

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|             |               |
|-------------|---------------|
| Reserved on | Pronounced on |
| 07.08.2019  | 03.10.2019    |

Coram

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.18454 of 2015  
and M.P.No.1 of 2015

The Commissioner,  
Customs and Central Excise Department,  
Beach Road, Puducherry-605 001. ... Petitioner

-vs-

1. Regional Labour Commissioner (Central),  
No.26, Haddows Road,  
Shastri Bhavan,  
Chennai-600 006.
2. V.G.Nilavazhagan,  
Honorary President,  
Customs and Central Excise Casual  
and Contract Workers Union,  
No.42, Cuddalore Road, Mudaliarpeta,  
Puducherry-4.
3. Shri Ganeshkumar,  
Contractor,  
No.72, Perumal Koil Street,  
Singrikudi, Cuddalore-607 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 29.04.2015 passed by the 1<sup>st</sup> respondent in Claim Application No.2 of 2014 and quash the same as arbitrary, illegal and against the settled legal position and consequently directing the 1<sup>st</sup> respondent to drop all the further proceedings against the Writ Petitioner, regarding the claim made by the 2<sup>nd</sup> respondent impugned in Claim Petition No.2 of 2015.

For Petitioner : Mr.R.Aravindan

For R1 : Mr.G.Baskaran, CGSC

For R2 & R3 : No Appearance

## O R D E R

This Writ Petition has been filed, seeking to quash the order dated 29.04.2015 passed by the 1<sup>st</sup> respondent in Claim Application No.2 of 2014, by which, the 3<sup>rd</sup> Respondent was directed to pay the wages due to the 20 employees and in default of such payment, the Petitioner herein was directed to ensure payment of wages to the employees concerned and to recover from the bills of the 3<sup>rd</sup> Respondent. The Petitioner also sought a direction to the 1<sup>st</sup> respondent to drop all further proceedings against the Writ Petitioner, regarding the claim made by the 2<sup>nd</sup> respondent impugned in the Claim Application No.2 of 2015.

2. The case of the Petitioner was that the 3<sup>rd</sup> Respondent, being a successful bidder, was appointed as Contractor for housekeeping work to be carried out in the office premises of the petitioner for the year 2014-2015 and the agreement with the 3<sup>rd</sup> Respondent came to an end in the month of September, 2014 pursuant to some labour problems faced by the 3<sup>rd</sup> Respondent. It was the further case of the Petitioner that the 2<sup>nd</sup> Respondent Union (in short 'the Union') had filed a Claim Application before the 1<sup>st</sup> Respondent on behalf of certain employees, numbering 20 for non payment of wages to them from April, 2014 and July 2014 and in the said Application, the 1<sup>st</sup> Respondent has passed an order, directing the 3<sup>rd</sup> Respondent to pay the wages due to those 20 employees with further direction to the Petitioner to ensure payment of wages to them and recover the amount from the bills of the 3<sup>rd</sup> Respondent.

3. It was also the case of the Petitioner that the 1<sup>st</sup> Respondent has wrongly given a finding that the Petitioner is the Principal employer for the employees engaged by the 3<sup>rd</sup> Respondent, whereas the Petitioner has no direct connection with those employees, who were purely engaged by the 3<sup>rd</sup> Respondent for the purpose of housekeeping, namely, sweeping and cleaning works, on the basis of the contract awarded by the Petitioner herein.

4. It was submitted by the Petitioner that since the amount due to the 3<sup>rd</sup> Respondent under the Contract had already been settled, no amount is payable to them and the Petitioner is not liable to settle the amount to the employees engaged by the 3<sup>rd</sup> Respondent. It was urged that the order passed has been passed by the 1<sup>st</sup> Respondent without any application of mind and once the Petitioner does not come within the purview of employer, the question of payment of wages to the employees does not arise at all, especially when they were hired by the 3<sup>rd</sup> Respondent. Therefore, it was prayed that the order passed by the 1<sup>st</sup> Respondent is liable to be set aside, as the Petitioner is not responsible to settle the amount to those 20 employees.

5. According to the Union, the wages to be paid under the Payment of Wages Act, 1936 (in short 'the Act, 1936') have not been paid to some of the employees of the Union, which necessitated them to file a Claim Application before the 1<sup>st</sup> Respondent for settlement of wages.

