

Item no. 07

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 953 of 2022

Food Corporation of India & Ors.

vs.

Food Corporation of India Workers' Union & Ors.

Appearance:

For the Appellant : Mr. Kamal Kumar Chattopadhyay

For the Respondents : Mr. Soumya Majumdar

Heard on : 08.08.2022

Judgment on : 08.08.2022

T.S. Sivagnanam J.:

This intra-Court appeal is directed against the interim order dated 25.04.2022 passed in WPA 2704 of 2022. Identical orders were put to challenge before us in APO 58 of 2022 and by order dated 21.07.2022 the appeal was disposed of by refusing to interfere with the order impugned therein which is identical that of the impugned order before us. For better appreciation the entire order is quoted hereinbelow:-

"This intra-court appeal is directed against the order dated 5th May, 2022 passed in IA No.GA/1/2022 in WPO/969/2022. The said writ petition was filed by the first respondent herein, namely, FCI Workers Union challenging the decision taken by the appellant namely, Food Corporation of India in the matter of appointing handling contractors for handling of various items dealt with by the Food Corporation of India (FCI). It appears that along with WPO/969/2022 there are four other writ petitions and the learned Single Bench, on being prima facie satisfied that the first respondent/writ petitioner, has made out a prima facie case, granted an order of interim stay of the operation of the notice inviting tender dated 1st February, 2022 till the disposal of the writ petition. Aggrieved by such order, the FCI is in appeal before us.

Mr. Kamal Kumar Chattopadhyay, learned counsel appearing for the appellant, submitted that there was no interim order which was granted at the relevant point of time i.e. when the notice inviting tender was issued by FCI and also when FCI was in the process of entrusting the Siliguri and Malda depots of the FCI on the contract of labour system and even during the pendency of the writ petition, as such, no specific change of service condition of the workmen belonging to the writ petitioner union arose which prompted them to move for interim orders during the final hearing stage of the writ petition. Further it is submitted that FCI is running solely on the subsidy of the Government and within the limit of the said subsidy it has to carry out its functions keeping constant vigil to minimise the unproductive financial loss in handling of foodgrains. Further, Mr. Chattopadhyay contends that manning of depots is basically an administrative matter wherein various factors have to be taken into consideration so as to optimise the use of labour and cut down the cost of handling of foodgrains and reducing the burden of the subsidy which is required to be provided to the FCI by the Government of India. Further, the learned counsel for the appellant

would submit that as one labour system can only be followed in a particular depot, hundred per cent transfer becomes necessary and the entire labour work in Siliguri and Malda depots of FCI ought to be transferred on introduction of contract labour in order to utilize such labour optimally by transferring them to any depot as per operational requirement. Further, the contract labour cannot be deployed along side DPS labour as it will lead to violation of Section 25(2)(v)(a) of the Contract Labour (Regulation & Abolition) Central Rules, 1971. The learned counsel has also referred to various documents which have been appended to the said application. Therefore, it is submitted that there is no reason for granting interim order and on account of interim order the activities which are required to be performed by the FCI have been hampered. The learned counsel for the appellant further submitted that Siliguri and Malda Depots of FCI are not notified depots under Section 10 of the Contract Labours (R & A) Act, 1970 and, accordingly, FCI is within its power to appoint handling contractor for the said depots as per the policy decision of the Food Corporation of India.

Mr. Majumdar, learned counsel for the respondent/writ petitioner would submit that the interim order was granted on 5th May, 2022 and has been in force for more than two months and the writ petition has been taken up for hearing by the learned Single Bench and the main arguments on the side of the writ petitioner concluded and the argument of Mr. Chattopadhyay appearing for the FCI is on the verge of being concluded and in all probabilities the arguments will get concluded tomorrow (22.7.2022). Therefore, it is submitted that no special circumstances have been brought out by the appellant for interfering with the impugned order. Further, the learned counsel would submit that in all of the conditions which have been raised by the appellant to this appeal, appropriate submissions have been made before the learned Single Bench and when the writ petition itself

is to be finalised, this intra-Court may not be entertained.

After elaborate hearing the learned counsel for the parties, we are of the considered view that it would not be appropriate to entertain this appeal filed by the FCI against an interlocutory order passed by the learned Single Bench which has remained in force for over a period of two months. That apart, the parties to the litigation are in the verge of concluding arguments and it is the submission of the learned counsel for the workers union that if the counsel for the appellant concludes his argument tomorrow (22.7.2022), reply submission would be made and the matter will be concluded by tomorrow (22.7.2022).

In the light of the above, we are not inclined to interfere with the impugned order. However, we are making it clear that we have not expressed anything on the merits of the matter and leave it open to the parties to agitate all their grounds, both factually and legally before the learned single Bench in the pending writ petition.

With the above observations, the appeal (APO/58/2022) stands disposed of.

With the disposal of the appeal, the connected application for stay (IA No. GA/1/2022) also stands disposed of."

Mr. Majumder, learned advocate appearing for the respondent in WPA 969 of 2022 submitted that when the respondents were about to conclude their submission an affidavit has been filed by the management. Furthermore, due to certain inconvenience the Court sitting had to be deferred. In any event, we feel that no interference is called for in the discretion exercised by the learned Single Bench which has been considered by us in the aforementioned order.

For such reasons, the appeal stands **disposed of** while declining to interfere with the impugned order without expressing anything on merits of the matter. We leave it open to the parties to agitate all grounds both factual and legal in the pending writ petition.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)