



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.7690 of 2020

and

W.M.P. (MD)Nos.7181 and 9498 of 2020

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Tamil Nadu General Workers Union,
DSTRL Kozhingipatti Toll Plaza Employees' Branch,
represented by its Secretary
Mr.K.Ganesh Raja,
Registration No.289/CPT/1975
K.T.K.Thangamani illam,
2/1, Kovur Vaidyanathan Street,
Chintadripet,
Chennai-600 002.

... Petitioner

Vs.

1.Government of India
represented by its Secretary,
Ministry of Labour and Employment Department
Rafi Marg,
New Delhi.

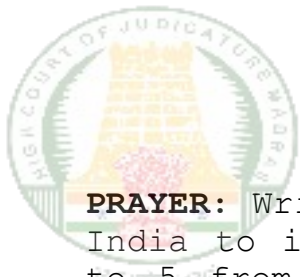
2.The Regional Labour Commissioner (central)
Lady Doak College Road,
Chinna Chokkikulam,
Madurai.

3.The Project Manager,
National Highway Authority of India (NH 44)
Plot No.3, Suriya Towers, II Floor I street,
K.K.Nagar, Madurai- 625 020.

4.The Toll Manager,
Dindigul- Samayanallur Toll Road Ltd.
Kozhigipatti Toll Plaza,
Kozhigipatti village,
Oruthattu Post,
Kodairoad,
Dindigul - 624 206.

5.The Toll Manager,
Racy Projects,
Kozhigipatti Toll Plaza,
Kozhigipatti Village,
Oruthattu Post,
Kodairoad,
Dindigul - 624206.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents No.3 to 5 from altering the service conditions of the members of the petitioner union whose names are given in the Annexure to the writ petition in any manner including discontinuance of service or failing to provide employment in any manner pending conciliation before the second respondent, and further to direct the second respondent to take up the Conciliation proceedings without further delay, within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman
For Mr. T.Lajapathi Roy
For R1 and R2 : Mr.S.Jeyasingh
Senior Panel Counsel
For R3 : Mr.C.Arul Vadivel @ Sekar
For R4 : Dr.R.Maheswari
For R5 : Mr.P.Ganapathi Subramanian

ORDER

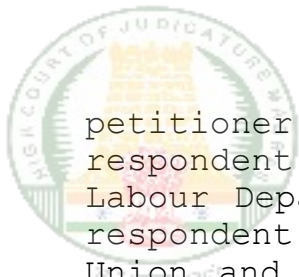
The prayer sought for herein is for a Writ of Mandamus, forbearing the respondents No.3 to 5 from altering the service conditions of the members of the petitioner union whose names are given in the Annexure to the writ petition in any manner including discontinuance of service or failing to provide employment in any manner pending conciliation before the second respondent, and further to direct the second respondent to take up the Conciliation proceedings without further delay, within the time period stipulated by this Court.

2.The petitioner is a Labour / Employees' Union called Tamil Nadu General Workers Union DSTRL, Kozhingipatti Toll Plaza Employee's Branch represented by its Secretary. Under the petitioner Labour / Employees' Union Branch, there are 43 employees as members, affiliated to the Tamil Nadu General Workers Union.

3.According to the petitioner, these employees had been engaged either directly or indirectly by respondents 3,4 and 5, in order to do various jobs at the aforesaid Toll Plazas which includes Shift in-charge, Route Patrolling Officer, Assistant Route Patrolling Officer, Validator, Lane Supervisor, Toll Collectors, Assistant Security Officer, Security Guard, Gun Man, Electrical Technician, Office boy, Drivers, Highway Traffic Management System Attender, Customer Support Assistant, Database Administrator, House Keeping etc.

4.The employees since have been working as such for the past few years, there had been labour / employees dispute between the

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petitioner's employees and the respondents especially the fifth respondent. In this regard, already the issue has been referred to Labour Department for conciliation, where it seems that, the second respondent has taken up the issue referred by the petitioner Workers Union and accordingly for some days, the conciliation proceedings went on. It also seems that, at one point of time, the conciliation proceedings could not be progressed further due to COVID-19 situation and in that circumstances, as alleged by the petitioner's Workers Union, the respondents, especially the respondents 4 and 5 started altering the service conditions of the employees and they further alleged that, such alteration would go to the extend of even terminating or dispensing with the services of some of these employees.

