

10.09.2024
Court No.13
Item No.49
AP

MAT 1279 of 2023

**The Board of Major Port Authority for the Syama
Prasad Mookerjee Port, Kolkata and Anr.
Vs.
Union of India and Ors.**

Mr. Abhrojit Mitra
Mr. Pramit Bag
Mr. Ashok Kumar Jena

...For the Appellant.

Mr. R. Chatterjee
Mr. D.R. Mukherjee
Mr. Arijit Dey

...For the Respondents.

1. The appeal is directed against an order dated 12th May, 2023 passed by the Single Bench of this Court in CAN 4 of 2017 arising out of WPA 2034 of 2014. The said interlocutory application was filed seeking modification of the earlier order dated 1st September, 2017 as corrected on 21st September, 2017.

2. The writ petition was filed by the Bengal Sainik Punarvas Corporation Limited (hereinafter referred to as “the BSPCL”). The company was under the control and management of the Rajya Sainik Board (hereinafter referred to as “the RSB”), a wing of the Labour Department of the Government of West Bengal. The objects and purposes of the Board and the writ petitioner were to provide employment opportunities to retired personnel of the armed forces and police.

3. The appellant/Port Trust is stated to entered into an agreement with the RSB for supply of security personnel at about 130 sites of the huge land and property of the Kolkata Port Trust, now known as Syama Prasad Mookerjee Port, Kolkata.

4. The terms and conditions of the contract involved provisions of the Contract Labour (Regulation & Abolition) Act 1970 and other statutes. The engagement of the personnel of the company BSPCL continued from 2006 to 2012. It is only for the period from December 2012 to January 2013 that the BSPCL did not receive any payment from the Port Trust for the security guard deployed. This was in respect of only one of the 130 sites that were manned by the personnel deployed by the petitioner.

5. In course of inquiring into the demands being raised by the BSPCL, the Port Trust detected certain suspicious transactions between its employees and the BSPCL. It started an internal investigation. A complaint was made and the CBI came to register FIRs against several employees of the Port Trust and the writ petitioners were named as accused.

6. In January 2013 an internal Dispute Resolution Committee (hereinafter referred to as “the DRC”) was formed by the Port Trust to look into the claims of the writ petitioners and the acts and omissions of their

employees and any collusion between the employees and the BSPCL and/or RSB.

7. The instant writ petition was thereafter filed seeking the following reliefs:-

“a) A writ in the nature of Mandamus be issued commanding the respondents and/or each of them and/or their servants agents or assigns to act and proceed in accordance with law by releasing the outstanding dues lying with the Respondents No.2 being 20% of the Wages withhold by it, Wages of deployed ex-service men for the months of December, 2012 and January 2013, work order 16 in numbers not released till the date despite completion of work by the persons deployed by the petitioner amounting to Rs.3,31,75,008/-.

b) A writ in the nature of Cetiorari be issued directing the Respondents no.2 and 3 to transmit the records of the case and to certify the same so that conscionable justice may be done by directing to release the outstanding dues with held by the Respondents, being 20% of the wages of the persons deployed at KOPT, Wages of December, 2012 and January 2013 and work orders 16 in numbers which have not been issued despite completion of work by the persons deployed by the petitioner.

c) Any other appropriate writ or writs be issued complete protection and remedy to the petitioner.

d) Rule NISI in terms of prayer (a) to (c) above and to make the Rule absolute if no cause is shown and/or in sufficient cases are shown.

e) Ad interim order of direction be issued directing the Respondents no.2 and 3 to release the outstanding dues amounting to Rs.3,31,75,008/- within a period of 15 days from the date of communication of the order.

f) Ad interim order in terms of prayer (e) above.

g) Cost or costs;

h) Any other or further order or orders and/or direction or directions be issued as to this Hon'ble Court may deem fit and proper.”

8. When the writ petition was moved on 25th February, 2024 a Single Bench of this Court recorded submissions of the Port Trust that a DRC was constituted to investigate inter alia into the claims of the petitioners. It was recorded that entire amount excepting 20% of the claims of the writ petitioner would have to be released by the appellants.

9. The Single Bench further directed the Committee constituted by the Port to complete the investigation and submit a report within eight weeks. The balance 20%, which the Port Trust refused to the writ petitioner was directed to be maintained in a separate account with a nationalized bank.

10. The Port Trust deposited 1,05,10,166/- with the State Bank of Mayshore (now merged with the State Bank of India).

11. On 11th June, 2014 the Single Bench directed the Port Trust to file an affidavit disclosing the progress of the investigation by the DRC.

12. A report dated 31st December, 2014 was prepared by the DRC where it was held that a sum of Rs.1,79,03,600/- could be payable to the petitioner upon satisfaction of four several conditions which are set out hereinbelow:-

- “i) A satisfactory audited statement is produced by RSB/BSPL for payments made by them to their contracted employees from April 2012

to January 2013 (or November 2012, if payment was made by them only till November 2012)

- ii) An RSB (Govt) official certifies each and every payment as having been actually made to each individual guard and countersigns the anomaly sheet.
- iii) A clearance is received from the Port's Vigilance Department which had instituted several cases for alleged irregularities concerning RSB/BSPL deployment during the period 2010-2011 and
- iv) A clearance is obtained from the CBI which is also conducting independent investigation on the same issue as at (iii) above."

