

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION Nos.26687 of 2010 and 10707 of 2012

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10.09.2015

W.P.No.26687 of 2010:

Between:

N.Jitender Reddy

.. Petitioner

and

The Andhra Pradesh State Road Transport Corporation, Hyderabad and another

.. Respondents

Counsel for the petitioner: Mr.B.H.R.Choudary

Counsel for the respondents: Mr.N.Praveen Reddy,

for Mr.N.Vasudeva Reddy,

Standing Counsel for Telangana State Road Transport Corporation

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W.P.No.10707 of 2012:

Between:

N.Jitender Reddy

.. Petitioner

and

The Andhra Pradesh State Road Transport Corporation, Hyderabad

.. Respondent

Counsel for the petitioner: Mr.B.H.R.Choudary

Counsel for the respondent: Mr.N.Praveen Reddy,

for Mr.N.Vasudeva Reddy,

Standing Counsel for Telangana State Road Transport Corporation

The Court made the following:

COMMON ORDER:

W.P.No.26687 of 2010 is filed for a *mandamus* to set aside proceedings No.K5/122(2)/2005-BBW, dated 05.11.2009, of respondent No.2 therein, whereunder a sum of Rs.7,35,954/- was directed to be recovered towards the alleged excess payments made to the petitioner.

W.P.No.10707 of 2012 is filed for a *mandamus* to declare the action of the respondent therein in non-considering the petitioner's representation, dated 02.12.2011, as arbitrary and illegal.

I have heard Mr.B.H.R.Choudary, learned counsel for the petitioner, and Mr.N.Praveen Reddy, learned counsel representing Mr.N.Vasudeva Reddy, learned standing counsel for the Telangana State Road Transport Corporation (TSRTC) appearing for the respondents.

For convenience the parties are referred to as they are arrayed in W.P.No.26687 of 2010.

The petitioner was allotted service contract pertaining to sweeping of the shop floor of open area, up keep of the canteen etc., for a period of three years i.e., from 03.02.2006 to 02.02.2009. In pursuance of the said allotment, an agreement was entered into between the petitioner and the respondent corporation on 03.02.2006, which is also styled as deed of license. The agreement contains several terms and conditions. A fixed remuneration payable to the petitioner is Rs.48,600/- per calendar month. Clause 10 of the agreement/deed of license envisages that the petitioner shall engage minimum of 17 workers in respect of sweeping and clearing of the shop floor including toilets, sewerage pipe lines, lifting of scrap materials and segregation at scrap bins, BBW, Miyapur, cleaning and sweeping of canteen floor and washing of vessels and utensils etc. and cleaning and sweeping of all wards and adjacent roads in stores. The petitioner executed the work till the expiry of the contract period of three years i.e., 02.02.2009. On 03.07.2009, the petitioner was served with a show cause notice proposing recovery of Rs.7,35,954/- on the ground that he has not engaged minimum of 17 unskilled labour, but claimed the full monthly remuneration and received the payment. In reply to the said notice, the petitioner submitted his explanation on 16.07.2009, wherein he has stated that he has been executing the contracts for the past several years; that he is maintaining attendance register as contemplated under the Contract Labour (Regulation and Abolition) Act, 1970; that the wage bills were submitted by him along with P.F. and E.S.I. challans in accordance with the registers maintained by him; that the contract work was executed by him every day by engaging 17 unskilled labour as per the terms and conditions of the contract work and that whenever some contract labour is absent, he engaged unskilled labour available at adda. The petitioner further explained that at no point of time during the period of contract, any allegation was made by any supervising officer that he engaged less than the minimum prescribed number of unskilled labour, and that work suffered due to that reason. However, respondent No.2, issued impugned proceedings, dated 05.11.2009, advising the petitioner to remit the amount of Rs.7,35,954/- within seven days, failing which the amount will be adjusted from the remuneration payable to him for the contracts

under execution at BBW Complex, Miyapur, and his security deposit.

After the filing of W.P.No.26687 of 2010, the petitioner made representation, dated 02.12.2011, to respondent No.1 therein for reconsidering the decision. As no order was passed thereon, the petitioner filed W.P.No.10707 of 2012.

