IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P. No.4871 of 2014

New Sarika Cotton Traders,
Rep. by its Managing Partner,
Mr.K.V.Prasad,
No.3-29-13/28, 6th Line,
Krishna Nagar,
Guntur - 522 006.
Andhra Pradesh. ... Petitioner

Vs.

1. The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi (C1) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2. Government of Tamil Nadu,
Rep. by the Secretary,
Finance Department,
Fort St. George,
Chennai - 600 009.

3. The Commissioner,
Handlooms and Textiles,
Kuralagam,
Chennai - 600 001.

4. The Administrator,
South India Co-operative Spinning
Mills Limited,
Pettai, Tirunelveli District ....Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus, directing the respondents to consider the case of the petitioner and effect payment of the amount due to the petitioner in a sum of

Rs.73,67,223/- with further interest at 14% per annum, as requested under letter of the petitioner dated 29.11.2013 to the 3rd respondent, in terms of payment effected to similar suppliers pursuant to G.O.Ms.No.169 Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.07.2013 issued by the 1st respondent.

For Petitioner	:	Mr.P.Krishnan
For R1 to R3	:	Mr.R.A.S.Senthilvel, Additional Government Pleader
For R4	:	Mr.A.S.Thambuswamy

ORDER

Seeking a writ of mandamus directing the respondents to consider the case of the petitioner for effecting payment due from the fourth respondent since having been under liquidation, the present writ petition has been filed.

2. On the question of the liability, the counter affidavit filed by the respondents 1 to 3 states as follows:

"5. I further submit that the averments made in paragraph 4 of the affidavit are denied. I submit that the fourth respondent is a Co-operative Society registered under the Madras Co-operative Societies Act, 1932 (Madras Act No.VI of 1932) during the year 1952 and engaged in spinning and selling of cotton yarn. The petitioner herein during the year 2003 entered into transaction with the fourth respondent under which he had supplied cotton for a value of Rs.1,11,07,810/- and also made an advance payment of Rs.69,68,649/- for conversion of cotton to yarn. The amount payable by the fourth respondent was Rs.1,80,76,459/- including Demand Draft and Telegraphic Transfer Commission. The Fourth respondent had subsequently supplied yarn for Rs.1,48,83,048/- and paid Rs.2,10,000/- in cash, Rs.1,48,734/- as lorry freight and for others Rs.21,721/-. Thus all put together, total payment made to the petitioner was Rs.1,52,63,503/- and only a sum of Rs.28,12,956/- stood as due payable by the fourth respondent. In the meanwhile functioning of the fourth respondent mill slowly came down and met severe critical situations. Eventually all the employees and workers of the mill went on Voluntary Retirement Scheme on 31.03.2004 and the mill is not functioning from 31.03.2004. Since, operation of the fourth respondent mill came to a grinding halt on account of circumstances beyond the control of the fourth respondent they had not supplied yarn for the balance cotton due of Rs.28,12,956/- payable to the petitioner."

3. In the counter affidavit filed by the fourth respondent, there is no denial about the liability. The objection is to the effect that instead of working out remedy under the Act, the petitioner has approached this Court belatedly. The specific objection of the fourth respondent is that it is for the respondents 1 to 3 to consider the payment of the petitioner, since it is under liquidation.

4. Considering the very same issue, the Honourable First Bench of this Court, in W.A.Nos.525 to 532 of 2015, dated 28.08.2015, was pleased to pass the following orders.

> "16. Admittedly, when the First Bench by order dated 04.01.2005 referred the matter for arbitration was conscious of the fact that large number of farmers of Andhra Pradesh and Tamil Nadu had been affected on account of the non payment of the dues for the cotton supplied to the respondent Co-operative Spinning Mills. The Court took into consideration the plight of the farmers that they have been languishing without payment and since the matter pertains to a money claim and there were controversies, though the claimants could have been relegated to the Civil Court to file suits for recovery of their money, with a view to resolve the controversy thought fit to refer the matter to Arbitration. In such circumstances, when the Government extended the benefit and settled the dues to persons, who were not covered in the Arbitration award, there was no valid reason by which the appellants could have been singled out, when admittedly they were also similarly placed as other suppliers whose dues were settled inspite of not being parties to the Arbitration award.
>
> 17. Furthermore, we wish to point out that the appellants could not have been non-suited on the ground of delay, as the claimants were able to realise the fruits of the award only after the Government advanced monies to the respondent Co-operative Spinning Mills pursuant to Government Order, dated 25.07.2013. Only at that juncture, the appellants came to know that apart from the persons covered in the award 92 other similarly placed persons like them were granted benefit. This one reason is sufficient to hold that the appellants could not have been singled out and owing to such fact, the claim of the

