



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.10937 of 2021 and
W.M.P.No.11573 of 2021

The Management
Gnutti Carlo India Private Limited,
Rep. by its Authorised Signatory - Vijay Ramakrishna
Plot No.A25, Engineering SEZ,
SIPCOT Industrial Complex, Phase III,
Mukundarayapuram Village,
Ranipet District - 632 405.

...Petitioner

-vs-

1. State of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Labour and Employment (B2) Department,
Fort St.George, Chennai-600 009.

2. United Labour Federation,
Rep. by its Secretary,
No.149, Thambu Chetty Street,
C.J.Complex, IV Floor,
Chennai-600 001.

3. Mr.S.Ayyappan
4. Mr.G.Kuselan

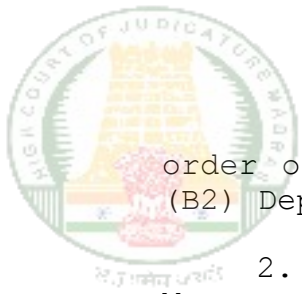
...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st Respondent to include the Respondents 3 and 4 as parties to order of the reference in G.O.(D) No.370, Labour and Employment (B2) Department dated 24.08.2020.

For Petitioner	: Mr.S.Ravindran, Senior Counsel For Mr.S.Bazeer Ahamed
For R1	: Mr.LSM.Hasan Fizal Govt. Advocate
For R3 & R4	: Mr.V.Prakash, Senior Counsel For Mr.M.Arumugham
For R2	: No Appearance

O R D E R

This writ petition has been filed for a direction to the 1st Respondent to include the Respondents 3 and 4 as parties to



order of the reference in G.O.(D) No.370, Labour and Employment (B2) Department dated 24.08.2020.

2. The case of the petitioner is that the Petitioner / Management (hereinafter referred to as 'the Management') is engaged in manufacture of Rocker Arms, Shafts and Assemblies for Automotive and Non-Automotive Sectors and the 2nd Respondent / Union raised an Industrial Dispute on 23.05.2018 by way of charter of demands. The Dispute was taken up for conciliation by the Assistant Commissioner of Labour-I, Vellore in Case No.245 of 2019 by issuing conciliation notice dated 03.06.2019, which was questioned by the Management by way of reply dated 02.07.2019 on the ground of authority of 2nd respondent and the merits of the demands made by the 2nd Respondent Union;

2.1. It is further case of the Management that the Union included the issue relating to non-employment of 52 Contract Workmen of the Respondents 3 and 4 who were Contractors and on 18.12.2019, a failure report was submitted with a reference that the dispute in respect of Contract Labour was not maintainable against the Management. Under Section 11(4) of the Industrial Disputes Act, 1947, the Conciliation Officer is duty bound to summon and enforce attendance of any person and the Officer ought to have issued summons to the Contractors to ascertain the employment of 52 Workmen;

2.2. It is also the case of the Management that the 1st Respondent vide Order dated 24.08.2020 referred the demands raised by the Union and also the alleged non-employment of 52 Workmen, pursuant to which, the Tribunal has taken up the dispute on file and numbered the same as O.P.No.34 of 2020. Since Respondents 3 and 4 were Contractors, they are necessary and proper parties to the dispute and the 1st Respondent ought to have arrayed them as Respondents. Though the Management sent a representation dated 05.03.2021 to the 1st Respondent for arraying them as parties, no order has been passed thereon till date. Aggrieved by the same, the Management is before this Court seeking for the above direction.

3. Mr.V.Prakash, learned Senior Counsel appearing for the Respondents 3 and 4, by referring to the respective counter affidavits of R3 and R4, contended that R3 and R4 are providing manpower to the Management and out of 52 Workmen, 50 Workmen were deployed by 3rd Respondent and two (2) by 4th Respondent. He further contended that in case they are added as parties to the dispute, they may be permitted to contest the dispute on merits in the pending O.P.No.34 of 2020 before the Industrial Tribunal, Chennai.



4. Learned Senior Counsel for the Management relied on the following judgment of this Court in support of his submission that the Tribunal has incidental powers to implead necessary parties to the Dispute for the purpose of complete adjudication of the dispute:

i) Sri Kanchi Kamakoti Peetam Charitable Trust Hospital vs. Industrial Tribunal and Others, reported in 2003 (4) LLN 910;

"12. It is also relevant to note that Rule 24 of the Central Rules, 1957 confers powers on the Labour Courts, which are vested in the Civil Court under the Civil Procedure Code in respect of discovery and inspection, granting adjournment, reception of evidence taken on affidavit, summon and examine any person, whose evidence appears to be material. Conjoined reading of the provisions referred to above and the dispute raised, I am of the view that the Labour Court / Industrial Tribunal is not excluded in directing persons other than the employer and employee, who would be required for complete adjudication of the issue. A reading of the provisions, such as Sections 2(k), 10, 11 and 18 of the I.D. Act as well as the Rules show that the test always must be, is the addition of the party necessary to make the adjudication itself is effective and enforceable. In other words, in the absence of any specific provision, I am of the view that impleading of a party to the proceedings before the Tribunal / Labour Court is not totally prohibited. If the Labour Court considers that the presence of such party is necessary for the enforcement of the award, it has ample power to add or admit a party to the industrial dispute. The authority can consider, in addition to the dispute, specify in the order of reference any matter incidental to the dispute.

