



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.4927 of 2020

and

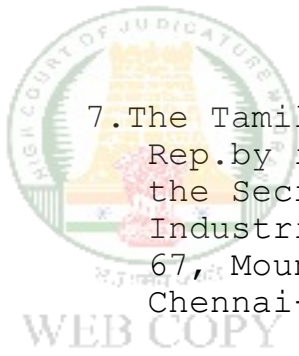
W.M.P. (MD) No.4300 of 2020

Desiya Murpokku TNPL Oppantha
Thozhilalar Sangam (Regn.No.99/Karur)
Rep.by its President, Pon.Elangovan,
18/1, Arasinagar (Pugazghi Nagar South),
Velayuthampalayam-639 117,
Karur District.

... Petitioner

vs.

- 1.The Government of Tamil Nadu,
Rep by its Principal 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,
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 Complex, Teynampet, Chennai-600 006.
- 4.The Commissioner of Labour,
DMS Complex,
Teynampet, Chennai-600 006.
- 5.The Director of Industrial Health and Safety,
(Chief Inspector of Factories),
Royapettah, Chennai-600 014.
- 6.The Joint Director,
Industrial Safety and Health, Kajamalai, Trichy.



7.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 : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the 1st 4th 5th and 6th respondents to enforce and ensure the implementation of the decisions in Clause-4.1 and 4.2 taken at the 50th meeting of the Tamil Nadu State Advisory Contract Labour Board held on 23.03.2018 and to grant all the statutory benefits like minimum wages, leave facilities, ESI, EPF, Canteen facilities, Medical facilities, Gratuity, Bonus, working hours etc to all the contract labourers in TNPL, as stated in the Govt. Letter 1(D) No.542/H1/2018-1, dated 04.10.2019 and the direction issued in the Govt. Letter No.22104/H1/2019-2 dated 27.01.2020 addressed to the 5th and 6th respondents, within a time limit to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy

For R1 to R6 : Mr.M.Rajarajan,
Government Advocate

For R7 : Mr.S.Ravindran, Senior Counsel
for M.P.Senthil

ORDER

The prayer in the writ petition is for issuance of a Writ of Mandamus, to direct the respondents 1, 4, 5 and 6 to enforce and ensure the implementation of the decisions in Clauses-4.1 and 4.2 taken at the 50th meeting of the Tamil Nadu State Advisory Contract Labour Board held on 23.03.2018 and to grant all the statutory benefits like Minimum Wages, leave facilities, ESI, EPF, Canteen facilities, Medical facilities, Gratuity, Bonus, working hours etc to all the contract labourers in TNPL, as stated in the Govt.Letter 1(D) No.542/H1/2018-1, dated 04.10.2019 and the direction issued in the Govt. Letter No.22104/H1/2019-2 dated 27.01.2020 addressed to the 5th and 6th respondents, within a time limit to be fixed by this Court.

2.The petitioner would submit that there are about 1039 permanent workers in TNPL Unit-I at Kakhithapuram and about 1401 contract labourers in the year 2015 in TNPL. The service of the contract labourers worked in perennial manufacturing works in TNPL were continuous and regular over a period ranging from 25 to 30 years which is continued till date. According to the petitioner, about 250 contract labourers attained the age of superannuation



without getting any statutory retirement/terminal benefits. The petitioner further states that there are about 3643 contract labourers called as Non-settlement Contract Labourers, who are also employed in TNPL for perennial works. Since the Government authorities and the Management of TNPL did not take action on the recommendation of the sub-committee's report, dated 22.03.2001, for more than 14 years, to abolish the Contract Labour System in the perennial nature of works in TNPL and also to grant all the statutory benefits to the contract labourers, the petitioner's sangam filed W.P.(MD)No.7998 of 2015 for a Mandamus to the respondents to abolish the contract labour system in TNPL as per Section 10(1) of the Contract Labour (Regulation and Abolition) Act 1970 and consequently to absorb the members of the petitioner's sangam as regular employees in TNPL from the date of their initial engagement. This Court by order dated 22.06.2015, in a batch of writ petitions directed the Government to constitute a special committee to deal with the dispute relating to abolition of contract labour system and to take a decision on the report of the committee in accordance with law with regard to the abolition of contract labour system pertaining to the nature of work as pleaded by the petitioner within three months and also stating that any notification to be issued under Section 10 is to be for the entire Paper Industry in the State. However, the 7th respondent and Association of Contractors filed an appeal in W.A.(MD)No.890 of 2015 against the above common order on the ground that the Government has no power and jurisdiction to constitute a committee under the Contract Labour (Regulation and Abolition) Act 1970. The Division Bench of this Court by judgment dated 23.02.2017 modified the order in the writ petitions and directed the 2nd respondent-Advisory Board 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 the order and to proceed further in accordance with law. It was 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. The Sub-Committee constituted by the Advisory Board has submitted its report dated 08.02.2018 and reported the following:-

