

W.P.No.23894 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON: 16.08.2024

DELIVERED ON: 04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.23894 of 2024

W.M.P.Nos.26151, 26152 & 26155 of 2024

NLC India Limited,
Represented by its Deputy General Manager (HR)/IR,
Neyveli – 607 801.

...Petitioner

vs.

- 1.The Deputy Chief Labour Commissioner – Central,
No.4, Haddows Road, Shastri Bhavan, Chennai – 600 006.
- 2.The Regional Labour Commissioner – Central,
No.4, Haddows Road, Shastri Bhavan, Chennai – 600 006.
- 3.The Assistant Labour Commissioner (Central),
DA-2, BSNL Staff Quarters, Jaya Nagar,
Reddiarpalayam, Puducherry – 605 010.
- 4.NLC Jeeva Oppantha Thozilalar Sangam,
Represented by its General Secretary,
D-13, Mahatma Gandhi Road,
Block-24, Neyveli – 607 801.
- 5.NLC Jeeva Oppantha Thozilalar Sangam,
Represented by its General Secretary,
Door No.01, Panruti Main Road,



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Krishna Maravadi (Near), Abatharanapuram,
Vadalur, Kunrinjipadi Taluk, Cuddalore District – 607 303.

6.The Collector,
Office of the Collectorate,
Cuddalore, Cuddalore District.

7.The Superintendent of Police,
No.18, Pudukuppam New Street, Meenakshi Nagar,
Pudukuppam, Cuddalore – 607 001.

8.The INDOSERVE SOCIETY,
Represented by its Administrator,
Opposite to TPS – I Expansion,
Neyveli, Cuddalore District.

9.The Builders Association of India,
Represented by its Chairman,
D-7, Gnana Sambanthar Salai,
Block – 19, Neyveli – 607 803.

10.The NLC Contractors Association,
Represented by its President,
D-23, High School Road,
Block No2, Neyveli – 607 803.

...

Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, for issuance of Writ of Declaration to declare the strike by the alleged members/representatives of the 5th respondent is illegal in terms of Section 22 of the Industrial Disputes Act, 1947 and consequently direct the 5th respondent, its alleged members and the contract workmen of the respondents 8 to 10 from proceeding with the illegal strike and indulging in any mode of agitations either within, or at the Gates, or in the vicinity of the installations of the petitioner



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company, being a public utility service, which disrupts or has the potential to disrupt the mining and generation activities of the petitioner company or preventing by threats, intimidation or otherwise, free ingress and egress to the willing contract workers and/or workers/executives of the petitioner company, being a public utility service, for attending to their works/shifts/duty or otherwise.

For Petitioner : Mr.G.Masilamani, Senior Counsel
for Mr.N.Nithianandam

For Respondents : Ms.P.J.Anitha for R1 to R3
Central Government Standing Counsel

Mr.G.Sankaran, Senior Advocate for R5
for Mr.S.Nedunchezhiyan

Mr.J.Ravindran,
Additional Advocate General for R6
Assisted by Ms.M.Jayanthy

Mr.V.Meganathan for R7
Government Advocate (Criminal Side)

Notice to R4, R8-R10 dispensed with

ORDER

The petitioner has filed the present writ petition to declare the strike by the alleged members/representatives of the fifth respondent as illegal in terms of Section 22 of the Industrial Disputes Act, 1947 and consequently direct the fifth



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respondent, its alleged members and the contract workmen of respondents 8 to 10 from proceeding with the illegal strike and indulging in any mode of agitations either within, or at the Gates, or in the vicinity of the installations of the petitioner Company, being a Public Utility Service, which disrupts or has the potential to disrupt the mining and generation activities of the petitioner Company or preventing by threats, intimidation or otherwise, free ingress and egress to the willing contract workers and/or workers/executives of the petitioner Company from attending their works/shifts/duty or otherwise.

2. Before dealing with the facts, submissions and analysis, I feel it necessary to record the following:

i. Mr.G.Masilamani, learned Senior Counsel appearing for the petitioner made a representation before this Court on 13.08.2024 stating that the fifth respondent Union has called for a strike and if such strike is permitted, it may give rise to unrest in the vicinity of the petitioner Company and create law & order problems. Apprehending such eventualities, the counsel for the petitioner requested for the present Writ Petition to be moved as an urgent motion on the same day. As the urgency expressed by the petitioner was genuine, permission



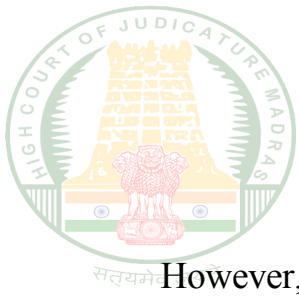
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was granted to bring up the writ petition as a lunch motion. While granting such permission, this Court directed that the respondent Union or the counsels who usually appear for the respondent Union should be given notice immediately, before the Case was listed for admission.

ii. When the writ petition was taken up in the afternoon on 13.08.2024, Mr.G.Sankaran, learned Senior Counsel appearing for the fifth respondent submitted that conciliation proceedings have been initiated and requested this Court not to pass any interim direction or orders which may prejudice the rights of the fifth respondent. It was also informed on behalf of the fifth respondent that they will take part in the adjudication on 14.08.2024. The case was, therefore, adjourned to 14.08.2024 at 2.15 p.m., for reporting the outcome of the conciliation proceedings. When the matter was taken up on 14.08.2024, Mr.G.Masilamani, learned Senior Counsel appearing for the petitioner informed this Court that though the fifth respondent participated in the conciliation proceedings, they refused to sign the Minutes of the Meeting.

iii. Learned Senior Counsel appearing for the fifth respondent reported that the strike notice was issued towards their 21 Charter of Demands.



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However, the same was not even discussed for consideration in the conciliation proceedings. Therefore, according to the senior counsel, the question of signing the conciliation proceedings did not arise and for that reason the fifth respondent, though having participated in the conciliation proceedings, did not sign the minutes.

iv. Learned Senior Counsel appearing for the fifth respondent further submitted that they would file a counter in response to the writ petition to, *inter alia*, narrate the proceedings that took place on 14.08.2024. At this juncture, the learned Senior Counsel appearing for the petitioner as well as the other respondents informed this Court that the main writ petition itself can be disposed of at the earliest point of time since there is urgency for the petitioner as well as the fifth respondent.

v. Considering the request and the mutual agreement between the counsels for the petitioner as well as the respondents, the matter was posted on 16.08.2024 at 2.15 P.M, for final hearing. The fifth respondent filed their counter along with a typed set of papers. Learned Counsel appearing for the petitioner filed additional typeset of papers and compilation of judgments which



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FACTS IN BRIEF:

3. Facts leading to filing of the present Writ Petition, based on submissions made by the learned Senior Counsels for the parties and also ascertainable from the records, are as follows:

(i) The petitioner is NLC India Limited (herein after referred to as “NLCIL”), formerly M/s.Neyveli Lignite Corporation Limited. NLCIL is a Central Government Public Sector Undertaking, incorporated under the Companies Act, 1956. According to the Petitioner, due to abundant availability of lignite in Neyveli area of Cuddalore District, a project to establish the petitioner Company for mining lignite and for generation of power was conceived in the mid 1950's and thereupon the Central Government established the petitioner Company on 14.11.1956. At present, NLCIL is a Navaratna Government of India Enterprise, under the administrative control of Ministry of Coal. NLCIL in course of time has extended its activities in Neyveli.

(ii) NLCIL is a pioneer amongst the Public Sector Enterprises in the



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country in energy sector. NLCIL contributes major share in lignite production and significant share in thermal and renewable energy generation. According to NLCIL, it is currently operating 3 open-cast lignite mines of a total installed capacity of 30 million tonnes per annum (MTPA) at Neyveli.

(iii) As on date, 10,115 employees are working in the petitioner Company including workmen category. Both mining and power generation activities of NLCIL are carried out throughout the year. In NLCIL, there are several Trade Unions and the elections for the Trade Unions are conducted by secret ballots as per the directions of this Court in earlier Writ Petitions. There are two recognised Trade Unions viz., (a) NLC Workers Progressive Union (தொழிலாளர்கள் முன்னேற்ற சங்கம்) (Tho.Mu.Sa) and (b) Kanaraka Thozhil Pirivu Anna Thozhilalar Sangam (KTPATS). Apart from these recognised Unions, there are several other Unions representing the workmen. The fourth and fifth respondents are two factions of a Union viz., NLC Jeeva Oppanda Thozhilalar Sangam, representing the contracting workers, having large membership.

4. (i) Apart from the regular work force, the sporadic works, such as,



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Annual Maintenance Works, cleaning works etc., are all carried out through workmen under labour service contracts. The said contract workers are the employees of the respective Contractors in accordance with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. All the Contractors including Respondents 8 to 10 in NLCIL have valid licenses under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The award of said contracts is in terms of the provisions of the aforesaid act. These contract workers are paid wages as fixed under the Minimum Wages Act by the Central Government from time to time and are given other benefits, such as, P.F, gratuity etc., by the Contractors.

(ii) In addition, the contract workers are being paid additional wages, medical facilities, uniforms, various allowances (Housing Assistance, Washing Allowance, Canteen Allowance, and Conveyance Allowance), service weightage etc., by NLCIL as a Principal Employer to the contract workers through the respective Contractors/Employers.

5. (i) In order to ameliorate the conditions of contract workmen, Neyveli Lignite Corporation Industrial Co-Operative Service Society Limited, Neyveli



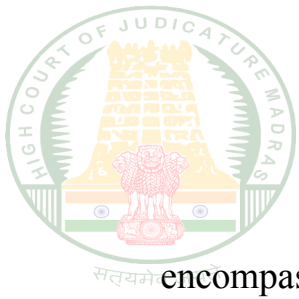
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(for short “NLC INDCOSERVE”), had come into existence in 1990. The said INDCOSERVE is a registered Cooperative Society established under the provisions of the Tamil Nadu Cooperative Societies Act, 1983, consisting of members, who were previously on the rolls and deployed by the private contractors. The said Society has its own by-laws governing the enrolment of its members and their service conditions.

(ii) 'NLC INDCOSERVE' is also one of the licensed contractors under the Contract Labour (R&A) Act, 1970 and it supplies contract workers to NLCIL on labour contract basis. Their members are paid wages and other benefits as per the contract terms but subject to the Minimum Wages Act notified by the Central Government from time to time and are also entitled to applicable benefits, such as P.F, gratuity etc.,

6. While the facts stood thus, pursuant to a demand made by the then recognized Joint Council of Unions (JCU) of NLCIL, a settlement under Section 12(3) of the I.D. Act, 1947 was reached on 18.05.1995 between NLCIL and the then recognized Unions for absorption of INDCOSERVE members/workers working in Operation Area, subject to certain conditions. The said Settlement



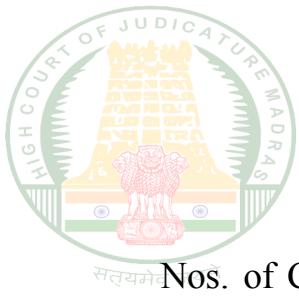
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encompassed only those members/workmen of the INDCOSERVE members/workmen of the INDCOSERVE, who were engaged in the works of NLCIL and it did not cover those members of the INDCOSERVE, who were not engaged in NLCIL as contract workers.

7. In the year 2019, the Trade Unions representing Contract Workers and other similar stakeholders raised a charter of demands and resorted to various agitations including strikes. Consequently, after elaborate discussions with the concerned Unions, a Memorandum of Understanding dated 26.02.2020 was entered into between Contractors/Employers, Unions representing Contract Workers and other similar stakeholders in the presence of NLCIL as witness wherein several other benefits were extended. The Memorandum of Understanding/Settlement under Section 12(3) of the Industrial Disputes Act, 1947 was to remain valid till 31.12.2026.

8. (i) Based on the Common Seniority List drawn pursuant to an order of the Hon'ble Supreme Court in C.A.No.1629 of 2011 (S.L.P.No.9807 of 2003) dated 16.04.2023 and in terms of the Settlement under Section 12(3) of I.D. Act, 1947 dated 07.08.2020, NLCIL in its 212th Board Meeting dated 02.01.2021 has accorded principal approval for absorption/regularisation of 750



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NLCIL.

Nos. of Contract Workmen in Phase – I and as such they were absorbed into

(ii) In phase-II, 510 Contract Workmen and in phase-III, another 517 contract workmen were absorbed/regularized in NLCIL from the Common Seniority List. The said process was completed in February, 2024. In phase-IV along with fresh vacancies, a total of 567 contract workmen from the common Seniority List were taken up for consideration for absorption and the same is presently under progress. The petitioner has absorbed the contract workers to a total strength of 2173 nos. based on the terms of Section 12(3) Settlement dated 07.08.2020 and organizational requirements.

9. (i) The fifth respondent, claiming to represent majority contract workers issued a strike notice dated 01.06.2023 with various demands under Section 22 of the I.D. Act, 1947 to the Petitioner, proposing to go on strike on any date after the expiry of 14-days of receipt of the said notice. This prompted the Petitioner to file a Writ Petition before this Court in W.P.No. 21245 of 2023 seeking following relief:

*“to issue an order or direction in the
nature of writ of mandamus directing the*



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respondents 1 to 3 herein (the District Collector, the Superintendent of Police and Deputy Superintendent of Police and Deputy Superintendent of Police) not to grant any permission (5th respondent herein) from conducting in any mode of agitation(s) either within Neyveli Township, within, or at the Gates, or in the vicinity of the installations of the petitioner company, being a public utility service, which disrupts or has the potential to disrupt the mining and power generation activities of the petitioner company or preventing by threats, intimidation or otherwise, free ingress and egress to the willing contract workers in the petitioner company, being a public utility service, for attending to their work/shift/duty or otherwise and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice."

(ii) The above Writ Petition was disposed of by this Court, in the admission stage, on 18.07.2023 with a direction to the 1st Respondent herein, namely the District Collector, to consider and pass orders on the representation



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of NLCIL dated 14.06.2023 after giving opportunities to all concerned.
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(iii) Consequent to the order of this Court, the third Respondent conducted conciliation proceedings on 25.07.2023, as scheduled, and the representatives of the Petitioner had participated in the meeting. However, it was alleged that, the representatives of the 5th Respondent did not participate in the said conciliation meeting and the same was adjourned to 01.08.2023.

10. (i) The said 5th Respondent Union allegedly indulged in road blockade and declared strike from 26.07.2023 (night shift), prompting the Petitioner herein to move before this Court, considering the extraordinary situation, a W.P.No.22626 of 2023 with the following prayer:

“to issue a writ of declaration to declare the strike by the alleged members/representatives of the fourth respondent union is illegal in terms of Section 22 of the Industrial Disputes Act, 1947 and consequently direct the fourth respondent, its alleged members and the contract workmen of the respondents 7 to 9 from proceeding with the illegal strike and indulging in any mode of agitation either within, or at the gates, or in the



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vicinity of the installations of the petitioner company, being a public utility service, which disrupts or has the potential to disrupt the mining and generation activities of the petitioner company or preventing by threats, intimidation or otherwise, free ingress and egress to the willing contract workers and/or workers/executives of the petitioner company, being a public utility service, for attending to their works/shifts/duty or otherwise.”

(ii) This Court, vide an order dated 22.08.2023, disposed of the above Writ Petition, by consent, with certain directions, *inter alia* against the 5th Respondent herein, which will be dealt with in the discussion *infra*.

