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WP.Nos.19051 of 2017 & 10431 of 2018

In the High Court of Judicature at Madras

Dated : 12.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

W.P.Nos.19051 of 2017 & 10431 of 2018

and

W.M.P.Nos.20568 of 2017 & 12395 of 2018

W.P.No.19051 of 2017

The Management of ACC Ltd.,
Madukkarai Cement Works,
Madukkarai Post,
Coimbatore 641 105,
Rep. by its General Manager

... Petitioner

Vs

1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court, Shastri Bhawan,
Haddows Road, Chennai – 600 006.

2.Coimbatore Cement Workers' Union,
(affiliated to AITUC), Regn. No.254,
No.3/117, Palakad Road,
K.R.Ramasay Nilayam,
Gandhi Nagar, Madukkarai,
Coimbatore 641 105,
rep. by its General Secretary,
C.V.Subramanian



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3.Union of India,
rep by its Secretary,
Ministry of Labour
Shram Sakthi Bhavan,
Rafi Marg, New Delhi – 110 001.

4.M/s.Alfa Engineering Construction,
C/o.ACC Ltd.,
Madukkarai 641 105,
Coimbatore.

5.M/s.Banu Engineering,
C/o.ACC Ltd.,
Karumpapalayam,
Madukkarai 641 105,
Coimbatore.

6.M/s.Safeline Electrical,
C/o.ACC Ltd.,
Madukkarai 641 105,
Coimbatore.

7.M/s.Bharathi Builders and Constructions,
C/o.ACC Ltd.,
Madukkarai 641 105,
Coimbatore.

8.M/s.Shiva Industrial and Engineering Works,
C/o.ACC Ltd.,
No.17/3-21A, Gandhi Nagar,
Madukkarai 641 105,
Coimbatore.

9.M/s.Latha Engineering Construction,
C/o.ACC Ltd.,



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Madukkarai 641 105,
Coimbatore.

10.M/s.Fathima Contractor,
C/o.ACC Ltd.,
Madukkarai 641 105,
Coimbatore.

11.M/s.Sakthi Electricals,
C/o.ACC Ltd.,
Madukkarai 641 105,
Coimbatore.

12.M/s.Chitra Contract,
C/o.ACC Ltd.,
Madukkarai 641 105,
Coimbatore.

... Respondents

W.P.No.10431 of 2018

The Management of ACC Ltd.,
Madukkarai Cement Works,
Madukkarai Post, Coimbatore 641 105,
rep. by its Director Plant

... Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court, Shastri Bhawan,
Haddows Road, Chennai – 600 006.

2.Coimbatore Cement Workers' Union,
(affiliated to AITUC), Regn. No.254,
No.3/117, Palakad Road,
K.R.Ramasay Nilayam,



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Gandhi Nagar, Madukkarai,
Coimbatore 641 105, rep. by its General Secretary

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3.Dutta Enterprises,
MIG-II, 2636, M.P.Housing Road,
Industrial Estate, Bilai,
Madhya Pradesh 460 026.

... Respondents

Prayer in W.P.No.19051 of 2017 : Writ Petition is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in I.A.No.23 of 2017 in I.D.No.1 of 2010 dated 29.05.2017, quash the same and direct the 3rd respondent not to publish the common award of the 1st respondent dated 01.06.2017.

Prayer in W.P.No.10431 of 2018 : Writ Petition is filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.2 of 2010 and quash its award dated 31.05.2017.

For Petitioner in both WPs : Mr.G.Anand
for M/s.T.S.Gopalan & Co.

For R1 in both WPs : Tribunal

For R2 in both WPs : Mr.K.R.Samrath
for M/s.Arunachalam Associates

For R3 in W.P.No.19051/2017 : Mr.A.Murugan

For R3 in W.P.No.10431/2018 : Not Ready in Notice

For R4, R6 & R12 in
W.P.No.19051 of 2017 : Not Ready in Notice



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For R5, R7 to R11

: No appearance

COMMON ORDER

Since the issue involved in both the writ petitions are one and the same, with the consent of the learned counsel for the parties, both the writ petitions were heard together and disposed of by this common order.

2. It is the case of the petitioner that it is engaged in the manufacture of cement and has 11 factories throughout India. In the course of its business activities, the petitioner provides residential quarters to its employees, which require to be maintained with regard to electrical, plumbing, civil works, etc., for which the petitioner employs contract labourers through contractors, who have registered themselves under the Contract Labour (Regulation and Abolition) Act and that the petitioner is the principal employer.

2.1. It is the further case of the petitioner that the said contract employees are not utilised for any perennial work and are used only in connection with the temporary work and they are not involved in the manufacturing processes. It is the



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further case of the petitioner that the petitioner, though is not a party to the settlement of All India Wage Board for Cement Industry, yet the settlements arrived thereto are implemented by way of a separate settlement entered with the 2nd respondent Union. Many settlements were entered into between the petitioner and the 2nd respondent Union.

