

Chowdhury G.C. Parida Vs State of Orissa and Others

Court: Orissa High Court

Date of Decision: April 3, 1972

Citation: (1972) 2 LLJ 529

Hon'ble Judges: G.K. Misra, C.J; K.B. Panda, J

Bench: Division Bench

Judgement

G.K. Misra, C.J.

By Annexure 5 dated 23rd November, 1966, the District Labour Officer, Cuttack, addressed a letter to the Executive

Engineer, P.H.D., Cuttack-2, to pay Rs. 2,250.00 to opposite party No. 5 from the dues standing to the credit of the petitioner against the

Executive Engineer (opposite party No. 4). This writ application has been filed to quash this order (Annexure 5), on the allegation that it has not

been proved that opposite party No. 5 was a supervisor under the petitioner.

2. The facts are : Opposite party No. 5 filed an application before the Labour Commissioner, Orissa (opposite party No. 2) stating that he was

working as a supervisor of the petitioner, and the petitioner did not pay his dues to the tune of Rs. 2,250.00. This petition was forwarded by the

Labour Commissioner to the District Labour Officer, Cuttack, (opposite party No. 3). The petitioner was called upon to file his written statement.

He filed his written statement, but did not appear on the dates of hearing. Opposite party No. 5 appeared and produced documents in support of

his case that he was working as a supervisor under the petitioner. Accepting the case of opposite party No. 5, opposite party No. 3 addressed

Annexure 5 to opposite party No. 4 for payment of Rs. 2,250-00 by withholding the same from the bill of the petitioner pending with the

Government.

3. Mr. Harichandan assailed Annexure 5 saying that it does not clearly establish that opposite party No. 5 was a supervisor working under the

petitioner; and secondly a "supervisor" does not come within the definition of "labour" under the fair-wages clause of the contract. None of these

grounds appeals to us. The District Labour Officer is not a Court and is not versed in legal technique. He worked with his common sense in

deciding the simple question whether opposite party No. 5 was a supervisor or was working on labour contract under the petitioner. Though no

categorical finding was recorded, he proceeded directing payment of Rs. 2,250.00 to opposite party No. 5 by accepting his case that he was

working as a supervisor under the petitioner.

4. Mr. Harichandan also took us through the definition of "labour" and "contractor" in the fair-wages clause. A supervisor is not excluded from the

definition of "labour".

5. It is next contended by Mr. Harichandan that the matter was subsequently re-opened for settlement, but as the petitioner did not agree, an

adverse order against him was passed that the amount would be payable to opposite party No. 5. What Mr. Harichandan means to contend is that

after the case was re-opened, Annexure 5 disappeared, and there is no further substantive order in the case, by looking into the merits, for

directing payment. This contention has also no force. By user of the word "reopening" the District Labour Officer did not mean that Annexure 5

was set aside. What he meant is that though Annexure 5 was valid, an opportunity was given to the petitioner and opposite party No. 5 to settle up

matters ; and in case they settled up, Annexure 5 could have been modified. In absence of any settlement, Annexure 5 stands. We are satisfied that

opposite party No. 3 took a reasonable view of the matter.

6. That apart, the controversy between the petitioner and opposite party No. 5 is not under any statutory provision. It was on a contractual basis,

and it is open to the petitioner to file a suit to enforce his claim. We are not inclined to interfere with the order made in Annexure 5 both on merits

and on preliminary objection.

7. Mr. Harichandan next contends that the order of the Executive Engineer in Annexure 16 that the further dues of the petitioner, excluding Rs.

2,250.00, should be forfeited to the State, should be quashed. The learned Advocate-General frankly concedes that it is not open to the State to

forfeit this amount. But certainly the petitioner is not entitled to get this amount unless he goes to the Executive Engineer and settles the claim.

Therefore, that part of the order in Annexure 16, dated 7-5-69, viz., "the amount due to you (petitioner) for the above noted work will forthwith

stand forfeited to Government", is contrary to law, and is hereby quashed, and it is further directed that the sum of Rs. 2,250-00 be paid by the

Executive Engineer (opposite party No. 4) to opposite party No. 5 from out of the dues of the petitioner.

8. In the result, the writ application succeeds in part as indicated above. The claim of the petitioner against opposite party No. 5 is dismissed. In

the circumstances there would be no order as to costs.

K.B. Panda, J.

9. I agree.