



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.04.2018
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)No.1032 of 2017
and
C.M.P(MD)No.7209 of 2017

Judgment reserved on 12.03.2018	Judgment pronounced on 05.04.2018
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The Secretary,
BHEL Valaga Oppanda Thozhilalar Nala Sangam
5, Dheen Complex, 1st Floor,
Thiruverumbur,
Thiruchirapalli - 620 014.

.. Appellant/Second
Respondent

Vs.

1.The Executive Director,
Bharat Heavy Electricals Limited,
Thiruchirapalli - 620 013.

.. First Respondent/
Writ Petitioner

2.Central Government Industrial Tribunal
cum Labour Court, Shastri Bhavan,
Chennai.

3.The Special Officer,
BHEL Labour Contract Society,
24, Building, BHEL,
Tiruchirapalli - 620 014.

.. Respondents
2 and 3/Respondents 1 and 3

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order, dated 17.07.2017, made in W.P(MD)No.2330 of 2017.

Prayer in WP(MD). 2330/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the order dated 11.01.2017 made in Preliminary Point in I.D.No. 121 of 2015 on the file of the Central Government Industrial Tribunal- Cum-Labour Court, Shastri Bhavan, Chennai the 1st respondent herein and quash the same.



For Appellant

: Mr.R.Viduthalai,
Senior counsel for Mr.D.Veerasekaran

For Respondent No.1

: Mr.A.V.Arun

For Respondent No.2

: Mr.D.Saravanan

For Respondent No.3

: Mr.Y.Prakash

J U D G M E N T

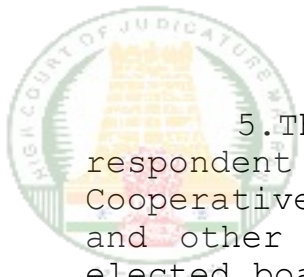
[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This writ appeal is directed against the order, dated 17.07.2017, passed in W.P(MD)No.2330 of 2017, filed by the first respondent, Executive Officer, Bharat Heavy Electricals Limited (BHEL), Tiruchirapalli. The said writ petition was filed challenging the order passed by the Central Government Industrial Tribunal cum Labour Court (CGIT) in I.D.No.121 of 2015, dated 11.01.2017.

2.The Writ Court, by the impugned order, allowed the writ petition, holding that the CGIT was required to decide as to whether there exists a dispute regarding the existence of employer-employee relationship between the petitioner and the second respondent, at the time of seeking reference before the Government. The CGIT was also required to go into the issue, whether the appellant herein can be permitted to raise such an important issue for the first time before the CGIT, so as to justify the reference, even though the existence of dispute, is not *prima facie* made out, when the reference was made by the Government as per the direction of the Court in the first writ petition filed by the appellant. Thus, the Writ Court concluded that the CGIT has failed to consider two important issues as mentioned above, which are relevant to decide the preliminary issue. as per the direction of the Court in the earlier writ petition.

3.For such reason, the writ petition filed by the BHEL was allowed and the order passed by the CGIT was set aside and the matter was remitted to decide the preliminary issue, whether the order of reference made by the Central Government is maintainable, after framing the two issues that were referred to in the writ order and then decide the preliminary issue one way or other after giving adequate opportunities to both sides. Time limit of three months was fixed for the CGIT to comply with the direction.

4.The appellant is a trade union, whose members are contract employees, deployed by the third respondent society. The third respondent society has been granted a licence under the Contract Labour [Regulation and Abolition] Act, 1970.



5.The BHEL contended that they had engaged the third respondent society, which is registered under the Tamil Nadu Cooperative Societies Act, and they are providing employees to BHEL and other organisations and institutions and earlier there was a elected board, which was functioning in the third respondent society and after the board has been superseded, the Special Officer is in charge of the affairs of the society.

6.The background facts which lead to the present dispute is as follows:

(i)The appellant trade union raised a dispute claiming that they should be absorbed and regularised in the services of BHEL as a permanent employee and in this regard, a representation dated 29.09.2013 was given to the Chairman and Executive Director of BHEL. In the said representation, the appellant union requested that the contract workers, who are members of the third respondent society, should be made permanent.

