

(2014) 12 MAD CK 0382

Madras High Court

Case No: Writ Petition Nos. 6261 to 6268 of 2014 and M.P. No. 1 of 2014

Adapala Dayakara Reddy

APPELLANT

Vs

The Principal Secretary to
Government

RESPONDENT

Date of Decision: Dec. 9, 2014

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 31(7), 34
- Constitution of India, 1950 - Article 226

Hon'ble Judges: V. Ramasubramanian, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.

All the petitioners herein are engaged in the business of supplying cottons to various Co-operative Spinning Mills. The Co-operative Spinning Mills such as the Vellore District Co-operative Spinning Mills, Villupuram District Co-operative Spinning Mills and Pudukottai District Co-operative Spinning Mills, to which the petitioners supplied cotton, became sick units and were declared as Relief Undertakings by the State Government under Section 3 of the Tamil Nadu Relief Undertakings (Special Provisions) Act, 1969. Consequently, the Government of Tamil Nadu framed a Scheme of settlement of the claims of suppliers against these Mills. Under the Scheme, three options were given. The first option was that the supplier could accept 60% of the dues as full and final settlement and the same would be paid in three equal monthly instalments on or before 31.03.1999. The second option was for the supplier to continue to supply fresh cotton against full payment with 10% to be adjusted against the old dues prior to 01.07.1999. The third option was to wait till the Mills became financially sound so that the entire dues could be paid.

2. The claim of the petitioners in these writ petitions is that they voted for the first option, but the Respondents failed to make full payment of the 60% amount in three monthly instalments on or before 31.03.1999. It appears that an initial instalment of 20% was paid. The next instalment of 40% was paid belatedly.

3. Therefore, a person by name Kannaiah Raj, a social worker filed a Public Interest Litigation in W.P. No.12316 of 1999 on the file of this Court. In the said writ petition, an interim order was passed. One of the suppliers also filed a writ petition in W.P. No.6898 of 2001. In the said writ petition, the Government produced a set of guidelines formulated for payment. Based on the said guidelines, the writ petition filed by the individual supplier in W.P. No.6898 of 2001 was dismissed. However, the supplier filed a writ appeal in W.A. No.1642 of 2001.

4. The writ appeal filed by the supplier in W.A. No.1642 of 2001 was taken up by the Division Bench along with the Public Interest Litigation W.P. No. 12316 of 1999 filed by Kannaiah Raj. Finding that there is a controversy about the payment due to each of the suppliers and that it cannot be resolved in a writ petition, the Division Bench of this Court appointed an advocate by name Mr. Vedantham Srinivasan, as an Arbitrator to decide how much is due, to whom and by whom. The operative portion of the order of the Division Bench dated 04.01.2005 is as follows:-

"2. It appears that the formers in Andhra Pradesh and Tamil Nadu had supplied cotton to the respondent-Mills, but their grievance is that they have not received payment for the same. There is a controversy about the payment due to them and hence we are of the opinion that this court under Article 226 cannot properly decide this controversy. We would ordinarily relegate the petitioners to the alternative remedy of filing a civil suit, but since the matter has been pending very long and since it is alleged that large number of farmers of Andhra Pradesh and Tamil Nadu are affected, we are of the opinion that the controversy about how much is due, to whom and by whom, should be decided by an Arbitrator.

3. With the consent of the parties, we appoint Mr. Vedantham Srinivasan, learned Advocate, as Arbitrator in this case. The parties shall appear before him on the date convenient to him and make their claim statements and he is requested to decide the controversy expeditiously. The Arbitrator's fees will be fixed as decided upon by the parties. The matter is adjourned till the receipt of the report from Mr. Vedantham Srinivasan. The respondent shall make payment in accordance with the decision of the Arbitrator within a month of that decision."

5. The parties appeared before the learned Arbitrator and the learned Arbitrator passed an Award on 02.05.2005. The operative portion of the Award of the learned Arbitrator is as follows:-

"7. The respondents shall be jointly and severally liable to pay the award amount within 30 days from this date as per the directions of the Hon"ble High Court. Any failure thereof, would entitle the claimant to further interest at the rate of 18%

under Sec. 31(7) of the Arbitration and Conciliation Act, 1996 till the actual date of payment. The respondents are liable to pay the fees to the arbitrator, which has been agreed at Rs.30,000 per hearing. Since the respondents are already in default in payment of their share of the arbitration fees, they are directed to pay the fees and Rs.5,000 towards secretarial and other expenses forthwith. The respondents are also directed to pay the costs of the claimants incurred in arbitration proceedings, which is quantified at Rs.25,000.

8. Total sum awarded to the Claimant is Rs.2,31,27,382.48 together with pendente lite interest at 18% p.a from the date of the claim till the date of the award."

