

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 18985 of 2009 (P)

PETITIONER :

LT.COL.BABU GEORGE,NEPTUNE SECURITY,
TC-17/1853, PURA 122 A, NALLOTH ROAD
POOJAPPURA P.O. THIRUVANAHTAPURAM.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS :

1. THE ASSISTANT LABOUR COMMISSIONER
(CENTRAL), KENDRIYA SHRAM SADAN, OLIMUGHAL
KAKKANAD, KOCHI-20.
2. THE PRINCIPAL GENERAL MANAGER,
TELECOM, BSNL, KALATHIPARAMBIL ROAD
ERNAKULAM SOUTH, KOCHI-16.
3. ALL KERALA EX-SERVICEMEN SECUTIRY
STAFF ASSOCIATION OF BSNL, IDUKKI DISTRICT COMMITTEE
BHAVANA, KARIMKUNNAM P.O., THODUPUZHA VIA
IDUKKI, REPRESENTED BY ITS SECRETARY.

R1 BY SRI.N.NAGARESH, ASGI
SRI.P.PARAMESWARAN NAIR,ASG OF INDIA

R2 BY ADV. SRI.C.S.RAMANATHAN

R3 BY ADVS. SRI.A.V.THOMAS
SRI.G.SHRIKUMAR
SRI.FRANCIS JOSEPH KURISINKAL
SRI.JOJO GEORGE
SRI.NIDHI SAM JOHN

R BY SRI.MATHEWS K.PHILIP,SC, BSNL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF LETTER DATED 19/11/07 WRITTEN BY THE 1ST RESPONDENT

EXT.P2 : COPY OF LETTER 22/11/07 WRITTEN BY THE 1ST RESPONDENT

EXT.P3 : COPY OF REPRESENTATION DATED 29/3/08 SUBMITTED BY THE PETITIONER

EXT.P4 : COPY OF LETTER DATED 19/6/08 OF THE 1ST RESPONDENT

EXT.P5 : COPY OF JUDGMENT DATED 23/1/09 IN WP(C)NO.29542/08

EXT.P6 : COPY OF REPRESENTATION DATED 5/2/09 FROM THE 3RD RESPONDENT TO THE 1ST RESPONDENT

EXT.P7 : COPY OF WAGE STATEMENT OF SRI.ALBERT GEORGE, THE SECRETARY OF THE 3RD RESPONDENT

EXT.P8 : COPY OF LETTER DATED 01/12/2008, GIVEN BY 49 SECURITY GUARDS

EXT.P9 : COPY OF STATEMENT DATED 18/2/08 SUBMITTED BY THE PETITIONER

EXT.P10 : COPY OF CLAIM STATEMENT DATED 6/3/09 OF THE 3RD RESPONDENT

EXT.P11 : COPY OF PETITIONER'S REPLY DATED 26/3/09

EXT.P12 : COPY OF PROCEEDINGS OF THE 1ST RESPONDENT DATED 21/4/09

RESPONDENTS' EXHIBITS :

EXT.R1(a) : COPY OF THE PROCEEDINGS HELD ON 10.2.2009

EXT.R1(b) : COPY OF THE PROCEEDINGS HELD ON 19.2.2009

EXT.R1(c) : COPY OF THE PROCEEDINGS HELD ON 27.2.2009

EXT.R1(d) : COPY OF THE PROCEEDINGS HELD ON 3.3.2009

EXT.R1(e) : COPY OF THE PROCEEDINGS HELD ON 6.3.2009

EXT.R1(f) : COPY OF THE PROCEEDINGS HELD ON 27.3.2009

EXT.R1(g) : COPY OF THE PROCEEDINGS HELD ON 5.2.2009

/TRUE COPY/

PA TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.18985 of 2009

Dated this the 20th day of February, 2015

J U D G M E N T

The petitioner, an ex-service man conducting a security agency, has filed this writ petition challenging Ext.P12 proceedings of the 1st respondent. As per Ext.P12, the petitioner has been directed to pay arrears of wages to his employees who are members of the 3rd respondent union. In the event of failure on his part to pay the said amount, the 2nd respondent who is the principal employer has been directed to pay the amount in compliance with Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Act' for short). The facts of the case are the following.

2. As already noticed above, the petitioner is conducting a security agency providing security services to the 2nd respondent. The 3rd respondent is an association of the security staff employed by the petitioner. The security staff employed by the petitioner are also ex-service men. The petitioner had as per an agreement entered into with the 2nd respondent provided security service during the period from 27.11.2004 to 14.12.2008. A complaint was made by the union to the 1st respondent that the employees of the petitioner were not paid the full wages to which they were entitled. The complaint was raised in respect of 41 security personnel who were working at the

various establishments of the 2nd respondent in Idukki District. However, the order has subsequent been made only in respect of 34 workers. There were similar complaints with respect to the workers in Ernakulam as well as Thrissur Districts. The 1st respondent enquired into the complaint. Heard the representatives of the 3rd respondent as well as the petitioner, as also the 2nd respondent and Ext.P12 proceedings have been issued finding that the workers were not paid the entire wages to which they were entitled. The arrears payable have been quantified and directed to be paid, as per Ext.P12. The petitioner is aggrieved by the said proceedings.

