

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-09-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.NO.7735 OF 2016

And

W.M.P.Nos.6936 and 22560 of 2016 and 12560 of 2019

The Management

Ennore Thermal Power Station,

Ennore,

Chennai-600 057

Represented by its Superintending Engineer.

.. Petitioner

vs.

1.The Presiding Officer,
III Additional Labour Court,
Chennai.

2.K.Ethiraj (I.D.No.294/2005)

3.G.Gunasekaran (I.D.No.295/2005)

4.R.Ganapathi (I.D.No.296/2005)

5.P.Ramdoss (I.D.No.297/2005)

6.L.Balakrishnan (I.D.No.298/2005)

7.K.Moorthy (I.D.No.299/2005)

8.V.Govindaraj (I.D.No.300/2005)

9.G.Prabhakaran (I.D.No.301/2005)

10.C.P.Harikumar (I.D.No.302/2005)

11.E.Ravi (I.D.No.303 of 2005)

12.M.Kannan (I.D./No.304/2005)

13.V.Gandhi (I.D.No.305/2005)

14.S.Nagendran (I.D.No.306/2005)

15.G.Arumugam (I.D.No.307/2005)

16.E.Chandrasekar (I.D.No.308/2005)

- 17.C.Ponnuswamy (I.D.No.309/2005)
- 18.K.K.Balasubramani (I.D.No.310/2005)
- 19.M.Velu Nair (I.D.No.311/2005)
- 20.A.M.Kadar Basha (I.D.No.312/2005)
- 21.M.Manoharan (I.D.No.313/2005)
- 22.P.Munuswamy (I.D.No.314/2005)
- 23.S.Ravikumar (I.D.No.315/2005)
- 24.K.Murugan (I.D.No.316/2005)
- 25.T.Ramu (I.D.No.317/2005)
- 26.J.Kishore Babu (I.D.No.318/2005)
- 27.P.Ranajayam (I.D.No.319/2005)
- 28.C.Babu (I.D.No.320/2005)
- 29.V.Arul (I.D.No.321/2005)
- 30.P.Asupathi (I.D.No.322/2005)
- 31.V.Damodaran (I.D.No.323/2005)
- 32.V.Veeraiyan (I.D.No.324/2005)
- 33.S.Rajasekaran (I.D.No.325/2005)
- 34.K.R.Vijayan (I.D.No.326/2005)
- 35.M.John Bosco (I.D.No.327/2005)
- 36.Joseph Anand (I.D.No.328/2005)
- 37.K.R.Kalidoss (I.D.No.329/2005)
- 38.M.Velayudam (I.D.No.330/2005)
- 39.A.D.Sundaram (I.D.No.331/2005)
- 40.K.Sekar (I.D.No.332/2005)
- 41.M.Gurusamy (I.D.No.333/2005)

- 42.P.R.Danapal (I.D.No.334/2005)
- 43.S.Suriyanarayanan (I.D.No.335/2005)
- 44.J.Paranthaman (I.D.No.336/2005)
- 45.T.Jeeva (I.D.No.337/2005)
- 46.C.Gandhi (I.D.No.348/2005)
- 47.P.Kumar (I.D.No.349/2006)
- 48.M.Subramani (I.D.No.350/2006)
- 49.D.Marimuthu (I.D.No.351/2006)
- 50.V.Munisundaram (I.D.No.352/2006)
- 51.P.Ramaiah (I.D.No.353/2006)
- 52.E.Thangam (I.D.No.354/2006)
- 53.R.Babu (I.D.No.355/2006)
- 54.S.sudharsan (I.D.No.356/2006)
- 55.M.Venkatesan (I.D.No.357/2006)
- 56.A.Saravanan (I.D.No.358/2006)
- 57.D.Elangovan (I.D.No.359/2006)
- 58.M.Narayanan (I.D.No.360/2006)
- 59.V.Balasubramanian (I.D.No.361/2006)
- 60.K.Senthil Kumar (I.D.No.362/2006)
- 61.N.Ulaganathan (I.D.No.363/2006)
- 62.R.Dhanasekar (I.D.No.364/2006)
- 63.S.Nandakumar (I.D.No.365/2006)
- 64.A.G.Murugan (I.D.No.366/2006)
- 65.S.Nagaraj (I.D.No.367/2006)
- 66.P.John Lawrance (I.D.No.368/2006)

