

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 34645 OF 2018

AND

W.M.P. NO. 40167 OF 2018

Madras Port Trust Employees Union
rep. By its General Secretary
G.M.Krishnamurthy
No.34/9, SCC Anthony Pillai Bhavan
Second Line Beach
Parrys, Chennai - 1. ... Petitioner

- Vs -

1. Union of India
rep. By its Secretary
Ministry of Shipping
Transport Bhavan
New Delhi.
2. The Chairman
Chennai Port Trust
Rajaji Salai, Chennai - 1. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents to dispose the petitioner's representation dated 23.10.2018 and conduct the process of checkoff for the year 2019 and 2020 at the earliest within a time frame to ascertain the strength of the Unions functioning in Chennai Port Trust for the purposes of availing recognition and appointing the Labour Trustees to the Board of Chennai Port Trust.

For Petitioner : Mr. R.Sunil Kumar

For Respondents: Mr. R.Vasudevan, ACGSC for R-1
Mr.P.M.Subramanian for R-2

ORDER

The petitioner is a registered trade union and affiliated to Hindu Mazdoor Sabha, which has been espousing the cause and interest of the employees of the Port Trust for nearly 75 years.

The petitioner/Union is one of the leading Unions in the Port Trust commanding a strength of 900 members out of 4000 employees in the Port Trust. The office bearers of the petitioner/Union are elected once in three years by the members of the Union. As far as Chennai Port Trust is concerned, there are about 19 Unions, out of which 7 top Unions are accorded recognition by the 2nd respondent. The petitioner is one of the Unions recognised by the 2nd respondent. The strength of each Union is assessed on the basis of the number of employees affiliated to the Union and such assessment is ascertained on the basis of check-off process periodically conducted once in a year.

2. According to the petitioner, the check-off system has been followed by the Port Trust across India and the system being operated on the basis on the guidelines issued by the 1st respondent. According to the petitioner/Union, the check-off system is a democratic process by which the workers/employees are free to choose their allegiance to a particular union without being subjected to any external pressure, influence or coercion. The worker/employee cannot be a member of more than one Union. The check-off system, as far as the 2nd respondent is concerned, has been in vogue and being conducted on a yearly basis, since 1986. The process of check-off will also determine the majority Unions to nominate its members as Labour Trustee in the 2nd respondent Board, which ensures that the labour is represented in the Board for the purpose of negotiations in respect of their service conditions.

3. On 8.12.14, the 1st respondent issued guidelines to all major Port Trust, including the 2nd respondent in regard to the manner of recognition of Labour Unions, either through check-off system or secret ballot. Several guidelines have been incorporated in the communication dated 8.12.14 in regard to assessment of strength of each of the Union. The communication dated 8.12.14 also provided for a check-off system or secret ballot system to be operated once in two years. The communication emphasised the fact that the Unions of Port Trust can determine the system of either check-off or secret ballot according to their wish and interest. As far as the 2nd respondent is concerned, the check-off system has been followed on a yearly basis since 1986. the last of the check-off system was conducted for the year 2015.

4. Whiles, the Unions, being aggrieved by certain issues regarding the system to be followed, has approached this Court in W.P. No.21158/16 challenging the circular dated 16.10.2015 of the 2nd respondent. A learned Judge of this Court, while disposing of the writ petition, in para-6 of the order, has issued directions, which is extracted hereunder :-

"6. Taking advantage of the new circular, the

existing unions cannot be allowed to enjoy the benefits for two years, without conducting the process. Even without undergoing the process, the seven major unions are already enjoying the check off (authorisation) facilities from the year 2014 to 2016. In any event, the two year period ends on 31.10.2016. Therefore, following the new circular issued by the Government of India on 08.12.2014, the Madras Port Trust is directed to issue necessary circular/communication between 15.11.2016 to 30.11.2016 for conducting the check off (authorisation) process for the year the 2017 and 2018, following the guidelines contemplated in the new circular for check off system, by which seven major unions would be chosen by the workers and the check off facilities would be made available to those unions for a period of two years, i.e. 2017 to 2018."

5. In pursuance to the direction, the check-off system was conducted for the year 2017 - 2018. In the process of conduct of check-off system, the 2nd respondent has issued authorisation as well as revocation forms. After completion of the process of check-off system for the years 2017 - 2018, one of the parties approached the learned Judge of this Court stating that in the process of conducting the check-off system, the 2nd respondent has violated the orders and, therefore, sought to initiate contempt proceedings against the 2nd respondent. According to the affected party, the 2nd respondent has issued both authorisation and revocation forms and such action on the part of the 2nd respondent was in violation of the orders passed by this Court. In the contempt petition, though notice is ordered, the same has not been disposed of and the contempt petition is still pending.

6. While the matters stood thus, the check-off system, which was conducted for the earlier two years, has admittedly come to an end on 31.12.18. When such is the position, the 2nd respondent, according to the petitioner/Union, has not initiated any action for conducting the check-off system for the present two years, viz., 2019 - 2020. In this regard, the major Unions of the 2nd respondent have represented to the 2nd respondent for initiation of the process of check-off system, but as no action was forthcoming, the petitioner/Union, which is one of the recognised Unions of the 2nd respondent, has come before this Court seeking the issue of a writ of mandamus.

