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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th August, 2021

+ **W.P.(C) 8498/2021 & CM APPLs. 26334-35/2021**

DELHI PARSHASHAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION

..... Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with
Mr. Rajiv Agarwal, Ms. Meghna De,
Mr. Naman Jain, Ms. L. Gangmei and
Mr. Nawlendu Bhushan, Advocates.

versus

DEPARTMENT OF SOCIAL WELFARE & ORS. ... Respondents

Through: Mr. Anjum Javed, ASC, GNCTD
with Mr. Devendra Kumar, Advocate
for R-1. (M:8744880124)
Mr. Zahid, Advocate for Mr. Naushad
Ahmed Kha, ASC, GNCTD.
Mr. Ajay Vikram Singh, Advocate for
R-2/DSIIDC.
Mr. Sushil Kumar Pandey, Sr. Panel
Counsel with Mr. Sahaj Garg (GP)
and Mr. Rahul Mourya, Advocates for
R-4/CLC. (M:9873588234)

2 AND

+ **W.P.(C) 8561/2021 & CM APPLs. 26472-73/2021**

DELHI PARSHASHAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION

..... Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with
Mr. Rajiv Agarwal, Ms. Meghna De,
Mr. Naman Jain, Ms. L. Gangmei and
Mr. Nawlendu Bhushan, Advocates.

versus

CHIEF ELECTORAL OFFICER GOVT
OF NCT F DELHI & ORS.

..... Respondents

Through: Mr. Zahid, Advocate for Mr. Naushad
Ahmed Kha, ASC, GNCTD.

Mr. Anjum Javed, ASC, GNCTD
with Mr. Devendra Kumar, Advocate
for R-1. (M:8744880124)

Mr. Neeraj and Mr. Vedansh Anand,
Advocates for R-3/NIELIT.
(M:8076802450)

Mr. Sushil Kumar Pandey, Sr. Panel
Counsel with Mr. Sahaj Garg (GP)
and Mr. Rahul Mourya, Advocates for
R-4/CLC.

6
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WITH
W.P.(C) 7616/2021 & CM APPL. 23833/2021

DELHI PARSHASHAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION

..... Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with
Mr. Rajiv Agarwal, Ms. Meghna De,
Mr. Naman Jain, Ms. L. Gangmei and
Mr. Nawlendu Bhushan, Advocates.

versus

CHIEF ELECTORAL OFFICER & ORS.

..... Respondents

Through: Mr. Zahid, Advocate for Mr. Naushad
Ahmed Kha, ASC, GNCTD.
Mr. Neeraj and Mr. Vedansh Anand,
Advocates for R-3/NIELIT.
Mr. Tanveer Ahmed Ansari, Sr. Panel
Counsel for R-4. (M:9717736267)
Mr. Sushil Kumar Pandey, Sr. Panel
Counsel with Mr. Sahaj Garg (GP)
and Mr. Rahul Mourya, Advocates for
R-4/CLC.

7
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WITH
W.P.(C) 7788/2021 & CM APPLs. 24277-78/2021

DELHI PARSHASHAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION

..... Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with
Mr. Rajiv Agarwal, Ms. Meghna De,
Mr. Naman Jain, Ms. L. Gangmei and

Mr. Nawlendu Bhushan, Advocates.

versus

DEPARTMENT OF SOCIAL WELFARE & ORS. ... Respondents

Through: Mr. Zahid, Advocate for Mr. Naushad Ahmed Khan, ASC, GNCTD.
Mr. Ajay Vikram Singh, Advocate for R-2. (M:9868632122)
Mr. Sushil Kumar Pandey, Sr. Panel Counsel with Mr. Sahaj Garg (GP) and Mr. Rahul Mourya, Advocates for R-4/CLC.

8

WITH

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W.P.(C) 7843/2021 & CM APPLs. 24391-92/2021

DELHI PARASHASHAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION

..... Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with Mr. Rajiv Agarwal, Ms. Meghna De, Mr. Naman Jain, Ms. L. Gangmei and Mr. Nawlendu Bhushan, Advocates.

versus

CHIEF ELECTORAL OFFICER & ORS. Respondents

Through: Mr. Zahid, Advocate for Mr. Naushad Ahmed Kha, ASC, GNCTD.
Mr. Rishikesh Kumar, ASC with Mr. Premsagar Pal, Advocate for R-1 & 2. (M:9643006230) with Mr. T. Masao, from the Chief Electoral Officer's Office, in person.
Mr. Neeraj and Mr. Vedansh Anand, Advocates for R-3/NIELIT.
Mr. Sushil Kumar Pandey, Sr. Panel Counsel with Mr. Sahaj Garg (GP) and Mr. Rahul Mourya, Advocates for R-4/CLC.

