

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.27734 of 2021
and
W.M.P.No.29313 of 2021

Mahamuni Enterprises Private Limited,
Represented by its Authorised Signatory,
Chandrashekhar Dattatray Dixit, aged 60 Years,
S/o.Dattatray Vishnu Dixit,
55/12, Prem Nagar Society,
Satara Road, Pune - 411 009
Maharashtra

... Petitioner

Versus

1. The Registering/Licensing Authority,
Tea Board of India,
14, B.T.M. Sarani (Brabourne Road),
Kolkata 700001
2. Tea Board of India,
Represented by the Executive Director,
Shell Wood, Club Road,
P B No.6, Coonoor,
Nilgiris -643101.
3. M/s Narumukai Tea Company,
Represented by its Managing Partner,
No.2/7, Mela Street, North Mannangadu,
Thanjavur-614613.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus directing the second respondent to recover the dues to be paid to the Small Tea Growers for the green leaves procured by the third respondent from the third respondent and consequently directing the respondents 1 and 2 to grant final approval of the Application for Change of Ownership of Registered Factory submitted by the petitioner on 03.04.2021.

For Petitioner : Mr.E.Manoharan

For Respondents : Mr.D.Muthukumar
 for Mr. Paul and Paul
 For R.1 and R.2

 Mr.Shanmuganathan
 for Mr.Arun
 For R.3

ORDER

The Petitioner has purchased a Tea Factory from the third respondent on 25.01.2021. According to the petitioner, he has applied for transfer of license in his favour from the third respondent under an application dated 03.04.2021 and the petitioner's application for transfer has not been considered till date by the first respondent on the ground that the third respondent has not paid the dues of the Small Tea Growers from whom tea leaves were procured by the third respondent while they were the owners. The petitioner has given representation seeking for transfer of ownership and since the same has not been considered till date, they have filed this writ petition.

2. All the respondents have been duly served and they are represented by learned counsels.

3. The second respondent is the Board which protects the interest of Small Tea Growers. According to the learned counsel appearing for the second respondent, a sum of Rs.10,83,789/- (Rupees Ten lakhs eighty three thousand seven hundred eighty nine only) was due and payable by the third respondent to the Small Tea Growers upto March, 2018. He would further submit that there is possibility of some more amount may be due and payable as the third respondent has not rendered true and proper accounts. However, he would submit, on instructions, that the balance amount, if at all payable, would not exceed Rs.4,00,000/-.

4. It is brought to the notice of this Court by the learned counsel for the petitioner that he had earlier filed an affidavit, submitting a proposal, agreeing to pay a sum of Rs.10,83,789/- (Rupees Ten lakhs eighty three thousand seven hundred eighty nine only) without prejudice to its rights since according to the petitioner, if at all, the said sum is payable, it is payable by the third respondent and not by the petitioner. In the said affidavit, the petitioner has stated that on payment of the aforementioned sum, he must be granted the following reliefs:-

" (a) That the application for change of ownership is approved immediately by the

respondents 1 and 2 and the petitioner is permitted to start operations in the factory;

(b) The specific growers to whom the dues are to be paid are identified and verified by the second respondent and the details of those growers are forwarded to the petitioner. As and when forwarded, the payment will be made by the petitioner and the same will be intimated to the second respondent.

© The petitioner is not saddled with liability for any dues that the third respondent owes to the suppliers of green leaves which may be determined in the future for the remaining period i.e., beyond March, 2018;

and

(d) The petitioner is given liberty to recover the amount paid towards the due of the third respondent through appropriate proceedings.

5. However, according to the learned counsel for the second respondent, apart from the sum of 10,83,789/- (Rupees Ten lakhs eighty three thousand seven hundred eighty nine only), which is due upto March, 2018, as per the available accounts submitted by the third respondent, there may be some more amount due and payable by the third respondent prior to the sale of the factory by the third respondent to the petitioner. However, he would submit, on instructions, that the said sum may not exceed Rs.4,00,000/-. The said statement is recorded which has been placed before this Court only on the instructions received from the second respondent.

