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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2022

PRONOUNCED ON : 20.01.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.Nos.3003 and 3007 of 2019, 607, 1020, 1023 and 1024 of 2020, 1761 of 2021
and 2529 of 2022**

and

**C.M.P.Nos.19392, 11019 and 19395 of 2019, 8425, 12459, 12465 and 12467 of 2020
and 19866 of 2022**

and

Cont.P.Nos.956 and 961 of 2021

in

Sub.A.Nos.285 and 286 of 2021

W.A.No.3003 of 2019:-

1.E.Deivasagayam

2.S.Devan

3.A.Sagaya Kaurnakaran

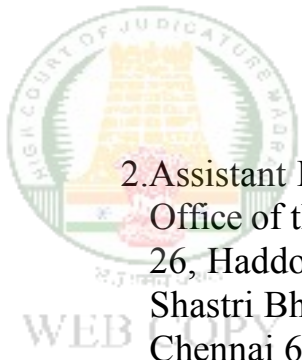
4.A.Guru

5.V.Marimuthu

... Appellants

/vs./

1.The Union of India,
represented by its Secretary,
Ministry of Labour,
Sharm Mantralaya,
New Delhi 110 001.



2. Assistant Labour Commissioner,
Office of the Deputy Labour Commissioner (Central),
26, Haddows Road,
Shastri Bhavan,
Chennai 6.

3. Airports Authority of India,
represented by its Director,
Chennai Airport,
Meenambakkam,
Chennai 600 027.

4. Management
Bright Shine Services
No.2, First Floor,
Sarathy Street, Pallavaram,
Chennai 600 043.

5. M/S. Media Solution,
represented by its Authorised Signatory,
M.O. Amanullah Marikar,
S 95, III Phase,
II Floor,
Spencer Plaza,
Chennai 600 002.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 11.06.2019 in W.P.No.21515 of 2013 is illegal, arbitrary contrary to law insofar as directing to maintain status quo in respect of employees, who are actually working only till disposal of the conciliation proceedings and not giving direction to the first respondent to refer the dispute for adjudication before the competent authority as illegal, arbitrary and contrary to law and liable to be set aside to that extend.



For Appellants : Mr.S.Balan Haridas
For R1 : Mr.S.Diwakar
Senior Panel Counsel Central Government
For R3 : Mr.R.Parthiban

COMMON JUDGMENT

*(Judgment of the Court was delivered by **K.KUMARESH BABU, J.**)*

The instant writ appeals arise out of a common judgment passed by the learned single Judge, wherein he had upheld the notification issued by the Central Government abolishing contract labour system in trolley retrieval in the establishment of Airport Authority of India at Chennai.

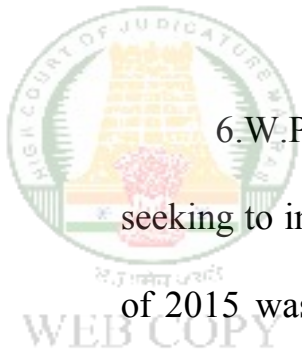
2. There are four parties to the batch of these writ appeals. They are a) Airport Authority of India represented by its Director, Chennai Airport, who is the employer, b) Tamil Nadu Airport Workers Union - they represent the contract workers, who were employed as trolley retrieval workers till 2004, C) Tamil Nadu General Workers Union representing 19 contract workers, who were employed during 2004 and d) 65 Contract Workers represented by the 5 men committee, who had been employed during 2004.

3. The brief facts of the case are as follows:-



4.The Airport Authority of India, a Public Sector undertaking created by a statute is undertaking construction, operations of Airports, civil enclaves and their effective management and administration. As a part of its function towards baggage handling and movements for the convenience of passengers in the terminals, provides trolleys, which can be easily used by the passengers at the terminals. The said facility is available free of cost. However, the trolleys used by the passengers are dropped at their convenience at various places inside the Airport as well as outside the Airport. Therefore, the Airport Authority of India had to employ persons for retrieval of the trolleys, which shall be placed at the convenient place for the passengers' use. Instead of appointing such trolley retrieval workers, directly the Airport Authority of India chose to enter upon into the contracts with private persons.

5.It is the case of the workers represented by both the Unions that the Airport Authority of India had been engaging the services of the trolley workers continuously during their employment. But however, the contractors were changed. It is the case of the Tamil Nadu Airport Workers Union that they were instrumental in moving the Central Government to abolish the contract labour system, as the employment is continuous/perennial and round the clock. After various litigations, the Central Government issued a notification on 05.11.2014, prohibiting the employment of contract labour in the job of trolley retrieval in the establishment of the Airport Authority of India at Chennai.



6.W.P.No.6485 of 2015 had been filed by the Tamil Nadu Airport Workers Union seeking to implement the notification issued by the Central Government. W.P.No.15917 of 2015 was filed by the Airports Authority of India challenging the said notification. W.P.No.21515 of 2013 was also filed by five individual workers, who formed a committee representing 65 trolley retrieval workers seeking for a Mandamus that their service should not be discontinued and that their claim should be directed to be conciliated and on failure of such conciliation to be referred for adjudication before the competent Industrial Adjudicator.