9

WITH

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W.P.(C) 7847/2021 & CM APPLs. 24398-99/2021

DELHI PARSHASHAN VIKAS VIBHAG INDUSTRIAL

EMPLOYEES UNION

..... Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with
Mr. Rajiv Agarwal, Ms. Meghna De,
Mr. Naman Jain, Ms. L. Gangmei and
Mr. Nawlendu Bhushan, Advocates.

versus

DEPARTMENT OF SOCIAL WELFARE & ORS. ... Respondents

Through: Mr. Zahid, Advocate for Mr. Naushad
Ahmed Kha, ASC, GNCTD.
Mr. Neeraj and Mr. Vedansh Anand,
Advocates for R-3/NIELIT.
Mr. Sushil Kumar Pandey, Sr. Panel
Counsel with Mr. Sahaj Garg (GP)
and Mr. Rahul Mourya, Advocates for
R-4/CLC.

10

WITH

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W.P.(C) 8068/2021 & CM APPL. 25130/2021

DELHI PARSHASHAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with
Mr. Rajiv Agarwal, Ms. Meghna De,
Mr. Naman Jain, Ms. L. Gangmei and
Mr. Nawlendu Bhushan, Advocates.

versus

DEPARTMENT OF TRAINING AND TECHNICAL GOVT OF
NCT OF DELHI & ORS. Respondents

Through: Mr. Zahid, Advocate for Mr. Naushad
Ahmed Kha, ASC, GNCTD.
Mr. Neeraj and Mr. Vedansh Anand,
Advocates for R-3/NIELIT.
Mr. Sushil Kumar Pandey, Sr. Panel
Counsel with Mr. Sahaj Garg (GP)
and Mr. Rahul Mourya, Advocates for
R-4/CLC.

11

WITH

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W.P.(C) 8903/2021 & CM APPLs. 27666-67/2021

DELHI PARSHASHAN VIKAS VIBHAG INDUSTRIAL

EMPLOYEES UNION

..... Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with
Mr. Rajiv Agarwal, Ms. Meghna De,
Mr. Naman Jain, Ms. L. Gangmei and
Mr. Nawlendu Bhushan, Advocates.

versus

CHIEF ELECTORAL OFFICER GOVT OF
NCT OF DELHI & ORS

..... Respondents

Through: Mr. Zahid, Advocate for Mr. Naushad
Ahmed Kha, ASC, GNCTD.
Mr. Neeraj and Mr. Vedansh Anand,
Advocates for R-3/NIELIT.
Mr. Sushil Kumar Pandey, Sr. Panel
Counsel with Mr. Sahaj Garg (GP)
and Mr. Rahul Mourya, Advocates for
R-4/CLC.

15

AND

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W.P.(C) 8951/2021 & CM APPLs. 27859-60/2021

DELHI PARSHASHAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION THROUGH GENERAL SECRETARY

..... Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with
Mr. Rajiv Agarwal, Ms. Meghna De,
Mr. Naman Jain, Ms. L. Gangmei and
Mr. Nawlendu Bhushan, Advocates.

versus

GOVERNMENT OF NCT OF DELHI THROUGH DISTRICT
MAGISTRATE CENTRAL & ORS.

..... Respondents

Through: Mr. Shadan Farasat, ASC, GNCTD
with Ms. Hafsa Khan, Advocate for
R-1 & 4.
Mr. Neeraj and Mr. Vedansh Anand,
Advocates for R-3/NIELIT.
Mr. Sushil Kumar Pandey, Sr. Panel
Counsel with Mr. Sahaj Garg (GP)
and Mr. Rahul Mourya, Advocates for
R-4/CLC.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. These are writ petitions, which have been filed by Data Entry Operators (*hereinafter* “DEOs”) engaged in various Departments forming part of the GNCTD, Delhi such as the Chief Electoral Officer, GNCTD; Department of Social Welfare, GNCTD; Department of Training and Technical Education, GNCTD etc.
3. The case of these DEOs is that they have been working in their respective Departments for several years and they were engaged through two different agencies, namely, NIELT and ICSIL in the various writ petitions. The services of these DEOs were extended from time to time for a period of one year. The last such extension, which is granted in each of the cases, is different. However, most extensions were ending sometime in May/June 2021
4. The brief background is that the Petitioners, in all these Petitions, were employed in their respective Departments on a contractual basis, through agencies, namely Intelligent Communication Systems India Limited (*hereinafter*, “ICSIL”) and National Institute of Electronics and Information Technology (*hereinafter*, “NIELIT”), who have been impleaded in the respective writ petitions. The details of the same, in respect of each of the present petitions are captured below:

