

W.P. No. 2849 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2025
PRONOUNCED ON : 25.03.2025

CORAM:

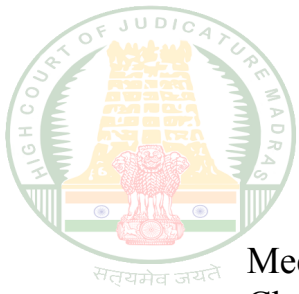
THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 2849 of 2020
and
W.M.P. No.3293 of 2020

Tamil Nadu General Workers Union
Chennai Airport Contract Workers Unit,
(ASRS Cargo Division), Rep. by its General Secretary,
Regn.No.289 / CPT
K.T.K.Thangamani Illam,
2/1, Kovur Vaidyanathan Street,
Chintadripet,
Chennai – 600002. ...Petitioner

Vs.

- 1 . Government of India
Rep. by its Secretary,
Ministry of Labour and Employment Department,
Rafi Marg, New Delhi.
2. The Assistant Labour Commissioner (Central)
O/o. The Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road,
Shastri Bhavan,
Chennai – 600 006.
3. Airports Authority of India,
Rep. by its Airport Director,
Chennai Airport,



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Meenambakkam,
Chennai – 600027.

4. Godrej Efacec- Southern Region,
Rep. by its Manager,
C/o. ASRS, AAI, Cargo-Import,
Chennai Airport,
Chennai – 600 027.
5. Ratna Engineering,
Rep. by its Manager,
P.No.4, D.No.85-26-8 RTC Colony,
Rajhamundry,
East Godhavari District,
Andhra Pradesh 533 103.
6. AAI Cargo Logistics & Allied Services Company Limited,
Rep. by its Regional Manager,
Integrated Cargo Complex,
Chennai Airport, Chennai – 600 027.
7. Godrej Consoveyo Logistics & Automation Ltd,
Rep. by its Managing Director,
A Wing, 701, Reliable Tech Park Off
Cloud City, Thane, Belapur Road,
Airoli, Navi Mumbai,
Maharashtra 400 708.
8. Theme Facility Management,
Rep. by its Managing Director,
Theme Reality Service Private Limited,
H.O. Abimaan II, 1st Floor, Opp. To Elegance
Teen Haath Naka, Thane (W)
Mumbai – 400 062.

...Respondents

Prayer in W.P.

To issue appropriate orders or directions and more particularly a



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Writ in the nature of Declaration, declaring the e-Tender Document issued by the 6th respondent in respect of Tender No.AAICLAS/ELECT-14/ASRS/FMC/2019 floated for FMC for operation of ASRS at integrated Air Cargo Complex, Meenambakkam, Chennai Airport, Chennai for a period of 24 months, without protecting the employment of the members of the petitioner union as illegal, arbitrary and contrary to law and consequently direct the respondents to retain the services of the members of the petitioner whose names are given in the Annexure to the Writ Petition as retained even when the contractor change and till the outcome of the dispute no. M8(15) 2016-B3 raised by the Petitioner union regarding regularization of the services of the members of the petitioner union and pass such other orders or directions as this Hon'ble Court deem fit in the circumstances of the case, award cost.

Prayer in WMP

To grant interim injunction restraining the respondent no.3 to 8 from discontinuing the employment of the employee concerned in this writ petition, whose names are given in the annexure to the writ petition, in any manner pending disposal of the writ petition.

Appearance of Parties:

For Petitioner : M/s. Balan Haridas and R.Kamatchi
Sundaresan, Advocates.

For Respondents 1 and 2 : Ms.R.Durga Rani,
Central Govt. Standing Counsel.



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For Respondents 3 and 6 : Dr.Xavier Arulraj, Senior Counsel,
for Ms.A.Arul Mary, Advocate

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For Respondents 4 and 7 : Mr.Anand Gopal, Advocate.

For Respondent 5 : No appearance – notice not ready.

For Respondent 8 : No appearance.

J U D G M E N T

Heard.

2.The Petitioner Union is a registered trade union. In this writ petition, they challenge the e-Tender document issued by the 6th Respondent for the operation of the Automatic Storage and Retrieval System (ASRS) at the cargo complex of Chennai airport for 24 months, alleging that it fails to safeguard the employment of its members. The Petitioner seeks to declare the tender process illegal and to ensure the continued employment of its members, whose names are listed in the annexure to the writ petition. The annexure contains the names of 18 employees. The Petitioner further contends that these workers should be retained even if there is a change in the contractor, pending the resolution of the industrial dispute before the 2nd Respondent in case M8(15)/2016-B3 concerning their regularization of service.



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3. When the matter was listed on 07.02.2020, notices were accepted on behalf of Respondents 1, 2, 3, 4, 6, and 7, while notices to Respondents 5 and 8 were directed to be issued, returnable by 14.02.2020. The case was then adjourned for three weeks to facilitate the filing of counters. On 07.07.2020, fresh notices were ordered to be issued to Respondents 5 and 8 at their correct addresses, and the respondents who had already received notice were directed to file their counters. Except for Respondents 3 and 6, who filed their counter affidavits dated 07.03.2025, the other respondents have yet to file their counters.