7.A similar relief was also claimed by the Tamil Nadu General Workers Union by filing W.P.No.40237 of 2016. In this case, the Union represented 19 workers. The workers sought to be represented in W.P.Nos.21515 of 2013 and 40237 of 2016 formed a same class of workers, all of them having been appointed during 2004. Hence, there are three set of litigants before this Court and they shall be addressed in this common judgment as a) Airport Authority of India, b) Tamil Nadu Airport Workers Union and c) Tamil Nadu General Workers Union for convenience.

8.Heard Father Xavier Arulraj, learned Senior Counsel for M/s.Arul Mary, learned counsel for the appellant in W.A.Nos.3003 and 3007 of 2019, 1020, 1023 and 1024 of 2020, 1761 of 2021 and 2529 of 2022, M/s.Vaigai, learned Senior Counsel for



Mr.K.M.Ramesh, learned counsel for the first respondent in W.A.No.1020 of 2020 and the third respondent in W.A.No.1023 of 2020, Mr.S.Diwakar, learned Senior Panel Counsel, Central Government for the second respondent in W.A.Nos.1020 and 1024 of 2020 and the first respondent in W.A.Nos.607 and 1023 of 2020, Mr.Balan Haridas, learned counsel for the first respondent in W.A.No.1024 of 2020 and the respondents 5 to 9 in W.A.No.607 of 2020, Mr.R.Parthiban, learned counsel for the appellant in W.A.No.607 of 2020. None appears for the respondents 2 to 4 in W.A.No.607 of 2020.

9.Father Xavier Arulraj, learned Senior Counsel appearing on behalf of the Airport Authority of India would contend that the notification issued by the Central Government is wholly arbitrary and without consideration of the relevant materials. He would further contend that while issuing the notification, the Central Government had not heard the Airport Authority. The Airport Authority of India is empowered to enter into the contracts for outsourcing the terminal services as provided in schedule II under Regulation 2 (e)(ii) of the Ground Handling Regulation, 2007. He would further contend that outsourcing the employment of trolley retrievers is backed by a statute and the Central Government ought not to have issued a conflicting notification.

10.He would further submit that the Central Advisory Contract Labour Board, which had recommended prohibition of contract labour employment, had not followed



various procedures prescribed for it to make such recommendations. He would submit that when W.P.No.21515 of 2013 was filed, the issue raised therein is that the contracts by which the workers therein were employed were sham and nominal, the Central Advisory Contract Labour Board (*herein after referred to as Board*) and the Central Government ought not to have taken up the issue, which was sub-judice before a Constitutional Court. He would further plead that the Airport Authority of India had produced all the relevant particulars as regards the conditions of service, wages paid, the benefits provided and the social security being provided by the contractors to the workers. He would further contend that the Board had not at all considered the particulars submitted by the Airport Authority of India before making the recommendations.

11.Father Xavier Arulraj, learned Senior Counsel appearing on behalf of the Airport Authority of India would further contend that the workers employed by the contractors were being paid in accordance with the Minimum Wages Act, 1948. He would strenuously contend that the notification issued by the Central Government is not based upon the finding of fact of any Industrial Tribunal or Labour Court that the contract is a sham and nominal one. He would further submit that in the absence of any such finding, the Central Government ought not to have ventured upon in issuing the notification prohibiting the contract labours in the Trolley Retrieval Division. He would



also submit that there is no oral or documentary evidence adduced by either of the parties before any competent Court or the Tribunal much less even before the Board to make such recommendations. He would also submit that the work of trolley retrieval does not form part of the core function of the Airport Authority of India in the Air Traffic/Transport service.

12.He would further submit that these contracts entered by the Airport Authority of India are pursuant to a statutory empowerment and that such contracts are being entered into based upon a genuine revenue contract and advertisement rights. The advertiser manages the contract through his own workmen. The trolleys are under the control of the advertisers/contractors. The Airport Authority of India has no control over the labourers or the trolleys except issuing entry passes to the workers through the said contractors for the security purposes. He would further submit that the Board has not considered the fact that the work is not a full time work and depends upon the frequency of flights and the capacity of flights, which fluctuates taking into account the seasonal travels. He would further submit that due to the modernization, the use of trolley in the Airport has reduced drastically, as wheeled baggages are largely used by the passengers.

13.The learned Senior Counsel would further contend that the contract entered by



the Airport Authority of India for employment of contract labourers for trolley retrieval is genuine and transparent. There is no camouflage in the said contracts and the contractors are paying the workers in accordance with the Minimum Wages Act. He would further submit that the privatization of Chennai Airport is on the unveil. This factual aspect has been fully over looked both by the Board and the Central Government before making the recommendations and issuing the notification respectively.

14.Father Xavier Arulraj, learned Senior Counsel would draw the attention of this Court to Regulation 3 of the AAI (Central Management Entry for Ground Handling Services) Regulations, 2007 to drive home his contention that the Airport Authority of India is permitted to outsource the Ground Handling Services, which includes trolley retrieval through competitive bidding on revenue sharing basis. Hence, the said regulation permits a third party, on the basis of revenue sharing, to be engaged in the retrieval of trolleys. He would further contend that the essential services involving air-safety, security, watch and ward, legal movement of Cargo and life and safety of passengers cannot be outsourced, as they are the core functions of the Airport Authority of India. However, the other allied activities, which are subsidiary in nature, can be either outsourced or executed through joint ventures on the basis of the commercial contracts. To support his contention, he had also relied upon Section 12(3)(r) of the Airport Authority of India Act, 1994.