(ii)The matter went before the Conciliation Officer/the Assistant Labour Commissioner (Central), Puducherry. Before the Conciliation Officer, BHEL submitted their reply requesting to drop the proceedings, as no valid industrial dispute has been raised by the appellant Union so as to require conciliation proceedings.

(iii)The sum and substance of the objection being that the appellant Union having admitted their employment with the third respondent society as contract workmen, it is not open to them to maintain the industrial dispute. Further, as no allegation has been made with regard to payment of wages and other statutory benefits, that are applicable to contract workman, the appellant Union is not entitled to request the Conciliation Officer to enquire into the service rendered by its members.

(iv)The appellant Union submitted their rejoinder, dated 25.08.2014 to the reply given by BHEL, among other things, stating that the third respondent society, was set up with the purpose of giving employment to the local panchayat people and exclusively during contract work for BHEL. They pointed out that all the facilities extended to the regular employees, such as, uniform, safety equipments, shoes, etc. are provided to the members of the contract labour society, the third respondent and they are working in shift system and there can be no discrimination between the labour contract workmen and regular employees of BHEL.

(v)To this rejoinder, BHEL submitted their further reply, dated 14.10.2014, reiterating the stand taken in the reply, dated 13.08.2014. In the said reply, it was pointed out that all the facilities are provided by the Labour Contract Society as a Contractor and Employer and none of them are provided by BHEL and the members of the appellant Union being employees of the third respondent society, have no *locus standi* to raise the industrial dispute.



(vi) The Administrator of the third respondent society sent a reply dated 06.12.2014, to the Conciliation Officer, disputing the correctness of the stand taken by the appellant Union and among other things, stating that the third respondent society receives consideration for the execution of contract, which it has executed for various organisations and from and out of the same, establishment expenditure and other expenses of the society are met with and in view of the same, the members of the appellant Union are always employees of the third respondent society only and the society being a different entity, is the sole employer of the members of the appellant Union.

(vii) The Conciliation Officer after taking note of the objection, appears to have considered the matter and by communication, dated 13.01.2015, submitted his "Failure of Conciliation Report" to the Central Government, thereupon, the Central Government, by proceedings, dated 29.01.2015, declined to refer the dispute to the CGIT for adjudication and the reason assigned by the Central Government is to the following effect:

"It is reported that there is no direct employer-employee relationship exists in the instant dispute as the members being to the society and they are fulfilling the contractual obligations. Therefore, there is no locus-standi to raise an Industrial Dispute as the same is not maintainable. It is further stated that the demand for regular absorption is not supported by Law either under the ID Act, 1947 or under the Contract Labour (Regulation & Abolition) Act, 1970. Hence, the case is not found fit for reference. Therefore the case is not recommended for adjudication by the CGIT".

(viii) The appellant challenged the above order by filing W.P.No.9271 of 2015, wherein this Court, by order, dated 31.07.2015, set aside the order passed by the Central Government, refusing to refer the dispute for adjudication and directed the Central Government to refer the dispute to the CGIT. Accordingly, the Central Government, by order, dated 04.09.2015, referred the following disputes for adjudication by the CGIT.

"Whether the demand of BHEL Valaga Oppandha Thozhilaar Nala Sangam (BHEL contract Labour Union), Trichy to absorb and regularize the members of BHEL complex cooperative labourers is legal and justified? If yes, what relief the workmen are entitled to?"

(ix) The management of BHEL was not impleaded as a party respondent in W.P.No.9271 of 2015 filed by the appellant, challenging the order of the Central Government refusing to refer the dispute for adjudication. Therefore, they filed a miscellaneous petition before the Division Bench, seeking to leave to file an appeal, which was granted and W.A.No.1667 of 2015 filed by BHEL was entertained.



(x) Parallely, the management of BHEL filed W.P.No.34247 of 2015, challenging the order, dated 04.09.2015, passed by the Central Government referring the disputes for adjudication and prayed for stay of all further proceedings before the CGIT and the Writ Court, taking note of the fact that the Division Bench has granted leave to file appeal to BHEL, as against the order in W.P.No.9271 of 2015 and since the CGIT was insisting upon BHEL to file counter in the dispute, granted an order of interim stay of all further proceedings in I.D.No.121 of 2015, by order, dated 04.11.2015.