13. In this regard, it is relevant to refer the case of Palanisamy R. Vs. Presiding Officer, Labour Court, Salem reported in 2001 (2) L.L.J. 1693. While considering similar issue, K. Raviraja Pandian, J., has concluded that,

"The power of the Labour Court to add or implead a party is not totally prohibited. If the Labour Court is of the opinion that the presence of the party is necessary for effective and enforceable adjudication, it can add a party. Further, the Labour Court can adjudicate upon matters, which are incidental to the order of reference. "



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14. It is also worthwhile to refer the case of Natarajan vs. Presiding Officer, Labour Court, Tiruchirapalli reported in 2001 (1) L.L.J. 1586, wherein F.M. Ibrahim Kalifulla, J., in similar circumstance has held that under Section 18-B of the I.D. Act, the Labour Court is vested with powers to implead persons not made parties before conciliation officer, as parties to dispute before it. Since both the decisions are in accordance with the statutory provisions and considered the interest of parties concerned, I am in agreement with the same. In the light of the statutory provisions referred to above and for the purpose of complete adjudication, I am of the view that the Industrial Tribunal / Labour Court has incidental powers including to implead or add parties other than employer, employee or persons before the conciliation officer.

15. It is also relevant to note that all the financial institutions have sold the property of Tamilnad Hospital to the writ petitioner and the petitioner is having interest in I.D., pending before the Tribunal, I am in agreement with the conclusion of the Tribunal that the writ petitioner is necessary party to enable it to factually and completely adjudicate upon the question involved in the industrial dispute. It is made clear that merely because the petitioner has been impleaded as one of the parties in the I.D., it may not be automatically presumed that the liability is to be fastened on it. It is for the parties to substantiate their respective claim and ultimately it is the duty of the Tribunal to consider the same with reference to oral and documentary evidence and arrive a just decision. When such remedy is available, I am unable to appreciate the stand taken by the petitioner. All the questions / objections including liability are left open and it is for the Tribunal to consider and pass orders while deciding the main I.D. With the above observation, this writ petition is dismissed. No costs. Consequently, connected WPMP., and WVMP., are also dismissed."

5. Heard the learned Senior Counsel for the Petitioner/Management, learned Government Advocate for R1 and learned Senior Counsel for R3 and R4. There is no representation for R2/Union.



6. The main contention of the Management is that the Dispute cannot be given quietus to without hearing the Contractors, namely, R3 and R4 and therefore, they should be impleaded as party Respondents to the Dispute. It is seen that 37 issues have been referred to for adjudication and out of 53 employees, 52 are Contract Labours. The issue whether the contract is sham and nominal can be decided only by the Tribunal. Once the contract is genuine, the remedy lies to the Workmen before the Authority or the Appropriate Government under the Contract Labour (Regulation and Abolition) Act, 1970, and if it is sham and nominal, then the Tribunal / Labour Court has got power to grant necessary relief. For deciding the issue about the genuineness of the contract labour system, Contractors need to be a party to the Dispute, as records have got to be summoned to establish the case. Hence, the Management prayed that the Government should amend the reference and thereafter, the Tribunal shall proceed with the matter in the Industrial Dispute. It is no doubt true that this Court is empowered to direct the Government to include the Contractors as party to the Dispute, but it is a procedural one and it is not going to affect any party.

7. The powers under Section 11 of the I.D.Act, 1947 are very wide for the parties concerned to file a petition to bring the party as Respondents and in such an event, the Tribunal will have to consider and pass appropriate orders. Since the genuineness of the contract system is an issue and even according to the Union, Contract Labour System itself is sham and nominal, relegating the matter to the Government for inclusion of R3 and R4 will take time and in that process, there is every possibility of the employees losing the job.

8. In the present case on hand, learned Senior Counsel for R3 and R4 fairly conceded that R3 and R4 have no objection to implead them as party respondents to the Industrial Dispute. On the Management filing a petition for inclusion and after taking endorsement from the Union with regard to the inclusion of parties, the issue with regard to the genuineness of the Contract Labour System can be decided based on the evidence that may be let in by the parties. There is no hard and fast rule in allowing the party to implead, when they are necessary and proper parties. Hence, this Court, instead of directing the 1st Respondent to implead R3 and R4 as party to the Dispute, directs the Tribunal to consider the plea of the parties with reference to oral and documentary evidence and arrive at a just decision, regarding impleadment. Even if the Tribunal comes to the conclusion that the Contract System is GENUINE, still it has got power to decide the issue of non-employment of 52 Workmen and grant the relief ONLY against the Contractors.



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9. With the above observation and direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To:

1. The Assistant Commissioner of Labour-I,
Vellore.
2. The Additional Chief Secretary,
Labour and Employment (B2) Department,
Fort St.George, Chennai-600 009.
3. The Secretary,
United Labour Federation,
No.149, Thambu Chetty Street,
C.J.Complex, IV Floor,
Chennai-600 001.

+1 cc to the Government Pleader, Advocate Sr.No.29840

W.P.No.10937 of 2021

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