

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.14572 of 2020 and W.M.P.No.18063 of 2020

Tamil Nadu General Workers Union
Regn.No.289/CPT/1975,
Sengkuruchi Thirumandurai Toll Plaza
Workers Branch, No.2/1, Kovur
Vaithiyanathan Street, Chintadripet
Chennai 600 002.

... Petitioner

-Vs-

- 1 The Government of India
rep by its Secretary to Government Ministry
of Labour and Employment Rafi Marg New Delhi
- 2 The Chief General manager - cum- Zonal Director
National Highways Authority of India Sri Tower
2nd Floor, DP34(SD) Industrial Estate Guindy Chennai
- 3 The Assistant Labour Commissioner
DA2 BSNL Staff Quarters Jaya Nagar
Reddiyarpalayam Puducherry- 605 010
- 4 M/s.Trichy Tollway Pvt Ltd
No.6.3. 1099/ 400 P.NO.105 B Block 1st
Floor Babukhan Millennium Centre Rajeev
Bhavan Rd Somjakuda Hyderabad- 500 082
- 5 M/s.SIS Prosegur
SIS Cash Services P Ltd B-26 Okhla
Industrial Area Phase-1 New Delhi
- 6 M/s.Racy Projects
F.No.102 Lakshmi Madura Heights R. No.3
Gayatri Nagar P.M.Palem Vishakapatnam -
530 041

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus forbearing the 2nd and 4th respondents from in any manner alternating the

conditions of service of the members of the petitioner, including discontinuance of employment or termination or failing to provide employment under the ambit of downsizing or restructuring, pending adjudication of the Industrial Dispute of the petitioner by the 3rd respondent and consequently direct the 3rd respondent to conciliate and effect settlement between the 2nd and 4th respondents and the petitioner.

For Petitioner :Mr.L.S.M.Hasan Fizal

For Respondents:Ms.Anuradha, ACGSC - for R1 & R2
Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co - for R4
Mr.S.Giridharan - for R5

O R D E R

The prayer sought for in this writ petition is to forbear the 2nd and 4th respondents from in any manner alternating the conditions of service of the members of the petitioner, including discontinuance of employment or termination or failing to provide employment under the ambit of downsizing or restructuring, pending adjudication of the Industrial Dispute of the petitioner by the 3rd respondent and consequently direct the 3rd respondent to conciliate and effect settlement between the 2nd and 4th respondents and the petitioner.

2. The petitioner is the Employees Union, espousing the cause of several employees who are members of the Petitioner Union, who are working in at least two Toll Plazas located at Sengkuruchi and Thirumandurai in NH45. It is the case of the petitioner that already an industrial dispute is pending adjudication by way of conciliation before the Conciliation Officer ie., the third respondent and during pendency of the conciliation proceedings, it is the apprehension on the part of the petitioner Union that services of some of the employees would be dispensed with by the fourth respondent and therefore, in order to protect their service conditions they came out with the present writ petition with the prayer as has been stated above.

3. On notice, Mr.Anand Gopalan appeared for the fourth respondent, who has also filed a counter affidavit disputing the allegations made in the affidavit filed in support of the writ petition.

4. I have heard Mr.L.S.M.Hasan Fizal, learned counsel for the petitioner, who would submit that the second respondent is the statutory authority who build, operate and maintain the National Highways in India and NH45 is one of the National

Highway under the control of the second respondent and in order to maintain the said Highway, they wanted to collect the toll for which Toll Plazas are established at various places as per the relevant provisions of law. In this regard, there are two Plazas in the said NH45 ie., one at Sengkurichi and another one at Thirumandurai and the collection of the Toll in these Toll Plazas have already been entrusted to the fourth respondent by the second respondent under the Build Operate and Transfer (BOT) Scheme.

5. In turn, the fourth respondent has given subcontracts to various people to collect Toll and in this regard the fourth respondent has given subcontract to the fifth respondent to collect Toll in these Toll Plazas, where the members of the petitioner Union have been engaged or have been working. Even prior to the fifth respondent took control of these Toll Plazas, majority of these employees were engaged and had been continuously working. Therefore, according to the learned counsel for the petitioner that, the continuance of these employees under the fourth respondent is not altered or changed merely because of the expiry of the period of contract of any subcontractor and in whose place new contractor would come into place.

6. In this context, it is the further case of the petitioner that, the erstwhile subcontractor under the fourth respondent has completed its contract period by 31.03.2020 and from 01.04.2020, a new subcontractor has been given the contract. Therefore, at the time of changing the subcontract, it is the apprehension on the part of the employees that their service conditions would be altered by the new subcontractor and therefore, in this regard already a dispute has arisen and the issue is pending before the third respondent for conciliation and during the pendency of the conciliation, if at all either the fourth respondent or any subcontractor under him has come forward to dispense with the services of the employees or alter their service conditions, certainly it would be impermissible and therefore, in order to have job security and continuance of their engagement under the fourth respondent, of course through the subcontractors continuously with better service conditions, they have been agitating the issue before the Conciliation Officer and therefore before the said conciliation is decided one way or the other, by virtue of the change in the subcontract after the expiry of the contract period on 31.03.2020, the new contractor shall not alter the service conditions and therefore, only in that circumstances, the petitioner has approached this Court by way of the present writ petition.