15.Father Xavier Arulraj, learned Senior Counsel would further contend that the



recommendations of the Board do not conform to the ingredients warranting promotion of contract labour in trolley retrieval. He would further contend that the recommendations of the Board had pointed out that the trolley retrieval work is perennial in nature that there is no employee-employer relationship between the Airport Authority of India and the contract workers. The learned Senior Counsel reiterated his argument that when the contract outsourcing the trolley retrieval works is backed by a statutory mandate, which is a special enactment governing the Airport Authority of India, neither the Board nor the Government ought to have exercised their power under general enactment, namely Contract Labour (Regulation and Abolition) Act, 1970 (*herein after referred to as CLRA Act*).

16. In support of his contention, the learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court in the case of ***Steel Authority of India Limited and others Vs. National Union Waterfront Workers and others*** reported in (2001) 7 **SCC 1**. Relying upon the said judgment, he would contend that only if there is a finding that the contract is not genuine, but a mere camouflage, then the notification under Section 10(1) of the CLRA Act could be issued. Relying upon the same judgment, he would also contend that the notification issued by the Central Government does not reveal the compliance of Section 10(2) of the CLRA Act and therefore, the notification issued under Section 10 of the CLRA Act is *ex facie* contrary to the postulates of Section



10 of the CLRA Act.

17. He would rely upon another judgment in the case of ***Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat Vs. Hind Mazdoor Sabha and others*** reported in ***(1995) 5 SCC 27***. He would contend that the power of an authority to abolish contract labour under Section 10 of the CLRA Act comes into play, only when there is a genuine contract. If there is no genuine contract and the so called contract is sham or camouflage to hide the reality, the provisions of the CLRA Act are not applicable. Relying upon the observations of the said judgment, he would contend that even though the Airport Authority of India stood by the contract as being genuine, he would bring to the notice of this Court that the Tamil Nadu General Workers Union had raised an issue that the contract is a sham and nominal contract, which issue was sub-judice before this Court. When that be the position, without any authoritative pronouncement by the Industrial Adjudicator or this Court, the notification issued by the Central Government is without authority and therefore, he would request this Court to interfere with the notification issued by the Central Government.

18. He also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Rashtriya Chemicals and Fertilizers Limited Vs. General Employees' Association and others*** reported in ***(2007) 5 Supreme Court Cases 273*** in support of the aforesaid



contention. Hence, he would persuade us to interfere with the impugned judgment upholding the notification issued by the Central Government prohibiting engagement of contract labour and consequently to set aside the notification issued by the Central Government.

19.Mr.R.Parthiban, learned counsel appearing for the Airport Authority of India in W.A.No.3007 of 2019 had adopted the arguments of Father Xavier Arulraj, learned Senior Counsel appearing on behalf of the appellant in W.A.Nos.3003 and 3007 of 2019, 1020, 1023 and 1024 of 2020, 1761 of 2021 and 2529 of 2022.

20.He placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Rahman Industries Private Limited Vs. State of Uttar Pradesh and others*** reported in ***(2016) 12 Supreme Court Cases 420*** to submit that the Government had to examine independently and satisfy itself. It cannot close its eyes and accept the recommendations of the Board as it has done in issuing the notification. He would further submit that when a section of trolley workers are raising a dispute as to the nature of the contract, viz., contract being sham and nominal then the same could not be decided by this Court. He would also submit that when such a question has been raised by a section of workers before conclusion of the same by an appropriate authority, the Central Government is barred from issuing the notification prohibiting the contract labour, as it would foreclose

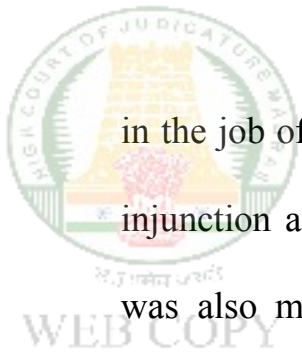


the issue raised by a section of workers, as it would lead to a presumption that the contracts are genuine.

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21.Ms.Vaigai, learned Senior Counsel appearing for the Tamil Nadu Airport Workers Union representing about 78 workers at the outset would contend that when the Airport Authority of India had taken a definite stand that the contract is not sham and nominal and that the contracts are all pursuant to the statutory empowerment, it cannot take advantage of an allegation by the workers, who have subsequently appointed, to contend that the provisions of CLRA Act cannot be applied to the trolley retrieval workers at Chennai Airport. She would further contend that in the light of the admission by the Airport Authority of India that the contracts are genuine backed by a statutory empowerment, the judgments relied upon by the learned Senior Counsel need not be put against the notification prohibiting the employment of contract labour in the Trolley Retrieval Division.

