



Arb O.P(COM.DIV.) No. 509 of 2023
and Application Nos.5610 of 2023 and 3134 & 3866 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 18.12.2025
Pronouncing orders on : 07.01.2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 509 of 2023
and Application Nos.5610 of 2023 and 3134 & 3866 of 2024

The Chairperson, Chennai Port Authority
(Formerly known as The Chennai Port Trust),
Rep. by its Chairman,
No.1, Rajaji Salai,
Chennai-600 001.

Petitioner(s)

Vs.

1.V.Manoharan
Represented by
The Madras Port Spillage Handling Workers Association,
Regt. No.55/1990,
165, Amman Koil Street,
Kakanchi Colony, Vyasarpadi,
Chennai-600039.

2.A.Puratchidasan

3.S.Suresh

4.M.Krishnamurthi



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5.R.Sekar

6.E.Sekar

7.Elumalai

8.K.Annappan

9.M.Murthy

10.K.Srinivasan (dead)

11.R.Niraimathi

12.S.Kandaswamy

13.G.Pandian

14.U.Devi

15.M.Ponnan

16.M.Devaraj

17.S.Muniyammal

18.S.Sundaramoorthy

19.S.Manimaran

20.Meera



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WEB COPY 21.M.Lakshmi

22.M.Andal

23.M.Kalyani

24.R.Sundari

25.V.Dhanalakshmi

26.D.Sasikala

27.S.Dhatchayani

28.S.Sadhana

29.B.Jayalakshmi

30.S.Gunasundari

31.T.Muniyammal

32.E.Nalini

33.E.Vignesh

34.S.Mumthaj

35.Fathima Bee M.E.,

36.ShakilaBanu.M

37.H.Apsama



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38.Ennore Port Ltd.
Now Known as Kamarajar Port Ltd.,
Represented by its Chairman cum Managing Director,
2nd and 3rd Floor, (North Wing),
Jawahar Building,
17, Rajaji Salai, Chennai-600 001.

39.C.Pradeepan

40.R.Ambeth

41.V.Karthikeyan

42.N.Stanley

43.A.Johnson

44.M.Anandaraj

45.K.Arumugam

46.M.Babu

Respondent(s)

[Respondents 39 & 40 are impleaded as per order dated 17.12.2025 in A.No.2174 of 2024]

[Respondents 41 to 46 are impleaded as per order dated 17.12.2025 in A.No.5141 of 2024]



Arb O.P(COM.DIV.) No. 509 of 2023
and Application Nos.5610 of 2023 and 3134 & 3866 of 2024

WEB (PRAYER): Petition filed under Section 34(2) of Arbitration and Conciliation Act, 1996, praying to set aside the impugned Award dated 14.06.2023 of the learned Arbitrator/by the Hon'ble Mr.Justice F.M.Ibrahim Kalifulla in Arbitration Case No.1 of 2019.

For Petitioner(s): Mr.AR.L.Sundaresan
Additional Solicitor General for
Mr.S. Haja Mohideen Gisthi

For Respondent(s):Ms.R.Vaigai
Senior Counsel for
Ms.S.Meenakshi for
R1, R20 to R37

Mr.V.Prakash
Senior Counsel for
Mr.K.Raja for
R2 and R6

Mr.K.M.Ramesh
Senior Advocate for
M/s.Samata and Ston for
R5 to R16

Mr.R.Sunil Kumar for R3 and R4

ORDER

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996, at the instance of the Chennai Port Authority (formerly the 'Chennai



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2. An Arbitral Tribunal was constituted by the parties pursuant to the directions contained in an order dated 15.02.2018 passed by the Supreme Court in Civil Appeals 2114-2115 of 2018 ***Chairman, Cum Managing Director, Ennore Port Trust v V. Manoharan***, reported in ***(2018) 3 SCC 612***, to decide the claims of the workmen. The resultant award is now the subject matter of challenge under Section 34 of the Arbitration and Conciliation Act, 1996 (for the sake of brevity, hereinafter referred to as 'the Act').
3. The challenge under Section 34 of the Act has arisen in the backdrop of the following facts: the Chennai Port Trust was handling various cargoes including iron ore. Since the handling of this dusty cargo led to spillages, the Port Trust engaged workers to clear the iron ore spillages. The engagement of spillage workers by the Port Authority commenced in the year 1981. Initially, 160 employees were engaged for clearing the spillages and this was reduced to 147 employees during the year 1990. Initially, these workers were employed through a contractor without a license and without



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registration under the Contract Labour (Regulation and Abolition) Act, 1970. Thereafter, the Port Trust directed the employees to form an Association and thus, this Association was named as 'Madras Port Spillages Handling Workers Association'. The arrangement was that the employees will get employed through the Association for the purpose of clearing the spillages.

4. The issue of engagement of spillage workers went before a Board of Arbitrators who, by an award dated 22.10.1994, published in the Gazette of India dated 24.12.1994, directed the parties to enter into an MOU between the Port Trust and the workers' Association. Accordingly, the MOU dated 02.05.1995 was signed for the engagement of the spillage workers and it is the specific case of the workmen that all the workers were working under the supervision and control of the Port Trust.
5. A batch of Public Interest Litigations came to be filed before this Court in W.P.Nos.11747 of 2002 etc., complaining that the iron ore that is unloaded in the harbour is causing serious environmental issues and air pollution and also the coal dust started spreading into every household around Chennai



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Port Trust. In fact, a complaint even went from the Registry of the Madras High Court about the pollution caused. The Division Bench of this Court, after hearing the case in detail, allowed all the writ petitions by an order dated 31.05.2011. The operative directions of the common order are extracted hereunder:

“(a) All the writ petitions are allowed. However, the prayer in W.P.No.41163 of 2002, with regard to the compensation aspect stands dismissed.

(b) The Government of India, represented by its Secretary, Ministry of Shipping, New Delhi is directed to see distribution of cargoes between Ennore Port and Chennai Port, allotting clean cargoes viz. Container, car etc. to Chennai Port and the dusty cargoes like Coal, iron ore and all other dusty cargoes to Ennore Port.

(c) since the coal terminal, iron ore terminal and the single line rail connectivity at Ennore Port are assured to be operational to their full capacity by September, 2011, the Government of India, represented by its Secretary, Ministry of Shipping, New Delhi and the Government of Tamil Nadu, represented by its Chief Secretary are directed to see that all the dusty cargoes like Coal, iron ore and all other dusty cargoes should move only to Ennore Port on and from 1.10.2011 and not to Chennai Port. The Chennai Port is also directed to render all its cooperation to the Government of India and the Government of Tamil Nadu in this direction.

(d) with regard to the employees and pensioners of the Chennai Port, the Government of India, the Government of Tamil Nadu, Chennai Port Trust and the Ennore Port Trust are directed to see that not even a single employee is retrenched or otherwise made to lose his livelihood because of the distribution of cargoes between Ennore Port and Chennai Port, as ordered above. For this purpose, since the dusty cargoes are going to be berthed and processed at Ennore Port on and from 1.10.2011, the Ennore Port may treat the employees of the Chennai Port connected employees, including the to such activities 89 its pensioners. In case of any difficulty, Secretary, Ministry of Shipping, New Delhi and the Chief Secretary to the Government of Tamil Nadu, shall divide the



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employees and pensioners, between the Chennai Port and the Government of India, represented by its Ennore Port, proportionate to the income of both the Ports.

(e) With regard to the traders, like the impleaded respondents 6 to 8 also, both the Chennai Port and the Ennore Port are directed to protect their rights and interest, in accordance with law."

6. By virtue of the above order, it was made clear that those workmen who were engaged were not to be terminated/retrenched and that they were directed to be treated as employees by distributing them to the Chennai Port and the Ennore Port. Sufficient safeguard was also given to the pensioners.
7. In the light of the above order, since the Port Trust stopped handling iron ore rakes, they thought it fit to terminate the contract with the Association and accordingly, a notice of termination came to be issued on 06.12.2012. The Termination Notice became a subject matter of challenge in a batch of writ petitions in W.P.Nos.33614 of 2012 etc., and those employees also sought for regularization of their services and for all other benefits. All these writ petitions came to be dismissed by a common order dated 22.07.2016.
8. Immediately after the order was passed by this Court, the Chennai Port Trust terminated the engagement of all workers with immediate effect from



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01.08.2016. The common order passed by the learned single Judge became a subject matter of challenge in W.A.Nos.1020 etc., of 2016. The Division Bench, after considering the background facts and the earlier orders passed, disposed of the writ appeals by an order dated 05.01.2017 in the following terms:

“20. In this context, We need to advert to the contention canvassed by Sri Krishna Ravindran, learned counsel appearing for Ennore Port, who urged that pursuant to the State Karnataka imposing ban on export of iron ore from the said State, the iron ore handling work itself has come to a grinding halt. Even in such circumstances, collateral proceeding, we cannot either clarify or modify the We are afraid, in a directions issued by the earlier Division Bench on 11.05.2011. It is for the Ennore Port to work out the legal remedies available to it in that respect. But, so long as the judgment rendered by this Court on 11.05.2011 binds them, which it does, there is no escape, except to treat the earlier spillage workmen as the employees of Ennore Port. As already noticed by us supra, since Ennore Port was trying to act in tandem with Chennai Port Trust, it is certainly open to Chennai Port Trust as well to step in and help Ennore Port to relieve the stress of unproductive utilisation of human resources. It is for both of them to work out as to where the entire spillage workers' services have to be utilised. So far as the wages are concerned, one of the serious issues, which Sri N.G.R.Prasad, learned counsel counsel for the workmen, raised is that while utilising the services by Chennai Port Trust, the wages drawn earlier were not protected. The defence offered by Chennai Port Trust, as articulated by Sri P.Wilson, learned Senior Counsel, is that after termination of the contract with the spillage workers association on 06.12.2012, the utilisation of the services of the spillage workmen was entirely for a different purpose and for an altogether different work. Though the said explanation may fit into the context, we have to necessarily recognise the principle that the spillage workmen are required to be engaged in service by either Ennore Port or Chennai Port Trust. Therefore, wherever their service are utilised, they have to be necessarily paid the same wages, which they have drawn last as spillage workmen. A spillage workman,



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who has progressed by securing slightly higher wages than what the minimum wages are because of continued service for a number of years, he cannot be made to lose the said benefit, all-of-a-sudden, that too because he is not actually engaged for spillage clearance, work alone. The fact that coal and other dusty cargo are still being operated at Ennore Port and the operations at Chennai Port also require certain manpower advantage of the higher quantum of wages, which they have earned earlier.