(xi) The writ appeal filed by BHEL was disposed of by Judgment dated 10.12.2015. The operative portion of the Judgment reads as follows:

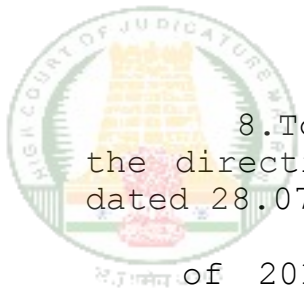
"Having considered all the facts, we are of the view that all the observations made in respect of the merits of the case have to be deleted and the Tribunal shall be given liberty to proceed with the matter in accordance with law. Accordingly, all the observations made in respect of the merits of the case stand deleted and the Tribunal is at liberty to proceed with the matter in accordance with law and on its own merits dehors the observations made in the impugned order".

In terms of the above order, the observations made in W.P.No.9271 of 2015 were deleted and the Tribunal was given liberty to proceed with the matter in accordance with law and on merits, *de hors* the observations made by the Writ Court.

(xii) Subsequently, W.P.No.34247 of 2015 was disposed of by the Writ Court in view of the order passed by the Division Bench in W.A.No.1667 of 2015. As against the order vacating the interim stay of I.D.No.121 of 2015 in W.P(MD)No.34247 of 2015, BHEL filed W.A.163 of 2016 and the Division Bench directed the writ petition in W.P.No.34247 of 2015 to be tagged along with the appeal and disposed of both the matters, by a common Judgment, dated 28.07.2016.

(xiii) The result of the present writ appeal hinges upon as to what is the purport and intent of the direction issued by the Division Bench to the CGIT and whether the CGIT understood the directions issued and decided the matter in terms of the directions of the Division Bench.

7. The Writ Court held that two important questions were not considered by the CGIT and therefore, allowed the writ petition and remanded the matter for fresh consideration. Therefore, it is important to take note of the directions issued by the Division Bench to the CGIT as to how the observations/directions have to be understood, more particularly, in the light of the stand taken by the respective parties before the Conciliation Officer as well as before the Writ Court and before the Division Bench in the earlier round.

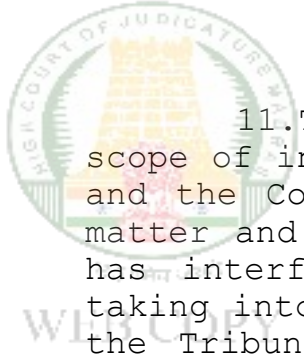


8.To answer these questions, we are required to take note of the directions issued by the Division Bench in its Judgment/order, dated 28.07.2016, which reads as follows:

"9.Be that as it may, in the present W.P.No.34247 of 2015 filed by the Management, though initially they obtained an order of stay against the impugned order of reference, the order of stay having been vacated by the learned single Judge, in the light of the observations made by the Division Bench in W.A.No.1667 of 2015 dated 10.12.2015, giving rise to the filing of W.A.No.163 of 2016, during the course of the proceedings, as the learned senior counsel for the third respondent-contract labourers has agreed that the Industrial Tribunal can decide whether the order of reference made by the Central Government is maintainable or not, as a preliminary issue, we feel that it would be proper for the parties to agitate the matter before the second respondent-Industrial Tribunal in accordance with law. Accordingly, without going into the merits, we direct the second respondent-Central Government Industrial Tribunal cum Labour Court to entertain the dispute on the preliminary issue as to whether the order of reference made by the Central Government is maintainable or not and to decide the same in accordance with law. Both the parties, namely, the Management and the contract labourers are at liberty to approach the second respondent-Industrial Tribunal and to raise all the contentions available to them. The matter may be taken up by the second respondent-Industrial Tribunal within a period of one month from the date of receipt of a copy of this order. With these observations, both the writ appeal and the writ petition are disposed of accordingly. Consequently, C.M.P.No.2297 of 2016 and M.P.No.1 of 2015 are closed. No costs".

