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STATUS

DISPOSED

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|--------------|---|-----------------|--------------|-----------------|--------------------------------|
| Case Number: | WP 48094/2012 (KAHC010478312012) | Classification: | L RES | Date of Filing: | 28/11/2012 15:53:27 |
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|--------------------|---------------------------------|-------------------|--|--------------------|-----------------|
| Petitioner: | SAMUEL SATHYASHEELAN | Pet. Advocate: | CLIFTON D ROZARIO FOR | | |
| Respondent: | UNION OF INDIA | Resp. Advocate: | R1-R3 BY S KALYAN BASAVARAJ | | |
| Filing No.: | WP 48094/2012 | Judge: | D.H.WAGHELA (CJ) AND ASHOK B HINCHIGERI | | |
| Last Posted For: | ORDERS | Date of Decision: | 18/08/2014 | Last Action Taken: | DISPOSED |
| Next Hearing Date: | 14/08/2014 | | | | |

Daily Orders: WP 48094/2012

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|---|--|-------------------|
| 1 | D.H.WAGHELA (CJ) & HGRJ | <u>14/07/2014</u> |
| | List on 17.07.2014 for final disposal. | |
| 2 | D.H.WAGHELA (CJ) & HGRJ | <u>09/06/2014</u> |

1. The matter has come on board pursuant to the office objections raised against I.A.No.1/2013 and on statement of objections filed by counsel for R.11, R.13, R.16 and R.19. The office objections against I.A.No.1/2013 are over-ruled in view of the nature of litigation. The other objections against statement of objections filed by the respondents are either stated to have been already complied with or shortly to be complied with. Therefore, time of two weeks is granted for removal of all office objections. 2. After the matter being argued at some length, it was agreed amongst learned counsel for the respondents that, as suggested by learned Additional Government Advocate, payment of wages to the workers working on the Metro-rail project is required to be made in presence of Labour Inspector working under respondent No.8, so as to ensure that each of the workmen working on the project is paid his wages as prescribed under the Minimum Wages Act and within the period prescribed under the Payment of Wages Act, without any illegal or unauthorized deduction. It was, therefore, agreed that each of the principal employer joined herein as respondents as also the sub-contractors working under them shall intimate the date and time of payment of wages to the Labour Inspector and ensure that actual payment of wages is made only in presence of Labour Inspector. 3. Learned Additional Government Advocate has stated that one or the other Labour Inspector will be deputed by respondent No.8 to remain present at the time of making payment of wages as aforesaid and ensure that at least now onwards no violations of the provisions of Minimum Wages Act or the Payment of Wages Act is committed either by the sub-contractor or the principal employer who are joined herein as respondents. It was further agreed that this order shall take immediate effect and all payments to the workers shall be made as aforesaid now onwards and till further orders in that regard. A report of the payments made in presence of Labour Inspector as above shall be made by the Labour Inspector concerned on the next date of hearing. 4. Learned counsel for the respondents who are present have been reminded of the order of 24th March 2014 for its compliance, if that order is not complied so far by one or the other respondents. The matter may be listed for further hearing on 09.07.2014. A copy of this order shall be furnished to learned counsel for the respondents immediately.

3

D.H.WAGHELA (CJ) & BVNJ

21/04/2014

List on 09.06.2014 for the parties to exchange their pleading in the meantime and for the petitioner to submit necessary data of alleged violation of the provisions of the labour welfare legislations mentioned in the earlier order.

4

D.H.WAGHELA (CJ) & BVNJ

07/04/2014

List on 21.04.2014 at the request of learned counsel for the respondents who propose to fully implement the previous order in respect of filing affidavits/written submissions. If any of the respondents fails to do so by the said date, the responsible officer of the party concerned shall remain personally present.

5 D.H.WAGHELA (CJ) & BVNJ

24/03/2014

Learned counsel for newly joined respondent Nos.11 to 23, except for respondent No.14, have appeared. They have generally claimed ignorance about the present proceedings and the report of the joint inspection team filed herein, as also the written submissions made on behalf of the petitioner at page 1624 with the tables annexed thereto, as also the interim order dated 18.12.2013 made herein. They are required to take out copies of the aforesaid documents and order and show cause as to why necessary directions should not be issued, considering them to be principal employers, to disclose relevant conditions of the contracts they have entered into with the main project proponent and the sub-contractors, for effective implementation of the applicable provisions of several labour legislations including the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Contract Labour (Regulation and Abolition) Act, 1970, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936. The aforesaid respondents are required to submit brief written submissions on affidavit, so as to fix the responsibility for gross violation of the aforesaid laws in execution of the contract, which is prima facie established by aforesaid inspection report and the data culled out from the record by the petitioner. It is also required to be explained by the respondents as to how 100% registration of the workmen in the establishments concerned could be ensured, so as to ensure delivery of all the benefits accruing to the building workers, working on the project of metro rail in Bangalore. Hearing is adjourned to 07.04.2014 at the request of learned counsel for the respondents, who propose to file affidavits/written submissions after collecting all the necessary copies and data.

6 D.H.WAGHELA (CJ) & BVNJ

03/02/2014

Respondent Nos.13, 15 and 16 to be served through respondent-Bangalore Metro Rail Corporation Limited.

7

D.H.WAGHELA (CJ) & BVNJ

21/01/2014

List on 03.02.2014, at the request of learned counsel newly appearing for respondent No.11, awaiting service to the other respondents.