6. Admittedly, as on date, evidence has been placed by the second respondent before this Court to show that a sum of Rs.10,83,789/- (Rupees Ten lakhs eighty three thousand seven hundred eighty nine only) is due upto March, 2018, which is payable to the Small Tea Growers. Insofar as the additional sum, claimed by the second respondent is concerned, no proof has been produced by the second respondent before this Court. The petitioner's transfer of ownership application has not been processed by the first respondent only on the ground that there is an outstanding amount payable by the third respondent prior to the transfer of ownership by the third respondent in favour of the petitioner. The application of the petitioner, seeking for transfer of ownership is still pending on the file of the first respondent. The petitioner has filed an affidavit and they have prepared to pay the sum of Rs.10,83,789/- (Rupees Ten lakhs eighty three thousand seven hundred eighty nine only) to the second respondent towards the alleged dues, due and payable by

the third respondent to the Small Tea Growers, provided the aforementioned directions are issued by this Court.

7. Learned counsel for the second respondent has not raised any serious objection if the petitioner deposits the sum of Rs.10,83,789/- (Rupees Ten lakhs eighty three thousand seven hundred eighty nine only) within a time frame to be fixed by this Court. But, however, he would submit that insofar as the balance amount due and payable by the third respondent prior to the sale of factory in favour of the petitioner is concerned, an enquiry can be held by the second respondent after giving notice to both the petitioner as well as the third respondent and thereafter, a decision can be taken as to what is the outstanding amount and who is liable to pay the said amount.

8. For the above said submission, the learned counsel for the petitioner as well as the learned counsel for the third respondent has not raised any serious objection. However, learned counsel for the petitioner would reiterate that the petitioner is not liable to pay any dues in respect of outstanding due and payable by the third respondent prior to the sale of the factory in favour of the petitioner.

9. Learned counsel for the second respondent would also submit that in case, in the enquiry proceedings it is held that a sum in excess of Rs.4,00,000/- is due and payable, the third respondent is liable to pay the excess amount. He would further submit that the second respondent will be recovering the said excess amount only from the third respondent and not from the petitioner.

10. After recording the submissions made by the respective learned counsels, the following directions are issued by this Court:-

" (i) The petitioner shall take a fixed deposit for a sum of Rs.10,83,789/- (Rupees Ten lakhs eighty three thousand seven hundred eighty nine only), in favour of the second respondent in any Nationalised Bank and hand over the same to the second respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the fixed deposit as stipulated supra, the first respondent shall transfer the licence/ownership in favour of the petitioner within a period of three days thereafter;

(ii) The fixed deposit shall be taken for a period of three months by the petitioner

which shall be renewed periodically;

(iii) The disbursements to the Tea Growers shall be made by the second respondent only after intimating the petitioner and the third respondent. The details of the disbursements shall be disclosed to the petitioner and the third respondent prior to the disbursement;

(iv) Insofar as the balance amount, which the second respondent states is due and payable is concerned, the same will have to be quantified by the second respondent after holding an enquiry and after affording a fair hearing to the petitioner and the third respondent;

(v) In case, the second respondent after conducting an enquiry, comes to the conclusion that a sum in excess of Rs.4,00,000/-, in addition to Rs.10,83,789/- (Rupees Ten lakhs eighty three thousand seven hundred eighty nine only) is due and payable, the excess amount, if any, shall be paid only by the third respondent and the petitioner shall not be made liable as a submission was made by the learned counsel for the second respondent that the maximum additional amount that may be payable is only Rs.4,00,000/-;

and

(vi) In the final order, to be passed in the enquiry proceedings, a decision shall be taken by the second respondent as to who is liable to pay the dues of the Small Tea Growers prior to the sale of the factory to the petitioner by the third respondent and the actual amount due and payable.

11. With the aforesaid directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Registering/Licensing Authority,
Tea Board of India,
14, B.T.M. Sarani (Brabourne Road),
Kolkata 700001
2. Tea Board of India,
Represented by the Executive Director,
Shell Wood, Club Road,
P B No.6, Coonoor,
Nilgiris -643101.

+1cc to M/s.Paul & Paul, Advocate, S.R.No.34629

+1cc to M/s.M.Muthu Yazhini, Advocate, S.R.No.35021

W.P. No.27734 of 2021

AJB(CO)
UMA(04/07/2022)