

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28-11-2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.1633 and 15464 of 2015

And

M.P.Nos.1, 1 and 2 of 2015 and W.M.P.Nos.2943 of 2016

Tamil Nadu Civil Supplies Corporation,
Employees Union,
Regd. No.325/CPT,
Represented by its State General Secretary,
G.S.Valluvan ... Petitioner in WP 1633/15

Tamil Nadu Nugarporul Vaniba Kazhaga
Jananayaga Angadigal Sumai Thookkuvor
Matrum Pothu Thozhilalar Sangam,
Represented by its General Secretary,
(Regd.No.3170/CNI), (Affiliated to AICCTU),
No.10, 11th Street,
Karunanidhi Nagar,
Ayanavaram,
Chennai-600 023. ... Petitioner in WP 15464/15

vs.

1.Tamil Nadu Civil Supplies Corporation,
Represented by its Managing Director,
No.12, Thambuswamy Road,
Kilpauk,
Chennai-10.

2.Commissioner of Labour,
DMS Compound,
Chennai-600 006.

3.Joint Commissioner of Labour,
DMS Compound,
Chennai-600 006.

4.Tamil Nadu Civil Supplies Corporation,
Sumai Thookuvorin Manila Padhukappu Sangam,
Represented by its State General Secretary,
C.Saravanan, No.38, Manikkam Street,
Arakkonam Taluk,
Vellore District.

(R-4 impleaded as per Order of Court
dated 19.01.2016 made in WMP No.3 of 2015) .. Respondents 1 to 4
and made herein in WP 1633/15

1.The Government of Tamil Nadu,
Represented by the Secretary to Government,
Food, Cooperation and Consumer Protection
Department,
Fort St. George,
Chennai-600 009.

2.Tamil Nadu Civil Supplies Corporation Ltd.,,
Represented by its Chairman and Managing Director,
No.42, Thambuswamy Road,
Kilpauk,
Chennai-10.

3.The Joint Commissioner of Labour and
Returning Officer,
Labour Welfare Building,
DMS Compound,
Chennai-600 006. .. Respondents 1 to 3
in WP 15464/15

WP No.1633 of 2015 is filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorarified Mandamus, calling for the records of the first
respondent in connection with its communication bearing
Ref.No.Na.Ka.En.ALB3/53764/2014 dated 13.11.2014 and the
consequential communication of the third respondent bearing
Ref.No.Na.Ka.en.E/4456/2014 dated 02.01.2015 and quash the same
and direct the respondents herein to conduct the Ballot for
recognition in accordance with paragraph-4 of the Division Bench
judgment pronounced in W.A.No.1459 of 2009 on 27.10.2009.

WP No.15464 of 2015 is filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Mandamus, directing the respondents 1 to 3 to include the
category of loadmen, who are working in various godowns of the
second respondent-Corporation all over Tamil Nadu, to vote in
the election to be conducted for verification of membership of
Trade Unions and for assessment of representative character for
the year 2015.

For Petitioner : Mr.V.Prakash, Senior Counsel
in WP 1633/15 for Mr.K.Sudalaikannu.

For Petitioner
in WP 15464/15 : Mr.K.M.Ramesh

For R-2&R-3 in
WP 1633/15 and
for R-1&R-3 in
WP 15464/15

: Mr.J.Ramesh,
Additional Government Pleader.

For R-1 in WP
1633/15 and
For R-2 in WP
15464/15

: Mr.C.Munusamy

For R-4 in WP
1633/15

: Ms.P.V.Rajeswari

C O M M O N O R D E R

WP 1633 of 2015 is filed calling for the records of the first respondent in connection with its communication bearing Ref.No.Na.Ka.en.ALB3/53764/2014 dated 13.11.2014 and the consequential communication of the third respondent bearing Ref. No. Na.Ka.en.E/4456/2014 dated 02.01.2015 and quash the same and direct the respondents herein to conduct the Ballot for recognition in accordance with paragraph-4 of the Division Bench judgment pronounced in W.A.No.1459 of 2009 on 27.10.2009.

2. WP 15464 of 2015 is filed to direct the respondents to include the category of loadmen, who are working in various godowns of the Tamil Nadu Civil Supplies Corporation Limited all over the Tamil Nadu to vote in the election to be conducted for verification of membership of Trade Unions and for assessment of representative character for the year 2015.

