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W.P. No.28459 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.28459 of 2017

Central Organization of Tamil Nadu,
Electricity Employees Union,
NTECL, Vallur Thermal Power Station,
Branch Unit, Represented by its Secretary,
BTR Ninavagam, Athipattu Pudhunagar,
Chennai-120.

... Petitioner

-VS-

1. The Secretary
Labour and Employment Department
Secretariat, Chennai-9.

2. The Assistant Commissioner of Labour,
(Conciliation) -2, Kuralagam,
Chennai-108.

3. NTPC, Tamil Nadu Energy Company Ltd.,
Rep. By its Chief Executive Officer,
Vallur Thermal Power Station,
Vallivoyal Chavadi, Chennai-103.

4. The General Manager,
NTPC, Tamil Nadu Energy Company Ltd.,
Vallur Thermal Power Station,
Vallivoyal Chavadi, Chennai-103.

5. M/s.Utility Power Tech Limited,
Vallur Thermal Power Station,
NTPC Tamil Nadu Energy Company Ltd.,
Vallur, Vallivoyal Chavadi, Chennai-103.

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, after calling for the records pertaining to the order in G.O.(D) No.173 and 174 Labour and Employment (A2) Department dated 24.03.2017 passed in the first respondent, quash the same and consequently direct the first respondent to refer all the demands in Serial Nos.1 to 12 in the annexure to the G.O.(D) No.174 and to modify the reference pertaining to the three demands which have been referred in G.O.(D) No.173 by including the names of the respondents 3 and 4 herein as parties to the reference and also in each demand, award costs.

For Petitioners : Mr.V.Ajoy Khose

For Respondents : Mr.M.S.Prem Kumar GA, RR1 & 2
Mr.M.Vijayan
for M/s.Kings and Patridge R3
R4 & R5- No appearance

ORDER

This petition has been filed seeking to quash the order passed in G.O.(D) No.173 and 174, Labour and Employment (A2) Department, dated 24.03.2017 by the first respondent and consequently direct the first respondent to refer all the demands in Serial Nos.1 to 12 in the annexure to the G.O.(D) No.174 and to modify the reference pertaining to the three demands which have been referred in G.O.(D) No.173 by including the names of the respondents 3 and 4 herein as parties to the reference.



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WEB COP 2. It is the case of the petitioner that the petitioner is a trade Union registered under the Trade Unions Act, 1926 and its Registration number is 158/CPT. It is affiliated to CITU and EEFI and the petitioner is fighting for promotion, development and improvement in the service conditions of the workmen employed in the erstwhile Tamil Nadu Electricity Board (TANGEDCO) which is now bifurcated as Tamil Nadu Generation and Distribution Corporation Ltd., and Tamil Nadu Transmission Corporation Limited. The National thermal Power Corporation (NTPC) is a Government of India Company. NTPC and TANGEDCO have entered into an agreement and started a new joint venture company in the name of NTPC Tamil Nadu Energy Company Ltd., the third respondent to start a thermal power station at Vallur and 300 staff are working in Vallur Thermal Power Station . All the workmen have completed more than 480 days in 24 calendar months from the date of their joining. By letter dated 03.09.2014 the petitioner Union made a request to the third respondent to make all the workmen concerned permanent and also to extend them equal pay till they were made permanent. Since the third respondent did not give any reply, the petitioner raised an industrial dispute before the second respondent. The second respondent issued a notice to respondents 3 to 5 and there was no communication from them till the



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conciliation meeting was over. Thereafter, the 3rd respondent was stated in the remarks before the second respondent that the employees are contract labours.

After raising the dispute, the 3rd respondent were denying employment for some workers, due to which, the petitioner made a representation to the respondents 3 to 5 to reinstate the workmen. There was no reply or response from the respondents. Therefore, the petitioner made a representation before the Government for regularization of the workmen along with other 11 demands. However, the first respondent issued impugned G.O. in which there is no reference with regard to the regularization of the workmen. Challenging the said G.O., the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that in the year 1950, contract labour system was abolished by the State Government. However, in the year 2013, TANGEDCO was formed and they continued the abolition system by way of fresh contracts to the contractors in terms of the Contract Labour (Regulation and Abolition) Act, 1970. Therefore, the petitioner raised a dispute before the first respondent for regularization of the members of the petitioner Union and the same was rejected by the first respondent by issuing the impugned G.O.(D) No.174 declining to refer the said demand, particularly when the said demand was the main demand is arbitrary and illegal. The power



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vested on the first respondent under Section 10(1)(d) of the ID Act is only the administrative power and they are not vested with any power to decide the dispute and the demands on merits. The power to adjudicate the dispute is vested only with the Tribunal/Labour Court. It is a quasi judicial power. Only the Tribunal/Labour Court is competent to decide the dispute between the parties based on the pleading, oral and documentary evidence and arguments. Therefore, the action of the first respondent in deciding the demands by usurping the powers vested with the Courts is wholly illegal and unsustainable.

In support of the said contention, the learned counsel has relied upon the decision rendered by the Hon'ble Supreme Court reported in 2001 (7) SCC 1.