6. As against the Award of the learned Arbitrator, the Government of Tamil Nadu and one of the Mills filed a petition in O.P. No.532 of 2005 on the file of this Court under Section 34 of the Arbitration and Conciliation Act, 1996. A learned Judge of this Court, by a judgment dated 27.01.2006 dismissed the petition.

7. Similarly, the other Mills filed yet another petition in O.P. No.533 of 2005. The same was also dismissed by another learned Judge by a separate judgment dated 05.01.2007.

8. As against the judgment of the learned Judge in O.P. No.532 of 2005 dated 27.01.2006, an appeal was filed by the State as well as one Mill, in O.S.A. No.56 of 2006. In the appeal, the Division Bench was concerned about two issues namely: (1) the determination of the amount payable to each of the suppliers; and (2) the liability fixed upon the Government to satisfy the Award, though the liability was primarily that of the Co-operative Spinning Mills.

9. After holding on the first question that the determination of the amounts payable to the individual suppliers, based upon the evidence before the Arbitrator cannot be interfered with, the Division Bench went on to hold on the second question that the Government cannot be held liable to make payment. Consequently, that portion of the Award which imposed the ultimate liability upon the Government alone was set aside by the Division Bench.

10. As against the judgment of the Division Bench, a Review Application was filed by Kancheepuram Kamatchiamman Co-operative Spinning Mills Limited along with an application to condone the delay. When the Review Application was pending, a batch of Original Side Appeals also came to be filed in O.S.A. Nos. 71 of 2007 and 167 to 173 of 2007, challenging the decision in O.P. No.533 of 2005 by which the challenge to the Arbitration Award made by the other Co-operative Mills came to be dismissed. Therefore, all the appeals were tagged together and taken up for disposal by another Division Bench. By a common order dated 12.04.2013, the Division Bench dismissed all the appeals. But while doing so, the Division Bench had to address one argument. That argument related to the number of persons who were entitled to the benefit of the Arbitration Award. That argument was dealt with by the Division Bench in para 11.7 of its judgment which reads as follows:-

"11.7. It has been contended by the learned Additional Advocate General that the list furnished in the Public Interest Litigation filed would contend only about 122 cotton merchants alone, whereas, the claim petition includes 203 persons. The learned Arbitrator has considered the said issue and rejected the same on the ground that the appellants made the partial payments earlier to 203 persons and therefore, there is no dispute regarding the identity of the persons. Further, it is not as if those persons are not entitled to receive the award amount. In other words, while there was transaction between the parties, the orders passed by this Court earlier cannot be confined to 122 persons alone. If it is restricted to only 122 persons alone, then it would not be a Public Interest Litigation. All the private respondents are suppliers of cotton and identically placed. They also came under the Scheme. Hence, the submissions made by the learned Additional Advocate General on this score is also rejected."

11. After the disposal of all the appeals, the Government issued an order in G.O. Ms.No.169, Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.7.2013, sanctioning a sum of Rs.2055.11 lakhs, for eventual payment to the persons in whose favour there was an Arbitration Award.

12. After perusing the copy of the said order, the petitioners in these writ petitions made representations for payment of the amounts due to them. Since their representations were not considered, the petitioners have come up with the above writ petitions seeking the issue of a writ of mandamus to direct the Respondents to pay the amounts respectively due to them together with interest, as per the Government Order dated 25.07.2013.

13. I have heard Mr.R.Thiagarajan, learned Senior Counsel for the petitioners, Mr.P.H. Arvinth Pandian, learned Additional Advocate General, assisted by Mr.R.Vijayakumar, for the Government and Mr.A.S. Thambuswamy, learned counsel for the Co-operative Mills.

14. The main ground on which the petitioners seek a direction to the Respondents to make payment of the dues are: (1) that all the suppliers who were similarly placed, have been granted the benefit and hence the same cannot be denied to them; (2) that the respective Co-operative Mills had admitted their liability and hence the same is not in doubt; (3) that after the Arbitration Award had attained finality, the Respondents cannot escape from the liability.

15. However, the stand taken by the Government, as projected by Mr.P.H. Arvinth Pandian, learned Additional Advocate General is that as a matter of fact, the cases of the petitioners herein were not covered by the Arbitration Award. According to the learned Additional Advocate General, the Claim Petition filed before the Arbitrator, covered only the cases of 122 suppliers. But by virtue of the order passed by the Division Bench of this Court, the Government sanctioned payment to 193 suppliers. The petitioners herein were not part of any of the previous proceedings. Therefore,

it is claimed by the learned Additional Advocate General that the petitioners cannot claim any amount.

16. In response, it is contended by Mr.R.Thiagarajan, learned Senior Counsel for the petitioners that the very reference to Arbitration was made by a Division Bench of this Court in pursuance of an order passed in a Public Interest Litigation. Therefore, the learned Senior Counsel contends that all persons to whom monies were admittedly due, were entitled to the benefit that flowed out of the Public Interest Litigation.