- 67.J.Venkatesan (I.D.No.374/2006)
- 68.P.Arul (I.D.No.375/2006)
- 69.M.Murugan (I.D.No.376/2006)
- 70.K.Ravanamoorthy (I.D.No.377/2006)
- 71.R.Murugesan (I.D.No.378/2006)
- 72.S.Solaiappan (I.D.No.379/2006)
- 73.V.Dhamodharan (I.D.No.380/2006)
- 74.G.Gopi (I.D.No.381/2006)
- 75.S.Rajendran (I.D.No.382/2006)
- 76.M.Santhanam (I.D.No.383/2006)
- 77.D.Paranthaman (I.D.No.384/2006)
- 78.S.Jeevanantham (I.D.No.385/2006)
- 79.M.Rajendran (I.D.No.386/2006)
- 80.D.Arulazhi (I.D.No.387/2006)
- 81.P.Kathavarayan (I.D.No.388/2006)
- 82.J.Lawrance (I.D.No.389/2006)
- 83.E.Saravanan (I.D.No.390/2006)
- 84.K.Rajesh Babu (I.D.No.391/2006)
- 85.T.Kasi (I.D.No.392/2006)
- 86.Y.Ezhilvanan (I.D.No.393/2006)
- 87.G.Raja Gowri (I.D.No.394/2006)
- 88.D.Balasubramani (I.D.No.395/2006)
- 89.E.Madhan Kumar (I.D.No.396/2006)
- 90.M.Gopi (I.D.No.397/2006)
- 91.D.Thulasi Doss (I.D.No.398/2006)

- 92.D.Jeyasankar (I.D.No.399/2006)
- 93.V.Elangovan (I.D.No.400/2006)
- 94.S.Suresh Babu (I.D.No.401/2006)
- 95.D.Malavannan (I.D.No.402/2006)
- 96.S.Balaji (I.D.No.403/2006)
- 97.N.Amirthalingam (I.D.No.404/2006)
- 98.K.Damodaran (I.D.No.405/2006)
- 99.K.Rajendran (I.D.No.406/2006)
- 100.T.Siva (I.D.No.407/2006)
- 101.K.Sankar (I.D.No.408/2006)
- 102.S.Ravichandran (I.D.No.409/2006)
- 103.N.Nandakumar (I.D.No.410/2006)
- 104.P.John Iruthayaraj (I.D.No.411/2006)
- 105.G.Om Kumar (I.D.No.412/2006)
- 106.E.Bori (I.D.No.413/2006)
- 107.A.Jayaselan (I.D.No.414/2006)
- 108.E.Dhasarathan (I.D.No.415/2006)
- 109.D.Babu (I.D.No.416/2006)
- 110.P.Ponnurangan (I.D.No.417/2006)
- 111.M.Babu (I.D.No.418/2006)
- 112.A.Muthu (I.D.No.419/2006)
- 113.J.Desappan (I.D.No.420/2006)
- 114.V.Sivagnanam (I.D.No.421/2006)
- 115.S.Ravichandran (I.D.No.422/2006)
- 116.P.Kumar (I.D.No.423/2006)

- 117.R.Kumaran (I.D.No.424/2006)
- 118.N.Thirumalai (I.D.No.425/2006)
- 119.S.Muthukumaran (I.D.No.426/2006)
- 120.A.Venkatesan (I.D.No.427/2006)
- 121.V.Sundaramoorthy (I.D.No.428/2006)
- 122.P.Suresh (I.D.No.429/2006)
- 123.T.Sivakumar (I.D.No.430/2006)
- 124.G.Babu (I.D.No.431/2006)
- 125.K.Dayalan (I.D.No.432/2006)
- 126.C.Jayaraman (I.D.No.433/2006)
- 127.D.Prabhu (I.D.No.434/2006)
- 128.T.Ayyavoo (I.D.No.435/2006)
- 129.M.Sundrarajan (I.D.No.436/2006)
- 130.A.Jambu (I.D.No.437/2006)
- 131.P.S.Muthuvelu (I.D.No.438/2006)
- 132.E.Sridharan (I.D.No.439/2006)
- 133.M.Mani (I.D.No.440/2006)
- 134.M.Paarthiban (I.D.No.441/2006)
- 135.R.Arul Kumar (I.D.No.442/2006)
- 136.P.Natesan (I.D.No.443/2006)
- 137.R.Veerapandian (I.D.No.444/2006)
- 138.E.Chellappan (I.D.No.445/2006)
- 139.B.Nedunchezhiyan (I.D.No.446/2006)
- 140.G.Neethivasan (I.D.No.447/2006)
- 141.M.Dillibabu (I.D.No.448/2006)

