
(2011) 12 MAD CK 0299

In the Madras High Court

Case No : Writ Petition No. 24592 of 2011

K.V. Venkatapathi (deceased), K.V. Sundararajan, S.R.
Sundar and Vanaja Venkatapathi

APPELLANT

Vs

Chennai Metropolitan Water Supply and Sewerage Board

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Citation : (2012) 2 CTC 405

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : N. Vijay Narayan, for Mr. A. Kannappan, for the Appellant; Poonam R. Chopra, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar

1. The prayer in the writ petition is to issue a writ of mandamus directing the respondents to pay a sum of Rs.62,50,815/- to the first Petitioner, Rs.10,41,777/- to the second petitioner and Rs.10,41,777/- to the third petitioner being the Fee bill amount with interest at 12% p.a. in terms of the bill dated 13.7.2010 as per the break up of principal and interest as shown in paragraph 12 with future interest.

2. The first petitioner was the former learned Advocate General of State of Tamil Nadu and Senior Counsel of this Court and petitioners 2 & 3 are learned counsels practising before this Court. The respondents engaged the first petitioner as Senior Counsel in arbitration proceedings on a claim raised by Gammon STG Joint Venture, Mumbai against the respondents. The said Gammon STG Joint Venture, Mumbai raised a claim of Rs.55.79 crores together with interest at 12% per annum from 15.05.2005 due to escalation of steel cost in the said arbitration proceedings by raising arbitration clause. For the said arbitration proceedings, one Velu was appointed as their Arbitrator, which necessitated the first

respondent to appoint a nominee Arbitrator on their behalf and one Srinivasan, a retired Chief Engineer of CMWSSB was appointed as Co-Arbitrator. The said arbitrators in terms of the Arbitration and Conciliation Act, 1996, nominated one Senthil Velan as the Umpire.

3. The petitioners contention is that the claim was raised by the said claimant due to the steel price escalation in work and supply, laying, joint testing and commissioning of Clear Water Transmission from Ongur to Porur Package IV under Chennai Water Augmentation Project. The first respondent has availed the services of the first petitioner to appear on behalf of the respondent Board as Senior counsel in the said arbitration proceedings along with other petitioners, who assisted him in the said proceedings. In the Claim petition an application was filed by the respondent Board on the advice and guidance of the petitioners raising preliminary objection regarding the maintainability of the arbitration proceedings. The arbitration proceedings were heard and orders were reserved by the Arbitral Tribunal.

4. The first petitioner raised a bill on 20.04.2009 and adhoc payment of Rs.5 lakh was paid by the respondent Board after deducting TDS. The claimant's counsel thereafter filed an Interlocutory application for reopening the arbitral proceedings and further arguments were heard on 06.03.2010. The Arbitral Tribunal, after hearing the matters at length, reserved orders and ultimately pronounced orders on 17.05.2011 rejecting the claim of the claimant

5. The petitioners raised a bill with the respondents on 20.04.2009 towards the professional fee in terms of Order 43 Rule 16 of the Madras High Court Original Side Rules and as per Rule 2(c) order V of the Practitioners fee. The fee was calculated in terms of the said Rules, which works out at Rs.74,57,300/- (Rupees Seventy Four Lakhs Fifty Seven Thousand and Three Hundred only) for the total claim raised by the claimant in the arbitration proceedings. The first petitioner raised the bill on behalf of himself and other petitioners on 20.04.2009 and a reminder was sent on 31.08.2009. The respondent Board paid a sum of Rs.4,48,500/- on 08.10.2009 in favour of the first petitioner and a further sum of Rs.9,00,000/- on 05.07.2010 and Rs.2,70,000/- in the name of the second petitioner and Rs.1,80,000/- towards the third petitioner. The Arbitral Tribunal passed an award dated 17.05.2010 accepting the contention regarding the preliminary objection.

6. The first petitioner raised a bill on 13.07.2010 after indicating all the payments made in terms of the said statutory provisions and to settle the balance fee of Rs.54,47,300/- and also gave details as to how the cheques are to be issued in the name of the petitioners. Though, the respondents were reminded several times to settle the bills, no action was taken by the respondents. The first respondent also sent a letter on 07.01.2011 and the officials of the respondents informed that the settlement of fees for the petitioners will be placed before the Board meeting to be held on 24.01.2011 for early settlement. The third respondent had a meeting with the petitioners in

person and requested the first petitioner to reduce the professional charges by 25% on the total fee claim. The first petitioner had given a revised bill on 03.03.2011 for Rs.36 lakhs by reducing 25% of fee subject to a condition that the bill is to be settled on or before 30.04.2011, failing which the reduction in the professional fee bill stands cancelled. The said letter was received and countersigned by one V.V. Sethuraman, Superintending Engineer, SESouth, who is the second respondent in this writ petition.

7. It is the case of the petitioners that despite the concession shown by the petitioners, the respondent Board had failed to pay the bills before 30.04.2011. Therefore, the petitioners have filed this writ petition for disbursal of their professional fee of a sum of Rs.62,50,815/- to the first petitioner, Rs.10,41,777/- to the second and third petitioners with interest at 12% p.a. for all the petitioners till payment.

