

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 17.06.2019****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

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WP(MD)No.20496 of 2018**and****WMP(MD)Nos.18237 to 18239 of 2018**

Desiya Murpokku TNPL Oppantha

Thozhilalar Sangam (Regn.No.99/Karur),

Rep.by its President, Pon.Elangovan,

Ponveedu, Thillai Nagar,

S.Vellalapatti (Post),

Karur District - 639 004.

... Petitioner

Vs.

1.The Government of Tamil Nadu,

Rep.by its Secretary to Government,

Labour and Employment Department,

Secretariat, Chennai - 600 009.

2.The Tamil Nadu State Advisory Contract

Labour Board,

Rep.by its Chairman and

Secretary to Government,

Labour and Employment Department,

Government of Tamil Nadu,

Secretariat, Chennai - 600 009.

3.The Secretary,

Tamil Nadu State Advisory Contract

Labour Board and the Assistant

Commissioner of Labour

(Contract Labour),

Office of the Commissioner of Labour,

DMS Campus, Teynampet,

Chennai - 600 006.

4.The Commissioner of Labour,

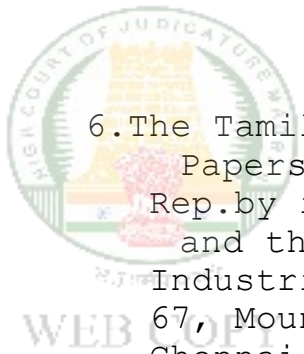
DMS Campus, Teynampet,

Chennai - 600 006.

5.The Director of Industrial Health
and Safety,

(Chief Inspector of Factories),

Royapettan, Chennai - 600 014.



6.The Tamil Nadu Newsprint and
Papers Limited,
Rep.by its Chairman / Managing Director
and the Secretary to Government,
Industries Department,
67, Mount Road, Guindy,
Chennai - 600 032.

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records related to the order No.L1/45663/17 dated 08.06.2018 passed by the 4th respondent and quash the same and consequently, direct the respondents to notify the abolition of contract labour system in respect of the perennial nature of works listed in the Sub-Committee reports dated 22.03.2001 and 08.02.2018 and regularise the services of the contract labourers working in the perennial nature of works listed in the Sub-Committee Reports dated 22.03.2001 and 08.02.2018 from the date of their initial employment and grant all the service, monetary and retirement benefits within a time limit to be fixed by this Court.

For Petitioner : Shri.Veerakathiravan, Senior Counsel
for Shri.T.Sakthikumaran

For Respondent : Shri.Aayiram K.Selvakumar
Addl., Government Pleader for R1 to R5

Shri.Somayaji, Senior Counsel
for Shri.M.P.Senthil for R6

ORDER

The writ petitioner is a registered Trade Union. It is one of the Trade Unions that work for safeguarding the interests of contract labour engaged in Tamil Nadu Newsprint and Papers Limited (TNPL), Kakithapuram, Karur District and its constituent units/industries. TNPL is a Government of Tamil Nadu undertaking. It is said to be a profit earning industry.

2.The case of the writ petitioner is that contract labour have been regularly employed even in perennial works in the manufacturing process in TNPL for periods ranging from 25 to 30 years. Many of them attained the age of superannuation and they are no longer employed and they have not received any retirement benefit. The principal employer remain the same. The contract labour remain the same. Only the intermediary contractors keep changing. This is as an unfair labour practice by TNPL which ought to act as a model employer. The Government of Tamil Nadu has issued G.O Ms.No.148, Labour and Employment Department dated 11.11.1998. A Sub Committee was formed to find out to go into the issue of abolition or regulation of the contract and labour system in paper industries in Tamil Nadu.



3. The Sub Committee submitted its reported dated 22.03.2001. The Sub Committee identified certain areas as those in which contract labour have been employed. As a corollary, the engagement of contract labour in regular perennial works in the manufacturing process ought to be abolished. The grievance of the writ petitioner is that no action was taken on the sub committee's report. Therefore, an industrial dispute was raised. The Deputy Commissioner of Labour, Dindigul issued an advisory on 20.08.2014 calling upon the parties to take further action on the basis of the said sub committee report. Thereupon, the writ petitioner filed WP (MD) No. 7998 of 2015 for directing the Tamil Nadu State Advisory Contract Labour Board to give a conclusive decision on the sub committee report dated 22.03.2001. Direction was sought against the Government for abolishing the contract labour system in TNPL. Consequential relief was also sought to absorb the members of the petitioner's sangam as regular employees. By order dated 22.06.2015, this Court issued certain directions. Aggrieved by the same, TNPL as well as the Association of contractors filed WA (MD) Nos. 886, 889, 890 and 891 of 2015. After hearing both sides, the Hon'ble Division Bench disposed of the writ appeals vide order dated 23.02.2017 as follows :

"4. Today, when the matter was taken up for hearing, the Assistant Commissioner of Labour, (Contract Labour), Chennai has filed an affidavit, wherein at paragraph No. 8, it has been stated as follows;

