



W.P.Nos.20062 and 20063 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Delivered on : 31.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.Nos.20062 and 20063 of 2014

W.P.No.20062 of 2014:

Veera

... Petitioner

Vs.

1.The Regional Labour Commissioner (Central),
Shastri Bhavan,
No.26, Haddows Road,
Chennai.

2.The Labour Enforcement Officer (Central),
Puducherry.

3.The Principal Chief Engineer,
Telecom Electric Zone,
No.60, Ethiraju Salai,
Chennai - 600 008.



W.P.Nos.20062 and 20063 of 2014

4.The Secretary,
Tamil Nadu Telecom Contract Labour Union,
BSNL, Cuddalore,
Cuddalore District,
No.6, Velmurugan Nagar,
Pathirikuppam,
Cuddalore - 2.

... Respondents

W.P.No.20063 of 2014:

Veera

... Petitioner

Vs.

1.The Regional Labour Commissioner (Central),
Shastri Bhavan,
No.26, Haddows Road,
Chennai.

2.The Labour Enforcement Officer (Central),
Puducherry.

3.The Electrical Engineer,
M/s.BSNL,
O/o.The RGMTTC Compound,
Meenambakkam,
Chennai - 600 027.

... Respondents

PRAYER in W.P.No.20062 of 2014: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the entire records of the 1st respondent relating to the impugned order in Claim Application No.736 of 2012



dated 12.06.2014 and quash the same.

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PRAYER in W.P.No.20063 of 2014: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the entire records of the 1st respondent relating to the impugned order in Claim Application Nos.860 to 864 of 2012 dated 12.06.2014 and quash the same.

For Petitioner : Mr.N.Nithiyanandam
in both petitions

For Respondents : Mr.K.Ramanamoorthy,
CGSC for R1 in both petitions

Ms.D.Jearany,
Government Advocate (Pondicherry)
for R2 in both petitions

No appearance for R3
in W.P.No.20062 of 2014

R3 - Not ready in notice
in W.P.No.20063 of 2014

Mr.M.Devaraj
for R4 in W.P.No.20062 of 2014

COMMON ORDER

These two Writ Petitions challenge the order of the 1st respondent in Claim Application No.736 of 2012 and 860 to 864 of



2012 dated 12.06.2014.

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2.The petitioner is a valid license holder under the Contract Labour (Regulation and Abolition) Act, 1970. The petitioner was awarded a contract for maintenance of 7 Air Conditioner Units for the various Telephone Exchanges in Cuddalore. The period of contract was between 17.12.2011 to 16.12.2013. The nature of work involved was switching off the air conditioning Units and to ensure that the air conditioning units are working at all points of time. The Writ Petitioner was awarded contract work in the area situate at Cuddalore, Chidambaram, Neyveli, Virudhachalam and Kallakurichi. In order to ensure the execution of the contract, the petitioner used to engage contract workers. He claimed that the contract workers were being paid wages as notified by the Central Government from time to time.

3.According to him, the Labour Enforcement Officer at Puducherry had approached him for illegal gratification and had



conducted an inspection at Cuddalore and found irregularity in payment of wages. The petitioner would state that it is impossible for the 2nd respondent to have inspected all the five units on the same day. He would further state that no opportunity has been given to the petitioner and the report itself is misleading as the name of Malaiarasan was repeated in two places and also the name of one Sankar, who was not even an employee of the petitioner, was found in the report.

4.In pursuance of the report filed by the 2nd respondent, the proceedings were initiated before the 1st respondent.

5.The workmen were represented by the Union, namely, Tamil Manila Telecom Contract Labour Union (hereinafter referred to as the TMTCLU).

6.The petitioner would allege that he appeared before the 1st



respondent on 17.04.2013 and filed a detailed claim on 16.07.2013.

He would state that despite filing of the counter and the submissions of records and documents that the workmen were not entitled to the benefits, the 1st respondent passed the impugned order.

7.According to the petitioner, the writ petitioner was not given adequate opportunity in both the proceedings. Therefore, he would plead that this Court would have to interfere with the order and set aside the same.

8.He would further allege that a sum of Rs.4,50,000/- had been withheld by BSNL towards the claim of minimum wages and that he is entitled to the same as he is not liable to pay any amount. He would seek for a direction to quash the proceedings and further to give a direction to the BSNL to repay the amount.

9.In order to satisfy myself with the procedure that had been adopted by the 1st respondent, I called upon Mr.K.Ramanamoorthy,



learned Central Government Standing Counsel to produce the entire records pertaining to the case. This order was passed on 19.06.2023.

The records were produced today, i.e., on 30.06.2023. Copies of the records were also handed over to the learned counsel for the petitioner for perusal.

10.I have heard Mr.N.Nithiyanandam, learned counsel appearing for the petitioner, Ms.D.Jearany, learned Government Advocate (Pondicherry) for the 2nd respondent and Mr.M.Devaraj, learned counsel for the 4th respondent.

11.I have gone through the records and have considered the plea of the respective parties.

12.It is the case of the petitioner that he was not heard during the enquiry. The enquiry proceedings are extracted hereunder for ready perusal:

17.04.13:

Applicant present. OP1 absent. OP2 present.



