In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 3963 of 2023
IA No: CAN 1 of 2023

Mandip Kumar Agarwal
Vs.
Union of India and others

For the petitioner	:	Mr. Srijib Chakraborty, Mr. Arindam Das, Mr. Abhijit Bose
For the FCI	:	Mr. Devajyoti Barman, Ms. Sanjukta B Mallick
For the respondent nos.2,3 & 4	:	Mr. Samrat Chowdhury
Hearing concluded on	:	08.12.2023
Judgment on	:	18.12.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner's father one Sawarmal Agarwala (since deceased) had worked for the respondent no.2, the Central Warehousing Corporation (for short, "the CWC") upon being awarded a contract for handling and transport of foodgrain and allied material at the Central Warehouse, Kharagpur in the District of Paschim Medinipur. The deceased father of the petitioner had deposited Rs. 43,28,4000/- as security deposit with the respondent/CWC in terms of the contract and had completed the work. However, he met his demise on February 18, 2022, which was reported to the Regional Manager of the CWC on the very next date. The petitioner now claims the dues of the CWC for the work done by his deceased father. It is argued that the petitioner made a request for payment of the dues upon enclosing a succession certificate to show his right thereto. The dues for the Kharagpur Head was shown under several heads. However, the CWC having not honoured the same, the present writ petition has been filed.

2. Learned counsel for the CWC controverts the claims of the petitioner.

3. The CWC argues that the bills of the CWC with regard to the payments for use of the warehouses of the CWC which were used by the Food Corporation of India (FCI), that is, the respondent nos.5 and 6 were withheld by the FCI. In view of the same, it is argued that the CWC could not pay the petitioner.

4. During arguments, the FCI was directed to file a report clarifying the amount withheld by it and the grounds for the same. The initial report of the FCI was not satisfactory. Ultimately, three reports were filed by the FCI, the first and third of which are germane in the context. Exceptions have been filed to both by the CWC.

5. By relying on its report, the FCI takes a stand that it has nothing to do with the security deposit paid by the Handling and Transport Company to the CWC; the same is a contract between the CWC and the handling agent and FCI washes off its hands in that regard.

6. Regarding the second component of bills for the months of February 2020, March 2020, April 2020, August 2021 and January 2022, it is argued that 8% of the supervision charges payable to the handling agent are to be paid by the FCI to the CWC. The said amount is not a direct claim of the handling agent from the CWC. It is contended by the FCI that due to lapses of supervision on the part of the CWC and reduction in the handling agent's billed amount which were claimed beyond specified operation, reduction of such amount was made by the FCI. The said ground has to components – one, alleged lapses of supervision by the CWC and second, reduction in the handling agent's bill.

7. Learned counsel for the petitioner seeks to argue that insofar as lapses of supervision of the CWC is concerned, the CWC is only liable for the same. The 8% on supervision charges payable by the FCI to the CWC is for such supervision. The petitioner cannot suffer for non-payment by the FCI in view of lapses of supervision on the part of the CWC.

8. Insofar as the second component is concerned, it is argued by the petitioner that the reduction in payment of bills to the petitioner was also the fault of the CWC. Since, the CWC withheld the bills from the handling agent that is the petitioner's father, the corresponding 8% on the same was also reduced. The petitioner is in no way connected with the same.

9. The third component is the arrear bill from February 01, 2022 to February 18, 2022 regarding which the FCI submits that sufficient amounts have already been disbursed by the FCI to the CWC.

10. The fourth count on which the petitioner has claimed money is "height withheld". The said ground was cited by the CWC for non-payment of Rs. 13,93,572/-. Regarding the same, the FCI has taken a stand that the bills raised by CWC were not commensurate with the operations conducted by CWC through its handling agent during stacking of bags in different layers as per the existing norms. The FCI disowns the liability to pay the amount, which according to it results in reduction in corresponding 8% supervision charges to the tune of Rs. 1,11,486/- for August, 2021 which is also included in the claim in the second component, that is, lapses in supervision charges.

11. The CWC castigates the petitioner and alleges that the operation of stacking of bags and meeting the necessary height requirements was the job of the handling agent and, having not done so, the handling agent itself is responsible for non-payment of such amount. Thus, the petitioner's claim is refuted on such ground.

12. The fifth component of the petitioner's bill is in respect of certain invoices, amounting to the tune of Rs. 5,62,448/-. The FCI submits that the same is not payable by the FCI to the CWC and as such it has no comment thereon.

13. Lastly, for casual labour charges, the petitioner has billed Rs. 3,00,000/-. Out of the same, the entire amount has been disowned by the FCI. The CWC, in its exception to the first report, had admitted the claim of Rs.1,58,823/- on such count, subject to the petitioner submitting proof of payment of applicable GST.

14. Learned counsel for the CWC tries to link the alleged lapses to the handling agent in stacking of goods and transportation to dispute the entire claim of the petitioner.

15. For ascertaining the respective liabilities of the parties, the third report of the FCI is also required to be looked into. The FCI has stated there that the payment to the CWC was reduced due to various factors including excess payment for previous period, deduction of charges for lack of proper supervision required to be exercised and curtailment/restriction to inflated bills of the handling agent and certified subsequently by the CWC.

