

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16-10-2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.NO.14978 OF 2020
AND W.M.P.NOS.18627 AND 18628 OF 2020

V.Selvaraj

...Petitioner

Vs.

1. Union of India
Rep. by Secretary
Ministry of Shipping,
Transport Bhavan,
New Delhi.
2. The Chairman
Chennai Port Trust,
Rajaji Salai,
Chennai.

...Respondents

Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, by calling for the records of the second respondent in the Letter No.IR2/4944/2020/GA, dated 29.09.2020 and quash the same and consequently direct the second respondent to the Check off / Authorization process should conduct at least six months later in the interest of the employees and their family members to prevent the affect of Covid-19 virus infection.

For Petitioner : Mr.M.Silambarasan
For Respondents : Mr.Kumaraguru
Standing Counsel

ORDER

The prayer sought for in this writ petition is for a writ of Certiorarified Mandamus calling for the records of the second respondent in the Letter No.IR2/4944/2020/GA, dated 29.09.2020 and quash the same and consequently direct the second respondent that the check off / Authorization process should be conducted at least six months later in the interest of the employees and their family members to prevent from affecting the Covid-19 virus infection.

2. The petitioner, who is one of the employees and General Secretary of the Trade Union called Bharatiya Port and Dock Employees Union, has filed this writ petition with the aforesaid prayer.

3. The case of the petitioner is that, in order to identify that, which Trade Union (recognised or approved Trade Union functioning in the respondent Chennai Port Trust) is able to muster more strength for the purpose of identifying and to nominate two number of trustees for the Chennai Port Trust administration, election process is undertaken. In this regard, the Elections otherwise called as 'Check Off System', being conducted periodically and accordingly, this year check off procedure/ system election for the year 2021 and 2022 has been slated to be conducted between 15.10.2020 and 30.10.2020, accordingly Chennai Port Trust has issued a Notification No.IR2/4944/ 2020/GA dated 29.09.2020.

4. Along with the said notification, the General Administration Department of the Chennai Port Trust has issued a circular, where, the details with regard to the salient features of the check off system had been given.

5. In this context, it is the grievance of the petitioner's Union that, the pandemic situation due to Covid-19 is still looming large in the society, especially in this part of the country also and during this pandemic period, if the check off system for the year 2021 and 2022, as fixed through the impugned notification, is permitted to go on for 16 days from 15.10.2020 to 30.10.2020, large number of employees, since have to participate in that process, would be in very vulnerable for getting affected of Covid-19 and that will be a life risk for so many employees of not only the petitioner's employees Union, but also other employees Union functioning in Chennai Port Trust. Therefore, the check off system election can very well be deferred or postponed for some months by the Chennai Port Trust management and in this regard, despite request having been made by the petitioner labour Union and other similarly placed labour Unions, the said request have not been considered and the management of the Chennai Port Trust has decided to go ahead with the said process of check off system, pursuant to the impugned notification, hence the petitioner employees Union had no other option, but to challenge the same and accordingly, the writ petition has been filed.

6. These factors have been reiterated by the learned counsel appearing for the petitioner, who would submit that, the Standard Operating Procedure is in operation and it should be strictly followed. However, predominantly the same has not been followed throughout, where, large number of employees standing

in a particular place for getting the application form and fill up the same and at times periodical campaign by issuance of pamphlets has also been undertaken by various employees Unions within the campus, with the result, absolutely there has been no scope of following the Standard Operating Procedure (SOP) in strict sense, where the social distancing, which ought to be maintained between two persons or employees concerned, are also not being maintained. Therefore, the apprehension on the part of the employees Union is that, if the 16 days check off procedure going to be permitted, pursuant to the impugned notification, accordingly, at the end of the programme, several hundreds of employees would get affected due to Covid-19 situation, then, it will be a situation, where, the Chennai Port Trust campus will be a major hub for Covid-19 spread and large number of employees to that extent would be definitely affected, as that would be the life risk for these employees and also the other officials of the Chennai Port Trust. Therefore, it is conducive for all concern to defer the election, therefore, the impugned notification since has been challenged by the petitioner's employees Union, the said prayer can be taken note of and indulgence to that effect may be shown by this Court.

7. However, Mr. Kumaraguru, learned Standing Counsel appearing for the respondents, including the second respondent Port Trust, on instructions, would submit that, this is a routine election process called 'Check off system' and while announcing this check off through the impugned notification, the Chennai Port Trust, having evaluated the situation, and accordingly, issued several stringent conditions to strictly maintain the Standard Operating Procedure and in this regard, strict measures have already been taken and which shall be continued to ensure that, the SOP is being maintained with strict sense.