17. I have carefully considered the above submissions.

18. A careful look at the affidavit filed by K.Kannaiah Raj in the Public Interest Litigation W.P. No.12316 of 1999 would show that he took up the cause of only 122 cotton merchants. In paragraph 7 of the affidavit in support of the Public Interest Litigation, he had referred to the amount due to 122 cotton merchants from 7 Co-operative Spinning Mills. Para 7 of the affidavit in support of the Public Interest Litigation reads as follows:-

"7. I submit that the following amounts towards purchase of cotton from the various cotton merchants shown in the Annexure A to G are due from Respondents 4 to 10 mills:

A total number of 122 cotton merchants have supplied cotton to the above mills."

19. Even in the prayer made in the Public Interest Litigation, the writ petitioner prayed only for the issue of a writ of mandamus to direct the Respondents to take steps to make payments to the parties shown in Annexure A to G to the writ petition.

20. After the Public Interest Litigation was disposed of referring the parties to Arbitration, the writ petitioner K.Kannaiah Raj filed a Claim Petition before the Arbitrator. In the Claim Petition, what was claimed was a direction to the Respondents to pay the balance 40% of the principal amount to those cotton suppliers who had exercised the first option to take 60%. There was also a prayer for payment of interest on the said amount. In the Annexure to the Claim Petition, the claimant K.Kannaiah Raj mentioned the names of 17 suppliers who supplied to Kancheepuram District Co-operative Spinning Mills, 16 suppliers in relation to Villupuram District Co-operative Spinning Mills, 10 suppliers in relation to Vellore District Co-operative Mills, 4 suppliers in relation to Missecior Co-operative Spinning Mills, 19 suppliers in relation to Madurai District Co-operative Spinning Mills, 18 suppliers in relation to Karur Co-operative Spinning Mills and 21 suppliers in relation to Pudukkottai District Co-operative Spinning Mills.

21. If the number of suppliers to whom each of those 7 Mills owed money, as indicated in the Annexure to the claim petition are totalled, it comes to only 105. Nevertheless, the Arbitrator proceeded to consider the claim petition as one relating

to 122 cotton suppliers in view of the fact that originally the Public Interest Litigation was filed on behalf those 122 suppliers. It appears from the first paragraph of the Arbitration Award that even before the Arbitrator, the Public Interest Litigation petitioner filed only a list of 122 cotton suppliers.

22. Paragraph 4 of the Arbitration Award also shows that when the claimant filed a claim statement on the date of first hearing, he gave only a list of 122 suppliers. It appears that during the pendency of the Arbitration proceedings, one of the 7 defaulting Mills, paid the amounts due to the suppliers in full. Therefore, in paragraph 6(h) of the Award, the Arbitrator allowed some of the claimants to withdraw their claims. It is only in respect of the remaining persons that the Arbitrator passed an Award towards the end of para 6(b), directing payments to be made as indicated in Annexure-I to the Award. In Annexure-I to the Award, the Arbitrator has given the names of 17 suppliers in respect of Kanchipuram Sri Kamatchiamman Co- operative Spinning Mills, 16 suppliers in respect of Villupuram District Co- operative Spinning Mills, 10 suppliers in respect of Vellore District Co- operative Spinning Mills, 19 suppliers in respect of Madurai District Co- operative Spinning Mills, 18 suppliers in respect of Karur District Co-operative Spinning Mills and 21 suppliers in respect of Pudukkottai District Co-operative Spinning Mills. The figure actually totals to only 101. This is in view of the fact that some people had received payment in the meantime from one mill.

23. Therefore, it is clear that both the Public Interest Litigation as well as the Arbitration Proceedings covered only the cases of 122 suppliers. But unfortunately what happened later was that Government took into account 92 suppliers, in addition to the 101 in whose favour the Award was passed. This took the total to 193. When the Government wanted to retract and stick to the Award, the Division Bench held that after having passed an order, the Government should not retract. This was in view of the fact that those 92 persons had already taken 60% of the amount in advance.

24. From the facts narrated above, it will be clear: (1) that the original Public Interest Litigation covered only 122 suppliers; (2) that the Claim Petition filed before the Arbitrator covered only 122 suppliers; (3) that the Annexure to the Arbitration Award covered only 101 suppliers; and (4) that the Government order covered an addition of 92 suppliers.

25. The petitioners herein had admittedly taken 60% of the amount under the first option. It is true that the entire 60% was not paid within the time stipulated in the Scheme for settlement. Nevertheless, they received 60%, beyond the deadline fixed by the Government. The period of supply was about 20 years ago. After allowing the matters to drift away for about 20 years, the petitioners cannot jump into the bandwagon, after finding that an additional list of 92 persons are getting a relief under the Government Order. Therefore, I find that the petitioners are not entitled to the reliefs prayed for. Hence, the writ petitions are dismissed. There will be no

order as to costs. Consequently, connected miscellaneous petitions are closed.