

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.07.2019

Delivered on: 08.08.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.4727 of 2019
and
W.M.P.No.19840 of 2019

M.Arunachalam Petitioner

vs.

1.Tamil Nadu Cements Corporation Limited,
re.by its Managing Director,
L.L.A.Buildings, Second Floor,
No.735, Anna Salai, Chennai-600 002

2.The General Manager,
Tamil Nadu Cements Corporation Limited,
Ariyalur Cement Works, Ariyalur-621 729 Respondents

Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents to release the statutory dues of Rs.19,01,835/- which has been paid by the petitioner on behalf of the respondent together with interest @ 12% to the petitioner.

For Petitioner .. Mr.N.G.R.Prasad for
M/s.T.Sellapandian

For Respondents ... Mr.A.Sivaji for R1 and R2
M/s.Ramapriya Gopalakrishnan
for R3 in implead petition

ORDER

The petitioner was a Contractor, engaged by the Tamil Nadu Cements Corporation Limited, the respondents 1 and 2 herein, for loading of cement bags into Railway Wagons/Lorries from their Ariyalur Factory. The contract was for a period of one year from 01.10.2017 to 30.09.2018, which was extended up to 30.11.2018. The contract was governed by e-Tender

Advertisement dated 31.08.2017. After the petitioner was selected to be the contractor for the first and second respondents, a Letter of Acceptance was issued on 28.09.2017, followed by agreement dated 01.10.2017 and work order was also issued on 23.10.2017.

2. According to the petitioner, he had successfully executed the contract work for the period in question. The writ petition was originally filed seeking for issuance of writ of mandamus to release the statutory dues, which have been paid by the petitioner on behalf of the respondents 1 and 2, with interest at 12% per annum. The affidavit contains number of averments in regard to certain disputes between the petitioner and the respondents, particularly in regard to payment of wages to the contract employees and other statutory dues. According to the petitioner, he was obligated to pay more than what was originally agreed upon and therefore, he incurred heavy expenditure and loss towards payment of wages and other statutory benefits to the employees engaged by him.

3. While the petitioner has come up before this Court for release of statutory dues paid by him, by the respondents, on behalf of the Labour Union, a writ petition was filed in W.P.No.21244 of 2018 with the prayer to direct the first and second respondents to pay arrears of wages to the members of the Union and recover the same from the third respondent. The petitioner herein was arrayed as 3rd respondent in that writ petition. In that writ petition, certain grievances were projected on behalf of the workmen that the wages due to them were not paid and therefore, it was the duty of the principal employer to compensate them.

4. However, when the writ petition was taken up for hearing, this Court felt that the grievances as projected by the Union involved adjudication of factual disputes as to whether the workmen were entitled to higher wages and other benefits or not. Since, such adjudication was not possible in a writ jurisdiction, the Court felt that the writ petition was not maintainable. In the said circumstances, the learned counsel sought permission of this Court to withdraw the writ petition with liberty to approach appropriate legal forum, in regard to the grievances projected in the writ petition. With such liberty, W.P.No.21244 of 2018 came to be withdrawn on 03.07.2019.

5. Simultaneously, the same Union has filed W.M.P.No.19840 of 2019 in the present writ petition seeking for its impleadment, as according to the Union, if the dues, as claimed by the writ petitioner herein is paid by the respondent Corporation, the workmen would not be able to realize their dues and therefore, they claimed to be necessary and proper party to the present writ petition.

6. At this, the learned Senior counsel Mr.N.G.R.Prasad, appearing for Mr.Sellapandian, for the petitioner, would submit that the impleading petitioner has already filed a writ petition before this Court for the same relief and the Union has chosen to withdraw the writ petition and therefore, the present impleading petition is being filed for the same relief. What the Union could not achieve directly, is now sought to be achieved indirectly. Therefore, their impleading petition is without merits and the same is liable to be dismissed.

7. Further, Mr.N.G.R.Prasad, learned counsel would submit that the counter affidavit has been filed by the respondent Corporation admitting certain amounts withheld by them like Security Deposit, Earnest Money Deposit, amounts paid towards EPF, Workmen Compensation, Holiday Wages etc. According to the counter affidavit, the only objection for release of the payments, which were admittedly due to the contractor on completion of the contract, was the pendency of writ petition No.21244 of 2018. Now that the writ petition has been dismissed as withdrawn on the request of the petitioner Union, there is no legal impediment for the respondent Corporation to release the payments admitted by them in their counter affidavit, as mentioned in paragraph No.8 of the counter affidavit. Paragraph Np.8 of the counter affidavit reads as follows:-

"8. As regards the prayer made by the petitioner in paragraph 11 of the affidavit, it is submitted that release of the amounts due to him is withheld pending a final decision on writ petition filed by the said Union. In case, the writ petition is decided in favour of the union, then the petitioner would become liable to pay arrears of wages to the workmen and if the withheld sums are released, it would be very difficult to make recoveries from him. The respondents submit that they are willing to act in the matter depending on the decision of this Hon'ble Court in W.P.No.21244 of 2018. The amount withheld are:

I. Security Deposit Rs.12,46,500/- in the form of Bank guarantee.

II. Earnest Money Deposit Rs.2,50,000/-

III.Rs.21,69,180/- paid for EPF, Workmen Compensation,

Holiday wages etc. by the Contractor.