2.2. It is the further case of the petitioner that during the period 1.4.92 to 31.10.2010, the 2nd respondent Union made demand for abolition of contract system, but in the settlement entered either u/s 18 (1) or 12 (3), the 2nd respondent Union did not press the said demand in any of the four settlements. It is the further case of the petitioner that during 2006, when the 12 (3) settlement dated 26.4.2005 was in operation, the 2nd respondent raised a demand that the contracts made between the petitioner and the various contractors were sham and nominal and the contract workmen were entitled for reinstatement for permanent absorption.

2.3. It is the further case of the petitioner that the 2nd respondent purported to have taken up the cause of the contract labourers between the petitioner and



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Dutta Enterprises, which was supplying the contract labourers, more particularly, 27 workmen, who were on the rolls of the said contractor, viz., Dutta Enterprises and, accordingly, two disputes, viz., I.D. Nos. 1 and 2 of 2010 were referred for adjudication to the 1st respondent.

2.4. Before the 1st respondent, the 2nd respondent filed Exs.W-1 to W-78 and the petitioner marked Exs.M-1 to M-27. It is the further case of the petitioner that even in the cross examination of WW.1, the Secretary of the 2nd respondent has admitted that 85% of the contract labour were engaged only in construction work and that the contract labour were not engaged for attending perennial and regular work connected with the manufacturing process.

2.5. It is the further case of the petitioner that when in all the settlements, the 2nd respondent had never pressed the demand relating to the contract labourers employed through contractors for the purpose of carrying out civil maintenance works, all of a sudden the 2nd respondent cannot take up their cause and raise a dispute, while agreeing not to press the issue, which is against the spirit and operation of the settlement. It is the further case of the petitioner that even



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pending the aforesaid disputes, the petitioner and the 2nd respondent entered into

a 12 (3) settlement on 8.6.2011 in which also the demand was not pressed.

Therefore, the settlement should have put an end to the dispute and an award should have been made on the basis of the settlement entered into between the parties in the pending disputes.

2.6. Therefore, the petitioner filed I.A. No.340/2016 in the pending disputes for reopening the two disputes for filing the settlement and seeking an award in terms of the settlement. The 2nd respondent also filed I.A. No.12/2017 to reopen the case for the purpose of marking a document and both the applications were allowed on 10.4.2017. Thereafter, the petitioner filed settlement dated 25.8.2015 and few other documents with a petition to frame a preliminary issue whether the settlement dated 25.8.2015 was fair and reasonable and whether an award could be made in terms of the settlement and the said application was numbered as IA No.23/2017. After reopening of the case, the 2nd respondent examined the Secretary and marked one document and the petitioner marked Exs.M-22 to M-27 and the petitioner submitted that the settlement u/s 12 (3) was not tainted by fraud or misrepresentation.



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2.7. It is the further case of the petitioner that after hearing the submission on merits, orders were reserved on 17.5.2017 and posted for orders on 29.5.2017. On 29.5.2017, order was pronounced stating the IA as dismissed and though the petitioner applied for certified copy of the order, no detailed orders were passed. Further, the two disputes in ID Nos.1 and 2/2010 were adjourned to 31.5.2017. In spite of the petitioner seeking time by adjourning the main disputes pending issue of order in IA No.23/2017, which was dismissed and the petitioner filed one more petition to reopen the enquiry and post the dispute for further hearing after furnishing copy of the order in IA No.23/2017, on 1.6.2017, notice was issued to the parties that award would be pronounced on 2.6.2017 and the Court Diary reveals that award was passed on 2.6.2017, though the order dated 29.5.2017 in IA No.23/2017 was never made available to the petitioner and the order was made available only on 30.6.2017.

2.8. It is the case of the petitioner that the chronology of events clearly shows that after delaying the passing of the award by more than two years, pursuant to the filing of an application to reopen the case and pass an award on the



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basis of the settlement, the Tribunal was inclined to pass orders on merits instead of accepting the settlement, which act shows the predetermination of the Tribunal and further no opportunity was granted to the petitioner to make submissions about the developments, which had taken place in the two years from the date of reserving the award on 3.7.2014. The award passed by the 1st respondent inspite of the plea of the petitioner to reopen the enquiry and without providing the copy of the order passed in IA No.23/2017 is a clear predetermined view of the 1st respondent and to defeat the legitimate rights of the petitioner, which is in stark violation of principles of natural justice and, therefore, the said order deserves to be interfered with and, therefore, the present petitions have been filed.

