

**ORISSA HIGH COURT : C U T T A C K**

**AFR**

**W.P.(C) NO.18280 OF 2023**

*An application under Articles 226 & 227 of  
the Constitution of India.*

*M/s.Jindal India Thermal Power Ltd.,  
Angul* : *Petitioner*

*-Versus-*

*State of Odisha & Ors.* : *Opposite Parties*

For Petitioner : Mr.D.P.Nanda, Sr.Adv.  
Mr. S.Mohanty &  
Mr.D.P.Sahu, Adv.

For O.Ps. : Mr.Sonak Mishra, ASC

**J U D G M E N T**

**CORAM :**

**JUSTICE BISWANATH RATH  
JUSTICE M.S.SAHOO**

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Date of Hearing & Judgment : 12.07.2023

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*Biswanath Rath,J* The matter is taken up for fresh admission. Mr.Nanda, learned Senior Advocate assisted by Mr.D.P.Sahu, learned counsel for the petitioner taking this Court to the reference involved read together with the award dated 23.03.202 passed in I.D.Case No.05 of 2019 at Annexure-10, taking to the plea available herein in the writ petition contests the award.

2. Mr.Nanda, learned Senior Advocate while admitting that the present petitioner is the principal employer involving the workmen involved and the immediate employer already involved in the industrial adjudication is opposite party no.5. Taking to the plea in the writ petition, Mr.Nanda, learned Senior Advocate submitted that in the meantime contract with the immediate employer being over, the contractor has vanished. There is no amount lying with the principal employer to facilitate the recovery of the awarded amount from the immediate employer on implementation of the award involved. Mr.Nanda, learned Senior Advocate also claims that there is also no scope available to the principal employer to recover such amount in the event the principal employer discharges his role by way of payment to the workmen involved herein. Further submission of Mr.Nanda, learned Senior Advocate appears to be the ultimate award directing payment of compensation to each of the workmen and the amount therein as directed should not exceed the wages to such workmen in course of employment. It is on the above premises, Mr.Nanda, learned Senior Advocate attempted to challenge the award involved herein and requests this Court for interfering in the award so far it relates principal employer, the present petitioner is concerned. There is clear admission that immediate

employer not only did not contest the Industrial Adjudication even did not challenge the award involved herein as of now.

3. Mr.Sonak Mishra, learned Additional Standing Counsel in his support to the award involved herein submits that the petitioner has the simple role of principal employer being the 2<sup>nd</sup> party Management incorporated in the Industrial Adjudication involved herein being the principal employer, the petitioner has a limited role to discharge i.e. only the liability on account of immediate employer, in the event immediate employer fails to discharge its responsibility as an outcome in the industrial adjudication involved herein. Further submission of Mr.Mishra, learned Additional Standing Counsel appears to be once an award is already involved directing discharge of responsibility by the immediate employer holding that there has been illegal termination of the workman involved by immediate employer and unless the immediate employer assails such order or award, the award becomes final and unassailable even by the principal employer. For Mr.Mishra, learned Additional Standing Counsel, the only course opened here appears to be discharge of its responsibility by the principal employer. It is also claimed that there is sufficient provision under the Industrial Disputes Act for working out the payment discharge by the principal employer, as a burden on the immediate employer. It is in the premises, Mr.Mishra,

learned Additional Standing Counsel supported the award involved herein and objects entertaining the writ petition at the admission stage itself.

4. Considering the rival contentions of the parties, this Court records the submission of Mr.Nanda, learned Senior Advocate that the petitioner herein appearing as 2<sup>nd</sup> Party Management in the Industrial adjudication, undoubtedly the principal employer. Getting into the reference, this Court finds, Government in its appropriate authority by its referral order dated 05.09.2019 had the following reference:

“ SCHEDULE  
*Whether the refusal of employment of Sri Nabakishore Jena & 4 others by the management of M/s.Kazstory Infrastructure India Pvt. Ltd., presently known as M/s. KSS Petron Pvt, Ltd., Derang, Kaniha, Head Office-Swastik Chamber, 6<sup>th</sup> Floor, Sion Trimby Road, Chembur, Mumbai, Maharashtra-400071 (CIN)-U4510MH2007, PTC-234297 under the Principal Employer M/s.Jindal India Thermal Power Ltd., Deranga, Kanhai w.e.f.31.07.2014 is legal and/or justified? If not, to what relief Sri Jena & 4 others are entitled?”*

5. The principal employer as Management No.2 in its appearance filed the written statement admitting therein that the workmen involved herein were all under the employment of the contractor, the immediate employer involved herein. There is also admission to the effect that they have all worked at the site of Management No.2., M/s. Jindal India Thermal Power, Ltd., Kaniha. the present petitioner but however being engaged by the immediate employer. The further plea of the Management in the written statement appears to be the Management-petitioner herein, being the principal employer, was not liable to serve any notice prior to refusal of employment to the Workmen by the

