

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.09.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.42303 OF 2002

AND

W.M.P.NOS. 62434 & 62435 OF 2002

Neelakantan Brothers Construction Private Limited,
First Floor, Gokul Towers,
C.P.Ramaswamy Road,
Chennai-18, Rep.By its M.D. N.Jayachander.

.... Petitioner

Vs

- 1.Asst. Labour Commissioner (Central),
Flat No.124, Kali Mandir Lane,
Sathia Nagar, Bhuvaneshwar.
- 2.The Chief Administrative Officer,
Metropolitan Transport Project,
Periyar EVR Salai,
Southern Railways,
Chennai - 600 008.
- 3.Hindustan Construction Company Limited,
Hincon House, Lalbahadur Shastri Marg,
Vikroli (West), Mumbai - 400 083.
- 4.Kishore Pradhan,
Village Borigaon,
P.O.Bhateswar,
P.S. Bangur, khurda District,
Orissa.
- 5.Souri Biswal,
Village Borigaon,
P.O.Bhateswar,
P.S.Bangur, Khurda District,
Orissa.
- 6.Bhagban Sabara
- 7.Kartika Biswal
- 8.Adikanda Biswal
- 9.Simanchal Nayak
- 10.Ashok Jani

11.Sarata Jani
12.Gagan jani
13.Susanta jani
14.Nari Das
15.Dandsi Sabara
16.Bharata Sabara
17.Kartika Sabara
18.Subash Sabara
19.Susanta Sabara
20.Bandhu Sabara
21.Bana Sabara
22.Bidya Routary
23.Sahadeba Sabara
24.Arakhita Pradhan
25.Biwwanath Pradhan
26.Kartik Pradhan
27.Balaram Pradhan.
28.Gountam Sabara.
29.Rama Biswal
30.Niranjan Swain
31.Puma Bhujabala
32.Raju Jani
33.Sahadeba Jani
34.Bauribandhu Jani
35.Pravata Bhujabal
36.Narsima Bisoi
37.Sauri Biswal

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records and quash the notice bearing Ref.No.50(04)/02-BBS/A dated 23.10.2002 on the file of the Assistant Labour Officer (Central), Bhubaneswar, Orissa.

For Petitioner : Mr.S.Ravi

For Respondents : Mr.Madanagopal Rao,
Standing Counsel for
Central Government for R1
Mr.P.T.Ramkumar,
Standing Counsel for R2

O R D E R

The prayer sought for to issue a Writ of Certiorari to call for the records and quash the notice bearing Ref.No.50(04)/02-BBS/A dated 23.10.2002 on the file of the Assistant Labour Officer (Central), Bhubaneswar, Orissa.

2. The short facts leading to file this writ petition is as follows :-

The petitioner is a Company incorporated under the Companies Act, 1956 and is engaged in the business of undertaking construction contracts for various undertakings. Since, it is one of the pioneering company in construction work for Railways, it has taken a contract work under the Mass Rapid Transit System for the work undertaken by the Department of Railways for construction of elevated railway structure in the City of Chennai.

3. The entire construction work was over and the every dues for the labourers and others have been settled by the petitioner company. However, the first respondent had issued a notice on 18.07.2002 to the petitioner as well as the 3rd respondent alleging that a complaint was given by one Bhagban Sabara and 30 others, wherein it is stated that certain wages payable to them have not been paid to the extent of Rs.2,80,447/-, with regard to the employment, they undertaken as Workers in respect of elevated railway structure contract for the Mass Rapid Transit System construction work undertaken by the petitioner.

4. The petitioner seems to have replied, however, once again a similar notice has been issued by the very same first respondent on 23.10.2002 directed the petitioner to appear before them on 15.11.2002 at 11.30 hours for discussion on the issue, with a hope for an amicable settlement. Comprehensively that notice dated 23.10.2002 also was responded by the petitioner by way of a detailed reply, dated 12.11.2002, wherein the petitioner has taken the stand that the first respondent shall have no jurisdiction to issue such notice by invoking the provisions of the Inter State Migrant Workmen Act, 1979 herein after referred to as "Act".

5. However, since in the impugned notice, dated 23.10.2002, the first respondent also had directed the Railways to retain or detect the claimed amount of Rs.2,80,447/- from the Contractor till the finalisation of the case, the petitioner challenging the said notice, dated 23.10.2002, filed this writ petition with the aforesaid prayer.