22.She would further submit that the issue relating to abolition of contract labour has been taken up even as early as in the year 1993. She would contend that the Tamil Nadu Airport Workers Union had filed W.P.No.12606 of 2003 seeking for a declaration that the notification issued under Section 10 of the CLRA Act dated 16.11.1999 was unconstitutional, insofar as it took a decision not to prohibit the contract labour system



in the job of trolley retrieval. An interim order of *status quo* was granted on a prayer of injunction against the termination of the services of the workmen. The said injunction was also made absolute. While that being so, the period of contract of the alleged contractor came to an end in 2004 and thereafter, a new contractor was appointed. Pursuant to the new contract, the members of the petitioner's Union were not employed. The petitioner's Union had been pursuing its efforts to abolish the engagement of contract labour in trolley retrieval by the management.

23.W.P.No.13993 of 2007 was also filed by the Tamil Nadu Airport Workers Union therein seeking for a Mandamus to prohibit the contract labour system in the job of trolley retrieval at Chennai Airport. The said writ petition was disposed of by this Court in its order dated 09.10.2012 taking into account that already the proceedings have been initiated, with a direction to expedite such proceedings.

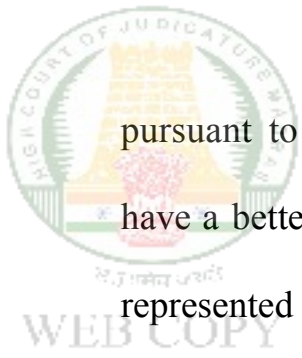
24.She would further submit that pursuant to the representation of the Union, several meetings were conducted between the Central Government, the Board and the members of the Union with regard to abolition of the contract labour system. Finally, in its meeting held on 16.05.2014, based on the report, the Board has unanimously resolved to recommend prohibition of contract labour system in the matter of trolley retrieval in the establishment of Airport Authority of India at Chennai. The report



referred to in the minutes of the meeting dated 16.05.2014 is based on the minutes of the inspection held on 24.10.2014, which was made by the Regional Labour Commissioner, Chennai in the presence of the management representatives and the Union representatives.

25.The report clearly establishes that the trolley retrieval work is a continuous process carried on round the clock and that there were no regular workmen of Airport Authority of India engaged for this nature of work. On the basis of the recommendation, the Central Government had also issued a notification prohibiting engagement of contract labourers in the job of trolley retrieval. Even thereafter, the Airport Authority of India had been only engaging the contract labourers. Hence, the petitioner was constrained to file W.P.No.6485 of 2015 seeking to implement the aforesaid notification. Thereafter, as a counter blast, the Airport Authority of India had filed W.P.No.21515 of 2015 challenging the aforesaid notification.

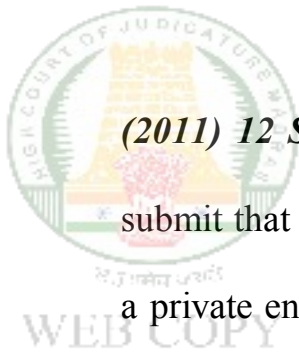
26.She would further contend that the contract workers, who were employed post 2004 through other contractors had also filed a writ petition before this Court seeking to refer their claim for industrial dispute on the ground that the contract for trolley retrieval entered into by the Airport Authority of India with private entities as sham and nominal. She would further contend that such contract labourers, who came into the picture,



pursuant to the non-employment of the members of the Union she represents cannot have a better claim and they have to stand in queue behind the members of the Union represented by her. She would further submit that the members of the Union have been continuously engaged for more than 10 years by different contractors and therefore, they are entitled to be absorbed first in the regular vacancies for trolley retrievers.

27. She would further contend that the Airport Authority of India as on date had not made any appointments for trolley retrievers. They have been entrusted to other contract labourers, who have been engaged for other services. In spite of the notification prohibiting the contract labour in the work of trolley retrieval, the Airport Authority of India is continuing to employ the contract labourers engaged for other services, thereby directly violating the notification issued under CLRA Act. She would further submit that the claim of the Airport Authority of India is that their services may not be required in view of the on going proposal for privatizing the Airports across India. She would further submit that, that cannot be a ground to reject the lawful claim of the workers of the Union she represents.

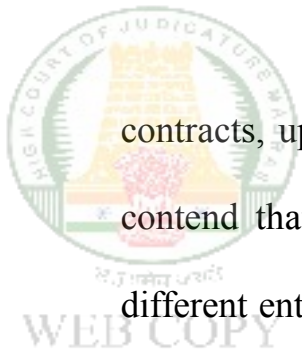
28. She would rely upon the judgment of the Hon'ble Supreme Court in the case of ***Delhi International Airport Private Limited Vs. Union of India and others*** reported in



(2011) 12 Supreme Court Cases 449. Referring to the aforesaid judgment, she would submit that even if the functioning of the Airport is handed over to a private entity, such a private entity will be a contractor for the Airport Authority of India and that they are obligated to all the liabilities of the Airport Authority. In such circumstances, she would plead that the Airport Authority of India would have to absorb the members of the Union she represents in the regular vacancies for trolley retrieval.

29. She would further contend that the Hon'ble Supreme Court in the case of ***Steel Authority of India Limited and others Vs. National Union Waterfront Workers and others*** reported in **(2001) 7 Supreme Court Cases 1** had held that the establishment will have to give preference to the contract labourers working in its establishment by relaxing the relevant rules with regard to the maximum age and also the academic qualifications. She reiterated that the Airport Authority of India in spite of prohibition/notification continuous to engage the services of other contract labourers and thereby is not making regular appointments. This attitude, according to her, is a ruse to belittle the rights of preferential consideration available to the contract workers, who have been hitherto employed in the retrieval of trolleys at the Chennai Airport.