7. Learned counsel for the petitioner would also contend that as expected and apprehended by the petitioner Union on

behalf of the employees, the services of at least some of the employees who had been engaged through the same subcontractor, not the fifth respondent and sixth respondent, who are also subcontractors under the fourth respondent, had been dispensed with and therefore that can also be taken note of by this Court.

8. On the other hand Mr. Anand Gopalan, learned counsel for the fourth respondent would contend that, the fourth respondent is the main contractor under the second respondent to maintain the Toll Road ie., NH45 and since it is a long highway having Toll Plazas, in order to have an effective maintenance of the Toll Plazas and the road also, the fourth respondent has given subcontract to various subcontractors for specific periods and in this regard from 01.04.2020, the fifth and sixth respondents have been appointed as subcontractors by the fourth respondent.

9. When the fifth respondent has taken charge of the subcontract entrusted to it by the fourth respondent, with the already available employees, the fifth respondent has entered into a settlement with the employees of the petitioner Union under Section 18(1) of the Industrial Disputes Act, 1947 on 14.06.2020.

10. Producing a copy of the said 18(1) Settlement entered into between the fifth respondent and the petitioner Union, the learned counsel for the fourth respondent further contended that, as per the first condition of the terms of settlement, all the workmen who are working in the Toll Plazas in Sengkurichi and Thirumandurai Toll Plazas shall be allowed to continue with their respective employment under the fifth respondent. In order to appreciate further, the relevant portion of the terms of settlement is quoted hereunder.

"All workmen who were working in the Toll operation in Sengkurichi and Thirumandurai Toll Plazas shall be allowed to continue in their respective employment under SIS Cash Service Private Limited (SIS Prosecur)."

11. By relying upon the terms of settlement under Section 18(1) of the Act, learned counsel for the fourth respondent would contend that, none of the employees who are already there or working continuously could be sent out or their services would not be dispensed with in view of the terms of settlement and therefore, the apprehension on the part of the petitioner Union is not well founded and therefore, based on such apprehension the prayer sought for to give a mandamus against the respondent especially the fourth respondent may not be required. Hence, the fourth respondent would contend that, the terms of settlement reached between the petitioner Union and the fifth respondent can be taken note of and accordingly this writ

petition can be disposed of as no further adjudication is required on the issue raised in this writ petition, he contended.

12. I have considered the said rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court including the copy of the 18(1) settlement dated 14.06.2020.

13. In the 18(1) Settlement dated 14.06.2020, on behalf of the petitioner Union, the Deputy General Secretary as well as the Unit President and Vice President of Toll Plazas of Sengkurichi and Thirumandurai have signed. On behalf of the fifth respondent, the Cluster Head, Tamil Nadu, Deputy Manager (R&T) and Toll Manager have signed. As has been rightly pointed out by Mr. Anand Gopalan, learned counsel for the fourth respondent, there has been a 18(1) Settlement with clear terms of settlement under which it has been agreed upon between the fifth respondent and the petitioner Employees Union that all workmen, who were working in the Toll Plazas of both Sengkurichi and Thirumandurai shall be allowed to continue in their respective employment, which means none of the employees, who are already engaged in these Toll Plazas would be dispensed with or their services would be terminated.

14. The major issue which has been apprehended by the Petitioner Union is that, because of the change of subcontractor from the fourth respondent on the completion of the contract, there may be alteration of service conditions through which many or at least some of the employees who had been already working could be dispensed with. In order to ensure that no such apprehension can be projected by the petitioner Union that some of the members of the petitioner Union who are the employees of the fifth respondent on behalf of the fourth respondent would be dispensed with, at least for the time being it has been given a quietus through the said 18(1) Settlement.

15. Insofar as any other alteration of service conditions are concerned, even the other terms and conditions, to a considerable extent, in the considered opinion of this Court, would take care of. Beyond these terms of settlement, still if there are any issues pertaining to the service conditions of these employees, those issues can very well be adjudicated either before the Conciliation Officer, the third respondent, where the conciliation is pending and thereafter, even if there is any failure report, an industrial dispute can be raised by the employees side.

16. In view of the aforesaid, the prayer sought for in this writ petition, which has been made mainly based on the

apprehension as has been explained above need not be further gone into or adjudicated.

17. Therefore, recording the aforesaid development, especially in the context of the 18(1) settlement between the fifth respondent and the petitioner, by which the job security of every employee who have already been engaged or continuously working in both the Toll Plazas are made secured so that there would not be any dispensing with of their services in the near future, this Court feels that this writ petition can be disposed of by recording the aforesaid settlement and developments.

18. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1 The Secretary to Government,
Government of India
Ministry of Labour and Employment,
Rafi Marg New Delhi.
- 2 The Chief General manager - cum- Zonal Director,
National Highways Authority of India Sri Tower
2nd Floor, DP34(SD) Industrial Estate,
Guindy, Chennai.
- 3 The Assistant Labour Commissioner,
DA2 BSNL Staff Quarters Jaya Nagar,
Reddiyarpalayam, Puducherry- 605 010.

+1cc to M/s.Anuradha, Advocate Sr.36593
+1cc to Mr.Giritharan, Advocate Sr.36982
+1cc to M/s.LSM Hasan Fizal, Advocate Sr.36907
+1cc to M/s.T.S.Gopalan, Advocate Sr.36891

W.P.No.14572 of 2020

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srg 11/02/2021