<i>Writ Petition No.</i>	<i>Government Department</i>	<i>Agency</i>	<i>Date of termination of contract</i>	<i>Currently continuing or discontinued</i>
WP(C) 8498/2021	Department of Social Welfare, GNCTD	ICSIL	4th December 2020, or till regular incumbents are posted	Continuing
WP(C) 8561/2021	Chief Electoral Officer	NIELIT	31st July 2021	Discontinued however re-engaged due to an interim order by the High Court
WP(C) 7616/2021	Chief Electoral Officer	NIELIT	31st July 2021	Discontinued, however re-engaged due to an interim order by the High Court
WP(C) 7788/2021	Department of Social Welfare, GNCTD	ICSIL	4th December 2020, or till regular incumbents are posted	Continuing
WP(C) 7843/2021	Chief Electoral Officer	NIELIT	31st July 2021	Discontinued, however re-engaged due to an interim order by the High Court
WP(C) 7847/2021	Department of Social Welfare,	NIELIT	1st April 2022 or till regular incumbents are posted	Continuing

	GNCTD			
WP(C) 8068/2021	Department of Training and Technical, GNCTD	NIELIT	27th November 2021 or till regular incumbents are posted	Continuing
WP(C) 8903/2021	Chief Electoral Officer	NIELIT	31st July 2021	Discontinued, however re- engaged due to an interim order by the High Court.
WP(C) 8951/2021	District Magistrate, Central, GNCTD	NIELIT	Expired on 30th June 2021 although extended from July 2021, till the GeM hiring is completed	Continuing

5. The contracts *qua* each of the Petitioners/DEOs were extended from time to time by the Respondents. The Respondents then decided to issue fresh NITs to procure the services of DEOs, on the Government -e- Market (hereinafter, “GeM”) portal, due to the operation of the General Financial Rules, 2017 (hereinafter, “GFR, 2017), which under Rule 149, makes it mandatory to procure goods and services from the said portal. Owing to the same, the Petitioners in all these petitions apprehended their termination from contractual service.

6. Due to the said apprehension, the Petitioner- DEOs approached the appropriate labour Authority under the Industrial Disputes Act, 1947 (*hereinafter referred as “the ID Act”*) and sought regularization under the

provisions of the ID Act. Section 33 of the ID Act, which provides that conditions of service etc. have to remain unchanged under certain circumstances, during pendency of proceedings, was also pressed by the DEOs. The Assistant Labour Commissioner (*hereinafter*, “ALC”), vide orders passed on various dates, directed that Section 33 of the ID Act, would be applicable to the case of the DEOs and advised accordingly. The relevant part of the direction of the ALC is as under:

“The matter is ceased (sic seized) for conciliation proceedings. In this connection attention of management is drawn towards sec. 33 of the ID Act. And advised to adhere the provision its letter and spirit in order to avoid any untoward action and you are also advised not to change service conditions.”

The said direction was issued by the ALC, in all these petitions vide letters dated:

<i>Writ Petition No.</i>	<i>Date of Direction/ Letter</i>	<i>Identifier</i>
WP(C) 8498/2021	3 rd August 2021	ALC-III/8/19/2021
WP(C) 8561/2021	6 th August 2021	ALC-III/8/29/2021
WP(C) 7616/2021	5 th July 2021	ALC-III/8/97/2021
WP(C) 7788/2021	30 th July 2021	ALC-III/8/115/2021
WP(C) 7843/2021	22 nd July 2021	ALC-III/8/104/2021
WP(C) 7847/2021	30 th July 2021	ALC-III/8/114/2021
WP(C) 8068/2021	3 rd August 2021	ALC-III/8/120/2021
WP(C) 8903/2021	17 th August 2021	ALC-III/8/136/2021
WP(C) 8951/2021	19 th August 2021	ALC-III/8/143/2021

According to the Petitioners/DEOs, their service conditions cannot be changed without the employer seeking permission under Section 33 of the ID Act.