30. Mr. Balanharidas, learned counsel appearing on behalf of the Tamil Nadu General Workers Union and also on behalf of 65 other labourers would submit that the



contracts, upon which the workers were engaged, are all sham and nominal. He would contend that the Airport Authority of India would enter into different contracts with different entities for a particular period. However, the trolley workers continued to work under the different contractors. This itself is a sufficient reason to come to a conclusion that the contract for employment of workers for trolley retrieval is a sham and nominal one. On that basis, he would refer to the judgment of the Hon'ble Supreme Court in the case of *Steel Authority of India Limited and others Vs. National Union Waterfront Workers and others* reported in (2001) 7 SCC 1 to submit that when such a contract is sham and nominal, the Principal Employer, namely, the Airport Authority of India, Chennai should be directed to absorb all the members, who are the contract labourers at the relevant point of time.

31.He would further contend that the contract labourers are also entitled to permanency and to be confirmed in services, in view of Section 3 of the Tamil Nadu Industrial Establishment Conferment of Permanent Status of Workmen Act, 1981. Therefore, they have also raised an industrial dispute, which ended in a report of failure of conciliation and the State Government had refused to refer the dispute for adjudication.

32.He also relied upon the judgment of the Division Bench of this Court made in W.A.No.490 of 2020 to contend that the provisions of Tamil Nadu Industrial



Establishment Conferment of Permanent Status of Workmen Act, 1981 would be applicable to a workman, who had been employed as a contract labour through different contractors by the Airport Authority of India. He would also submit that the aforesaid judgment has been confirmed by the Hon'ble Supreme Court by its order in S.L.P.(C).No.11418 and 11419 of 2020 dated 11.04.2022. Hence, he would submit that the contract labourers working under different contractors represented by him are entitled to be absorbed as trolley retrieval workers in the regular vacancies in the establishment of the Airport Authority of India, Chennai.

33.We have considered the rival submissions made by the learned counsel appearing on behalf of the respective parties.

34.The learned single Judge had upheld the notification issued by the Central Government under Section 10 of the CLRA Act. The learned single Judge had also issued further directions, which reads as under:-

“a) The Airport Authority of India at Chennai Airport is directed to employ regular workmen for trolley retrieval.

b) While making such employment, the Airport Authority of India shall give preference to the members of the petitioner Association, if otherwise they are found suitable.

c) The Airport Authority of India shall also consider to relax the condition as to maximum age appropriately if necessary, taking into



consideration the age of the workers at the time of their initial employment as well as on the date of the impugned notification dated 05.11.2014.

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d) In other words, the disposal of these writ petitions as above does not mean that the members of the petitioner Association are entitled to automatic absorption, as admittedly they are out of service from 2007 onwards and on the other hand, they are only entitled to be considered to get preference while making regular employment subject to fulfilling the suitability as fixed by the Airport Authority of India including with regard to the maximum age.”

35.As regards the claim of the parties represented by Mr.Balan Haridas, learned counsel, the learned Judge had issued further directions that their application for conciliation proceedings will be proceeded in accordance with law and that pending disposal of such proceedings, *status quo* should be maintained in respect of the persons, who are actually working as on the date of the order. The Airport Authority of India being aggrieved against the said common order had preferred W.A.Nos.607, 1020 and 1023 of 2020 and 1024 of 2016. The Tamil Nadu Airport Workers Union had filed W.A.Nos.1761 of 2021 and 2529 of 2022. The Tamil Nadu General Workers Union had filed W.A.Nos.3003 and 3007 of 2019. Contempt petitions have also been filed on the allegation that the order of *status quo* granted by the learned single Judge has been totally disregarded and that the members annexed in the list to the writ petitions in



W.P.Nos.21515 of 2013 and 40237 of 2015, have been violated.

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36. The first question that looms large is to the validity of the notification issued by the Central Government prohibiting the employment of contract labour in the retrieval of trolleys at the Chennai Airport. It is relevant to take note of the facts leading to the issue of these notifications. The Central Government had originally issued notification stating that it was not necessary to prohibit the contract labour in various processes including that of the trolley retrievals. The Tamil Nadu Airport Workers Union had moved this Court in W.P.No.12606 of 2003 seeking for a declaration to declare the said notification as unconstitutional, insofar it relates to a job of trolley retrieval and for the consequential relief of absorption.