11. (i) It is not disputed that, based on the above, the 5th Respondent filed a Charter of Demands with the Central Government, as per the directions of this Court in W.P.No.22626 of 2023.

(ii) Subsequently, a letter dated 29.12.2023 was issued by the 3rd Respondent herein, Assistant Labour Commissioner (Central), Ministry of



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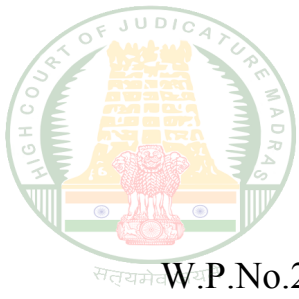
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Labour and Employment, Government of India, addressed to the Deputy Chief Labour Commissioner (Central), allegedly being the failure report of the Conciliation Officer/3rd Respondent.

(iii) Based on the above report, the Ministry of Labour and Employment, Government of India, on 16.01.2024 made a reference under Section 12(5) read with sub-section (2A) of Section 10 of the I.D. Act, 1947 for adjudication of industrial disputes to the Central Government Industrial Tribunal cum Labour Court (hereinafter referred to as “CGIT-LC”), Chennai, more particularly on whether the 5th Respondent is entitled to any reliefs as claimed in the Charter of Demands submitted.

(iv) The above reference made by the Central Government was numbered as I.D.No.11 of 2024 before the CGIT-LC, wherein notice dated 21.02.2024 was issued to the parties to appear and file their respective statements relating to the issue in the order of reference.

12. (i) Meanwhile, the Petitioner herein filed Contempt Petition No. 265 of 2024 against the General Secretary, one Mr. R.Selvamani, alleging wilful disobedience of the order of this Court dated 22.08.2023 passed in



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Court.

W.P.No.22626 of 2023 and the said Contempt Petition is pending before this

(ii) While things stood thus, the 5th Respondent herein seems to have filed a Writ Petition before this Court in W.P.No.6813 of 2024, seeking for the following relief:

“Directing the 1st Respondent (Ministry of Coal, Government of India) to consider the Charter of demands submitted by the petitioner Union dated 05.09.2023, and to provide opportunity of hearing to the Petitioner Union and NLC Management/4th Respondent, for redressal of grievances of the Petitioner union in accordance with directions issued by this Hon’ble Court in the orders passed in W.P.No. 22626 of 2023 dated 22.08.2023, within a time frame to be fixed by this Hon’ble Court”

(iii) Vide order dated 13.03.2024, this Court issued notice which was accepted by all the Respondent counsels with a plea to permit them to file their counters. The above Writ Petition was ordered to be tagged along with Contempt Petition No.265 of 2024 and the same is also pending as on date.



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13. During the pendency of the aforesaid petitions, the 5th Respondent issued a strike notice dated 01.08.2024 under Section 22 of the Industrial Disputes Act, 1947, allegedly with identical demands, with an indication to go on strike any date after the expiry of 14 days from the date of receipt of the said notice. The said strike notice was addressed to:

*“(1) The Director, Personnel HR Corporate Office, NLC (IL) Ltd.,
Neyveli,*

(2) Special Officer, Indcoserve, Neyveli,

(3) The President/Secretary, Contractors Association, Neyveli

and copies were marked to:

*(i) the Secretary to the Government of India, Labour and
Employment, New Delhi,*

(ii) The Chief Labour Commissioner (Central), New Delhi,

(iii) The District Collector, Cuddalore,

(iv) The Superintendent of Police, Cuddalore,

(v) The Deputy Superintendent of Police, Neyveli,

(vi) The Revenue Divisional Officer, Cuddalore,

(vii) The Revenue Divisional Officer, Viruthachalam, and

(viii) The Tahsildar, Kurinjipadi.”

14. Taking cognizance of the strike notice dated 01.08.2024 issued by the 5th Respondent, the 2nd Respondent vide proceedings No.1/1/2024-B3 dated 08.08.2024 initiated conciliation proceedings by invoking Section 12 of the I.D. Act, 1947. Pending conciliation proceedings, NLCIL has filed the present Writ



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Petition on 12.08.2024, challenging the legality of the strike notice dated 01.08.2024 issued by the 5th Respondent, seeking for a Writ of Declaration to the effect that the strike notice dated 01.08.2024 was illegal in terms of Section 22 of the I.D. Act, 1947, and a consequential relief to direct the 5th Respondent and all workmen belonging to the said union, in effect, not to carry on with the strike, either within or near the NLCIL's premises.

SUBMISSIONS ADVANCED ON BEHALF OF THE PARTIES:

Learned Senior Counsel, Mr.G.Masilamani, appearing for the Petitioner, made the following submissions:

15 (i) Learned Senior Counsel for the Petitioner, after narrating the chequered history of disputes between the Petitioner, the fifth respondent and other registered or recognised Trade Unions, drew the attention of this Court to Section 2(n) of the Industrial Disputes Act and submitted that NLCIL was a public utility service as defined under the said provision.

(ii) It was submitted by the Learned Senior Counsel that the Petitioner being a public utility service, there is a possibility that it will disrupt or is potent enough to disrupt mining and generation of power activities of the Company, including possibility of preventing by threats, intimidation or otherwise free



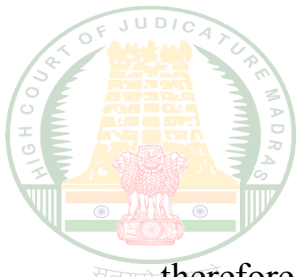
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ingress and egress of the willing contract workers and/or workers/executives of the petitioner Company, from attending their works/shifts/duty or otherwise.

16. Learned Senior Counsel further submitted that it was unequivocally agreed by all the signatories to the Memorandum of Understanding dated 26.02.2020 entered under Section 12(3) of the I.D. Act, 1947 between Contractors/Employers, Unions representing Contract Workers and other similar stakeholders in the presence of NLCIL, that the said Memorandum of Understanding shall remain valid till 31.12.2026. It was also submitted that the Trade Unions agreed that they shall not demand any further rise in wages, allowances or any other benefits whatsoever during the said period.

17. It was the further submission of the Learned Senior Counsel, while referring to Section 12(3) of the Act, that the settlement between the Unions and the Petitioner is binding on the unions which are signatory to the same, including the future members of the unions. It was his submission that since the settlement is valid till 31.03.2026, it has a binding force and the 5th Respondent or any other Trade Union cannot call for a strike, in derogation of the said settlement. It is submitted by the learned senior counsel that the strike notice is



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therefore *per se* illegal and contrary to Section 12(3) of the Act.
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18. Learned Senior Counsel submitted that in accordance with Section 18 of the Act, the settlement certainly binds all signatories including the future members of the unions which are party to the same and any violations and/or breach of the terms and conditions of the said settlement by any of the signatories is impermissible, incongruous and illogical. It was submitted that after absorption of all workmen as per the Memorandum of Understanding, the 5th Respondent, claiming to represent majority workmen, issued strike notices in the year 2023 and 2024, in clear derogation of the terms of the settlement already arrived between the parties. It is submitted by the learned senior counsel for the Petitioner that the notice dated 01.08.2024, which is the subject matter of the present writ petition, is also therefore clearly against the terms of the settlement between the parties.

19. It was submitted by the Learned Senior Counsel for the Petitioner that in the order dated 22.08.2023 passed by this Court in W.P.No.22626 of 2023, Paragraph 7(iii) of the said order specifically directed the fourth respondent (5th respondent herein - NLC Jeeva Oppantha Thozilalar Sangam) not to initiate any



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strike proceedings; not to create any law and order problem; and not to interfere with the day to day affairs of the petitioner corporation, till the disposal of their Chartered Demands pending adjudication with the Central Government. It was submitted that the said order of this court is binding on the members of NLC Jeeva Oppantha Thozilalar Sangam, namely the 4th respondent and the 5th respondent as well as anybody claiming through the said NLC Jeeva Oppantha Thozilalar Sangam.

20. Learned Senior Counsel further drew the attention of this Court to the failure report dated 29.12.2023 under Section 12(4) of the Act issued by the 3rd Respondent herein in respect of the conciliation proceedings that were initiated pursuant to the order dated 22.08.2023 passed by this Court in W.P.No.22626 of 2023 and the order of reference of dispute dated 16.01.2024 to the CGIT-LC by the Government of India, and submitted that the said order of reference was not challenged either by the 5th Respondent or any other respondents representing the Unions. According to the learned Senior Counsel, since the issues pertaining to the chartered demands that were referred to the CGIT-LC vide the above reference are pending, the 5th Respondent or other unions cannot resort to parallel, simultaneous and repeated agitations on the



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21. Learned Senior Counsel further submitted that the very issuance of the strike notice dated 01.08.2024 was in violation and contrary to the orders passed by this Court, and that it could not have been issued, especially during pendency of various proceedings such as I.D.No.11 of 2024 before CGIT-LC, Contempt Petition No.265 of 2024 and W.P.No.6813 of 2024 before this Court. It was further submitted that the strike notice dated 01.08.2024, in effect, is nothing but a repetition of the earlier strike notice and the charter demands, in respect of which proceedings are pending before the CGIT under the Industrial Disputes Act, 1947.

22. Learned Senior Counsel referring to Section 20 of the I.D. Act, 1947 submitted that conciliation proceedings shall be deemed to have commenced on the date on which the notice of strike or lockout under Section 22 is received by the Conciliation Officer. It is the submission of the learned Senior Counsel that, in the present case, the conciliation proceeding is deemed to have commenced under Section 20(1) of the Act on the date of receipt of the strike notice dated 01.08.2024 by the Conciliation Officer.

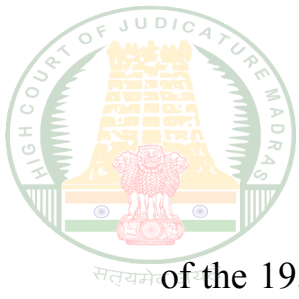


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23. Learned Senior Counsel for the Petitioner further drew attention of this Court to Sections 22, 23 and 24 of the Act and contended that resorting to a strike during the pendency of proceedings before the Tribunal taints the strike with illegality under Section 24 of the Act. According to the learned Senior Counsel, in view of the charter of demands pending adjudication before the Tribunal, resorting to a strike in respect of the same demands is contrary to what is provided in the said provisions, hence deserving to be declared as illegal. Learned Senior Counsel while referring to Sections 26 and 27 of the Act, submitted that illegal strikes and the instigation thereof are penalised with imprisonment under the I.D. Act, 1947.

24. A submission was also made while referring to Rule 71 of the Industrial Disputes (Central) Rules, 1957, that the form of notice of strike to be given by the Union/Workmen in public utility service is available as Form L which contains an Annexure. As per the said Annexure, it was submitted that, a copy of notice of strike shall be forwarded to the Assistant Labour Commissioner (Central), the Regional Labour Commissioner (Central) and Chief Labour Commissioner (Central), New Delhi. It was contended that the 5th Respondent ought to have issued the strike notice as per Form L under Rule 71



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of the 1957 Rules. It was a further submission that the said strike notice has to denote the date from which the Union is proposing to resort to strike, and that the notice dated 01.08.2024 issued by the 5th Respondent fails to do so. Hence not being in accordance with Rule 71, it was submitted that the notice dated 01.08.2024 issued by the 5th Respondent is liable to be declared as illegal.

25. Learned Senior Counsel furnishing the chartered demands made by the 5th Respondent, contended that they are nothing but the demands that are already pending adjudication before the CGIT in I.D.No.11 of 2024, as stated *supra*. It was contended that the only difference in the present strike notice dated 01.08.2024 is that there are 5 new additional demands which are included along with the previous demands made by the 5th Respondent herein. The comparative study finds place in the additional typed set of petitions filed by the Petitioner. Learned Senior Counsel submitted that the five new demands are not even those that relate to service conditions. A summary of the new demands, and the response of the Petitioner is given herein under:

Demand No.	Description of Demand	Response of Petitioner
17	The Management of NLC(I)L should withdraw the proceedings towards privatization.	The demand relating to privatization is strongly refuted as the same is not a service condition and the petitioner is not obliged to consider.

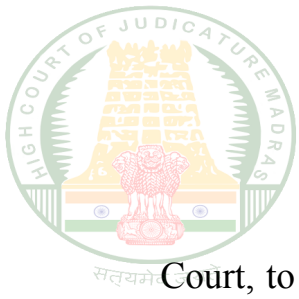


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18	<i>The Private corporate companies like “Adhani Group” and “Mahalakshmi” should quit from NLC(I)L Tamilnadu.</i>	The said demand is highly imaginary and without any material. The demand is out of service jurisprudence.
19	<i>The Indcoserve Society management did not conduct G.B.Meeting for 7 years. Tamilnadu Government should intervene and save Co.op Society's Democracy.</i>	The said demand does not fall under the purview of service conditions.
20	<i>The Central Government Ministry of Labour should take appropriate action against ALC and other connected conciliation officers, those who are colluded with the management and diluting the poor worker's demands in NLC(I) L.</i>	The said demand does not fall under the purview of service conditions.
21	<i>The Management should not allow to continue the Retired executives as “Advisors” in NLC(I)L.</i>	It is the prerogative of the petitioner Company to nominate or appoint the Advisors for the Company to obtain suggestions for its better administration which will benefit the company.

Apart from the above, it was submitted that all the other 16 chartered demands are all pending adjudication before the Tribunal in I.D.No.11 of 2024.

26. Learned Senior Counsel for the Petitioner drawing attention of this



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Court, to the Writ Petition in W.P.No.6813 of 2024 filed by the 5th Respondent, contended that the Writ Petition was nothing but a scuttling process to circumvent I.D.No.11 of 2024 pending adjudication before the Tribunal, and that if the 5th Respondent was aggrieved by the orders passed in W.P.No.22626 of 2023, the 5th Respondent ought to have filed a review application or a Writ Appeal. Rather, it was submitted that, the 5th Respondent has been resorting to various dilatory tactics to deviate and derail the pending adjudication proceedings in respect of the demands and the strike notice dated 01.08.2024 was nothing but a part of the said process.

27. In support of his submissions, Learned Senior Counsel Mr.G.Masilamani relied on the following precedents:

(i) ***T.K.Rangarajan v. Government of Tamil Nadu & others*** reported in **(2003) 6 SCC 581**, on the proposition that any strike should be in accordance with law, and that any strike in violation of the statutory mandates can be termed illegal as contemplated under Section 24 of the Industrial Disputes Act, 1947.

(ii) ***P. Virudhachalam and Others v. Management of Lotus Mills and another*** reported in **(1998) 1 SCC 650** on the proposition that once a written



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settlement is arrived at during conciliation proceeding, such settlement under Section 12(3) has a binding effect not only on the signatories, but also on all parties to the industrial dispute, which would cover the entire body of workmen.

(iii) *National Engineering Industries Ltd. v. State of Rajasthan and others* reported in (2001) 1 SCC 371 on the point that the judgment laid out in *P.Virudhachalam* (referred supra) has been constantly followed and that the 5th Respondent cannot now claim that they are not a party to the Section 12(3) settlement and therefore not binding on them.