7. Despite the pendency of the regularisation petitions before the labour Courts, since the Respondents- Departments of the GNCTD were going ahead with the issuance of NITs for procurement of services through the GeM portal, as indicated vide the various proposals initiated and letters sent, the present writ petitions have been filed by the Petitioners-DEOs. The prayers in these petitions, are broadly the following:

- a) Issuance of a writ/order/direction directing Respondents to maintain status quo in service conditions of the DEOs and not to terminate their services, without following procedure envisaged under Section 33;
- b) Issuance of a writ/order/direction directing the Respondents to comply with the directions passed by the ALC on various dates as captured above;
- c) Issuance of an appropriate writ/order/direction, directing the Respondents to withdraw their proposals, letters and communications regarding hiring of DEOs through GeM portal.

In addition to the same, in the petitions, wherein the DEOs were disengaged, but have already been re-engaged, i.e., W.P.(C) 8561/2021, W.P.(C) 7616/2021, W.P.(C) 7843/2021 and W.P.(C) 8903/2021, an additional prayer for quashing the said discontinuation, has also been pressed, which broadly is in the following terms:

d) Issuance of an appropriate writ/order/direction, directing the Respondents to withdraw the letter regarding the expiration of contract or letters regarding discontinuation of the contracts of the DEOs.

8. Mr. Sanjay Ghose, Id. Senior Counsel appearing for the Petitioners, along with Ms. Meghna De, Id. counsel, submits that the contractors in all these cases are semi-Government/ Government entities. He submits that since the plea for regularization is already pending before the labour Courts and the terms of reference clearly raise issues as to which of the managements is to be held responsible for granting regularization, the advertisement on the GeM portal for the same very posts, which are currently occupied by the Petitioners- DEOs, could induct new contractors and could prejudice the cause of the DEOs irreparably. He further submits that as on today NIELIT and ICSIL are the two contractors which had engaged the DEOs and the said DEOs are rendering their services with the various government Departments. If a third party contractor enters the arrangement through the NIT process on the GeM portal, it would also result in complicating the regularization petitions, which are already pending before the labour Courts. It is, finally, submitted by Mr. Ghose, that several DEOs had earlier come before this Court and had preferred *W.P.(C) 6055/2021* titled *Delhi Prashasan Vikas Vibhag Industrial Employees Union v. Chief Electoral Officer and Ors*, *W.P.(C) 5986/2021*, titled *Delhi Prashasan Vikas Vibhag Industrial Employees Union v. Chief Electoral Officer and Ors* and *W.P.(C) 6019/2021*, titled *Delhi Prashasan Vikas Vibhag Industrial Employees Union v. GNCTD and Ors..* He places

reliance on the order dated 26th July 2021 passed in these petitions, and submits that this Court had already granted protection in respect of all these petitions, and accordingly, a similar protection ought to be granted to the Petitioners- DEOs in these petitions as well.

9. On 5th August, 2021, in some of these petitions which were listed, this Court had directed the Id. ASCs appearing in the matters to verify the particulars of the DEOs involved, and had also relisted the matter for hearing today, as there were some developments in respect of the NITs issued.

10. Mr. Rishikesh Kumar, Id. ASC, has filed the short reply in in WP(C) 7843/2021, and has also placed on record some of the NITs which have been published in some Districts by the Chief Electoral Officer. He submits that under Rule 149 of the GFR, 2017, the Government Departments are mandated by the Central Government, to obtain goods and services only through the GeM portal. He further submits that DEOs ought not to have any apprehension in respect of their engagement, inasmuch as the NITs which have been issued, clearly stipulate that the existing DEOs would not be replaced and a perusal of the NIT would reveal that the names of all the existing DEOs are clearly contained in the NIT itself, making it abundantly clear that these DEOs are not to be replaced or terminated by the new contractor. The only condition under which these DEOs would be continued to be retained would be their satisfactory performance report which would be submitted by the AERO. He, thus, submits that insofar as the issue of the DEOs continuing to work in their respective Departments is concerned, there can be no apprehension *qua* the same. Moreover, he submits that it is also clear that the wages, which are being paid to all the DEOs, would also

not be changed inasmuch as they are all entitled to wages which are fixed by the Government in this regard. He submits that only the contractor could change depending upon the bids that would be submitted on the GeM portal, which is mandated by GFR 2017.

