



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19683 of 2020

M/s.Nachiappan and Co
Rep. by its Managing Partner R.K.Kumar
Having its Administrative Office at D. No.
2/220, Edappady Main Road, Magundanchavadi,
Sankari Taluk, Salem.

... Petitioner

Vs.

- 1 The Divisional Railway Manager,
(Works) Southern Railways, Salem Division,
Salem 636 004.
- 2 The Divisional Engineer /
Central / Salem, Southern Railways,
Salem Division, Salem 636 004.
- 3 R.K.Singaravel

...Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Mandamus, directing the respondents 1 and 2 to return the performance Guarantee of Rs.36,54,920/- security Deposit of Rs.40,64,530/- Final Bill amount of Rs.95,245/- and Price Variation Clause Bill Amount of Rs.12,54,507/- relating to the contract of proposed collection of 50 mm Machine Crushed Hard Stone Ballast at LP, PALM, PRV, MPLT and MALR depot including loading and unloading vide Agreement No.SA/171 dated 08/10/2018 within a reasonable period without citing the pendency of the civil suit filed by the third respondent within a reasonable period to be fixed by this Honourable Court.

For Petitioner : Mr.R.Neelakandan

For Respondents : Mr.P.T.Ramkumar R1 & R2
Mr.Rajarajan R3



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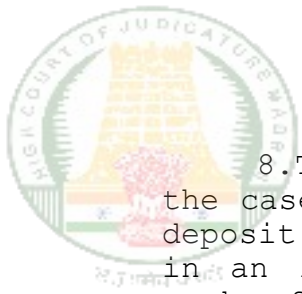
Director. Further, one Akila and the 3rd respondent herein is the other partners. The petitioner is having 63% share and Akila is having 25% share and the third respondent namely Mr.R.K.Singaravel is having 1% share in the petitioner's partnership firm. While so, in the meantime, due to partnership dispute between the partners and with a malafide intention, the third respondent herein has filed a suit in O.S.No.83/2020 on the file of the Learned I Additional District Munsif, Salem to block the payment of bills and refund of performance guarantee and security deposit. He submitted that owing to the suit pending before the Learned I Additional District Munsif, Salem, the petitioner's company is facing hardship to receive their legitimate claim from the respondent railways. He further iterated that the third respondent is not at all eligible to get the bills/refund from the Southern Railways as he has only a meagre share of 1% with their partnership firm. Therefore, he prayed that this Court may direct the respondents 1 & 2 to consider the petitioner's representations and pass appropriate orders.

4. The learned Standing counsel appearing on behalf of the respondents 1 & 2 submitted that in view of the pending suit, which was filed by the third respondent, the Southern Railways could not refund the amount to the petitioner's company and the third respondent.

5. The learned counsel for the 3rd respondent submitted that the third respondent's suit in O.S.No.83/2020 is pending before the Learned I Additional District Munsif, Salem and the same is yet to be decided. He stated that the amount as prayed for shall be disbursed only pursuant to the order in O.S. No. 83/2020, if such amount, as prayed for, is disbursed, then the third respondent will be put to irreparable hardship. In culmination, the learned counsel prayed for dismissing the writ petition.

6. Heard the learned counsel appearing on behalf of the petitioner and the learned Standing Counsel appearing on behalf of the respondents 1 & 2 and the learned counsel for the third respondent. Perused the materials available on record.

7. It is seen from the records that the petitioner's company is the partnership firm. One Kumar, who is the Managing Director and he is having the major share and the third respondent is having 1% share in the aforesaid firm. Due to dispute, the third respondent filed a suit for declaring him as a partner of the above said company. In view of the pendency of the suit filed by the third respondent, the Southern Railways have stopped the payments and refunds.



8. Taking into consideration the facts and circumstances of the case, there shall be a direction to the respondents 1 & 2 to deposit the entire amount in favour of the petitioner's company in an interest-bearing fixed deposit within a period of four weeks from the date of receipt of a copy of this order. The petitioner's company shall keep the same till the disposal of the suit.

9. The writ petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

rli

To

1 The Divisional Railway Manager,
(Works) Southern Railways Salem Division
Salem 636 004.

2 The Divisional Engineer /
Central / Salem Southern Railways,
Salem Division, Salem 636 004.

+lcc to Mr. R. Neelakandan, Advocate, S.R.No.1715

+lcc to Mr. Rajarajan, Advocate, S.R.No.1396

+lcc to Mr. P. T. Ramkumar, Advocate, S.R.No.1246

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SS[co]
NSK 11/02/2022