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W.P.No.35420 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.35420 of 2012
and M.P.No.1 of 2012**

1.The Secretary,
Thiruvannamalai Market Committee,
No.2A, Anna Salai, Tindivanam Road,
Thiruvannamalai-606 601.

2.The Superintendent,
Thiruvannamalai Regulated Market Committee,
Vandavasi Road, Chetpet,
Thiruvannamalai District.

... Petitioners

Vs.

1.The Inspector of Labour/The Inspector,
Appointed under Section 4 of the Tamil Nadu Industrial Establishments
(Conferment of Permanent Status to Workmen) Act, 1981,
Thiruvannamalai.

2.S.Appasamy

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorari, to call for the records in



W.P.No.35420 of 2012

Na.Ka.No.E/2810/2009, dated 15.06.2012 passed by the first respondent and quash the same.

For Petitioner : Mr.Jayaprakash Narayanan
for M/s.Dr.G.Krishnamurthy

For Respondents : Mr.M.Murali
Government Advocate for R1
Mr.R.Elango for R2

O R D E R

The present petition has been filed challenging the order of the 1st respondent in and by which the 1st respondent has directed the petitioner to confer confirmed status on the members of the 2nd respondent Association in terms of the Tamil Nadu Industrial Establishments (Confirmation) Act, 1981.

2. It is the case of the petitioner that it is the Market Committee, which oversees the maintenance and the running of the market space at Tiruvannamalai. In the course of overseeing duties, it is the responsibility of the petitioners to keep the area clean and also provide compulsory



W.P.No.35420 of 2012

WEB COPY

infrastructural facilities for the market produce of the farmers, which is brought to the said place for the purpose of business. When any agricultural market produce is brought to the said place, the members of the 2nd respondent Association are employed for carrying out the task and the members of the 2nd respondent Association are free to accept the employment with any members or at any place of their choice if no work is there in the market place and the petitioners have no control over the said members and also the petitioners are not paying any wages to the said members and whatever is charged is between the members and the persons, who employ them and the petitioners have no control over the same, except for regulating the tariffs/charges, that can be charged from the persons utilising the said persons. It is more or less like the porters, who are in the premises of the railways and carry the luggages and charge the passengers with railways having no control over them. That being the case, all of a sudden, the members of the 2nd respondent Association filed a claim seeking confirmed employment under the petitioners before the 1st



W.P.No.35420 of 2012

WEB COPY

respondent and the 1st respondent, without properly appreciating the factual matrix of the case, had granted the benefit and directed the petitioners to confirm the members of the 2nd respondent Association as employees of the petitioners, which is contrary to the materials and assailing the same, the present petition has been filed.

3. Learned counsel appearing for the petitioners submitted that there is no iota of material connecting the employment of the members of the 2nd respondent with the petitioners and the 2nd respondent has not proved that they are under the employ of the petitioner. It is the further submission of the learned counsel that merely because the charges for the employment is fixed by the petitioners cannot be the basis to hold that the members of the 2nd respondent are under the employ of the petitioner. When the charges are collected by the members from the persons, who employ them, which is the resultant position, the petitioners cannot be mulcted with the responsibility of confirming their employment when they have not been employed by the petitioner. However, forgetting the basic fact, the authority



W.P.No.35420 of 2012

WEB COPY

has erroneously passed the impugned order, which is misconceived, arbitrary, perverse and liable to be set aside.

4. Per contra, learned counsel appearing for the 2nd respondent submitted that the authority, based on the materials placed by the petitioners as well as the members of the 2nd respondent has passed the impugned order clearly holding that the materials placed by the petitioner are not sufficient to substantiate their stand, the said order is clear, cogent and based on materials and, therefore, the same does not require interference at the hands of this Court.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. Though it is the case of the members of the 2nd respondent that

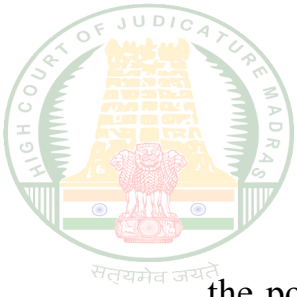


W.P.No.35420 of 2012

WEB COPY

they are employed by the petitioners and, therefore, they are entitled for confirmation, however, there is no material evidencing their employment with the petitioners. The 1st respondent, based on certain materials has held that the members of the 2nd respondent are entitled to confirmation. However, the fact remains that none of the said materials in any manner relate to the employer-employee relationship between the parties.

7. True it is that the petitioners are the Managing Committee, which manages the area and is providing all the support for the activities of agriculturists. But the employment of the members of the second respondent is self-employment in nature and their employability is not binding on the petitioners. The petitioners, at best, can regulate the employment of the members of the 2nd respondent, but it cannot intrude into the manner in which or the occasion in which the employment is given to the prospective employers. When the petitioners are in no way connected with the employability of the members of the 2nd respondent, merely because, like



W.P.No.35420 of 2012

WEB COPY

the porters in railway stations, the members of the 2nd respondent carry on certain activities, the petitioner cannot be mulcted with the responsibility of employing them. Once, the petitioners are held to be not employing the members of the 2nd respondent, the question of confirming their employment does not arise. In the absence of any affirmative material to show the employment status of the members of the 2nd respondent with the petitioners, the petitioners cannot be directed to confirm their employment.

8. The 1st respondent has laid its case on the materials, more particularly, the fixation of tariff for soliciting the employment of the members of the 2nd respondent as the yardstick to determine that the members of the 2nd respondent are, in fact, employed by the petitioner. As aforesaid, the petitioners, being the Managing Committee, are managing the affairs in the area and in that regard, if the petitioners fix the tariff which is chargeable from the prospective persons employing the members of the 2nd respondent, such fixation cannot be put against the petitioner to hold that it



W.P.No.35420 of 2012

WEB COPY

is the petitioner, which is fixing the tariff and paying the workmen. When no part of the amount collected from the prospective employer is parted with by the workmen to the petitioner, there exists no employer-employee relationship between the petitioner and the members of the 2nd respondent and in that backdrop, the 1st respondent lost sight of this crucial fact and has passed the impugned order, which is grossly perverse and misconceived and the same requires to be interfered with.

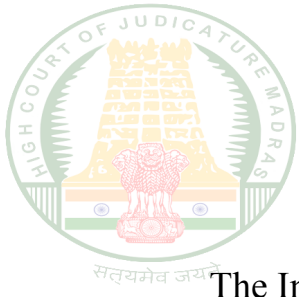
9. For the reasons aforesaid, the impugned order deserves to be set aside and, accordingly, the same is set aside and this Writ Petition is allowed. However, there shall be no order as to costs. Connected miscellaneous petition is closed.

07.02.2025

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

Page 8 of 10



W.P.No.35420 of 2012

WEB COPY
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W.P.No.35420 of 2012

M.DHANDAPANI, J.

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W.P.No.35420 of 2012

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