7. Learned counsel appearing for the petitioner/Union submits that by not initiating the process of check-off system for the present two years, viz., 2019 and 2020, the 2nd respondent is indirectly trying to prevent the representation of the workers on the Board, since the Port Trust was not interested in the welfare of the workers and is not inclined to have any representation of the workers on the Board. It is further submitted that admittedly, the earlier check-off process has ended on 31.12.18 and, therefore, the 2nd respondent ought to have initiated action in January, 2019 itself by issuing necessary authorisation forms and also deduction of subscription from the workers concerned. Unfortunately, till date, the 2nd respondent has not initiated any action nor has given any reply to the representation submitted by all the Unions, including the petitioner/Union. In any case, learned counsel for the petitioner/Union submits that it is the democratic right of the petitioner/Union to represent the workers of the 2nd respondent and such right cannot be stifled by the continued inaction on the part of the 2nd respondent. Moreover, the non-conduct of the check-off system once in two years is also contrary to the instructions issued by the Government of India in this regard.

8. To the above submissions, Mr.P.M.Subramanian, learned counsel appearing for the 2nd respondent submitted that the 2nd respondent could not take any immediate action in regard to the conduct of the check-off system for the present two years, viz., 2019 and 2020 in view of the fact that the contempt petition was pending before the learned Judge of this court in regard to the implementation of the earlier order of this Court dated 4.11.16 in W.P. No.21158/16. The person, who initiated the contempt petition before this Court has complained that the 2nd respondent has violated the orders of this Court dated 4.11.16 by issuing both authorisation forms as well as revocation forms. Whiles, the 2nd respondent is awaiting the outcome in the present contempt petition for conducting the check-off system for the present two years, being wary not to commit any further contempt.

9. At the same time, learned counsel appearing for the 2nd respondent also fairly submits that the original authorisation form submitted by the workers has come to an end on 31.12.18 by passage of time and, therefore, as far as the present check-off system to be operated, there is no requirement for issuing any revocation forms, though the circular contemplated such course. According to the learned counsel for the 2nd respondent, since the authorisation for the earlier two year period has come to an end, admittedly on 31.12.18, the question of revocation will not arise for the present two years and, therefore, de hors the outcome in the contempt petition, the present check-off system can be set in motion.

10. This Court is in agreement with the submissions made on behalf of the 2nd respondent that the contempt petition only pertains to whether the issuance of revocation forms amounted to violation of the orders passed by this Court in the earlier writ petition in W.P. No.21158/16. But as far as the operation of check-off system for the present two years is concerned, even according to the learned counsel for the 2nd respondent, there is no requirement for issuance of revocation forms for the reason that the earlier authorisation by the workers concerned had come to an end on 31.12.18. That being the case, this Court feels that there is no legal impediment for the 2nd respondent to initiate check-off system for the years 2019 and 2020, in terms of the guidelines issued by the 1st respondent.

11. As rightly contended by the learned counsel for the petitioner that the interest of the workers will be undermined if their representatives are not nominated in the Board in order to negotiate and safeguard their interest against the Management. If the check-off system is not set in motion immediately, it will go against the interest of the workers, as the workers would be deprived of their representative in the Board to represent their interest and grievances to the Management. Therefore, it is legally imperative on the part of the 2nd respondent to set in motion the process of check-off system for the present years 2019 - 2020, since already two months have lapsed since the beginning of the year 2019.

12. For the aforesaid reason, this Court is of the considered view that the petitioner has made out a case for grant of relief. In the above circumstances, the 2nd respondent is directed to initiate the process of check-off system by issuing necessary authorisation forms to all the workers. The process of initiation of the check-off system shall commence within a period of one week from the date of receipt of a copy of this order and the same shall be completed within a period of four weeks thereafter.

13. This writ petition stands allowed in the terms aforesaid. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Gln

28.02.2019

BEING MENTIONED

The Writ Petition having been posted on 22.03.2019 under the Caption "For Being Mentioned" pursuant to the order of this Court dated 28.02.2019 and made herein in the presence of the aforesaid Counsel on the either side, the Court made the following Order:-

Today when the matter is posted for being mentioned, at the instance of the Port Trust, it is represented by the learned counsel for the petitioner that the Port Trust apprehends that the completion of the process of check-off system, in pursuance of the direction passed by this Court, may result in violation of the model code of conduct, issued by the Election Commission of India in regard to the forthcoming Lok Sabha Election notified by the Election Commission of India.

2.This Court is of the view that the exercise which the Port Trust is going to undertake is only in pursuance of the direction issued by this Court and therefore, it cannot be construed as violation of any model code of conduct and therefore, the Port Trust is free to undertake the exercise, as per the directions of this Court. Accordingly, the issue is clarified.

Msk

22.03.2019

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Ministry of Shipping
Government of India
Transport Bhavan
New Delhi.

2. The Chairman
Chennai Port Trust
Rajaji Salai, Chennai - 1.

+1cc to Mr.P.M.Subramanian, Advocate Sr.27339

W.P. NO. 34645 OF 2018

A.SK (27/03/2019)

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