



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2021

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P(MD)No.7580 of 2021

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(Through Video Conference)

P.S.Nelson

... Petitioner

-Vs-

1.Union of India,
Rep. By its Secretary,
Ministry of Petroleum and Natural Gas,
Shastri Bhavan,
New Delhi - 110 001.

2.Hindustan Petroleum Corporation,
(A Government of India Enterprise),
Having Registered Office at
No.17, Jamshedji Tata Road,
Mumbai - 400 020,
And Having a Branch at Kappalur,
Madurai - 625 018,
Rep. By the Deputy General Manager
(Central Procurement Organization)

3.K.V.Anilkumar

4.Rail India Technical and Economic Service (RITES),
First Floor, 84, Thiruvalluvar Street,
Pasumpon Nagar,
Palanganatham,
Madurai - 625 003,
Rep. By Venkakesh

(One of its Deputy General Managers)

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order, dated 10.03.2021 in Ref:HPCL/CPO/MDU/01 of the second respondent, quash the same and consequently direct the second respondent to disburse the amount of Rs.63,71,328/- including GST due to the petitioner for the work done by him prior to 21st December, 2019 and during the period falling between January 2020 to 20.03.2020.



For Petitioner : Mr.S.Haja Mohideen Gisthi
For R - 1 : Mr.A.Srinivasan
Central Government Standing Counsel

For RR 2 & 3 : Mr.M.Sridhar

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ORDER

This Writ Petition has been filed challenging the order of the second respondent, dated 10.03.2021 and for a direction to the second respondent to disburse a sum of Rs.63,71,328/- including GST to the petitioner for the works done by him.

2.When the matter came up for admission, this Court passed the following order on 07.04.2021:-

"Mr.M.Sridhar, learned standing counsel takes notice for the 2 & 4 respondents.

2. The petitioner is having certain money claims against the third respondent. The petitioner earlier approached this Court and this Court directed the second respondent to consider his representation. According to the petitioner, there is no information from the second respondent as to whether any amount was settled to the third respondent. Only on gathering such an information, the petitioner will be able to proceed against the third respondent for recovering his dues.

3. The learned standing counsel appearing on behalf of the 2 & 4 respondents submitted that the contract given in favour of the third respondent was terminated and in his place, some other person has been appointed to carry on with the work. It was further submitted that the said termination was challenged by the third respondent before this Court in W.P.(MD) No.9047 of 2020 and the same was also dismissed by giving liberty to the third respondent to work out his remedy before the appropriate Court / Tribunal.

4. The learned counsel, therefore submitted that the inter se dispute between the petitioner and third respondent cannot be resolved by the second respondent and the second respondent does not have any privity of contract with the petitioner.

5. The learned standing counsel for the second respondent shall take instructions as to whether any amount was settled to the third respondent by the second respondent. Based on this instruction, final orders will be passed in this writ petition.



6. Post this case under the caption, 'for orders' on 21.04.2021."

3. When the matter was taken up for hearing today, the learned Standing Counsel appearing on behalf of the second and fourth respondents submitted that the contract that was given to the third respondent was terminated on 22.07.2020 and prior to the termination, he was paid nearly Rs.4 crores. The learned counsel further submitted that the third respondent is now claiming for a sum of Rs.15.30 lakhs. The learned counsel submitted that the claim made by the third respondent, if not settled by the second respondent, will only ultimately result in arbitration proceedings based on the contract entered into between the second and third respondents. Even otherwise, the petitioner who has no privity of contract cannot get into the dispute between the second and third respondents.

4. The learned counsel appearing for the petitioner submitted that the third respondent was giving evasive reply and not settling the amount due and payable to the petitioner. Therefore, even if arbitration proceedings are initiated, the petitioner will implead himself in the proceedings and seek for the settlement of the amount.

5. In the considered view of this Court, the petitioner is a third party insofar as the contract between the second and third respondents are concerned. The petitioner does not have any privity of contract with the second respondent. This Court does not want to make any observations with regard to the claim made by the petitioner to the effect that he will also implead himself and seek for the amount due and payable to him during the arbitration proceedings between the second and third respondents. Admittedly, no arbitration proceeding has been initiated till date by the third respondent.

6. In the result, except recording the stand taken by the respective parties, no further orders can be passed in this Writ Petition. Liberty is granted to the petitioner to independently make his claim against the third respondent and work out his remedy in accordance with law.

7. This Writ Petition is disposed of accordingly. No costs. Consequently connected Miscellaneous Petition are closed.

Sd/-

Assistant Registrar (AE)

/ True Copy/

/ /2021

Sub Assistant Registrar (CS)



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Secretary,
Union of India,
Rep. By its Secretary,
Ministry of Petroleum and Natural Gas,
Shastri Bhavan,
New Delhi - 110 001.
2. The Deputy General Manager,
(Central Procurement Organization)
Hindustan Petroleum Corporation,
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