9.The management of BHEL filed a special leave to appeal before the Hon'ble Supreme Court in S.L.A(C)Nos.26891-26892/2016, which were dismissed by the Hon'ble Supreme Court, by order, dated 23.09.2016, on the ground that liberty has been granted by the High Court to raise the question of maintainability [before CGIT] and therefore, there are no reasons to interfere with the order passed by the High Court [Division Bench].

10.Mr.R.Viduthalai, learned senior counsel, instructed by Mr.D.Veerasekaran, learned counsel appearing for the appellant, contended that the order passed by the Central Government refusing to refer the dispute, vide order, dated 29.01.2015 was set aside by the Court and after direction was issued by the Writ Court, the Central Government referred the matter for adjudication and the CGIT considered the matter and took note of the directions issued by the Division Bench and has passed a speaking order, giving elaborate reasons and the order does not call for any interference.



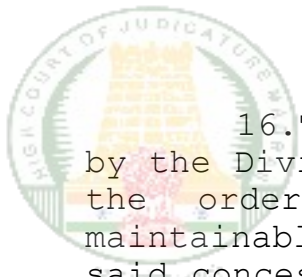
11. The learned senior counsel further contended that the scope of interference against the order of reference is very limited and the Court should allow the Tribunal to proceed further in the matter and the Writ Court without considering the factual position, has interfered with the well-drafted order and the CGIT without taking into consideration certain vital factors, which were noted by the Tribunal, in its order, dated 11.01.2017. Further, the CGIT pointed out that the issues raised by the management are contentious matters, which will be decided, when the matter is taken up for adjudication and it is the Tribunal to decide whether the contract between the management of BHEL and the society is sham and nominal and whether the workers are actually employed under the control of BHEL justifying absorption and regularisation. Therefore, it is contended that the Tribunal should be permitted to proceed with the adjudication of the dispute by allowing the parties to lead oral and documentary evidence and at this stage of the matter, the Writ Court ought not to have interfered with the order passed by the CGIT.

12. Mr. A.V. Arun, learned counsel appearing for the first respondent/ BHEL, submitted that the Writ Court took into consideration the stand taken by BHEL and more particularly, the contention that if the contract is not genuine, then the remedy is only under the provisions of the Contract Labour [Regulation and Abolition] Act, 1970. This position is more so in the case of the appellant because at no point of time, they contended that they are direct employees of BHEL. This position has been clearly brought out by the Administrator of the society, in his letter, dated 06.12.2014, addressed to the Conciliation Officer. Therefore, it is submitted that the first issue that should have been decided by the CGIT is whether the dispute will fall within the scope of Section 2 (k) of the Industrial Disputes Act. Apart from that what is important to note that the matter falls within the realm of the Contract Labour [Regulation and Abolition] Act, 1970 and the other decisions, which were referred to by the Tribunal, would not apply to the facts of the case.

13. In support of his contention, the learned counsel appearing for the first respondent/BHEL referred to the decisions of the Hon'ble Supreme Court in *International Airport Authority of India v. International Air Cargo Workers' Union and Another* reported in (2009)13 SCC 374 and *TATA Iron Steel Company Limited v. State of Jharkhand and Others* reported in (2014)1 SCC 536.

14. We have heard the learned counsel appearing for the parties and carefully perused the materials placed on record.

15. As pointed out earlier, the entire issue revolves around the interpretation of the direction issued by the Division Bench in W.A.No.163 of 2016 and W.P.No.34247 of 2015, vide Judgment dated 28.07.2016 and relevant paragraph has been extracted above.