37. Pending that writ petition, the issue was taken up by the Central Advisory Contract Labour Board and in its various meetings held from the year 2004, it had been considering the issue of abolition of contract labourers in the job of trolley retrievals. The minutes of the meetings held on 12.03.2005 and 13.03.2005 of the said Board would be relevant to further proceed. It reads as follows:-

The Board considered the oral and written submissions of the parties and all the relevant data and materials placed before them and upon examination of the same with reference to the factors set out in sub section (2) of section 10 of Contract Labour (Regulation and Abolition Act),



1970 came up with the following findings:-

(i) The work of trolley retrieval is an integral function of AAI in as much as the Airport Authority of India Act as well as ICAO standards clearly lay down that the passengers travelling by air have to be provided at domestic and international airports assistance in the carriage of luggage and such transport facilities as are necessary. If the work is not incidental to or necessary for the occupation carried on by AAI, the same could have been done away with, which is not the case. At no point of time the AAI has either withdrawn or would withdraw these services to the passengers. The trolleys are owned by AAI. If trolley retrieval work has not been an incidental function of AAI, at all, investment on trolleys would not have been made. Moreover, the Contract Labour Act does not distinguish between core and non-core activities of an establishment and that the activity being considered for prohibition under section 10 should be incidental to core functions of an establishment. The definition of “airport” under section 2(b) of AAI Act, 1994 includes passenger facilities. Therefore for these reasons the contention of AAI that as trolley retrieval work is only a facility to be extended it is not incidental to core/main function of the Authority is not acceptable. The work of trolley retrieval is incidental to and necessary for the occupation carried on by AAI which is management of airports as per section 12(i) read with section 2(b) and includes providing facilities to passengers using air services.

(ii) The work of trolley retrieval is continuous and has to be carried on a day to day basis throughout 365 days in a year. The flight schedule of domestic/international arrivals and departures produced by AAI hardly shows any vast gaps between 00.00 hrs. to 24.00 hrs in flight movements.



The table indicating peak hour flight movement at Chennai Airport shows that except for one arrival each for Domestic and International flights between 05A.M. To 7 A.M. and 1 P.M. to 3 P.M. respectively, all other periods indicate increased flight movement, the number of such movement ranging from 11 to 55 in a two hour slot. Further according to AAI, there is practically no trolley retrieval work between 00.00 hrs to 04.00 hrs for domestic flights and 0550 to 0700 hr for international flights. Even if this period of 5 hours is discounted, the work is continuously available for the remaining 19 hours. There can, therefore, be no doubt that the work is of perennial nature and of sufficient duration. This is further borne out by the attendance and wage registers produced which shows that, in a month, majority of the workers had worked for a period 24-27 days. The plea of AAI that the traffic fluctuates to a great extent is unacceptable.

(iii) The total number of flight movements for both domestic and international flights as per the figures given by AAI is 286. The number of flight movements for domestic and international flights is 80 and 206 respectively. If it is assumed that only 50% of domestic passengers and 90% of the international passengers utilize the trolley, the number of times trolleys are utilized and retrieved @ 300 passengers per flight works out to 67,620 per day. The work load is, therefore, sufficient to employ considerable number of whole time workmen. With the increase in air traffic the volume of work is also bound to increase over the years. The licensee is doing the work with nearly half the number of workers of the earlier licensee is not an indicator of reduction in work or non-perenniality of work but only goes to show that a certain minimum number of workers on whole time basis would be required. The trolley is provided free of cost to passengers and



licence fee is taken only to cover the charges do not merit consideration in the face of section 10 of the Act and also the fact that passengers are levied airport tax.

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(iv) According to AAI, the work of trolley retrieval is not being discharged by regular workmen and at no airport there is regular staff present for this work. At Cochin International Airport and all International Airports, the practice is to get the work done by contract labour system. To this extent, the factor under Section 10(2)(c) is not attracted but this is not the sole criterion for judging abolition of contract labour system.

(v) The plea of AAI that the contract is a revenue contract, it is a license and service rendered under such a contract is not covered by the Contract Labour (Regulation and Abolition) Act, 1970 cannot also be accepted. The license agreement shows that the licensee has to abide by the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. To a pointed question by the Board whether AAI would be adversely affected by the abolition of contract labour system, if, as contended by them that license is not covered by the Contract Labour Act, the Airport Authority of India could not give any categorical answer. The Board was of the view that keeping in view, the definition of “contractor” and “contract labour” in the Act, the contract in question whether it is a revenue contract or in the form of a license would be covered by the provisions of the Act. Moreover, the AAI had obtained a

Registration Certificate under the provisions of the Contract Labour Act.

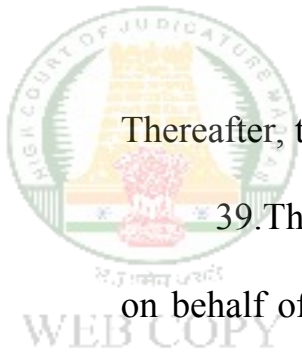
(vi) The Board has jurisdiction to consider the matter as it has been referred by the Government, irrespective of the prayer in W.P. filed by the petitioner-union.



(vii) *On the recommendations of the Board, the Government have already prohibited employment of contract labour in the work of trolley retrieval in AAI at Delhi (both Domestic and International). The nature of operation is the same at Chennai Airport though the volume of work involved is less than that of Delhi Airport but sufficient.*

In view of the aforesaid fact and circumstances and the fact that the factors of Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970 except Section 10(2)(c) are satisfied, the Board unanimously recommends to the Central Government, prohibition of employment of contract labour in the job of trolley retrieval in the establishment of AAI at Chennai Airport (both domestic and international). ”

38. The said recommendation was made as early as in March 2005. As there was a request for reconsideration of the aforesaid decision of the Board, subsequent meetings were also held by the Board and had suggested a process of settlement between the parties. In a meeting held in May 2006, the Board has recorded its dismay as to accommodating the extra workers at the Chennai Airport. Thereafter, the issue has been time and again taken by the Board on different dates and has been adjourned on the main ground that the same is sub-judice before this Court and that the issue relating to Delhi Airport is also sub-judice before the Hon'ble Supreme Court. Finally, in its meeting held in October, 2013, it had resolved to recommend for prohibition of contract labour system in the matter of trolley retrieval in the establishment at Chennai Airport.