6. I have heard Mr.S.Ravi, learned Counsel for the petitioner. In spite of notice having been served and the names of the respondents including the private respondents have been printed in the cause list, none is appearing for the respondents.

7. In the reply, dated 12.11.2002, the petitioner Company

has given the following :

Without prejudice to the above, we submit that there is no scope for any of this workmen to invoke the provisions of the Inter State Migrant Workmen Act, 1979. We are a Construction company carrying on business at Chennai and engage only local labourers. We did not recruit directly or through a contractor any of the said workmen from the State of Orissa but on the other hand some of the workmen who are engaged by us were already employed in other construction work through Mr.Kishore Pradan since a small portion of work was available with us he agreed to execute the same on a labour piece rate basis and we paid a total sum of Rs.1,07,493/- to the said Kishore Pradan for the work performed by him. An amount of Rs.6937/- is only payable to him, which he did not come forward to take with ulterior motives even when we asked him to take the same. We deny that we recruited any Inter State Migrant workmen from the State of Orissa but on the other hand all the labourers now said to be from Orissa were already in Chennai and were procured for employment by the said Sri Kishore Pradhan. In such circumstances, since there was no engagement of inter state migrant workmen, the provisions of said act has no applicability and consequently your letter dated 23.10.02 has no legal or factual basis.

8. Even though this reply was given by the petitioner company to the first respondent as early as on 12.11.2002, it seems that the same has not been considered and no orders finally have been passed by the first respondent.

9. The learned counsel for the petitioner also argued that, the very provisions of the Act cannot be applied to the case in hand, because, the petitioner has not engaged any Migrant Worker, in this regard. According to the learned counsel for the petitioner that, the scheme of the Act very clearly provides that, unless the Contractor, who wants to engage Migrant Workers, is getting registered and got a licence to that effect and engaged the Migrant Workers in the State, where they belongs, for the purpose of work to be undertaken in some other State, that provisions of the said Act cannot be invoked.

10. In this context, it is to be noted that, the case of the petitioner is that, they undertaken the work at Chennai, where only local employees were engaged assuming that these individuals who made the complaint have migrated, they had already settled at Chennai and only as locals they have been engaged.

11. Therefore, the question of invoking the provisions of the Act does not arise in this case.

12. That apart, it is the claim of the petitioner company that, the entire wages had been settled to the said Kishore Pradhan, who is the 4th respondent in this writ petition and only a sum of Rs.6,937/- was due, even though the same has been made by them, but he did not accept to take the money and purposely he had avoided to take the said money and made a frivolous complaint before the 1st respondent Authority, invoking the provisions of the Act, for which he is not entitled to, as he has never been engaged by any registered licensed Contractor under the Act.

13. I have considered the said submissions made by the learned counsel appearing for the petitioner and also perused the materials placed before this Court, including the reply given by the petitioner pursuant to the impugned notice.

14. Since, a detail reply has been given by the petitioner on 12.11.2002, comprehensively making out the issue raised by the first respondent in this impugned notice, there can be no gain saying that the impugned communication has to be quashed or set aside. Once, the notice issued by the first respondent, who is the Authority under the said Act, the issue as to whether the invocation of the provisions of the Act is justifiable or not also can be agitated before the said Authority by way of either sending a reply to the Authority for consideration or appear before them and to make out a case.

15. Here the case in hand, the petitioner has already chosen to reply to the impugned notice. When that being the position, the petitioner cannot challenge the said impugned notice and therefore, the said challenge cannot be sustained in the eye of law.

16. Even though the impugned communication is only a show cause notice, the direction issued by the first respondent to the principal employer of Railways to deduct the amount of Rs.2,80,447/- payable to the petitioner company till the finalisation of the issue is not required at this juncture and the issue may be decided in favour of the Workers and against the petitioner subject to the confirmation to be made in that regard in any further proceedings / appeal filed by the petitioner and that issue can be very well settled. Therefore, the said portion of the order directing the Southern Railway to deduct the amount of Rs.2,80,447/- from the Contractor's bill i.e. petitioner's bill, as directed in the impugned communication, dated 23.10.2002, alone is quashed and the

remaining portion of the impugned notice shall be acted upon.

17. However, since the reply has already been given to the first respondent including the issue of jurisdiction and invocation of the provisions of the Act, apart from the merits of the case, the same shall be considered and decided on merits by the first respondent Authority.

