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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.20791 of 2022
and
W.M.P.Nos.19864 & 19866 of 2022

M.Prakash

Vs.

.. Petitioner

1.The Executive Director,
CMWSS Board,
No.1, Pumping Station Road,
Chindadripet,
Chennai – 600 031.

2.The Commissioner,
Corporation of Chennai,
Chennai.

3.The Divisional Engineer – III,
CMWSS Board, Area – III,
Madhavaram,
Chennai.

4.The Area Engineer – III,
CMWSS Board, Area III,
Madhavaram,
Chennai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India



praying to issue a Writ of Certiorari, calling for the records pertaining to the demand notice dated 04.07.2022 in Letter No.Se.Ku.Va/Part-III/Special/03/2022-23 issued by the 4th respondent and to quash the same.

For Petitioner	.. Mr.B.Janakiram
For R1, R3 & R4	.. Mr.K.Subramani, Standing Counsel.
For R2	.. Mr.D.B.R.Prabhu, Standing Counsel.

ORDER

This Writ Petition has been filed in the nature of a Certiorari seeking records relating to demand notice dated 04.07.2022 in Letter No.Se.Ku.Va/Part-III/Special/03/2022-23 issued by the 4th respondent, Area Engineer – III, CMWSS Board, Area III, Madhavaram, Chennai and to quash the same.

2.In the affidavit filed in support of the writ petition, it had been stated that petitioner is a contractor and was placed with the work order of outsourcing services of O&M of sewer system maintenance using department machineries. It is contended that the petitioner had employed two persons namely Nelson and Ravikumar for the purpose of clearing the



block sustained in the sewerage system. At that time, both the employees died due to poisonous gas emanating from the sewerage and therefore, by the said notice, the petitioner had been directed to pay a sum of Rs.15/- Lakhs to the family members of each one of the two deceased person, failing which it was contended that the amounts would be recovered from the outstandings payable to the petitioner herein.

3.It is seen from the records that the petitioner had obtained a license from the licensing authority in accordance with the Tamil Nadu Contract Labour (Regulation and Arbitration) Rules. A copy of this license had been enclosed along with the other documents in the writ petition. It is dated 12.01.2022. The said license indicated that the petitioner was included in the list of registered contractors of the Board namely, the Chennai Metropolitan Water Supply and Sewerage Board for the year 2022 – 2023. Various requirements as stipulated in the license had also been indicated. Thereafter, the petitioner was granted the contract to attend “300 mm dia damaged sewer main at Muthumariamman Koil Street near public toilet in Depot 31 Area – III”. It is contended by the petitioner in his affidavit that the petitioner had not employed the two individuals who had unfortunately died.



It is contended that they did not die due to suffocation of poisonous gas. It is also further stated that one of them Nelson got struck while opening the man hole and while trying to save him, the other individual Ravikumar also got struck and they fell down. They were taken to hospital and then died. It had been very specifically contended by the petitioner that he did not employ the two individuals and that they were employed by the Corporation. It had been contended that show cause notice had been unlawfully issued to the petitioner. It is under those circumstances that the writ petition has been filed.

4.A counter affidavit has been filed on behalf of the 1st, 2nd, 3rd and 4th respondents in effect by the Chennai Metropolitan Water Supply and Sewerage Board wherein, it had been contended that the petitioner was granted the contract to attend “300 mm dia damaged sewer main at Muthumariamman Koil Street near public toilet in Depot-31, Area – III”. It was stated that the work was completed on 15.06.2022. But however, even after completion of the work there was no free flow in the sewerage system at Muthumariamman Koil Street. Therefore, the petitioner was instructed to examine the completion of the work. It had been stated that on 28.06.2022,



the supervisor of the petitioner, Vineesh and his labourers namely, Nelson and Ravikumar had opened the man hole lid at Muthumariamman Koil Street, near Amma Unavagam during the lunch time. It was contended that this was done without the knowledge of the CMWSS Board. While opening the man hole from outside, Nelson who was standing on the road fell down into the man hole. Another labourer Ravikumar tried to rescue him and also got into the man hole. Both of them unfortunately suffered injuries. Nelson died immediately and Ravikumar died after few days.

5.In this connection, a complaint was received from the Village Administrative Officer and FIR in Crime No.527 of 2022 had been registered for the offences punishable under Sections 338 and 304 (A) IPC by the Madhavaram Police Station. The named accused were Prakash and Vineesh.

6.The learned counsel for the petitioner pointed out the complaint wherein, it had been stated that the two individuals had died owing to suffocation and inhalation of poisonous gas. The learned counsel therefore, questioned the correctness of the complaint lodged.

7.In the counter affidavit, it had been further stated that in accordance



with the GO.Ms.No.83/MAWS Department dated 07.06.2022, compensation of Rs.15/- Lakhs for the family member of each victim had to be paid by the contractor. In the impugned notice, it had been stated that the petitioner should pay the said amount of Rs.15/- Lakhs to the family members of each one of the two victims, failing which the amount would be paid by the department and subsequently, deducted from the amounts due and payable to the petitioner.

8.In the counter affidavit, it had been very specifically stated that Nelson and Ravikumar were employees of the petitioner and that Vineesh was the supervisor. It had been therefore stated that notice had been properly issued, since the board had paid the sum of Rs.15/- Lakhs to the family members of the deceased and had sought recovery of the said amount from the petitioner herein. It had therefore been contended that the writ petition should be dismissed.