8. He would further submit that, the process now started yesterday (15.10.2020), where, the Chennai Port Trust have appointed so many Designated Officers at various places, where, the concerned members / employees of the Union concerned to get the form and to fill up and give it back to the Designated Officers. Therefore, there is absolutely no scope for any large gathering of employees in one place, as apprehended by the petitioner's Union. Even before each of the Designated Officer, if a group of employees come to collect the form, even during that time, if they formed a queue, the social distancing ought to be maintained by them are being maintained and in this regard, the employees are very often being sensitised to maintain the SOP strictly and in this regard, if still any more stringent measures to be taken by the Chennai Port Trust, they are ready and willing to take strict stringent measures also. If any such conditions are issued by this Court, that will also be

taken note of and accordingly will implement the stringent measures in strict sense by the Chennai Port Trust.

9. However, Mr.M.Silambarasan, learned counsel appearing for the petitioner, relying upon some of the photographs taken yesterday (15.10.2020) at about 11:45 a.m., a copy of which have also been filed before this Court as additional typed set of papers, would contend that, at the time of collecting the form, even though separate Designated Officers were nominated, the employees form a queue, where, though they wear mask supposed to wear, they are not maintaining the social distance, therefore, there is every possibility of spreading the Covid-19, which is directly in violation of the Standard Operating Procedure, which is not therefore strictly implemented by the Chennai Port Trust.

10. In response to the said pointed query raised on the side of the the petitioner, Mr.Kumaraguru, learned Standing Counsel for the respondents would submit that, though the said instances, now have been brought to the notice of this Court, have not been served or brought to the notice of the respondent or counsel for the respondent, still, based on such complaint made by the petitioner, that would be brought to the notice of the Chennai Port Trust management and in this regard, whatever further direction if this Court wants to issue, the same would be strictly followed ensuring that, every aspect of the SOP is strictly implemented during the 16 days Check off procedure.

11. I have considered the said rival submissions made by the learned counsel appearing for both the parties and have perused the materials placed before this Court.

12. Having regard to the main concern of the petitioner employees Union, due to pandemic situation arising out of Covid-19, it is an apprehension on the part of the employees Union that, the process of Check off procedure goes on 16 days next, will pave a way for spreading of Covid-19, in view of the gathering of employees for the activities, like collecting forms and giving back of filled up forms and also for campaign etc.

13. In this context, the petitioner's side also in support of their apprehension has filed copy of some photographs claimed to have been taken yesterday, i.e., on 15.10.2020, where, this Court finds, atleast, in some of the photographs, though very handful of people stand in a queue to get the form from the Designated Officer, the social distancing is not properly maintained. If the said claim made by the petitioner is true, then, it is a serious concern and it should be immediately addressed by the respondent Chennai Port Trust.

15. The Check off procedure is part of the election process in order to identify the maximum command among the employees by a recognised Union for the purpose of nominating two members from the largest employees supported Trade Union, in the body of the Chennai Port Trust. Hence, it is an important task to be undertaken by the Chennai Port Trust.

16. However, at the same time, the respondent Port Trust cannot stop with just issuing the Standard Operating Procedure with a call to the employees to maintain the social distancing. They must ensure that, SOP is strictly followed in every place at all time in all sense. In this context, if at all their employees are to form a queue to get the form from the Designated Officer concerned, the Chennai Port Trust management shall ensure that, during that process or any other process related to the Check off procedure, the social distancing shall be strictly maintained, and also, every employee shall wear the mask and wherever such kind of employees have to form a queue or have to gather to do their business, the other safety measures, like hand sanitizer etc. to be provided by the management of the Chennai Port Trust and other measures are being properly taken and the employees also utilising the same strictly to maintain the Standard Operating Procedure. In order to ensure the same by appointing temporary Supervisor from the management side, it should be strictly monitored. If these measures are taken further in addition to the measures already been envisaged or taken by the respondent Chennai Port Trust, this Court feel that, the apprehension on the part of the petitioner's Association would be seriously met and it would be ensured that, in the Covid-19 situation, the Chennai Port Trust campus shall not be a hub for the spreading of Covid-19.

17. Therefore, this Court feel that, apart from the Standard Operating Procedure, being implemented by the Chennai Port Trust, as provided by the Central and State Government, some more stringent measures, in all respects for ensuring 100% full proof system, where there is no room for any employee to get affected by Covid-19 during their working hours or in the campus of the Chennai Port Trust, not only in the course of Check off system, but also in their regular duty and business time, can be imposed. If that is ensured, this Court feel that, there can be no impediment for the respondent to proceed with the election by way of check off system, pursuant to the impugned notification.