18. In that view of the matter, this Court is inclined to pass the following orders in this writ petition :

19. The Assistant Labour Commissioner (Central), Sathia Nagar, Bhuvaneshwar / first respondent is directed to consider the reply given by the petitioner, dated 12.11.2002 including the issue of jurisdiction and the power of the first respondent to invoke the provisions of the Act viz., Inter State Migrant Workmen Act, 1979; for the case in hand and also the merits of the case as projected by the petitioner and accordingly, the decision can be taken and an order to that effect can be passed. Ultimately, if any adverse order is passed by the first respondent, it is open to the petitioner to challenge the same in the manner known to law. The needful as indicated above shall be undertaken by the first respondent within a period of three months from the date of receipt of a copy of this order. Before deciding the issue as directed above, the first respondent shall issue a fresh notice to the petitioner indicating the date of hearing by way of giving an opportunity of personal hearing to the petitioner and on receipt of the same, it is for the petitioner to respond including appearing before the first respondent to put forward his case.

20. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

सत्यमेव जयते
Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2/dua

To

1. The Assistant Labour Commissioner (Central),
Flat No.124, kali Mandir Lane,
Sathia Nagar, Bhuvaneshwar.

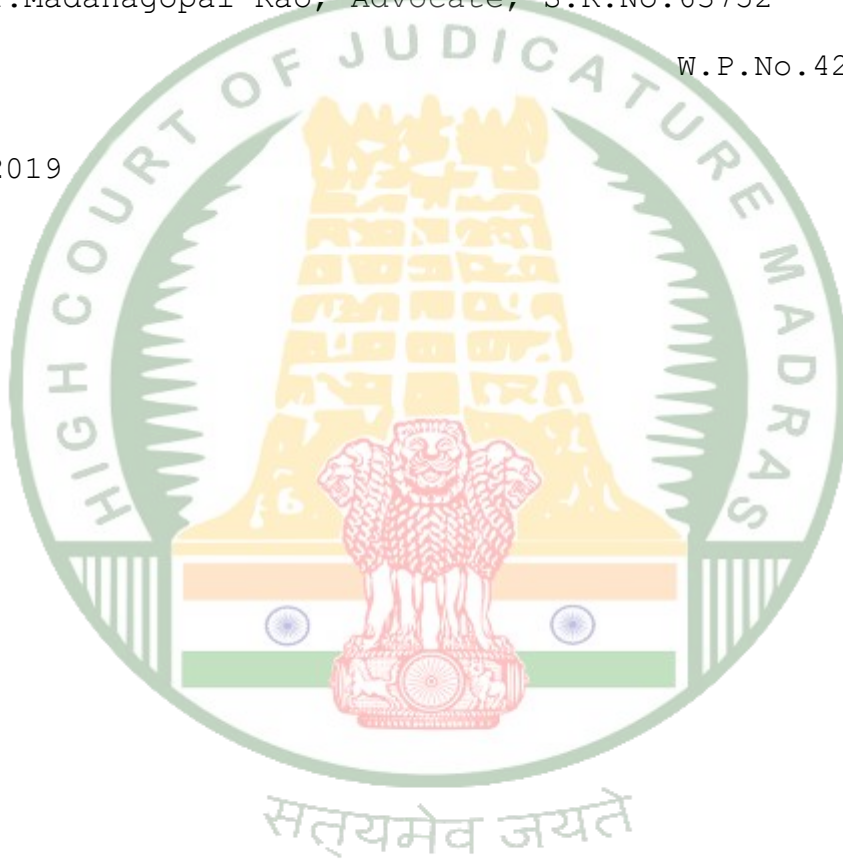
2. The Chief Administrative Officer,
Metropolitan Transport Project,
Periyar EVR Salai,
Southern Railways,
Chennai - 600 008.

3. Hindustan Construction Company Limited,
Hincon House, Lalbahadur Shastri Marg,
Vikroli (West), Mumbai - 400 083.

+lcc to Mr.Gupta & Ravi, Advocate, S.R.No.63364
+lcc to Mr.P.T.Ramkumar, , Advocate, S.R.No.64049
+lcc to Mr.Madanagopal Rao, Advocate, S.R.No.63752

W.P.No.42303 of 2002

SKV(CO)
CS/20/05/2019



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