21. We, therefore, make it very clear that the former spillage workmen will be entitled to be paid the same wages, which they were drawing earlier from 03.04.2014, 04.07.2014 and 06.10.2014, 08.01.2015, 07.04.2015, 09.07.2015 09.11.2015 and 11.01.2016, as the case may be.

22. It is Mr.P.Wilson, learned Senior Counsel, who has furnished us the information that by separate orders, some of the workmen have been engaged on 03.04.2014, 04.07.2014 and 06.10.2014, 08.01.2015, 07.04.2015, 09.07.2015, 09.11.2015 and 11.01.2016. However, we have noticed an interlocutory order passed by Justice N.Paul Vasanthakumar, as he then was, on 04.07.2014, in M.P.No.2 of 2012, in W.P.No 3361 of 2012, clearly holding that the respondent Chennai Port Trust is not justified in paying reduced pay to those workmen, who have been engaged by Chennai Port Trust than what they were getting prior to their We have considered this issue disengagement in November, 2012. from this perspective also and we endorse the view of Justice N.Paul Vasanthakumar, and, therefore, we direct that for all those spillage handling workmen, who have been engaged by Chennai Port Trust, they are entitled to be paid the wages, which they were drawing prior November, 2012, to their disengagement in and such payment shall be effective from 04.07.2014, the date on which the aforementioned interlocutory order was passed. The contract of employment of the association stands transferred to Ennore Port Trust, upon its termination on 06.12.2012 by Chennai Port Trust. The financial benefit, which flows from our order, will have to be settled on or before 31.03.2017, subject to mutual adjustment of all statutory dues. The list of spillage workmen together with their identity proof and latest photographs, as certified by the office-bearers of their Association, shall be furnished to both Chennai Port Trust and Ennore Port, within a maximum period of thirty days from today. So long as the services of the workmen have been extracted, such of those workmen, who have been continued in service beyond the age of 58 years by virtue of an earlier interlocutory order passed by this Court, shall, however, be entitled for payment of their wages, as directed in this order, subject, of course, to their establishing the fact that they have worked and also



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subject to payment/adjustment of all statutory dues. As for Gratuity, as and when the Association makes a reimbursement claim strictly in accordance with the Memorandum, the same will be attended to on priority basis by Chennai Port Trust, within a maximum period of thirty days duration."

9. Aggrieved by the order of the Division Bench, the Port Trust approached the Supreme Court by way of SLP (C) 14441-42 of 2017, which were eventually converted into Civil Appeals 2114-2115 of 2018. By an order dated 15.02.2018, the Supreme Court set aside the orders of the Division Bench holding, *inter alia*, as under:

21) *Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals in part with directions mentioned herein below.*

22) *In our considered opinion, having regard to the nature of the controversy raised by the writ petitioners (respondents herein) and relief sought in the writ petitions out of which these appeals arise and keeping in view the clauses of the MOU, especially Clause 31, which provides for referring the case to the Arbitral Tribunal in the event of any dispute arising between the parties in relation to MOU, the writ petition filed by the respondents herein under Article 226 of the Constitution should not have been entertained for being tried on merits by the Single Judge and instead the parties should have been left to take recourse to the remedy provided in Clause 31 for referring the case to Arbitral Tribunal for its decision in accordance with law.*

23) *In our considered opinion, a question whether a particular person is in the employment of any establishment and whether he is entitled to claim regularization of his services in such establishment (as in this case Port Trust) and, if so, from which date is essentially a question of fact.*

24) *If such question is disputed by the establishment, then it is required to be decided by a fact-finding body on the basis of evidence adduced by such person unless the parties do not dispute the facts*



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25) If one person is able to prove his case of regularization qua establishment from a particular date that does not necessarily mean that other person's case is also automatically proved alike other person.

26) In other words, every person has to prove his case qua establishment independently by adducing evidence. It is only then such person is entitled to claim such relief."

It is evident that the Supreme Court disapproved of the approach of the Division Bench in deciding disputed factual questions in a writ petition under Article 226, particularly when the nature of the claims was such that leading evidence in support of the reliefs sought became imperative. After making the aforesaid observations, the Supreme Court observed as follows:

"27) In our considered opinion, several questions arise in the case at hand and need to be answered before considering grant of appropriate relief, if any. These questions when we see the background facts of the case set out above are inter-linked with each other and relate to the main activity which was being carried in the Chennai Port Trust and now shifted to Ennore Port Trust largely. The disputes now being raised again relate to the employment and regularization of the class IV employees in the set up of Chennai Port Trust. Indeed, to settle this controversy for all time to come, the stakeholders had in past executed MOU providing therein the entire machinery to safeguard the rights and obligation of parties concerned, which are detailed above. But due to several intervening factors, it did not seem to have worked smoothly."



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Having found that these foundational facts, requiring evidence, had to be established, the Supreme Court went on to frame the following six questions which, in its opinion, emanated from the facts:

“29) First, whether the writ petitioners (respondents herein) were/are in employment of Chennai Port Trust or in the employment of any contractor and, if so, its basis. Second, whether there ever existed any relationship of employee and employer between the writ petitioners and Chennai Port Trust or between the writ petitioners and any contractor and, if so, its basis.

30) Third, whether the writ petitioners were/are members of the Association and, if yes, then its effect and if not, then its effect.

31) Fourth, assuming that the writ petitioners are not held to be the members of the Association as they now claim in the writ petition (see ground (e) in the writ petition at page 125-126), whether the writ petitioners (90 in number) are still entitled to claim any relief and, if so, against which Port Trust and of which nature.

32) Fifth, assuming that the writ petitioners are held members of the Association or let us say eligible members by virtue of their qualifications prescribed in the MOU, whether they are entitled to claim any relief against any Port Trust and, if so, of which nature.

33) Sixth, If the writ petitioners (whether all or some) are able to prove that they are/were in the employment of Chennai Port Trust and that relationship of employee and employer between them does exist notwithstanding execution of MOU, then whether such persons are entitled to claim regularization in the



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service of Port Trust and, if so, since when and with what benefits or their cases are still governed by MOU as its members and lastly, what eventual reliefs, if any, can be granted to the writ petitioners.”

Having set out the questions, the Supreme Court then identified the body by which such disputes were to be adjudicated. The following are the relevant directions in this regard:

“34) In our view, the aforesaid questions could not be decided in the writ petition but could be adjudicated more effectively by a fact-finding body empowered to record evidence.

35) Since in this case parties have agreed to refer the matter to the Arbitral Tribunal in the event of any dispute arising between them, we are of the view that it would be in the interest of justice that the parties are relegated to take recourse to the arbitration proceeding remedy for adjudicating the disputes.

36) We are of the view that to decide the questions arising in the case at hand, recourse to MOU for the purpose of referring the case to arbitration can be taken. As observed supra, even otherwise, the disputes raised herein are not the disputes, which are capable of being tried effectively in writ jurisdiction and indeed are capable of being tried only by a Tribunal.

37) Once the disputes are referred to the Arbitral Tribunal, the writ petitioners and the Port Trusts would be at liberty to raise all the issues on



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facts/law in support of their respective contentions including adducing evidence (oral and documentary).

38) In view of the foregoing discussion, we are unable to sustain the impugned order, which in the facts of this case should not have been passed.

39) As a consequence, we allow the appeals, set aside the impugned judgments of the Division Bench and the Single Judge, dismiss the writ petition out of which these appeals arise and grant liberty to the writ petitioners and the Port Trusts to approach the Court for appointment of Arbitral Tribunal in terms of Clause 31 of MOU for deciding the questions framed by this Court supra.

40) Parties are also at liberty to appoint the Arbitral Tribunal with mutual consent, if they so wish, without taking recourse to appointment of Arbitral Tribunal through Court.

41) The Arbitral Tribunal once appointed will embark upon the reference on the questions framed by this Court and would be free to frame any more questions after consultation of the parties/stakeholders, if such questions also arise and need to be decided to give quietus to the long pending disputes.

42) The Arbitral Tribunal will afford full opportunity to all the parties (stakeholders) concerned to file their response/statements and lead evidence in support of their respective stands and then pass a reasoned award in accordance with law on the basis of the evidence adduced by the parties (oral/documentary) uninfluenced by any observations made by Single Judge and the Division Bench.

43) Since the case is old and concerning about a large number of workers, efforts be made to complete the proceedings within six months from the date of appointment of Arbitral Tribunal.”