6. It was contended by the Petitioner that the entire amount due to the employees have been paid to the 3<sup>rd</sup> Respondent in terms of the agreement dated 01.04.2014, wherein in Clause Nos.9 to 11, it has been stipulated as under:

"9. The contractor should pay to their personnel a minimum wage at the prevailing rate as fixed by the Government of Puduchery under Minimum Wages Act. Besides, ESI and PF per head and other statutory requirements at the current rate should be paid by the contractor every month as per the existing Rules.

10. The contractor is responsible for payment of monthly salary including leave salary, bonus, gratuity, etc., to the personnel as applicable to them.

11. The contractor should ensure that there is no scope for any grievance from the personnel on delayed payment of wages. The employees engaged by the Housekeeping agency will be in the employment of the House Keeping Agency only and not of the Central Excise Department."

7. According to the Petitioner, there was a contract entered into between the Petitioner and the Contractor and the finding of the Authority that the Petitioner is the Principal Employer, is not at all correct, as the Petitioner is statutorily bound to pay the amount only to the 3<sup>rd</sup> Respondent under the Contract and not to the employees engaged by them.

8. Per contra, the learned Central Government Standing Counsel appearing for R1 has submitted that admittedly, minimum wages due to 20 employees have not been paid and the 1<sup>st</sup> Respondent has determined the amount payable to them, by granting liberty to the Petitioner to recover the amount from the 3<sup>rd</sup> Respondent. Hence, there is no need to revise the order of the 1<sup>st</sup> Respondent and the Writ Petition has got to be dismissed in limine.

9. Heard the learned counsel for the Petitioner and the learned Central Government Standing Counsel for R1 and perused the material documents available on record. There is no representation on behalf of the Respondents 2 and 3.

10. It is seen that the employees of the Union have been engaged by the Petitioner herein from the 3<sup>rd</sup> Respondent and the foremost contention of the Petitioner is that they are not the Principal Employer and there is no relationship between them and the employees. A plea has also been raised by the Petitioner as to the maintainability of the present Writ Petition, as the Petitioner is not aware as to who is the Honorary President of the Union. It was put forth by the Petitioner that they cannot be termed as the Principal Employer and that the employees, for whom wages have not been paid, are not the direct employees of the Petitioner. Moreover, in terms of the contract, the entire amount has been paid to the 3<sup>rd</sup> Respondent and the 3<sup>rd</sup> Respondent, having agreed to pay the money to employees had failed to do so and therefore, the 1<sup>st</sup> Respondent ought to have directed the 3<sup>rd</sup> Respondent alone to pay the amount instead of foisting the liability on the Petitioner.

11. This Court is unable to accept the contention of the Petitioner. This Court, in a case arising out of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter referred to as 'the Conferment of Permanent Status to Workmen Act') [Muthialpet Benefit Fund Ltd (Rep. by its Chief Executive), Madras vs. Muthialpet Benefit Fund Staff Union (Rep. by its Secretary) and another, reported in 2002 (2) LLN 427] had rejected the plea raised by the Management therein that the aggrieved employees alone need to file an application, seeking permanent status, holding that in case Union discloses the name of the employees, for whom the relief sought for, such application for permanent status is maintainable.

12. In view of the aforesaid settled proposition, in the present case on hand, the Union representing its employees is empowered to file a case on their behalf and that apart, the Act, 1936 and the Conferment of Permanent Status to Workmen Act empower the Union to file a case and it is obligatory on the Union to furnish the details of the workers in the application filed before the Authority. Merely because a contract has been entered into between the Contractor and the Principal Employer, it does not mean that the Contractor alone is responsible for settlement of the amount due to the employees, which defeats the very purpose of the provisions of Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970, which reads as under:

"21(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the

contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

13. It is the duty cast upon the Principal Employer to pay the amount, in case the Contractor fails to pay and thereafter, they can recover the amount from the Contractor.

14. Bearing in mind the above, the 1<sup>st</sup> Respondent has rightly invoked the said provision, even though it has not been referred to in the order. It is very unfortunate that the counsel appearing for the Petitioner has been all along reiterating that the Petitioner is not the Principal Employer at all, stating that those employees are only contractor labourers and were not directly employed by the Petitioner. It is appropriate to state here that if the contention of the Petitioner is accepted that the Petitioner is not the Principal Employer, then the Court will have to come to a conclusion that those employees are directly employed by the Petitioner. Therefore, the said contention lacks merit acceptance and has to be summarily rejected.

