

Buddhadev Maity and anr Vs. Union of India and ors

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Court : Delhi

Decided On : Sep-21-2011

Judge : S. Muralidhar, J.

Acts : [Constitution of India](#) - Article 226(2)

Appeal No. : W. P. (C) 6856/2011

Appellant : Buddhadev Maity and anr

Respondent : Union of India and ors

Advocate for Def. : Mr. Himanshu Bajaj; Mr. Karan Bindra; Mr. V. N. Kaura; Mr. Shirish Kumar, Advs.

Advocate for Pet/Ap. : Mr. R. K. Saini; Mr. Sanjoy Ghose; Mr. Sitab Ali Chaudhary, Advs.

Judgement :

1. The present writ petition was listed first on 20th September 2011. Learned counsel for the Petitioners was asked to address the Court on the question of maintainability of the writ petition particularly in light of the judgment of Five Judge Bench of this Court dated 1st August 2011 in Sterling Agro Industries Limited v. Union of India 181 (2011) DLT 658.

2. Mr. R. K. Saini, learned counsel for the Petitioner submits that the prayer in this writ petition is for a direction to the Chief Labour Commissioner (Central) ('CLC') to take a decision on the Petitioners' representation regarding payment of wages to contract labour, like the Petitioners, on par with the regularly employed workmen performing the same work in the Respondent Indian Oil Corporation ('IOC') at its Haldia Oil Refinery Plant in West Bengal. Referring to Rule 25 (2) (v) (a) of the Contract Labour Regulation and Abolition (Central) Rules, 1971, Mr. Saini points out that the decision in this regard has to be taken only by the CLC who is located in Delhi. It is submitted that the failure of the CLC to reply even to the legal notice issued on behalf of the Petitioners to him on 10th August 2011 provides a cause of action for this Court to entertain the writ petition. It is further submitted that in terms of the judgment of Five Judge Bench of this Court in *Sterling Agro Industries Limited v. Union of India*, this Court has to only examine whether it is convenient for all the parties for it to entertain the writ petition. It is submitted that in as much as the Petitioners, who are admittedly residing in Midanpore in West Bengal, have subjected themselves to inconvenience by approaching this Court for relief, and are not going to complain of such inconvenience, and further since the Respondents are also not going to suffer inconvenience in defending the writ petition, the present writ petition ought to be entertained. Mr. Saini draws the attention to the observations of the Supreme Court in *Alchemist Ltd. v. State Bank of Sikkim* (2007) 11 SCC 235.

3. The question whether the High Court should entertain a writ petition only because the authority against whom the relief is sought is located within its territorial jurisdiction has come up for decision on a number of occasions before the Supreme Court. Illustratively reference may be made to the decision in *Kusum Ingots & Alloys Ltd. v. Union of India* (2004) 6 SCC 254. In para 30 of the said decision, it was stated: "We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*".

4. Taking note of the above decision as well as the decision of the Supreme Court in *Alchemist Ltd. v. State Bank of Sikkim*, the Five Judge Bench of this Court in *Sterling Agro Industries Limited v. Union of India* in para 33 of the judgment observed that it was not willing to accept the earlier decision of a Bench of three Judges of this Court in *New India Assurance Company Ltd. v. Union of India* AIR 2010 Delhi 43 (FB), to the effect that this Court "cannot decline to entertain the writ petition" so long as the tribunal/appellate authority/revisional authority whose decision is challenged is situated within the jurisdiction of this Court. It was observed in para 33 (f) of the decision in *Sterling Agro Industries Limited* that "while entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in *Ambica Industries v. Commissioner of Central Excise* 2007 (213) ELT SC 323 and *Union of India v. Adani Exports Ltd.* (2002) 1 SCC 567."

5. Mr. Saini does not dispute the fact that as a result of the decision in *Sterling Agro Industries Limited*, this Court is under no compulsion to entertain the writ petition. He, however, submits that since a small part of the cause of action arises within the jurisdiction of this Court, discretion should be exercised by this Court to entertain the writ petition.

6. Admittedly, no decision has yet been taken by the CLC on the application filed by the Petitioners. It is, therefore, not even clear whether any cause of action has yet arisen within the jurisdiction of this Court. Be that as it may, the mere fact that the CLC is located in Delhi does not necessitate this Court having to entertain the writ petition. The Petitioners are in West Bengal and their place of work is also in West Bengal. The question concerns payment of wages to them at their place of work. The procedure involved in the decision to be taken by the CLC requires verification of facts by a Deputy Labour Commissioner functioning in West Bengal. He is expected to make a field visit to ascertain the facts. All these factors are relevant in ascertaining the „cause of action for the present petition. Lastly, it is not as if the High Court of Kolkata, if approached with a writ petition, cannot issue directions to the CLC. Article 226 (2) of the Constitution is intended for such contingency.

7. As regards convenience of parties, the question is not merely of one of the parties not complaining about its inconvenience in appearing before this Court. The question is one of principle. If more than one Court were to entertain writ petitions on the same set of facts it would, apart from a possibility of inviting conflicting orders, also encourage forum shopping. From the point of view of litigants, there has to be certainty on which High Court can entertain a writ petition, given the facts and circumstances of a case. The decision of the Five Judge Bench of this Court in Sterling Agro Industries Limited was intended to bring about that certainty.

8. This Court is accordingly not inclined to entertain this writ petition. It would of course be open to the Petitioners to approach the appropriate forum for relief. Nothing stated in this order is to be construed to be an expression of opinion on merits.

9. The writ petition is dismissed.

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