

(2010) 07 CAL CK 0018

Calcutta High Court

Case No: Writ Petition No. 27653 (W) of 2006

Adcon and Others

APPELLANT

Vs

W.B.S.E.B and Others

RESPONDENT

Date of Decision: July 16, 2010

Acts Referred:

- Arbitration Act, 1940 - Section 19
- Constitution of India, 1950 - Article 226
- Electricity Act, 2003 - Section 161, 185(2C), 67(3), 67(4)
- Intimation of Accidents (form and time of service of notice) Rules, 2005 - Rule 67(2j)
- Workmens Compensation Act, 1923 - Section 12(3), 53

Hon'ble Judges: Patherya, J

Bench: Single Bench

Advocate: Sadhan Roy Chowdhury and Rajarshi Basu, for the Appellant; Bhaskar Mitra, for the Respondent

Final Decision: Dismissed

Judgement

Patherya, J.

This is an application filed under Article 226 of the Constitution of India for a direction upon the Licensing Company to proceed in accordance with law in respect of payment of compensation to the family members of the deceased labourer.

2. Petitioners" Case

2.1 The case of the Petitioner is that pursuant to an Agreement of Maintenance between the Petitioner and the licensing company the Petitioner undertook maintenance work. In the course of maintenance work one of its labourers, Sanjay Dhali, died due to a live high-tension line. Therefore the question which needs for consideration is whether the licensing company or the Petitioner is liable for payment of compensation to the family of the deceased. Proceedings have been

initiated under the Workmen's Compensation Act being Claim Case No. 321 of 2006.

2.2 Clause VIII of the General Terms and Conditions of the Contract dated 8th March, 2006 is void in view of Section 67(3) of the Electricity Act, 2003 (2003 Act), which imposes a liability on the licensee. The contract contains certain set forms and there can be no estoppel against statute. For the said proposition reliance is placed on [Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another](#), . Therefore Clause VIII of the Terms and Conditions be declared void in view of Section 67(3) of the 2003 Act and the licensing company be directed to make payment of compensation to the family of the deceased.

3. Case of the Licensing Company (WBSEB).

3.1 Counsel for the licensing company submits that Section 67(3) has no application as no regulations have been framed u/s 53 and in view of Section 185(2)(c), Rules 36, 44(A) and 45 of the Indian Electricity Rules, 1956 will be applicable. Section 161 of the 2003 Act deals with accidents and postulates issuance of notice of the occurrence and the loss or injury caused by such accidents and inquiries.

3.2 In the instant case there has been no compliance of Section 161 of the 2003 Act and for non-issuance of notice no inspection could be made. No blame or liability can be attached to the licensing company either in common law or under the Regulations or the 2003 Act. For the said proposition reliance is placed on 1968 Lab.IC 1079.

3.3. For all the said reasons this application is not maintainable as the death of the deceased cannot be attributed to the licensing company.

4. Petitioner-in-Reply

4.1 Section 53 does not fix liability but sets out the procedural aspect. The Intimation of Accidents (form and time of service of notice) Rules 2005 postulates intimation being given and does not deal with the question of compensation. Section 67(2)(j) postulates making of rules regarding the procedure for adoption of safety measures for works undertaken. Section 67(4) has in cases of difference regarding the payment of compensation barred the appropriate commission to determine the same. Section 19 of the 1910 Act is equivalent to Section 67(3) of the 2003 Act. Section 161 postulates only giving notice of accidents not payment of compensation.

5. Conclusion

5.1 Having considered the submissions of the parties although the Petitioner has argued that in view of Section 67(3) of the 2003 Act, Clause 8 of the terms and conditions of contract is void no such pleading can be found, nor relief sought.

5.2 Though not pleaded Counsel for the Respondent has also objected to such submissions, therefore the parties have both travelled beyond the scope of the pleadings and therefore, the same is dealt with.

5.67 (3) of the 2003 Act reads as follows:

A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

5.3 From a reading of the said section it is clear that the licensee is to make compensation not only to someone employed by him or engaged by him but to third parties who has suffered injury by virtue of the licensee or persons employed by him for doing the works set-out in Section 67 of the 2003 Act. Such is not the case here as the Petitioner's case is that under a contract with the licensing company its employee in the course of work has suffered injury, therefore its employee must be compensated by the licensing company. The Petitioner's employee is not the third party contemplated. Therefore, Section 67(3) is not applicable to the Petitioner.

5.4 In case a dispute is raised as contemplated by Section 67(4), such dispute is to be determined by the Appropriate Commission under the 2003 Act.

5.5 It is an admitted fact that compensation claim case No. 321 of 2006 is pending and to determine the liability the instant petition has been filed.

5.6 Section 67(4) of the 2003 Act as also Section 19 of the 1910 Act postulates determination of liability and such liability at best could have been decided through the Appropriate Commission (2003 Act) or Arbitration (1910 Act). As the 2003 Act has come into force on 10th June, 2006, i.e., after the date of the accident the provisions of the 2003 Act are inapplicable.

5.7 Section 19 of the 1910 Act reads as under:

19. Compensation for damage.- (1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(2) Save in the case provided for in Section 12, Sub-section (3), where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by arbitration

5.8 The date of filing the compensation is not known. No documents with regard thereto have been disclosed. Section 19 of the 1910 and Section 67(4) of the 2003 Act, both sections postulate that in case of dispute even with regard to compensation the matter is to be determined by Arbitration under the 1910 Act and by the Appropriate Commission under the 2003 Act.

5.9 In the instant case a dispute has been raised and a reference to arbitration ought to have been made.

5.10 Any finding on the provisions of the 1910 Act which is not sought in the writ petition will usurp the powers of the Compensation Tribunal. This is another factor for not entertaining this writ petition.

5.11 For all the said reasons, this application fails and is accordingly dismissed. The Petitioners will be at liberty to take steps in accordance with law.