

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2015

Coram

The Hon'ble Mr. Justice T.S.SIVAGNANAM

W.P.Nos.34365 to 34374 of 2013 and 2549 to 2555 of 2014
and 8205 to 8208 of 2014

and

M.P.Nos.1 and 2 of 2013 and 1 to 1 of 2014, 1 to 1 and 2 to 2 of 2014
and M.P.Nos.1 to 1 and 2 to 2 of 2014

- 1 M/S.RMS DYEING
REP. BY ITS PARTNER
MR.R.MYLSWAMY S/O.P.
RAJAPPA GOUNDER
HAVING OFFICE AT
SF NO.610/2 SAMBA THOTTAM
VEERAPANDI PO.
TIRUPUR 641 605 ..PETITIONER IN WP.34365 OF 2013
- 1 M/S.THANGAMMAN PROCESS
REP. BY ITS PARTNER
MR.N.NATRAYAN S/O.
NACHIMUTHU GOUNDER
SF. NO.15 VADUGAN
THOTTAM KASI PALAYAM
NALLUR TIRUPUR 641 606 ..PETITIONER IN WP.34366 OF 2013
- 1 M/S.SIVASAKTHI DYEING FACTORY
REP. BY ITS MANAGING
PARTNER MR.K.M.
SUBRAMANIAM
S/O.S.MURUGASAMY S.F.NO.620/1
SIVASAKTHI GARDEN VEERAPANDI
TIRUPUR ..PETITIONER IN WP.34367 OF 2013
- 1 M/S.HIGH POWER PROCESS
REP. BY ITS PARTNER
MR.K.CHINNUSAMY S/O.M.
KUMARASAMY S.F.NO.249
AND 250 C.S.P. GARDEN
SARKAR PERIYAPALAYAM TIRUPUR. ..PETITIONER IN WP.34368 OF 2013

- 1 M/S.BRINDAA PROCESSING MILLS
REP. BY ITS PARTNER
MR.R.EASWARN S/O.A.
RAMASAMY SF NO.377/1B
PALLANKADU
AVARAPALAYAM VEERAPANDI PO.
TIRUPUR ..PETITIONER IN WP.34369 OF 2013
- 1 M/S. OSKAR PROCESS REP. BY
ITS MANAGING PARTNER
MR.P.DEIVASIGAMANI
543/1 EAST KALLANKADU
KARUPPAGOUNDENPALAYAM
VEERAPANDI TIRUPUR ..PETITIONER IN WP.34370 OF 2013
- 1 M/S.TIP TOP PROCESSING REP.
BY ITS PARTNER MR.R.EASWARAN 527
KURUMANKUTTAI THOTTAM
PALAVANCHIPALAYAM
ROAD VEERAPANDI PO.TIRUPUR ..PETITIONER IN WP.34371 OF 2013
- 1 M/S.SRI KARPAGAM DYEINGS
REP. BY ITS PARTNER
MR.RAMAMOORTHY S/O.
NATRAJAN CHETTIAR 432/2
PALAVANJIPALAYAM
KNP COLONY PO. TIRUPUR ..PETITIONER IN WP.34372 OF 2013
- 1 M/S.ATUL PROCESS
REP. BY ITS PARTNER
MR.P.GANDHIRAJAN S/O.A.
PALANISAMY HAVING OFFICE AT
S.F.NO.414/10
PALAVANJIPALAYAM ROAD
VEERAPANDI PO
TIRUPPUR-641 605. ..PETITIONER IN WP.34373 OF 2013
- 1 M/S.ADITHYA TEXTILE PROCESS
REP. BY ITS PARTNER
MR.N.BALASUBRAMANI S/O.
NATCHIMUTHU HAVING OFFICE AT
S.F.NO.418-A PALAVANJIPALAYAM ROAD
VEERAPANDI TIRUPPUR-641 605. ..PETITIONER IN WP.34374 OF 2013
- 1 M/S.G.K.M.COLOURS
REP. BY ITS PARTNER
MR.G.KANAGARAJ S/O.A.
GOVINDASAMY OFF: SF NO.258
VAYAKKADU THOTTAM
MURUGUMPALAYAM TIRUPPUR-641 687...PETITIONER IN WP.2549 OF 2014