4. The Petitioner Union contends that the 3rd Respondent was engaged in both passenger and cargo services. The cargo operations were managed by the Cargo Manager and included both import and export divisions. The import division was mechanized and had been operating through the Automatic Storage and Retrieval System (ASRS) for the past four years, with cargo being stocked and retrieved through a mechanical process. In August 2016, the 6th Respondent was established to exclusively manage cargo operations at airports in India and abroad,



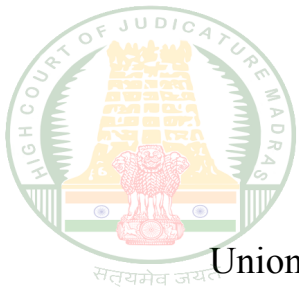
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including ground handling services.

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5. Initially, the ASRS was operated by the 4th Respondent on behalf of the 3rd Respondent. Instead of directly installing and managing the automated system, the 3rd Respondent engaged the 4th Respondent, creating the impression that the work was being handled by them. The 4th Respondent initially functioned only as an intermediary, facilitating salary distribution through an alliance with an industrial service provider until 31.03.2016. The wages were disbursed by the 5th Respondent, but the work itself remained under the supervision of the 3rd Respondent. The ASRS system requires skilled training, and at its inception, 36 employees were engaged, of whom 18 were members of the Petitioner Union.

6. Due to various issues concerning the service conditions of the workmen, the Petitioner Union raised an industrial dispute on 29.08.2016 before the 2nd Respondent, the Conciliation Officer, which was registered as M8(15)/2016-B3. Following the initiation of the dispute, as the Respondents attempted to disengage the workmen, the Petitioner



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Union filed W.P. No. 32817 of 2016, in which an interim order was granted protecting the service conditions of the workmen. It was during this period that the 6th Respondent issued an e-Tender for operating the ASRS, allegedly as a means to displace the members of the Petitioner Union from their existing employment. Meanwhile, the 8th Respondent, through a communication dated 22.01.2020, informed that their contract with the 7th Respondent would conclude on 15.02.2020 and directed all employees to report before the 8th Respondent at Thane.

7. The Petitioner Union has now brought to the attention of this Court that, during the pendency of the conciliation proceedings before the 2nd Respondent, a Memorandum of Understanding (MoU) was executed between the Petitioner Union and Respondents 4 and 5 on 23.08.2017. Based on this MoU, the Conciliation Officer recorded the following minutes in his conciliation file No. M8(15)/2016-B3:

“17.8.2017

Shri Suresh, president, Sri Sai Nivas Secretary, Sri Ramesh, Treasurer are present for union.

Shri Dhanujeyan Proprietor of M/s. Ratna Engineering, Sub-Contractor of M/s Godrej EFACEC and Shri

A.Balasubramanian, Asst. Manager Godrej EFACEC, contractor present.



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None present on behalf of AAI, Chennai.

The disputes were discussed in detail and both parties have arrived at the following understanding:

- 1.Appointing orders signed by Proprietor has been issued to all.*
 - 2.ESIC card have been issued to all after necessary corrections.*
 - 3. 04 National holidays & 05 festival Holidays for the years 2017-18 has been notified / displaced.*
 - 4. The payments in lieu of holidays for 2015-16 has been made to all 2016-17.*
 - 5. Wages per State government has been made calculating for 30 days, however the same is to be verified to see whether it works out to be more than the central government wages.*
 - 6. Uniforms after stitching is provided to all.*
 - 7. Shoes also provided to all 36 workers.*
- Hence the hearing are adjourned to 23.8.2017 at 11 am in my office for clarifying part – 5 and for signing of settlement.*

Sd/-”

8. In view of the above, Respondents 3 and 6 submitted that the writ petition has become infructuous. In the brief notes dated 10.03.2025, they further stated as follows:

“The writ petition challenged the tender proceedings in E-tender AAICLAS/ELEC-14/ASRS FMC/2019. The said tender proceedings had resulted in the Award dated 25.01.2020. The writ petition has been filed on 29.1.2020. In that respect as well, it was infructuous even on the date of filing.



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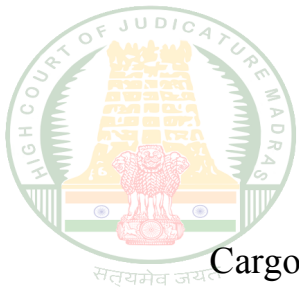
The petitioner also prays for regularization of service of the 18 members of that Union, referring to the pendency of the conciliation proceedings. In this regard also, the prayer is a misrepresentation of the factual position.”

9. A copy of the transfer notice dated 22.01.2020, issued by the 8th Respondent to the 35 employees engaged in ASRS, was submitted. The notice contained the following statement:

This is to notify you all that our service contract with our client M/s.Godrej Consoveyo Logistics Automation Ltd will come to an end on 15th February 2020 and there is no alternative need to continue your services within the same premises. Therefore, your services are being transferred w.e.f.16th February 2020 and your new place of posting is TRSPL HO, Thane Maharashtra.