18. In that view of the matter, this Court is inclined to pass the following orders in this writ petition :

- (i) That the Standard Operating Procedure announced and being implemented by the Union as well as the State Government shall be strictly followed by the respondent

Chennai Port Trust.

(ii) During this check off system election being conducted by the respondent Chennai Port Trust between 15.10.2020 and 30.10.2020, in every such place where if there is a chance of collecting more than one employee or official, the social distancing shall be strictly maintained.

(iii) Wherever the employees form a queue or are collected in a group, the social distancing between each of the employees shall be strictly maintained. For the said purpose, a Supervisor in those parts to be identified, by the second respondent, can be appointed.

(iv) In every such place, the hand sanitizer shall be provided at the cost of the Port Trust and it shall be ensured that each of the employee, who enter into any premises or places for participation in the check off system, has utilized the hand sanitizer before move into his business.

(v) It shall be ensured that, every employee is wearing the masks, not only at the time of check off system election process, but also during the business hours, where he supposed to contact the other employee in close proximity.

(vi) In order to ensure all these additional measures, which suppose, are part of the Standard Operating Procedure, not only the supervisors, as indicated above and also some other officials of the Chennai Port Trust, must take a round at frequent interval, where if they notice any violation of SOP, then and there, the official has to sort out the same by deputing more Supervisors.

(vii) With these measures, as indicated above, along with regular Standard Operating Procedure, being followed by Chennai Port Trust within the campus, if the check off system election process is taken place, this Court hope that, there would not be any vulnerability, as apprehended by the petitioner's employees Union that, Covid-19 would spread among the employees, when they necessarily participate in these process of check off system during these pandemic situation for the next 16 days.

(viii) In view of the aforesaid stringent measures to be adopted by the Chennai Port Trust due to the pandemic situation, there shall not be any campaign by the employees Associations including the petitioner's employees Union inside the campus of the Chennai Port Trust. If at all the employees Associations want to make campaign, they can do so by electronic mode.

With all these directions and observations, this Writ Petition is disposed of. However, there shall be no order as to

costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

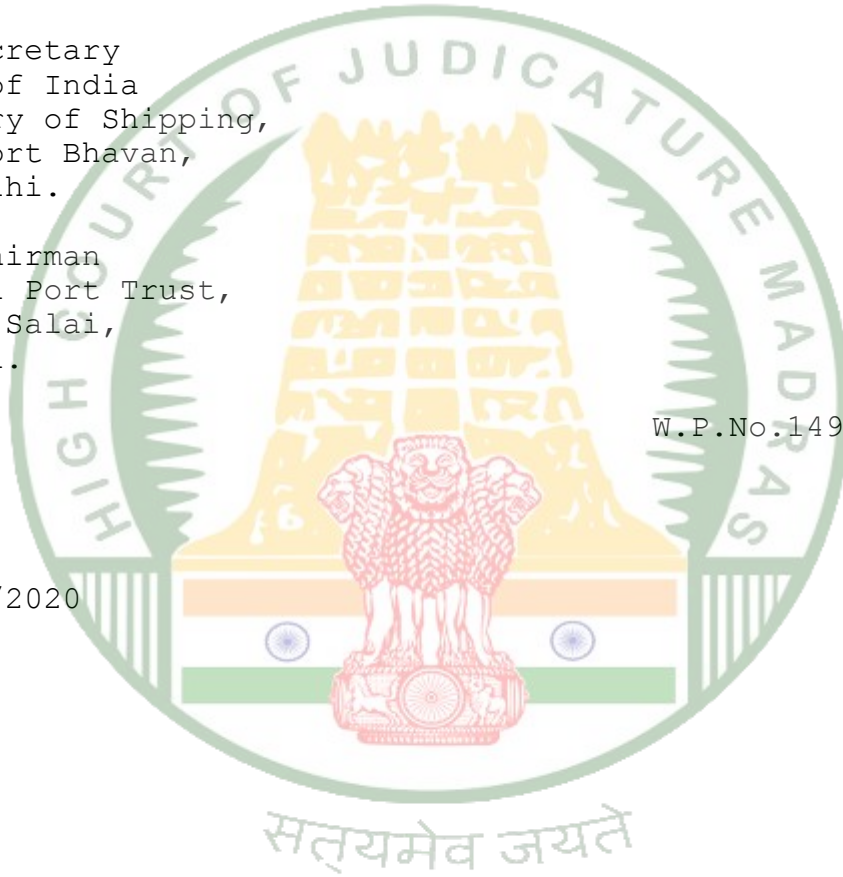
Sgl

To

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

W.P.No.14978 of 2020

BP (CO)
KKV/21/10/2020



WEB COPY