- 1 M/S.VELAN DYEINGS
REP. BY ITS PARTNER
MR.P.BALAKRISHNAN S/O.
PALANISAMY OFF: SF NO.618/2
ANAIPALAYAM SIRUPULUVAPATTI
TIRUPPUR-641 603. ..PETITIONER IN WP.2550 OF 2014
- 1 M/S.SRI VETRIVEL BLEACHERS
REP. BY ITS PARTNER
MR.R.CHINNASAMY S/O.
RAMASAMY GOUNDER OFF:
AATHU THOTTAM
KASIPALAYAM TIRUPPUR-641606. ...PETITIONER IN WP.2551 OF 2014
- 1 M/S.VARMA DYEING
REP. BY ITS PARTNER
MR.K.ARUMUGAM S/O.
KALIANNAN OFF: 1/1
MANIAKARER THOTTAM
KASIPALAYAM TIRUPPUR-641 606. ...PETITIONER IN WP.2552 OF 2014
- 1 M/S.SATHYA DYEINGS
REP. BY ITS PARTNER
V.DEIVASIGAMANI S/O.K.
VALLIAPPA GOUNDER OFFICE AT NO.7
PARAPPALAYAM MANGALAM ROAD
TIRUPPUR-641 604 ..PETITIONER IN WP.2553 OF 2014
- 1 M/S.D.S.P. PROCESS
REP. BY ITS PARTNER
THANGARAJ S/O.
MUTHUSAMY OFFICE AT 10/27
CHINNAKARAI
PALLADAM ROAD TIRUPPUR-641 605 ..PETITIONER IN WP.2554 OF 2014
- 1 M/S.JAYASAKTHI PROCESSES
REP. BY ITS PARTNER
T.R.SUBRAMANIYAM S/O.A.
RAMASAMY OFFICE AT S.F.NO.124
MERKKU THOTTAN KASIPALAYAM
TIRUPPUR-641 606 ..PETITIONER IN WP.2555 OF 2014
- 1 M/S.SINTHU TEXTILE PROCESS
REP. BY ITS PARTNER
MR.R.PARAMASIVAN S/O.
RAKKIAPPA GOUNDER OFF:
S.F.NO.49/3 SINTHU
GARDEN PARK COLLEGE ROAD
KARAIPUDUR TIRUPPUR-641 605. ...PETITIONER IN WP.8205 OF 2014

- 1 M/S.APARNA COLOURS REP. BY
ITS PARTNER MR.MOORTHY.
S/O.K.PALANISAMY
OFF: THENMARA THOTTAM
MURUGAMPALAYAM
TIRUPPUR-641 687. ..PETITIONER IN WP.8206 OF 2014
- 1 M/S.COTTON COLOURS
REP. BY ITS PARTNER
MR.SUBRAMANIYAM S/O.
MUTHUSAMY GOUNDER
OFF:S.F 128 AATHU THOTTAM
KASIPALAYAM TIRUPPUR 641 606. ...PETITIONER IN WP.8207 OF 2014
- 1 M/S.COLOUR LINES
REP. BY ITS PARTNER
MR.M.MUTHUKUMARASAMY
S/O.V.MUTHUSAMY OFF:
S.F.NO.32 KUNNANGALKADU
KASIPALAYAM TIRUPPUR 641 606. ...PETITIONER IN WP.8208 OF 2014
- Vs
- 1 NEW TIRUPUR AREA DEVELOPMENT
CORPORATION LTD. REP. BY ITS MANAGING
DIRECTOR ANURAG 15 MURRAYS GATE ROAD
ALWARPET CHENNAI-108
- 2 THE GENERAL MANAGER NEW
TIRUPUR AREA DEVELOPMENT CORPN.
LTD. 1/C (OPERATIONS) 37
RASSI TOWERS GROUND FLOOR
JG NAGAR KURAMARANANDAPURAM
60 FEET ROAD TIRUPUR & DT.
..RESPONDENTS IN WP.Nos.34365 to 34374
of 2013 and 2549 to 2555 of 2014
and 8205 to 8208 of 2014

Amended Prayer in W.P.No.34365 of 2013 to 34374/13:-

Petition filed under Article 226 of the Constitution of India
praying to issue a writ of mandamus

[i]directing the respondents to sign and act upon the Service
Addendum Agreement entered between the petitioner and the respondent
dated 27.07.2012 and consequentially exclude the agreed 15% of the
water charges levied upon the petitioner from February, 2011 to July,
2012 as per the said Service Addendum dated 27.07.2012.