16. The FCI alleges in the said report that the handling agent's bill for the month of August, 2021 raised by CWC is not commensurate with the operations conducted by the CWC during stacking of bags in different layers as per existing norms. It has been further alleged that the number of bags stacked in each layer was quite unnatural and it was not physically possible to keep the said bags in the layers of stacks which were formed for the month of August, 2021. It has been alleged that the rectified/revised bills for early settlement of the pending/withheld amount to the tune of Rs. 13,93,572/- was withheld on account of inflated bills.

17. A perusal of the allegations of the parties indicates that FCI had no role to play in return of the security money deposited by the petitioner's predecessor to the tune or Rs. 43,28,400/-. Although the CWC has sought to intertwine all its dues to the petitioner with the allegations levelled by the FCI, the allegations of the FCI are pin-pointed and cannot be spread over all the dues of the petitioner to furnish defence for non-payment to the CWC.

18. For example, the security money component of Rs. 43,28,400/- has no nexus with the allegations of the FCI and in the absence of any better defence, the CWC is obviously liable to pay the same to the petitioner.

19. The same applies to the dues for the period of February, March and April, 2020 and January, 2022. The FCI has raised some allegations regarding August, 2021 but has merged such allegations with the height withheld component, which comes to the amount of Rs. 13,93,573/-. Thus, the amount raised for the said months by the petitioner, that is, Rs. 38,81,330/- can be seen in isolation. In view of the CWC having no defence thereto, the said amount is also due from the CWC to the petitioner.

20. Thirdly, regarding the bill for February 01, 2022 to February 18, 2022, there is no specific allegation with regard to the said period. The general allegations of security lapses against the CWC cannot be shifted to the petitioner. Since the godowns belong to the CWC, security lapses and withholding by the FCI of 8% on such count has to be borne by the CWC. Hence, there is no legitimate ground for the CWC withholding the payment on such bill, which is to the tune of Rs. 61,55,723/-.

21. However, the FCI has a point regarding the height withheld component quantified at Rs. 13,93,572/-. The CWC is justified in arguing that if the amount is paid to the petitioner, who was not the person handling the work but is the heir of the handling agent and has no business with the CWC, it might be difficult to recover the same later from the petitioner.

22. Allegations and counter-allegations fly between the FCI and the CWC as well as against the handling agent regarding the liability of erroneous stacking and layering of the bags. Hence, it would be premature for the writ court to direct such amount to be paid. Hence, insofar as the component of Rs. 13,93,572/- is concerned, it is kept open for the petitioner to claim such amount by way of a regular civil suit.

23. As to the Invoice Nos. 46, 55, 56, 74, 80 and 92 DC Jhargram, the component of claim to the tune of Rs. 5,62,448/- has not been substantially opposed by the CWC by cogent evidence. Thus, the petitioner is also entitled to such amount.

24. The casual labour charges of Rs. 3,00,000/- however, has not been entirely admitted by the CWC. In its exception to the first report of the FCI, the CWC has admitted the claim to the tune of Rs. 1,58,823/- subject to the petitioner showing proof of payment of applicable GST.

25. The petitioner has agreed to such payment for the time being on such condition. Hence, the said amount is also to be disbursed to the petitioner by the CWC.

26. It is to be taken note of here that Clause 9(vii) of the tender document stipulates that the security deposit shall be refunded to the contractors only after due and satisfactory performance of the services and on completion of all obligations by the contractor under the terms of the contract and on submission of a No Demand Certificate. The CWC insisted upon furnishing a No Dues Certificate/No Demand Certificate by the petitioner. On query of court, learned counsel for the CWC explains that the No Demand Certificate had to be brought from the FCI. However, the non-furnishing of No Demand Certificate from a third party to the contract between the petitioner and the CWC cannot hinder, in any manner, the payment of all dues of the petitioner by the CWC, since there is no dispute as to the work having been concluded by the petitioner's father at the relevant juncture.

27. Thus, in view of the above discussions, the petitioner is entitled to a substantial portion of the bills raised by the petitioner in respect of the work done by his deceased father under the Nimpura, Kharagpur Head.

28. Accordingly, WPA No. 3963 of 2023 is disposed of by directing the respondent no.2-Central Warehousing Corporation and its Chairman, the respondent no.3, to disburse the following amounts to the petitioner for work done by the petitioner's father under the CWC Nimpura Kharagpur head in terms of the reminder dated September 2, 2022 annexed at page 193 (Annexure P/5 of the writ petition):

Particulars	**Payments (Rs.)**
Security Money for CWC Nimpura, KGP	43,28,400/-
Bills for February, March and April-2020, August-2021 and January-2022	38,81,330/-
Supervision Charges (Bill dated February 01 to February 18, 2022)	61,55,723/-
Invoice Nos. 26, 55, 56, 74, 80 and 92 DC Jhargram.	5,62,448/-
Casual Labour Charges against Invoices for December-2021, January-2022 and February-2022	1,58,823/-
Total	**1,50,86,724/-**

29. The last component above for Casual Labour Charges to the tune of Rs. 1,58,823/- shall be paid subject to the petitioner producing proof of GST payment for such amount.

30. The payments as enumerated above shall be disbursed by the respondent no.2 and 3 in favour of the petitioner as expeditiously as possible, positively by January 31, 2024.

31. CAN 1 of 2023 is disposed of accordingly.

32. There will be no order as to costs.

33. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)