

(2011) 06 MAD CK 0332

In the Madras High Court

Case No : Writ Petition (MD) No. 11065 of 2005 and W.P.M.P. (MD) No. 11776 of 2005

Strumech Engineers and Tool Fab

APPELLANT

Vs

The Chairman and Managing Director, Neyveli Lignite Corporation, The Chairman/Industry Facilitation Council, Industries Commissioner and Director of Industries and Commerce, The General Manager District Industries Centre and The Zonal Officer, Regional Industry Facilitation Council

RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Industrial Undertakings (Amendment) Act, 1998 — Section 3, 4

Citation : (2011) 06 MAD CK 0332

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : J. Anandhavalli, for the Appellant; T.R. Rajaraman, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The Petitioner is a Small Scale Industry. The Petitioner was awarded a contract of laying pipe lines during January 1983, by the first Respondent Corporation.

2. The first Respondent invited tenders for laying pipe lines for a length of 4.5 kilometers between Mines II and Thermal Station II Lake. However, the contract was awarded to the Petitioner for 15% of the work.

3. Award of 15% work was put to challenge by the Petitioner by filing a Writ Petition in W.P. No. 11256 of 1983. The Petitioner sought for awarding entire contract to lay pipe lines for a length of 4.5 kilometers.

4. Even, the contract that was awarded to the Petitioner for lesser work was terminated by the first Respondent on 24.11.1983. The Petitioner filed a Writ

Petition in W.P. No. 352 of 1984, challenging the order terminating the contract. The Petitioner filed W.P.M.P. No. 541 of 1984 in W.P. No. 352 of 1984, seeking interim direction to release the payment due to the Petitioner for the work done by them.

5. This Court passed an order on 09.02.1984 in W.P.M.P. No. 541 of 1984 in W.P. No. 352 of 1984, directing the first Respondent Corporation to release the payment due to the Petitioner for the work done, after deducting the loss sustained, within a time frame.

6. According to the first Respondent, the aforesaid order of this Court was complied with and the entire payment due to the Petitioner was paid as on 12.04.1985.

7. According to the first Respondent, the amount payable to the Petitioner was Rs. 3,00,081.35 and the amount was paid after deducting Income Tax.

8. Ultimately, W.P. No. 11256 of 1983 was dismissed as infructuous on 01.11.1991 and W.P. No. 352 of 1984 was also dismissed as infructuous on 25.11.1991.

9. The Petitioner has filed a claim application before the fourth Respondent claiming Rs. 5,37,77,982/- under the Act 23 of 1998 [The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1998]. The said claim application was rejected by the fourth Respondent by the impugned order dated 02.07.2004.

10. The Petitioner has now come forward with the present Writ Petition challenging the aforesaid order, dated 02.07.2004 of the fourth Respondent. The first Respondent has filed a counter affidavit refuting the allegations made in the affidavit filed in support of the Writ Petition.

11. Heard both sides.

12. I am not going into the details of factual matters involved in this case, as the matter could be disposed of on the short ground that The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings (Amendment) Act, 1998 (herein after referred to as "the Act") is not applicable to the contract, that was terminated in the year 1983. The Act 32 of 1993, was of the year 1993 and came into effect on 23.09.1992, much after the period of contract and the disposal of writ petitions mentioned above.

13. The aforesaid facts make it clear that the award was terminated on 24.11.1983. As per the interim direction issued by this Court, the amount payable to the Petitioner was settled, according to the first Respondent, on 12.04.1985. Thereafter, the Writ Petition was dismissed in the year 1991 as infructuous.

14. In these circumstances, I am of the opinion that the submissions made by the learned Counsel for the first Respondent that the Act is not applicable to the

transactions are well founded. The judgment relied on by the learned Counsel for the first Respondent in *Modern Industries Vs. Steel Authority of India Ltd. and Others*, and more particularly, paragraph No. 52 is directly applicable to the facts of the case.

15. Paragraph No. 52 is extracted hereunder:

52. That the 1993 Act is prospective in operation is settled by two decision of this Court. In *Assam Small Scale Ind. Dev. Corp. Ltd. and Others Vs. J.D. Pharmaceuticals and Another*, , this Court held:

(SCC p.36, paras 37-38)

37. We have held herein before that Clause 8 of the terms and conditions relates to the payments of balance 10%. It is not in dispute that the Plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply. The 1993 Act came into effect from 23.09.1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, Sl. Nos. 1to 26 (referred to in the penultimate para of the trial court judgment), that is supply orders between 05.06.1991 to 28.07.1992, were prior to the date of the 1993 Act coming into force. Only the transactions at Sl. Nos. 27 to 71 (that is supply orders between 22.10.1992 to 19.06.1993), will attract the provisions of the 1993 Act.

38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June 1991 and 23.09.1992. The trial Court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate of 23% up to June 1991 and 23.5% thereafter.

16. Since, I am of the view that the Act is not applicable for the contract that was terminated in the year 1983, I am not inclined to interfere with the impugned order dated 02.07.2004. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.