142.S.Kumar (I.D.No.449/2006)
143.S.Sankar (I.D.No.450/2006)
144.G.Desappan (I.D.No.451/2006)
145.S.Raji (I.D.No.452/2006)
146.P.Prabhakar (I.D.No.453/2006)
147.S.Srinivasan (I.D.No.454/2006)
148.A.Saravanan (I.D.No.455/2006)
149.R.Suriyamoorthy (I.D.No.456/2006)
150.R.Sivakumar (I.D.No.457/2006)
151.C.M.Raja (I.D.No.458/2006)
152.V.Jayaseelan (I.D.No.459/2006)
153.R.Sampath (I.D.No.460/2006)
154.M.Bhaskar (I.D.No.461/2006)
155.K.Sigamani (I.D.No.462/2006)
156.S.K.Shanmugasundaram (I.D.No.463/2006)
157.C.Palani (I.D.No.464/2006)
158.V.Sivakumar (I.D.No.465/2006)
159.M.Arumugam (I.D.No.466/2006)
160.R.Srinivasan (I.D.No.467/2006)
161.C.Dilli (I.D.No.468/2006)
162.S.Ravi (I.D.No.469/2006)
163.D.Sundaram (I.D.No.470/2006)
164.M.Anandan (I.D.No.471/2006)
165.E.Gopalakrishnan (I.D.No.472/2006)
166.P.Jayaprakash (I.D.No.473/2006)

167.P.Krishnamoorthy (I.D.No.474/2006)

168.G.Janarthanan (I.D.No.475/2006)

169.N.Shankar (I.D.No.476/2006)

170.P.Selvam (I.D.No.477/2006)

171.T.Arivumani (I.D.No.478/2006)

172.R.Munusamy (I.D.No.479/2006)

173.P.Ramachandran (I.D.No.480/2006)

174.E.Deivasigamani (I.D.No.481/2006)

175.M.Ganapathy (I.D.No.482/2006)

176.K.Sekar (I.D.No.483/2006)

177.R.Babu (I.D.No.484/2006)

178.V.Mohan (I.D.No.485/2006)

179.R.Ethiraj (I.D.No.486/2006)

180.E.Ramesh (I.D.No.487/2006)

181.S.Panneer (I.D.No.488/2006)

182.A.Munusamy (I.D.No.489/2006)

183.J.Perumal (I.D.No.490/2006)

184.V.Saravanan (I.D.No.491/2006)

185.K.Raji (I.D.No.492/2006)

186.M.Abith Usean (I.D.No.493/2006)

187.R.Chandran (I.D.No.494/2006)

188.R.Sekar (I.D.No.495/2006)

189.V.Packrisamy (I.D.No.496/2006)

190.N.Kukmar (I.D.No.497/2006)

191.A.Venkat (I.D.No.499/2006)

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in I.D.Nos.294 to 337 of 2005, 348 of 2006 to 368 of 2006, 374 to 497 of 2006 and 499 of 2006 and quash its Common Award dated 25.04.2014.

For Petitioner : Mr.A.Anand Gopalan for
M/s.T.S.Gopalan and Co.
For Respondent-1 : Labour Court
For Respondents-2to191 : Mr.W.M.Abdul Majeed

O R D E R

The Common Award dated 25.04.2014 passed by the first respondent-Labour Court in I.D.Nos.294 to 337 of 2005, 348 of 2006 to 368 of 2006, 374 to 497 of 2006 and 499 of 2006 is under challenge in the present writ petition.