8

D.H.WAGHELA (CJ) & SNSJ

18/12/2013

Pursuant to the previous order herein dated 03.07.2013, respondent No.7 was required to convene a meeting of the main contractors and sub-contractors for ensuring full compliance of the relevant labour legislations at the site and submit a report to this Court in respect of the total number and names of the main contractors, sub-contractors and the list of total number of workers working at the site. An officer of the rank of Deputy Chief Labour Commissioner (Central) was also required to be deputed to attend the meeting and learned counsel for the petitioner Mr.Clifton D.Rozario was required to be invited to the meeting. Thereafter, the Committee has submitted a report and after perusal of the same, it is submitted that the petitioner moving the present public interest litigation is genuinely anguished at the inhuman living and working conditions of the workers employed for the Metro Rail Project. 2. It is submitted in writing by learned counsel Mr.Clifton D.Rozario that, admittedly there are 19 main contractors who have employed construction workers through sub-contractors or labour contractors. After inspections conducted by or under the auspices of respondent No.10 over a long period from 14th March 2013 to 26th July 2013, various violations of labour laws have been noticed and it is stated on behalf of respondent No.10 that various prosecutions have been launched against various contractors. Since, majority of the labourers are found to be migrant workers, the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, are required to be fully and duly enforced. But, by and large, they are found to have been observed more in violation, according to the survey conducted pursuant to the interim order. The petitioner has further pointed out the poor living conditions in which migrant workers are forced to live, while they are employed on the project. And, on that basis, various prayers are made for directions to enforce the relevant legal provisions. 3. Learned Assistant Solicitor General Mr.Kalyan Basavaraj appearing for the Deputy Chief Labour Commissioner (Central) has submitted that necessary inspection is carried out from time to time and the labour enforcement machinery has been active insofar as several criminal cases are already filed against the errant sub-contractors. It was, however, found from the Table submitted at page No.1630 onwards of the paper book, that various provisions of the Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996, the Contract Labour (Regulation & Abolition) Act, 1970, the Inter-State Migrant Workmen

(Regulation of Employment and Conditions of Service) Act, 1979, General Conditions of Contract for Civil Engineering Works, as also the provisions of The Minimum Wages Act, 1948 and Payment of Wages Act, 1936 are being consistently violated and such violation is continued even during the pendency of the present proceeding. Learned Assistant Solicitor General Mr. Kalyan Basavaraj, conceded that in none of the criminal cases being filed by respondent No.10, the principal employer or main contractors were being joined as parties. Therefore, it prima facie appears that actual enforcement of the aforesaid labour legislations is left or reduced to compliance by the sub-contractors and filing of a few criminal cases. It was argued that in case of conscious violation of the provisions of the above legislations, the principal contractors or principal employers of the workmen working on the ground would have and should have rescinded the contracts with the sub-contractors, in exercise of the powers reserved by the principal employers in the conditions of the contract. 4. With the above backdrop of facts and contentions, learned counsel for respondent No.7 was requested to submit the list of main contractors carrying out the project, who are also regarded as the principal employers. The list of 13 such main contractors has been submitted today. Since they are required to be heard before issuing any direction in respect of the alleged violation of law committed by the contractors or sub-contractors or labour contractors working under the aforesaid main contractors, notice is ordered to be issued to the 13 parties named in the memo submitted by respondent No.7 today. Those 13 contractors shall stand joined as party-respondents in the main petition. The notices as aforesaid shall be made returnable on 20.01.2014.

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| 9 | D.H.WAGHELA (CJ) & SNSJ | <u>18/11/2013</u> |
| | Stand over to 09.12.2013, at the request made on behalf of learned counsel Mr. N.N. Harish. | |
| 10 | D.H.WAGHELA (CJ) & BVNJ | <u>03/07/2013</u> |

Stand over to 24.07.2013 at the request of learned counsel appearing on either side on the understanding that respondent No.7 shall convene a meeting of the main contractors and sub-contractors for ensuring full compliance of the relevant labour legislations at the site and submit a report to this Court in respect of the total number and names of the main contractors, sub-contractors and the list of total number of workers working at the site. Learned counsel for respondent No.9 proposes to file an affidavit stating the number and details of the workers registered with the welfare board and the cess collected on the wages paid to the workmen working on the metro rail project. It was stated at the bar by learned counsel appearing for respondent No.10 that an officer of the rank of Deputy Chief Labour Commissioner (Central) shall be deputed to attend the meeting proposed to be convened as aforesaid and learned counsel for the petitioner Mr.Clifton D. Rozario shall also be invited to the meeting.

11

D.H.WAGHELA (CJ) & BVNJ

05/06/2013

Learned senior advocate Sri S.S.Naganand proposes to file statement of objections for Respondent No.7. Learned A.G.A. appearing for Respondent Nos.4, 5, 6 and 8 sought time to submit report on the lines of the report submitted on affidavit by Respondent No.10 in respect of the labour laws administered by labour laws enforcement machinery of the State Government. Learned counsel appearing for Respondent No.10 submitted that, as already stated in additional affidavit, Respondent No.10 is taking necessary action against the erring sub-contractors and a fresh report shall be submitted as regards compliance of the labour laws by the contractors on the next date of hearing. Hearing is therefore adjourned to 3.7.2013.

12

KSRJ & BVNJ

09/01/2013

Sri Kalyan Basavaraj, ASG to take notice for respondent Nos.1 to 3 and 10. Sri R.Devdas, Government Advocate to take notice for respondent Nos.4 to 6 and 8. Sri N.N.Harish, Advocate to take notice for respondent No.7. Issue notice to respondent No.9.