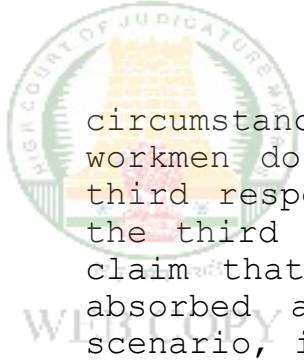


16. The concession given by the appellant Union was recorded by the Division Bench to the effect that the CGIT can decide whether the order of reference made by the Central Government is maintainable or not, as a preliminary issue. In the light of the said concession, the Division Bench observed that it would be proper for the parties to agitate the matter before the CGIT in accordance with law. Accordingly, without going into the merits, the CGIT was directed to entertain the dispute on the preliminary issue as to whether the order of reference made by the Central Government is maintainable or not and to decide the same in accordance with law. All contentions were permitted to be raised by both parties before the Tribunal. The Division Bench also fixed an outer time limit for the Tribunal to decide. In the light of the above directions, the question was whether the Central Government was right in referring the dispute for adjudication before the CGIT.

17. The management of BHEL contended that the dispute itself is not maintainable and consequently, the reference is not maintainable. It was pointed out that the dispute which was referred by proceedings, dated 04.09.2015 was whether the demand of the appellant to absorb and regularise the members of the third respondent society, is legal and justified and if yes, what relief, the workmen are entitled to. Thus, the members of the appellant Union have not stated that they are contract employees of BHEL. But what they seek is to be treated on par with regular employees of BHEL. The wordings adopted by the Central Government in the order of reference, dated 04.09.2015, clearly indicates the relief sought for by the workmen, i.e., to say that they want the members of the third respondent society to be absorbed and regularised.

18. The Division Bench placed the CGIT in the position of the appropriate Government, who will take a decision in a dispute, when there is a Failure of Conciliation Report submitted by the Conciliation Officer. Therefore, while deciding the preliminary issue, the CGIT cannot assume the role of an adjudicatory authority, as it normally does in respect of other disputes which are referred. To put it more clearly, the Division Bench has relegated the matter to a preliminary stage, i.e., when the workmen raised a dispute, the matter is referred for conciliation and in the absence of consensus, failure report is filed by the Conciliation Officer and received by the Central Government. At that stage, the Central Government has to take a decision whether there exists a dispute to be referred for adjudication. Precisely, it is, at that stage, the Tribunal had been placed and the job assigned to the Tribunal was to decide on the maintainability of the request to refer the dispute for adjudication. Therefore, this decision cannot be postponed to a later date.

19. There are parameters, which have to be adhered to, by the appropriate Government, while considering this issue as to whether there exists a dispute to be referred for adjudication. The CGIT should be guided by these parameters. Further, in the facts and

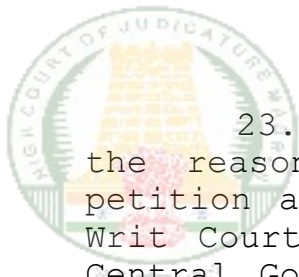


circumstances of the case, what is more important is that the workmen do not dispute the fact that they are all members of the third respondent society, which is, its employer. The members of the third respondent society/members of the appellant Union do not claim that they are direct employees of BHEL. They seek to be absorbed and regularised in the management of BHEL. In such scenario, it has to be seen as to what is the approach to be adopted by the CGIT.

20.To be noted that the third respondent society has a valid licence under the Contract Labour [Regulation and Abolition] Act, 1970. Further to be noted that the appellant Union raises a plea that the contract between the society and BHEL is sham and nominal. Therefore, what is required to be examined by the appropriate Government under Section 10 of the Act is whether the labour contract is genuine and only if such a decision is taken, it can be ascertained as to whether they are in fact employees of BHEL, terming them as principal employees.

21.In the background of these facts, it is apt to refer to the decision of the Hon'ble Supreme Court in *International Airport Authority of India* (supra). It is pointed out that the Hon'ble Supreme Court in *Steel Authority of India v. National Union Waterfront Workers* reported in (2001)7 SCC 1, held that on a prohibition notification issued under Section 10 of the Contract Labour [Regulation and Abolition] Act, 1970, prohibiting employment of contract labour in any process, operation or other work, if an industrial dispute is raised by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. Further, it was pointed out that where there is no abolition of contract labour under Section 10 of the Contract Labour [Regulation and Abolition] Act, 1970, but the contract labour contended that the contract between the principal employer and the contractor is sham and nominal, the remedy is purely under the Industrial Disputes Act, 1947.