Thereafter, the Government had issued the notification on 05.11.2014.

39. The contention of Mr. Father Xavier Arulraj learned Senior Counsel appearing on behalf of the Airport Authority of India that there was no opportunity given by the Board to place its case is contrary to the minutes of the Board. The minutes of the meeting held in March, 2005 as extracted supra would reveal that the Airport Authority of India had submitted details/objections, which were considered by the Board in detail and thereafter, it had resolved to make its recommendations unanimously to prohibit the employment of contract labour in the job of trolley retrieval at Chennai Airport. The reasonings assigned by the Board were that

- a) the trolley retrieval work is integral function of the Airport Authority of India;
- b) the work of trolley retrieval is perennial in nature;
- c) it has also taken into consideration the volume of air-traffic;
- d) the work of trolley retrieval has not been discharged by regular workmen and
- e) it has rejected the contention of the Airport Authority that the contract is a revenue contract. The aforesaid finding of the Board in our view requires no reconsideration.

40. The subject matter of the notification in these writ appeals is as under:-

“S.O.2824(E).-In exercise of the powers conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970



(37 of 1970), the Central Government, after consultation with the Central Advisory Contract Labour Board, and having regard to the working conditions and benefits provided to contract labour and other relevant factors enumerated in sub section (2) of the said section, hereby prohibits the employment of contract labour in the job of trolley retrieval in establishment of the Airport Authority of India, Chennai with effect from the date of publication of this notification in the Official Gazette.”

41. Section 10 of the CLRA Act reads as under:-

“10. Prohibition of employment of contract labour -

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business,



manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation: *If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.”*

42. We need not harp upon the ingredients of the aforesaid Section 10 of the CLRA Act, as the same has been dealt with in detail by the Hon'ble Supreme Court in the case of ***Steel Authority of India Limited and others Vs. National Union Waterfront Workers and others*** reported in ***(2001) 7 SCC 1***. The relevant portion of the aforesaid judgment is extracted hereunder:-

“A careful reading of Section 10 makes it evident that sub- section (1) commences with a non obstante clause and overrides the other provisions of the CLRA Act in empowering the appropriate Government to prohibit by notification in the Official Gazette, after consultation with Central Advisory Board/State Advisory Board, as the case may be, employment of contract labour in any process, operation or other work in any establishment. Before issuing notification under sub-section (1) in respect of an establishment the appropriate Government is enjoined to have regard to: (i) the conditions of work; (ii) the benefits provided for the



contract labour; and (iii) other relevant factors like those specified in clauses (a) to (d) of sub-section (2). Under clause (a) the appropriate Government has to ascertain whether the process, operation or other work proposed to be prohibited is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; clause (b) requires the appropriate Government to determine whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; clause (c) contemplates a verification by the appropriate Government as to whether that type of work is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and clause (d) requires verification as to whether the work in that establishment is sufficient to employ considerable number of whole-time workmen. The list is not exhaustive. The appropriate Government may also take into consideration other relevant factors of the nature enumerated in sub-section (2) of Section 10 before issuing notification under Section 10(1) of the CLRA Act.”

43. We have carefully analyzed the notification issued by the Central Government along with the observations made by the Hon'ble Supreme Court stated supra. We find that the notification has been issued by the Central Government having regard to the working conditions, benefits provided to the contract labour and other relevant factors enumerated in sub-Section 2 of Section 10 of CLRA Act. The notification also reflects the consultation with the Central Advisory Contract Labour Board. We have already



extracted the recommendations of the said Board supra.

44.A conjoint reading of the recommendations and the notification, we are satisfied that the notification had been issued after taking into account all the relevant factors that has been adumbrated in Section 10 of the CLRA Act. Hence, in that aspect, we hold that the notification has been validly issued.

45.Further, the aforesaid issue is no longer *res integra*. In respect of Delhi Airport, the Board had resolved to prohibit the contract labour employment for retrieval of trolleys. The said notification was the subject matter of challenge before the Delhi High Court, which went up to the Hon'ble Supreme Court and has been affirmed. All the reasons assigned by the learned counsel to assail the notification have been in detail considered by the Division Bench of the Delhi High Court and the Division Bench has sustained the notification issued therein. The relevant portion of the judgment of the Division Bench of the Delhi High Court is extracted hereunder for better appreciation:-

26.The challenge to the Notification dated 26th July 2004 issued by the central government under Section 10 (1) CLRAA is essentially on the ground that it does not account for the factors mentioned in that provision. These are indicated in sub-section (2) of Section 10 CLRAA as (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation



that is carried on in the establishment; (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto and (d) whether it is sufficient to employ considerable number of whole-time workmen.

.....