[ii] Prayer in WP.Nos.2549, 2551 to 2553, 2555 and 8205 of 2014:

directing the respondent to sign and act upon the Service Addendum Agreement entered between the petitioner and the respondent dated 20.06.2012, 30.07.2012, 26.7.2012, Nil, 31.07.2012 and 15.08.2012 respectively and consequentially exclude the agreed 15% of the water charges levied upon the petitioner during from February 2011 to July 2012 as per the said service Addendum dated 20.06.2012 30.07.2012, 26.07.2012, Nil, 31.07.2012 and 15.08.2012 respectively.

iii) Prayer in W.P.2550 & 2554 of 2014:

directing the respondents to sign and act upon the service addendum Agreement entered between the petitioner and the respondent dated 31.07.2012 and consequentially exclude the agreed 15% of the water charges levied upon the petitioner during from February 2011 to July 2012 as per the said service Addendum dated 31.07.2012.

(ii & iii) Prayer amended vide order dated 27.01.2015 in MP.Nos.3 to 3 of 2014 in WP.Nos. 2549, 2551 to 2553, 2555 and 8205 of 2013 and 2550 & 2554 of 2013)

(Prayer Amended vide order dated 27.01.2015 in M.P.Nos.2 to 2 of 2014 in W.P.Nos.34365 to 34374 of 2013)

W.P.8206 of 2014: Forbearing the respondents their men agents servants or any one acting under them from in any manner demanding collecting or enforcing the demand for Take or Pay Charges for the period February 2011 to July 2012 during which period the Unit was Shut Down due to Court order by enforcing the illegal demand of Rs.13 32 414/- made vide Invoice No.4169 dated 30th November 2013 and further invoices to be raised in any manner including invocation of the existing Bank Guarantee issued in favour of the 1st respondent and consequently direct the respondents to refund the charges of Rs.6 48 530/- deposited by the petitioner for the period from February 2011 to December 2011 along with interest at 18% p.a from the date of deposit till the date of Payment.

W.P.8207 of 2014: Forbearing the respondents their men agents servants or any one acting under them from in any manner demanding collecting or enforcing the demand for Take or Pay Charges for the period February 2011 to July 2012 during which period the Unit was Shut Down due to Court order by enforcing the illegal demand of Rs.4 46 421.00/- made vide Invoice No.47858 dated 31st March 2012 and further invoices to be raised in any manner including invocation of the existing Bank Guarantee issued in favour of the 1st respondent and consequently direct the respondents to refund the charges of Rs.51 672/-deposited by the petitioner for the period from February 2011 to December 2011 along with interest at 18% per annum from the date of deposit till the date of payment.

W.P.8207 of 2014: Forbearing the respondents their men agents servants or any one acting under them from in any manner demanding collecting or enforcing the demand for Take or Pay Charges for the period February 2011 to July 2012 during which period the Unit was Shut Down due to Court order by enforcing the illegal demand of Rs.5 97 871.00/- made vide Invoice No.4371 dated 30 November 2013 and further invoices to be raised in any manner including invocation of the existing Bank Guarantee issued in favour of the 1st respondent and consequently direct the respondents to refund the charges of Rs.97,032/-deposited by the petitioner for the period from February 2011 to December 2011 along with interest at 18% per annum from the date of deposit till the date of payment;

For Petitioner .. Ms.K.Subhashini
for M/s.Chennai Law Associates
in all the W.Ps

For Respondents ... Mr.P.Giridharan
in all the W.Ps

COMMON ORDER

Though some of the writ petitions are not listed, the learned counsel for the petitioners submitted that she is appearing in all the writ petitions and requests that the same may be clubbed along with these writ petitions. Learned counsel for the respondents has no objection for the same. Hence all the writ petitions are taken up together.