3. It is worthwhile noticing that, earlier, as per Ext.P4 dated 19.06.2008 the 1st respondent had issued a direction to the 2nd respondent to recover the wages from the service charges of the petitioner to be paid to the workers. Ext.P4 was the subject matter of challenge before this Court in W.P.(C).No.29542/2008. The said writ petition was disposed of by Ext.P5 judgment dated 23.01.2009. In the said judgment, this Court found that the dispute raised had not been considered by the 1st respondent and that, no amount had been quantified by the authority. Therefore, Ext.P4 was set aside and the 1st respondent was directed to consider the dispute and to quantify the amount if any due from the petitioner. It was pursuant to the said direction that the matter was considered and Ext.P12 issued. According to the petitioner, Ext.P12 is unsustainable and liable to be set aside.

4. Adv.Sri.P.Ramakrishnan who appears for the petitioner points out that, the petitioner had produced before the 1st respondent, Ext.P7 wage sheets, duly acknowledged by the workers to show that, he had paid them wages in accordance with law. Ext.P7 is only one out of the 705 sheets that he had produced before the 1st respondent. Ext.P8 is the copy of a letter written by all the security guards to the Managing Director of BSNL admitting that, they were being paid their full salary and other benefits regularly. The said documents have not been considered by the 1st respondent in Ext.P12. There is a further complaint that, Ext.P9 statement submitted by the petitioner also has not been considered. The liability has been cast on the petitioner by the 1st respondent, though there is no supporting evidence to show that any amount is due from the petitioner to the workers. The learned counsel also raises a contention that, the 1st respondent had no jurisdiction to decide the dispute. For the above reasons, it is contended that Ext.P12 is liable to be set aside.

5. A counter affidavit has been filed by the 2nd respondent. According to the counter affidavit, amounts are due and payable by the 2nd respondent to the petitioner. However, the said amount had not been paid, since the BSNL has been directed to pay the arrears of wages to the workmen, if the petitioner omits to pay the same. There is no other objection for making the payments due to the petitioner. According to the counter affidavit, wages were being paid to the

workers by disbursing amounts regularly to the petitioner every month. It was presumed that the amount was being paid to the workers. The 1st respondent has filed a separate counter affidavit producing the record of the proceedings conducted by him on the complaint received by him. The 3rd respondent has not filed a counter affidavit.

6. Heard. Since the question of maintainability of the proceedings of the 1st respondent has been raised, it is necessary to consider the said contention first. It is pointed out by the learned counsel for the petitioner that, though Section 21(4) of the Act casts a duty on the principal employer to pay the wages in the event of the contractor omitting to pay the wages to the employees, there is no provision in the Act conferring power on the 1st respondent to adjudicate a dispute regarding the same. It is pointed out that, in the absence of any power conferred on the 1st respondent, the appropriate remedy of the workmen was to raise an industrial dispute and to have the same determined through one of the authorities constituted under the Industrial Disputes Act, 1947. Inasmuch as the 1st respondent has not been conferred with any power to decide the dispute, it is contended that Ext.P12 is liable to be set aside, for want of jurisdiction.

7. A perusal of Ext.P5 judgment shows that, the above contention had been raised by the petitioner before this Court in the said writ petition also, while challenging Ext.P4. The issue has been considered by this Court in Paragraphs 3 and 4 of the judgment, which read as

under :

“3. I heard counsel for the first respondent, who sought to justify Exhibit P3. According to the first respondent, the petitioner has been granted Exhibit R1 licence. It is contended that nonpayment of the wages that are due to the contract labourers engaged by the petitioner, amounts to violation of the licence conditions and that for enforcing the licence conditions, the second respondent is perfectly competent. It is also contended that if at all the petitioner is aggrieved, by Exhibit P3 order, remedy available to the petitioner is to seek the appellate remedy that are provided under the Act itself. He also contended that since their claim is for legitimate wages, Exhibit P3 order under Section 21 of the Act is legal.

4. It is true that the petitioner's establishment is a licenced one. The licence itself shows that it has been granted by the authority under the Central Government. If that be so, in my view, the second respondent is perfectly justified in exercising his power in dealing with the complaint that he had received.”

On the basis of the above finding, the 1st respondent was directed by Ext.P5 to decide the claim of the workers in the light of the contentions raised by the parties, after giving an opportunity to adduce evidence. The above judgment has admittedly become final. The same is binding inter parties. Therefore, it is not open to the petitioner to raise the very same contention regarding the jurisdiction of the 1st respondent to decide the dispute, in this writ petition. The petitioner accepted Ext.P5 judgment, participated in the proceedings before the 1st respondent and has suffered Ext.P12. It is therefore not open to the petitioner to

question the jurisdiction of the 1st respondent.