22.In the factual background, the Hon'ble Supreme Court framed three questions for consideration, of which, Question No. (iii) in paragraph No.40 will be relevant for the case on hand. The question being in the absence of a notification under Section 10 of the Contract Labour [Regulation and Abolition] Act, 1970 prohibiting the employment of contract labour in the process/operation of cargo handling work, whether the workmen employed as contract labour are entitled to claim absorption? The Hon'ble Supreme Court held that the contractor in the said case not being a private contractor, but a society comprising of the same workers, it cannot be stated to be operating with the profit motive.



23. Bearing the above legal principle in mind, if we examine the reasons assigned by the Writ Court for allowing the writ petition and we find that the reasons are perfect and valid. The Writ Court rightly held that at the time of reference before the Central Government, the contentions of the respective parties were in the form of representations made before the Conciliation Officer and the issue, whether there exists a dispute for reference, was to be decided on the basis of the materials available with the Government. The Writ Court was equally right in observing that the Central Government is not mere a post office as it required to form an opinion, whether there is any dispute even in relation to the existence of employer-employee relationship and then decide whether there is a dispute which has to be referred for adjudication. The observations made by the Writ Court are well-founded, especially when the appellant Union admits that they are all members of the third respondent society, its employer.

24. The third respondent society has a valid licence under the Contract Labour [Regulation and Abolition] Act, 1970. They seek for parity with that of the regular employees of BHEL. Therefore, it has to be seen as to whether there arises a dispute warranting reference to the CGIT for adjudication. This is more so because there is no direct employer-employee relationship, even as per the case as projected by the appellant Union as the members of the appellant Union admitted that they are members of the third respondent society. Therefore, the *locus standi* also is required to be gone into. We find that that the Tribunal missed the subtle distinction between the role, which was directed to be performed and the role which it normally performs. Thus, the subtle distinction having lost sight of, has rendered the order passed by the Tribunal, liable to be set aside.

25. The Tribunal should have placed itself in the position of an appropriate Government, which will consider as to whether there exists a dispute warranting reference for adjudication. The Administrator of the third respondent society while responding to a letter from the Conciliation Officer, vide reply, dated 06.12.2014, submitted that the third respondent society is registered under the Tamil Nadu Cooperative Societies Act, it has its own bye-laws, which is intended to promote the economic interest of the labourer members of the society, who hail from 10 villages in Tiruchirappalli District and to find suitable and profitable employment for them by obtaining contracts from BHEL and other Government and public bodies and to execute those contracts through or with the help of the members. The bye-laws and the amendments there to were approved by the Registrar of Cooperative Societies.

26. Further, it has been stated that the third respondent society has been undertaking various works contract from BHEL, BHEL Employees Co-operative Bank and other public bodies and in order to discharge the contractual obligations, the members of the society



are engaged at various places and are paid wages for the same by the society and the society has taken licence under the Contract Labour [Regulation and Abolition] Act, 1970 and it has its own PF and ESI Codes to which the members/workers of the society [members of the appellant Union] have subscribed their names and the members of the society are separately issued with wage slips and their salary are directly credited to the savings bank account as per the arrangement with the members/workers. Further, the members of the society through their trade union [appellant Union] have entered into wage revision settlement with the society management periodically.

27.The stand taken by the Administrator also assumes importance, which requires to be taken note of for complying with the directions of the Division Bench to decide whether the order of reference by the Central Government was maintainable or not. Since, these aspects have not been considered by the CGIT, the Writ Court was fully justified in setting aside the order and remanding the matter to the CGIT for deciding as to the maintainability of the reference before the Government. Thus, for the above reasons, we find no grounds have been made out by the appellant to interfere with the order passed in the writ petition.

28.In the result, the writ appeal fails and accordingly, the same is dismissed, confirming the order, dated 17.07.2017, made in W.P(MD)No.2330 of 2017. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

The Central Government Industrial Tribunal
cum Labour Court, Shastri Bhavan,
Chennai.

+2ccs to M/s.D.Veerasekaran, Advocate, SR.No.60379

+1cc to M/s.A.V.Arun, Advocate, SR.No.60121

smn

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