'(i) Statutory benefits like Minimum Wages, Leave facilities, ESI, EPF, Canteen facilities, Gratuity, Bonus etc are extended by some of the Managements may be extended to the Contract Labourers,

(ii) Working Hours of the Contract Labourers may be restricted as per the provision of the Factories Act, 1948

(iii) The Sub Committee recommends that the abolition of entire Contract Labour System in paper industries is not feasible. The Contract Labour System in the perennial nature of work/directly involved in the following manufacturing process may be abolished in Paper and Board industries.



System in paper industries is not feasible.''

4.It is further submitted that the above decision of the Board has been sent to the Government by the letter dated 11.04.2018 to issue necessary instructions to the Directorate of Industrial Safety and Health to comply with the decision of the State Advisory Contract Labour Board on the recommendations in Clause Nos.4.1 and 4.2. Accordingly, the Government has instructed the Directorate of Industrial Safety and Health Department vide Letter No.275 Labour and Employment Department dated 26.04.2018. However, the 5th and 6th respondents, who are competent authorities to enforce and ensure implementation of the above decisions in Clause Nos.4.1 and 4.2 of the State Advisory Board, did not take action in this regard.

5.The petitioner would also state that since the decision of the 2nd respondent in Clause 4.3 that abolition of entire contract labour system is not feasible communicated in the letter No.L1/45663/17, dated 08.06.2018 of the 4th respondent was arbitrary and erroneous, the petitioner's sangam filed W.P.(MD)No.20496 of 2018 to quash the above communication dated 08.06.2018 passed by the 4th respondent. This Court by an order dated 17.06.2019 set aside the communication dated 08.06.2018 and directed the 1st respondent to consider the entire issue on merits and in accordance with law, within a period of ten weeks. However, the 1st respondent, again, has reiterated the said Clause No.4.3 in their letter (1D) No.542/H1/2018, dated 04.10.2019 and denied the abolition of contract labour system. In the letter, it has been further stated that in the letter (1D)No.275, Labour and Employment (H1) Department, dated 26.04.2018, the 5th respondent has been directed to ensure the compliance of the decision in clauses 4.1 and 4.2 taken at the 50th meeting of the Advisory Contract Labour Board held on 23.03.2018. But the said letter issued to the 5th respondent has not been sent to the petitioner and the 5th respondent also did not take any action on the said letter. Therefore, the petitioner's sangam sent representations dated 08.11.2019 and 07.12.2019 and the legal notice dated 22.12.2019 to take action. The 1st respondent also by letter dated 27.01.2020 directed the respondents 5 and 6 to take appropriate action. However, no action has been taken till date. Hence, this writ petition.

6.The 7th respondent has filed a counter affidavit. The learned Senior Counsel for the 7th respondent would state that the petitioner along with some other unions representing Contract workmen under the 7th respondent, had filed W.P.(MDNos.19476/2014, 7998/2015 & 9929/2015 seeking for permanency of contract workmen before this Court which were disposed of by order dated 22.06.2015 with the following directions:-

'a)The special committee has to be constituted immediately within a period of one month from the date of receipt of a copy of this order and after its constitution,

the committee is directed to forward its report to



the Government within a period of one month thereafter;

b)The State Government, namely, appropriate authority in turn is directed to take a decision in accordance with law with regard to abolition of contract labour system pertaining to the nature of work, as pleaded by the petitioners, within a period of one month from the date of receipt of the committee's report.''