Contractor, the immediate employer. It is further pleaded that the Management No.2 being the principal employer has already paid the dues to the workmen pursuant to the order of the learned S.,D.J.M., Talcher in terms of provision of the Payment of Wages Act, as the immediate employer did not turn up to pay such dues to the workmen. This position clears that there is instance petitioner herein taking up the responsibility on account of immediate employer though unrelated to the present issue. The last submission through the written statement of the present petitioner appears to be since the workmen were employed by the contractor, the immediate employer, the workmen here are not entitled to reinstatement with full back wages under the Management No.2.

6. Keeping this in view and the statement of claim, further evidence laid before the Industrial Adjudicator, there has been framing of following issues:

"i. Whether the refusal of employment of Sri Naba Kishore Jena and 04 others by the Management of M/s.Kazstory Infrastructure India Pvt. Ltd., presently known as M/s. KSS Petron Pvt, Ltd., Derang, Kaniha, Head Office-Swastik Chamber, 6<sup>th</sup> Floor, Sion Trimby Road, Chembur, Mumbai, Maharastra-400071(CIN)-U4510MH2007, PTC-234297 under the Principal Employer M/s.Jindal India Thermal Power Ltd, Deranga, Kaniha w.e.f. 31.07.2014 is illegal and/or justified.

ii. If not, to what relief Sri Jena & 4 others are entitled?"

7. Reverting back to the submission of Mr.Nanda, learned Senior advocate in his objection to the implementation of the award as against the Management No.2, petitioner herein on the premises that the Management- principal employer's responsibility should not exceed to

the labour component admittedly operating under the contract itself, this Court finds the written statement of the Management, petitioner herein absolutely silent on this aspect. There is no pleading nor advancement of evidence to support all such contentions. Contentions being raised in a writ petition involving an industrial adjudication examining propriety in award under an Industrial Adjudication, writ Court has no jurisdiction to enter into the cases outside the purview of the industrial adjudication. This Court, therefore, rightly rejects the contention of Mr. Nanda, learned Senior Advocate on behalf of the petitioner.

8. Coming back to other aspects, there is no denial that the petitioner herein is the principal employer and has clear responsibility to discharge the lawful dues in favour of workmen not being discharged by the immediate employer. Undisputedly, the immediate employer has run away even in the stage of industrial adjudication and was thus held *ex parte*. Immediate employer since did not contest the principal employer in such proceeding has very very limited role.

9. It is in the circumstances, this Court finds the petitioner herein has a statutory obligation to take up the responsibility on account of immediate employer as a fall out of the direction in the industrial adjudication, the impugned award herein. Furthermore, this Court finds even at this stage also there is no challenge to such award by the

immediate employer leaving no scope to the principal employer than to be abided by such award considering the statutory role and or legal liability on the principal employer involved herein. Question as to it is recoverable or not recoverable for no cooperation of the immediate employer, this Court is not assigned with role to advise to either of the parties. Party in loss cannot be prevented from undertaking appropriate proceeding for recovery of the amount involved and get it adjudicated by proper forum. This Court however makes it clear that Industrial Disputes Act makes sufficient provision to attend to such situation. Nothing prevents the party has its appropriate advise from the counsel engaged by him to pursue his further remedies in the circumstance. It is in the circumstance and for the limited role of the principal employer in an industrial adjudication compelled to discharge the responsibility of the immediate employer, this Court finds the direction of the Industrial Objector in I.D. Case No.05 of 2019, award dated 23.03.2022 is bound to be complied and the workmen should not suffer. Industrial Adjudicator had already made it clear that failure of the principal employer to discharge its responsibility towards workmen on account of failure by the 1<sup>st</sup> Party, the immediate employer, the amount will be charged @ 10% interest per annul till realization. This Court finds the award was passed in 2022. There is no discharge on the responsibility of the principal

employer even after a year. However, considering the principal employer is pursuing this remedy in this Court by way of writ petition, while dismissing the writ petition, this Court observes in the event the compensation awarded by the Industrial Adjudicator in I.D. Case No.05 of 2019 at Annexure-10 is not released with interest within a period of one month, the Workmen shall be entitled to interest @ 15% per annum after lapse of one month, being granted by this Court.

10. In the result, the writ petition stands dismissed. However, there is no order as cost.

*(M.S.Sahoo)*  
*Judge*

*(Biswanath Rath)*  
*Judge*

Orissa High Court, Cuttack.  
The 12<sup>th</sup> day of July, 2023/sks

