

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C) .No. 17507 of 2015 (K)

PETITIONER(S) :

ALL INDIA BSNL CASUAL WORKERS UNION (INTUC) ,
WITH OFFICE AT PALA,
KOTTAYAM DISTRICT (REG.NO.0512/199 AND AFFILIATION NO.12436)
REPRESENTED BY ITS GENERAL SECRETARY P.C.THOMAS.

BY ADV. SRI.P.KURUVILLA JACOB.

RESPONDENT(S) :

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1. THE DEPUTY LABOUR COMMISSIONER(CENTRAL) ,
UPPALAM ROAD, THIRUVANANTHAPURAM-695001.
 2. THE ASSISTANT GENERAL MANAGER,
BHARAT SANCHAR NIGAM LIMITED,
OFFICE OF THE PRINCIPAL GENERAL MANAGER,
TELECOMMUNICATIONS, BSNL BHAVAN, UPPALAM ROAD,
THIRUVANANTHAPURAM-695 001.
 3. THE CHIEF GENERAL MANAGER,
BHARAT SANCHAR NIGAM LIMITED BSNL BHAVAN,
UPPALAM ROAD, THIRUVANANTHAPURAM-695 001.
 4. K.K.PURUSHOTHAMAN,
NADUVILEVEEDU, MUTHOOR POST, THIRUVALLA,
PATHANAMTHITTA DISTRICT-689 645.

R1 BY ADV. SRI.B.RAMACHANDRAN, CGC
R2-R3 BY ADV. SRI.SAJI VARGHESE, SC, BSNL
BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY SRI.MATHEWS K.PHILIP, SC, BSNL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE RELEVANT PORTION OF THE TENDER NOTIFICATION PUBLISHED BY 2ND RESPONDENT IN THE MATHRUBHUMI DATED 7.12.14.
- EXHIBIT P2: TRUE COPY OF PETITIONER'S REGISTERED COMPLAINT DATED 9.1.15 FORWARDED TO 2ND RESPONDENT.
- EXHIBIT P3: TRUE COPY OF PETITIONER'S REGISTERED COMPLAINT DATED 12.1.15 FORWARDED TO 1ST RESPONDENT.
- EXHIBIT P4: TRUE COPY OF THE STATEMENT DATED 22.5.12 AND ACCOMPANYING MINUTES DATED 23.12.11 FILED ON BEHALF OF THE ASSISTANT LABOUR COMMISSIONER CENTRAL THIRUVANANTHAPURAM IN THE PROCEEDINGS OF WPC NO.2615/2012 OF THE HON'BLE HIGH COURT.
- EXHIBIT P5: TRUE COPY OF PETITIONER'S COMPLAINT DATED 16.1.15 SUBMITTED IN THE OFFICE OF 3RD RESPONDENT.
- EXHIBIT P6: TRUE COPY OF PETITIONER'S REPRESENTATION DATED 18.5.15 FORWARDED TO 1ST RESPONDENT BY SPEED POST.
- EXHIBIT P6(A): TRUE PHOTOSTAT COPY OF THE POSTAL RECEIPT RECEIVED, WHILE SENDING EXT.P6 BY SPEED POST.
- EXHIBIT P7: TRUE COPY OF THE REPLY DATED 01/04/2015 OF 3RD RESPONDENT COMMUNICATED TO SRI.THILAKARAJ AZHIKAL, THE PRESIDENT OF THE BSNL WORKERS' UNION KANNUR DISTRICT, AZHIKAL P.O.
- EXHIBIT P8: TRUE COPY OF BILL NO.II DATED 09/06/2015 ISSUED BY THE JUNIOR TELECOM OFFICER OF BSNL TO CASUAL WORKER THILAKARAJ AZHIKAL EVIDENCING PAYMENT OF RS.16092/- TOWARDS HIS WAGES FOR MAY 2015.
- EXHIBIT P9: TRUE COPY OF BILL DATED 28/05/15 ISSUED BY THE CONCERNED JUNIOR TELECOM OFFICER OF BSNL TO CASUAL WORKER ANILKUMAR A.M. AT KANNUR TOWARDS PAYMENT OF 14170/- TOWARDS HIS WAGES FOR MAY 2015.