appellants cannot be thrown out as being a belated claim. Had the Government restricted the payment to the persons, who were covered by the Arbitration award i.e., claimants before the Arbitrator, it would be a different matter, but the Government thought fit to extend the benefit to an additional 92 suppliers and there is no reason assigned by the respondents as to why the appellants alone who are 8 in number should have been excluded.

18. The learned Additional Advocate General does not dispute the fact that the appellants were suppliers and received payments and to non-suit them by stating that the claim is belated, is unreasonable and offends Article 14 of the Constitution of India. The learned Additional Advocate General placed reliance on the decision of the Hon'ble Supreme Court in the case of S.S.Balu vs. State of Kerala (supra), to drive home the point that “delay defeats equity”. By referring to the paragraph 17 of the judgment, it is submitted that the Writ Court was justified in dismissing the Writ Petitions as they have been filed after a long delay. Irrespective of the fact that they are similarly situated to the other candidates, who obtained the benefit of the judgment. The said decision of the Hon'ble Supreme Court arose out of a service matter relating to filling up of Lower Primary/Upper Primary School Assistants in the State of Kerala. Taking note of the facts therein, it was pointed out that the rank list was valid only for a period of three years. Its validity expired on 5.6.2000 and thereafter, another Select List was published for the period from 2002 to 2005 and vacancies in terms of the said Select List have also been filled up. Thus, the considering the said facts the Court held that delay and latches are relevant facts for exercise of equitable jurisdiction. In the case on hand, the equity is in favour of the appellants. It is not in dispute that they are similarly placed as that of the other suppliers and were not aware of the fact that the Government would extend the benefit to 92 other persons who were not the claimants before the Arbitrator. Hence, on the peculiar facts and circumstances of this case, the appellants claim cannot be rejected on the ground of delay and latches and the decision relied on by the respondent is clearly distinguishable on facts.

19. As pointed out earlier the plight of the farmers was taken note of by the Division Bench while referring the matter for arbitration. It appears that

the appellants as suppliers had with the bonafide belief effected supplies to the respondent Co-operative Spinning Mills with a fond hope that the payments would be promptly settled, since all the Mills were managed by the Government by appointing Special Officers. All their hopes were shattered when the respondent Mills breached their promises, miserably failed in settlement of their dues. Thus in the peculiar facts and circumstances and more importantly taking note of the fact that the Government extended the benefit to 92 other similarly placed suppliers like the appellants, we are of the firm view that the appellants are also entitled to the same benefit as that of the other suppliers who were granted the benefit under G.O.Ms.No.169, dated 25.07.2013.

20. In the result, the Writ Appeals are allowed and the impugned order passed in the Writ Petitions are set aside and the respondents are directed to settle the claims of the appellants, as has been done to the other suppliers pursuant to the Government Order, dated 25.07.2013 on the same terms, within a period of three months from the date of receipt of a copy of this Order. No costs."

5. Thus, all the issues raised on behalf of the respondents being technical are duly rejected. The ratio laid down in the decision of the Hon'ble First Bench would be applicable to the case of the petitioner as submitted by the learned counsel for the petitioner. Therefore, the writ petition is ordered in the very same terms. No costs.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
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Khadi (C1) Department,
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Mills Limited,
Pettai, Tirunelveli District.

+1 cc to Mr.A.S.Thambuswamy,Advocate(sr.56328)
+1 cc to Mr.P.Krishnan,Advocate(sr.56406)

W.P. No.4871 of 2014

sr(co)
cp 20/10/2015