

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.02.2020
CORAM:
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.29066 of 2012

M/s.Anusha Enterprises
Rep.by its Managing Partner
C.K.Nafrasimha Rao,
No.5, (Old No.2A)
3rd Main Raod, Kasturba Nagar,
Adyar, Chennai - 600 020.

... Petitioner

Vs.

1.Government of India,
Department of Atomic Energy
General Services Organisation
Kalpakkam - 603 102.

2.The Estate Officer,
Department of Atomic Energy
General Services Organisation
Kalpakkam,
Kancheepuram District - 603 102.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified mandamus calling for the records relating to the proceedings of the 2nd respondent made in Ref.No.GSO/D 16013/EMS-2012 dated 17.08.2012 and quash the same consequently, directing the 1st respondent to release the recovered amount of Rs.4,49,434/- vide his proceedings dated 28.03.2008 made in S.No.400 to the petitioner together with interest at 24% p.a from 28.03.2008.

For Petitioner : Mr.K.Radhakrishnan

For Respondents : Mr.B.Rabu Manohar

ORDER

This writ petition has been filed challenging the order dated 28.03.2008 passed by the first respondent rejecting the request of the petitioner for refund of a sum of Rs.4,49,434/- paid by him, which the respondent had adjusted from the final bill of the petitioner towards damages for unlawful use and occupation of quarter No.125, Sadras East, DAE Township, Kalpakkam, for the period from 31.10.1987 to 17.09.2006.

2.It is the case of the petitioner that M/s.Kotaiah & Co., was appointed as a contractor with the respondents in the year 1987. According to him, subsequent to the appointment of M/s.Kotaiah & Co., as a contractor, the respondents allotted the quarters bearing Quarter No.125, Sadras East, DAE Township, Kalpakkam to M/s.Kotaiah & Co. It is the case of the petitioner that M/s.Kotaiah & Co., is a partnership firm, in which Mr.Kotaiah was the managing partner and the present managing partner of the petitioner firm Mr.C.K.Narasimha Rao who is the son of Kotaiah, was also one of the partners of M/s.Kotaiah & Co. According to the petitioner, Kotaiah died in the year 1993 and subsequent to his death, M/s.Kotaiah & Co., the partnership firm was reconstituted and the new name of the firm was M/s.Anusha Enterprises, the petitioner herein. It is the case of the petitioner that ever since the death of Kotaiah and subsequent to the reconstitution, the petitioner firm is in possession of the quarters. It is also the case of the petitioner that by letter dated 07.07.2005, the respondents recognised M/s.Anusha Enterprises which was previously known as M/s. Kotaiah & Co., as their contractors. According to the petitioner, the respondents have wrongfully and illegally deducted a sum of Rs.4,49,434/- from and out of the final bill raised by the petitioner towards damages for the alleged unlawful use and occupation of the quarters viz., No.125, Sadras East, DAE Township, Kalpakkam, ever since 31.10.1987 by the petitioner. Aggrieved by the impugned order dated 28.03.2008, this writ petition has been filed.

3.Heard Mr.K.Radhakrishnan, learned counsel appearing for the petitioner and Mr.B.Rabu Manohar, learned counsel appearing for the respondents 1 & 2.

4.Admittedly, Mr.C.K.Narasimha Rao, the managing partner of M/s.Anusha Enterprises, the petitioner herein is the son of Mr.Kotaiah, who was the managing partner of M/s.Kotaiah & Co. It is also not in dispute that the original contractor of the respondents was M/s.Kotaiah & Co. The respondents have also recognised M/s.Anusha Enterprises, the petitioner herein as their contractor as seen from the letter dated 07.07.2005 addressed to the petitioner herein. The letter dated 07.07.2005 referred to supra reads as follows:

"With reference to your letter dated 04.07.2005. M/s.Anusha Enterprises previously in the name of Kotaiah & Co., is working with us for the part years in constructing residential quarters at Kalpakkam and Anupuram Township. Presently, they are constructing 24 Nos. of type V-E quarters at Anupuram Township. As such for effective works their

representative can be allowed to continue in same quarter No.125, Sadras East, on payment basis."

5.The case of the respondents is that the petitioner firm is an unauthorised occupant of the quarters from 31.10.1987 to 07.09.2006. If the case of the respondents is to be accepted, there is no necessity for the respondents by its letter dated 07.07.2005 to recognise that M/s.Anusha Enterprises, the petitioner herein was previously known as M/s.Kotaiah & Co., and it is also mentioned in the same letter that M/s.Anusha Enterprises as well as M/s.Kotaiah & Co., are working with them for the past several years for the construction of residential quarters at Kalpakkam and Anupuram Township.

6.The respondents have also not disputed that Mr.C.K.Narasimha Rao, the managing partner of M/s.Anusha Enterprises is the son of Mr.Kotaiah, who was the managing partner of M/s.Kotaiah & Co. The only ground for rejection of the petitioner's request for refund in the impugned order is that the petitioner did not inform about the reconstitution of the firm subsequent to the death of Mr.Kotaiah, who was the managing partner of M/s.Kotaiah & Co. The reason for rejection is arbitrary and illogical as by their own letter dated 07.07.2005, the respondents have recognised M/s.Anusha Enterprises to be in possession of the quarters viz., No.125, Sadras East, DAE Township, Kalpakkam and they have also recognised that M/s.Anusha Enterprises was previously known as M/s.Kotaiah & Co. Without considering his letter dated 07.07.2005, the second respondent has passed the impugned order. This Court is of the considered view that the impugned order is arbitrary and illogical and has been passed by total non application of mind as the respondents have failed to take note of the fact that the petitioner has been in possession of the quarters even after the death of Mr.Kotaiah in the year 1993, who was the managing partner of M/s.Kotaiah & Co. The second respondent has also not taken note of the fact that C.K.Narasimha Rao, the managing partner of M/s.Anusha Enterprises, is none else than the son of Mr.Kotaiah, the managing partner of M/s.Kotaiah & Co. It is also not in dispute that a sum of Rs.4,49,434/- is due and payable to the petitioner by the respondent towards invoices raised by the petitioner. The only reason for non-payment by the respondents is the alleged unauthorized usage of the quarters by the petitioner ever since the death of Mr.Kotaiah. As observed earlier, the petitioner is an authorized occupant of the quarters. Since the petitioner is an authorized occupant, the respondents ought not to have deducted the sum of Rs.4,49,434/- from and out of the final bill raised by the petitioner. Being an admitted amount, this Court has got the power to order refund to the petitioner under Article 226 of the Constitution of India.

7. For the foregoing reasons, the impugned order dated 28.03.2008 passed by the second respondent is hereby quashed and the first respondent is directed to refund the amount of Rs.4,49,434/- to the petitioner within a period of four weeks from the date of receipt of a copy of this order subject to the condition that the managing partner of petitioner firm submits an indemnity bond in favour of the first respondent that he will indemnify the first respondent, in case, any further claims are made in respect of the same subject matter. He is also directed to produce all the documents required by the first respondent to their satisfaction for the purpose of refunding the amount as stated supra.

8. With the aforesaid directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

sms

To

1. Government of India,
Department of Atomic Energy
General Services Organisation
Kalpakkam - 603 102.

2. The Estate Officer,
Department of Atomic Energy
General Services Organisation
Kalpakkam,
Kancheepuram District - 603 102.

+1cc to Mr.K.Radhakrishnan, Advocate, SR.No.10674.

+1cc to Mr.B.Rabu Manohar, Advocate, SR.No.10645.

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SR(CO)

CSR: 16.03.2020