8. The learned counsel for the petitioner has raised strong objections against the manner in which the liability has been fixed. According to him, the 1st respondent has not considered Ext.P7 wage sheets produced by him which show that the workers were being paid salary/wages at the rates stipulated by the 2nd respondent. My attention has been drawn to the wages paid to the workers shown as Serial Nos.16 and 20 in Ext.P7, with reference to the claim made by the workers in Ext.P10 to point out that, the amount actually received by them is the same as the amount for which claim has been raised in Ext.P10. However, it is stated in Ext.P10 that the amount actually paid to them was short by the amounts shown in Ext.P10. According to the learned counsel for the petitioner, there is absolutely no evidence to substantiate the said contention. A similar objection is raised with respect to Ext.P8 letter which also according to the counsel has not been referred to or considered. The said contention is disputed by Adv.Sri.A.V.Thomas, the Senior Counsel who appears for the 3rd respondent. According to the counsel, the wage sheets have been considered and Ext.P8 has been found to be unreliable, in Ext.P12.

9. A perusal of Ext.P12 shows that immediately on receipt of the complaint, the parties were called for a joint meeting by the 1st respondent on 07.01.2008. Thereafter, the discussion was adjourned to 24.01.2008. On the said date, the petitioner was directed to produce

the Register of Wages. Though, it is stated that he had not been maintaining a register of wages, on 19.02.2009 the petitioner's representative is seen to have furnished his written statement producing 705 sheets in support of his contention that the employees had been paid their wages regularly. However, the said sheets are seen to have been returned to him with the specific advice to furnish a consolidated statement and supporting documents in respect of 41 workers.

10. With respect to Ext.P8 letter, what is stated in Ext.P12 is that, on 27.02.2009, 4 out of the 41 workers had appeared and stated that, they had not signed the said document which was produced as Annexure IV before the 1st respondent. The above aspects have been considered in Ext.P12 as follows :

"In view of the statement furnished by the union on 6.3.2009 wherein they have restricted their claim to 34 workers, as a last and final hearing the proceedings were adjourned to 27.3.2009 and a letter in this regard was issued to the contractor enclosing a copy of the statement furnished by the union with specific direction to furnish a consolidated statement of payments made by the contractor to these said 34 workers for the total period covered by the union in their representation. Further the contractor was also advised to furnish the wage register/wage sheets in respect of the 34 workers for the period under reference without fail.

On 27.3.2009, the representative of the contractor has appeared and furnished the letter denying the claim of the union and reiterated that the said workers have already been

paid their entitled wages. The contractor has further stated that he does not have any records or documents to furnish in this regard despite repeated opportunities, as the contractor has failed to furnish the wage register, it was obvious that no further proceedings are required and accordingly the same was concluded on 27.3.2009.

As enumerated above, inspite of the repeated directions, the contractor has furnished neither the consolidated statement of payment made by him to these personnel for the period under reference nor the wages register/wage sheets in respect of the workers under reference for the said period. Further he has also not furnished the originals of the annexure that he has enclosed along with his letter dt.18.2.2008. The contractor has however vide his letter dt.26.3.2009 has furnished the calculation of the compensation for arranging relievers for 6 days a month and when the said computation is compared with the DGR Guide lines and the bills that he has submitted, it is seen that the calculation furnished by him towards the said compensation contrary to the DGR Guide lines and his bills.

At this juncture it is worth mentioning that the contractor, though was furnished with the copies of the wage sheet said to have been circulated by him amongst the workers for obtaining their signature has neither disowned nor disproved the same. It is thus construed that the copies furnished by the union are the copies the original wage sheets maintained by the contractor. Further, in view of the failure of the contractor to produce the documentary proof in respect of the payments said to have been made by him, the undersigned is left with no other option but to accept the details furnished by the union in respect of the total wages payable in accordance with the DGR guidelines, the actual wages paid by the contractor and the balance amount payable to these

workmen by the contractor."

Further it has been noted in Ext.P12 that, the representative of the BSNL had confirmed before the 1st respondent that the petitioner had received the amounts as claimed by the union in the statement furnished, vide his various bills for the period from 2004 to 2008.

11. It is clear from the above that, the contentions of the petitioner were considered and that sufficient opportunity had been granted to produce records in support of his contentions, by the 1st respondent. It was only pursuant to a submission made on behalf of the petitioner that he had no further documents to produce, that the authority had proceeded to decide the question on the basis of the records available and the statements made by the BSNL. It has been found that, short payments had been made by the petitioner to the workers, though he had received the full amount from the BSNL.

12. In view of the above, I do not find any grounds to interfere with Ext.P12. This writ petition is therefore, dismissed.

The learned counsel for the BSNL assures that the amounts due to the petitioner retained in view of the claim made by the workmen and determined as per Ext.P12, would be disbursed after deducting the amounts payable to the workers. This is recorded.

Sd/-

K.SURENDRA MOHAN, JUDGE.

AV