13. CAN 616 of 2017 in WP 2034 of 2014 was thereafter moved by the writ petitioner praying for following reliefs:-

“(a) Direction be issued upon the respondents to complete the verification process and submits its report to the Hon’ble High Court on the outstanding amount of Rs.1,88,02,149/- within a reasonable time.

(b) Direction be issued upon the respondents to release the amount Rs.2,61,95,583/- plus Rs.1,05,10,166/-, which has been kept in a separate account in the State Bank of Mysore along with the interest accrued thereon in favour of the applicant/petitioner.

(c) Direction be issued to not to withhold the either outstanding amount for the quantum of Rs.11,25,683/- which has been alleged to have been mis-appropriated.

(d) Directions be issued to decide about the fate of the alleged mis-appropriated amount of Rs.11,25,683/- till the finalization of the criminal case initiated by CBI.

(d) Direction be issued upon the respondent to borne the liabilities of the interests, late fines/fees and/or penalties that has accrued on delayed payment of all the statutory dues that the applicant/petitioner has failed to pay on time due to withholding the release of payment by the Kolkata Port Trust.

(d) Such order or further order or orders be issued as to this Hon'ble High Court may deem fit and proper.”

14. On the said application a Single Bench of this Court, on 1st September, 2017, directed a sum of Rs.1,79,03,600/- minus a sum of Rs.3,62,91,818/- towards Provident Fund and further sum of Rs.11,25,688/- to be deducted towards alleged amount misappropriated by the officials of the Port Trust.

15. The Port Trust thereafter filed CAN 4 of 2017 for modification of the order dated 1st September, 2017 where under the impugned order dated 12th May, 2023 was passed.

16. This Court notes that the provisions of The Industrial Dispute Act 1947, Contract Labour (Regulation & Abolition) Act 1970, The EPF and Miscellaneous Provisions Act 1952, The ESI Act 1948 and others Statutes are clearly attracted in so far as the relations amongst the Port Trust, the writ petitioner and the RSB. The said Statutes have detailed and prescribed procedure and Fora for adjudication of the disputes between the workmen and their employers. As to who is the actual employer or deemed employer is also a matter that is required to be adjudicated under the aforesaid Statutes before the Fora prescribed thereunder.

17. This Court is surprised to note that the maintainability of the writ petition has not been opposed by the Port Trust at the very inception.

18. Indeed, it is true that undisputed and admitted and unqualified monetary claims can be entertained and a mandamus could be issued in respect thereof under Article 226 of the Constitution of India. The maintainability of such writ petitions would depend on the facts and circumstances of each case. Reference in this regard is made to the decision of the Supreme Court in the case of ***ABL International Vs. ECGC*** reported in **(2004) 3 SCC 553** and as clarified in ***Joshi Technologies International Inc. Vs. Union of India & Ors.*** reported in **(2015) 7 SCC 728**.

19. This Court notes that the DRC report is an internal report of the Port Trust. The DRC may have a member of the RSB in its Constitution. The payment by the DRC to the writ petitioner is qualified and conditional. The conditions are set out in Para 9 hereinabove.

20. In view of the above, it cannot be said that there is any liquidated, admitted or undisputed claim that the writ petitioner could have maintained against the Port Trust could have been entertained, under Article 226 before this Court. The violation of any of the aforesaid Statutes, prescribe penal consequences including fine and imprisonment. The Fora a under the statute can

adjudicate disputed questions of fact, by trial on evidence.

21. This Court's mind is not free from doubt the writ petitioner and the Port Trust may have colluded with each other to avoid rigor and consequences under the aforesaid statutes.

22. The writ petition could not have been maintained before this Court under Article 226 of the Constitution of India given the disputed questions of fact as regards the claims of the petitioner and the conditional for payment of the quantum by the Port Trust. The writ Court can neither remove the conditions imposed by the DRC nor can pronounce with accuracy any sum actually payable to the petitioners.

23. The Statutory authorities have not been able to look into the violation of the Statute by the writ petitioner and the Port Trust, for the pendency of these proceedings.

24. In so far as the investigation by the CBI is concerned, and the portions of the final report placed by Mr. Chatterjee, this Court is of the view that the same can have no bearing on the rights of the parties in this lis.

25. For the reasons stated hereinabove, this Court permits the parties to raise their grievances before the Fora under the statutes, indicated above. Such disputes

would have to be adjudicated in accordance with law. Any violation of any Statutes must also be investigated by the concerned Statutory authorities.

26. The impugned order dated 12th May, 2023, shall stand set aside. All orders passed in the writ petition shall also stand set aside. WPA 2034 of 2014 shall stand dismissed.

27. The deposits made by the Port Trust with themselves shall abide by any appropriate adjudication by any Fora constituted under the aforementioned statutes. The Port Trust shall continue to maintain the said deposit account and keep renewed till the appropriate adjudication of the claim of the workmen concerned.

28. MAT 1279 of 2023 shall stand disposed of with the above directions.

29. In view of the disposal of MAT 1279 of 2023, connected pending applications, if any, shall also stand disposed of.

30. There shall be no order as to costs.

31. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)