Enclosed is the List of Employees Transferred (names of 36 employees were mentioned in that notice which includes the 18 employees supported by the Petitioner Union in this W.P.)

10. The counsel for Respondents 3 and 6 also submitted an order issued by the 6th Respondent in favor of M/s. Delite Systems Engineering (I) Pvt. Ltd., located at 34, B Wing, Ground Floor, Guru Gobind Singh Industrial Premises, Goregaon (East), Mumbai – 400 063 (Mobile: 2820134070, Email: info@delite.in). The order granted M/s. Delite Systems Engineering the FMC operation at the Integrated Air

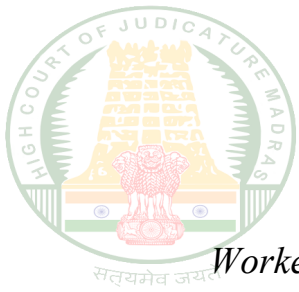


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Cargo Complex, Meenambakkam, as they emerged as the successful bidder. The contract was for a period of two years, commencing from 20.02.2020. Consequently, the contract awarded to the company would have expired by now, and the successive bidder is not a party to the present writ petition. Furthermore, the counsel for the Petitioner has not provided any recent update regarding the status of the 18 workmen they were representing.

11. The senior counsel for Respondents 3 and 6 relied on the division bench judgment in *ONGC Madras Port Contract Employees' Union & Ors. v. The Management of ONGC*, reported in 2005 (2) CTC 1. In that case, a reference obtained by the workmen for the regularization of contract labor with the Port Trust was initially upheld by a single judge, but on appeal, the division bench allowed the appeal and quashed the reference. Notably, this judgment was delivered on 28.02.2005, and it did not refer to the Constitution Bench judgment dated 30.08.2001, despite citing several other decisions.

12. A Constitution Bench of the Supreme Court, in its decision in *Steel Authority of India Ltd. & Ors. v. National Union Waterfront*

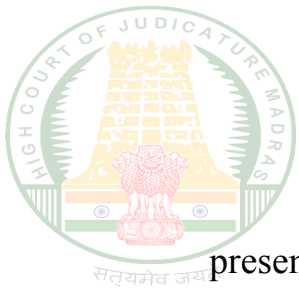


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Workers & Ors., reported in 2001 (7) SCC 1, laid down several propositions. Among them, the fifth proposition stated is particularly relevant, which reads as follows:

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

13. Being mindful of the aforesaid decision, the Petitioner Union has raised the contention that the contract is sham and nominal, asserting that the workers are entitled to direct employment under the 3rd and 6th Respondents, as the work is of a perennial nature. However, in the



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present writ petition, no interim orders were granted during the pendency of the tender process. Furthermore, the contract was awarded to a third party, whose term, as per the tender conditions, would have expired after two years. The workmen engaged in the ASRS by the 8th Respondent were transferred to Thane. In light of these circumstances, no relief can be granted to the Petitioner Union in this writ petition.

14. Furthermore, in *Kirloskar Brothers Limited v. Ramcharan*, reported in 2023 (1) SCC 463, the Supreme Court held as follows:

“4.3 Even otherwise, as observed hereinabove, in the absence of a notification under Section 10 of the CLRA Act unless there are allegations or findings with regard to a contract being sham, private respondents herein, who are as such the workmen/employee of the contractor, cannot be held to be employees of the appellant and not of the contractor.

xxxx

4.7 In the case of International Airport Authority of India Vs. International Air Cargo Workers’ Union and Anr. (supra), after considering the decision of this Court in the case of Steel Authority of India Ltd. and Ors. Vs. National Union Waterfront Workers and Ors. (supra), it has been observed and held by this Court that where there is no abolition of contract labour under Section 10 of the CLRA Act, but the contract labour contends that the contract



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between the principal employer and the contractor is sham and nominal, the remedy is purely under the ID Act. It is further observed that the industrial adjudicator can grant the relief sought if it finds that the contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short, who has direct control over the employee. It is further observed that where there is no notification under Section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularise the services of the contract labour does not arise. It has further been observed in paragraphs 38 and 39 as under :-

“38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.



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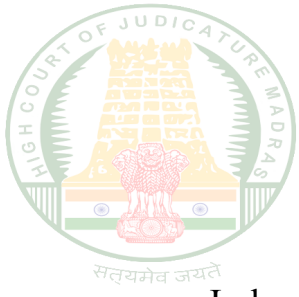
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39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

15. In light of the foregoing, no relief can be granted to the Petitioner Union, and W.P. No. 2849 of 2020 stands dismissed. No costs. Consequently, the Miscellaneous Petition in W.M.P. No. 3293 of 2020 is also dismissed. However, the dismissal of the writ petition shall not disentitle or preclude the Petitioner from availing any other remedies available to them under law.

25.03.2025

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

1. The Secretary to Govt.,
Ministry of Labour and Employment Department,
Govt. of India,
Rafi Marg, New Delhi.
2. The Assistant Labour Commissioner (Central)
O/o. The Deputy Chief Labour Commissioner,
No.4, Haddows Road,
Shastri Bhavan,
Chennai – 600 006.



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No. 2849 of 2020
and
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