The law officer of the respondent corporation filed a counter-affidavit in W.P.No.26687 of 2010, wherein he has sought to justify the recovery of the aforesaid amount.

The work between the parties is governed by a bilateral contract termed as deed of license. Clause 10 of the terms and conditions of the deed of license, dated 03.02.2006, reads as under:

“10. The successful licensee shall engage minimum 17 workers in respect of sweeping and cleaning of shop floor including toilets and sewerage pipe lines, lifting of scrap materials and segregation at scrap bins, BBW, miyapur, cleaning and sweeping of canteen floor and washing of vessels and utensils etc., and cleaning and sweeping of all wards and adjacent road in stores.”

It is not in dispute that during the currency of the contract, no official of the respondent corporation has ever pointed out that the petitioner failed to engage minimum of 17 unskilled labour. However, on the basis of the information furnished by the petitioner with reference to the number of days for which each of the 17 contract employees have worked in a month, the show-cause notice was issued to him. A perusal of the information furnished by the petitioner, no doubt, shows that each of the 17 contract employees worked for a particular number of days. The respondent corporation calculated the actual number of days of each of these 17 contract employees and demanded the sum of Rs.7,35,954/- treating the same as excess payment. Interestingly, for every month, the Assistant Works Manager, BBW, issued identical certificates. One such certificate reads as under:

"CERTIFICATE

This is to certify that the Maintenance of the work i.e., cleaning and sweeping of work at Work Shop, Canteen, Stores at A.P.S.R.T.C., Miyapur have been successfully carried out by the Contractor during the period from 01.04.2006 to 30.04.2006 and is eligible for payment of remuneration for the month of April, 2006.

XXX XXX

Stores Officer:BBW & PP Asst. Works Manager: BBW"

It is the pleaded case of the petitioner that while he has engaged 17 contract labour on regular basis and paid provident fund, gratuity and insurance amounts to these workers; whenever some of them were absent, he has engaged daily wage workers from the labour adda and that, therefore, there was no impediment for the work and the supervising officials of the respondent corporation have issued aforesaid certificates every month to the effect that he has successfully completed the work.

As rightly pleaded by the petitioner, if there were any shortcomings in the maintenance work on account of shortage of the labour being engaged by the petitioner i.e., below the minimum number of 17 contract labour, there was no possibility of the supervising staff not raising that issue during the entire period of contract spanning about three years. No such whisper was raised at any time during the currency of the contract. On the contrary, aforesaid certificates were issued every month. Another important aspect, which needs to be referred is that, as noted hereinbefore, the contract fixed monthly remuneration at Rs.48,600/-. It does not contain any clause to the effect that if minimum number of workers to be engaged falls below 17, remuneration fixed in the contract will be proportionately reduced.

One other pertinent aspect, which requires to be noticed in this case is that agreement/deed of license does not contain any clause, which empowers the respondents to recover the excess amount paid from the petitioner. In a bilateral contract, the parties can only exercise their rights flowing from the terms of the

contract. Unless the contract envisaged a specific term, by which the respondents are empowered to recover the alleged excess amounts, they cannot cause such recovery. In this connection, clauses 21 and 25 of the agreement/deed of licence, dated 03.02.2006, which deserve a mention read as under:

“21. In the event of any damage to the Corporation property the contractor shall reimburse or bear the same.

25. The contractor is liable to pay penalty upto Rs.1,000/- per occasion for violation of the terms and conditions and improper maintenance in addition to the recovery towards proportionate amount of work not done. The penalty and the amount on work not done is recoverable from the monthly remuneration payable to the contractor. Decision of the Works Manager, BBW in this regard is final.”

A clause similar to the above mentioned clauses pertaining to recovery of the alleged excess amount is absent in the contract.

For all the above mentioned reasons, I am of the opinion that the impugned proceedings, dated 05.11.2009, by which the respondents have directed recovery of the alleged excess payment to the petitioner, cannot be sustained and the same are accordingly set aside.

W.P. No.26687 of 2010 is accordingly allowed. As a sequel to allowing W.P. No.26687 of 2010, W.P. No.10707 of 2012 is disposed of as infructuous.

As a sequel to disposal of W.P.No.10707 of 2012, W.P.M.P. No.13536 of 2012 filed in the said writ petition shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

10th September, 2015

GHN/BNR