the order sheet and warrant has been directly issued to the petitioner which is not only procedural violation but violation of the principles of natural justice. Learned counsel further submits that the Labour Superintendent did not give reasonable opportunity to the petitioner before transferring the matter to the Certificate Officer for recovery of amount claimed by the concerned respondent. The order impugned have been issued in blatant violation of the provisions and Scheme of Section 17 of the Act and the Rules made thereunder. Learned counsel further argues that as per provisions of the Act, the concerned respondent is not eligible for any payment as per the recommendations of Majithiya Wage Board and the Labour Superintendent had no right to adjudicate the dispute for the amount due under the provisions of the Act. It is only Labour Court; which may adjudicate any dispute over the amount due to the employee of the newspaper establishment under the Act.
7. Learned counsel further submits that the issuance of arrest warrant against the office bearer of the petitioner-company without specifying name of the person concerned to be arrested, is impermissible under law and has been held to be contrary to the basic principles of law from time to time by Hon'ble Supreme Court and various Courts of law. The issuance of arrest

warrant could lead to harassment of an employee of the petitioner company holding any managerial position in the company, whether said person was related to the issue in question or not.

8. Learned counsel draws attention of this Court towards order and direction of Hon'ble Supreme Court dated 04.10.2016 in respect of determination of disputed amount in CP (C) No. 411/2014 in W.P.(C) No. 246 of 2011, wherein the Hon'ble Court has specifically held as under:

“In all cases where there is dispute with regard to the amount payable, we direct the State Government to act under the provisions of Section 17(2) of the Working Journalits and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955. The concerned labour court will finalise its Award expeditiously and send the same to the State Government for due execution.”

Learned counsel submits that in the facts and circumstances of the case and in view of settled proposition of law, the impugned order is fit to be quashed and writ petition is accordingly fit to be allowed.

9. Learned counsel further argue that the concerned respondents were engaged by the Company in accordance with terms and conditions of service contract and as such they negotiated for better salary, benefits and perquisites than what was prescribed by the wage board at relevant time and accordingly agreed voluntarily and specifically to be not governed by any wage fixation machinery under the said service contract. The impugned notice has been issued in utter violation of rules of procedures and failures to comply with the mandatory scheme provided under the statute also renders impugned notice to be unsustainable and liable to be set aside.

10. Learned counsel has heavily relied upon the Judgment passed in the case of ***Samarjit Ghosh Vs. Bennett Coleman & Company and another*** reported in ***1987 AIR 1869*** and submits that in the said Judgment, the Hon'ble Court has clearly held that the State Government alone is empowered to refer the question for adjudication. It has also been held that Rule 36 of the said Rule provides that an application under Section 17 of the Act shall be made to the Government of the State where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed is situated. It is the location of the

Central Office or the Branch Office in which the newspaper employee is employed which determines jurisdiction.

ARGUMENTS ON BEHALF OF THE RESPONDENT - STATE

11. Mr. Sreenu Garapati, learned SC-III assisted by Mr. Bhaskar Trivedi appearing on behalf of the respondent-State argues that ample opportunity was given to the petitioner but they failed to appear and as such it is not open to them to take point of jurisdiction before this Court. At this belated stage it is not open to the petitioner to raise point of jurisdiction as the same would frustrate the entire proceedings. Drawing attention to letter no. 1038, dated 10.06.2015 [Annexure-B to the counter affidavit], learned counsel submits that in compliance of direction of Hon'ble Supreme Court in Contempt Pet. No. 411 of 2014, arising out of W.P.(C) No. 246 of 2011, the Labour Commissioner, Jharkhand being head of the Department and duly authorized by Government of Jharkhand, issued an office order no. 1038, dated 10.06.2015 to all Inspectors to ensure compliance of recommendations of Majithia Wage Board duly notified by the Government of India in the official Gazette on 11.11.2011, within a period of one month. Notices were issued to the petitioner upon the claim filed by the concerned respondent. Due approval was also granted by the Labour Commissioner, Jharkhand for filing Certificate Case and thereafter certificate was issued. Learned counsel further submits that petitioner was a party before the Court and as such, it was well within their knowledge that a recovery case was pending against them. Petitioner did not make any objection even before the Hon'ble Supreme Court. The action of the respondent is in accordance with law and no interference is called for. There was no occasion for the respondents to refer claim for adjudication before the Labour Court. Unless the question is disputed, there is no need to refer the same for adjudication.