(iv) *Arasu Viraivu Pokkuvarathu Oozhiyar Sangam vs. State Express Transport Corporation Ltd., and Others* reported in 2006 (3) L.L.N. 916 on the proposition that conciliation proceedings are deemed to conclude only when a failure report is received by the appropriate Government, as indicated under sub-section (2) of Section 20, and that until then the respondent unions cannot resort to strike.

(v) *A.Saravanan vs. The Government of Tamil Nadu and Ors.* reported in MANU/TN/0142/2023, to point out that interim orders have been passed restraining unions from resorting to strikes in violations of the provisions of law enumerated under the I.D. Act, 1947. Learned Senior Counsel pointed out



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that the orders passed by this Court in the above writ petitions in ***W.P.Nos.646 & 724 of 2023 dated 09.01.2023*** was an *exparte ad-interim* order and the writ petitions were subsequently dismissed as infructuous.

(vi) ***Workers of the Industry Colliery vs. Industry Colliery*** reported in ***1952 SCC OnLine SC 146***, on the proposition that strike in contravention of the mandate under Section 20(2) read with Sections 22 to 24 of the Act, is illegal, and the time lines under the Act are to be punctually obeyed.

Learned Senior Counsel, Mr.G.Sankaran appearing for the 5th Respondent, whose strike notice is sought be declared as illegal, made the following submissions:

28. Learned Senior Counsel Mr.G.Sankaran referring to the definition of strike under Section 2(q) of the Act, would contend that right to strike is enshrined in the Industrial Disputes Act, 1947 and the fifth respondent being a registered Trade Union has a statutory right to go on strike, the only requirement being the adherence to Section 22 of the Act.

29. Learned Senior Counsel further referring to Section 2(k) and Section 2-A of the Act, contended that any issue or dispute arising between the



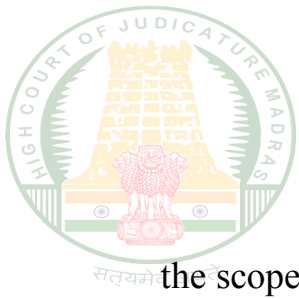
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workmen and the Petitioner organisation is an issue of serious concern. Learned Senior Counsel submitted that the issues raised by the 5th Respondent are serious industrial disputes and that the 21 chartered demands made by the 5th Respondent cannot be ignored by the Petitioner on the ground that the new demands are not related to service conditions.

30. Learned Senior Counsel further contended that terms of a settlement under Section 12(3) of the Act, cannot be contrary to the provisions of the Act in itself and any stipulation in the said settlement, taking away the statutory rights of Unions such as that of the 5th Respondent to go on strike is contrary to the provisions of the Act. Learned Senior Counsel would further contend that the 5th Respondent is not a party to the settlement under Section 12(3) arrived at by and between the Petitioner and the Trade Unions and therefore the same does not bind the 5th Respondent.

31. Learned Senior Counsel appearing for the 5th Respondent would contend that the strike notice given by the 5th Respondent cannot be construed as illegal and there can be no prohibition to call for a strike. It was further contended that the argument of the learned Senior Counsel for the Petitioner on



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the scope of Sections 22(1)(a) and (b) are not applicable to the present case, and that the 5th Respondent is, in no manner, in violation of the said provision.

It was argued by the learned Senior Counsel that scope for violation of Section 24 arises only if the strike is operational before the expiry of 14 days as prescribed under the Act. Hence, it was argued that the present writ petition was premature.

32. Learned Senior Counsel further submitted that the Petitioner issued a letter dated 02.08.2024 to the 5th Respondent, which reads as follows:

“It is noted that notice of the strike has been wrongly addressed to the Management of NLCIL and NLCIL is not the appropriate party for redressing the disputes/demands relating to contract workers engaged by Contractor Employees for works in NLC India Limited”,

and, therefore, contended that the Petitioner, having stated that they are not the right person for redressing the chartered demands made by the 5th Respondent, cannot now make a hue and cry that there is likelihood of law-and-order problems, security threats and that agitations may disrupt the mining and generation activities of the Petitioner.



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33. It was also contended that the Chartered demands made by the 5th Respondent are genuine, bonafide and are service demands which, directly or indirectly, affects their livelihood. It was argued that in the conciliation report, the issues raised by the 5th Respondent, reply given by the Petitioner and the findings of the Conciliation Officer has not rendered a finding as contemplated under Section 4, and the said report can therefore not be rendered as closure report under Section 12(4) of the I.D. Act, 1947.

34. It was further contended by the learned Senior Counsel that the demands made in the strike notice dated 01.08.2024 are new demands and there is no comparison to the previous demands pending before the Tribunal in I.D.No.11 of 2024 as contended by the learned Senior Counsel appearing for the Petitioner. The Tribunal, after taking cognizance of I.D.No.11 of 2024, issued summons to the Petitioner as well as to the 5th Respondent, and the 5th Respondent is yet to participate in the proceedings. It was further submitted that the Petitioner Company should be condemned by not only the Conciliation Officer but also by the Tribunals and Courts. It was submitted that the working conditions of the workers including the contract labours, casual labours and



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permanent employees are always at huge risk. It was suggested by the learned senior counsel that the disputes could be resolved only with a human approach to resolve it between concerned parties.

35. In addition to what was argued by the learned senior counsel for the 5th Respondent, the following contentions have been raised in the detailed counter affidavit filed by the 5th Respondent, relevant extracts of which are as follows:

i. That the Writ Petition seeking for a declaration that the strike is illegal is not maintainable:

“36...Whereas after receipt of strike notice under Section 22(1) of the Act, the Regional Labour Commissioner initiated conciliation proceedings under Section 20 of the Act and issued notice of hearing to the Respondent Union as well as the Management to be conducted on 14.08.2024 i.e. the 13th day after the date of strike notice. Accordingly, as per the proceedings of Regional Labour Commissioner, the conciliation proceedings posted on 14.08.2024, requiring both management and the Trade Union to participate in the proceedings to



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carry on the exercise in accordance with the procedure under Section 20 of the Act read with Section 11 and 12 of the Act.

37...While so, the petitioner NLC India Ltd., filed the present Writ Petition, immediately after the receipt of notice dated 01.08.2024 to declare the proposed strike even before expiring the period of 14 days and before announcement of any date for holding the strike which could be possible only after expiry of 14 days with ill-motive only to thwart the statutory right of the respondent sangam in accordance with the provisions of the ID Act.

38...In the said circumstances, filing of Writ Petition for the relief as prayed for is ex-facie not maintainable in as much as calling for strike is recognized under the provisions of the ID Act and it is legal if it does not violate any provisions of the statute and there are provisions for illegal strike to declare a strike as illegal strike conducted in contravention of the procedure contemplated under the provisions of the Act. Therefore, it is amply clear that the filing of Writ Petition for the relief as prayed for is highly premature and not maintainable and further there cannot be any



declaration of strike which is a statutory right
provided under the ID Act as illegal.

ii. That the conciliation proceedings conducted by the 2nd Respondent on 14.08.2024 were not in consonance with the provisions of the Act, and that the conciliation proceedings already stand closed.

39...The Respondent sangam has participated in the conciliation proceedings conducted by the Regional Labour Commissioner (RLC) on 14.08.2024, as scheduled. Whereas, the RLC has refused to consider or even record the demands made by the Respondent sangam for redressal of grievances of the contract labours on the ground that the Industrial Dispute is pending before the CGIT consequent to referral from the Coal Secretary though CLC and ALC.

40...The RLC has never acted in accordance with the procedure contemplated under Section 12(2) of the ID Act, by which the conciliation officer shall, for the purpose of bringing about the settlement of the dispute, without delay investigate the dispute and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

41...Whereas, instead of recording any of the claim made on behalf of the Respondent Sangam, while declining to entertain the conciliation proceedings on the ground that the matter is pending before the CGIT, the RLC has proceed to advise only the respondent sangam not to resort to strike as well other agitations that are statutorily permissible safeguards under the provisions of the ID Act. On the face of it, there was not even a single advise to the management to consider the grievances or even to call for the negotiation with contract Labour's Union to resolve the problems.

42...That strangely, the RLC while drawing the minutes of the meeting, has recorded the participation of representatives/officials



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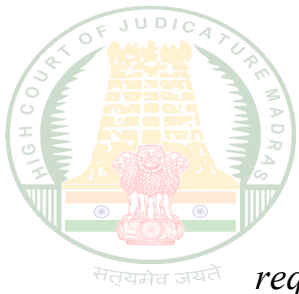
of NLC Management as witnesses in the proceedings, which is evident from the fact that the representatives of NLC Management has signed the “minutes as witnesses”. Hence, it is amply clear that the conciliation proceedings by RLC is against the statutory provisions by calling the Management representatives as witness and hence the entire proceedings suffers malice in law and malice in fact and stand vitiated.

43...In the said circumstances, as the 5th respondent Union not able to consent to the minutes drawn by the RLC, it has declined to sign the minutes of the meeting. Consequently, after recording the protest made by the 5th respondent sangam also by stating that the reference to CGIT which is not legally sustainable, nevertheless, the RLC proceed to close the conciliation proceedings. Accordingly, the conciliation proceedings initiated by the RLC stand closed.

iii. That the strike notice dated 01.08.2024 was necessitated due to the continued non-resolution of the disputes raised by the 5th Respondent Union.

“20...In the said circumstances, the NLC Management made statement that the Conciliation proceedings dated 16.01.2024 issued by ALC, 3rd Respondent, is in compliance with High Court order. Therefore, the Petitioner Union was constrained to submit a detailed representation to the District Collector by stating that the affected workers are pushed to go on various allegations and prepared to give strike notice also and the District Collector was requested to intervene in the matter and to take appropriate action in the interest on ten thousand workers.

21...Consequently, the District Collector, Cuddalore district, the 6th Respondent herein addressed a letter to the Joint Secretary, Ministry of Coal, Government of India dated 30.01.2024 with a



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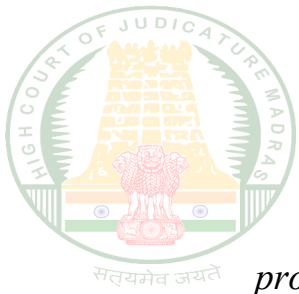
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request to examine the demands of the Union in a time bound manner and to settle the issue amicably in view of larger public interest. In the meantime, the Petitioner Union also constrained to forward a strike notice dated 29.01.2024 to the employer NLC to go on strike from any day after 14 days expiry of the strike notice. Whereas, the Petitioner Union has not resorted to strike till date.

24...Any such return notice by NLC is highly demeaning and disheartening by stating that the contract employees are not connected to NLC and they should go to the Contractor Employers, whereas ten thousand workers employed as contract workers in NLC for more than 25 years and Section 12(3) Settlement entered between the Petitioner Sangam and NLC. The settlements were arrived in the year 2008, 2010, 2012 wherein the Petitioner Union is the signatory to the settlement. Accordingly, the Petitioner Union for contract workers was a party to the settlement proceedings along with other recognized union meant for permanent employees.

30...That apart from closing the hearing resulted in denial of the consideration of the grievances of the contract labours of the Respondent sangam as per Charter of demand already submitted, the Secretary, Ministry of Coal has instructed the Assistant Labour Commissioner (ALC) through Chief Labour Commissioner (CLC), Delhi to refer the matter to CGIT, Chennai for further adjudication.

34...In the said circumstances, after having exhausted all the remedies through agitation etc., no other option except to resort to strike, issued strike notice dated 01.08.2024 in accordance with Section 22(1) of the Act by giving notice to the employer that the Contract Labours of 5th Respondent Sangam proposed go on strike from any date after 14 days expiry of receipt of this notice for the reasons and demands enclosed therewith. The 5th respondent Sangam proceed to resort the strike in conformity with the



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procedure laid down under the provisions of the ID Act without any deviation.”

36. It was also submitted by the learned Senior Counsel for the 5th Respondent that the strike notice was given on 01.08.2024 and they have 14 working days to go on strike. It was contended that the petitioner has chosen to file the Writ Petition before the expiration of the 14 days and therefore, the writ petition is premature and not maintainable. It was further contended by the learned senior counsel that this Court ought not to have issued notice before the expiry of the statutory period i.e. 14 days, and therefore the notice issued to the respective Respondents is without jurisdiction.

37. Learned Senior Counsel for the 5th Respondent Mr.G.Sankaran relied on the following precedents in support of his contentions:

(i) ***Syndicate Bank v. K. Umesh Nayak*** reported in (1994) 5 SCC 572 on the proposition that right to strike is an essential right of the employees and a ‘weapon of last resort’, keeping in mind the abnormal imbalance of power in an employer-employee relationship. The following paragraphs, as extracted below, were specifically pointed out by the learned Senior Counsel:

“29. The strike as a weapon was evolved by the workers as a



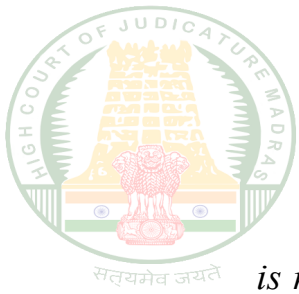
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form of direct action during their long struggle with the employers.

It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is abuse by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, “irritation strike” or staying at work but deliberately doing everything wrong, “running-sore strike”, i.e., disobeying the lawful orders, sit-down, stay-in and lie-down strike etc. etc. The cessation or stoppage of work whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lockout and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lockout as a direct action is prima facie unjustified. This is, particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal.

30. The question whether a strike or lockout is legal or illegal does not present much difficulty for resolution since all that



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is required to be examined to answer the question is whether there has been a breach of the relevant provisions. However, whether the action is justified or unjustified has to be examined by taking into consideration various factors some of which are indicated earlier. In almost all such cases, the prominent question that arises is whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lockout is not to be resorted to because the party concerned has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of the rule of “might is right”. Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the society which can well await the resolution of the dispute by the machinery provided for the same. The strike or lockout as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the Act places additional restrictions on strikes and lockouts in public utility services.

(ii) ***Bharat Petroleum Corporation, Ltd. vs. State and Others*** reported in **2007 (4) L.L.N. 1001**, on the proposition that legality or illegality of a strike,



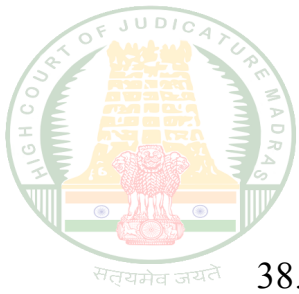
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more specifically on whether it would be violative of the provisions in Sections 22 and 23, cannot be decided at a premature stage in a Writ Petition.

(iii) ***Dhanraj v. Vikram Singh and others*** reported in ***2023 SCC OnLine SC 724***, for the proposition that the Court cannot issue a direction to refrain the implementation of a statutory provision without holding it constitutionally invalid. Being so, it was argued that the Court cannot issue directions in the nature of injunction injuncting the Respondent unions from going on strike in derogation of the statutory rights which are not circumstantial. More specifically, the following paragraph was relied therein:

“13. We are of the view that in absence of any specific challenge to the validity of the statutory provisions, the High Court ought not to have undertaken the exercise of going into the question of repugnancy. We fail to understand the propriety of the observation that the law departments of the State and the Union should have a dialogue to remove the discrepancy. Moreover, the High Court has not proceeded to strike down the relevant provisions which were held to be repugnant to PESA. It only directs that till the discrepancy is removed by the legislature, certain provisions of the 1961 Act and the rules framed thereunder shall be ignored. Such approach by the writ Court is not at all called for. Without holding that the statutory provisions are not constitutionally valid, the High Court could not have issued a direction not to implement the statutory provisions.”