*29. Learned Senior Counsel for the AAI was unable to point out if any of the parameters in Section 10(2) (a) to (d) CLRAA were not attracted in the present case. The report of the CACLB is exhaustive and has considered all the factors. The Central Government has accepted the recommendations. **There was no need to Central Government to again examine the reasons why there should be a prohibition of contract labour in the job of trolley retrieval.** The AAI has been unable to show that any relevant material which ought to have been considered was not considered by the CACLB and further that if such material has been considered the CACLB it would have come to a different conclusion.”*

46. This said judgment of the Delhi High Court has been affirmed by the Hon'ble Supreme Court in a judgment reported in **(2011) 12 SCC 449 (Delhi International Airport Private Limited Vs. Union of India and others)**. In the present case also, the Board has in detail examined the issue in its proper perspective and had given elaborate reasons even as early as in the year 2005 as to why there should be a prohibition of

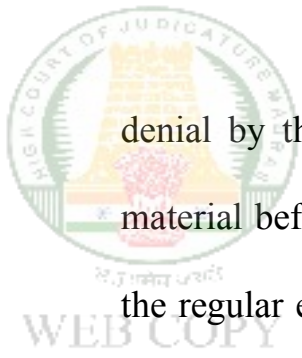


employment of contract labour. The Airport Authority of India has been successfully delaying the inevitable by at least a decade by seeking reconsideration by the Board, which was ultimately rejected and the Board reiterated its decision in 2013. The notification came after a year in November, 2014. Even after a period of 8 years, no regular appointment has been made by the Airport Authority of India to the job of trolley retrievals.

47.As we find that there is no infirmity in the notification issued by the Central Government, we uphold the decision of the learned single Judge in dismissing the writ petition in W.P.No.15917 of 2015.

48.The next question that arises for consideration is as to the validity of the directions issued by the learned single Judge. It is an admitted fact that pursuant to the notification in the year 2014, there has been no regular appointment made by the Airport Authority of India to the post of trolley retrievals.

49.It is the case of the Airport Authority of India that they have been engaging the services of the persons belonging to other departments. Even though it is disputed by the contract labourers on the ground that they have been engaging the contract labourers in respect of other contracts to perform the duty of trolley retrievals, there is no specific



denial by the Airport Authority of India for the same. They have not produced any material before this Court as to whether the work of trolley retrievals is being made by the regular employees or by the contract labourers engaged under other contracts. Even if it is assumed that the work is being carried on by the regular employees of other departments, it would only lead us to the conclusion that the job of trolley retrieval has to be performed by a regular employee appointed to the said post. In view of the aforesaid reasonings, we are also of the view that there is no infirmity in the directions issued by the learned single Judge.

50. We also uphold the directions issued by the learned single Judge in W.P.No.6485 of 2015. The decision to uphold the direction issued falls from the decision of the Hon'ble Supreme Court in the case of ***Steel Authority of India Limited and others Vs. National Union Waterfront Workers and others*** reported in (2001) 7 ***SCC 1***. The Hon'ble Supreme Court has in clear terms held as follows:-

“125.6.If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour,



if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

51.As we have noted that the proceedings under the CLRA Act have been initiated as early as in 2004 and almost 18 years have passed and that the notification was issued as early as in the year 2014, we direct the Airport Authority of India to comply with the directions issued by the learned single Judge, within a period of four months from the date of receipt of a copy of this order.

52.Now, coming to the next question as to the right of the contract labourers, who were appointed during 2004. Even though an order of *status quo* has been granted as regards to their employment, two contempt petitions have been filed for violation of this *status quo*. It would only pre-suppose that those, who had the benefit of *status quo*, are not continuing in service. It is also gathered from the arguments advanced before us that pursuant to the directions of the learned single Judge, the Conciliation Officer had submitted a failure report. It is reported that the Government has refused to refer the dispute under the Industrial Tribunal Act and that the writ petition has been filed by the Tamil Nadu General Workers Union challenging the decision of the Government in not referring to the dispute under the Industrial Disputes Act. Since the said issue is not before us, we do not propose to delve upon the same and leave it to be decided in the



said writ proceedings. As we have already held that the directions issued by the learned single Judge of this Court to conduct a recruitment process, it is also open to those contract labourers, who have been appointed during 2004, to participate in the said recruitment process.

53.Also on our Board, are two contempt petitions and two sub applications. It is seen from the records that the pleadings have not been completed in the same. Therefore, we delink the contempt petitions along with sub applications and the Registry is directed to list it before the appropriate Bench, as per roster.

54.In fine, W.A.Nos.1020 and 1023 of 2020 are dismissed. W.A.Nos.3003 and 3007 of 2019, 607 and 1024 of 2020, 1761 of 2021 and 2529 of 2022 are disposed of with the observations that the contract labourers in the annexure to the writ petitions would be entitled to take part in the recruitment process. The directions issued by the learned single Judge shall be implemented within a period of four months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

(R.S.M., J.) (K.B., J)
20.01.2023

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R.SUBRAMANIAN, J.
AND
K.KUMARESH BABU, J.

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**Pre-delivery Common Judgment made in
W.A.Nos.3003 and 3007 of 2019, 607, 1020, 1023 and 1024 of 2020, 1761 of 2021
and 2529 of 2022
and
Cont.P.Nos.956 and 961 of 2021
in
Sub.A.Nos.285 and 286 of 2021**

20.01.2023