5. Therefore, on the said circumstances, the petitioners have filed this writ petition stating that, in view of the pendency of the conciliation proceedings before the second respondent under the provisions of the Industrial Disputes Act, in between or during the interregnum, no service conditions of the employees shall be altered by the employer. Therefore, seeking a prohibitory order by way of a Writ of Mandamus, directing the respondents especially the respondents 3, 4 and 5, not to alter the service condition of the employees, which includes the termination or dispensing with the services of them, thus seek indulgence of this Court. That is how, this writ petition was filed.

6. At the time of admission, this Court, after having considered the prima facie case projected by the petitioner's side, was pleased to grant an interim order dated 20.07.2020 to the following effect :-

"3. It is submitted by the learned counsel for the petitioner that, in respect of this matter, the employees/workers are the members of the petitioner's Union who have already raised an Industrial Dispute, where conciliation is pending between the employer and employees. Therefore, during the conciliation proceedings, which is pending before the concerned authority, no alteration of service condition can be taken place and since it is apprehended by the petitioner's union that the conditions of service would be altered during the pendency of the conciliation proceedings, they approached this Court by way of Writ of Mandamus. In this regard, the learned counsel for the petitioner relied upon the earlier interim order passed in similar circumstances in W.P.No.9127 of 2017 and W.M.P.No.10052 of 2017 in the matter of Tamil Nadu General Workers Union, Vs. Government of India, by order, dated 17.04.2017.

4. It is the specific case of the petitioner that, some of the employees, who are members of the petitioner's union



may be terminated unmindful of the pendency of the conciliation proceedings, which goes against the provisions of the Industrial Dispute Act, therefore, their service shall be protected during the interregnum period.

5. In view of the said submission, there shall be an interim order of status quo insofar as the members of the petitioner's union with regard to their termination is concerned and that shall be maintained by both sides as on date.

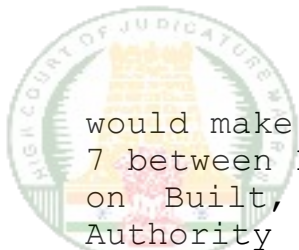
6. Post the matter after four weeks."

7. Aggrieved over the said interim order passed by this Court dated 20.07.2020, the fourth respondent has filed vacate stay petition in W.M.P.(MD)No.9498 of 2020. The fifth respondent also has filed counter statement. The third respondent has filed the counter affidavit separately and the second respondent has filed a counter affidavit on behalf of respondents 1 and 2.

8. I have heard the respective counsel appearing for the parties. It is the case of the petitioner's Union that the 43 employees had been continuously engaged at the Toll Plaza under the control of the fourth respondent and in this regard their case is that, they are the employees directly under the fourth respondent as well as the fifth respondent and in this regard there has been several service issues and in respect of those service issues and for redressing the same, the Labour Union, on behalf of the employees, already approached the Labour Commissioner, before whom conciliation proceedings is pending. Wherein, not only the fifth respondent, but also the third respondent had been called for to make their views to take a conclusive decision on the service conditions to be imposed on these employees.

9. The learned counsel for the petitioner would further submit that, however due to COVID-19 situation, the conciliation proceedings could not be further progressed and in the meanwhile, the fourth and fifth respondents joined together, wanted to terminate the services of employees, thereby the fourth and fifth respondent not only made an attempt to alter the service conditions during the pendency of the conciliation proceedings but also decided to go the extend of terminating the services of the employees which are impermissible under law especially under the provisions of the Industrial Dispute Act. Therefore in order to protect the services as well as the service conditions of the employees, it become necessitated for them to file this writ petition. Therefore, the prayer of Writ of Mandamus as has been sought for by the petitioner's Union may be considered by this Court, he contended.

10. However, Dr.R.Maheswari, learned Counsel appearing for the fourth respondent namely the Toll Manager, Dindigul-Samayanallur Toll Road Ltd., who filed vacate stay in W.M.P.(MD)No.9498 of 2020,



would make submissions that, the 53 kms stretch of National Highway-7 between Dindigul-Samayanallur was awarded to the fourth respondent on Built, Operate and Transfer Basis(BOT) by National Highways Authority of India and the concessions period is 20 years. Accordingly, the road was built and being operated by the fourth respondent during the concession period of 20 years and therefore on completion of the concession period it may be transferred as per the contract between the National Highways Authority of India and the fourth respondent.