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38. In rejoinder, on the issue of maintainability, learned Senior Counsel for the Petitioner Mr.G.Masilamani contended that in view of the definition under Section 2(n)(iv), the Petitioner company falls under public utility service and the Writ Petition, being in respect of a public utility service, is therefore absolutely maintainable. Apart from that, it was submitted that, there is a reasonable apprehension on the minds of the petitioner that if the strike is permitted to go on as per the notice of the fifth respondent, there is a likelihood of breach of law and order and the petitioner may not be in a position to function. Therefore, under the apprehension of likelihood of breach of peace by virtue of strike notice issued by the fifth respondent on 01.08.2024, the petitioner has every right to approach this Court for protection to the property and the lives of the persons employed in different categories in the petitioner's Company. Learned Senior Counsel for the Petitioner drew the attention of this Court to Fifth Schedule to the I.D. Act, 1947 which deals with unfair labour practices that are prohibited under the Act.

39. The learned counsels appearing for the Respondents 1 to 3, 6 and 7 respectively submitted that the said Respondents would abide by any orders that were to be passed by this Court. Since the arguments were confined by the



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Petitioner and the 5th Respondent to the legality/illegality of the strike notice dated 01.08.2024 issued by the 5th Respondent and the issues consequent thereto, the Petitioner did not insist upon issuance of notice in respect of the 4th, 8th to 10th Respondents, and the matter was reserved for orders on 16.08.2024 after hearing the learned counsels for the parties, in the manner as mentioned above.

ANALYSIS:

40. Having heard the learned Senior Counsels for the Petitioner and the 5th Respondent, and the learned counsels for the other Respondents, it is discernible that the following issues arise for consideration:

- i. Maintainability of the present Writ Petition.
- ii. Legality/Illegality of the Strike Notice dated 01.08.2024 issued by the 5th Respondent.
- iii. Binding nature of the Memorandum of Understanding/Settlement dated 26.02.2020 under Section 12(3) of the Act on the 5th Respondent.

41. The Statement of Objects and Reasons appended to the Industrial Disputes Bill, 1946, published in The Gazette of India, 1946, Part V, pp.239-



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240, *inter alia*, reads thus:

“Experience of the working of the Trade Disputes Act, 1929, has revealed that its main defects is that while restraints have been imposed on the rights of strike and lock-out in public utility services, no provision has been made to render the proceedings institutable under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of inquiry, conclusive and binding on the parties to the dispute.

This defect was overcome during the war by empowering under Rule 81A of the Defence of India Rules the Central Government to refer industrial disputes to adjudicator and to enforce their awards. Rule 81 A, which was to lapse on the 1st October, 1946, is being kept in force by the Emergency Powers (Continuance) Ordinance, 1946, for a further period of six months; and as industrial unrest in checking which this rule has proved useful, is gaining momentum due to the stress of post-industrial re-adjustment, the need of permanent legislation in replacement of this rule is self-evident.

...The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the right of strike and lock-out, which must remain inviolate, except where considerations of public interest override such rights.

The Bill also seeks to re-orient the administration of the conciliation machinery provided in the Trade Disputes Act. Conciliation will be compulsory in all disputes in public utility



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services...”

Even the long cause title to the Act, reads as follows:

“An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.”

42. As evident from the above, one of the core ideas/objects behind the enactment of the Industrial Disputes Act, 1947, was the idea of giving quicker resolution to industrial disputes, which would not only help in avoiding unnecessary strikes/lock-outs, but would also be beneficial to the workmen, whose right to bargain by adopting the course of a strike as contemplated under the I.D. Act, has been subjected to certain restraints that are in-built in the Act.

43. No doubt, it is settled law that ‘Right to Strike’ is not a fundamental right, as laid down by a Constitution Bench of the Hon’ble Supreme Court in ***Kameshwar Prasad v. State of Bihar*** reported in ***AIR 1962 SC 1166***. While the learned Senior Counsel for the 5th Respondent argued much on ‘right to strike’ being enshrined in the statute as a statutory right, delving into whether such a right is a statutory right or not may not be material in the present case, while also noting that the Hon’ble Supreme Court, in ***T.K.Rangarajan v.***

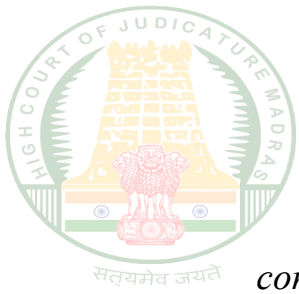


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Government of Tamil Nadu & others reported in **(2003) 6 SCC 581**, has held such a right not to be a ‘statutory right’. Rather, it is more pertinent to note how ‘strike’ is a double-edged sword and is therefore rightly perched in the Industrial Disputes Act, 1947 with the in-built restraints and mechanisms that it contains. Justice V. Krishna Iyer, in his usual eloquence, in **Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha** reported in **(1980) 2 SCC 593** commented on the concept of ‘strike’, and its role in collective bargaining, as follows:

“129. A selective study of the case law is proper at this place. Before we do this, a few words on the basis of the right to strike and progressive legal thinking led by constitutional guidelines is necessitous. The right to unionise, the right to strike as part of collective bargaining and subject to the legality and humanity of the situation, the right of the weaker group viz. labour, to pressure the stronger party viz. capital, to negotiate and render justice, are processes recognised by industrial jurisprudence and supported by Social Justice. While society itself, in its basic needs of existence, may not be held to ransom in the name of the right to bargain and strikers must obey civilised norms in the battle and not be vulgar or violent handlooms Industry, represented by intransigent Managements, may well be made to reel into reason by the strike weapon and cannot then squeal or wail and complain of loss of profits or other ill-effects but must negotiate or get a reference made. The broad basis is that workers are weaker although they are the producers and their struggle to better their lot has the sanction of the rule of law. Unions and strikes are no more



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conspiracies than professions and political parties are, and, being far weaker, need succour. Part IV of the Constitution, read with Article 19, sows the seeds of this burgeoning jurisprudence. The Gandhian quote at the beginning of this judgment sets the tone of economic equity in Industry. Of course, adventurist, extremist, extraneously inspired and puerile strikes, absurdly insane persistence and violent or scorched earth policies boomerang and are anathema for the law. Within these parameters the right to strike is integral to collective bargaining.”

44. Viewed in the above background, the success or the failure of the Industrial Disputes Act, 1947, lies in the effectiveness of the dispute resolution mechanisms that has been devised under the Act, and, in turn, its ability to consequently reduce/do away with strikes/lock-outs, to ensure the smooth functioning of the industries. To put it in other words, the dispute resolution mechanisms under the Act are akin to oil for the machines. Lesser the friction, lesser the wear and tear, more the longevity and productivity.

45. Before commenting on the merits of the present dispute, it is important to address certain preliminary issues. The Petitioner, in the present Writ Petition, has sought for the issuance of a Writ of Declaration seeking to declare a strike notice, issued by a registered union, illegal, with an indirect



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prayer to restrain them from resorting to strikes either within or near the Petitioner's premises. It is clear and categorical that no relief or directions are sought in respect of the official Respondents, i.e., Respondents 1 to 3, 6 and 7.

46. Two aspects are to be considered: *Firstly*, on whether such a relief for a Writ of Declaration that a strike is illegal, can be entertained by this Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India, 1950 and *Secondly*, on whether the Writ Petition could be maintained in respect of a relief as against the 5th Respondent herein. While the former is more on entertainability, the latter goes to the maintainability.

47. It is important to note the following relevant provisions of the I.D. Act, 1947 on the preliminary issues mentioned above:

(i) Sections 2(d), (e) and (f):

2(d) “conciliation officer” means a conciliation officer appointed under this Act.

2(e) “conciliation proceeding” means any proceeding held by a conciliation officer or Board under this Act.

2(f) – “Court” means a Court of Inquiry constituted under this Act.

(ii) Sections 2(k) and 2(q):

2(k): “Industrial Dispute” means any dispute or difference between employers and



employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person

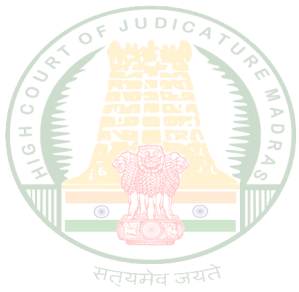
*2(q): "**strike**" means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal, under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;*

(iii) Section 7:

*(7): **Labour Courts** - (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act*

(iv) Section 7A:

*(7A) **Tribunals** – (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified*



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in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

(v) Section 10(1)(d):

10. Reference of disputes to Boards, Courts or Tribunals— (1) *Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,*

...

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication.

...

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced.

(vi) Section 24:

24. Illegal strikes and lock-outs.— (1) *A strike or a lock-out shall be illegal if—*

(i) it is commenced or declared in



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contravention of section 22 or section 23; or

(ii) it is continued in contravention of an order made under sub-section (3) of section 10 or sub-section (4A) of section 10A.

(vii) Second Schedule:

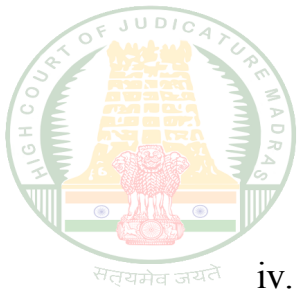
Matters within the Jurisdiction of Labour Courts

...

5. Illegality or otherwise of a strike or lock-out.

48. A conjoint reading of the above provisions results in the following conclusion, in so far as the scheme prescribed under the act for the adjudication of an industrial dispute is concerned:

- i. A strike is, undoubtedly, an industrial dispute as defined under Section 2(k) of the Act.
- ii. Labour courts, under Section 7, and Tribunals, under Section 7A, have been constituted for the adjudication of industrial disputes.
- iii. Legality/Illegality of a strike is a matter mentioned in the second schedule, determination of which is within the jurisdiction of a labour court under Section 7.



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iv. A tribunal constituted under Section 7A has jurisdiction to deal with matters mentioned both in the second and the third schedule, if such dispute is referred to the Tribunal by the appropriate Government under clause (d) of sub-section (1) of Section 10.

v. Such determination of legality/illegality of a strike/lock-out is to be determined only in accordance with the provision contained in Section 24 of the Act.

49. At this juncture, it is important to also refer to the relevant portions in Sections 20 and 22 of the Act, dealing with strikes and proceedings relating thereto:

“20. Commencement and conclusion of proceedings. — (1)A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lockout under S. 22 is received by the Conciliation Officer or on the date of the order referring the dispute to a Board, as the case may be.

(2)A conciliation proceeding shall be deemed to have concluded:

(a)where a settlement is arrived at, when a memorandum of settlement is signed by the parties to the dispute;

(b)where no settlement is arrived at when



the report of the Conciliation Officer is received by the appropriate Government or when the report of the Board is published under S. 17, as the case may be; or

(c)when a reference is made to a Court (Labour Court, Tribunal or National Tribunal) under S. 10 during the pendency of conciliation proceedings.

“Section 22. Prohibition of strike and lock-outs

(1) No person employed in a public utility service shall go on strike, in breach of contract-

(a)without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

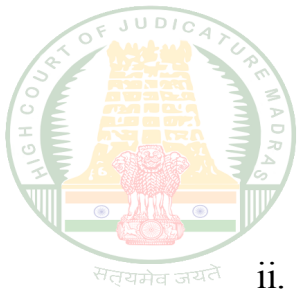
(b)within fourteen days of giving such notice; or

(c)before the expiry of the date of strike specified in any such notice as aforesaid; or

(d)during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.”

50. As evident from the provisions extracted above, the dispute resolution mechanism under the I.D Act in so far as a strike notice issued by the workmen of a public utility service goes through the following steps:

- i. Issuance of notice of strike under Section 22.



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ii. Commencement of conciliation proceedings, as deemed under Section 20, on receipt of such notice under section 22 by the Conciliation Officer.

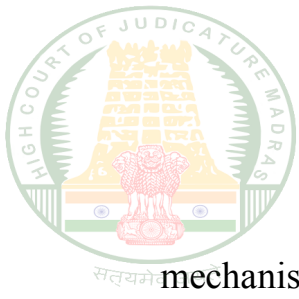
iii. Bar on commencement of strike during the pendency of conciliation proceedings, and seven days thereafter, as mandated under Section 22(1)(d).

iv. Conclusion of conciliation proceedings on receipt of report of Conciliation Officer by the appropriate Government, in cases where no settlement is arrived at, as mentioned in Section 20(2)(b).

v. Referral of the industrial dispute by the Appropriate Government to the Tribunal for adjudication thereof either during conciliation proceedings (Section 20(2)(c)), or after conclusion of such conciliation proceedings (Section 10(1)(d)), or referral by application of the parties, either jointly or separately, under Section 10(2).

vi. When the industrial dispute is in respect of a strike notice under Section 22, the appropriate Government, is by default required to refer the matter under Section 10(1)(d) to the tribunal, except when the appropriate Government is of the opinion that the strike notice is vexatious or it would be inexpedient to refer such dispute for adjudication.

51. When the I.D. Act provides for such a detailed and a special

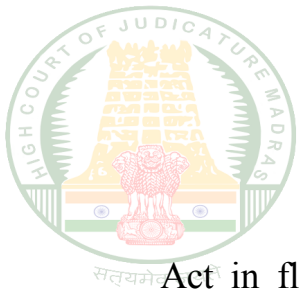


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mechanism on how an industrial dispute is to be handled by the various stakeholders involved, such procedure has to be strictly adhered to by the parties to the industrial dispute, and the authorities under the Act. From a reading of Section 25T and Section 26 of the Act, it is evident that conduct of an illegal strike has its own consequences under the Act, including penal punishments. More specifically, the determination of whether a strike is illegal, and/or whether the workmen are entitled to the demands, in respect of which a strike is announced, are necessarily matters of adjudication that has to take place before a Court or a Tribunal, under Sections 7 or 7A of the Act, respectively.

52. If writ petitions filed for Writs of Declaration seeking to declare strikes/strike notices as illegal are entertained, the very purpose of the Act, and the heart of the dispute resolution mechanisms enshrined in the Act loses its value. It is important to note that the Industrial Disputes Act, 1947 is a complete code in itself, in so far as resolution and the resolution mechanism of an industrial dispute, is concerned. No doubt, Writ Petitions under Article 226 of the Constitution of India, 1950 may lie in so far as non-observance of statutory requirements by the authorities under the Act, or against orders passed under the



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Act in flagrant violation of the provisions of the statute, and on such other grounds that the Courts may entertain under Article 226 of the Constitution of India, 1950.

53. In ***Radha Krishan Industries v. State of Himachal Pradesh*** reported in (2021) 6 SCC 771, the Hon'ble Supreme Court, while summarizing the principles governing exercise of jurisdiction by the High Court under Article 226 of the Constitution of India, held as thus:

“27. The principles of law which emerge are that:

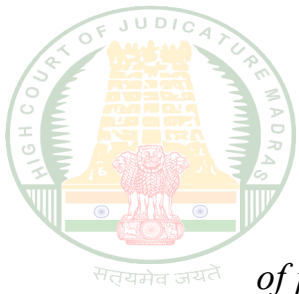
...

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

...