2. The writ petitioner states that in the year 1971, Tamil Nadu Electricity Board put up a Thermal Power Plant in Ennore and it came to be known as 'Ennore Thermal Power Station' (ETPS). As ETPS was engaged more than 20 workmen as contract labourers, it had obtained a Certificate of Registration as a principal employer under the Contract Labour (Regulation and Abolition) Act as early as 1978 and continued to amend the same from time to time. Amongst the contractors enumerated in the Certificate of Registration such of those who were employing more than 20 workmen as contract labourers had also taken license under the provisions of the Contract Labour (Regulation and Abolition) Act.

3. Whenever any job was awarded on contract, the Board used to float a tender inviting quotations and based on the quotations, the party who has bid the lowest will be awarded the contract. The contract will invariably be for a fixed period. When once the contract comes to an end, if there be a requirement, the Board will again float a tender inviting fresh bids.

4. The job of providing security was given on contract to establishments providing security services. There were many agencies acting as Security Contractors at different times in ETPS. One Guardian Security Service was a security contractor from 01.04.1984 to 31.03.1986, Hindustan Security and Detective Services was the contractor from 1986 to 1989 and Southern Security Service was the contractor from 19.01.1989 to 31.03.1990. Whenever there is a change of contractor from one agency to another, if the latter quotes a rate lesser than the former, the wages paid by the latter contractor to his workmen will be lower than the wages paid by the earlier contractor.

Therefore, whenever there is a change of contractor resulting in a fixation of lower rate of wages, many of the workmen of the former contractor will not accept engagement with the latter contractor. Moreover when such change of contractor takes place, the new contractor would does not necessarily employ the workmen of the erstwhile contractor.

5. In August, 1988, when the security contract was with Hindustan Security Detective Services, 167 Security Guards including some of the respondents filed WP No.11348 of 1988 for the issue of a Writ of Mandamus to regularise their services, absorb them in the employment of the writ petitioner-company and pay them equal wages to that of the wages paid to the permanent security watchmen. In January, 1989, WP No.314 of 1989 was filed for the issue of a Writ of Mandamus, directing the Government of Tamil Nadu to pass orders under Section 10 of the Contract Labour (Regulation and Abolition) Act abolishing contract employment in the security services of the Ennore Thermal Power Station.

6. On 10.04.1990, the Hon'ble Supreme Court of India passed an order in SLP No.1820 of 1990 appointing Mr.Justice V.Khalid, the former Supreme Court Judge to go into the question of whether the contract workmen were entitled to be absorbed in the service of Tamil Nadu Electricity Board throughout the State. In view of the order of the Supreme Court appointing Mr.Justice V.Khalid to go into the question of absorption of contract workmen, the Security Guards whose engagement with Southern Security Service came to an end on 31.03.1990 were hoping to stake their claim for absorption based on the outcome of the decision of Mr.Justice Khalid Commission. On 11.02.1991, Mr.Justice V.Khalid gave an Award holding that 18006 contract workmen should be absorbed in the service of the Electricity Board. However, the name of the contesting respondents was not part of the Award.

7. On 28.02.1996, a Division Bench of this Hon'ble Court passed orders disposing of WP No.11348 of 1988 and WP No.314 of 1989. As far as WP No.11348 of 1988 was concerned, the Division Bench held that the relief of absorption of the contract workmen cannot be considered in a writ petition and it is to be pursued through the machinery provided under the Industrial Disputes Act. In that view WP No.11348 of 1988 was dismissed. The Division Bench also dismissed WP No.314 of 1989.

8. Purport to the order of the Hon'ble Division Bench of this Court dated 28.02.1996 was that a collective industrial dispute could be raised by the direct workmen of principal employer under Section 2(k) of the Industrial Disputes Act, seeking absorption of the contract workmen or at best the

contract workmen themselves collectively raise an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 for a declaration that the workmen of the contractor are really the workmen of the principal employer, such a dispute could be taken to the Industrial Tribunal or Labour Court for adjudication and only on such adjudication proceedings, relief could be obtained by the aggrieved persons. The order of the Hon'ble Division Bench of this Court has nothing to do with the non-engagement of the concerned Security Guards by Southern Security Service as on 31.03.1990. The Security Guards ceased to be engaged from 31.03.1990 and they did not raise any industrial dispute changing their cessation of employment.

