

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2016

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

W.P. No.3120 of 2014

Tamil Nadu Construction and Unorganised
Workers Federation (TCWF),
Rep. by its President,
No.500/573, 1st Floor Kamaraj Bhavan,
Anna Salai, Thenampet,
Chennai-600 006.Petitioner

Versus

- 1.Union of India,
Represented by its Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110 001.
- 2.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Labour and Employment,
Fort St. George, Chennai-600 009.
- 3.The Commissioner of Labour,
DMS Complex, Teynampet,
Anna Salai, Chennai-600 006.
- 4.The Chennai Metro Rail Limited,
Represented by its Managing Director,
"HARINI TOWERS", No.7, Conran Smith Road,
Gopalapuram, Chennai-600 086.
- 5.The Tamil Nadu Construction Workers Welfare
Board, Represented by its Secretary,
No.8, Valluvar Kottam High Road,
Nungambakkam, Chennai-600 034.
- 6.The Employees State Insurance Corporation,
Tamil Nadu Region, Represented by its
Regional Director, 143, Sterling Road,
Nungambakkam, Chennai-34.

- 7.The Employees Provident Fund Organisation,
Rep. by the Provident Fund Commissioner,
Regional Office, Chennai and Puducherry,
37, Royapettah High Road, Chennai-600 014.
- 8.M/s Soma Enterprises Ltd.,
Rep. by its Managing Director,
Post Box No.4, Behind old Kumar Theatre lane,
Vanagaram, Chennai-600 095.
- 9.M/s Larsen & Tubro Ltd.,
Rep. by its Managing Director,
Mount Poonamallee Road,
Manapakkam, P.B.No.979,
Chennai-600 089.
- 10.M/s Larsen & Tubro Ltd.,
Chennai Metro Rail Project,
Rep. by its Project Manager,
ECV02 & ECV03 Package,
No.44/62, Kasi Estate, 3rd Street,
Jaffer Khanpet, Chennai-600 083.
- 11.M/s. Consolidated Construction Consortium Ltd.,
Rep. By its Managing Director,
No.13, West Sivan Koil Street,
Vadapalani, Chennai-600 026.
12. M/s Metro Tunnelling Chennai,
(L & T-SUCG JV), M/s Larsen Toubro Limited,
Rep. by its Managing Director, ECC Division
Mount Poonamallee Road, Manapakkam,
P.B.No.979, Chennai-600 089.
- 13.M/s Metro Tunnelling Chennai,
(L & T-SUCG JV), M/s Shanghai Urban Construction
(Group) Construction, Rep. by its Managing Director,
No.500, Fu Shan Road, Shanghai, 200 122, China.
- 14.M/s AFCONS Infrastructure Limited,
Rep. by its Managing Director,
Afcons House, 16, Shan Industrial Estate,
Veera Desai Road, Azad Nagar P.O.,
P.B.No.11978, Andheri (W), Mumbai-400 053.
- 15.M/s Alstom Projects India Ltd.,
Rep. by its Managing Director,
The International, 5th Floor, 16, Marine Lines
Cross Road, No.1, Off Maharishi Karve Road,
Churchgate, Mumbai-400 020.

16.The Directorate of Industrial Safety and Health (DISH), Chennai - 600 006.

(R-19 impleaded as per order dt.27/08/2015. by C.J. & T.S.S.J. in WP.3120/2014).

(R-9 R-15 & R-16 are deleted as per order dt. 15.10.2015 by CJ&TSSJ in WP.3120/2014).

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents 1, 2, 3, 5, 6 and 7 to enforce the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, the Contract Labour (Regulation and Abolition) Act, 1970, the Tamil Nadu Manual Workers Act, 1982, and the Schemes framed thereunder, the Employees Compensation Act 1923, the Minimum Wages Act 1948, Building and Other Construction Workers Regulation of Employment and Conditions of Service) Act 1996, the Payment of Wages Act 1936, the Employees State Insurance Act 1948, the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and the Factories Act 1948, in respect of the labourers employed in the Chennai Metro Rail Project in respect of the respondents 4, 8 to 18 are concerned, issue such further or other appropriate orders or directions as this Court may deem fit and proper in the facts and circumstances of the case, award costs.

For Petitioner :: Mr.K.Venkatesan

For Respondents :: Mr.Su Srinivasan,
Assistant Solicitor General
of India for R1 & R7

Mr.STS.Moorthy,
Government Pleader for

Mr.V.Shanmughasundar, Government
Advocate

for R2, 3, 5 & 19 for
Mr.V.R.Kamalanathan, Additional
Government Pleader

Mr.Jayesh B.Dolia for R4

Mrs..Rita Chandrasekar for
M/s Aiyar & Dolia
for R10, 11, 13 &14

Mr.D.Balaraman for R17

Mr.P.Ranganatha Reddy for
M/s King & Partridge for R18
Mr.G.Bharadwaj for R6

O R D E R

(Order of the Court was made by M.M.Sundresh,J.)

The petitioner has filed this Public Interest Litigation seeking implementation of various Labour Welfare Enactments qua the migrant workmen working with the respondent No.4. The grievance of the petitioner in a nutshell appears to be that despite the enactments governing the field, the unorganised migrant workmen have not been given the statutory benefits due to them.

2. Taking note of the fact that the respondent No.19 has been entrusted with the enforcement of various labour laws, by the order dated 27/08/2015, it has been impleaded as a party to this writ petition.

3. The learned counsel appearing for the petitioner submitted that though there are various labour enactments, they have not been implemented qua the migrant workmen. Unfortunately, such workmen have not been registered with the fifth respondent. A further submission has been made that the migrant workers, though entitled to in law are not given such benefits under the Inter-state Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979 and Contract Labour (Regulation and Abolition) Act, 1970, which were enforced by Commissioner of Labour.