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule



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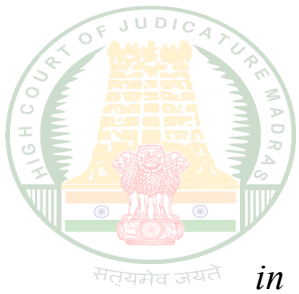
of policy, convenience and discretion.”

54. Further, when a statute prescribes a specific remedy, redressal of which is to be done in a particular manner as laid out, it cannot be sought to be done in any other manner. This is a settled principle of law, as also recently reiterated by the Hon’ble Supreme Court in **Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors.** reported in **(2015) 13 SCC 722**, wherein it was held as thus:

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure...”

55. This principle equally applies to a scenario where a specific procedure/remedy is prescribed under a statute for redressal of grievances in respect of subject matters under the statute. The Hon’ble Supreme Court, in **CIT v. Chhabil Dass Agarwal** reported in **(2014) 1 SCC 603**, held as thus:

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed



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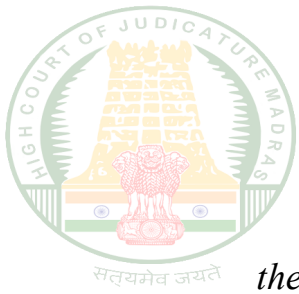
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in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419], Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433: 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.” (emphasis applied)

56. The Hon’ble Supreme Court, while recently considering the rule of alternative remedy in ***PHR Invent Educational Society v. UCO Bank and others*** reported in **2024 INSC 297**, summarized the principles as follows:

“29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus: (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question; (ii) it has acted in defiance of the fundamental principles of judicial procedure; (iii) it has resorted to invoke the provisions which are repealed; and (iv) when an order has been passed in total violation of the principles of natural justice.

30. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or



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57. In the present case, the case of the Petitioner in the present Writ Petition does not fall under any of the above categories mentioned in Paragraph 29 of the judgment of the Hon'ble Supreme Court in ***PHR Invent (supra)*** and in fact it would be squarely covered by the succeeding paragraph, Paragraph 30 of the said judgment, since:

i. The statutory authorities have taken cognizance of the strike notice dated 01.08.2024 and conciliation proceedings have been initiated, which to the knowledge of this Court, has not yet concluded, in light of the discussion regarding the issue in the succeeding paragraphs. It will be deemed to have concluded only on receipt of a failure report by the Conciliation Officer, or of referral to Court or Tribunal by the appropriate Government, in this case the Central Government.

ii. It is not the case of the Petitioner that the authorities under the Act have acted in defiance of fundamental principles of judicial procedure, whereas, in fact the parties participated in the conciliation proceedings even during the



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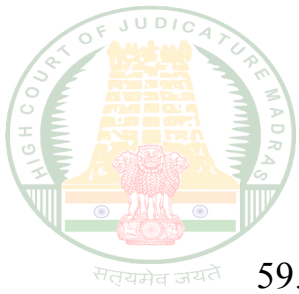
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pendency of the Writ Petition. It is further not the Petitioner's case that principles of natural justice have not been followed, or that provisions that have been repealed have been invoked.

58. As rightly contended by the learned Senior Counsel for the 5th Respondent, the judgment of a Division Bench of the Hon'ble Calcutta High Court in ***Bharat Petroleum Corporation Ltd. vs. State and Others*** reported in ***2007 (4) L.L.N. 1001*** would be relevant to the issue involved. The relevant paragraph relied upon is extracted herein under:

“8. The issue as to whether the proposed strike on 18 April, 2007 would violate the provisions of Ss. 22 and 23 of the Industrial Disputes Act cannot be decided at this stage in this proceeding and in our opinion the said issue can be effectively decided in an appropriate proceeding under the Industrial Disputes Act, 1947. In any event, the learned Single Judge in our opinion has rightly refused to grant interim relief in the present writ petition on the ground that the same would virtually grant final relief to the writ-petitioners.

Even in the above said case, the Writ Petition was filed by the management against the Trade Unions claiming that the strike that was called for was in violation of the provisions of the I.D. Act, more particularly Sections 22 to 24.



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59. This Court, further happened to chance upon an order passed in a Writ Petition filed by the same Petitioner herein, in W.P.No.26918 of 2014, reported as ***Neyveli Lignite Corporation Ltd. v. Assistant Labour Commissioner*** reported in ***2014 SCC OnLine Mad 9082***, wherein the following relief was sought by the Petitioner:

“PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 15 to 17 to provide adequate police protection to the petitioner's industry to run peacefully with its staff and willing workers and contract workmen engaged by the contractors including the respondents 12 to 14 and suitably prevent the respondents 2 to 11 unions, their members, office bearers, agents and outside supporters from gathering or assembling at the gates of the mines, thermal power stations, units and at the precincts of NLC Township and also restraining them from preventing the free ingress and egress of men, materials and vehicles to the various units of the petitioner and further direct the respondents 15 to 17 to enforce the rule of law by taking adequate steps to enable the petitioner, a corporate citizen to carry on the business of mining and power generation activity as per the protection given under The Constitution of India without any interruption from any quarters.”

In so far as the second limb of prayer against unions and their members, seeking to prevent them from gathering or assembling at the Petitioner's premises, this Court observed as thus:



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“15. If strike is construed to be a weapon at the hands of the workers under the Industrial Disputes Act, 1947, there are also equally effective weapons available to the management. Therefore, the appropriate course of action open to the petitioner is to work out their remedies under the industrial law and not to scuttle agitations.”

60. Therefore, on the question of whether this Writ Petition for a Writ of Declaration has to be entertained by this Court, the answer has to be in the negative. This is more so in view of the fact that the combined effect of Section 10(1)(d), read with Section 7A and the Second Schedule of the Act confers jurisdiction on the Labour Court/Tribunal to adjudicate the disputes mentioned in the said schedule, and the same cannot be circumvented by way of a Writ Petition under Article 226 of the Constitution of India, 1950.

61. It is settled law that writs are not ordinarily to be issued against private persons, or bodies which is not ‘State’ or ‘Instrumentalities of State’ as enumerated under Article 12 of the Constitution of India. Though it is true that writs can be issued against private persons in discharge of public duties or functions, question of whether such discretion is to be exercised depends on the party against which it is proposed to be issued, the nature of relief claimed as against the said party and the nature of duty performed by such private body or



62. In *Chemosyn (Private) Ltd. v. Kerala Medical and Sales Representatives Association* reported in *1997 SCC OnLine Ker 77*, the Kerala High Court dealt with a question of whether a Trade Union was amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India, 1950. In the said case, a Writ of Mandamus was sought as against the Respondent Association which was a Trade Union. Answering the question in negative, the High Court held as thus:

“1. The question whether a trade union registered under the Indian Trade Unions Act, 1926, is amenable to the writ jurisdiction of the Court falls for decision in this writ petition. The first petitioner is a private limited company carrying on business of manufacturing and marketing pharmaceuticals. The second petitioner is a citizen of India having substantive interest in the first petitioner. The third petitioner is the manager of field operations of the regional office of the company.

...

9. Petitioners herein can succeed only if the first respondent union would fall within the meaning of “other authorities” having a public duty or public responsibility. Applying the tests which are well established it can be seen that a trade union registered under the Trade Unions Act is neither an instrumentality nor an agency of the State discharging public functions or public duties.

10. The trade union as defined in S. 2(h) of Trade Unions



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Act means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employer or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.

11. Any person who has attained the age of fifteen years may be a member of a registered trade union subject to any rules of the trade union to the contrary.

12. The State has no deep or pervasive control or domination in the composition or function of the union. There need not be any substantial financial assistance by the Government. A trade union, a body corporate, is not a statutory body. It is not created by statute or incorporated in accordance with the provisions of a statute.

13. The activities of the union are not closely related to Governmental functions and are not of public importance. The privileges conferred or the immunities enjoyed by the union do not impose any public duty on the part of the union. There is no scope for expanding the content of the expression “authority” to cover a trade union. In this view it has to be held that the first respondent is not amenable to the jurisdiction of this Court under Art. 226 of the Constitution of India. There is no scope for issuing any writ of mandamus as prayed for. The allegations in the original petition do not disclose any vad ground for issuing any writ compelling respondents 2 and 3 who are public officers.

14. In the result, the original petition is dismissed. There shall be no order as to costs.”

63. In *Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir*



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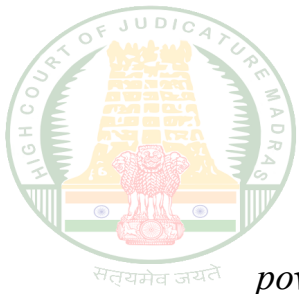
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reported in (2022) 5 SCC 345, the Hon'ble Supreme Court while deciding on whether a Writ Petition could have been filed claiming a relief as against an Asset Reconstructing Company, which was a private entity, held as thus:

“12. Even otherwise, it is required to be noted that a writ petition against the private financial institution – ARC – appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable.”

64. On the issue of when a private body/person can be said to perform a public duty or function, and against whom a writ under Article 226 of the Constitution can be issued, the Hon'ble Supreme Court in **K.K. Saksena v. International Commission on Irrigation and Drainage** reported in (2015) 4 SCC 670, held as follows:

“33. ...However, under Article 226 of the Constitution, the



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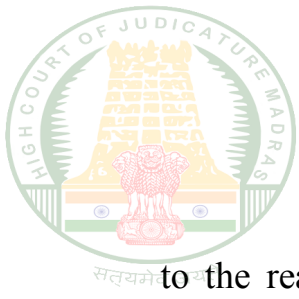
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power of the High Court is not limited to the Government or authority which qualifies to be a 'State' under Article 12. Power is extended to issue directions, orders or writs "to any person or authority". Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also 'for any other purpose'. Thus, power of the High Court takes within its sweep more "authorities" than stipulated in Article 12 and the subject matter which can be dealt with under this Article is also wider in scope."

After considering a catena of its own decisions, the Hon'ble Supreme Court of India in ***K.K.Saksena (supra)***, further held as thus:

*"45. On the other hand, even if a person or authority does not come within the sweep of Article 12 of the Constitution, but is performing public duty, writ petition can lie and writ of mandamus or appropriate writ can be issued. However, as noted in **Federal Bank Ltd. [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733]**, such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to perform such a statutory function."*

65. In the present case, the 5th Respondent Trade Union, against which a Writ of Declaration, in addition to certain positive reliefs which are in the nature of a mandamus has been sought for, cannot be said to be performing public duty. The 5th Respondent union does not run on state funding and the union as such is not under liability to discharge a specific function under any statute, so as to compel it to perform such specific statutory function. Further, merely due



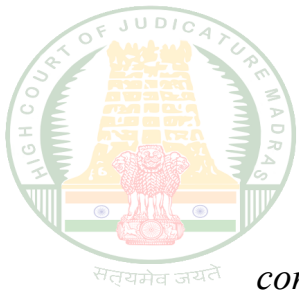
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to the reason that the Petitioner is a “public utility service” as defined under Section 2(n) of the Act, to which there is no dispute by either parties, the workers employed with the Petitioner or the Trade Unions formed by such workmen do not become amenable to the Writ Jurisdiction of the High Court.

66. At this juncture, it is important to address the reliance of the Learned Senior Counsel for the Petitioner, on *A.Saravanan vs. The Government of Tamil Nadu and Ors.* reported in *MANU/TN/0142/2023*, wherein in an identical case of a relief of Mandamus sought against Trade Unions of two public sector undertakings, this Hon’ble Court issued an ad-interim *ex-parte* relief *vide* a detailed order dated 09.01.2023, issuing interim directions restraining the unions from indulging in illegal strikes. It is important to extract the relevant portions of the said order, considering the similarity of the reliefs sought in the Writ Petition therein, and to distinguish the same from the present case:

“6. Learned Senior Counsel further submitted that by virtue of Section 22(1)(d) of the ID Act, during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings, no person employed in public utility service shall go on strike in breach of the contract. Learned Senior Counsel further contended that the petitioner is a



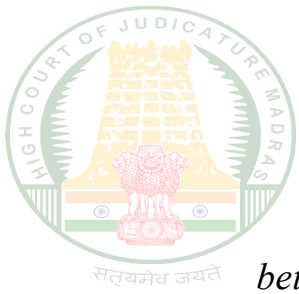
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consumer of electricity which is produced and distributed by the fourth respondent Corporation for industrial, commercial and domestic purposes. The service conditions of the employees of the fourth respondent Corporation are governed by bilateral discussions and arrangements as between the parties and, therefore, the trade unions ought not to have issued strike notice proposing to go on strike from 10.1.2023.

7.Learned Senior Counsel urged that the fourth respondent TANGEDCO, being a public utility service under Section 2(n)(iv) of the ID Act, if a strike notice is issued, the conciliation proceedings is deemed to have commenced in terms of Section 20 of the ID Act. He would submit that Section 20 of the ID Act clearly says that the conciliation proceedings shall be deemed to have commenced on the date on which a notice of strike or lock-out under Section 22 is received by the Conciliation Officer and once the conciliation proceedings commenced under Section 20 of the ID Act, then Section 22 would come to a play against the Union. Although a detailed charter of demands has been given by respondents 6 to 16, pursuant thereto, conciliation proceedings have already commenced and the fourth respondent, being a public utility service falling under Section 2(n)(iv) of the ID Act, respondents 6 to 16 are not legally entitled to proceed with a strike.

9.Mr.N.Manoharan, learned counsel appearing for the petitioner in W.P. No. 724 of 2023, by placing on record the decision of the Apex Court in the case K.Umesh Nayak, supra, submitted that strike is illegal if it contravenes the provisions of Sections 22, 23 or 24 of the ID Act or of any other law or of the terms of employment depending upon the facts of each case. He would submit that in K.Umesh Nayak, supra, the Apex Court observed that "it is abuse by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute



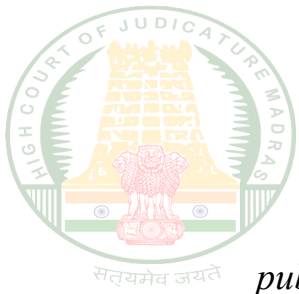
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between them and in addition to the total cession of work, it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, irritation strike or staying at work but deliberately doing everything wrong, running-sore strike".

10.Learned counsel would further submit that the Apex Court further observed in K.Umesh Nayak, supra, that the cessation or stoppage of work-whether by the employees or by the employer-is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike has tried to regulate it along with the right of the employer to lock-out and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. In this context, when conciliation proceedings have already commenced and parties are peacefully negotiating with each other and, in addition thereto, the first respondent also, as canvassed by learned Senior Counsel Mr. K.M. Vijayan, invited the members of Trade Unions/Associations to participate in the wage revision meeting scheduled to be held on 9.1.2023, there is no justification for them to again resort to a strike from 10.1.2023 onwards. Therefore, he prays for an order of interim injunction.

11.Mr.J.Ravindran, learned Additional Advocate General, assisted by Mr. D.R. Arunkumar, learned counsel, for the fourth respondent in W.P. No. 724 of 2023, supported the arguments advanced by learned counsel for the petitioners. Learned Additional Advocate General has also relied upon the same decision of the Apex Court in the case of K.Umesh Nayak, supra and submitted that the members of the Trade Unions/Associations without even realizing that the fourth respondent/TANGEDCO is a



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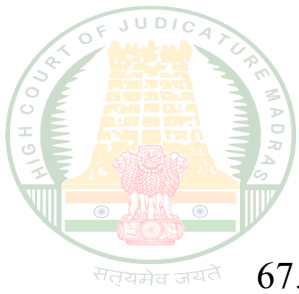
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public utility service falling within the ambit of Section 2(n)(iv) of the ID Act have issued a notice for strike. He added that when the conciliation proceedings have commenced, there is statutory bar under Section 22(1)(d) of the ID Act to go on strike.