9. In the year 1988, the Tamil Nadu Electricity Board decided to absorb some workmen, who were working as contract workmen in the four Thermal Stations. Accordingly, the writ petitioner-company called for applications, conducted interviews and appointed eligible persons. Such of those contract workmen, who gave representation and were eligible as per Board proceedings dated 05.01.1998 were absorbed from 01.05.1999. The respondents-workmen did not make any claim for employment when the said absorption took place. In any event the absorption scheme of the Board required the contract labourers to be working as on 01.05.1999 and further ought to have worked for 480 days between 06.01.1996 and 05.01.1998.

10. On 07.01.2000, One V.Ilangovan and 170 contract Security Guards made a representation to the Assistant Commissioner of Labour (Conciliation) complaining that they were stopped from service on the ground that the contract with the security contractor had come to an end, that the writ petitioner filed on their behalf in the year 1989 was pending, that in the meantime several contract workmen were regularised based on the report of Mr. Justice Khalid Commission, that these Security Guards were not regularised, that though the writ petition was disposed of on 29.06.1996, they could not immediately initiate legal proceedings, that therefore their representation may be considered and they should be provided job in terms of the recommendations of Mr. Justice Khalid Commission.

11. In between January 2000 and July 2000, some of the Security Guards, who ceased to be engaged by the contractor from 31.03.1990 made representation to the Assistant Labour Commissioner, seeking his intervention to get employment in the service of the Tamil Nadu Electricity Board. In fact, it was not a petition under Section 2-A of the Industrial Disputes Act, 1947, raising an industrial dispute challenging the termination of employment on 31.03.1990. Those representations were treated as petitions under Section 2-A of the Industrial Disputes Act, 1947 and they were admitted in conciliation.

12. The Conciliation Officer submitted his failure report and thereafter they approached the Labour Court Chennai. The disputes were taken as ID Nos.73 to 140 of 2001 and 227 of 2001 and concerned Security Guard filed claim statement contending the contract system was illegal, that several workers were absorbed in terms of Mr. Justice Khalid Commission Report that they were not considered for regular service, that therefore an Award should be made holding non-employment was not justified and unlawful and directing the management to reinstate and absorb them in regular service of the Board. Thus, it will be seen that the claim was for regularisation rather than against the termination of employment by the contractor. In the said dispute, an Award was passed in favour of the workmen. The writ petitioner-company has challenged the Award and the issue is now pending before this Court in writ appeal.

13. The learned counsel for the respondents-workmen made a submission that the benefit of permanent absorption was granted in favour of many such persons pursuant to the recommendations of Mr. Justice Khalid Committee and based on the Board proceedings. Therefore, the similar benefit of permanent absorption is to be extended to these respondents-workmen also.

14. Per contra, the learned counsel appearing on behalf of the writ petitioner disputed the said contention of the learned counsel for the respondents-workmen by stating that the writ petitioner-Board raised a specific ground even before the Labour Tribunal that the dispute cannot be entertained as the said industrial dispute had been raised after a lapse of 15 years from the date of disengagement. Further, it is contended that the relief of absorption cannot be granted in a dispute under Section 2-A of the Industrial Disputes Act, 1947. The engagement of the respondents-workmen were on contractual basis and they were contract workers working under the Southern Security Services and the contract itself came to be terminated on 31.03.1990.

15. This apart, the respondents-workmen were not engaged directly by the writ petitioner-Board. Under those circumstances, the dispute raised after the lapse of 15 years from the date of disengagement was hit by delay and laches and the Labour Court has committed an error in entertaining the dispute after the lapse of 15 years, as the Tamil Nadu Electricity Board is the State Government Undertaking cannot absorb these workmen, who were employed by the private contractor as per the Recruitment Rules and as per the Board proceedings.

16. It is further urged that the very same writ petitioner earlier filed WP Nos.11348 of 1988 and 314 of 1989 and the Division Bench of this Court dismissed the writ petition with a liberty to approach the appropriate Labour Court for raising a dispute. Even thereafter, the respondents-workmen had not raised any dispute. Even from the date of dismissal of the writ petition, they took 9 years for raising the industrial dispute and therefore, there was an enormous delay in raising the industrial dispute and after this length of time, the writ petitioner-Board is not in a position even to consider the cases of the of the respondents-workmen for permanent absorption in view of the fact that the permanent absorption cannot be made in violation of the Recruitment Rules in force.