3. Admittedly, the notification issued for the election was not proceeded to and no elections were conducted. Pursuant to the interim orders granted in these writ petitions, the entire election process was stalled and the office bearers of the Unions, who were elected in the year 2009, are allowed to continue on account of litigious pendency for the past about 10 years. In other words, the elected office bearers of the Unions of the year 2009 is continuing for more than 10 years, despite the fact that the term of elected office bearers of the Unions are five years as per the guidelines. Therefore, keeping these writ petitions for a further period would affect the democratic process of conducting an election in the manner known to law.

4. This apart, it is not preferable to allow the elected office bearers of the Unions of the year 2009 to continue any further. Under these circumstances, the learned Senior Counsel appearing on behalf of the writ petitioner in WP No.1633 of 2015 made a submission that the Division Bench of

this Court in Writ Appeal No.1459 of 2009 dated 27.10.2010 made an observation that "the Corporation will consider whether the loadmen can be included in the roll of regular employees at the time of next election. This will help to emerge one common Union for all the employees rather than to have a separate representative Union for the loadmen".

5. Citing the above observation of the Hon'ble Division Bench of this Court, the learned Senior Counsel, appearing on behalf of the writ petitioner-Sangam, reiterated that the said observation is to be considered by the respondent-Corporation at the time of conduct of elections.

6. The learned counsel appearing on behalf of the writ petitioner in WP No.15464 of 2015, in support of the contention, solicited the attention of this Court with reference to the additional affidavit filed by the respondent-Corporation in October 2009, wherein the Managing Director of Tamil Nadu Civil Supplies Corporation Limited averred as under:-

"6. As far as the next elections to the Trade Unions in the Corporation it is submitted that the Corporation will consider whether the said loadmen can be included in the rolls of regular employees covered by the Service Regulations for the purpose of election of the Trade Unions in that regard. This would however be possible only after regularization of the services of the loadmen and their recognition as being part of the employees covered by the Service Regulations."

7. Reading of the above statement reveals that the observation made by the Hon'ble Division Bench in paragraph-4 of the order dated 27.10.2009 is possible only after regularization of services of the loadmen and their recognition as being part of the employees covered by the Service Regulations.

8. The Labour Manager Smt.Svetlana Regu Rajan, Tamil Nadu Civil Supplies Corporation (TNCSC), No.12, Thambusamy Road, Kilpauk, Chennai-600 012, made a submission on behalf of the Civil Supplies Corporation that the services of these loadmen are yet to be regularised in view of the fact that the eligibility and the other Rules are to be followed by grant of regularization of these employees. In the absence of sanctioned posts, it may not be possible for the respondent-Corporation to accommodate these temporary employees as permanent employees. Thus, only in the event of complying with the Recruitment Rules and availability of sanctioned posts, the respondent-Corporation would be in a position to initiate actions by following the

procedures contemplated under law.

9. This Court is of an opinion that all these factors cannot be linked with the conduct of election, which is the democratic process and it is not always preferable to stall the elections, which would affect the very principles of democracy. The elected office bearers of the Unions should not be allowed to continue beyond the period prescribed and further more, by virtue of an interim order, the elected office bearers of the Unions of the year 2009, cannot be allowed to continue as they have already continued another 5 years term, which is certainly painful and undemocratic.

10. All such election matters are to be decided as expeditiously as possible. That is the reason why the Courts have repeatedly insisting that in the election matters, interim orders cannot be granted for an unspecified period, stalling the entire elections, which would, undoubtedly, affect the basic principles of democracy and further the members of the Unions are also deprived of electing the set of new office bearers of the Unions of their choice.

11. This apart, long continuance of the office bearers of the Unions for an unspecified period would create lot of inconvenience, dissatisfaction and pave way for commissions or omissions as well as irregularities and illegalities. In all circumstances, the elected office bearers of the Unions should not be allowed to continue beyond the period of tenure specified in the Regulations/Guidelines.

