

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 16561 of 2003

Damodar Valley Corporation

Versus

Assistant Labour Commissioner, Bankura & Ors.

Mr. Ranjay De

Mr. B. Banerjee

Mr. A. A. Bose

.....For the petitioner.

Hearing Concluded On : 04.01.2024

Judgment on : 18.01.2024

Krishna Rao, J.:

1. The petitioner, Damodar Valley Corporation has filed the present writ application against the communication dated 6th May, 2003 issued by the Assistant Labour Commissioner, Bankura, State of West Bengal requesting the writ petitioner to pay all the dues payable to the private respondents under Section 3 of the Payment of Wages Act, 1936 and the communication dated 11th July, 2003 issued by the Labour

Inspector, Bankura threatening the petitioner for taking legal action for nonpayment of the wages to the private respondents under the provisions of Payment of Wages Act, 1936.

2. Damodar Valley Corporation generates and distributes electrical energy to the State of West Bengal and Jharkhand and Public Sectors like Coal India Limited, Eastern Coalfields Limited, SAIL, Railways, TISCO, CESC and other industries situated within the State of West Bengal and Jharkhand. The petitioner operates five numbers of Thermal Power Station, one Gas Turbine Project and three Hydel Power Stations. The petitioner has undertaken construction of Mejia Thermal Power Station (herein referred to as "MTPS") to the rural areas of Bankura, Purulia for industrial development as well as for the benefit of agriculture in rural areas. The MTPS was having three units of 210 MW each. For the said purpose land was acquired through the State Government after payment of due compensation to the State Government.
3. As per the meeting held between the Government of West Bengal and the petitioner on 28th October, 1993, it was decided that 500 to 520 persons who are the land losers category will be appointed and the District Magistrate, Bankura, was authorized to process the panel from amongst land losers based on the criteria fixed by the petitioner. In between 24th April, 1991 to 28th April, 1995, the petitioner entered into a contract with five different contractors for the purpose of arranging supply of water in the project as temporary arrangement, till the development of permanent infrastructure. On 1st September, 1996, an

agreement was entered with the labour contractors for providing water by operating pumps and about 18 labourers were engaged by the labour contractors for operation of 14 pumps which were installed as a temporary measure till the completion of permanent water supply system for Damodar River. The petitioner has made all the payments to the labour contractors in terms of the agreement.

4. The labourers of the contractors have filed a writ petition before this Court being C.O No. 17150 (w) of 1996 before this Court for their absorption on permanent basis as pump and valve operator. This Court had disposed of the writ petition by an order dated 13th December, 1996 directing the petitioner to maintain status quo as regard the service of the labourers till the proceeding under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 was disposed of by the State Government. Being aggrieved with the said order, the petitioner has preferred an appeal being FMAT No. 4311 of 1996 and the Hon'ble Division Bench had set aside the order passed by this Court and remanded the matter back for fresh consideration and directed to maintain status quo for two weeks.
5. After remand, this Court had disposed of the writ application after exchange of pleadings on 29th November, 1999 wherein this Court directed the petitioner to frame a Scheme so that all the persons including the writ petitioners can be absorbed and employed in such posts with the utmost expedition. Till such absorption is made, status quo shall be maintained. Being aggrieved with the order passed by this

Court, the petitioner had preferred an appeal. During the pendency of the appeal, the Government of India has issued a Notification dated 28th February, 2001 under sub Section 1 of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 wherein it prohibits the employment of contract labour in the job or works specified in the establishments of MTPS of Damodar Valley Corporation and its offices situated in the residential colony area at MTPS with immediate effect from the date of publication of Notification in the Official Gazette.

6. The Appellate Court had disposed of the appeal on 14th March, 2002 by passing the following order:

“Therefore, keeping in mind all the pleas of both the parties, we confirm the order of the learned Single Judge to the extent that a panel of the land-losers along with these petitioners be prepared by the Damodar Valley Corporation and the D.V.C. may consider them for giving jobs subject to the availability of jobs in their project. However, till it is done, we cannot allow the interim order of status quo by the learned Single Judge to continue. The order directing maintenance of status quo as directed by the learned Single Judge is vacated.”.... The authorities may also kept in their view the notification of the Central Government dated 28th February, 2001 and the judgement of the Supreme Court in Steel Authority of India Limited and another Vs. National Union Waterfront Workers and others reported in (2001) 7 SCC 1.”

7. The petitioner has also challenged the said order before the Hon’ble Apex Court but the same was also dismissed. After the order passed by the Hon’ble Division Bench dated 14th March, 2002, the petitioner has not allowed the private respondents to perform their work with effect

from 15th March, 2002 and have also not authorized to remain in MTPS.

8. On 6th May, 2003, the Assistant Labour Commissioner has issued notice to the petitioner directing the petitioner to pay the dues payable to the private respondents. In the said letter, it is mentioned that the private respondents were found working in the pump house on 10th April, 2003. The petitioner by a letter dated 18th August, 2003 informed the Assistant Labour Commissioner that the private respondents are not working in the pump house after the order passed by the Hon'ble Division Bench dated 14th March, 2002 as the Hon'ble Court vacated the order of status quo and requested to withdraw the said notice for payment of wages. The Labour Inspector has again issued a letter dated 11th July, 2003 directing the petitioner to pay the arrears of wages.
9. The Hon'ble Division Bench by an order dated 14th March, 2002 categorically held that till the consideration of giving jobs in the project by the petitioner the order of status quo passed by this Court cannot be allowed to continue and the Hon'ble Division Bench has vacated the order of status quo. The impugned notice wherein the Assistant Labour Commissioner has directed the petitioner to pay the arrears in the said letter, it is mentioned that on inspection, it was found that the private respondents are engaged in the pump house but the petitioners have categorically denied the said contention of the Assistant Labour Commissioner. Neither the official respondents nor the private respondents have filed any document or evidence to say that the private

respondents were engaged by the petitioner after the order of Status quo vacated by the Hon'ble Division Bench.

- 10.** Inspite of service of notice upon the official respondents and after publication of notice in the Bangla News Paper neither the official respondents nor the private respondents have appeared in the matter. There is no document on record that the private respondents were engaged by the petitioner after the order of status quo vacated by the Hon'ble Division Bench on 14th March, 2002. It is not the case of the respondents that the private respondents have reported to the office of the labour commissioner for non-payment of wages. If at all on inspection, it was found that the private respondents were performing their duties and the petitioner has not paid wages, the office of the Labour Commissioner ought to have initiated a proceeding before issuance of impugned notice but on record, there is no documents to show that the respondent authorities have initiated any proceeding against the petitioner or any opportunity of hearing was provided to the petitioner before issuance of direction for payment of wages.
- 11.** It is impossible for this Court to rely upon the impugned notice issued by the Assistant Labour Commissioner dated 6th May, 2003 as there is no evidence that the Private respondents were engaged by the petitioner even after the order of Status quo vacated by the Hon'ble Division Bench.

12. In view of the above, the communication dated 6th May, 2003 issued by the Assistant Labour Commissioner, Bankura and the communication dated 11th July, 2003 issued by the Labour Inspector, Bankura are set aside and quashed.

13. WPA No. 16561 of 2003 is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)