7.Learned Senior Counsel would further submit that thereafter, the 7th respondent as well as TNPL Contractors' Association had filed Writ Appeals (W.A.(MD)Nos.886/2015, 889-891/2015) challenging the aforesaid order of the Single Judge. All the Writ Appeals and other connected Writ Petitions filed by the aforesaid unions subsequent to the filing of Writ Appeals were disposed of by the Division Bench on 23.02.2017 by directing the State Advisory Contract Labour Board 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 the order. The State Advisory Contract Labour Board had constituted a Sub-committee to take up the study covering the entire Paper Industry in Tamil Nadu. The sub-committee had submitted its report on 08.02.2018, stating that abolition of entire Contract Labour System in Paper Industry is not feasible. In the 50th meeting of the State Advisory Contract Labour Board held on 23.03.2018, it was decided that the recommendation of the sub committee for abolition of the contract labour system in some areas may be taken up after the outcome of the proposed amendments in the Contract Labour Act. Hence, the petitioner's sangam once again filed another Writ Petition No.20496 of 2018, seeking for permanency of Contract Workmen. This Court has passed the order dated 17.06.2019 stating as follows:-

'Since the decision making process is vitiated in this case, the matter stands remitted to the file of the Government. The first respondent (Govt. of Tamil Nadu rep. by its Secretary to Govt. Labour and Employment Department) 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.'

However, the Government has again reiterated its decision taken at the 50th meeting in its Letter 1(D)No.542/H1/2018-1 dated 04.10.2019 addressed to the petitioner.

8.It is further submitted that some of the contract workmen who were deployed by the contractors in the respondent company had filed cases before the Appropriate Authority under the Payment of Gratuity Act, 1972 for payment of Gratuity which were dismissed on the ground that the contract workmen could not prove that they had worked under any particular contractor continuously as stipulated in the said Act and therefore, they are not entitled for gratuity. In pursuant to



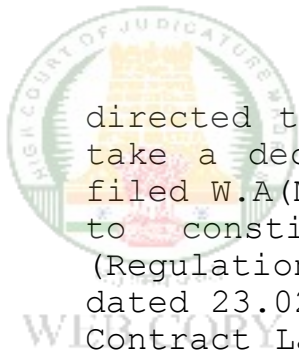
respondent had inspected the factory of the 7th respondent on 06.02.2020 and had issued a show cause notice on 02.03.2020 and the 7th respondent sought 15 days time for submitting its reply. But the petitioner without waiting for the reply from the respondents, had rushed to this Court with this Writ Petition. As the 6th respondent had conducted an inspection based on the letter dated 27.01.2020 and awaiting for the reply from the 7th respondent, the prayer in this Writ Petition has become infructuous.

9.As regards the contention that the Government of Tamil Nadu is the Principal Employer, learned Senior Counsel submitted that total equity capital held by the Government of Tamil Nadu in TNPL is only 35.32% and the remaining 64.68% of the equity is held by the Indian Financial Institutions, Insurance Companies, Indian Public, Non-Resident Indians, Overseas Corporate bodies and the employees of TNPL. Therefore TNPL is not a Government Company within the meaning of the Companies Act and it is neither owned by the Central Government nor by the State Government and therefore, TNPL cannot be considered as a "State" or "Instrumentality of State" within the meaning of Article 12 of the Constitution of India and it is only a Public Limited Company registered under Companies Act, as such, this Writ Petition is not maintainable against TNPL and deserves to be dismissed. The allegation of the petitioner regarding unfair labour practice on the part of the 7th respondent is denied. Further, the contract workmen are deployed by the contractors and working under the direct supervision and control of the respective contractors. Hence, they are not the regular employees of the 7th respondent.

10.Learned Senior Counsel for the 7th respondent further submitted that the sub-committee's report dated 22.03.2001 is an inconclusive report. Hence no action or decision could be taken based on that report. It is also submitted that some of the contract workmen who were deployed by the contractors in the 7th respondent company had filed petitions before the Appropriate Authority under the Payment of Gratuity Act, 1972 for payment of Gratuity. The Appropriate Authority had dismissed those petitions on the ground that the contract workmen could not prove that they had worked under any particular contractor continuously as stipulated in the said Act and they are not entitled for gratuity. But none of them have challenged the order passed by the appropriate authority before the appellate authority and it has become final. Thus, he would pray for dismissal of the writ petition.

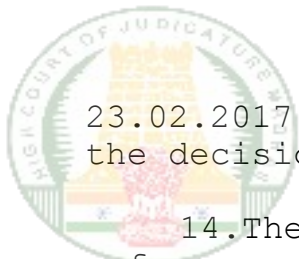
11.Heard the learned counsel for the petitioner, learned Government Advocate for the respondents 1 to 6 and the learned Senior counsel for the 7th respondent.