2.Heard the learned counsel for both sides and perused the materials available on record.

3.The reliefs sought for in these writ petitions are identical and therefore, they were heard together and disposed of by this common order.

4.The petitioners are all Dyeing Units in Tiruppur District and they were initially drawing water from underground sources for their operation. Subsequently, on account of several issues which arose as the industrial units were not adhering to the pollution control norms and filing of the writ petitions by way of public interest litigations, all the units were directed to be closed. In the interregnum, for the purpose of regulating the use of water as well as to treat the effluent discharged by the Dyeing Units, certain arrangements were made. In this regard, an agreement was entered into by the unit holders with the first respondent viz., New Tirupur Area Development Corporation Limited, pursuant to which, the petitioners committed themselves to drawal of a particular quantity of water per day/per month and pay the charges. On account of the closure of the units, the petitioners have stated that they are unable to pay the

charges. In the meantime, alleging that the first respondent is attempting to invoke the bank guarantees executed by the petitioners to recover the water charges, the petitioners filed writ petitions in W.P.Nos.1998 to 2009 of 2012. The said writ petitions were withdrawn by the petitioners and the same were accordingly dismissed by order dated 02.07.2012. Once again, the petitioners approached this Court by filing W.P.Nos.754 to 758 of 2014 raising a plea that the first respondent was attempting to encash the bank guarantees and therefore, a writ of mandamus should be issued to forbear the respondents from in any manner demanding, collecting or enforcing the demand for "Take or Pay Charges" for the period from February, 2011 to July, 2012 on the ground that the petitioner units were shut down during the said period. Those writ petitions were dismissed by common order dated 25.06.2014. The operative portion of the order reads as follows:

"8.As rightly pointed out by the learned Additional Government Pleader appearing for the respondents, it is well settled proposition of law that the respondents cannot be enjoined from invoking the bank guarantee especially when the petitioners have not even pleaded or alleged that the respondents have resorted to fraud. In the absence of any pleading to that effect, the relief as claimed by the petitioners cannot be granted.

9.It is contended on behalf of the petitioners that as per clause 7.2 & 7.3 of the Service Agreements, in the event of any force majeure, the obligation on the part of the petitioners to perform their duties shall be suspended till the cessation of such event. In the present case, the petitioners term the closure of the units by virtue of the order passed by this Court as a force majeure. The very same contention has been raised and agitated by the petitioners in the earlier writ petitions filed before this Court and they were withdrawn without any liberty. Therefore, such an argument advanced on behalf of the petitioners cannot be countenanced.

10.The dispute involved in these writ petitions are contractual disputes. The prayer in these writ petitions is to forbear the respondents from in any manner demanding, collecting or enforcing the demand for "Take or Pay Charges" for the period during which Units were shut down due to Court order and to consequently direct the respondents not to enforce their demand for outstanding charges on the basis of invoices raised by them and to refund the 10% charges of along with interest at 18% per annum from the date of deposit till date of repayment. As regards refund of the 10% of the amount paid by the petitioners, such amount was paid pursuant to the Addendum which provides for payment of the outstanding amount in instalments. The 10% of the amount paid by the petitioners is towards outstanding amount. Therefore, the relief sought for in these writ petitions in so far as it relates to refund of the 10% amount paid by the petitioners towards outstanding cannot be countenanced. In any event, these are all disputed questions relating to the particular period of

closure of the petitioners unit, the quantum of water utilised by them and their obligation under the contractual agreements. Such a disputed question of fact cannot be gone into by this Court in exercise of jurisdiction under Article 226 of The Constitution of India. It is noteworthy to mention that when the petitioners have entered into Addendum and availed certain concessions and such concessions have also been accepted by the petitioners to their benefit, it is no longer open to them to file the present writ petitions. Therefore, it is clear that the petitioners entered into service agreements on various dates with the first respondent, unable to perform their obligations and taking note of such difficulties, the first respondent granted certain concessions which are duly incorporated in the Addendum. When the petitioners could not even perform their obligations under the Addendum, they have come forward with these writ petitions. In fact, by virtue of the Addendum, the petitioners were given certain concession to pay the outstanding amount in instalments and the mandatory procurement of quantity of water, reflected in the service agreements, were reduced. In those circumstances, this Court is not inclined to issue any mandamus to the respondents.