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10. Pursuant to the directions contained in the paragraph 40 of the aforesaid order, the parties, after due deliberations consensually appointed an Arbitral Tribunal comprising a former Judge of the Supreme Court of India. It should also be mentioned that the petitioner, Chennai Port Authority, filed M.A's 865 & 866 of 2022 before the Supreme Court seeking extension of the mandate of the Tribunal. By an order dated 20.05.2022, the mandate of the Tribunal was extended by one year w.e.f. 20.06.2022.

11. Before the Arbitral Tribunal, two sets of claim statements and an additional claim statement were filed, seeking the following reliefs:

(i) the denial of employment to the employees concerned in this Arbitration on and from 1st August 2016 is illegal arbitrary and contrary to law.

(ii) direct the respondents to regularize the services of the members of the Association/Claimant employee represented by the Association, whose names are given in the Annexure II to the Claim Statement from the day when they completed 480 days of continuous service within a period of 24 calendar months and confer the employees with relevant scale of pay, pay arrears of wages, pay back wages and all other attendant benefits to their till their date of death.

(iii) direct the respondents to regularize the services of the members of the Association/Claimant employee represented by the Association, whose names



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are given in the Annexure III to the Claim Statement from the day when they completed 480 days of continuous service within a period of 24 calendar months and confer the employees with relevant scale of pay, pay arrears of wages, pay back wages and all other attendant benefits till their date of superannuation."

12.A common counter statement was filed on behalf of the Chennai Port Trust.

They took a stand that the claimants are all employees of the contractor and there was absolutely no privity of contract between the Port Trust and the claimants and that the MOU itself was entered into only with the Association. Immediately after the ban on mining and transportation of the iron ore was imposed, the handling of the iron ore at the Port Trust was stopped. Consequently, the spillage work was also stopped and thereafter, there was no need for the Port Trust to engage the services of the contract workers. Therefore, there was no obligation on the part of the Port Trust to provide employment to the workers and hence, they sought for the rejection of all the claims made by the claimants.

13.The Sole Arbitrator took into consideration the nine issues that were already framed by the Apex Court in the aforesaid order and thought it fit to frame



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certain additional issues. The thirteen issues framed by the Sole Arbitrator are as follows:

- “1. Whether the Claimants were/ or in the employment of the Respondents or with any contractor, and if so, its basis?*
- 2. Whether the Madras Port Spillage Handling Workers Association was an independent contractor or was it an arrangement made by the Respondents for distribution of wages to the Claimants?*
- 3. Whether there ever existence any relationship of employee and employer between the Claimants and the Chennai Port Trust or the 2nd Respondent and any contractor and if so, its basis?*
- 4. Whether The Claimants 93 in number are entitled to claim any relief and, if so, against which of the Respondents and of what nature?*
- 5. If the Claimants establish that they are/were in the employment of the Respondents and that the relationship of employee / employer between them does exist notwithstanding execution of MOU, whether such persons are entitled to claim regularisation in the service of the Respondents and if so, from which date and with what benefits or in the alternate if their cases are governed by MOU as its members what eventual relief if any, can be granted?*
- 6. Whether the Claimants' demand in these disputes are barred by the law of limitation?*
- 7. Whether the individual Claimants have any locus to raise an Arbitrable dispute and consequently whether this reference vis-a-vis the individual Claimants is liable to be struck down on the ground of lack of jurisdiction?*
- 8. Whether the 2nd Respondent is liable to answer the claims of the Claimants and whether it should be excluded from this reference as claimed by it?*
- 9. To what relief the parties are entitled to and for costs?*
- 10. Whether the stoppage of the work of the Claimants by Chennai Port Trust on 06.12.2012 was not in consonance with the order of the High Court dated 11.05.2011 in W.P. No. 11747 of 2002?*
- 11. Whether the non employment of the Claimants from 06.12.2012 at the instance of the 1st Respondent by terminating the contract with Madras Port Spillage Handling Workers Association was legal and justified?*



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12. *Whether the employment of the 93 Claimants from April 2014 till 01.08.2016 was by direct payment system and consequently the claim that the workers were directly employed by the Chennai Port Trust is valid and correct?*
13. *Whether the impugned action of the Chennai Port Trust amounts to unfair labour practice?"*

14. CW1 to CW5 were examined on the side of the claimants and Exhibits C1 to C84 were marked in the first claim petition; Exhibits C1 to C25 were marked in the second claim petition and Exhibits C1 to C158 were marked in the third additional claim petition. RW1 and RW2 were examined on the side of the Port Trust and Exhibits R1 to R31 were marked in the first claim petition and Exhibits R1 to R6 were marked in the second claim petition.

15. The Sole Arbitrator, after detailed discussion, granted reliefs by broadly categorizing the claimants under three heads viz., (i) the employees who are no more, (ii) the employees who have attained the age of superannuation and (iii) employees those who still have service left. The claimants were also specifically identified by names under each category and insofar as those persons who had died, their legal representatives were impleaded before granting appropriate reliefs.

16. Insofar as employees who are no more, the following reliefs were granted:



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“The 1st Respondent is directed to calculate the arrears of wages/back wages for the period 06.12.2012 to 02.04.2014 and whomsoever lost his life after 01.08.2016; from 01.08.2016 till the date of his death, the arrears of wages / back wages along with all attendant benefits. The 1st Respondent is also directed to calculate the gratuity, payable to the said deceased employees, counting their service from the date of their entry into service till the date of their death. The 1st Respondent is also directed to pay the above-said payments of arrears of wages/back wages with all attendant benefits as well as gratuity after due calculation and to pay the same to the concerned LR of the deceased employees within one month from the date of this Award. The said payment should be made along with interest calculated at the rate of 6% per annum from the date of the claim statement, namely 06.03.2019 till the date of payment. If the 1st Respondent fails to make the payment as directed above, the 1st Respondent will be liable to pay a further interest of 2% in addition to the 6% i.e. 8% from the last date of expiry of the one-month period as directed in this Award, till the date of payment.”

Insofar as the employees who attained the age of superannuation, the following reliefs were granted:

“As has already been held, the 1st Respondent is directed to calculate the arrears of wages / back wages, with all other attendant benefits for the above said period till the date of their superannuation and pay the same to the said workmen. The 1st Respondent is also directed to calculate the gratuity, payable to the said superannuated employees, counting their service from the date of their entry into service till the date of their superannuation. The 1st Respondent is also directed to pay the above-said payments of arrears of wages/back wages, with all other attendant benefits along with gratuity after due calculation and to pay the same to the concerned employees within one month from the date of this Award. The said payment should be made along with interest calculated at the rate of 6% per annum from the date of the claim statement, namely 06.03.2019 till the date of payment. If the 1st Respondent fails to make the payment as directed above, the 1 Respondent will be liable to



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pay a further interest of 2% in addition to the 6% i.e. 8% from the last date of expiry of the one-month period as directed in this Award, till the date of payment.”

Insofar as the last category of employees who still have service left, the following reliefs were granted:

“The 1st Respondent is directed to order reinstatement of the above said employees to enable them to continue in service for the period for which they are eligible to remain in service, except the employees in S.Nos. 1 to 4 of the above table, namely A Mayakrishnan, M. Raja, C. Govindu and A. Govindaraj, who though had service left, as on 01.11.2022, a period of 3 months to 6 months, the said period has expired before the passing of this Award. The 1st Respondent is directed to pass the order of reinstatement in respect of the other employees found in S.Nos. 5 to 28 of the above table, within one month from the date of passing of this Award. The 1st Respondent is also directed to pay the arrears of wages/back wages and attendant benefit from 06.12.2012 to 02.04.2014 and from 01.08.2016 till their date of reinstatement into service by making due calculation of such payments due and payable to them. In respect of the 1st 4 employees noted in S.Nos. 1 to 4 above, the 1st Respondent is directed to pay the arrears of wages / back wages, with all other attendant benefits, which was denied to them for the period 06.12.2012 to 02.04.2014 and from 01.08.2016 till the date of their superannuation. The 1st Respondent is further directed to effect the said payment within one-month from the date of passing of this Award, along with interest at the rate of 6% from the date of the Claim Statement, i.e. 06.03.2019 till the date of payment. If the 1st Respondent fails to effect the payment as directed in this Award, within the said time period, the 1st Respondent will be liable to pay further interest of 2% over and above the 6%, i.e. at 8%, calculated from the date of expiry of the one-month period till the date of payment. In so far as the employees found in S. Nos. 5 to 28 is concerned, it is needless to state that as and when they reach the age of superannuation, they will be entitled to the payment of gratuity calculated by



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counting their service from the date of their entry into service till the date of their superannuation."

17.The Sole Arbitrator also took into consideration certain categories of claimants who had filed an additional claim statement claiming for gratuity as well as the difference in dearness allowance arrears. The Sole Arbitrator found that the gratuity claim was already covered by virtue of the order passed by the competent authority under the Payment of Gratuity Act, 1972 and therefore, the Sole Arbitrator considered granting only the relief of dearness allowance arrears and directed the Port Trust to effect payment of the dearness allowance arrears based on the additional claim statement filed by claimants 5 to 16 within one month from the date of passing of the Award, along with interest at the rate of 6% per annum from the date of the claim statement. In the absence of effecting the payment within the time stipulated, further interest of 2% over and above 6% should be calculated from the date of expiry of the said period, till the date of payment.