12.Perusal of record shows that the petitioner along with some other unions representing contract workmen under the 7th respondent, had filed W.P(MD)Nos.19476/2014, 7998/2015 & 9929/2015 to abolish the contract labour system in TNPL and consequently to absorb their



directed the Government for constitution of a special committee to take a decision in this regard, against which, the 7th respondent filed W.A(MD)No.890/2015 contending that the Government has no power to constitute special committee under the Contract Labour (Regulation and Abolition) Act, 1970. The Division Bench by judgment dated 23.02.2017 directed the 2nd respondent/Tamilnadu State Advisory Contract Labour Board 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. The State Advisory Contract Labour Board had constituted a Sub-committee to take up the study covering the entire Paper Industry in Tamil Nadu and the Sub Committee submitted its report stating that abolition of entire contract labour system in Paper Industries is not feasible and the Contract Labour System in the perennial nature of work may be abolished in Paper and Board industries. Since no orders were passed thereafter, the petitioner filed contempt petition and the 4th respondent/Commissioner of Labour issued a communication dated 08.06.2018, containing the decisions of the State Advisory Labour Board, wherein, in Clause 4.3, the State Advisory Contract Labour Board accepted the recommendation of the sub committee that abolition of entire contract labour system in Paper Industries is not feasible, against which, the petitioner's sangam filed W.P(MD) No.20496/2018 to quash the communication dated 08.06.2018 and sought for permanency of contract workmen. This Court by order dated 17.06.2019 set aside the communication dated 08.06.2018 and directed the Government to consider the entire issue on merits and in accordance with law. However, the Government again reiterated Clause 4.3 in their letter dated 04.10.2019 and denied abolition of contract labour system. Now it is the only grievance of the petitioner that decision in clauses 4.1 and 4.2 of the State Advisory Labour Board has not been implemented.

13.Perusal of record further shows that some of the contract workmen who were deployed by the contractors in the respondent company, had filed cases before the Appropriate Authority under the Payment of Gratuity Act 1972, for payment of Gratuity which were dismissed on the ground that the contract workmen were not able to prove that they had worked under any particular contractor continuously as stipulated in the said Act and therefore, they are not entitled for gratuity. In my considered opinion, it cannot be expected that the contract workmen maintain proof for continuous employment and it is for the authorities to genuinely find out who had worked continuously and to comply with the report of the State Advisory Contract Labour Board. Mere dismissal of the above cases filed before the Appropriate Authority under the Payment of Gratuity Act, does not mean that the authority should not implement the decisions in Clause-4.1 and 4.2 taken at the 50th meeting of the Tamil Nadu State Advisory Contract Labour Board. It is very unfortunate that there is no such compliance till date. The sub committee was constituted as per the directions of the Division Bench in W.A.(MD)Nos.886/2015, 889-891/2015 dated



23.02.2017 and therefore, the authorities are obliged to comply with the decisions in Clause-4.1 and 4.2.

14. Therefore, the respondents 1, 4, 5 and 6 are directed to enforce and ensure implementation of the decisions in Clause-4.1 and 4.2 taken at the 50th meeting of the Tamil Nadu State Advisory Contract Labour Board held on 23.03.2018 and to grant all the statutory benefits like minimum wages, leave facilities, ESI, EPF, Canteen facilities, Medical facilities, Gratuity, Bonus, working hours etc., to all the contract labourers in TNPL, as stated in the Govt. Letter 1(D)No.542/H1/2018-1, dated 04.10.2019 and the direction issued in the Govt. Letter No.22104/H1/2019-2 dated 27.01.2020 addressed to the 5th and 6th respondents, within a period of four months from the date of receipt of a copy of this order.

15. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

bala/gns

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Labour and Employment Department,
Secretariat, Chennai-600 009.
2. The Chairman and Secretary to Government
Tamil Nadu State Advisory Contract
Labour Board,
Labour and Employment Department,
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 Complex, Teynampet, Chennai-600 006.



4.The Commissioner of Labour,
DMS Complex,
Teynampet, Chennai-600 006.

5.The Director of Industrial Health and Safety,
(Chief Inspector of Factories),
Royapettah, Chennai-600 014.

6.The Joint Director,
Industrial Safety and Health, Kajamalai, Trichy.

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

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-11984[F] dated
17/03/2020)

+1 CC to M/s.SPL.GP (SR-12038[F] dated 17/03/2020)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-12052[F] dated 17/03/2020)

Order made in
W.P. (MD) No.4927 of 2020
Dated : 16.03.2020

KM(CO)
NR (07/12/2020) 10P : 11C