17.In the case on hand, learned Additional Advocate General submitted that if strike by the members of the Trade Unions/Associations of the TANGEDCO takes place, the entire State shall stand affected.

18.Since the fourth respondent and the first respondent have already initiated conciliation proceedings and the same are taking place even today and since both parties are actively participating in the conciliation proceedings, they ought to have waited for the outcome thereof. Therefore, in view of Section 22(1)(d) of the ID Act, prima facie, in our considered view, such a move for strike is not legally sustainable in law. As we have highlighted in the preceding paragraphs, when the fourth respondent is public utility service covered under Section 2(n)(iv) of the ID Act, if the strike is allowed to take place, the Aavin may not able to supply milk to the babies, children and elderly people; hospital authorities and Doctors may not able to cater the needs of the patients which will affect the lives of patients. Similarly, strike by the employees of the fourth respondent would push the State of Tamil Nadu into dark.

19.In such view of the matter, it would be appropriate to grant an order of ad-interim injunction restraining the members of respondents 6 to 16 in W.P. No. 646 of 2023 and respondents 5 to 15 in W.P. No. 724 of 2023 from in any way indulging in any illegal strike or any kind of agitation either within the premises or outside the premises or in the vicinity of the fourth respondent Corporation on 10.1.2023 or from 10.1.2023 onwards.”



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67. While it is true that the above orders have been passed in Writ Petitions by a Division Bench of this Court, the said order was an *ad-interim ex-parte* order, where this Court did not have the occasion to deal with the issue of maintainability at the final stage, as the Writ Petitions were subsequently infructuous. It is worthwhile to note that the above Writ Petitions were Public Interest Litigations and only interim orders were issued.

68. Another reason why a Writ cannot be issued against a Trade Union merely because a public utility service is involved is that, the procedure contemplated under Section 22 of the I.D. Act, 1947 i.e., requirement of a notice, conciliation proceedings and mandatory referral of such dispute by the Appropriate Government to the Tribunal/Court, is solely for a public utility service, and such mechanism would be rendered nugatory if writ petitions are held maintainable on the ground that such reliefs were sought against Trade Unions which pertain to public utility services. For industries which are not public utility services, Section 23 of the Act is applicable. Therefore, Section 22, being a more specialized mechanism, is to be strictly adhered to.

69. Discussing both the above preliminary grounds, on entertainability of



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a Writ of Declaration, and its maintainability as against a Trade Union, this

Hon'ble Court in ***Bharat Petroleum Corporation Ltd. v. Petroleum Employees***

Union & others reported in ***2011 SCC OnLine Mad 933***, discussed a very

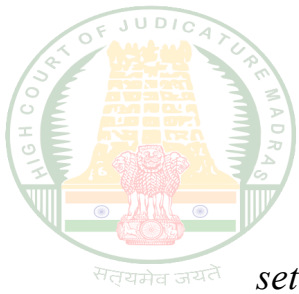
similar issue and held as thus:

“11. At the outset, it must be stated that the issuance of prerogative writs, that too, against private persons, endowed with any statutory or public duty can only be in a rarest of the rare cases and the Courts have always held that it is only discretionary in nature. The conduct of the writ petitioner in moving Courts at repeated intervals all over India by frittering away public funds with such a litigation is highly unwarranted and should be encouraged. Therefore, this Court heard arguments both on the maintainability as well as the desirability of entertaining the writ petitions at repeated intervals.

...

17. The attempt of the petitioner to come before this Court seeking for a declaratory relief is an exercise in futility. Even on previous occasions, the petitioner had come forward with prayers claiming similar relief and declarations have been made to the effect that going on a strike pending a reference will be an illegal strike. When it has been patently made as a part of legal provision, the Court need not repeatedly grant declaratory relief to the same effect that too, between the same parties.

18. What is more important is that the concept of a strike is a creation under the I.D. Act, which is a special statute and that statute itself prescribes the remedies in case of any illegalities being committed. The decision of the Supreme Court reported in (1976) 1 SCC 496 [Premier Automobiles Ltd. v. K.S. Wadke],



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settles the legal issue regarding the above aspect. The Industrial Disputes Act is a comprehensive and self- contained code insofar as it speaks and the enforcement of rights created thereby can only be through the procedure laid down therein. Neither the civil court nor any other tribunal or body can award relief. ...

...

20. Therefore, the writ petitioner cannot come to this Court each time when the workmen or their respective trade unions issue strike notices and seek for a similar relief. But, on the contrary, they can exercise their managerial power and bring about normalcy by taking appropriate action in terms of relevant laws as are available to them. The present declaratory relief is one based upon the provisions of the I.D. Act and no other rights under any other laws are claimed by the petitioner. They must be directed to approach the forums created under the I.D. Act and must be told that remedy by way of writ jurisdiction under Article 226 of the Constitution of India is not available to them.”

70. But, in extreme circumstances, the High Court, under Article 226 of the Constitution of India, 1950, indeed has the power to issue such directions to any parties, including private bodies such as Trade Unions, if such proposed strikes by Trade Unions or lockouts by industrial establishments would affect the public at large or endanger their fundamental rights, for example, affect the supply of essential services/commodities to the society, as done by the Division Bench of this Court through the interim order in a Writ Petition cited above. In doing so, the High Court would be acting in exercise of the plenary jurisdiction



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conferred upon it under Article 226. Such exercise of such plenary powers is to be sparingly done, as held by the Hon'ble Supreme Court in ***Veeru Devgan v. State of Tamil Nadu*** reported in (2008) 17 SCC 137, as follows:

“28. No doubt the High Court was exercising plenary jurisdiction under Article 226 of the Constitution. To us, however, even plenary powers must be exercised judicially and judiciously on the basis of facts before the Court and on well-settled principles....”

71. In ***Harnek Singh v. Charanjit Singh*** reported in 2005 (8) SCC 383, the Hon'ble Supreme Court while considering the exercise of plenary powers under Article 226 of the Constitution when an alternate remedy was available, held as thus:

“15. Prayers (b) and (c) aforementioned, evidently, could not have been granted in favour of the petitioner by the High Court in exercise of its jurisdiction under Article 226 of the Constitution. It is true that the High Court exercises a plenary jurisdiction under Article 226 of the Constitution. Such jurisdiction being discretionary in nature may not be exercised inter alia keeping in view the fact that an efficacious alternative remedy is available therefor.”

72. The above position is also neatly summed up by a Division Bench of the Calcutta High Court in ***Gandhi Memorial Girls' High School and Others v. State of West Bengal*** reported in 2022 SCC OnLine Cal 1327:



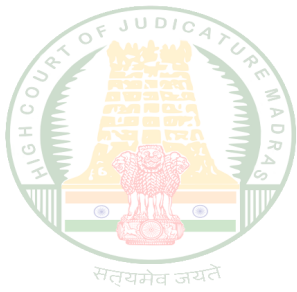
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“6. The question is still begging an answer whether in exercise of plenary jurisdiction, the court can pass an order which is otherwise conferred upon the statutory authority and inflicted the punishment without observing and/or following the statutory procedures and the norms provided therefor. The edifice of the Constitution stand upon the equality, fraternity, respect for each other and the adherence of the principles of natural justice. Nobody shall be punished or condemned without affording an adequate opportunity to defend or a right of hearing.

7. Time and again, the Supreme Court as well as the High Court has imposed the self-restraint in exercise of the plenary jurisdiction under Article 226 of the Constitution of India in not entertaining the writ petitions nor the order to be passed transgressing and/or abrogating the statutory provisions which is applied in the given facts of the case. The concept of justice and its protection is a major role of the court but it should be remembered that while embarking a journey of imparting justice, the injustice should not be caused to the other. All the courts in the country and the judicial system stands for rendering the justice and, therefore, it invites more robust mechanism eroding the misuse and abuse in pursuit thereof which brings more responsibilities in adjudicating the right of the litigating parties in an adversible system.

...

16. In view of the law enunciated from the above report there is no ambiguity to hold that the plenary power reserved upon the court is somewhat brindled with and is not to travel in an unchartered ocean having no limitations but within the circumference of the statutory provisions of law applicable in regard to a particular subject. Such power is eminent and apparent from the relevant provisions of Article 226 of the Constitution but must embark its journey on the statutory terrain to prevent any misuse or abuse of such powers.”



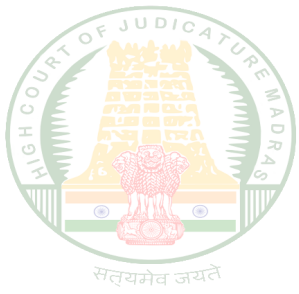
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73. When the High Court must exercise such discretion to interfere, in spite of availability of an alternative remedy, is explained in ***Harbanslal Sahnia v. Indian Oil Corporation*** reported in ***(2003) 2 SCC 107***:

“7. ...suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged...”

74. In the present case, none of the above four contingencies are met. The apprehension expressed by the learned Senior Counsel for the Petitioner, that a strike may affect law and order putting the Petitioner industry in a prejudicial position, is not entirely unfounded. However, that is a separate issue, which the Petitioner is always open to take it up with the authorities responsible for law enforcement, who would be bound to ensure that the law and order is maintained, and failure of which will invite the interference of this Court in respect of such law and order issues.



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75. There is another reason why legality or illegality of a strike is to be determined by the Tribunal/Court and not by the High Court. The I.D. Act, 1947 and the Industrial Disputes (Central) Rules, 1957 framed thereunder provide for adjudication based on evidence recorded by the Tribunal/Court. The relevant provisions in this regard are Section 11 of the Act and Rules 10B, 15, and 24 of the 1957 Rules.

76. In this context, it is apposite to note the judgment of the Hon'ble Supreme Court in *Syndicate Bank v. K. Umesh Nayak* reported in (1994) 5 SCC 572, where a Writ Petition was filed by the workmen challenging a circular issued by a bank to the effect that if the workmen were to go ahead with a strike, the principle of 'no work no pay' would be followed. The High Court, determining the validity of such a circular, went into the question of legality of the strike and held that such a strike was both illegal and unjustifiable. The Hon'ble Supreme Court, commenting on the order passed in the Writ Petition, held as follows:

“25. We, therefore, hold endorsing the view taken in T.S. Kelawala [(1990) 4 SCC 744 : 1991 SCC (L&S) 170 : (1991) 15 ATC 747] that the workers are not entitled to wages for the strike



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period even if the strike is legal. To be entitled to the wages for the strike period, the strike has to be both legal and justified. Whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Under the Act, the question has to be decided by the industrial adjudicator, it being an industrial dispute within the meaning of the Act.

26. In the present case the High Court, relying on Churakulam Tea Estate [(1969) 1 SCR 931 : AIR 1969 SC 998 : (1969) 2 LLJ 407] and Crompton Greaves [(1978) 3 SCC 155 : 1978 SCC (L&S) 447] cases has held that the strike was both legal and justified. ... We are afraid that the High Court has exceeded its jurisdiction in recording the said findings. It is the industrial adjudicator who had the primary jurisdiction to give its findings on both the said issues. Whether the strike was legal or illegal and justified or unjustified, were issues which fell for decision within the exclusive domain of the industrial adjudicator under the Act and it was not primarily for the High Court to give its findings on the said issues. The said issues had to be decided by taking the necessary evidence on the subject. ... Further, the question whether the implementation of the said agreements was of such an urgent nature as could not have waited the outcome of the conciliation proceedings and if necessary, of the adjudication proceedings under the Act, was also a matter which had to be decided by the industrial adjudicator to determine the justifiability or unjustifiability of the strike.

27. It has to be remembered in this connection that a strike may be illegal if it contravenes the provisions of Sections 22, 23 or 24 of the Act or of any other law or of the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the



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workmen, the cause which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules and regulations etc. An enquiry into these issues is essentially an enquiry into the facts which in some cases may require taking of oral and documentary evidence. Hence such an enquiry has to be conducted by the machinery which is primarily invested with the jurisdiction and duty to investigate and resolve the dispute. The machinery has to come to its findings on the said issue by examining all the pros and cons of the dispute as any other dispute between the employer and the employee.

...

32. We are, therefore, more than satisfied that the High Court in the present case had erred in recording its findings on both the counts, viz., the legality and justifiability, by assuming jurisdiction which was properly vested in the industrial adjudicator. The impugned order of the High Court has, therefore, to be set aside.”

The extracted portion of the above judgment of the Hon’ble Supreme Court applies on all fours to the present case. Questions of legality and justifiability of a strike/lock-out are necessarily to be decided by the statutory forum and not by the High Court in a Writ Petition.

77. In addition to the above, the questions of legality and justifiability, which are questions of fact are to be decided after consideration of evidence recorded by the Court/Tribunal for the sole reason that such a determination has



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serious consequences, a few of which are as follows:

- i. Cancellation of Registration of a Union under Section 9F(a)(iv) of the I.D. Act, 1947.
- ii. Whether there was 'continuous service', as defined under Section 25B of the Act.
- iii. Penalty of imprisonment or fine, under Section 25U of the Act for having committed an unfair labour practice.
- iv.. Penalty of imprisonment or fine, under Section 26 of the Act.
- v. Whether protection under Section 36 would apply to a person who was expelled by a Trade Union for not having participated in a strike.
- vi. Whether the principle of 'no work, no pay' would be attracted in a specific case.

78. When such serious questions of fact hinges on determination of question of illegality of the strike, it is neither possible nor permissible for this Court to give a determinative finding akin to a fact-finding authority or act as a court of first instance.

79. Taking note of all the above, this Court comes to the conclusion that the present Writ Petition for a Writ of Declaration and certain positive directions, almost in the nature of a mandamus, against the 5th Respondent



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Trade Union, is neither maintainable nor is entitled to be entertained in view of the statutory mechanism having already been set in motion. Consequently, for the above reasons, the question of legality of the strike/strike notice issued by the 5th Respondent is to be determined in accordance with the procedure as contemplated under the I.D. Act, 1947.

80. Having held as thus on the preliminary issues, though this Court need not labour any further on the other contentions that were raised on the point of legality of the strike or the binding nature of the settlement entered into under Section 12(3) of the Act, considering the peculiar nature of the present case and parties to the dispute, where orders were passed by this Court, as recently as in 2023, and since various other grounds on which maintainability/non-maintainability were argued in the present Writ Petition, the following observations become necessary to alleviate any further doubts on the present Writ Petition, and also in generally entertaining Writ Petitions challenging notices under the I.D. Act, 1947.

i.Regarding the formal Validity of the Notice of Strike (Form L):

81. It was argued by the Learned Senior Counsel for the Petitioner that the strike notice dated 01.08.2024 issued by the 5th Respondent was not in



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conformity with the rules, more specifically Rule 71 read with Form L mandates issuance of notice to Asst. Labour Commissioner/Regional Labour Commissioner. As the 5th Respondent has not issued the strike notice dated 01.08.2024 to such authorities, the said notice is illegal.