"8. It is submitted that to comply with the orders of the Hon'ble High Court, special committee was constituted by the Government vide G.O. (D). No. 643, Labour & Employment (H1) Department dated 02.11.2016 and subsequently amended the G.O. (D). No. 664, Labour & Employment (H1) Department, dated 11.11.2016, though the subject matter referred to in the writ petition is pending before the State Advisory Contract Labour Board. As aforesaid, the State Advisory Contract Labour Board (a Tripartite body) is only vested with the powers of constituting a sub-committee which has to place its report before the Board for its deliberations and the State Government has to decide based on the decision taken in the State Advisory Contract Labour Board to issue a notification as per Section 10 of the Act or not. Hence, it is submitted that State Advisory Contract Labour Board will deliberate on the same issue through a sub-committee that will be appointed by the State Advisory Contract Labour Board. .

5. Since, now, the State Advisory Contract Labour Board has stated that the Board will deliberate the issue through sub committee, this Court is of the view that the order passed by the learned Single Judge



appointing the Sub Committee can be set aside and accordingly, the said portion is set aside and consequently, the G.O.(D).No.643, Labour & Employment (H1) Department, dated 02.11.2016 and amended G.O.(D).No.664, Labour and Employment (H1) Department, dated 11.11.2016 are set aside. The State Advisory Board is directed to take a decision either by themselves or by appointing a Sub- Committee with regard to the abolition of Contract Labour system within a period of 10 weeks from the date of receipt of a copy of this order and proceed further in accordance with law. It is also open to the Board to decide whether the issue with regard to the abolition of the Contract Labour system should be restricted to TNPL or it should be applicable to the entire paper industry. Except this modification, in all other aspects, the order of the learned Single Judge is confirmed."

4. Pursuant to the aforesaid order, the Tamil Nadu State Advisory Contract Labour Board constituted a sub committee with the following terms :

"1. The sub committee shall study the prevailing contract system in paper units registered under the Factories Act, 1948.

2. The working conditions of the Contract Labour like hours of work, wages paid, payment of statutory benefits etc.,

3. To find out as to whether the work done by the Contract Labour is perennial in nature connected with the manufacturing process or supervised by any representatives of the principal employer."

5. The Sub Committee submitted its report on 08.02.2018. The sub committee after making its factual observations, recommended that the contract labour system should be abolished in respect of those working in the manufacturing process that are perennial in nature. Those areas were also specifically identified. Yet, no further action was taken. Hence, the writ petitioner issued a contempt notice and also filed Cont P(MD)No.2009 of 2017 in WA(MD) No.890 of 2015. In the meanwhile, the Commissioner of Labour issued a reply dated 08.06.2018 stating that the decision taken by the State Advisory Contract Labour Board has been accepted by the Government. In fact, the response of the Commissioner of Labour, Chennai is based on the letter dated 26.04.2018 issued by the Government. The letter refers to the decision taken in the 50th State Advisory Contract Labour Board meeting held on 23.03.2018 and states that the same is accepted. The Government expressed its concurrence that the abolition of entire contract labour system in paper industries was not feasible. It is this decision and its application that is under challenge in this writ petition.

6. Heard the learned Senior Counsel appearing for the writ



petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 5 and the learned Senior Counsel appearing for the sixth respondent.

7. Very many contentions were advanced on either side. In view of the nature of order to be passed in this writ petition, I do not want to go into the merits of the matter. Suffice it to say, that the minutes of the 50th State Advisory Contract Labour Board Meeting dated 23.03.2018 give an impression that the Board had unanimously taken the decision in the matter. The Government had chosen to accept the decision of the Board. But, a perusal of the files gives an indication that it was not an unanimous decision. One of the members of the Board Thiru.S.Kasiviswanathan had given a letter dated 27.06.2018 stating that matters that were not discussed or decided find place in the minutes. He specifically expressed his apprehension that the legislative reforms proposed by the Government of India may have an implication for those contract labour who are continuously engaged in works of perennial nature from getting regularised. Vide letter dated 27.06.2018, he registered his dissent. A mere look at the communication dated 26.04.2018 issued by the Government to the Commissioner of Labour, Chennai proceeds on the premise that the Government was also of the view that the Board had taken an unanimous view in the matter. But, it appears to be otherwise. If the Government had been appraised on this aspect, it is quite possible that a different view might have been taken but we cannot hazard a guess in the matter or speculate.

8. Therefore, the impugned communication dated 08.06.2018 is set aside. Since the decision making process is vitiated in this case, the matter stands remitted to the file of the Government. The first respondent shall consider the entire issue on merits and in accordance with law within a period of ten weeks from the date of receipt of a copy of this order. It is made clear that this Court has not gone into the merits of the matter.

9. This writ petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Secretary to Government, Labour and Employment Department,
Secretariat, Chennai - 600 009.