17. This Court is of the considered opinion that permanent absorption of the contract labourers was already done through a Scheme and all those employees, who were found eligible and qualified, were conferred with the benefit of permanent absorption from 01.05.1999 onwards. When the benefit of permanent absorption was extended to these contract labourers during the relevant point of time, these respondents-workmen had not even raised any dispute nor approached the writ petitioner-Board with a request to grant the benefit of permanent absorption.

18. Under these circumstances, the Award of the Labour Court is perverse and the Labour Court had committed an error in entertaining the industrial disputes, which were filed after the lapse of 15 years from the date of disengagement and the Award was passed without considering the fact that the respondents-workmen were engaged by the private contractor and they were not engaged by the writ petitioner-Board directly.

19. This being the factum, this Court has no hesitation in coming to the conclusion that the Award of the Labour Court is perverse and consequently, the Common Award dated 25.04.2014 passed by the Labour Court in I.D.Nos.294 to 337 of 2005, 348 of 2006 to 368 of 2006, 374 to 497 of 2006 and 499 of 2006 is quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Svn

To

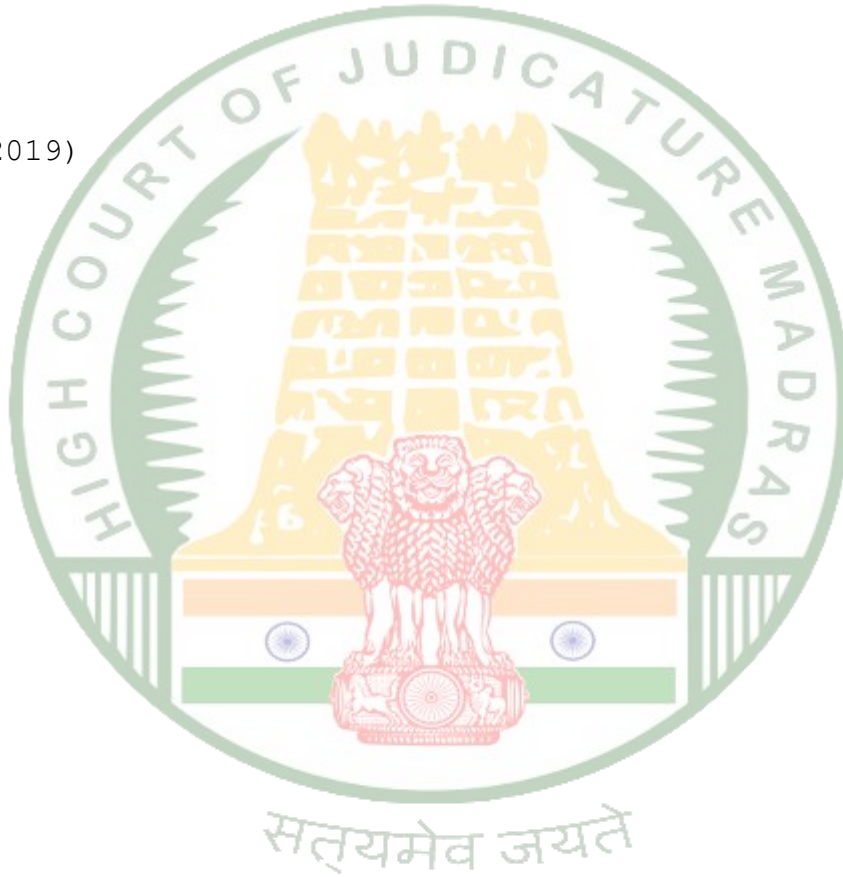
The Presiding Officer,
III Additional Labour Court,
Chennai.

+1 CC to Mr.T.S. Gopalan , Advocate sr 82092.

+1 CC to Mr.N. Antony Selvaraj, Advocate sr 82585.

W.P.No.7735 of 2016

PP(CO)
SP(25/11/2019)



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