12. This being the basic principles to be followed, this Court is of an opinion that the issues raised by the parties are to be resolved in the manner known to law. However, all such issues regarding regularization or incorporating the loadmen as members or otherwise, cannot be linked with the conduct of elections, thereby affecting the very democratic principles and this Court is of an undoubted opinion that such situations would lead to unconstitutionality, which cannot be encouraged by the Constitutional Courts.

13. In the cases on hand, the last election was conducted in the year 2009. The elected office bearers of the Unions are continuing for more than 10 years and the tenure of the elected office bearers of the Unions, as per the Regulations, is five years. It is an unfortunate situation, where the Court granted interim order and the petition is unable to be disposed of as expeditiously as possible.

14. This Court is of an opinion that on account of the pendency of large number of writ petitions in the High

Court, it may not be possible to dispose of all the cases within a reasonable period of time. The parties, who all are getting interim orders, are also taking undue advantage of such interim orders on account of the pendency of litigations. Such situations, more specifically, in election matters, are to be avoided and the Courts must ensure that election matters are periodically listed and the same are disposed of within a specified time frame and the Registry of the High Court should ensure that, whenever the interim orders are granted in election matters, such matters are listed periodically before the Court concerned, so as to dispose of the cases at least before the expiry of the term prescribed in the Regulations or Statutes or otherwise.

15. The Registry of the High Court is directed to identify all such election matters or the matters, which all are to be disposed of within the time frame and in the event of non-disposal, the same would affect the democratic principles, fundamental rights of citizen or constitutional principles and therefore, all such cases are to be posted before the Court having roster without causing any undue delay.

16. As far as the writ petitions on hand are concerned, the parties have raised many issues. All such issues can be placed before the Corporation, who in turn is bound to consider the same with reference to the Guidelines/Regulations or the Statute and take decisions. Thus, the respondent-Corporation should ensure that the elections are conducted promptly and by following the Guidelines or the Regulations as prescribed.

17. The respective petitioner-Unions/Sangams are at liberty to place their grievances before the authorities competent, enabling them to consider the same and take decisions on those issues. However, during the process of considering the grievances, the entire elections cannot be stalled and in any event, the elections must be conducted as per the Guidelines and on expiry of the term of the elected office bearers of the Unions and such principles must always be ensured by all concerned, both the Unions as well as the respondent-Corporation.

18. Under these circumstances, this Court is of an opinion that all the parties are at liberty to place their respective grievances before the authorities competent, who in turn shall consider the same in the light of the Guidelines or the Regulations and take decisions without causing any undue delay.

19. Accordingly, the relief, as such, sought for in these writ petitions cannot be granted in view of the fact that

the elected office bearers of the Unions of the year 2009, are continuing for about 10 years, which is more beyond the period of tenure of 5 years fixed in the Guidelines. Thus, the respondent-Corporation is directed to take all steps to conduct the elections as expeditiously as possible and complete the elections preferably within a period of six months from the date of receipt of a copy of this order. All the elected office bearers of the Unions, who all are continuing beyond the tenure of 5 years, shall not take any major decision or policy decision, till such time, the elections are conducted and results are declared by the authority competent.

20. With the above directions, the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Svn

sd/-

Assistant Registrar
True Copy

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Food, Cooperation and Consumer Protection Department,
Fort St. George,
Chennai-600 009.
- 2.The Chairman and Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd.,,
No.42, Thambuswamy Road,
Kilpauk,
Chennai-10.
- 3.The Joint Commissioner of Labour and
Returning Officer,
Labour Welfare Building,
DMS Compound,
Chennai-600 006.
- 4.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambuswamy Road,
Kilpauk,
Chennai-10.

5. Commissioner of Labour,
DMS Compound,
Chennai-600 006.

6. Joint Commissioner of Labour,
DMS Compound,
Chennai-600 006.

7. The Registrar-General,
High Court,
Madras.

8. The Registrar (Judicial),
High Court, Madras.

+1cc to Mr.K.M.Ramesh , Advocate SR.No. 99519

+1cc to Mr.K.Sudalaikannu , Advocate SR.No. 10014

+1 cc to Government Pleader Sr.No. 9965

+1cc to Mr.C.Munusamy , Advocate SR.No. 99810

+1cc to M/s.P.V.Rajeswari , Advocate SR.No. 99550

WP Nos.1633 & 15464 of 2015

A.SK(10/01/2020)



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