11. Heard Id. Senior Counsel and Id. Counsels for the parties, and perused the records.

12. A perusal of all these cases would show that there is no doubt, even as per the claim petitions filed before the labour Courts, that the DEOs were engaged on a contractual basis by the contractor in the respective cases. All these DEOs have approached the concerned authority under the ID Act, 1947, seeking regularization and have arrayed the various managements who, according to them, are liable to regularize them, including the Government Departments and the Contractors. The Petitioners-DEOs being contractual employees, and the contracts merely being renewed from time to time, makes it clear that no permanent right can be claimed by the DEOs, unless and until orders are passed, if any, in the applications seeking regularization, pending before the labour Courts.

13. Further, the current process of obtaining services of DEOs through the GeM portal is stated to be a mandate which the GNCTD is following, as per Rule 149 of the GFR, 2017. The claim of the DEOs that even the Contractors cannot not be changed is not tenable, inasmuch as the same could impede the working of the various Departments and can also prevent the Departments from engaging in competitive bidding which, would be economically beneficial for the said Government Department.

14. A perusal of the NITs clearly shows that the existing DEOs are not being replaced and one of the conditions of the tender is that all the existing

DEOs have to be continued. Mr. T. Misao, who has appeared from the Chief Electoral Officer's office, has also clarified that even the wages etc., are all prescribed by the Government and there would be no change in the same due to the NIT. One sample clause in the NIT relating to the South-West district, which contains the condition for retention of the existing DEOs is extracted below:

“

19.	<i>Please Upload The List Of Resources Alongwith Quantity Of Each Type Of Resource To Be Continued By The Successful Bidder/Service Provider Under The New Contract As Per The Terms And Conditions Of New Contract Concluded On The Basis Of This Bid Alongwith Approval Of Competent Authority. (Max Size 10 mb PDF)</i>	1. Lal Bahadur 2. Abhishek 3. Sunil Kamil 4. Ajay 5. Kavita 6. Aditya Sharma 7. Sandhya Gautam 8. Shamsher Gahlaut 9. Anu 10. Harbir Singh 11. Rakesh Bansawal 12. Prashant 13. Soni Bhadoriya 14. Vinay Tanwar	<i>It is proposed that all the existing 14 Data Entry Operators will be allowed to continue subject to the satisfactory report submitted by concerned AEORs by the successful bidder/service provider under the Delhi Contract</i>
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15. Under such circumstances, there cannot be any inherent right that the DEOs can claim that the Contractor ought not to be changed, especially considering that it is the admitted position in all these petitions, that they are currently contractual employees. Since the Respondents are ensuring that the existing DEOs would be continued even by the new Contractor, the interest of the Petitioners is adequately safeguarded.

16. Accordingly, the following directions are issued:

- i. In all the NITs, which would be issued by the respective Departments, even through the GeM portal, the condition that the existing DEOs shall be retained by the new Contractor, shall be clearly stipulated.
 - ii. The wages and other emoluments currently being paid would not be changed.
 - iii. Even in respect of those DEOs who may have been removed during this interregnum between May-June, 2021 till date, and were serving under the earlier Contractor, they would be taken back and their names would be included in the NITs to be published, or already published, if required by an amendment.
 - iv. If a new Contractor becomes a successful bidder under the NIT, the Petitioners would be at liberty to implead them in the currently pending proceedings before the Authorities under the ID Act, 1947/ labour Courts.
 - v. As already directed in the earlier order dated 26th July, 2021 in ***W.P.(C) 6055/2021*** and connected matters, the labour Courts, where the matters relating to the Petitioners-DEOs are pending, shall endeavour to conclude the adjudication of the same on or before 31st December, 2021.
17. The respective Departments are free to proceed in accordance with law to obtain services of DEOs from the GeM portal, subject to compliance of the above-mentioned conditions. It is made clear that this Court has not examined the merits and contentions of either of the parties.
18. With these observations the present petitions and all pending applications are disposed of. No further orders are called for. The digitally

signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

AUGUST 25, 2021/dk/dj/Ak