4. The learned counsel for the respondent submitted that admittedly, NTECL was formed in the year 2013 and the Government order referred by the respondent is not applicable to the petitioner. The petitioner union raised Industrial Dispute on 06.11.2014 before the second respondent under Section 2(k) of the ID Act and the first conciliation meeting was scheduled to be held on 03.01.2014, however, the respondents 3 to 5 did not attend the conciliation meeting and in due course of enquiry proceedings, the respondents 3 to 5 filed their reply and in response to the same, the petitioner Union filed their rejoinder



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reiterating the facts that the workmen employed were all direct employees of the third respondent and contractors and sub-contractors are bogus. The petitioner, only with malafide intention, without participating in the industrial dispute, have raised vexatious ground beyond the scope of demands raised before the conciliation authority. The petitioner union can very well participate before the Industrial Tribunal regarding their demands concerning the workmen. Without doing so, the petitioner has filed the present writ petition which is not sustainable. That apart the petitioner has not filed any claim petition in respect of the charter of demands referred for adjudication. On the contrary, the petitioner has filed the present writ petition challenging the G.O. issued by the first respondent which is not maintainable. Hence, the petition is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

6. It is borne out by records that the petitioner Union raised charter of demands before the second respondent. Based on the failure report filed by the second respondent, the dispute was referred by first respondent with respect to various demands excluding regularization of the members of the petitioner



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union, who are working with the respondents 3 and 4. Such dispute was not referred by the first respondent and hence, the present writ petition has been filed.

7. On perusal of the records, it is seen that vide G.O.Ms.No.950 dated 08.09.1990, the Tamil Nadu Electricity Board stood abolished. After formation, the respondents 3 & 4 have entered into contracts with the contractors who have employed the members of the petitioner Union. When the contract is genuine and contract labour system has been abolished, then the courts open to the petitioner is to approach the Government for referring the dispute. The petitioner has approached the State Government under Section 10 of ID Act for referring the dispute. The State Government has power to refer a dispute if the dispute is available under any of the schedule. The members of the petitioner Union are working temporarily for several years and for their regularization, they are entitled to approach the Government for referring the dispute to the appropriate authority.

8. In the present case, admittedly the petitioners are contract labours and they are working under several contractors. Though the petitioner claims that for regularization, the petitioner are entitled to seek remedy before the Labour



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Court, however, such dispute cannot be decided by the Government and it is the Industrial adjudicator, who has to decide whether the grievance raised by the petitioner is genuine or not. In such view of the matter, the first respondent has refused to refer the dispute relating to regularization before the Industrial adjudicator, which is not sustainable one as it is not clothed with power to reject.

9. The similar issue was considered by this Court reported in **2007 (1) SCC 1 in the case of Steel Authority of India Ltd., and others Vs. National Union Waterfront Workers and others**. For better understating, the relevant paragraphs are extracted hereunder:

"102. In Gujarat Electricity Boards case (supra), a two-Judge Bench of this Court has held that if there is a genuine labour contract between the principal employer and the contractor, the authority to abolish the contract labour vests in the appropriate Government and not in any court including industrial adjudicator. If the appropriate Government abolishes the contract labour system in respect of an establishment the industrial adjudicator would, after giving opportunity to the parties to place material before it, decide whether the workmen be absorbed by the principal employer, if so, how many of them and on what terms, but if the appropriate Government declines to abolish the contract



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labour the industrial adjudicator has to reject the reference. If, however, the so-called contract is not genuine but is sham and camouflage to hide the reality, [Section 10](#) would not apply and the workmen can raise an industrial dispute for relief that they should be deemed to be the employees of the principal employer. The court or the industrial adjudicator would have jurisdiction to entertain such a dispute and grant necessary relief.

125 (5) On issuance of prohibition notification under [Section 10\(1\)](#) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

126. We have used the expression industrial adjudicator by



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design as determination of the questions afore-mentioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under [Article 226](#) of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal/court whose determination will be amenable to judicial review. "

10. A perusal of the above said decision, makes it clear that if the appropriate Government has abolished the contract labour system, the industrial adjudicator would, after giving opportunity to the parties and advertent to the materials placed before it, decide whether the workmen should be absorbed by the principal employer, and if so, how many of them and on what terms, but if the appropriate Government had declined to abolish the contract labour system the industrial adjudicator has to reject the reference. If, however, the so-called contract is not genuine but is sham and camouflage to hide the reality, [Section 10](#) would not apply and the workmen can raise an industrial claiming the relief that they should be deemed to be employees of the principal employer. The said decision applies to the facts of the present case.

11. In view of the categorical decision rendered by the Hon'ble Apex Court, this Court is inclined to issue a direction to the first respondent to refer



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the dispute with regard to the regularization of the members of the petitioner

Union to the Labour Court within a period of six weeks from the date of receipt of a copy of this order. Upon receipt of the same, the Labour shall consider the issue and pass appropriate orders after providing opportunity to either parties, as expeditiously as possible. Further, liberty is granted to the petitioner as well as the respondents 3 to 5 to canvas all the points before the Labour Court.

12. With the above directions, the writ petition stands disposed of. No costs.

25.09.2023

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Index: Yes/No

NCS : Yes/No

To

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Labour and Employment Department
Secretariat, Chennai-9.

2. The Assistant Commissioner of Labour,
(Conciliation) -2, Kuralagam,
Chennai-108.



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M.DHANDAPANI, J.

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