Accordingly, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

5. The said order has become final. The learned counsel for the respondents pointed out that the plea raised by the petitioners stating that bank guarantees were sought to be invoked itself is an incorrect statement and the original prayer sought for in the writ petitions being identical to the earlier writ petitions, they are liable to be dismissed. However, the petitioners in W.P.Nos.34365 to 34374 of 2013 and 2549 to 2555 and 8205 of 2014 have filed petitions to amend the prayer, which have been ordered by this Court in the light of the fact that in the counter affidavit, the first respondent has accepted the fact that an Addendum to the service agreement dated 20.05.2005 has been prepared and signed by the petitioners, whereby the agreed volume of water at 4 lakh litres per day was modified with effect from the date of the addendum to 20,000 litres per day. The petitioners would state that this agreement was arrived at after mutual discussions and taking into account the fact that during the relevant period, the units were shut down. It has to be pointed out that the units were shut down for non-compliance of the pollution control norms and indiscriminate discharge of untreated effluent water. Be that as it may, the issue that arises for consideration is whether the respondents are entitled to invoke the bank guarantees. It is made clear in this order though this Court has referred to the variation in the volume of litres of water as 20,000 litres per day, it relates to only one of the cases viz., the petitioner in W.P.No.34365 of 2013 and the same is quoted as an illustration. The volume of litres of water may vary from unit to unit.

6.The learned counsel for the respondents submitted that there is no communication issued to the petitioners till date that they seek to invoke the bank guarantees. However, with regard to past arrears, the interest of New Tirupur Area Development Corporation Limited has to be protected and the bank guarantees should be directed to be kept alive by all the petitioners. Further, the Addendum to the service agreement states that the general terms and conditions remain unaltered and they are binding on the parties and this has been agreed to by the petitioners.

7.The Addendum to an agreement can be an amendment only to what it contemplates and not to the general terms and conditions. It is clear from the Addendum that there is variation only in Clause 3.1 of the service agreement as the volume of litres of water per day which has been reduced from 4 lakh litres to 20000 lites. In all other respects, the original service agreement remains unaltered. Therefore, the petitioners are bound to keep the bank guarantees offered by them alive for the entire sum for which the guarantees have been offered. This leaves us with the only question as to what direction should be issued to the first respondent.

8.In the light of the fact that the first respondent does not dispute the Addendum to the service agreement, the same having already been signed by all the petitioners and forwarded to the first respondent, the first respondent shall sign the agreement and implement the same and as a consequence of which, the first respondent has to necessarily issue a revised demand for the past quantity because there is a variation or reduction in the quantity of water per day. It is reiterated that merely on account of the fact that revised demand is issued that does not mean that the petitioners can claim that they will furnish bank guarantees for the reduced amount. The bank guarantees which are to be furnished by the petitioners shall be to the same extent as has been furnished in terms of the general terms and conditions which remains unaltered and agreed to by the petitioners. The above directions shall be implemented by the first respondent within a period of six months from the date of receipt of a copy of this order. It is made clear that the petitioners shall keep the bank guarantees alive for the entire amount as per the original service agreements.

9.With the above direction, all the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar(Cs-III)
dt. 156.07.2015

/true copy/

Sub Asst. Registrar.

mmi

To

+ 21 ccs to Chennai Law firm Associates Advocates
SR.4232, 4233, 4234

+ 1 cc to Mr.P.Giridharan, Advocate SR.4148

W.P.Nos.34365 to 34374 of 2013 and 2549
to 2555 of 2014
and 8205 to 8208 of 2014

JSV(CO)
Eu 16.07.15



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