15. The plea raised by the Petitioner that they have no supervisory control over the contract employees and that they have no role to play in their affairs, cannot be gone into, as it is not the case of the employees that the contract labour system is sham and nominal and that they are contract employees. If such plea is taken, certainly this Court will hold that for payment of wages to contract labourers, the appropriate provisions of the Contract Labour (Regulation and Abolition) Act, 1970 have to be invoked and the appropriate Labour Forum will have to decide the issue and that is not the case here, as the main grievance of the Union is that the employees, who were engaged by the Petitioner through the 3<sup>rd</sup> Respondent have not been paid wages by the 3<sup>rd</sup> Respondent, for which the Petitioner, being the Principal Employer is liable to pay the amount. The issue has been rightly dealt with by the 1<sup>st</sup> Respondent / Authority, by reserving the right to the Principal Employer to recover the amount from the 3<sup>rd</sup> Respondent. The question, regarding payment of amount to the 3<sup>rd</sup> Respondent by the Petitioner, cannot be gone into at this stage, as there is no iota of evidence to that effect. Even assuming for the sake of argument that the petitioner had duly paid the amount to the 3<sup>rd</sup> Respondent, as per Section 15(3) of the Payment of Wages (Amendment) Act, 2005, the Authority is empowered to impose ten times the wages not paid to each of the employees and the said amended section reads as follows:

"(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty-five rupees."

16. It is also relevant to extract hereunder Section 16 of the Payment of Wages Act, 1936:

"Section 16. Single application in respect of claims from unpaid group.- (1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if deductions have been made from their wages in contravention of this Act for the same cause and during the same wage-period or periods or if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in sub-section (3) of section 15.

(3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly."

Rule 3 of the Payment of Wages (Procedure) Rules, 1937, reads as under:

"3. Form of application.- Applications under sub-section (2) of section 15 by or on behalf of an employed person or group of employed persons shall be made in duplicate in Form A, Form B or Form C, as the case may be, one copy of which shall bear such court-fee as may be prescribed."

Form B appended to the said Rules, is also extracted hereunder:

**FORM B**

**[See sub-section (2) of Section 15 and Section 16 of the Payment of Wages Act.]**

**Form of Group Application**

**IN THE COURT OFF THE AUTHORITY APPOINTED  
UNDER THE PAYMENT OF WAGES ACT (IV OF 1936)**

**FOR**

**AREA**

**Application No.**

**of 19**

**Between A.B.C. and (state number) others.**

**(through a legal practitioner/**

**an official of**

**which is a registered trade union),**

**Applicants**

**and**

**X.Y.Z.**

**Opposite**

**Party.**

**The applicants state as follows:-**

**1. The applicants whose names and permanent addresses appear in the attached schedule are persons employed in/on**

**Factory**

**Railway**

**industrial establishment entitled.**

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**SCHEDULE**

| <b>S.No.</b> | <b>Name of applicant</b> | <b>Permanent address</b> |
|--------------|--------------------------|--------------------------|
| <b>1</b>     | <b>2</b>                 | <b>3</b>                 |
|              |                          |                          |

17. In view of what is stated herein-above and more particularly, in the light of the provisions extracted supra and the principles laid down by this Court in [Muthialpet Benefit Fund Ltd (Rep. by its Chief Executive), Madras vs. Muthialpet Benefit Fund Staff Union (Rep. by its Secretary) and another, reported in 2002 (2) LLN 427], the petition filed by the second respondent is maintainable and this Court is of the view that the order passed by the 1<sup>st</sup> Respondent is a well considered one and no reason whatsoever is found to interfere with the same.

18. Hence, the Writ Petition is dismissed as devoid of merit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

ar

To:

The Regional Labour Commissioner (Central),  
No.26, Haddows Road,  
Shastri Bhavan,  
Chennai-600 006.

+1 cc to Mr.G.Baskaran, Advocate, S.R.No.84344

RK(CO)  
SSM(17/10/2019)

W.P.18454 of 2015

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