9.Heard arguments advanced and perused the records.

10.The petitioner is a registered contractor with the CMWSSB. He



had been given the contract to ensure that there is no blockage of sewerage in Muthumariamman Koil Street 'near the public toilet'. It had emanated during the course of argument in Muthumariamman Koil Street, there are three separate man holes, also called machine holes. One is near Amma Unavagam. The other is near the public toilet and the third is near the Anganvadi. One of the main work entrusted to the petitioner is to replace damaged pipes in the sewerage, if required. But the petitioner also has the duty to ensure that there is no blockage, since the damaged pipe would also cause blockage of the sewerage. They are both interconnected. The petitioner had completed the said work on 15.06.2022. But however, there was no free flow in the sewerage system in the Muthumarimman Koil Street. The petitioner was therefore once again called upon to examine the reason for the stagnation of the sewerage and to ensure that there is no block in the sewerage system.

11.It is the case of the respondent that the supervisor of the petitioner had unauthorizedly opened the man hole near Amma Unavagam. It is contended on behalf of the petitioner that to maintain the machine hole / man hole at Amma Unavagam no contractor had been appointed.



12.It is informed that the respondents would clear the blockage by two methods. They would get what is called a Jet Rod, which rod will enter into the sewerage system and find out at what point there is a block. There is also a second method wherein, the block is sucked out by using a sucker machine. Both these required water tankers with capacity of 6000 litres.

13.It is the case of the learned counsel for the petitioner that it is the respondents who operate both these machines namely, the jet rod and sucker machine. The petitioner has to only ensure that the pipelines which carries the drainage or sewerage are proper and if the pipelines are damage to rectify the same. In effect, it is contended that the petitioner would only do plumbing work.

14.But, it is a fact that there was a block in the drainage and that the petitioner was given the task to examine the block at Muthumariamman Koil Street near the public toilet and that he actually did the work on 15.06.2022, but that block continued and therefore, he was called upon once again to do the work on 28.06.2022.



15. On 28.06.2022, it is a fact that the machine hole / man hole at Amma Unavagam was opened. It is also a fact that two individuals were standing there near that place. One of them Nelson, had peeped into the hole to find out where the block was. He slipped and fell into the hole. The other individual Ravikumar tried to save him. He also slipped in and fell down. Nelson suffered injuries and died while being taken to the hospital. Ravikumar died after a few days. In this connection, it is a fact that FIR in Crime No.527 of 2022 had been registered, wherein, the petitioner and his supervisor Vineesh had been named as accused.

16. This Court can only render findings on probabilities and on the basis of affidavits filed. If the petitioner seeks a proper trial to be conducted about non-payment or payment of the compensation of Rs.30/- Lakhs and whether the respondents are entitled to deduct to the same from the bills payable to him, then, evidence has to be recorded. The Writ Court can only go according to what the affidavit and counter affidavit state. Both the affidavit and the counter affidavit point to one fact, namely, that the man hole at Amma Unavagam was opened, that the supervisor Vineesh was present, that two individuals Nelson and Ravikumar were present, that



Nelson fell down, suffered injuries and died while taking to the hospital and

Ravikumar tried to save him and he also fell down and died after few days.

17. On the basis of this calamity, in accordance with the provisions of the Prohibition of the Employment as Manual Scavengers and the Rehabilitation Act, 2013 and in accordance with G.O.Ms.No.83 MAWS Department dated 07.06.2022, compensation of Rs.15/- Lakhs has to be paid to the family member of those who died while doing work near or inside a man hole. Whether the two employees were employed by the supervisor and were under direct control of the petitioner or not is a question of fact which this Court cannot examine at this stage. The Court can only presume that since they were there and since the supervisor was also present, they were under the control of the supervisor of the petitioner.

18. In the impugned notice, it had been very clearly stated that several reminders were given to the petitioner to effect compensation to the deceased. The petitioner did not respond to any of those requests made by the respondents. The respondents had therefore paid the compensation to each one of the family members. They now claim that the petitioner to



reimburse the amount or that the amount would be deducted from the amounts due and payable to the petitioner for discharge of work as contractor under the respondents.

19. These are issues which can be examined only during the course of trial and this Court in this Writ Petition cannot interfere with the decision taken by the respondents either to pay the compensation or to recover it from the petitioner or cannot go into the fact whether the two deceased were employees of the petitioner or not employees and whether the petitioner is liable to pay them compensation or not to pay them compensation. These facts will have to be examined only during the course of trial and on the basis of affidavit and counter affidavit.

20. *Prima facie*, the respondents have a right to withhold the amounts of the petitioner herein and if the petitioner in later appropriate proceedings were to establish that the two individuals were not employees under him then he could seek refund of the amount withheld by the respondents. But one fact which the Court has to appreciate is that the family members have been compensated with Rs.15/- Lakhs each and they have not been made to



suffer in silence while all these legal proceedings were pending. It is now for the petitioner to workout his remedies. The respondents are at liberty to deduct the amounts due and payable to the petitioner herein and later the petitioner may establish in Court of law in appropriate proceedings about such correctness.

21. With the above observations, this Writ Petition stands dismissed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

16.12.2024

Index: Yes/No
Neutral Citation : Yes/No
Speaking order : Yes/No
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C.V.KARTHIKEYAN,J.



WEB COPY



14

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