



W.P.No.41406 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.41406 of 2016

and

WMP.No.35375 of 2016

M/s.Mycon Construction Ltd.,
Formerly known as The Mysore Construction Company,
Rep.by its General Manager,
Having its registered office at,
Industry House.45, Race Course Road,
Bangalore – 560 001.

...Petitioner

Vs.

1. The Regional Labour Commissioner (Central),
Chennai Authority under the Minimum Wages Act, 1948,
No.26, Shastri Bhavan, 5th Floor,
Haddows Road, Nungambakkam, Chennai-6.
2. R.Shakti Vel
3. R.Ganapathy
4. V.Krishnamoorthy
5. P.Kalyanasundaram
6. Arokiyadoss
7. R.Cauveri
8. P.Lakshmi
9. K.Valli
10. S.Kesammal
11. K.Santhi



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12. P.Gopal
13. Ramakrishnan
14. K.Sangeetha
15. K.Santhi
16. P.Ilangiyam
17. Krishnan
18. Ramchandran
19. D.Selvi
20. Kalaiselvi

R2 to R20 Rep. by Thozhilalar Otrumaimaiyam,
Door No.113, Kaililampuram, Peryakappankulam Village,
Vridachalam Taluq, Cuddalore District.

21. Bharat Heavy Electrical Ltd.,
Rep. by its General Manager,
Having its site office at
TPS-II Expansion, NLC Limited,
Neyveli – 607 807.
22. Neyveli Lignite Corporation Ltd.,
Rep. by its General Manager,
Having its office at TPS-II Expansion,
NLC Limited, Neyveli – 607 807.

23. S.Rayapillai

...Respondents

Petition filed under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to call for the records
pertaining to Claim Application No.M.39/MWA/287/2013-B2 and quash
the order dated 28.3.2016 passed by the first respondent in Claim
Application No.M.39/MWA/287/2013-B2.



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For Petitioner : Mr.Anirudh Krishnan

For Respondents : Mr.G.Purushothaman, for R2 to 20
: Mr.F.B.Benjamin George, for R22
: No appearance, for R21 & 23

ORDER

This Writ petition has been filed seeking quashment of the order dated 28.03.2016 passed by the 1st respondent in Claim Application No.M.39/MWA/287/2013-B2.

2. The case of the petitioner is that the 22nd respondent namely the NLC India Limited (in short 'NLC') decided to set up a thermal power scheme in TPS Expansion II, Neyveli and entered into a contract with the 21st respondent namely the Bharat Heavy Electrical Limited (in short 'BHEL') to carry on civil and other miscellaneous works at the site in relation to expansion. In turn, BHEL engaged the services of the petitioner, who was a sub-contractor, who in turn engaged the services of the 23rd respondent, as it was in need of labour to perform the work, who is none other than the father of the 2nd respondent and who was a piece rate sub-



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contractor from 2007-2011 at the work site on availability basis. After the work orders were executed, the payment due under the contract was directly paid to the 23rd respondent, who was supposed to pay the wages to his labourers. Further, the 23rd respondent also received payments at regular intervals from 2006-2007 to 2012-2013 to the tune of Rs.22,38,009/-. The 23rd respondent alone had documents to show as to how much money was paid towards wages, as the petitioner had not engaged the labourers directly. After completion of the period of work, the respondents 2 to 20 came forward with certain claims through M/s.NLC Thozhilalar Sangam contending that lesser wages had been paid to them for the period from March 2007 to March 2011 and they have also filed an application before the 1st respondent under Section 20(2) of the Minimum Wages Act, 1948 (in short 'Act') claiming a sum of Rs.7,21,273.83/- along with a sum of Rs.72,12,738/- towards compensation stating that they were entitled to payment towards overtime work. After contest, by the impugned award, the 1st respondent directed the petitioner to pay a sum of Rs.7,21,273.83/- to the workmen concerned along with compensation of a sum of Rs.500/- to each of the workmen. Challenging the same, the petitioner is before this Court.



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3. Learned counsel for the petitioner submitted that, for the purpose of carrying out civil and other miscellaneous works at the site in relation to Thermal power expansion, the petitioner was engaged by the 21st respondent and thereby the petitioner engaged the service of the 23rd respondent for supply of man power to execute the work. Further, it is pertinent to note that, the 23rd respondent had collected the wages to be paid to the employee as per the Minimum Wages Act from the petitioner, however, the 23rd respondent is the one who has not paid the minimum wages to the respondents 2 to 20, who were engaged by him and the said default committed by the 23rd respondent cannot be put against the petitioner and he cannot be made liable for the same. He further submitted that, the 2nd respondent, who is none other than the son of the 23rd respondent, instituted the claim under Section 20(2) of the Minimum Wages Act against the petitioner and the same is not maintainable as the said claim was made by the respondents 2 to 20 with a delay, which is barred by limitation. While so, without considering any of the above said facts, the 1st respondent passed the present impugned order directing the petitioner to pay a sum of Rs.7,21,273.83/- to the workmen concerned along with compensation of a



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sum of Rs.500/- to each of the workmen, which is not sustainable.

Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the respondents 2 to 20 submitted that, the petitioner is the principal employer and the 23rd respondent is the sub-contractor, and though the 23rd respondent engaged the services of the respondents 2 to 20 for execution of work as per the contract entered by the 22nd respondent with the 21st respondent, who in turn entrusted the work to the petitioner, however, the petitioner being the principal employer, is liable to pay the difference of wages as per the Minimum Wages Act, even if the alleged default was committed by the 23rd respondent. Hence, the 1st respondent, after taking into consideration all the above said facts, passed the present order under challenge, which is perfectly in order and the same does not warrants interference of this Court. Further, the name of the 2nd respondent may be removed from the beneficiaries list and it would suffice, if this Court issues direction to the 1st respondent to disburse the amount already deposited by the petitioner in favour of the respondents 3 to 20 within a reasonable time that may be fixed by this Court.



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5. On the above said contentions, heard learned counsel appearing for the 22nd respondent. Though respondents 21 and 23 were served with notice and their names were printed in the cause list, none appears for them. However, considering the period of pendency of this Writ petition, this Court is inclined to dispose of this Writ petition based on the material documents placed on record.

6. Admittedly, the 22nd respondent entered into a contract with the 21st respondent to carry on civil and other miscellaneous works at the site in relation to Thermal power expansion and BHEL engaged the services of the petitioner, who in turn engaged the services of the 23rd respondent for supply of man power and he had not engaged the labourers directly i.e., respondents 3 to 20.

7. It is alleged by the petitioner that, after the work orders were executed, the payment due under the contract was directly paid to the 23rd respondent, who was supposed to pay the wages to his labourers, however he failed to do so. It is further alleged that, the 23rd respondent received payments more than the minimum wages from the petitioner at regular



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intervals from 2006-2007 to 2012-2013. Whiles, the respondents 2 to 20 filed an application before the 1st respondent under Section 20(2) of the Minimum Wages Act, 1948, claiming a sum of Rs.7,21,273.83/- along with a sum of Rs.72,12,738/- towards compensation stating that they were entitled to payment towards overtime work, in which, the petitioner filed objections refuting the claim made by respondents 2 to 20 on the ground that the claim application was filed after a delay of more than three years without giving reasons for the inordinate delay and that respondents 2 to 20 were paid the wages as per their entitlement along with final settlements and they relied upon the judgments of the High Courts and also sought to implead the 23rd respondent as a party to the claim application, which was not considered by the 1st respondent before passing the impugned order.

8. Though the petitioner alleges that it has paid the amount of minimum wages due to the workmen to the 23rd respondent, however, it cannot abdicate its responsibility by citing that the petitioner is not the immediate employer, admittedly the petitioner is the principal employer. Therefore, it is incumbent on the part of the petitioner to see that the



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amounts towards the minimum wages is being paid to the employees. Even if it is to be presumed that the default is on the part of the 23rd respondent in not paying the minimum wages, however, being the principal employer it is the duty on the part of the petitioner to see to it that the statutory prescription of minimum wages is received by all the employees, who had done work for the petitioner. Therefore, necessarily, it is the duty of the petitioner to pay the minimum wages to the employees and towards non-payment of the minimum wages, which had already been paid by the petitioner to the 23rd respondent, the petitioner may proceed against the 23rd respondent in the manner known to law.

9. It is evident from the records placed before this Court that, when the matter came up for admission on 25.11.2016, this Court granted an order of interim stay subject to the condition that the petitioner should deposit the entire amount of Rs.7,21,273.83 Ps to the credit of the writ petition within two weeks, which has been complied with.

10. Hence, this Court, directs the Registry to transfer the amount in deposit to the credit of the Claim Application No.M.39/MWA/287/2013-B2



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with due notice to the 1st respondent and upon such transfer, the 1st respondent is directed to disburse the eligible amount to the respondents 3 to 20, after verifying the identity of each of the respondents. Further, it is made clear that the 1st respondent shall not disburse any amount in favour of the 2nd respondent, till the completion of the litigation to be initiated in between the petitioner, the 2nd & 23rd respondents. Further, liberty is granted to the petitioner to work out its remedy in the manner known to law as against the 2nd and 23rd respondents. The period during which the present petition was pending before this Court as well as before the lower Court shall stand excluded for the purpose of computation of limitation for initiation of legal proceedings as against the 2nd and 23rd respondents.

11. With the above observations and directions this Writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

27.07.2023

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

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WEB COPY To

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M.DHANDAPANI, J.

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