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18. Aggrieved by the award of the Arbitral Tribunal, the Chennai Port Authority has filed the present petition under Section 34 of the Act. On 12.02.2024, a detailed interim order was passed by this Court on the following terms:

“15.As per the petitioner if the award were to be implemented, approximately a sum of Rs.37.16 crores is to be paid to 93 workers. In the calculation given today along with Additional Typed Set of Papers – I, it is estimated that an amount of Rs.14,11,81,705/- is payable to 81 workers if the decision of the Hon'ble Supreme Court in M.C.Mehta Vs. Union of India, [(1997) 11 SCC 327] were to be implemented as detailed below:-

S.No	Details	Amount (in Rs.)	
1.	Wages for 81 spillage workers for a period of 6 years from the date of termination i.e., 06.12.2012	17,18,12,948/-	Annexure – I
2.	Wages already paid for 81 spillage workers for the period from 03.04.2014 to 31.07.2016	6,00,91,950/-	Annexure – II
	(1-2)	11,17,20,998/-	
3.	Calculation of Gratuity amount for 80 spillage workers for the date of joining till the date of death / date of retirement / 6 years from the date of termination	2,94,60,707/-	Annexure – III
	Total amount	14,11,81,705/-	



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16.For the present, the petitioner is directed to deposit a sum of Rs.14,11,81,705/- together with interest at the rate of 8% per annum from the date of award till the date of deposit to the credit of this Original Petition within a period of six (6) weeks from the date of receipt of a copy of this order.

17.Meanwhile, the counsel for the respective workers who are present before this Court are directed to file a common statement indicating the proportionate amount that could be paid out of the amounts to be deposited pursuant to order of this Court by the respondents.

18.The award will be stayed subject to compliance with the above order by the petitioner.”

19.It is not in dispute that the interim order of this Court has been complied with as it is evident from the subsequent order dated 03.04.2024. During the pendency of this petition, an attempt was made to settle the dispute amicably and accordingly, the same was recorded on 12.02.2025 and the matter was adjourned from time to time.

20.When this petition came up on 11.09.2025, the following order was passed:

“When the matter was taken up for hearing today, the learned Standing Counsel appearing on behalf of the petitioner submitted that the proposal from



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the petitioner and the first respondent was exchanged and the petitioner is open for a settlement in this case.

2. The learned counsel appearing on behalf of the first respondent submitted that the proposal given by the petitioner is not acceptable and therefore, the case is not moving towards any amicable settlement. The learned counsel appearing for some of the other respondents/workers submitted that the petitioner has not even come forward with any proposal to those workers and therefore, they are kept in dark.

3. In the considered view of this Court, the petitioner apart from mooted a settlement with the first respondent can also proceed to extend the proposal to the other respondents/workers. Atleast, whoever is willing for settlement can arrive at a compromise and they can leave the picture and ultimately the petition can be dealt with insofar as the other respondents, who are not willing for such a compromise and in which case, the petition can be heard and disposed of on merits. Therefore, this Court is not foreclosing the petitioner to attempt for a settlement with all the respondents/workers. However, if it does not work out with some of the workers/respondent, the petitioner can make an attempt to settle the dispute with the other respondents/workers before the next date of hearing.

4. Post this case on 16.10.2025. On that day, either the settlement has to be reported in full or atleast in part. Otherwise, this Court will proceed further to hear the petition on its own merits and take a decision."

21. This petition was once again heard on 29.10.2025 and the following order was passed:



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The matter was listed for hearing today in order to enable this Court to pass interim orders with respect to 70 workers for whom the gratuity was payable along with interest. This Court directed the learned Additional Solicitor General appearing on behalf of the petitioner to provide the particulars of the gratuity that is payable to 70 workers along with interest.

2. This Court, while passing an interim order on 12.02.2024, directed the petitioner to deposit a sum of Rs.14,11,81,705/- together with interest at the rate of 8% per annum from the date of award till the date of deposit to the credit of this Original Petition within a period of six weeks from the date of receipt of a copy of the order. In compliance of the above order, a total sum of Rs.15,02,79,222/- was deposited before this Court by way of a State Bank of India Demand Draft No.713014 dated 02.04.2024, drawn in favour of the Registrar General, Madras High Court.

3. The learned Additional Solicitor General provided with the particulars of the calculation for gratuity along with interest for the 70 workers. Out of the 70 workers, the names of the workers found in Sl.Nos.16, 17, 23, 35, 38, 67 and 70 are yet to retire and all the others have retired from service. As per the calculation sheet, the total gratuity amount payable to the 70 workers is to the tune of Rs.5,90,99,358/-. The interest payable comes to Rs.96,72,828/-. Thus, the total amount payable to the 70 workers towards gratuity has been calculated upto 31.01.2024 is Rs.6,87,72,186/-.

4. In the considered view of this Court, the gratuity amount along with interest can be paid to the 70 workers. Even though some of the workers are still in employment, the gratuity interest has been calculated only upto 31.01.2024. Therefore, those workers who are yet to retire, will also be entitled to receive this amount.

5. The Registry will not be able to handle the disbursement of the gratuity amount along with interest to the 70 workers inside the court premises. Therefore, this Court is inclined to permit the petitioner to withdraw a sum of Rs.6,87,72,186/- and this amount shall be utilised for the disbursement towards gratuity along with interest calculated upto 31.01.2024 to the 70 workers. This process shall be undertaken immediately.

6. It is made clear that this order is passed as an interim arrangement and it will be without prejudice to the rights of both the parties to raise all the issues in the present petition, which will be considered on its own merits and in accordance with law.



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7. As agreed by both sides during the previous hearing, post this petition under the caption "for final hearing" on 10.11.2025 at 02.15 P.M."

22.Pursuant to the above order, the gratuity amount was disbursed along with interest to nearly seventy workmen.

23.The petition was, thereafter, taken up for final hearing from 16.12.2025 and detailed submissions were made on either side.

RIVAL CONTENTIONS

24.The learned Additional Solicitor General appearing on behalf of the petitioner made the following submissions:

- The MOU dated 02.05.1995 was entered into with an Association and not with the individual workers and there was no privity of contract between the Port Authority and the workers. Hence, no rights flow from the MOU in favour of the individual workers.
- The arbitration clause provided under Clause 31 confines itself only to matters that arise within the scope of the MOU and the arbitration clause



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cannot be expanded to cover those disputes that have been raised on the side of the workmen, which are well beyond the scope of the MOU.

- The Arbitral Tribunal lacks jurisdiction to deal with questions of regularization, unfair labour practice, reinstatement of terminated workers, payment of statutory benefits etc., and these are reliefs which can only be granted by the concerned Tribunals constituted under the relevant enactments. They cannot be dealt with by the Sole Arbitrator.
- Even if the petitioner had consented to the appointment of a Sole Arbitrator, that does not, in any way, confer jurisdiction on the Sole Arbitrator, beyond those disputes which can be heard and decided by the Sole Arbitrator. The Sole Arbitrator applied the principles of piercing the corporate veil and concluded that the contract between the Association and the Port Authority was sham and nominal. If a contract is held to be sham and nominal, the arbitration clause in such a contract cannot stand alone and the said clause must also perish in the light of such a finding rendered by the Arbitral Tribunal.



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- The Sole Arbitrator has virtually granted the relief of specific performance by directing reinstatement of the workmen and such a relief cannot be granted in view of the bar under the Specific Relief Act and at the best, only compensation can be awarded.
- The Apex Court, after interfering with the order passed by this Court on the ground that the dispute involved disputed questions of facts and therefore, cannot be dealt with under Article 226 of the Constitution of India, merely granted liberty for the parties to raise the dispute under Clause 31 of the MOU. Such a dispute, can come only within the purview of the Arbitration and Conciliation Act and by no stretch, an industrial dispute can be decided by the Sole Arbitrator.
- Even if the arbitration is presumed to be one under Section 10A of the Industrial Disputes Act, 1947, the procedure specifically provided under Section 10A must be followed and Section 10A(5) makes it abundantly clear that nothing in the Arbitration Act shall apply to the arbitrations under Section 10A of the Industrial Disputes Act. Therefore, the arbitration under



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the Industrial Disputes Act and the arbitration under the Arbitration and Conciliation Act are mutually exclusive and both cannot go together.

- Insofar as the relief of reinstatement granted by the Sole Arbitrator is concerned, the concerned claimants were neither employed through the process of public employment nor where they accommodated in sanctioned posts and therefore, they cannot be directed to be reinstated by the Sole Arbitrator. To substantiate this submission, the learned Additional Solicitor General relied upon the judgment of the Apex Court in the *Umadevi* case.
- The issue regarding such regularization has now been referred to a larger Bench in view of conflicting views expressed by co-equal Benches, in *ONGC vs. Krishnan Gopal and others* in Civil Appeal No.1878 of 2016 by an order dated 07.02.2020 and the same is pending before the Apex Court.
- The entire relief that has been granted by the Sole Arbitrator is against public policy and the subject matter of the dispute handled by the Sole Arbitrator is not capable of settlement by arbitration under the law for the time being in force. Hence, the Award is liable to be interfered with under Section 34(2)(b)(i) of the Act.



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• The learned Additional Solicitor General, in order to substantiate the aforesaid submissions, relied upon the following judgments:

- a) ***Dr.S.Dutt Vs. University of Delhi*** reported in ***AIR 1958 SC 1050***.
- b) ***Associate Builders vs. Delhi Development Authority*** reported in ***2015 (3) SCC 49***.
- c) ***Maharashtra State Cooperative Housing Finance Corporation Limited vs. Prabhakar Sitaram Bhadange*** reported in ***2017 (5) SCC 623***.
- d) ***Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India*** reported in ***2019 (15) SCC 131***.
- e) ***Indian Oil Corporation vs. Shree Ganesh Petroleum Rajgurunagar*** reported in ***2022 (4) SCC 463***.
- f) ***Booz-Allen and Hamilton vs. State Bank of India Home Finance Limited and Others*** reported in ***AIR 2011 SC 2507***.
- g) ***Sumitomo Corporation vs. CDC Financial Services (Mauritius)*** reported in ***2008 4 SCC 91***.
- h) ***Sporting Pastime India Limited and K.K. vs. Kasthuri and Sons Limited*** reported in ***2006 (4) CTC 377***.