8. When the writ petition was posted for admission on 21.10.2011, counsel for the petitioner was permitted to serve notice to the standing counsel for the respondent Board. Thereafter, the case was adjourned to 1.11.2011, 08.11.2011, 09.11.2011, 10.11.2011, 18.11.2011, 25.11.2011,, 28.11.2011, 30.11.2011, 13.12.2011, 21.12.2011 and today (23.12.2011).

9. During the pendency of the writ petition, the first petitioner died on 30.11.2011, leaving behind the first petitioner's son who is already on record as the 2nd petitioner and widow of the first petitioner who was impleaded as fourth petitioner by order dated 21.12.2011 in M.P.No.2 of 2011, as his legal heirs.

10. Mr.N.Vijay Narayan, learned Senior Counsel appearing for the petitioners submitted that on 25.11.2011, the first petitioner was paid a sum of Rs.23,85,475/- and the second petitioner was paid a sum of Rs.6 lakhs and similarly the third petitioner was paid a sum of Rs.6 lakhs. The first petitioner having offered to deduct 25% of the claim amount and the same having not been accepted before the time limit given in the representation, the respondents are bound to pay without any deduction along with interest for the amount already paid and for the balance amount payable.

11. Learned Senior Counsel also relied on a Judgment rendered by me in W.P.NO.5635 of 2007 dated 09.04.2008, wherein a similar claim made by the then Special Government Pleader (CS) was not settled. The said writ petition was allowed with a direction to pay the legal fees with 12% p.a interest beyond six months, from the date of submission of the fee bills.

12. Learned Senior counsel also cited an unreported judgment in W.P.NO. 1191 of 2011 dated 04.08.2011 (D.Hariparanthaman.,J.). The said writ petition was filed by the Special Government Pleader of this Court for non-payment of his fee bills. This Court allowed the said writ petition with a direction to pay professional fee for five years with 12% p.a. interest after expiry of six months from the date of submission of the bills.

13. Learned Senior Counsel appearing for the petitioners submitted that the amount of fee claimed by the petitioners having not been disputed, the respondents are bound to pay the interest for the belated payment already made and for the amount payable as on date.

14. Learned counsel appearing for the respondents, on instructions, submits that the fee bill submitted by the petitioners to settle the fees by deducting 25% on or before 30.04.2011 could not be complied with due to code of conduct, which was in force during Tamil Nadu State Assembly Elections and the Board has subsequently convened a meeting and now the first petitioner was paid a sum of Rs.23,85,475/- and the second and third petitioners were paid a sum of Rs.6 lakhs each and therefore the Board may not be burdened to pay the interest to the petitioners for the belated payment.

15. I have considered the rival submissions.

16. The writ petition was filed before this Court on 14.10.2011 i.e. after six months of the Tamil Nadu State Assembly elections and the election process was over by May, 2011 itself. The part payment was made to the petitioners by the Board on 20.11.2011, that too, after filing of the writ petition and getting adjournments from this Court and based on the suggestions made by this Court to pay the amount. Hence the learned Senior Counsel for the petitioner is justified in contending that 25% deduction offer made as condition was not accepted by the Board and the petitioners are entitled to get full amount as claimed through the bills without reduction.

17. Regarding the claim for interest, the interest rate during the year 2008 was on the higher side. Taking note of the said fact, 12% p.a. interest was ordered in the said writ petitions. The rate of interest now is about 9% p.a. Hence, this writ petition is ordered by giving direction to the first respondent to settle the pending bills submitted by the petitioners with interest after expiry of six months from the date of submission of bills with interest at 9% p.a. While calculating the amount payable, the amount already paid to each of the petitioners shall be credited and interest for the belated payment and the balance amount with interest is directed to be calculated and paid to the petitioners within a period of four weeks from the date of receipt of copy of this order.

18. Before parting with this case, I am constrained to state as follows:

During the course of the hearing of this writ petition it was informed by the Members of the Bar that the Government and its instrumentalities are not paying the bill amounts to the former Advocate Generals, Additional Advocate Generals, Special Government Pleaders, Government Pleaders, Government Advocates and Standing Counsels promptly and even after expiry of their terms. Number of writ petitions are filed by former Law Officers. The authorities of the Government and Public Sector Undertakings are duty bound to keep in mind that it is not proper to force the learned Advocates to file writ petitions for the sanction of their legal fees after availing their professional service/work with satisfaction.

Forcing the learned Counsels, who are Officers of the Court to stand as litigants is regrettable. The concerned officers of the Government and Public Sector Undertakings are to be reminded by the Chief Secretary, Government of Tamil Nadu to settle the legal fee payable to all the Advocates so as to avoid unwanted litigations of this nature before this Court. The registry is directed to mark a copy of this order to the Chief Secretary, Government of Tamil Nadu, Chennai-600009.

19. The writ petition is ordered with the above directions and observation. No costs. Consequently, connected miscellaneous petition is closed.