In these circumstances, any interim direction for releasing the withheld sums to the petitioner may complicate matters. The respondents are advised to submit that there are no merits in the writ petition and hence, deserve to be dismissed with costs.

For the foregoing reasons it is prayed that this Hon'ble Court may be pleased to dismiss the above W.P. with costs and pass such further or other orders and thus render justice."

8.The learned Senior counsel would submit that in the above paragraph, the respondent Corporation has stated that they are willing to act in the matter depending on the decision of this Court in W.P.No.21244 of 2018. Therefore, when the said writ petition has been dismissed as withdrawn, nothing prevented the Corporation to release the amount and therefore, he would urge this Court to direct the respondent Corporation to release the amount without prejudice to the rights of the parties, in case any future claims arising from any quarters.

9.When this Court confronted the learned counsel appearing for the writ petitioner as to whether there was any wages payable to the workmen from his side, i.e. on the contractor side during the subsistence of the contract, an affidavit was filed by the contractor, viz., the petitioner herein that the entire wages and other dues payable to the workmen had been paid up to November 2018 and he had discharged his duties in terms of the agreement between him and the respondent Corporation. Therefore, the admitted dues payable to the petitioner cannot be withheld any further on the ground that there was some dispute raised by the workmen Union. If at all the workmen have any grievances, such grievances can be directed against the respondent Corporation and definitely not against this Contractor, whose period was long over and new Contractor has come into picture.

10.Mr.A.Sivaji, learned counsel appearing for the respondent Corporation reiterated the averments contained in the counter affidavit. From his arguments, it appears that the only issue which prevented the Corporation from releasing the amounts to the petitioner was the pendency of W.P.No.21244 of 2018. Now that the said writ petition has been dismissed as withdrawn, the said impediment has been removed and as per the respondent Corporation's own averment, they are willing to act in the matter depending on the decision of this Court in W.P.No.21244 of 2018. Therefore, this Court is of the considered view that as per the averments of the Corporation, the amounts which are withheld, which were shown in paragraph No.8 of the counter affidavit, which is extracted supra, can be ordered to be released to the petitioner without prejudice to the rights of either parties to make any further claim against each other, in case any dispute arises in future in regard to the contract of the petitioner, viz-a-vis, the respondents 1 and 2.

11.In view of the above narrative, this Court does not think that the impleading petitioner is necessary and proper party in this writ petition, since the petitioner's claim is for release of the withheld amounts like Security Deposit and Earnest Money Deposit, etc., which the petitioner is entitled to, on execution of the contract and it cannot be the subject matter of dispute raised by the workmen. Moreover, since the writ petition filed by the same Sangam has been withdrawn to workout their remedies in appropriate legal forum, this writ petition cannot be kept pending finalization of any labour dispute to be raised by the Sangam in future. Therefore, this Court is of the view that the Writ Miscellaneous Petition No.19840 of 2019, filed by the workmen Union, seeking to implead itself, is devoid of merits and the Union is neither a necessary nor a proper party and the same is dismissed.

12.For the above said reasons, the writ petition is allowed to the extent that the respondents are directed to release the payments withheld by them in terms of their own averments found in Paragraph No.8 of the counter affidavit, which is extracted supra, within a period of four weeks from the date of receipt of copy of this order. The release of payments to the petitioner is without prejudice to the rights of parties for any further claim as against each other, in case any dispute arises in future in regard to the subject contract entered into between the petitioner and the respondent Corporation.

The writ petition is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Managing Director,
Tamil Nadu Cements Corporation Limited,
L.L.A.Buildings, Second Floor,
No.735, Anna Salai, Chennai-600 002.
 - 2.The General Manager,
Tamil Nadu Cements Corporation Limited,
Ariyalur Cement Works, Ariyalur-621 729.
- +1cc to M/s.A.Sivaji, Advocate Sr.67886
+1cc to M/s.M.Selvaraju, Advocate Sr.68412

W.P.No.4727 of 2019
and
W.M.P.No.19840 of 2019

vsnII[co]
srg 20/09/2019

WEB COPY