11.She would further submit that, the fourth respondent had to engage certain external services through the external service providers for handling toll operations and allied works and in this context, the fourth respondent, after floating tender, selected various external service providers from 2009 onwards and a list of such external service providers had also been given in the affidavit filed in support of the vacate stay petition which the learned counsel for the fourth respondent relied upon. She would also submit that, accordingly, from October-2017, the fifth respondent was identified and selected as external service provider. Accordingly the work for handling Toll operation and allied works were entrusted to the fifth respondent since October-2017 and the said contract between the fourth and fifth respondent was over by 30.06.2019 and the same was further extended up to 31.03.2020.

12.The learned counsel for the fourth respondent would further submit that, therefore, the relationship between the fourth and fifth respondents is purely contractual. Therefore, according to the contract conditions, the fifth respondent has to do some allied work especially handling of Toll operations and for the said purpose, it is for the fifth respondent to engage the employees on its choice. Accordingly, these employees would have been engaged by the fifth respondent. Therefore, absolutely there has been no connection whatsoever with the fourth respondent and these employees. She would also submit that, since the contract period with the fourth respondent was over by 31.03.2020, due to COVID-19 situation, the fifth respondent did not immediately float a tender to identify any external service provider. Therefore, the contract which ended on 31.03.2020 is being extended from time to time for a shorter period like one month or more. Accordingly, even now, the contract period of the fifth respondent is extended for a limited period of 30 days till alternative arrangement is made.

13.The learned counsel appearing for the fourth respondent would also submit that, only in that circumstances, the petitioner's Employee Union approached this Court by filing this writ petition by projecting the case, as if that, the fourth respondent on behalf of the third respondent has engaged these employees directly and the fourth respondent is taking steps to dispense with the services of these employees which amounts to violation of the provisions of the

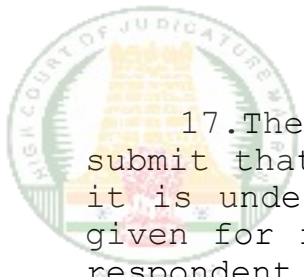


Industrial Dispute Act and the conciliation proceedings between the fifth respondent and Employees' Union, pending between the conciliation Labour Commissioner and on that ground, the order dated 20.07.2020 of this Court was passed, she contended.

14. In that result, the learned counsel submits that the fourth respondent even now precluded to take steps to identify the external service providers which could not proceed further thereby, the present contract though ended with the fifth respondent, is being extended for a shorter period. Therefore, the learned counsel for the fourth respondent would submit that, the interim order may be vacated and the writ petition may be rejected.

15. The learned counsel appearing for the fifth respondent on the other hand, relying upon the averments made in the counter affidavit filed by the fifth respondent would submit that, no doubt, for the past three years, the fifth respondent had been managing the toll operations work at the Toll Plaza concerned in NH-7 on contract basis with the fourth respondent. For the said period, these employees are engaged and insofar as service conditions of these employees are concerned, he would submit that, whatever pay incommensurate with the work undertaken by each of the employees, the pay would be paid and insofar as the plea of these employees to seek permanency or further extension of any service or service conditions, that issue has already been raised before the conciliation officer before whom the conciliation proceedings also is pending. Unless and until the issue is decided either before the conciliation officer or before the labour Court or the Industrial Tribunal, as the case may be, further improvement of service conditions or further enhancement of pay of these employees may not be decided by the fifth respondent at this juncture.

16. The learned counsel for the fifth respondent would also submit that, insofar as the apprehension raised by the petitioner's Union that soon or later, these employees are going to be terminated or their services going to be dispensed with and on that apprehension only they filed this writ petition is concerned, the learned counsel for the fifth respondent would submit that, absolutely the fifth respondent does not have any intention to dispense with the employees without adopting the procedures established under law. He would further add that, some of the employees many a times created so many confusion and they often create trouble in the Toll Plaza, thereby, the works in the Toll Plaza is getting affected very often and when the fifth respondent is trying to take disciplinary action against the employees, the petitioner's Employees' Union come in the way or stand in the way. That is the difficulty, very often, the fifth respondent is facing at the hands of the erring employees belong to the petitioner's union.