82. Rule 71 of the Industrial Disputes (Central) Rules, 1957 and Form L to which it refers to, reads as follows:

“Rule 71. Notice of strike

(1) The notice of strike to be given by workmen in a public utility service shall be in Form L.

(2) On receipt of a notice of a strike under sub-rule (1), the employer shall forthwith intimate the fact to the Conciliation Officer having jurisdiction in the matter.

FORM L

[See rule 71]

***FORM OF NOTICE OF STRIKE TO BE GIVEN BY [UNION/WORKMEN] IN
PUBLIC UTILITY SERVICE
NAME OF UNION***

[Names of five elected representatives of workmen.]

Dated the.....day of20.....

To

(The name of the employer).

Dear Sir/Sirs,

In accordance with the provisions contained in sub-section (1) of section 22 of the Industrial Dispute Act, 1947 I/We hereby give you notice that I propose to call a strike/We propose to go on strike on.....20....., for the reasons explained in the annexure.

Yours faithfully,



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Secretary of the Union

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- [Five representatives of the workmen duly elected at a meeting held on(dated), vide resolution attached.]

ANNEXURE

Statement of the Case.

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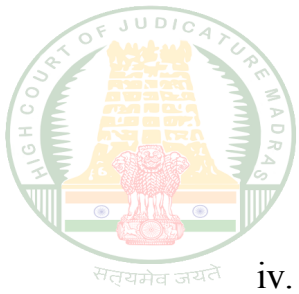
- (1) Assistant Labour Commissioner (Central).....
(Here enter office address of the Assistant Labour Commissioner (Central) in the local area concerned).
- (2) Regional Labour Commissioner (Central).....Zone.
- (3) Chief Labour Commissioner (Central), New Delhi.

83. The answer to the above argument is already available in the provisions concerning the notice of strike:

i. Clause (a) of sub-section (1) of Section 22 of the Act provides for issuance of notice of strike 'to the employer'. There is no provision in the statute mandating such issuance of a notice by the workmen to the authorities (commissioners) or the conciliation officers.

ii. Rule 71(2) itself provides that on receipt of notice of strike from the workmen, it is the employer who has to intimate the same to the Conciliation Officer having jurisdiction in the matter.

iii. Form L (*towards its end*) only provides that a copy of the notice to be sent to Asst./Regional Labour Commissioner, and the notice of strike is still addressed to the employer (*top part of Form L*).



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iv. No doubt, a copy of the said notice of strike is to be sent to such authorities by the workmen themselves. However, the Industrial Disputes (Central) Rules, 1957 itself provides adequate procedures for both scenarios, i.e., whether or not the Conciliation Officer is in receipt of such notice and when the Conciliation Officer receives no notice.

Rule 9 of Industrial Disputes (Central) Rules, 1957 is extracted hereunder:

“9. Conciliation proceedings in public utility service —

(1) The Conciliation Officer, on receipt of a notice of a strike or lock-out given under rule 71 or rule 72, shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

(2) Where the Conciliation Officer receives no notice of a strike or lock-out under rule 71 or rule 72 but he considers it necessary to intervene in the dispute he may give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be inserted therein.”

v. Therefore, the Conciliation Officer, who at times happens to be the Asst. Labour Commissioner, has the power to intervene, as per Rule 9, even if such copy of notice is not sent by the workmen at the time of issuance of such

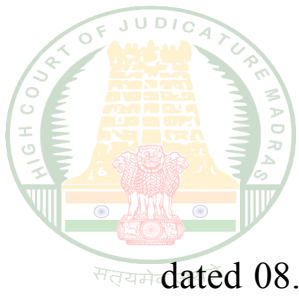


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vi. Irrespective of all the above, the statute itself provides that it shall be the duty of the employer to bring to the attention of the appropriate Government about the issuance of a notice of strike by such workmen. Sub-section (6) of Section 22 of the Act reads for as follows:

“(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.”

84. Merely because the 5th Respondent may not have issued a copy of the letter to the Regional/Asst. Labour Commissioner, it does not vitiate the formal validity of such notice. In fact, in the present case, the 5th Respondent seems to have issued a copy of the notice to “The Chief Labour Commissioner (Central), New Delhi” who is an authority certainly higher in rank to that of the Asst./Regional Labour Commissioner. Even going a step further, the 2nd Respondent/Regional Labour Commissioner had taken cognizance of the notice of strike and had commenced conciliation proceedings vide his letter



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dated 08.08.2024. Therefore, the technical plea of formal invalidity of the strike notice also deserves to be rejected.

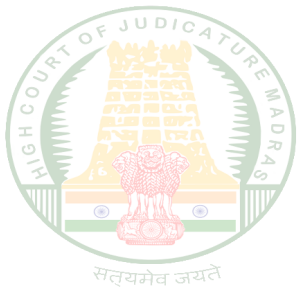
ii. Regarding the argument that issuance of notice of strike is in breach of the Memorandum of Understanding under Section 12(3):

85. It was argued by the learned Senior Counsel for the Petitioner that the notice of strike has been issued in violation of the provisions of the Memorandum of Understanding dated 07.08.2020 wherein it was allegedly accepted by the Unions including a recognized Union that they would not resort to strikes in respect of the demands that have already been met in the said Memorandum of Understanding. The relevant clauses of the said Memorandum that were pointed out are extracted herein below:

“3.0. The Unions representing contract workmen agreed as under:-

3.1.The union categorically agreed that they would not demand further increase in wages or allowances or any other issue whatsoever with or without financial implication during the period of this settlement which will remain valid till 31-12-2026.

3.2.The unions also categorically agreed not to resort to any agitation or strike during the period of this settlement failing which the additional wages, enhancement of allowances, introduction of new allowances and other



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benefits now agreed shall stand withdrawn as per the provisions of respective statute.

3.3.The unions also assured that the contract workmen would work with sincerity, dedication and devotion in the best interest of NLCIL and ensure higher levels of attendance production and productivity through the contractor employers.

4.0. Period of Settlement: *The above terms of settlement shall be binding on all the parties effective from 01-01-2020 to 31-12-2026. Further change, if any, in the composition of the status of the unions shall not affect the terms of this settlement. Both parties shall confirm the fact of implementation of this settlement within 30 days to the conciliation officer, failing which it will be presumed that the settlement is implemented in full.*

5.0.The parties agreed to resolve the disputes/difference that may arise, if any, in future by mutual discussions without resorting to any concerted action/agitation path.”

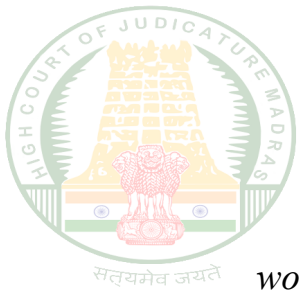
86. It was contended by the learned Senior Counsel for the 5th Respondent that the said Memorandum of Understanding was not binding on the 5th Respondent Union, for the reason that it was not a signatory to the settlement. As rightly contended by the learned Senior Counsel for the Petitioner, such contention of the 5th Respondent is contrary to the scheme of the



87. There are two different settlements that can be arrived at under the Scheme of the Act, one, in the course of conciliation proceedings under the Act, (*Section 18(3) read with Section 12(3)*) and the other, settlement is entered into by the parties otherwise than in course of conciliation proceedings (*Section 18(1)*). While the latter binds only the parties to such agreement as per Section 18(1) of the Act, the former binds all parties mentioned in sub-section (3) of Section 18.

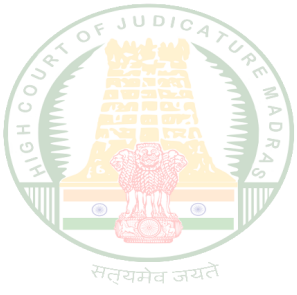
88. As rightly pointed out by the learned Senior Counsel for the Petitioner, it is settled law that a settlement under Section 12(3) of the Act binds not only the signatories, but all the parties to the industrial dispute as pointed out under Section 18(3). The relevant portion of the judgment of the Hon'ble Supreme Court of India in ***P.Virudhachalam and Others v. Management of Lotus Mills and another*** reported in (1998) 1 SCC 650, which was also relied on by the learned Senior Counsel for the Petitioner, states as follows:

“8. The aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which



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would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an arbitration award. They all stand on a par. It is easy to visualise that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. ... It is trite to observe that all settlements must be based on written agreements and such written agreements get embedded in settlements. But all agreements may not necessarily be settlements till the aforesaid procedure giving them status of such settlements gets followed. In other words, under the scheme of the Act, all settlements are necessarily to be treated as binding agreements between the parties but all agreements may not be settlements so as to have binding effect as provided under Section 18(1) or (3) if the necessary procedure for giving them such status is not followed in given cases. On the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during conciliation proceedings on 5-5-1980 between Respondent 1-management on the one hand and the four out of five unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of the signatory unions but also on the remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding on even future workmen as laid down by Section 18(3)(d), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act.



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89. It is not disputed that the Memorandum of Understanding dated 07.08.2020 is a settlement under Section 12(3) through conciliation proceedings. Therefore, the said settlement would clearly be binding on the 5th Respondent, unless the 5th Respondent is able to demonstrate that it was not even a party to the industrial dispute which necessitated to the conciliation proceedings that culminated into the said settlement and that it was not summoned by the Conciliation Officer to appear in the proceedings, as required under Section 18(3)(a) and (b) of the Act. It is unfathomable as to how the 5th Respondent, being a Contract Workmen Trade Union (ஒப்பந்த தொழிலாளர்கள் சங்கம்), can claim that it did not participate in the proceedings or that it was not a party to the dispute which resulted in the said settlement.

90. Having said so, at the same time, this Court cannot rule on the legality of the notice of strike through a comparison of the contents of the strike notice as against the terms agreed to in the Memorandum of Settlement under Section 12(3) of the Act, to see if such notice of strike is in violation of the terms of the Settlement. It is for the parties to establish the same before the Tribunal/Court, which has the jurisdiction to determine the legality/illegality of the strike notice.



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This is also in line with the reasons that have been enumerated in the earlier part of this judgment.

iii. Regarding the argument that the Notice of Strike is frivolous and a clear dilatory tactic and that it cannot happen parallelly when proceedings are pending before the CGIT in I.D.No.11 of 2024:

91. It was the contention of the learned Senior Counsel for the Petitioner that the strike notice dated 01.08.2024 was nothing but a mere repetition of the earlier strike notice, pursuant to which the proceedings in I.D.No.11 of 2024 have already been initiated and is now pending before the CGIT. The demands that have been newly raised, which are five in number, also *prima facie* does not seem to concern the service conditions of the workmen so as to result in an industrial dispute. It was contended that strike notices are repeatedly being issued by the 5th Respondent to derail the earlier proceedings before the CGIT and to frivolously create problems within the workforce of the Petitioner.

92. The apprehension expressed on behalf of the Petitioner does not seem to be without merit. The Petitioner cannot be expected to run industries with the



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constant threat of a frivolous strike notice hanging over its head. Within a span of almost a year, the 5th Respondent alone has admittedly issued three strike notices, dated 01.06.2023, 29.01.2024 and 01.08.2024, which has resulted in at least three writ petitions and a contempt petition within the same time period.

93. This Court refrains from commenting upon the nature of both the earlier and the new demands raised by the 5th Respondent for the sole reason that an adjudication process is already pending before the CGIT in respect of the 16 chartered demands and in respect of the five new demands, the statute gives an option to the appropriate Government to apply its mind on whether such demands are frivolous or not, in accordance with the second proviso to sub-section (1) of Section 10, before referring it to CGIT/Labour Court under Section 10. Whether such referral or denial of referral could be put to challenge is another thing altogether, which stage has not arisen yet.

94. The question as to the illegality of issuance of notice of strike dated 01.08.2024 or conduct of a strike pursuant to such notice, during the pendency of proceedings in I.D.No.11 of 2024 before the CGIT, can also be decided only by the statutory forum which has already seized of the issue. Further, the



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question of legality of the strike will arise only when such a strike is actually resorted by the workmen. This Court cannot certify a strike to be legal or illegal even before it has been conducted, and any comment on the same would only be prejudicial to either parties, both of whom have the chance of leading in evidence to prove legality and/or justifiability of the strike/strike-notice. This is more so when the Fifth Schedule to the Act contains a series of unfair labour practices that may get triggered based on a finding of illegality of a strike notice. Therefore, interference on the above ground at this stage is not permissible.

iv. Regarding the argument that the issuance of strike notice is illegal and in contravention to the earlier order passed by this Court.

95. The Petitioner had filed a Writ Petition with a very similar relief in W.P.No.22626 of 2023 seeking to declare the strike, pursuant to the strike notice dated 01.06.2023, as illegal. Without getting into the merits, a consent order as follows was passed by this Court on 22.08.2023, based on the representations by the learned Senior Counsels for the Petitioner and the fifth Respondent: The operative portion of the order is extracted hereunder:

“7. In view of the consent view expressed by the learned



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Senior Counsel appearing for the petitioner, learned Senior Counsel as well as the learned counsel appearing for the fourth respondent and the learned Central Government Counsel appearing for the respondents 1 and 2, this Court pass the following order:

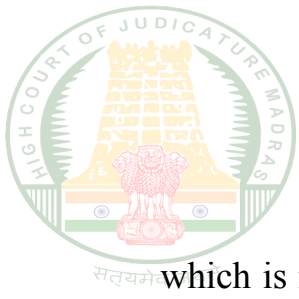
(i) The fourth respondent is permitted to make chartered demand with the Central Government, within a period of two weeks from the date of receipt of a copy of this order.

(ii) On receipt of the chartered demand from the fourth respondent, the Central Government shall hear the petitioner Corporation as well as the fourth respondent union and shall decide the issue strictly in terms of the Industrial Laws and shall pass appropriate orders, within a period of eight weeks from the date of receipt of the chartered demand.

(iii) The fourth respondent is directed to not to initiate any strike proceedings; not to create any law and order problem; and to not to interfere with the day to day affairs of the petitioner Corporation, till the disposal of the chartered demand made by them with the Central Government.

(iv) The petitioner Corporation is directed to not to initiate any disciplinary action as against the fourth respondent and its members, till the disposal of the chartered demand made by the fourth respondent with the Central Government.”

96. It is an admitted position that pursuant to the above order passed by this Court, the 5th Respondent submitted a list of demands with the Central Government and since the said demands could not be settled before the Conciliation Officer, they were referred by the Central Government to the CGIT,



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which is now pending in I.D.No.11 of 2024. It is the case of the 5th Respondent that the said direction was not complied with by the Central Government, constraining it to file a Writ Petition in W.P.No.6813 of 2024 seeking for such compliance, which according to the Petitioner is frivolous.

97. It is the case of the Petitioner that the Central Government, by referring the disputes to the Tribunal which is now pending as I.D.No.11 of 2024, has in effect complied with Paragraph 7(iii) of the order dated 22.08.2023 passed by this Court. The relief of declaration sought for by the Petitioner is neither connected to the above W.P.No.6813 of 2024 filed by the 5th Respondent or Cont.P.No.265 of 2024 filed by the Petitioner. Whether the new notice of strike dated 01.08.2024 is in violation of Paragraph 7(iii) of the consent order dated 22.08.2023 and whether the same would render it 'illegal' under Section 24 of the Act, is to be decided only by the Tribunal, merits of which proceedings cannot be gone into by this Court in the present Writ Petition.