3. Learned counsel appearing for the petitioner submitted that no opportunity was granted to the petitioner by providing a copy of the order passed in IA No.23/2017, inspite of a request made by the petitioner and not giving an opportunity to the petitioner to address the Tribunal on the basis of the findings rendered by the Tribunal in IA No.23/2017, and the award had come to be passed in a hasty manner to defeat the rights of the petitioner, inspite of the fact that orders were reserved in the disputes as early as on 3.7.2014. Therefore, the



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violation of the rights of the petitioner in not granting the copy of the order passed

in IA No.23/2017 to address the Tribunal inspite of the fact that settlement u/s 12

(3) has been arrived at between the petitioner and the 2nd respondent in which the 2nd respondent has clearly not pressed the demands, thereby, the rigours of Section 12 (3) stands attracted as the parties are bound by the settlement and, therefore, the award passed by the Tribunal is erroneous and, therefore, the same deserves to be interfered with.

4. Per contra, learned counsel appearing for the 2nd respondent submits that the settlement is only on behalf of the permanent workmen and the contract labourers are not covered under the said settlement and that with regard to the contract labourers, it is governed by the Arbitration Award. It is further submitted that contract has been abolished in the establishment and therefore the action of the petitioner is in violation of the Contract Act and the Arbitration Award and also the Wage Board recommendations. All the aspects have been rightly appreciated by the Court below and the award has come to be passed, which requires no interference.



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5. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. There is no quarrel with the fact that the dispute was raised in the year 2008 of which reference was made in the year 2010 and numbered as ID Nos.1 and 2/2010 in which after hearing arguments, the matter was reserved on 3.7.2014. After reserving orders on 3.7.2014, no order has come to be passed till IA No.23/2017 was filed in which order had come to be passed on 29.5.2017. However, inspite of the diligent efforts made by the petitioner to obtain copy of the order in IA No.23/2017, the same was made available only on 30.6.2017 subsequent to the pronouncement of the award on 15.6.2017.

7. It is to be noted that IA No.23/2017 was filed for the purpose of passing an award in terms of the settlement arrived at between the petitioner and the 2nd respondent. Therefore, the findings rendered in the dismissal of IA No.23/2017 would definitely have an impact in the award that is to be passed, which is pending in ID Nos.1 and 2/2010. Therefore, the prudent course for the Tribunal



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was to have provided the petitioner with the copy of the order in IA No.23/2017 before pronouncing orders in the pending ID Nos.1 and 2/2010.

8. Be that as it may. Admittedly, the petitioner management claims that when the dispute is pending before the Labour Court with regard to the regularisation of contract employees and subsequently, the petitioner claims that there were four settlement in between the petitioner management and the second respondent Union. Therefore, necessarily the settlements would have a bearing on the consideration of the case and passing of the award. Though IA No.23/2017 has been rejected, but the findings therein would definitely have a bearing on the orders to be passed in the disputes.

9. In spite of the fact that a specific request has been made for the orders in IA No.23/2017 or to defer the pronouncement of the orders in ID Nos.1 and 2/2010, the orders in the said disputes, which were reserved in the year, were curiously pronounced on 15.6.2017, without providing the copy of the order in IA No.23/2017 to the petitioner, which was pronounced on 29.5.2017.



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10. When the whole issue was with regard to settlement entered into between the petitioner and 2nd respondent 12 (3), in which the 2nd respondent had not pressed the dispute with regard to contract labourers, definitely, the said issue requires to be considered by the Tribunal while passing award in ID Nos.1 and 2/2010, and the findings rendered by the Tribunal in IA No.23/2017 rejecting the prayer of the petitioner to pass an award in terms of the settlement is wholly perverse. Once an order has been passed in IA No.23/2017 rejecting the prayer of the petitioner, an opportunity should have been granted to the petitioner to put forth its submissions with regard to the findings recorded in IA No.23/2017, which has a direct bearing on the dispute, which was accepted to have been entered into u/s 12 (3), as in the dispute, a finding has been rendered by the Tribunal that the dispute u/s 12 (3) relates only to permanent employees. to buttress such a finding, necessarily opportunity ought to have been provided to the petitioner, by providing a copy of the order in IA No.23/2017, as it would form the basis of the petitioner's contentions. However, without providing the said order in IA No.23/2017, passing the award in ID Nos.1 and 2/2010, which were reserved on 3.7.2017, after a lapse of three years, is wholly unreasonable and violates the rights of the petitioner, thereby there is gross violation of principles of natural



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justice with regard to the petitioner and, therefore, the said award definitely deserves to be set aside.

11. For the reasons aforesaid, the impugned orders are hereby set aside and the matter is remanded back to the Labour Court and the Labour Court is directed to hear the petitioner management as well as the second respondent Union and other parties connected with the dispute on all the issues and pass appropriate orders in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

12. Accordingly, both the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

12.9.2023

Index : Yes (or) No
Speaking Order : Yes (or) No
Neutral Citation Case : Yes (or) No
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M.DHANDAPANI, J.

rap/GLN

To

- 1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court, Shastri Bhawan,
Haddows Road, Chennai – 600 006.
- 2.The Secretary,
Union of India,
Ministry of Labour,
Shram Sakthi Bhavan,
Rafi Marg, New Delhi – 110 001.

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