17.The learned counsel for the fifth respondent would further submit that, admittedly, the fifth respondent contract was over and it is under extension only. Unless and until further extension is given for further period of some years, the continuity of the fifth respondent at the Toll Plaza Booth may not arise. Therefore, whether the employees are continuously engaged or not also cannot be decided by the fifth respondent because the fifth respondent cannot independently act upon unless and until the contract with the fourth respondent is extended as stated above.

18.He also submits that, however, till such time the fifth respondent is engaged by the fourth respondent by way of contractual obligation to handle the Toll operations of the Toll Plaza concerned, in the NH-7 under the control of the fourth respondent, certainly the service of these employees would not be terminated or dispensed with abruptly. However, in so far as the erring employees are concerned, the liberty may be given to the fifth respondent to take disciplinary action in the manner known to law.

19.Mr.S.Jeyasingh, learned senior panel counsel appearing for the second respondent would submit that, as per instructions, notice was given on 20.3.2020 to that effect that the continuation of the conciliation proceedings pending before the second respondent can go on. However, because of the lock down announced due to COVID-19, the said conciliation proceedings could not be progressed further beyond 20.03.2020. However when the normalcy is restored after the COVID lock down, certainly the second respondent would restore the possible steps to speed up the conciliation proceedings and accordingly a new date would be fixed to continue the conciliation proceedings and on intimation of such date, if the parties, mainly the fifth respondent and the petitioner's Employees Union appear before the second respondent, he would further explore the possibility to arrive at a conciliation for the issues raised by the employees Union.

20.Like that the learned counsel for the respondents 1 and 3 also relying upon the counter filed by the third respondent would submit that, the highway stretch in NH-7 between the Dindigul-Samayanallur for 53 kms have already been entrusted to the fourth respondent under BOT scheme. Accordingly, for the next 20 years from the date of such entrustment, it is for the fourth respondent to maintain the said highway of 53kms including collection of toll. Therefore, in this regard, except the overall supervision and management of the smooth functioning of the Highway in that stretch, without affecting the free flow of traffic, the respondents 1 and 3 have no major role to play on the issue raised in this writ petition.

21.I have considered such an elaborate submission made by the respective counsel appearing on both sides and perused the materials placed before this Court.



22.As has been pointed out by the learned counsel for fourth respondent, it is the special purpose assigned to a company which was entrusted the 53 kms in NH-7 stretch between the Dindigul and Samayanallur under BOT scheme and the road was formed and in operation for the last few years and in order to have the excellent service, mainly to handle the toll operations, they engaged some of the external operators. In this context from October 2017 onwards two times the contract have been given to the fifth respondent as a external service provider and that contract was over by 31.03.2020. Even during the contract period, these employees were not engaged, appointed or pressed into service by the fourth respondent directly. Since the employees are engaged by the fifth respondent, of course, continuously from 2017 onwards, the employer-employee relationship might be available only with the fifth respondent and the relationship between the fourth respondent and the fifth respondent is purely contractual. Moreover, once the contract period is over, the relationship between the fourth and the fifth respondent can very well be severed which ought to have been done on 31.03.2020. However, due to COVID-19 situation, the contract is being extended from time to time.

23.The learned counsel for the fourth respondent also submits that, in order to identify the fresh external service provider, tender may be floated by the fourth respondent immediately and in that process even the fifth respondent also can participate and he might be also one of the successful contender to be selected and in that case, the fifth respondent may also continue for some more years.

24.However, such situation cannot be finalized now. Therefore, as on date, the contractual obligation on the part of the fifth respondent and the fourth respondent is available only because of the extension given from time to time. Therefore, unless and until a new external service provider is identified by the fourth respondent and the work is entrusted to such new external service provider, the job of the fifth respondent can continue and there can be no dispute on that, because the Toll plaza is a 24x7 job and therefore during the intermittent period, no third party right can be suddenly created by the fourth respondent.

25.So far as the service condition, the proposed alteration of conditions, and terminating the services is concerned, the issue is very well pending before the second respondent. The learned counsel appearing for the second respondent has made it clear that, because of the COVID-19, the conciliation could not be progressed beyond third week of March and certainly that would be continued normalcy once is restored. That being the position, very soon communication may be sent by the second respondent to the concerned parties namely the fifth respondent and the petitioner's Employees' Union, pursuant



to which, they can appear before the second respondent and it can explore the possibility of reaching the settlement amicably in the conciliation proceedings.