4. Basing reliance upon the counter affidavits filed, the learned counsel appearing for the respondents submitted that the prayer sought for in the writ petition is very vague. The petitioner has not pointed out the specific irregularity/non compliance by the concerned respondent. The respondents are scrupulously following the welfare enactments. Therefore, there is no basis in the allegations made by the petitioner.

5. The learned Assistant Solicitor General appearing for the Respondents 1 and 7 submitted that as and when complaints are received, appropriate action is being taken. The respondent No.4 has paid the provident fund without default upto May, 2015.

6. The learned Government Pleader appearing for Respondent Nos.2, 3, 5 and 19 submitted that the migrant workmen are entitled to be registered with the respondent No.5. Appropriate orders have been passed in this regard in G.O.Ms.No.40, Labour and Employment (12) Department, dated

09.05.2014, G.O.Ms.No.153, Labour and Employment (12) Department, dated 08.12.2014 and G.O.Ms.No.154, Labour and Employment (12) Department, dated 08.12.2014. Thereafter, about 13,525 inter-state migrant construction workers have been registered with the respondent No.5 as on 30.06.2015. The Respondent No.5 has been discharging his duty to the best of his ability. It is further submitted that the Inter-state Migrant Workmen(Regulation of Employment and Conditions of Service) Act, 1979, Contract Labour (Regulation and Abolition) Act, 1970, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Rules framed thereunder are to be enforced by the Directorate of Industrial Safety and Health being a single agency as and when appropriate notification is issued by the Government-respondent No.2 within a reasonable time. Such a decision is taken to ensure better co-ordination and proper implementation of the various welfare legislations.

7. The learned counsel appearing for Respondent Nos.10 and 11 submitted that all the enactments are being followed scrupulously and the official respondents, on inspection, expressed satisfaction as to the steps taken for implementation of the welfare schemes. Thus, no interference is required. More or less, similar submission has been made by the learned counsel appearing for the other private respondents viz., Respondent Nos.13, 14 and 16.

8. The learned counsel appearing for the fourth respondent took a stand stating that it is the duty of the contractors to do the needful. They have been accordingly advised to enroll the workers in the Board. As the registration of workers is mandatory, the stand of the respondent No.5 is not clear. Thus, no progress can be made in this regard. Insofar as the implementation of the various Labour Welfare Enactments are concerned, they are being scrupulously adhered to.

9. The learned counsel appearing for the respondent No.6 submitted that the immediate employer or the contractors should furnish the details of the employees employed by them to the principal employer of the factory/establishment for the purpose of getting benefits under the Employees State Insurance Act provided under the ESI Scheme.

10. Though the averments made in the affidavits are general and the prayer is primarily with regard to the migrant workmen, qua the respondent No.5, considering the issues involved, we would like to expand the scope of writ petition.

11. We are concerned primarily with two issues. One is with respect to the registration qua the respondent No.5. A perusal of the affidavit filed by the respondent Nos.2, 5 and 19

would show that the migrant workers are covered under the scheme. Therefore, we deem it appropriate to direct the fourth respondent to take adequate steps to put the contractors concerned on notice qua the compliance of registration of the migrant workers with the respondent No.5. Thus, the migrant workers would come under the protection guaranteed by the respondent No.5.

12. Coming to the second issue on the implementation, the following passage in the counter affidavit filed by the Respondent No.19 is apposite.

"Prior to 24.06.2015, the Labour Laws such as Inter-state Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979, Contract Labour (Regulation and Abolition) Act, 1970 were enforced by Commissioner of Labour. To ensure better co-ordination and enforcement of labour laws it has been decided by the Government to entrust the implementation of all construction sector allied labour laws such as Inter-state Migrant Workmen(Regulation of Employment and Conditions of Service) Act, 1979, Contract Labour (Regulation and Abolition) Act, 1970 to the Directorate of Industrial Safety and Health. The issue of notification in this regard is under active consideration of the Government. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and Tamil Nadu Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2006 are enforced by the Directorate of Industrial Safety and Health."

13. As the respondent No.19 has been associated with the task of implementing the welfare enactments, we deem it fit to direct the respondent No.2 to issue appropriate notification in this regard, within a period of two months from the date of receipt of a copy of this order. The private respondents are also directed to make sure that their employees are covered under the ESI Act as per law, making them entitled for the benefits under the Scheme.

14. Accordingly, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

raa

To

- 1.The Secretary,
Ministry of Labour and Employment,
Union of India,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110 001.
- 2.The Secretary to Government,
Department of Labour and Employment,
State of Tamil Nadu,
Fort St. George, Chennai-600 009.
- 3.The Commissioner of Labour,
DMS Complex, Teynampet,
Anna Salai, Chennai-600 006.
- 4.The Secretary, Tamil Nadu Construction
Workers Welfare Board,
No.8, Valluvar Kottam High Road,
Nungambakkam, Chennai-600 034.
- 5.The Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Chennai and Puducherry,
37, Royapettah High Road, Chennai-600 014.
- 6.The Directorate of Industrial Safety and
Health (DISH), Chennai - 600 006.

+1cc to M/s. Jayesh B. Dolia, Advocate, S.R.No.12684
+4ccs to Mr. Aiyar & Dolia, Advocate, S.R.No.2683
+ 1 cc to M/s. King & Partridge, Advocate Sr.12737
+1cc to the Government Pleader, S.R.No.12733

MG(CO)
EU(23/03/2016)

W.P. No.3120 of 2014

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