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W.P.(MD)Nos.19674 & 19675 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON 28.11.2024	PRONOUNCED ON 06.01.2025
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CORAM:

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)Nos.19674 & 19675 of 2016
and W.M.P.(MD).Nos.14185 & 14186 of 2016

John Britto,
Managing Director,
M/s.Britto Sea Foods and Exports,
C-1, SIPCOT, Tuticorin.

... Petitioner in both W.Ps

Vs

1.The Secretary,
Government of India,
Ministry of Social Justice,
Room No.740, A-Wing,
Dr.Rajendra Prasad Road,
New Delhi – 110 001.

2.The Secretary,
Government of Tamil Nadu,
Municipal Administration & Water
Supply Department.
Chennai – 600 009.

3.The Commissioner,
Thoothukudi Corporation,
Thoothukudi.

... Respondents in both W.Ps

4. Muniammal ... Respondent in W.P.(MD).No.19764 of 2016



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4. Packiya Selvi ... Respondent in W.P.(MD).No.19765 of 2016

5. The Inspector of Police,
SIPCOT Police Station,
Thoothukudi.

... Respondent in both W.Ps

(R5 is suo motu impleaded vide Court order dated 21.11.2024 in W.P. (MD).Nos.19674 & 19675 of 2016)

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari by calling for the records pertaining to Na.Ka.H1/566-1/2014, dated 21.07.2016 and consequential notice Na.Ka.H1/566-1/2014 dated 26.08.2016, issued by the third respondent and quash the same as illegal.

In both W.Ps.

For Petitioner : Mr.A.W.D.Tilak

For Respondents : Mr.s.Jeyasingh for R1
CGSC

: Mr.R.Suresh Kumar for R2
Additional Government Pleader

: Mr.N.Ananda Kumar for R3
Standing Counsel

: Ms.M.Asha for R5
Government Advocate (Crl.Side)

COMMON ORDER

These Writ Petitions are filed by the employer during whose period of engagement there had occasioned the death of the employees.



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2. Heard Mr.A.W.D.Tilak, learned counsel for the petitioner, Mr.s.Jeyasingh, learned Central Government Standing Counsel appearing on behalf of the first respondent, Mr.R.Suresh Kumar, learned Additional Government Pleader appearing on behalf of the second respondent, Mr.N.Ananda Kumar, learned Standing Counsel appearing on behalf of the third respondent and Ms.M.Asha, learned Government Advocate (Crl.Side) appearing on behalf of the fifth respondent.

3. The learned counsel for the petitioner would submit that the petitioner is a company engaged in the export of sea foods. The common drainage channel runs outside the factory premises not only for the petitioner industry, but also for other industries. As there was a blockage in the common channel, the SIPCOT engaged contract workers for clearing the blockage. The engagement of such workers had not been made at the behest of the petitioner's company, but at the end of the SIPCOT for which the petitioners have no role to play.

4. While that being so, it had come to the knowledge of the petitioners that two of the workers so engaged had died after unsuccessfully being



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treated at the Government hospital. He would submit that the said workers were not employed by the petitioner company and therefore, they cannot be termed to be employees of the petitioner. Even in a criminal case, that was initiated by the Inspector of Factories before the Chief Judicial Magistrate, Thoothukudi, the petitioner stood acquitted, as there was no proof that the petitioner had engaged the services of the deceased employees. The legal heirs of the victims namely the private respondent herein had also filed a case under the Workmen Compensation Act claiming compensation. However, under the impugned notice, the third respondent herein had called upon the petitioner to pay a sum of Rs 10,00,000/- in each of the Writ Petitions. He would submit that the reference to the earlier proceedings, no notice was issued to the petitioners to ably defend himself and therefore, the impugned notices would have to be set aside.

5. Countering his arguments, learned counsels appearing on behalf of the respondents would submit that pursuant to the orders directing payment of compensation in an earlier round of litigation and also liberty granted by the Hon'ble Apex Court in its order dated 17.02.2006 made in SLP.No. 15888 of 2016, the present notices have been issued to the petitioner calling



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upon him to make good the payment made by the Department, pursuant to the direction issued by this Court. However, without responding to the same, the petitioner had approached this Court by filing this instant Writ Petitions. Liberty had been given by the Hon'ble Apex Court for recovery of the amount paid by the third respondent in favour of the fourth respondent from the petitioners in the manner known to law. Therefore, this Court pursuant to this Writ Petition cannot interdict the right of the third respondent in recovering the said amount. It is for the petitioner to substantiate his claim, pursuant to the notices impugned herein. He would further submit that the notices of enquiry can only to set aside on lack of jurisdiction or ultra virus a Statute or violation of a constitutional right. In the present case, he would submit that none of the grounds would be available to the petitioner. Hence, he would seek dismissal of the Writ petitions.

6. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials placed on record.



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7. What had been impugned in these Writ Petitions are notices issued by the third respondent, dated 21.07.2016 and 26.08.2016 calling upon the petitioner to answer as to why the said sum of Rs.10,00,000/- could not be recovered from the petitioner. It is also an admitted fact that the petitioner through their counsel had submitted a detailed objections by his communications dated 03.09.2016. Even before any orders could have been passed, the petitioner had approached this Court under these instant Writ Petitions.

8. It is to be noted that the fourth respondent in each of the Writ Petitions have also approached the Authority under the Workmen Compensation Act against the petitioner for grant of compensation. No details have been placed before this Court as to what was the fate of such application. The petitioner had also been acquitted under the complaint registered by the Inspector of Factories for the alleged incident.

9. As rightly pointed out by the learned counsel for the respondents that what has been the subject matter of challenge is only the notices calling upon the petitioner to make good the payment, pursuant to the direction



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issued in the earlier proceedings. The Hon'ble Apex Court had also permitted the third respondent for recovery of the said amount for the tortfeasor concerned in the manner known to law. Notice had also been replied to by the petitioner. Therefore, it cannot be said that the notices lack authority nor does the notice is in violation of any statutory or constitutional provisions. Therefore the said impugned notices cannot be said to be bad in law. Since the petitioner had already submitted his objections and considering the facts that it is almost more than a decade that the incident had occurred, the petitioner shall make further statement to the third respondent substantiating his claim and the third respondent after giving an opportunity of hearing to the petitioner shall pass a detailed order on the liability of the petitioner.

10. This Court sitting under Article 226 of the Constitution of India cannot entertain the claim made by the petitioner as regard to the employment of the third parties or to the nature of the incident that had occurred which had led to the payment of compensation to the legal heirs of the victims of the accident.



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11. For the aforesaid reasonings and findings, I do not find any infirmity in the impugned notices and in fine, these Writ Petitions stands dismissed. However, the Writ Petitioner is at liberty to make a further representation to the third respondent, within a period of four weeks from the date of receipt of a copy of this order and thereafter, the third respondent after providing an opportunity of hearing shall pass appropriate orders on merits and in accordance with the law. The same shall be exercised by the third respondent within a period of eight weeks thereafter.

12. In fine, these Writ Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition are closed.

06.01.2025

Gba
Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No



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To

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K . KUMARESH BABU, J.

Gba

A Pre-Delivery Order in
W.P.(MD)Nos.19674 & 19675 of 2016
and W.M.P.(MD).Nos.14185 & 14186 of 2016

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