FINDINGS OF THE COURT

12. Be that as it may, having gone through the rival submission of the parties across the bar and after examination of documents brought on record, I find force in the submission of learned counsel appearing for the petitioner. When there is specific provision in law, that cannot be given go bye. When all the provisions of Section 17 of the Act are considered

together, it is apparent that they constitute a single scheme. In simple terms, the scheme is that a newspaper employee, who claims that an amount due to him has not been paid by his employer, can apply to the State Government for recovery of the amount. If no dispute arises as to the amount due, the Collector will recover the amount from the employer and pay it over to the newspaper employee. If a question arises as to the amount due, it is a question which arises on the application made by the newspaper employee, and the application having been made before the appropriate State Government, it is that State Government which will call for an adjudication of the dispute by referring the question to a Labour Court. When the Labour Court has decided the question, it will forward its decision to the State Government which made the reference, and, thereafter the State Government will direct that recovery proceedings shall be taken.

13. Fundamental question before this Court is
 - (A) Whether the respondents are empowered to determine the issue without referring the matter before the Labour Court?
 - (B) Whether the respondents concerned have attempted to override the mechanism provided under the Act for recovery of purported amount due to an employee?
 - (C) Whether impugned notice has been issued in complete violation of the rules of procedures?
 - (D) Whether failure to comply with the mandatory scheme provided under the Statute also renders impugned notice to be unsustainable and liable to be set aside?
14. The grounds taken by the respondents-State is that ample opportunity was granted to the petitioner but they failed to appear and never raised point of jurisdiction and raising the said issue before this Court, is not sustainable in the eyes of law. The respondents – State could not deny the purport of Section 17(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. It would be relevant to quote Section 17 of the Act:

“17. Recovery of money due from an employer.-

- (1) *Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorized by him in writing in this behalf, or in the case of the*

death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recovery that amount in the same manner as an arrear of land revenue.

- (2) *If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.*
- (3) *The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).*

From reading of Section 17(2) of the Act, it appears that there is specific provision relating to the disputes of the amount due under this Act to a newspaper employee from his employer and the State Government has been authorized to act on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State. It is specifically mentioned therein that the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

15. The concerned respondents could not have override the mechanism provided under the Act for recovery of the purported amount due to an employee. The amount due, if any, has to mandatorily pass test of adjudication by the Labour Court in case of any dispute. The impugned notices and order are premature and unsustainable in eyes of law. Without going through the fact and law as well as without giving an opportunity of being heard, the respondents could not have unilaterally passed impugned order directing the petitioner to pay amount. The respondents concerned have acted contrary to the provisions of Section 17 of the Act. The act of the concerned respondents is also in blatant violation of the order passed by

Hon'ble Supreme Court dated 04.10.2016., which has already been discussed hereinabove.

16. As a sequel of the aforesaid guidelines, judicial pronouncements and facts and circumstances mentioned hereinabove, I find petitioner has good case and this writ petition is fit to be allowed. **Consequently, both the writ petitions stand allowed.**

As a result thereof order dated 16.06.2016, passed by the Labour Superintendent as also the order dated 18.11.2016, passed by District Panchayat Raj Officer – cum – District Certificate Officer, Godda whereunder warrant of arrest has been issued against 'Manager' of the petitioner Company in pursuance to Certificate Case No. CC III 114/ 2016 – 17 and any subsequent proceedings thereof, pending before the Court of Certificate Officer, Godda, are hereby set aside so far it relates to W.P.(L) No. 1147 of 2017.

Similarly, the notice/ letter dated 17.03.2016, passed by Labour Superintendent, Dhanbad served to the petitioner on 14.12.2016 as also notice dated 12.04.2016, issued by District Certificate Officer – cum – Additional Collector (Supply), Dhanbad in Certificate Case No. 22 (WC) 2016 – 17, served to the petitioner on 14.12.2016 and the letter no. 1651, dated 08.08.2015, issued by the Labour Superintendent, Dhanbad, served to the petitioner on 14.12.2016 and any further proceedings emanating from or related to the Certificate Case No. 22(WC) 2016 – 17, pending in the Court of Certificate Officer – cum – Additional Collector (Supply), Dhanbad are hereby set aside and quashed so far it relates to W.P.(L) No. 57 of 2017.

17. Under the circumstances, the matter is remanded back to the concerned authorities i.e. The Labour Superintendent, P.O. and P.S. – Godda, District – Godda [**In W.P.(L) No. 1147 of 2017**] and The Labour Superintendent, office of the Assistant Labour Commissioner, P.O. and P.S. – Town, P.S., District – Dhanbad [**In. W.P.(L) No. 57 of 2017**] for making reference to the concerned Labour Court for proper adjudication.

(Dr. S.N. Pathak, J.)