



W.P.No.7312 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.7312 of 2024
and W.M.P.No.8179 of 2024

N.Swaminathan

.. Petitioner

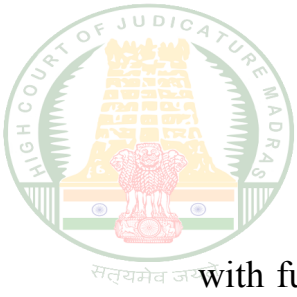
Versus

1. The General Manager,
Food Corporation of India, Regional Office,
No.8, Mayor Sathiyamoorthy Road,
Chetpet, Chennai - 600 031.

2. The Divisional Manager,
Food Corporation of India, District Office,
No.8, Mayor Sathiyamoorthy Road,
Chetpet, Chennai - 600 031.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Mandamus directing the 1st and 2nd respondents to pay a sum of Rs.28,39,926/- (Rupees Twenty Eight Lakhs Thirty-Nine Thousand Nine Hundred and Twenty Six only) pursuant to the work done under the Contract No.S&C/13/2/3/86, dated 05.08.1986 to the petitioner



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with future interest at the rate of 12% interest from the date of present Writ
Petition till the date of payment.

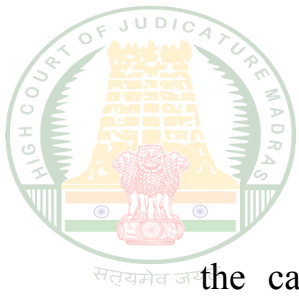
For Petitioner : Mr.C.Suraj

For Respondents : Mr.D.Baskar

ORDER

This Writ Petition is filed for a direction to the respondent Nos.1 and 2 to pay a sum of Rs.28,39,926/- pursuant to the work done under contract No.S&C/13/2/3/86, dated 05.08.1986 to the petitioner.

2. The case of the petitioner is that the petitioner is a contractor for transporting of essential commodities from the Railways. While so, when the petitioner has duly executed the contract and a certificate was also issued on 28.03.1989 duly expressing that the petitioner has performed the contract without any default whatsoever and that no demurrage or wharfage charges were incurred due to the delay or negligence on the part of the contractor and when the calculation sheet is also annexed thereto, it can be seen as per

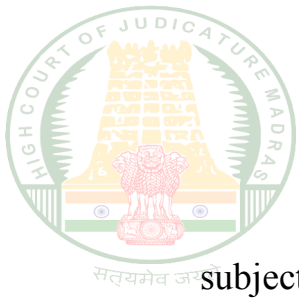


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the calculation sheet, a sum of Rs.5,09,641/- is deducted towards the demurrage or wharfage charges. These demurrage or wharfage charges, thereafter, were collected by the respondent Corporation from the Railways. The subsequent correspondences between the Railways and the respondent Corporation expressly reveal that atleast, a part of the amount i.e., Rs.2,08,760/- was actually received. Even the balance of the amount could have been received by the respondents, for which, the petitioner is not having any document.

3. Be that as it may, since some dispute arose between the partners of the petitioner firm, when they immediately approached the respondents, they issued a communication stating that only after the dispute between the partnership firm comes to an end, payments will be made. When the petitioner issued notice after the dispute came to an end, evasive replies that records are not available, are being made one way or the other. It is true that the petitioner had earlier filed Writ Petition with reference to the same



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subject matter in W.P.No.8213 of 2014, but, that was with a prayer to consider the representation. That was withdrawn. However, subsequently, part payment was made with reference to the security deposit. However, still the demurrage charges are not paid. Hence the Writ Petition.

4. The Writ Petition is resisted by the respondents by filing a counter-affidavit. It is the case of the respondents that the claim relates to the period 1987-1988 and there is huge delay and laches in filing the Writ Petition. In respect of the same cause of action, earlier, a Writ Petition is filed and the same was withdrawn without any liberty and therefore, the second Writ Petition is not maintainable.

5. The case of the respondents, on merits, is that the records are not available with reference to the impugned claim. Therefore, the respondents are not able to come to a conclusion one way or the other and when the liability is not admitted, the same cannot be ordered by way of the Writ



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Petition and the respondents have to file a suit establishing their claim and the limitation period is long over for filing the suit.

6. Heard *Mr.C.Suraj*, learned Counsel for the petitioner and *Mr.D.Baskar*, learned Counsel for the respondents.

7. The learned Counsel for the petitioner, taking this Court through the relevant records, would submit that from the certificate, dated 28.03.1989, it is clear that there was no fault on behalf of the petitioners. The subsequent legal notices as well as the individual letters clearly portray that the petitioner has been consistently making the demands. From the letter of the Railways, dated 15.07.1991, it would be clear that the Railways considered the aspect and has refunded portions of the demurrage and wharfage charges upto 70%, 90% for the relevant periods. The same is expressly acknowledged that atleast a sum of Rs.2,08,760/-, is already received by them. The subsequent correspondences, including the petitioner's letter



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addressed to Senior Regional Manager, dated 19.05.2009, is relied upon.

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The learned Counsel submits that the filing of the earlier Writ Petition cannot be a bar in view of the prayer that was made and further part payment is also made. When the respondents, being the authorities under the Welfare State, are sitting over the petitioner's money, they cannot be permitted to take such pleas, especially, when the liability is admitted and when the petitioner is not at fault.

8. Per *contra*, the learned Counsel for the respondents, by relying upon the correspondences, more specifically with the I.O note, dated 06.02.2011, would submit that even as early as in the year 2011, it was categorically held by the respondent Corporation that even though some copies are received from the Railways, there are no details or confirmation available about the refund that is effected to the contractor. In the absence of the same, the respondent authorities are unable to confirm the balance outstanding and pay out the same. Even otherwise, the authorities have



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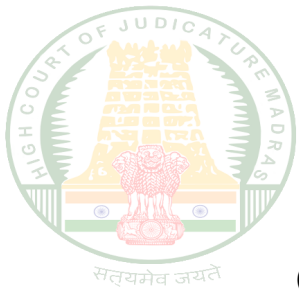
taken pains to verify the records and it was found that the security deposit was liable to be refunded, the said amount was refunded.

9. In reply thereof, even for the refunding of the security deposit, after a belated period, no interest was paid.

10. I have considered the rival submissions made on either side and perused the material records of the case.

11. In this case, I am unable to come to the rescue of the petitioner for the following reasons:-

(i) When the respondents are denying the liability based on the non-availability of records, even though it is the duty of the respondents to maintain the records, in this case, it can be seen that the delay was due to the reason attributable to the petitioner that is there was dispute among the partners and on account of the same, the delay happened.



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(ii) Even though there are some documents that were produced to point out that a portion of the demurrage charges might have been refunded from the Railways, as contended by the respondents, there is no document which categorically or expressly admits the liability. Therefore, on merits, this Court cannot now rule that the liability is an admitted liability and direct the respondents to make the payment.

(iii) When the petitioner also filed a Writ Petition in respect of the self-same cause of action and chose to withdraw the same without any liberty, merely because subsequently, the security deposit was refunded, that will not once again reopen the cause of action which was already closed by withdrawal of the Writ Petition.

(iv) Even the dispute between the parties got over as early as on 2009 and the legal notices started to have been issued thereafter, only now, in the year 2024, the second Writ Petition was filed and the time lapse is also huge and therefore, I uphold that the contention of the respondents that there is also delay in latches in filing the Writ Petition.



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12. For all the above said reasons, I am unable to countenance the submissions made by the learned Counsel for the petitioner. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28.02.2025

Neutral Citation : no
grs

To

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No.8, Mayor Sathiyamoorthy Road,
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