



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANW.P.(MD)No.19069 of 2017

Pon.Elangovan

....Petitioner

Rep.By

The President,

Desiya Murpoku TNPL Oppantha Thozhilalar Sangam,

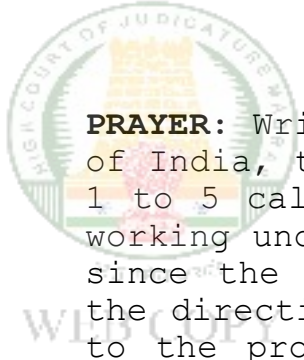
18/1, Arasi Nagar,Velayuthapalayam, (Post)

Karur -639 117.

Vs.

1. The Secretary
The Tamil Nadu Newsprint and Paper Limited,
Contractor Association, (Regd.No.49/87),
No.3, KG Complex, Kodumudi Road,
Velayuthapalayam,
Karur - 639 117.
2. The Chairman/Managing Director,
The Tamil Nadu Newsprint and Paper Limited,
Head Office,
No.76, Annasalai, Guindy,
Chennai - 25.
3. The Deputy Managing Director,
The Tamil Nadu Newsprint and Paper Limited,
Head Office,
No.67, Anna Salai, Guindy,
Chennai - 25.
4. The Executive Director,
The Tamil Nadu Newsprint and Paper Limited,
Kakithapuram (P.O)
Karur - 639 136.
5. The General Manager (Human Resources),
The Tamil Nadu Newsprint and Paper Limited,
Kakithapuram (P.O),
Karur - 639 136.

... Respondents



PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the Respondents Nos. 1 to 5 call for negotiation in regard to payment of bonus for the working under regular basis "Not On Roll" working Labourers in TNPL, since the Deepavali festivals in nearing shortly and also seeking the directions the Respondents Nos. 1 to 5 to provide in accordance to the procedural fixed payment of bonus or Two Months Salary as bonus payment have to be provided. I humbly submits that pertaining to the payment of bonus the Contractor Association or Administration of TNPL shall have to come forward to "call for the negotiation and award for bonus" and take agreeable decision in favour of more than 2996 members of contracted working labourers in TNPL. and that the contractors Associations shall have to offer sweets and bitter to all others working labourers.

For Petitioner : Mr.S.Thangaraju

For Respondents : Mr.V.Karthik
Senior Counsel for
Mr.R.Balakrishnan for R1

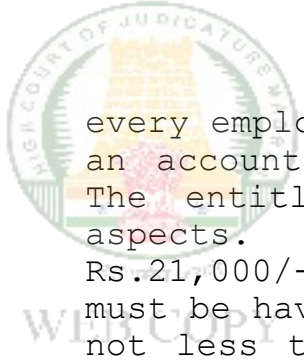
Mr.S.Ravi
Senior Counsel for
Mr.M.P.Senthil for R2 to R5

O R D E R

The petitioner is a registered trade Union. It claims to espouse the cause of the labour working in TNPL. According to the petitioner, the labour working in TNPL can be categorised into two, namely, 'on roll workers' and 'not on roll workers'. The 'on roll workers' are the direct employees of the TNPL. The 'not on roll workers' are basically contract labour. The grievance of the writ petitioner is that the 'not on roll workers' working in the TNPL are not being paid the bonus, which is usually paid on the eve of Deepavali. Therefore, the present writ petition has been filed.

2.This Court ordered notice on 12.10.2017. The matter was listed on 09.02.2018. On the said date, the learned Senior Counsel appearing for the respective respondents were ready to get along with the matter. But the counsel appearing for the writ petitioner sought time and at his instance, the matter was posted to 27.02.2018 at 2.15 p.m i.e, today. But today, when the matter was taken up for hearing, Mr.S.Thangaraju, who is also one of the counsel on record for the writ petitioner, sought further time. According to him, they are waiting for some more documents, which would boost their case. The learned Senior Counsel appearing for the first respondent as well as the respondents 2 to 6 opposed the said request.

3.The learned Senior Counsel appearing for the first respondent contended that as per Section 8 of the Payment of Bonus Act, 1965,



every employee shall be entitled to be paid bonus by his employer in an accounting year in accordance with the provisions of the Act. The entitlement and eligibility for bonus would rest on three aspects. Firstly, the employee must be earning less than Rs.21,000/-. Secondly, the establishment, in which he is employed, must be having 20 workers or more. Thirdly, he must have worked for not less than 30 working days in that accounting year. If these conditions are fulfilled, the worker will be entitled to payment of bonus and the fact that he is 'on roll' or 'not on roll' would pale into insignificance.

4.The learned Senior Counsel appearing for the first respondent pointedly raised the contention that the writ petition is liable to be dismissed for more reasons than one. The affidavit filed in support of the writ petition is totally vague. It is bereft of particulars. The first respondent is only a liaisoning person between the contractor and the TNPL Management. No liability as such can be fastened on the first respondent. It is only the individual contractor, who will be liable to pay the bonus to the employees. The individual contractors have not been made as a party, nor is there any reference to them either in the affidavit filed in support of the writ petition or in the typed set of papers. Therefore, on the sole ground of non impleadment of necessary parties, the writ petition has to be dismissed.

5.The learned Senior Counsel also pointed out that as per Section 22 of the Payment of Bonus Act, 1965, if any dispute arises between employer and his employees with respect to the bonus payable under the Act, the said dispute shall be deemed to be an industrial dispute within the meaning of 2(k) of the I.D Act, 1947. Therefore, the remedy open to the writ petitioner is only to move the Labour Court by raising an industrial dispute under Section 2(k) of the Act.

6.This Court finds both the objections raised by the learned Senior Counsel appearing for the first respondent to be eminently sound and sustainable.

7.The learned Senior Counsel appearing for TNPL Management rightly pointed out that the principal employer will be liable to pay wages, if the same is not paid to the contract labour. Such a liability is cast on the Management in terms of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970. Similar responsibility is not cast on the principal employer under the Payment of Bonus Act, 1965. The non-payment of bonus to the 'not on roll workers' is a matter to be addressed only by the individual employer concerned and not the TNPL Management. This is because there is no provision in the Payment of Bonus Act corresponding to Section 21 of the Contract Labour (R & A) Act, 1970.

8.The individual employers/Contractors are not before this Court. The first respondent is not obliged to answer the claims



raised by the writ petitioner and no legal liability can be cast on the respondents 2 to 5 also in this regard.

9. Therefore, the writ petition fails and the same is dismissed.
No costs.

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Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar

+1CC to Mr.M.P.Senthil Advocate in SR.NO.51718,
+1CC to Mr.P.Dhanasekaran Advocate in SR.No.51968,
+1CC to Mr.R.Balakrishnan Advocate in SR.No. 51734.

SKN

DS/SV/MMS/SAR-1 :11.10.2018: 4P/4C

W.P. (MD) No.19069 of 2017
27.02.2018