26. Moreover, it is further to be noted that, the learned counsel for the fifth respondent has categorically stated, ofcourse by relying upon the averments made by the affidavit filed by the fifth respondent that, during the contract period, as long as the fifth respondent continued to be the contractor under the fourth respondent, the service of these employees would not be dispensed with and they would not be terminated abruptly.

27. In this context, the submission and stand of the fifth respondent can further be noted to the extend that, improvement of further service conditions of the employees, is the subject matter before the conciliation officer. Therefore, unless and until some decision is made by the conciliation officer, no further improvement of service condition can be expected by these employees.

28. The learned counsel appearing for the petitioner also has not made much dispute on the aforesaid factual matrix, as has been projected by the respective respondents as well as the arguments advanced by the learned respective counsel for respondents, especially respondents 4 and 5. All that the learned counsel for the petitioner wants is, before the conciliation officer, the issue be continuously adjudicated by way of conciliation, till a settlement is arrived between the parties and in case if there is any failure in arrival of settlement, the matter can be further taken up to the next Forum by either party in the manner known to law.

29. It is the further plea of the petitioner as projected by the learned counsel for the petitioner that, till such time, that is, so long as the fifth respondent continues to be in the job, that is, handing the Toll operations under the fourth respondent either under the present contract or under the future contract, the service of the petitioner's employees shall not be dispensed with.

30. This assurance has already been given by the learned counsel for the fifth respondent relying upon by the counter filed by R5. As far as the workers problems is concerned, at the hands of the fifth respondent during the contract period, the fifth respondent may not take any steps. However, this would be subject to the disciplinary proceedings, if any, the fifth respondent wants to take against any of the erring employee of the petitioner's Union.

31. In view of the said stand respectively taken by the parties, having regard to those stand taken by them, this Court feels that the writ petition can be disposed of with the following orders :



"a) That the employees were engaged only by the fifth respondent and the relationship between the fourth and fifth respondent is only contractual. Insofar as the service conditions of the employees belongs to the petitioner's union is concerned, neither the 1st and 3rd respondents nor the fourth respondent have any role to play.

b) Admittedly, the employees are under the fifth respondent and the fifth respondent admitted that they have been continuously engaged and will continue the same till the contract between the fourth and fifth respondent exists. Therefore, there can be no apprehension in the minds of the employees that they would be abruptly terminated or their service would be dispensed with, without adopting the due process of law.

c) However, it is open to the fifth respondent to take disciplinary action against any of the erring employee for the known violation and in that case this order would not stand for taking such disciplinary action by the fifth respondent against any one of the 43 employees. Insofar as the improvement of service conditions of employees is concerned, since the said issues has already been engaged before the second respondent Labour Commissioner, who intend to speed up the conciliation proceedings by going to fix a new date of conciliation that issue can be taken care of by the second respondent by way of the conciliation proceedings.

d) It is made clear that till such conciliation proceedings is over or till the contract between the fourth and fifth respondent is over, or the new contract period is not given, which ever is earlier, the services of the employees at the hands of the fifth respondent shall not be terminated or dispensed with. Any of the pay arrears are due for the employees of the petitioner's Union during the pendency of this writ petition, despite they have been engaged and they render services to the fifth respondent, the same shall be paid by the fifth respondent at the earliest."

32. With all these directions, the writ petition is disposed of. The connected miscellaneous petitions are closed. However, there shall be no orders as to costs.

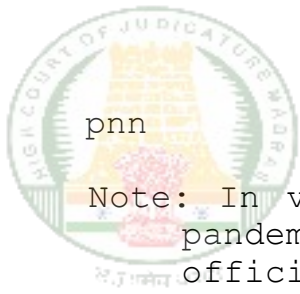
Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Government of India
Ministry of Labour and Employment Department
Rafi Marg, New Delhi.
 - 2.The Regional Labour Commissioner (central)
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Racy Projects,
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Kodairoad, Dindigul - 624206.
- +1 CC to M/s.R. MAHESWARI, Advocate (SR-16577[F] dated 11/09/2020)
- +1 CC to Mr.T. LAJAPATHI ROY, Advocate (SR-16687[F] dated 11/09/2020)
- +1 CC to Mr.S. JEYASINGH, Advocate (SR-16698[F] dated 11/09/2020)

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