98. Therefore, all the grounds raised by the Petitioner, alleging that the notice dated 01.08.2024 is illegal, cannot be decided at this stage by this Court. It is open to the Petitioner and the 5th Respondent to agitate all such grounds



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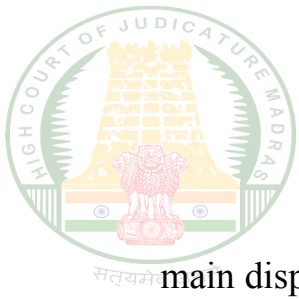
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before the appropriate forum if such disputes are referred by the Central Government under Section 10(1), and the Tribunal/Court (*if such dispute is referred*) is to decide the issue uninfluenced by this Order, as this Court has not expressed any opinion on the merits of the claims of the parties.

v. Regarding the argument that it would create severe law and order problems or stoppage of work at the Petitioner's industry should the workmen resort to a strike:

99. When a notice of strike is issued, there is always a threat of the workmen actually resorting to strike if their demands are not met by the employer. It is not unusual for the employer to take efforts to ensure that such a strike is not resorted to, which will ultimately result in the cessation of work, creating financial and other losses to an employer.

100. While it is understandable that the idea/ultimate relief behind the Writ Petition is to forbear the Unions from resorting to a strike, the High Court cannot be used as a forum for obtaining interim reliefs pending resolution of the



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main dispute. It is not that an employer, such as the Petitioner, is left remediless.

The appropriate Government, while referring the dispute to adjudication by a Court/Tribunal, has the option of prohibiting the continuance of a strike while referring the dispute under Section 10 to a Court/Tribunal. Sub-section (3) of Section 10 of the Act provides for as follows:

“(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.”

Therefore, when the statute itself specifically leaves it to the appropriate Government to decide on prohibition of the continuance of a strike, pending adjudication, the High Court cannot be called upon to step into the shoes of the appropriate Government and take a decision on the subject.

101. In addition to the above, it is also open to the Central Government under the Essential Services Maintenance Act, 1981 or the State Government under the Tamil Nadu Essential Services Maintenance Act, 2002 to issue an



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सत्यमेव जयते order for prohibition of a strike in respect of essential services.
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102. While this Court has chosen not to entertain the reliefs sought in the present Writ Petition for the reasons mentioned above, this Court is also duty bound to ensure that the authorities act swiftly in a manner in accordance with the procedure contemplated under the Act. In so far as the present strike notice dated 01.08.2024, it is imperative that certain directions are passed, since a conjoint reading of Sections 20, 22, 23 and 24 convey the following:

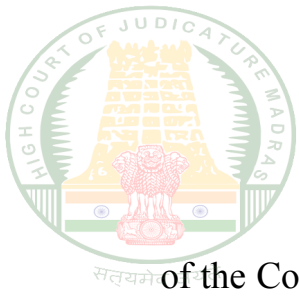
i. A strike would be illegal if it is commenced or declared either in contravention of section 22 or section 23, or if it is continued in contravention of sub-section (3) of section 10 or sub-section (4-A) of section 10-A.

ii. In so far as a public service utility is concerned, a strike cannot be called for unless the requirements of Section 22 of the Act have been met with.

iii. In so far as a public service utility is concerned, a strike cannot be commenced during the pendency of conciliation proceedings.

iv. A conciliation proceeding is deemed to have commenced on the date on which the notice of strike under Section 22 has been received by the Conciliation Officer.

v. A conciliation proceeding is deemed to have conclude when the report



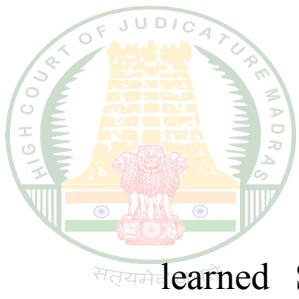
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of the Conciliation Officer is received by the appropriate Government, or when a reference is made under Section 10 by the appropriate Government during the pendency of the conciliation proceedings.

103. In the present case, as the strike notice issued by the 5th Respondent was dated 01.08.2024, going by the submissions of the learned Senior Counsels and taking into consideration the provision in Section 22(1)(b), the strike of the 5th Respondent had not commenced at the time of filing of the present writ petition, which was filed two days prior to the end of the 14-day period. Further, it is also evident that conciliation proceedings, in respect of the strike notice dated 01.08.2024, had already been commenced by the 2nd Respondent on 08.08.2024 and the Petitioner and the 5th Respondent in fact took part in the proceedings on 14.08.2024.

104. Though much was submitted on what transpired in the conciliation proceedings on 14.08.2024, the deemed conclusion of a conciliation proceeding in a case where a settlement is not arrived at, as mentioned in sub-section (2) of Section 20 is only when the appropriate Government receives a failure report from the Conciliation Officer. To this effect, it was rightly contended by the



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learned Senior Counsel for the Petitioner, by relying on *Arasu Viraivu*

Pokkuvarathu Oozhiyar Sangam vs. State Express Transport Corporation

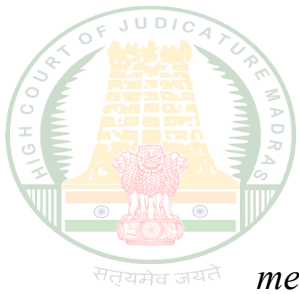
Ltd., and Others reported in ***2006 (3) L.L.N. 916***, that unless such report is received, the conciliation proceedings are not deemed to have been concluded.

The relevant portion of the above judgment is extracted as follows:

“9. Under these circumstances, the question that arises is whether the conciliation proceedings deemed to be terminated on signing of failure report by the Conciliation Officer or deemed to be continued till the failure report is received by the appropriate Government. In order to answer this question, it is necessary to note Sub-sec. (4) of S. 12 of the Act, which reads as under:

(4) If no such settlement is arrived at, the Conciliation Officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full settlement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

A mere look at this provision shows that if the Conciliation Officer finds during the conciliation proceedings that no settlement is arrived at between the disputing parties, then after closing the investigation, he has, as soon as practicable, to send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and has also to mention all other details as required to be



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mentioned in the report under S. 12(4) of the Act.

10. At this stage, it is necessary to refer to S. 20(2) of the Act, which is relevant for the purpose of this appeal and the provisions of S. 20 are as follows:

...

On a perusal of the above said provisions, it is seen that Sub-sec. (1) fixes the date of commencement of conciliation proceeding as the date on which a notice of strike or lock-out under S. 22 is received by the Conciliation Officer. As far as the non-public utility undertaking are concerned, the conciliation proceeding shall be deemed to have commenced on the date of the order referring the dispute to a Board. The provisions of Sub-sec. (2) apply to all conciliation proceedings, whether in regard to public utility service or otherwise. A conciliation proceeding under this sub-section shall be deemed to have concluded in the manner aforesaid. The conciliation proceeding therefore do not end when the report under S. 12(4) is submitted by the Conciliation Officer, but it ends when that report is received by an appropriate Government. The word "received" in Sub-sec. 2(b) obviously implies actual receipt of the report by the appropriate Government where no settlement is arrived at.

105. While the counter affidavit filed by the 5th Respondent mentions that the Conciliation Officer has closed the proceedings since the 5th Respondent did not sign the minutes on 14.08.2024, it is not clear if such a failure report has been drawn up and sent to the appropriate Government, in this case, the Central Government. Conclusion of conciliation proceedings is not dependent on

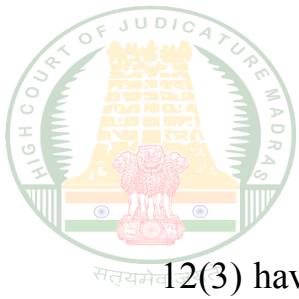


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whether or not the 5th Respondent signs the minutes. It is dependent only on “receipt of the report by the appropriate Government” as indicated in Section 20(2)(b). Therefore, as on date, the conciliation proceedings do not seem to have been concluded yet, and nothing has been brought to the knowledge of this Court which would otherwise indicate such conclusion. This is, of course, subject to the factum of whether or not the Central Government is in receipt of such failure report from the 2nd Respondent herein during the pendency of the present Writ Petition. In view of the above, this Court is constrained to pass a few directions to the 1st to 3rd Respondents, as enumerated in the Conclusion below, for the disposal of the present industrial dispute.

106. In fact, it is not only the dispute with the 5th respondent but also with the other recognized and registered Trade Unions. The demands of the subject strike notice seem to be merely the tip of the ice-berg. The dispute between the petitioner and the Trade Unions will not come to an end without an earnest effort from both the sides. The chequered history of disputes between the petitioner and the Trade Unions, and the repeated intervention of this Court only establishes that there seems to be no smooth relationship between the petitioner and the members of the Trade Unions in spite of a settlement under Section



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12(3) having been arrived at by the parties.
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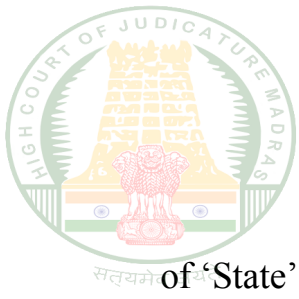
107. The 5th Respondent has been issuing strike notices one after the other, which has resulted in both the employer and the workmen approaching this Court time and again at every single step in the way. Trade Unions cannot use 'strike' as a weapon to get their demands attended to, every now and then. Strike notices cannot be issued at 'the drop of a hat'. The workmen force is expected to act in a manner that is practicable and use the extreme option of 'strike' only when it absolutely becomes necessary.

CONCLUSION AND DIRECTIONS:

108. Considering all the above, this Court comes to the following conclusions:

i. A Writ of Declaration seeking to declare a strike/strike notice cannot lie, when statutory forums under the Act have specifically been conferred with jurisdiction to decide industrial disputes, thereby rendering such writ petitions non-entertainable.

ii. Writ Petitions seeking the issuance of Writs/Directions exclusively against a Trade Union cannot be maintained, which is neither an instrumentality



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of 'State' nor performs any public function or duty.

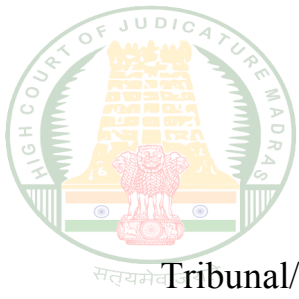
Iii. Legality or illegality of a strike/strike notice issued under Sections 22 or 23, cannot be directly questioned before the High Court in a Writ Petition under Article 226 of the Constitution of India, before first resorting to the statutory mechanism.

iv. Such a question of legality/illegality and justifiability of a strike/strike notice, which is essentially a question of fact, can be decided only by the Tribunal/Court under the Industrial Disputes Act, 1947, as laid down by a Constitution Bench of the Hon'ble Supreme Court in *Syndicate Bank v. K. Umesh Nayak* reported in (1994) 5 SCC 572.

Since this Court has not expressed any opinion on merits, certain specific directions regarding the disposal of the present dispute are:

i. If the 2nd Respondent Conciliation Officer has not issued a report yet under Section 12(4) to the appropriate Government regarding the conciliation proceedings that took place on 14.08.2024, the 2nd Respondent is directed to issue such report within a period of 7 days from the date of the present order.

ii. On receipt of such report, the Central Government/1st Respondent is directed to take a decision on whether such disputes are to be referred to the



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Tribunal/Court under Section 10(1), within a period of two weeks thereafter.

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iii. The procedure under the Act is to be adhered to for subsequent stages, depending upon whether the disputes get referred to the Tribunal/Court.

iv. As I.D.No.11 of 2024 is still pending before the CGIT in spite of the order of reference passed by the Central Government/1st Respondent dated 16.01.2024, requiring an award to be passed within three months, the CGIT is directed to dispose of I.D.No.11 of 2024 as expeditiously as possible without any further delay, within a period of two months from the date of receipt of a copy of this order.

v. Needless to say, it would be open for both the Petitioner and the 5th Respondent and/or all other Unions to amicably settle the disputes, and this Court would urge the parties to do so, even if it is remotely possible.

109. Unless and until the petitioner, the 5th Respondent and other Trade Unions sit for a dialogue on the simmering, unresolved, long-pending and burning disputes, threat of strikes and litigations against strikes will remain endless like the possibility of the eruption of a volcano. A forest fire starts from a mere spark. The counter affidavit of the 5th Respondent reveals there are as many as six conciliation proceedings invoked at its behest, which are pending



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unresolved even as on today. In the interest of the Petitioner Company, which is a 'Navaratna Company' and an important Public Sector Undertaking of the Central Government, and keeping in mind the operations of the Petitioner and its efficiency, it is imperative that the Central Government takes urgent measures to resolve all disputes between the management of the Petitioner and the recognized and registered Unions. This Court therefore passes the following directions:

a. The Central Government is hereby directed to form a High-Level Committee, within a period of six months from the date of receipt of a copy of this order, consisting of:

(i) Secretary, Ministry of Labour and Employment, Government of India, or any person nominated by the Secretary.

(ii) Secretary, Ministry of Coal, Government of India, or any person nominated by the Secretary.

(iii) Deputy General Manager (HR/IR), NLC India Limited.

(iv) District Collector, Cuddalore,

(v) Representatives of recognized and registered Trade Unions.

b. Such High-Level Committee is directed to look into all pending industrial disputes raised by the recognized and registered Trade Unions



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operating in the Petitioner Company, including grievances of the Petitioner Company if any, and explore the possibility of putting a quietus to all the pending industrial disputes.

c. It is made clear that the observations and directions issued herein above shall not, in any manner, affect the pendency of such disputes before the Conciliation Officer/Tribunal/Court, and the said proceedings are to continue and be disposed of, as expeditiously as possible, in accordance with the framework under the Industrial Disputes Act, 1947.

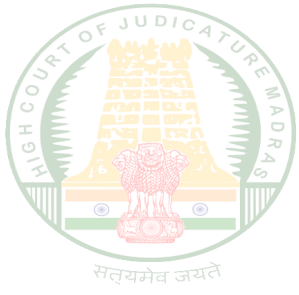
110. Resultantly, the Writ Petition is disposed of in terms of the above directions. Connected Writ Miscellaneous Petitions are closed. There shall be no order as to costs.

04.10.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
pam

To

1. The Deputy Chief Labour Commissioner – Central,
No.4, Haddows Road, Shastri Bhavan, Chennai – 600 006.



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2. The Regional Labour Commissioner – Central,
No.4, Haddows Road, Shastri Bhavan, Chennai – 600 006.

3. The Assistant Labour Commissioner (Central),
DA-2, BSNL Staff Quarters, Jaya Nagar,
Reddiarpalayam, Puducherry – 605 010.

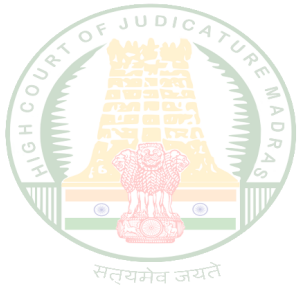
4. The Collector,
Office of the Collectorate,
Cuddalore, Cuddalore District.

5. The Superintendent of Police,
No.18, Pudukuppam New Street, Meenakshi Nagar,
Pudukuppam, Cuddalore – 607 001.

Note: In addition to the above, Registry is directed to issue a copy of this order forthwith to:

6. Ministry of Labour and Employment
Government of India,
Shram Shakti Bhawan Rafi Marg,
New Delhi-110001
and

7. Ministry of Coal
Government of India,
New Delhi.



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N.SENTHILKUMAR, J.

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04.10.2024