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W.P.Nos.20062 and 20063 of 2013

Rep. of OP2 present without authorization. OP2 requested time to file reply. Accordingly, hearing is adjourned. All the parties are advised to file their related documents on the date of next hearing.

16.07.2013:

Applicant present. OP1 absent. OP2 present and requested time to file reply. OP2 is directed to file and also insist OP1 to be present on the date of next hearing. Accordingly, hearing is adjourned.

21.11.2013:

Applicant present. OP1 absent. OP2 present. OP1 requested to file reply. Applicant, OP1 and OP2 are directed to produce original documents pertaining to Attendance, Wage Register, Security Entry Records, Number of Contractors, Names of Contractors, their period of contracts, particularly, along with AC Plant, Cuddalore, SSA and also produce JTO pleading Jan 2012 to Aug 2012. Accordingly, hearing is adjourned.

27.05.2014:

Proceedings in 152 No.M.39/MWA/860 to 864/2012.B2, (Claim Application No.736/2012)

It is noticed that the opponent 1 and 2, the Contractor, complainant, workman and the union and the PE were present. In the earlier hearing, the Authority had directed the petitioner counsel to settle the matter amicably and submit a report. During this hearing, it is once again noticed that there is no bilateral agreement or amicable settlement on the payment of minimum wages and non payment of OT Wages.

As the contractor is not adhering to the earlier order herein is called of reserved for final orders.



Written arguments in 5 days."

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13.A perusal of the records would show that the writ petitioner who was the second opposite party was present during the entire proceedings. On 21.11.2013, both BSNL as well as the writ petitioner were directed to produce documents pertaining to Attendance Register, Wage Register, Security Entry Records, Number of Contractors, Name of Contractors, period of contract, particularly, along with AC Plant Cuddalore, SSA.

14.The learned counsel for the petitioner would submit that the signature found at the end of the page is not his signature at all. After nearly a decade, such a plea cannot be entertained. Furthermore, I have to draw an inference under Section 114 of the Indian Evidence Act, 1872 regarding official Acts. Unless and until the contrary is proved, I have to presume the proceedings before an official had taken place as has been recorded by him. Even assuming that the signature was not that of the petitioner, at least on the next date of hearing or



before the orders have been passed, an objection would have been taken. The files do not reveal any such objection. The perusal of the proceedings dated 25.07.2014 would go to show that no objection had been taken by one Elumalai who was representing the Writ Petitioner. Therefore, the plea that the opportunity was not given to the petitioner is not acceptable. A careful perusal of the records shows that BSNL and the petitioner were successful in dragging on the proceedings from 17.04.2013 to 27.05.2014.

15.The learned counsel for the petitioner would argue that they have filed a counter and the counter had not been taken on file. If in fact, a counter had indeed been filed and it was refused by the 1st respondent, nothing prevented the petitioner to send it by Registered Post or to file a Memo objecting to the procedure. None of these were found in the records. The counter that has been filed before the Court in the typedset of papers are not available in the record maintained by the Authorities. Therefore, I am unable to convince myself that there



has been a violation of principles of natural justice. On the contrary, I am of the view that sufficient opportunities had been given to the petitioner and still the petitioner did not substantiate his case before the Deputy Chief Labour Commissioner (Central), Chennai.

16. Now turning to the aspect of compensation, I find that the Authority has imposed five times compensation. This is more punitive in nature. The alleged incident had taken place sometime in the year 2012 and he was visited with the impugned order within a period of two years. Therefore, I feel to impose five times compensation is slightly harsh. While rejecting the arguments of the learned counsel for the petitioner that there has been a violation of principles of natural justice, I would agree with the submission that the compensation that has been fixed is onerous and excessive. Therefore, the compensation is reduced from five times to two times, i.e., from 500% to 200%.



With the above modifications, these Writ Petitions are partly allowed. The liability to pay the difference in wages is upheld. The compensation alone is interfered with. The 1st respondent is directed to rework the compensation in terms of the above order. On such reworking, the petitioner shall immediately pay the amount. In case it is less than the amount already paid, the petitioner is entitled to the difference amount. The 1st respondent shall take into consideration the amounts that have been paid pursuant to the orders of this Court in M.P.Nos.1 and 2 of 2014 in W.P.Nos.20052 and 20063 of 2014 dated 27.11.2015. After adjustment of all these amounts, if there is any excess in the hands of the BSNL, the same shall be refunded to the petitioner. The aforesaid exercise of the 1st respondent shall be concluded within a period of twelve weeks from the date of receipt of a copy of this order. If there is any excess in the hands of the BSNL, on receipt of the order from the 1st respondent, the same shall be calculated and refunded to the petitioner within a period of twelve weeks from the date of receipt of the orders of the 1st respondent. No



W.P.Nos.20062 and 20063 of 2017

costs.

31.07.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
mps

To

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No.26, Haddows Road,
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5.The Electrical Engineer,
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V. LAKSHMINARAYANAN, J.

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W.P.Nos.20062 and 20063 of 2014

Pre-delivery Orders in
W.P.Nos.20062 and 20063 of 2014

31.07.2023