WEB COPY i) ***Union of India vs. Competition Commission of India*** reported in **2012**

(128) DRG 301.

j) ***Vidya Drolia and Others vs. Durga Trading Corporation*** reported in **AIR 2019 SC 3498.**

k) ***Kingfisher Airlines Limited vs. Prithvi Malhotra*** reported in **2013 (1) ALL MR 372.**

25. On the other hand, the learned Senior Counsels/Counsel appearing on behalf of the respective respondents made the following submissions:

- The jurisdiction of the Sole Arbitrator stems from the orders passed by the Apex Court and therefore, the Arbitral Tribunal was arbitrating an industrial dispute, having the flavor of an industrial arbitration and not a commercial arbitration.
- The Apex Court was aware of the nature of the dispute that was referred to the Sole Arbitrator and the same is evident from the first nine issues that were framed by the Apex Court and therefore, the jurisdiction of the Sole



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Arbitrator should not be traced from the MOU dated 02.05.1995, but it is only traceable from the order passed by the Apex Court.

- Both parties submitted themselves to the jurisdiction of the Sole Arbitrator, which has been specifically recorded by the Sole Arbitrator even in the Award. Once consent has been given by both sides, the petitioner cannot turn around and question the jurisdiction of the Arbitral Tribunal while filing the petition under Section 34 of the Act, more so since such a jurisdictional issue was not even raised before the Arbitral Tribunal under Section 16 of the Act. The various judgments that were cited by the learned Additional Solicitor General while questioning the jurisdiction of the Sole Arbitrator arose purely from commercial transactions involving commercial arbitration and whereas, considering the peculiarity of the present case, where the jurisdiction stems from an order passed by the Supreme Court, those ratios cannot be applied to the facts of the present case.
- The Apex Court specifically found that there were serious disputed question of facts which could not be gone into under writ jurisdiction and it requires a fact finding body which has to go into the entire facts and rival contentions



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put forth by both sides and on appreciation of evidence, must reach its conclusions. In the case in hand, considering the fact that the dispute involved the livelihood of a large body of workers, the Apex Court thought it fit to render substantial justice by exercising its jurisdiction under Article 142 of the Constitution of India.

- This Court, while dealing with the present case, must clearly keep in mind the distinction between an industrial adjudication and a commercial adjudication and the test that is applied while adjudicating a commercial dispute should not be applied to the facts of the present case. To substantiate this submission, reliance was placed on the judgment in ***Management of Bata India Ltd., and Another vs. Presiding Officer, Industrial Tribunal, Tamil Nadu and Others*** reported in ***(2010) 2 LLJ 175***.
- Even where the Sole Arbitrator has rendered a finding that the contract was sham and nominal, Clause 31 of the MOU will stand alone and that can form the basis for adjudicating the dispute between the parties. To substantiate this submission, the learned counsel relied upon the judgments in ***Today Homes and Infrastructure Private Ltd., vs. Ludhiana Improvement Trust***



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and Others reported in *2013 (3) CTC 559, G.Jawahar Enterprises vs. Glencore Grains B.V. and Others* reported in *2015 (5) CTC 470, N.N.Global Mercantile Private Limited vs. Indo Unique Flame Limited and Others* reported in *2021 4 SCC 379*.

- The stand taken by the petitioner that there was no privity of contract between the individual workmen and the petitioner is unsustainable, since a careful reading of Paragraph Nos.23 to 26 of the order passed by the Apex Court makes it clear that the Apex Court had in its mind the interests of the individual workmen, who were expected to establish their rights individually while seeking relief against the petitioner.
- At Paragraph No.33, the Supreme Court went to the extent of stating that the individual workmen must prove that they were in the employment of Chennai Port Trust and that such a relationship of employee and employer relationship existed, **notwithstanding** execution of the MOU. Therefore, insofar as the rights and claims made by the individual workmen are concerned, they are not traceable to the MOU but to the employer and employee relationship as clearly spelt out by the Supreme Court in the order.



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- A careful reading of Paragraph No.35 of the order of the Supreme Court makes it clear that an industrial dispute was referred to an Arbitral Tribunal and therefore, the Sole Arbitrator was clothed with a jurisdiction which otherwise would not have been available under the MOU. The Apex Court also added that the Arbitral Tribunal would embark upon the reference on the questions framed by the Apex Court and would be free to frame any number of questions in order to give a quietus to the long pending disputes. This would show that the issues before the Sole Arbitrator were not confined to the MOU.
- The various reliefs that were granted by the Sole Arbitrator are perfectly in line with the relevant labour laws and insofar as the relief of reinstatement is concerned, it should not be traced to the Specific Relief Act but only to Section 25N(7) of the Industrial Disputes Act. To substantiate this submission, reliance was placed on the judgment of the Apex Court in ***Krishna District Co-operative Marketing Society Limited, Vijayawada vs. N.V.Purnachandra Rao and Others*** reported in ***(1987) 4 SCC 99***.



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- While undertaking the process of deciding an industrial dispute between the employer and the workmen, the function of a Tribunal is not confined merely to administering justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, even if they do not fall within the terms of any existing agreement. Its role is not limited to interpreting or giving effect to the contractual rights and obligations of the parties. Such adjudication may also involve creating new rights and obligations between them, which is essential for maintaining industrial peace. These adjudications often involve some equitable arrangements and therefore, the Tribunal may not be strictly bound by rigid rules of law. To substantiate this submission, reliance was placed on the judgments in *Bharat Bank Limited vs. Employees of Bharat Bank Limited and others* reported in 1950 SCC 470 and *Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia and Others vs. State of Bombay and others* reported in AIR 1962 SC 486.

- The nature of the reference made by the Apex Court, in substance, is traceable to Section 10A of the Industrial Disputes Act. However, the said



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provision prescribes a procedure which the Apex Court dispensed with and directed the parties to agitate before the Sole Arbitrator. Once both parties had given their consent for the order passed by the Apex Court and had also consented to the appointment of the Sole Arbitrator and to participate in the arbitral proceedings, there is no question of turning around and questioning the jurisdiction of the Arbitral Tribunal. If the jurisdiction of the Arbitral Tribunal is questioned, it may tantamount to questioning the order passed by the Apex Court, which paved the way for referring all those disputes identified by the Apex Court to the Sole Arbitrator.

- Since the dispute was referred to the Sole Arbitrator by taking note of Clause 31 of the MOU and an Award has been passed, the same can be tested only by applying the parameters under Section 34 of the Act.

DISCUSSION

26. This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the Award passed by the Sole Arbitrator.



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27. At the outset, the learned Additional Solicitor General rightly did not canvass the findings rendered by the Sole Arbitrator on the merits of the case on appreciation of evidence. Instead, Mr. Sundaresan, learned Additional Solicitor General, aimed his submissions on four points:

- The nature of the reliefs granted by the Tribunal, particularly with reference to reinstatement, unfair labour practice, payment of statutory benefits etc., and consequential benefits, was beyond its jurisdiction as those reliefs could be granted only by the Industrial Tribunal under the Industrial Disputes Act, 1947.
- The *locus standi* of the respondents were assailed on the ground that the MOU was between the Association and the petitioner and that the respondents could not seek to have their individual claims determined under the said clause.
- The order of reinstatement is contrary to the law laid down in *Umadevi's case* and
- The order of reinstatement amounted to granting specific performance of a determinable contract, which is impermissible.



28. To test the first submission, it is first necessary to set out Clause 31 of the

MOU (Ex RI)-1, which reads as follows:

“Any dispute arising out of this Memorandum of Understanding will be referred to Arbitration under the Arbitration Act (1940) subject to the proviso that such Arbitration procedures will not be available when there is an exercise of authority under Clauses of this Memorandum of Understanding wherein it has been stipulated that the exercise of such authority shall be final.”

Before the Tribunal, one of the questions framed was whether the individual claimants had any *locus standi* and consequently whether the reference was liable to be struck down on the ground of want of jurisdiction. A close reading of the award also discloses that the petitioner Port Trust had raised two primary defences (a) that the claims were barred by limitation and (b) that the individual workers did not possess any *locus standi* to come under Clause 31 of the MOU. The submissions of the learned senior counsel for the Port Trust, which have been captured in paragraphs 58-64 of the award, also discloses that the contentions were centered around the merits of the case, as to whether there was any employer-employee relationship and on



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the issue of regularization. In other words, it was not even the contention of the Port Trust before the Arbitral Tribunal that the reliefs sought by the workers were beyond its purview.

29. In its order dated 15.02.2018, the Supreme Court had taken note of the arbitration clause in the MOU and had framed six questions for determination including questions relating to the nature of employment, the nature of reliefs/benefits could be granted and by whom. In paragraph 27.6 the Court concluded:

“27.6. Sixth, if the writ petitioners (whether all or some) are able to prove that they are/were in the employment of Chennai Port Trust and that relationship of employee and employer between them does exist notwithstanding execution of MoU, then whether such persons are entitled to claim regularisation in the service of Port Trust and, if so, since when and with what benefits or their cases are still governed by MoU as its members and lastly, what eventual reliefs, if any, can be granted to the writ petitioners.”

Having formulated the questions, the Supreme Court proceeded to determine the forum for deciding those questions. It was held as follows:

“30. We are of the view that to decide the questions arising in the case at hand, recourse to MoU for the purpose of referring the case to arbitration can be taken. As observed supra, even otherwise, the disputes raised herein are not the disputes, which are capable of being tried effectively in writ jurisdiction and indeed are capable of being tried only by a Tribunal.



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Once the disputes are referred to the Arbitral Tribunal, the writ petitioners and the Port Trusts would be at liberty to raise all the issues on facts/law in support of their respective contentions including adducing evidence (oral and documentary).”

The Supreme Court eventually concluded as under:

“34. The parties are also at liberty to appoint the Arbitral Tribunal with mutual consent, if they so wish, without taking recourse to appointment of the Arbitral Tribunal through Court.

35. The Arbitral Tribunal once appointed will embark upon the reference on the questions framed by this Court and would be free to frame any more questions after consultation of the parties/stakeholders, if such questions also arise and need to be decided to give quietus to the long-pending disputes.”

30. The Supreme Court has also expressly held that the appropriate forum for the parties to have the questions framed by it, together with other ancillary questions, adjudicated is the Arbitral Tribunal. This is clear from the following observation in paragraph 30 of its order dated 15.02.2025, which is as follows:



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*“30. We are of the view that to decide the **questions arising in the case at hand**, recourse to MoU for the purpose of referring the case to arbitration can be taken.”*

The aforesaid order has become final inter-partes and the parties have acted upon the said order, appointed the Tribunal, participated in the proceedings and an award has also been rendered. In fact, the Port Authority themselves had filed M. A’s 865 & 866 of 2022 before the Supreme Court to extend the mandate of the Tribunal. By an order dated 20.05.2022, the mandate of the Tribunal was extended by one year w.e.f 20.06.2022. It must also be borne in mind that the observations made from paragraphs 21 to 37 of the order of the Supreme Court dated 15.02.2018 are not passing reference but are “directions”. This would be evident from paragraph 20, which is as follows:

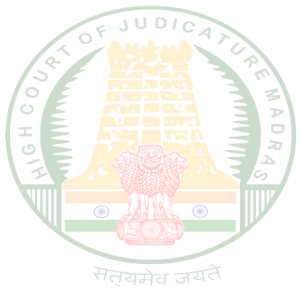
*“Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals in part **with directions mentioned herein below.**”*



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31. The directions of the Supreme Court from paragraphs 21 to 37, when viewed carefully, have the flavor of directions given under Article 142 of the Constitution. The Supreme Court was clearly alive to the peculiar facts involving issues that were in the nature of industrial arbitration concerning the plight of hundreds of workers who had been fighting against the Port Trust for over two decades. It is for this reason that the Supreme Court not only identified the questions that arose for adjudication but also empowered the Arbitral Tribunal to frame additional questions to “*give a quietus to the long-standing disputes*”. The fact that the jurisdiction of the Tribunal also flowed from the order of the Supreme Court is also fortified by the conduct of the Port Trust in filing M. A’s 865 & 866 of 2022 before the Supreme Court to extend the mandate of the Tribunal by one year, which would also strengthen the conclusion that the order dated 15.02.2018 must be treated as directions issued under Article 142 of the Constitution.

32. There is another way of looking at the question. The plea of the Port Trust, in essence, is that, in the context of the facts before the Arbitral Tribunal, the



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reliefs sought were within the purview of the Industrial Tribunal under the Industrial Disputes Act, 1947. This is essentially a mixed question of law and fact, as the grant of reliefs were dependent upon a finding on several other factual factors such as the nature and length of employment etc., In ***Gayatri Project Ltd. v. M.P. Road Development Corpn. Ltd.***, (2025) 10 SCC 750, the award was set aside on the ground that the reliefs granted by the Arbitral Tribunal pertained to a works contract which was exclusively within the domain of statutory arbitration under the M.P. Act, 1983. The Supreme Court held that such a contention had not been taken before the Arbitrator under Section 16 and could not, therefore, be taken under Section 34. It was held that, in such cases, the plea, though a question of law, was subject to the doctrine of waiver. The relevant observation is as follows:

“64. What emerges from the foregoing is that although Lion Engg. [Lion Engg. Consultants v. State of M.P., (2018) 16 SCC 758 : (2019) 1 SCC (Civ) 699] affirms that a plea of lack of jurisdiction, being a question of law, may be raised for the first time under Section 34 of the 1996 Act, yet such a plea is nevertheless subject to the waiver as held in Pam Development [Union of India v. Pam Development (P) Ltd., (2014) 11 SCC 366 : (2014) 4 SCC (Civ) 117] . Furthermore, as per GAIL [GAIL v. Ketu Construction (I) Ltd., (2007) 5 SCC 38] , such a plea may only be entertained if the party demonstrates a strong and sufficient reason for not raising it before the Arbitral Tribunal. However, L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers &



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Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] makes it clear that a failure to raise the issue of applicability of the M.P. Act, 1983 at the appropriate stage cannot be regarded as a sufficient reason, and therefore the plea cannot be permitted at the stage of Section 34 proceedings.”

Thus, having consented to appoint the Tribunal in terms of the order of the Supreme Court and thereafter having participated and suffered an award on merits, the petitioner cannot now be permitted to turn around and attack the award on the ground that the reliefs granted were not within its purview, especially when no such contention had been raised before the Tribunal. For these reasons, this contention cannot be countenanced at the stage of a challenge under Section 34.

33. In the context of the findings on unfair labour practice, the same was dealt with by the learned Arbitrator from paragraphs 222 to 225. Factually, it was found that the Port Trust had led absolutely no evidence to support their contention that the so-called contractual arrangement between the Association and its members was governed by the Contract Labour (Regulation and Abolition) Act, 1970. The Arbitral Tribunal has clearly



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returned a finding, on the basis of relevant documentary material, that the Association was formed at the behest of the Port Trust solely with a view to evade their obligations under the master-servant/employer-employee relationship.

34.The learned Additional Solicitor General would, however, draw my attention to a decision of mine in ***China Datang Technologies v NLC India Limited***, 2025 MHC 2716, where it was held that an Arbitral Tribunal appointed by the High Court in an international commercial arbitration was coram-non-judice and that the resultant award would be a nullity notwithstanding the consent of parties. This decision has no application to the facts of this case.

35.As Justice Frankfurter observed in ***United States v. Tucker Truck Lines, Inc.***, 344 U.S. 33, the word “*jurisdiction*” is a verbal coat of many colours. Thus, when we speak of lack of jurisdiction, we cannot lose sight of the context in which the expression is used. The decision in ***China Datang Technologies v NLC India Limited***, 2025 MHC 2716 was a case where an Arbitral Tribunal was appointed and constituted by the High Court in an international commercial arbitration on the basis that the parties had



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consented to empower the High Court to do so. It was held that consent could not cure a lack of jurisdiction to constitute a Tribunal, since the power to constitute an Arbitral Tribunal in an international commercial arbitration vested exclusively with the Supreme Court and not with the High Court. It was on this basis that award was set aside as the order of the High Court constituting the Arbitral Tribunal itself was a nullity and the Tribunal so constituted was a coram-non-judice.

36.The Tribunal in this case was appointed by the parties pursuant to the directions of the Supreme Court, as seen in paragraph 40 of the decision reported as *Ennore Port Trust v. V. Manoharan*, (2018) 3 SCC 612. It is nobody's case that the Tribunal in this case was coram non judice. The decision in *China Datang Technologies v NLC India Limited*, 2025 MHC 2716 cannot, therefore, apply to the facts of this case.

37.The next submission of Mr. Sundaresan, learned Additional Solicitor General was that the MOU covered only the Association and not the workers. He submitted that the workers have no *locus standi* to canvass claims made by them before the Arbitral Tribunal.



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38. The Tribunal has dealt with this contention in paragraphs 97-105. It noted that, in the Civil Appeals before the Supreme Court, the parties who were arrayed as the respondents were none other than the 90 individual workers, and that it was these parties ie., the Port Trust and the 90 individual workers, who had agreed to refer the matter to the Arbitral Tribunal. It was also noted that the question of locus of the workers was being raised for the first time before the Tribunal, even though these workers were parties before the Supreme Court when it passed the order dated 15.02.2018. On this basis, the Tribunal concluded, at paragraph 101, that the Supreme Court itself had concluded that the remedy of the 90 persons was to approach the Tribunal under Clause 31 of Ex R(I)-1, and the Port Trust cannot now be heard to plead the contrary.

39. This Court is in complete agreement with the aforesaid findings. It should also be added that this submission, on the face of it, is completely specious and untenable. As correctly noted by the Tribunal, the workers and the Port Trust were before the Supreme Court and had consented to arbitration. It was on this basis that the Supreme Court itself had framed six questions for



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determination by the Tribunal. If *locus standi* was an issue there was no question of referring the same to the Tribunal. In any event, the order of the Supreme Court dated 15.12.2018 is clear and unambiguous and cannot be wished away by the Port Trust. For these reasons, the finding of the Arbitral Tribunal on this point is clearly unassailable.

40.The next contention of the learned Additional Solicitor General is that the Arbitrator has gone on to hold that the Association was a sham entity and has committed a patent error in applying the concept of piercing the veil to grant relief in favour of the workmen. The learned Additional Solicitor General submitted that the conclusions of the Tribunal were mutually destructive, since by holding the Association to be a sham, the workers could not be granted relief by way of an MOU which governed the very same Association.

41.At the outset, the invocation of the principle of lifting the corporate veil by the Arbitral Tribunal was perhaps unnecessary since the Association was a body registered under the provisions of the T.N. Societies Registration Act, 1975.In ***Illachi Devi v. Jain Society*, (2003) 8 SCC 413**, it has been held that



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a society registered under the Societies Registration Act is not a body corporate, unlike a company registered under the Companies Act. It was also held that a society registered under the Societies Registration Act is not a juristic person. Similarly, a society under the T.N Societies Registration Act, 1975 is not a juristic entity. The property of such society vests with a committee under Section 18 of the Act and this committee is elected from and amongst the members themselves. Consequently, the question of piercing the corporate veil does not really arise. However, merely because the Arbitral Tribunal had misapplied the doctrine of piercing the corporate veil, it does not necessarily follow that the factual findings of the Tribunal are liable to be labelled as perverse.

42. This Court has independently examined the findings of the Arbitral Tribunal on this aspect. The learned Arbitrator, after discussing the relevant documents, found that the Madras Port Spillage Workers Association was registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 on 03.04.1990 under Ex C(I)-1. After referring to Ex R(I)-30, the Tribunal noted in paragraph 149 that the main reason for the Port Trust to



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sign an MOU with the Association was to avoid de-casualisation ie., to bring the workmen onto the regular rolls since the Port Trust apprehended that if they were regularized the workers might not be effective and efficient in performing their tasks. After a thorough scrutiny of the facts, the learned Tribunal concluded that, except for calling the Association as a contractor the entire administration relating to the engagement of these workmen was undertaken by the Port Trust and that they were under the direct control of the Chief Mechanical Engineer and the Superintending Engineer of the Electrical and Mechanical Department. The workmen were also paid the same wages as were paid to workmen in Dock Labour Board and the mazdoors of the Port Trust. The shift working was regulated by the Superintending Engineer, E & M of the Port Trust. The workmen had access to canteen facilities and medical benefits in the Port Trust Hospital. The Port Trust was also meeting medical expenses of the workmen and their family members. In paragraph 158, the Tribunal noted the extensive benefits conferred on the workmen and thereafter concluded that the spillage handling workers were treated on par with the regular employees and that



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the Association was only a name lender. Thereafter, in paragraph 163 the learned Arbitral Tribunal has concluded as follows:

“Therefore, all the above factors only disclose the claim of the 1st respondent Port Trust that the employees were all employees of the contractor, namely, the Association cannot be accepted merely because the Association was registered under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the 1st Respondent Port Trust’s claim as a Principal Employer, though admittedly not registered as such under the Act. But in reality, it was the 1st Respondent Port Trust who employed all these last set of 93 workmen by adopting the device of contract labour system through the Association. The Association was not benefitted in any manner as a contractor by its engagement as a contractor of the 1st Respondent Port Trust. It merely acted as a messenger on behalf of the 1st Respondent Port Trust by lending its name and that too only for disbursement of salary received from the 1st Respondent Port Trust and by merely passing on the payment of salary received from the 1st Respondent Port Trust.”

43. Thereafter, at paragraph 174, it was concluded that the claim of the Port Trust that the workmen were all workers of the Association as a deceitful claim which deserved outright rejection and that contract itself was sham and nominal, as the real employer was the Port Trust and not the Association. Thus, the conclusions reached by the learned Arbitrator are



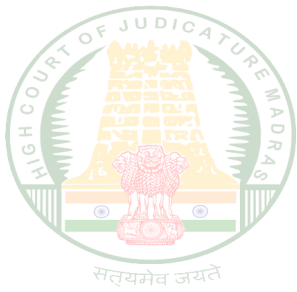
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grounded on relevant documentary material, which clearly pointed to the fact that the Port Trust had used the Association as a front to avoid de-casualisation, when it remained the active employer from the backstage.

Having held so, the learned Arbitrator concluded:

“On the other hand, the overwhelming relevant documentary evidence on record as noted in the preceding paragraphs of this Award, namely from 111 to 132, supported by the oral evidence of the workmen as well as the Respondent fully establish the claim of the Spillage Handling Workmen that they were all the employees of the 1st Respondent Port Trust and therefore entitled to claim whatever benefits available to them based on the said status.”

44. These factual findings are clear and cogent and are grounded on documentary evidence. They cannot, in any manner, be termed as perverse to call for interference within the limited parameters of Section 34. This is not a case of no evidence, nor is it a case where the learned Arbitrator has refused to rely on relevant evidence. In fact, it is a case grounded entirely on unimpeached oral and documentary evidence. This is precisely why the Port Trust has not attempted a foray into the merits of the case.



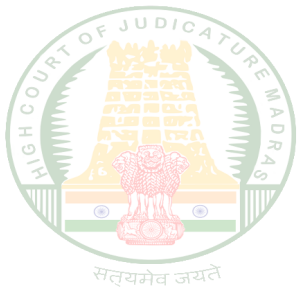
45. As pointed out by the Supreme Court in ***Associate Builders v. DDA, (2015)***

3 SCC 49:

“It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.”

In any event, the findings of the Arbitral Tribunal are purely factual. As pointed out by the Supreme Court in ***SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131***, re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award. Hence, this contention must also be rejected.

46. The next contention of Mr. Sundaresan, learned Additional Solicitor General, is that the employment of the respondent workmen would amount to backdoor employment, violating the decision in Umadevi’s case (*supra*).



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In paragraph 250 of the award the Tribunal has found that there was absolutely no basis to support the contention that these workmen had entered service through the backdoor. On the other hand, it was observed that there were overwhelming records to show that the workmen had entered the service of the 1st respondent and had remained in service from 1980 till the date of termination of the MOU on 06.12.2012, and subsequently by the order dated 01.08.2016. The Tribunal has also held that in none of the documents placed before the Tribunal was there even a whisper suggesting that these workmen had entered service through the backdoor. On this basis, the Tribunal has correctly concluded, in paragraph 251, that it was truly shocking to hear from the Port Trust that these workers were backdoor entrants.

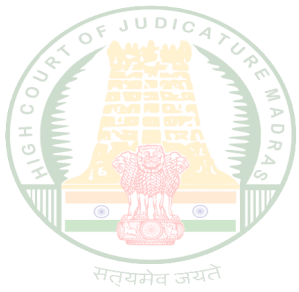
47.The aforesaid factual findings are based on documentary evidence. The scope of Section 34 does not permit this Court to examine whether an alternative view is possible. On the contrary, the view taken by the Tribunal given the nature of evidence before it, can certainly be said to be the only possible view on facts.



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48. The last contention of Mr. Sundaresan, learned Additional Solicitor General, is that the direction for reinstatement after the order of termination would amount to specifically enforcing a contract for personal service, which is clearly prohibited. The learned Additional Solicitor General also placed reliance on the decision of the Supreme Court in ***Maharashtra State Cooperative Housing Finance Corporation Limited vs. Prabhakar Sitaram Bhadange***, 2017 (5) SCC 623 to buttress his submission that the relief of reinstatement could not have been granted by the Arbitral Tribunal. Mr. Sundaresan, while not venturing into the merits of the other reliefs and confining himself to the relief of reinstatement, would submit that such a direction was wholly without jurisdiction and that the award, to this extent, suffers from a patent illegality warranting interference.

49. To examine this submission, it is necessary to first advert to the order of the Division Bench dated 11.05.2011 in ***Avoor Muthiah Maistry Street Residents Association v Government of Tamil Nadu***, 2011 SCC Online Mad 678. This matter arose out of a letter petition addressed by the resident's association to the Chief Justice of this Court, explaining the

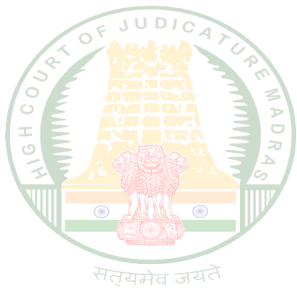


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hardship and turmoil faced by them because of the iron ore unloaded in the nearby Harbor being blown to their houses, causing unbearable pollution. The letter petition was treated as a PIL under Article 226 and the Chennai Port Trust was arrayed as the 2nd respondent. Eventually, a Division Bench of this Court held as follows:

“The Chennai Port Trust has not taken any appreciable step towards arresting the pollution. The so-called measures said to have been taken by the Chennai Port are inadequate to address the issue of pollution in the area and the various orders passed by this Court and the directions issued by the Tamil Nadu Pollution Control Board to the Chennai Port to arrest the pollution have not been cared by the Chennai Port Trust, exhibiting its callous attitude and scant regard to the public health and security.

(ii) The argument advanced on the part of the Chennai Port that in case of shifting its coal and iron ore operations to Ennore Port, it will lead to unrest among the employees and pensioners cannot be accepted, in view of the well-established principle of law that the interest of major sections of the society shall always prevail over that of the small sections of the people. Furthermore, this Court cannot leave in lurch the employees and the pensioners of the Chennai Port also, since this Court is aware that the livelihood of the employees and pensioners of the Chennai Port cannot be ignored and sufficient safeguards have to be made while protecting the interest of the society at large.”

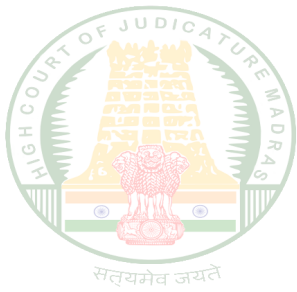


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Thereafter, the Division Bench went on to issue directions to ensure that dusty cargoes are moved to Ennore Port and not to the Chennai Port. What is material to the instant case is the direction contained in paragraph (d) which is as follows:

*“(d) With regard to the employees and pensioners of the Chennai Port, the Government of India, the Government of Tamil Nadu, Chennai Port Trust and the Ennore Port Trust are directed to see that **not even a single employee is retrenched or otherwise made to lose his livelihood** because of the distribution of cargoes between Ennore Port and Chennai Port, as ordered above.”*

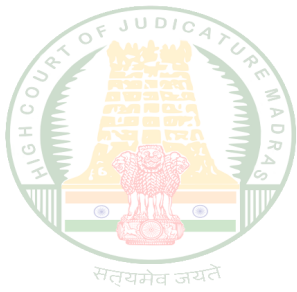
50. The learned Sole Arbitrator took note of the aforesaid order and specifically observed, in paragraph 218, that the stoppage of work of the claimants and their consequential non-employment by the petitioner Port Trust was not in consonance with the aforesaid directions of the High Court. It was observed that the order dated 06.12.2012 passed by the Port Trust was not in consonance with the aforesaid directions. Thereafter, the learned Arbitrator observed that, once the real status of the spillage-handling-workmen as workmen of the 1st respondent had been established by evidence, they would



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fall within the protective umbrella of the aforesaid order of the Division Bench and their non-employment under the guise of termination of the MOU would be wholly illegal and unjustified. The Tribunal has discussed the relevant evidence at paragraphs 219 and 220 and concluded that the orders of termination dated 06.12.2012 and 01.08.2016 are illegal and non-est in law. These findings in these paragraphs have not been assailed as being perverse. In fact, they are obvious consequence flowing from the earlier finding of the learned Arbitrator on the actual status of the workmen as employees of the Port Trust.

51. In the considered opinion of this Court, once it was held that the order of termination was “*non-est in law*” ie., void in law, the only consequence is that it must be treated as having never existed in the eye of law. In a recent decision in ***Machhindranath v. Ramchandra Gangadhar Dhamne***, (2025) 7 SCC 456, the Supreme Court has quoted its earlier decision in ***Dhurandhar Prasad Singh v. Jai Prakash University***, (2001) 6 SCC 534, which approved the following passage from the decision of the House of



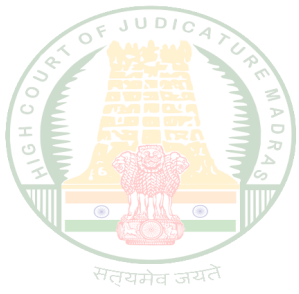
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was observed:

“This contention seems to me to raise the whole question of void or voidable; for if the original order was void, it would in law be a nullity. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because you cannot continue a nullity.”

Once the orders of termination were found to be contrary to the directions of the Division Bench, they were obviously void and no rights or liabilities would flow therefrom. Consequently, no cognizance can or need be taken of the same. As a result, the workmen must be treated as having continued in the employment of the Port Trust during the relevant periods.

52.The learned Arbitrator has thereafter taken recourse to Section 25 N of the Industrial Disputes Act, 1947, to order reinstatement of 28 employees in paragraph 262 (II)(iii) of the award, which is now assailed by Mr. Sundaresan, learned Additional Solicitor General, on the ground that the Arbitrator could not have granted such a relief.



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53. The decision of the Supreme Court in ***Prabhakar Sitaram Bhadange, supra***, cited by the learned Additional Solicitor General, is clearly distinguishable. The proposition laid down therein is that a civil court cannot grant the relief of reinstatement of service in view of Section 14 of the Specific Relief Act, 1963 and that in the context of an industrial dispute, such a relief can be granted only by an Industrial Tribunal under Section 25-N of the Industrial Disputes Act, 1947. While there is no quarrel with this proposition, the distinguishing feature in the present case is the order dated 11.05.2011 in ***Avoor Muthiah Maistry Street Residents Association v Government of Tamil Nadu***, 2011 SCC Online Mad 678.

54. The decision in ***S.B Dutt v University of Delhi, AIR 1958 SC 1050***, relied upon by Mr. Sundaresan, learned Additional Solicitor General, is clearly inapplicable to the facts of this case. That was a case where a professor at Delhi University who challenged his dismissal from service which dispute was referred to arbitration. The Supreme Court held that the Arbitrator could not have declared the petitioner to have continued in service, as that would amount to enforcing a contract of personal service, which is barred under the

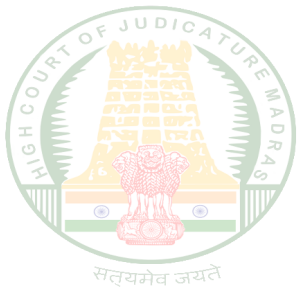


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Specific Relief Act, 1963. The facts here are otherwise. The workmen in this case cannot be placed on par with the Delhi University professor, and this ground alone is sufficient to distinguish this decision.

55. In the opinion of this Court, recourse to Section 25-N by the learned Arbitral Tribunal may not have been necessary on the facts of this case. This is because, de-hors Section 25-N, the protection for the workmen in this case flows from the order of the Division Bench in *Avoor Muthiah Maistry Street Residents Association v Government of Tamil Nadu*, 2011 SCC Online Mad 678. Once the status of the respondents as workmen of the Port Trust was established by oral and documentary evidence, they would fall within the protection of the order of the Division Bench and would continue to remain in the employment of the Port Trust. In fact, at paragraph 197 of the award, the Arbitral Tribunal has itself concluded:

*“Having regard to the detailed analysis made above and the conclusion reached that all the Claimants, 93 in number **were/are** in the employment of the 1st Respondent and were not in the employment of any contractor ie., the Association and therefore the said issue is answered to the effect that the Claimants **were/are** in the employment of the 1st respondent Port Trust”*



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The learned Arbitrator correctly noticed the aforesaid facts in paragraphs 218-222 of the award, but thereafter proceeded on to invoke Section 25-N of the Industrial Disputes Act, 1947 to direct reinstatement, which was not strictly necessary, as the order of termination itself was a nullity in law. The direction for reinstatement merely consequential to the finding of the Tribunal that the direction of the Division Bench had been breached. Such a direction was obviously necessary to give effect to the directions of the Division Bench. The Tribunal was careful to notice the above distinction as is clear from paragraph 262 (II) (iii) of the award which directs the Port Trust ***“to pass the order of reinstatement”***.

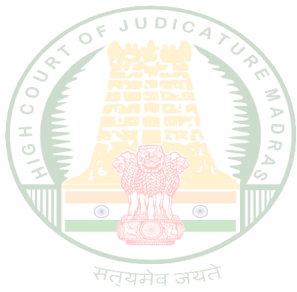
56. When the directions contained in the award are construed in the light of the aforesaid discussion, the direction of the Tribunal couched in terms of “reinstatement” cannot be said to be wholly perverse or without jurisdiction. As stated above, the said direction was necessary to give effect to the directions of the Division Bench in the light of the factual conclusion that the respondents were the workmen of the Port Trust. The view taken by the



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Tribunal is certainly a possible view and must necessarily pass muster, given the extremely limited scope of interference under Section 34. Consequently, this contention of the Port Trust must necessarily fail.

57. Before parting, this Court cannot help but observe that the Port Trust is an instrumentality of the State under Article 12 and is expected to act with a higher degree of fairness than ordinary employers. This litigation has been lingering on for several decades. The Arbitral Tribunal has taken great pains to minutely scrutinize the evidence and grant appropriate reliefs to meet the ends of justice. It is hoped that the Port Trust will, at least now, implement the award and give a quietus to the dispute, as desired by the Supreme Court. I only wish to remind the Port Trust that the respondents are persons who have worked for decades in a hazardous job exposing themselves to the vagaries of disease and ailments. When it comes to dealings between a State instrumentality and citizens the following observations of M.C Chagla, CJ in ***Firm Kaluram Sitaram v. Union of India***, AIR 1954 Bom 50 are worthy of reproduction:



Arb O.P(COM.DIV.) No. 509 of 2023
and Application Nos.5610 of 2023 and 3134 & 3866 of 2024

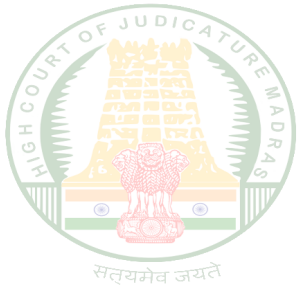
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“Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily reply on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.”

58. In the result, the petition fails and is dismissed. Consequently, Application Nos.5610 of 2023 and 3134 & 3866 of 2024 are closed.

07.01.2026

Index: Yes
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes
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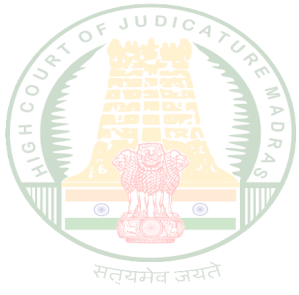


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1.The Madras Port Spillage Handling Workers Association,
Represented by V.Manoharan
Regt. No.55/1990,
165, Amman Koil Street,
Kakanchi Colony, Vyasarpadi,
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2.The Chairman cum Managing Director,
Ennore Port Ltd.
Now Known as Kamarajar Port Ltd.,
2nd and 3rd Floor, (North Wing),
Jawahar Building,
17, Rajaji Salai, Chennai-600 001.



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and Application Nos.5610 of 2023 and 3134 & 3866 of 2024

N.ANAND VENKATESH J.

SSR

Pre-Delivery Order in
Arb O.P(COM.DIV.) No. 509 of 2023
and Application Nos.5610 of 2023 and 3134 & 3866 of 2024

07.01.2026