RESPONDENT(S) ' EXHIBITS:

- EXHIBIT R2(A): TRUE COPY OF EXHIBIT P2 DATED 30/12/2012 FILED BY THE PETITIONER BEFORE THE ASST. LABOUR COMMISSIONER (CENTRAL) ERNAKULAM.
- EXHIBIT R2(B): TRUE COPY OF EXHIBIT P3 DATED 09/01/2013 FILED BY THE PETITIONER BEFORE THE ASST. LABOUR COMMISSIONER (CENTRAL) ERNAKULAM.

WP(C).No. 17507 of 2015 (K)

EXHIBIT R2(C) : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C)
NO.1875/2013.

EXHIBIT R2(D) : TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER DATED
12/01/2015 BEFORE THE DEPUTY LABOUR COMMISSIONER (CENTRAL)
TRIVANDRUM.

EXHIBIT R2(E) : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC
NO.2336/2015 DATED 07/04/2015.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.17507 of 2015

Dated this the 4th day of August, 2015

JUDGMENT

Aggrieved by the inaction on the part of the first respondent to initiate urgent conciliation proceedings on Ext.P6 representation, the petitioner has come up before this Court.

2. According to the petitioner, the second respondent published Ext.P1 notification in the Mathrubhumi daily dated 7.12.2014 to select a contractor for executing the works of BSNL in Trivandrum District. The second respondent received tenders till 2.1.2015 and they were opened at 3 p.m. on the same day. The 4th respondent was selected as the contractor. The second respondent has recently executed an agreement with the 4th respondent for executing the BSNL works of Trivandrum District. The petitioner alleges that the second respondent should not have invited tenders for selecting a contractor considering the conditions and observations in Ext.P4

statement and accompanying minutes.

3. The petitioner is a registered union of BSNL casual workers in Kerala State and is represented by its General Secretary. Most of its members are hailing from Thiruvananthapuram District. They are engaged by various Sub Divisional Engineers of BSNL in Thiruvananthapuram District to execute various repairing and maintenance works of BSNL. They were engaged as casual workers/petty contractors by BSNL for long time. The petitioner obtained information about Ext.P1 notification only during the first week of January 2015. Immediately, the petitioner sent Ext.P2 complaint to the second respondent requesting to stop selecting a contractor from the tenders received by him. But no action was taken on Ext.P2. Hence, the petitioner sent Ext.P3 registered complaint to the first respondent explaining the illegal and arbitrary acts of the second respondent and requesting to pass an urgent order of stay against the selection and engagement of a contractor by the second respondent for the BSNL works of

Thiruvananthapuram District; it is alleged. However, the first respondent was not taking any action on Ext.P3. The petitioner was constrained to file WPC No.2336/2015 before this Court which was dismissed vide judgment dated 7.4.2015 holding that the prayer sought in Ext.P3 is beyond the jurisdiction of the first respondent. Subsequently, the petitioner sent Ext.P6 representation to the first respondent requesting to initiate conciliation proceedings, since the 4th respondent is trying to engage works of his choice, denying job facility to many members petitioner-union. However, the first respondent is not taking action on Ext.P6. It is with this background, the petitioner has come up before this Court.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

As the learned counsel for the petitioner confined his argument to the limited prayer for a direction to the first respondent to consider Ext.P6 representation, the writ petition is disposed of directing the first respondent to consider Ext.P6 representation and to initiate conciliation

proceedings, if legally permissible and if the conciliation proceedings have not been initiated so far. This shall be done within a period of 45 days from the date of receipt of a copy of this judgment.

To facilitate an early action, it shall be open to the petitioner to produce a copy of this judgment as well as a copy of the writ petition before the first respondent.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE