SUPREME COURT OF INDIA

Workmen through the Convener FCI Labour Federation

Vs.

Ravuthar Dawood Naseem

C.A.No.10511/2011

(A.M.Khanwilkar and Dinesh Maheshwari,JJ.,)

19.05.2020

JUDGMENT

A.M.Khanwilkar,J.,

1. I.A. for permission to file the contempt petition(s) is allowed.

2. These contempt petitions except Contempt Petition (Civil) No. 754/2019 emanate from the common judgment and order of this Court dated 20.8.2018 in Civil Appeal Nos. 10499/2011 and 10511/2011. Contempt Petition (Civil) No. 754/2019, however, arises from a separate judgment and order of this Court on the same subject matter and date (i.e. 20.8.2018) in Civil Appeal No. 7961/2014.

3. The grievance in these petitions is about non-compliance of direction given to the respondent-Food Corporation of India to regularise and departmentalise the concerned workers who had initiated industrial disputes bearing I.D. No. 39/1992 and I.D. No. 55/1993 before the Industrial Tribunal, Tamil Nadu, Chennai under Section 10(1)(d) of the Industrial Disputes Act, 1947 . The concerned employees were employed at Depots of the Corporation in the Southern Zone of India including the States of Kerala, Andhra Pradesh, Karnataka and Tamil Nadu, as daily¬rated labour or casual labour through contract labour cooperative societies or private contractors. They were working in that capacity for quite some time and in some cases, for around 15 to 20 years, and were performing similar work as the regular employees of the Corporation. In I.D. No. 39/1992, following issue was referred to for adjudication: -

> "Whether the action of the management of Food Corporation of India, in denying to regularise 955 contract labourers engaged by management of Food Corporation of India Godown, Avadi through TVK Cooperative Society in respect of names as given in the Annexure is justified? If not to what relief they are entitled to?"
>
> (emphasis supplied)

In I.D. No. 55/1993, reference was made for adjudication of the following issue: -

"Whether the services of workmen employed in different Food Storage depots in Food Corporation of India in the South where notifications have been issued prohibiting engagement of contract labourers under Section 10(1) of CL (R and A) Act are entitled to be regularised and if so, from which date?"

(emphasis supplied)

During the pendency of these References, an understanding was arrived at between the parties, as recorded in the Minutes of Meeting dated 12.4.1996, the relevant extract whereof is as under:- "The Charter of demand submitted by the FCI Workers Union vide their letter dated 12.2.96 was taken do for discussions and decision taken on each of their demands are recorded as under: -

1. Department allegation of workers and payment of documental wages to the workers in all FCI depots as recommended upto [sic] the Hon'ble Supreme Court of India, and especially in South Sons where the Central Government have notified prohibiting employment of contract labour long before considering the food handling work as perennial in nature (both the food-handling work is still being done in all South Depots) by Labour Cooperative Society as Contractors as well as the Hon'ble High Courts of Kerala and Karnataka have also directed for departmentisation of FCI workers in F.S. Depots. The Union demanded departmentalization of labour in all the notified depots on the plea that there are other notified depots where departmentalisation has already been done since 1991. As such, these depots may also be extended the benefit of departmentalisation. After having protracted discussions, keeping in view the orders of the Hon'ble Karnataka High Court and the Supreme Court and the scheme submitted for decision between the Karnataka High Court, following decisions were taken: -

(i) It was decided that in all remaining, notified FCIs own Depots which were running under the Labour Cooperative Societies, or otherwise may be brought under Direct [sic] Payment System with all the benefits under the Direct Payment Scheme w.e.f. 1st May, 1996.

(ii) It was also decided that proposal for departmentalization will be sent to the government by 31st July, 1996 and till decision from the Government or from the concerned courts Direct payment System will continue.

(iii) It was agreed that in the other notified depots of FCI where labour Cooperative Societies are not functioning, the labour strength will be assessed on the basis of the formula to be evolved in consultation with FCI Workers Union as the Union had mentioned that the formula of assessment of labour being adopted by diving the workload i.e. receipt and issue by 365 is not realistic. The Union suggested that the workload of receipt and issue as well as all operations performed in the depot should be taken into account and the same should be divided by 240 days instead of 365. As regards labour Cooperative Societies, it was decided that the workers already working there during last 3 years and who had worked for nine out of 12

months in the last year and whose PF deductions are being made will be extended benefit of Direct Payment System workers. However the actual requirement of labour for these depots will be assessed as per the norms agreed to with the Union and utilisation of surplus labour including employment elsewhere will be resorted to by the management in Nconsultation with the Union. Regarding norms, the Union expressed resentment about adopting 365 days a year which management agreed to look into and take a final view.

(iv)As regards notified depots under CWC, separate discussions will be held for a final decision. (Action Manager (IR-L)

2.Immediate departmentalisation of all the workers of FCI Depots under Direct Payment System, Guaranteed Wages System. No work no pay System and B-Category system. It was agreed that the system as in existence will continue [sic]."

(emphasis supplied)

A list of Depots having Departmental Labour System in March, 2000 is annexed as annexure P-3 in the reply affidavit filed by the petitioner to the counter affidavit of the respondent in Contempt Petition (Civil) No. 404/2019.

4. In I.D. No. 39/1992, after due consideration of the rival submissions, the Tribunal vide award dated 19.12.1997, noted the point for its consideration as follows: -

"7. The point for our consideration is: whether the action of the management of FCI (respondent) in denying to regularise 955 contract labourers engaged by the management of FCI godown at Avadi through Thiru VI. Ka. Labour Contract Cooperative Society is justified."

After detailed analysis and reference to other decisions between the workmen and the Corporation, the Tribunal came to issue the following direction: -

"14. In the result award is passed holding that action of the respondent management in denying to regularise the 955 contract labourers engaged through Thiru. VI. Ka. Cooperative Society as not justified and the management is directed to regularise and departmentalise these 955 workmen from the date of notification Ex. W 4 with regard to Avadi depot i.e. 28.02.1990 with all attendant benefits.
No Costs."

(emphasis supplied)

5. Similarly, the Tribunal while disposing of I.D. No. 55/1993 vide award dated 29.7.1998, issued following directions: -

"... Therefore, the services of workmen employed in different food storage depots of the Food Corporation of India in South India where notification have been issued

prohibiting engagement of contract labour u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, are entitled to be regularised, from the date of notification concerning each depot. Award passed. No costs".

(emphasis supplied)

The aforementioned awards were subject matter of challenge before the High Court of Judicature at Madras in Writ Petition Nos. 11416/1999 and 12416/1999. The learned single Judge vide judgment and order dated 14.8.2003, dismissed the writ petitions on the finding that the awards passed by the Tribunal were just and proper, and thus affirmed the same.

6. Feeling aggrieved, the Corporation carried the matter before the Division Bench of the Madras High Court by way of Writ Appeal Nos. 3382/2003 and 3383/2003. The Division Bench dismissed the said writ appeals vide judgment and order dated 13.12.2006 having agreed with the conclusion arrived at by the Tribunal in passing awards and the reasoning of the learned single Judge in confirming the same. The Corporation filed special leave petitions before this Court, which were converted into Civil Appeal Nos. 10499/2011 and 10511/2011. Both appeals have been dismissed by a common judgment and order dated 20.8.2018 upholding the view taken by the Tribunal and the Madras High Court.

7. Contempt Petition (Civil) No. 754/2019 is in reference to a separate judgment and order of the same date (i.e. 20.8.2018) passed by this Court in Civil Appeal No. 7961/2014 in respect of writ petition instituted by the contempt petitioners (Thrissur Jilla General Mazdoor Sangh and others) before the High Court of Kerala at Ernakulam being Writ Petition No. 14786/2013, praying for the following reliefs: -

"(i) A writ of mandamus directing the 5 th respondent to take effective steps for implementing Exhibit P1;

(ii)Declare that the DPS workers in the depot of FCI at Mulakunnathukavu, Thrissur, are entitled to be regularised and are entitled to the pay and other service benefits of departmental labourer..."

The stated writ petition was dismissed by the learned single Judge vide judgment and order dated 4.9.2013 on the finding that there was substantial compliance of directions issued by the Tribunal. It also noted that there was no indication in the award that the workers were required to be engaged in the godowns in Kerala, departmentally. Feeling aggrieved, the contempt petitioners filed Writ Appeal No. 1746/2013 before the Kerala High Court, which came to be allowed in terms of the directions issued in O.P. No. 14360/1999 as affirmed in Writ Appeal No. 2491/2009. The relied upon order in O.P. No. 14360/1999 was passed by the Kerala High Court in a petition filed by Head Load Labour Congress for implementation of the award passed by the Tribunal. The reliefs claimed in the said writ petition read thus: -

"a) a writ of mandamus directing the 2nd respondent to take effective steps for implementing Exhibit P1.

b) hold that all godowns and depots of FCI, especially in Kerala, the workers should be regularised and brought under direct payment system forthwith."

(emphasis supplied)

The above writ petition came to be allowed vide judgment and order dated 22.9.2009. Feeling aggrieved, the respondent- Corporation had filed Writ Appeal No. 2491/2009 before the Kerala High Court, which was dismissed vide judgment and order dated 15.2.2010. Against the said decision, the Corporation had filed special leave petition before this Court, which was converted into Civil Appeal No. 10530/2011 and came to be dismissed by a common judgment and order dated 20.8.2018 of this Court along with Civil Appeal No. 7961/2014, referred to above.

8. Despite the dismissal of the appeals and confirmation of the award passed by the Tribunal including the writ issued by the Kerala High Court to implement the award, the respondent Corporation took no initiative, which prompted the contempt petitioners to approach this Court for initiating contempt action against the respondent Corporation and its officers.

9. The respondent Corporation would contend that it has already regularised the eligible employees, who were party to the two References mentioned above, under Direct Payment System (DPS) and nothing further was required to be done. It is urged that in both the References, the claim was restricted to regularisation of the concerned employees after abolition of the contract labour system. There was no prayer for absorbing the concerned employees under any specific system of regular labour prevailing in the Corporation. The Corporation has four systems of labour engagement, namely, (i) Departmental Labour System, (ii) Direct Payment System, (iii) No-Work-No-Pay System and (iv) Mate System. The workmen or the Unions concerned took no steps to amend the Reference even after the agreement arrived at in the meeting dated 12.4.1996 to ask for specific relief of regularisation under a particular system. In absence of any specific relief, the respondent regularised the workers under Direct Payment System (DPS) during pendency of the References. The existence of Direct Payment System (DPS) since 1973 is indisputable. It has been noted in the decision of this Court in Workmen of the Food Corporation of India vs. M/s. Food Corporation of India6 and recently in ESI Corporation vs. FCI Workers Union & Ors.7. It is also urged that since 1991, no contract worker has been regularised under the Departmental Labour System, although some Direct Payment System (DPS) workers and 'B category' workers were brought under Departmental Labour System in 1994 and 1997 pursuant to specific awards/Court orders followed by settlements during pendency of appeals filed by the Corporation. The recent policy guidelines issued by the Government of India vide letter dated 11.11.2013 unambiguously predicate that the contract workers be regularised only under No-Work-No-Pay System. It is the case of the Corporation that out of 1800 Depots operated by the Corporation, more than 1500 Depots

were operating under contract labour system, and provided employment to more than one lakh labour, out of which 50% of the total regular labour is employed under the Direct Payment System (DPS). It has produced the Chart in regard to regular labour as on 31.12.2019 under three different categories as under: -

Labour Type	Number of Depots	Men in Position
Departmental Labour System (DLS)	56	10860
Direct Payment System (DPS)	**155**	**19427**
No Work No Pay (NWNP)	85	6427
Total	295	36714

It is not as if only the workmen involved in two References have been regularised in Direct Payment System (DPS). There are 19427 workmen in this system as against 10860 under Departmental Labour System. It is urged that the service benefits under the Direct Payment System (DPS) are indicative of the fact that it is a regular engagement by the Corporation and not on contract or casual basis. The service benefits under the Direct Payment System (DPS) are outlined as follows: -

> "Service Benefits under DPS:
> The main service benefits of the DPS workers are highlighted as under:
>
> i.DPS workers are governed by the Model standing Orders under Industrial Employment Standing Orders Act, 1946.
>
> ii. DPS workers are permanent and regular and thus, departmentalised employees of FCI and enjoys security of tenure as superannuation age of a DPS worker is 60 years.
>
> iii. The Legal Heirs of a DPS worker are eligible for Compassionate Appointment on death as per Govt. of India policy circulated vide FCI Hqrs. Circular no. 4/2003 dated 04/13.03.2003.
>
> iv. The workers are paid monthly wages directly by the corporation subject to assured minimum guaranteed wages declared by Central Govt. Thus, a DPS worker gets higher monthly wages on piece rate basis when volume of work handled by him is high but when there is no work or adequate work at the depot during a particular month, the DPS workers is assured of minimum guaranteed wages.
>
> v. DPS worker is eligible for paid weekly off, 06 holidays including 03 national

holidays, 10 sick leave per year (accumulation upto 40 days), 15 days "leave without pay" per annum, CPF under FCI CPF scheme, Ex-gratie in lieu of Bonus as per the provision of payment of Bonus Act.

vi. DPS worker is eligible for productivity linked incentive as declared by FCI Hqrs. from time to time.

vii. DPS worker is eligible for OTA admissible as per shops and establishment act or 1.1 of hourly earnings where exemption from shops and establishment act has been granted by the appropriate authority or said act does not apply.

viii. DPS worker is eligible for festival advance as per FCI instructions applicable from time to time.

ix. DPS worker is eligible for gratuity as per payment of gratuity act, 1972 from the date of notification.

x. DPS worker is eligible for workmen's compensation as per workmen's compensation as per workmen's compensation act.

xi. DPS worker is eligible for Benevolent Fund as per the scheme of FCI.

xii. DPS worker is eligible for transfer grant/packing allowance and joining period on their transfer within and outside region/zone as per the instructions of the corporation issued from time to time."

Further, the Corporation has now been advised to declare the Departmental Labour System as a dying cadre. The same has been so notified by the Government of India recently on 3.1.2020 in light of recommendation made by the High-Level Committee constituted by the Government of India in August, 2014. Additionally, it was necessitated because of the directions given by the High Court of Judicature at Bombay, Bench at Nagpur in a suo moto registered PIL No. 84/2014 vide judgment and order dated 20.11.2015, which has been confirmed by this Court vide judgment and order dated 31.7.2017 passed in SLP(C) No. 19218/2016 and connected matters. The respondent has placed reliance on State of Bihar & Ors. vs. Bihar Secondary Teachers Struggle Committee, Munger & Ors. , wherein it has been held that when administration adopts an integrated policy and if by process of judicial intervention, any directions are issued, it could create tremendous imbalance and cause great strain on budgetary resources. As a matter of fact, the Constitution Bench of this Court in Steel Authority of India Ltd. & Ors. vs. National Union Waterfront Workers & Ors. has held that the contract labour need not be absorbed after abolition of contract labour system. Be that as it may, the Corporation is not a profit-making organisation. It has been established under the provisions of the Food Corporations Act, 1964 and its primary duty is to undertake purchase, storage, movement, transport, distribution and sale of food grains and other food stuff. It is

an agency to implement food policy of the Government of India, which envisages protection of farmers by ensuring remunerative price (Minimum Support Price) for their produce and simultaneously safeguarding the interests of poor consumers by providing them food grains at highly subsidised rates under National Food Security Act, 2013 and other welfare schemes. The food subsidy of more than Rs.1.50 lakh crore per annum is extended. It is stated that if all the regular workers in the Corporation are brought under the Departmental Labour System, there will be recurring liability on public exchequer to the tune of Rs.3,000 crore per annum and if arrears are also given with effect from 2003, there will be additional financial burden of more than Rs.40,000 crore. It is urged that the issue regarding the parity of wages between the employees under the Direct Payment System (DPS) and those working under the Departmental Labour System is pending adjudication in I.D. No. 1/2003 before the National Industrial Tribunal, Mumbai. Finally, it is urged that in absence of any clear directions in Reference proceedings, as per the extant policy, the respondent could have regularised the concerned workers only under the Direct Payment System (DPS) existing since 1973 as part of its organisational structure. It is, therefore, urged that it is certainly not a case of disobedience, much less wilful or deliberate disobedience of the order passed by this Court. Reliance is placed on Dinesh Kumar Gupta vs. United India Insurance Company Limited & Ors. , Bihar State Government Secondary School Teachers Association vs. Ashok Kumar Sinha & Ors. and Dineshan K.K. vs. R.K. Singh & Anr. . The respondents pray that the show cause notice(s) be discharged.

10. The petitioners, however, submit that the direction given by the Tribunal and upheld by the Madras High Court including by this Court is unambiguous. It mandates the respondent Corporation to regularise the concerned workers in the Departmental Labour System, as has been done in other cases adverted to by the Tribunal and the Madras High Court in the respective award/judgment. The petitioners assert that the Direct Payment System (DPS) was implemented on 1.5.1996, whereas the dispute had been raised by the workers Union/workers in 1992 and 1993. The relief granted by the Tribunal relates back to the date of initiation of Reference proceedings and at that time, in all other cases, regularisation of contract workers after abolition of contract labour system, was done under the Departmental Labour system. The regularisation of workers under the Direct Payment System (DPS) would be denial of their claim for being regularised under the Departmental Labour system. If such argument of the respondent Corporation was to be acceded to and that too in contempt proceedings, it would be re-writing the award of the Tribunal which had become final until this Court. For, the Tribunal in its award dated 19.12.1997 in I.D. No. 39/1992 had clearly directed the respondent Corporation to regularise and departmentalise the concerned workers with effect from the date of notification of abolition of contract labour system. It is too late in the day for the Corporation to contend to the contrary. It is urged that there are material differences between the service conditions under the Departmental Labour System and the Direct Payment System (DPS). The petitioners have relied on the decision of this Court *in Food Corporation of India & Ors. vs. West Bengal Food Corporation of India Workmen's Union* and the order passed in contempt petition in that matter, to urge that the Corporation was directed to regularise the

concerned workers under the Departmental Labour system. According to the petitioners, the Corporation is under obligation to extend same relief to these petitioners and implement the direction given by the Tribunal and upheld by the High Court, as well as, this Court, to regularise and departmentalise the concerned workers under the Departmental Labour system only. Reliance is placed on Anil Ratan Sarkar & Ors. vs. Hirak Ghosh & Ors. to contend that the Corporation cannot be permitted to raise a new plea, so as to frustrate the decision of the Tribunal and more particularly, of this Court, even after dismissal of the appeal preferred by the respondent.

11.We have heard Mr. Rana Mukherjee, learned senior counsel for the petitioners in Contempt Petition (Civil) Nos. 508/2019 and 507/2019, Mr. V. Prakash, learned senior counsel for the petitioners in Contempt Petition (Civil) No /2020(@ Diary No. 13740/2019), Mr. Colin Gonsalves, learned senior counsel for the petitioners in Contempt Petition (Civil) No. 754/2019, Mr. Brijender Chahar, learned senior counsel for the petitioners in Contempt Petition (Civil) Nos. 404/2019 and 1073/2019, Mr. Mukul Rohatgi, learned senior counsel for the respondents in Contempt Petition (Civil) No. 754/2019, Mr. V. Giri, learned senior counsel for the respondents in Contempt Petition (Civil) No. 404/2019 and Mr. Sudarsh Menon, learned counsel for the applicant in I.A. No. 167580/2019 in Contempt Petition (Civil) No. 404/2019.

12. Before we proceed to analyse the stand taken by the parties, it is apposite to advert to the exposition of this Court in *Ram Kishan vs. Tarun Bajaj & Ors.* , wherein the Court has delineated the contours for initiating civil contempt action. In paragraphs 11, 12 and 15 of the reported decision, the Court observed thus: -

> "11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide *V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697, Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530, Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21, Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360, Sahdeo v. State of U.P., (2010) 3 SCC 705 and National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600*.

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires

looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct." (Vide S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591, Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255, Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332, Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282, Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1, State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 and Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753.

xxx xxx xxx

15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392 and Three Cheers Entertainment (P) Ltd. v. CESC Ltd.., (2008) 16 SCC 592."

(emphasis supplied)

Suffice it to observe that to constitute civil contempt, it must be established that disobedience of the order is wilful, deliberate and with full knowledge of consequences flowing therefrom. For reaching that conclusion, it is essential to notice the scope of References before the Tribunal and direction issued therein, which has been affirmed upto this Court. Going by the plain text, the issue(s) referred to for adjudication (reproduced in paragraph 3 above) is merely for regularisation. However, the point-in-issue considered by the Tribunal coupled with the operative part of the award (which has been reproduced in the earlier part of this judgment), it would at best be a case of directing the respondent Corporation to regularise and departmentalise the concerned workmen, who were party to the stated References.

13. As noted earlier, the Corporation operates four systems of labour. The Departmental Labour System is one such system of engagement. The other is Direct Payment System

(DPS). The third is No-Work-No-Pay System and fourth, the Mate System. Neither the relief in the References was specific for regularisation in Departmental Labour System only nor the Tribunal, the Madras High Court/Kerala High Court or this Court was called upon to deal with that issue specifically. The claim set up by the petitioner-Union(s) was simpliciter for regularisation of workmen who were named in the annexure(s) to the References. The Tribunal did issue direction to regularise and departmentalise those workmen. It is axiomatic that departmentalisation could also be an engagement in a Department, which could be a separate part or branch/section of the whole Organisation. Departmentalisation is dividing an organisation into different departments or structuring it in a manner, which perform tasks according to the specialisations in the organisation. It may include departments such as functional, product, process, geographical locations, customer, divisional, matrix, planning task force etc.

14. As it is indisputable that the Corporation has four systems of labour engagement including the Direct Payment System (DPS), the petitioner-Union(s) ought to have sought specific relief against the Corporation in that regard. Significantly, the petitioners have assumed that the Direct Payment System (DPS) commenced only from 1.5.1996, whereas it is noticed from the decision of this Court in Workmen of the Food Corporation of India (supra) that the Direct Payment System (DPS) is in existence from 1973. It is not a new set up created by the Corporation pursuant to the minutes recorded on 12.4.1996 as such. Concededly, the subject References, as well as, the direction issued by the Tribunal, which has been upheld upto this Court is silent about the system in which the concerned workers have to be regularised and departmentalised. It is incomprehensible as to how it would be a case of disobedience, much less wilful disobedience, so as to entail in contemptuous conduct of the concerned officers of the Corporation especially when the eligible enlisted workers have already been regularised under the Direct Payment System (DPS) as per the applicable policy of 1991. Notably, the writ petition filed before the Kerala High Court for implementation of the stated award also sought direction (reproduced in paragraph 7 above) to regularise the concerned workmen under the Direct Payment System (DPS). If that be the position, it is unfathomable as to how the respondent Corporation can be proceeded against for having committed contempt of this Court.

15. The argument of the petitioners, however, is that the awards passed by the Tribunal, as well as, the judgments of the Madras High Court/Kerala High Court and this Court may have to be read as a whole and if so read, it would only mean that the direction given to the respondent Corporation was to regularise and departmentalise all the concerned workmen on the same terms as done in other cases referred to in the concerned judgment. To buttress this submission, reliance is placed on the award of the Tribunal, dated 19.12.1997, wherein reference is made to cases of regularisation in 1991 and as back as in 1982. In the relied upon cases, the Tribunal did not advert to the policy of the respondent Corporation to engage the concerned employees after abolition of the contract labour system only under the Direct Payment System (DPS) and which was being strictly adhered to since 1991. Pertinently, there was specific direction by the Tribunal/Court in those cases to regularise the concerned workmen under the Departmental Labour System, which is not so in the present case.

16. Indeed, the award dated 19.12.1997 makes extensive reference to the previous judgment of the Kerala High Court. In that decision, while issuing direction to the Corporation, it was made clear that the absorption of the concerned workmen would be governed exclusively by the terms and conditions prescribed by the Corporation for its own regular employees and the Corporation shall have all the rights such as retrenchment. It was further directed that the process of absorption must be in accordance with the provisions of concerned labour and industrial law. Be that as it may, in the present case, neither any discussion is noticed about the efficacy of policy of the Corporation effective since 1991 regarding regularising the concerned workmen after abolition of contract labour system only under the Direct Payment System (DPS) nor a clear direction has been given by the Tribunal to the respondent Corporation to regularise the concerned workmen only under the Departmental Labour System. Similarly, the learned single Judge has merely upheld the direction as given by the Tribunal. Indeed, the impression gathered from the discussion in the judgment of the learned single Judge does indicate that the Corporation being an instrumentality of the State cannot be heard to discriminate between its different employees working at different Depots. As noted earlier, it is not as if the workmen involved in subject References alone were being considered for regularisation in the Direct Payment System (DPS). There are 19427 others who have been so appointed and working as on 31.12.2019. Moreover, those who were working as contract labour engaged through cooperative societies or private contractors came to be regularised in the Direct Payment System (DPS) as per the policy of 1991. The fact remains that even the learned single Judge had not issued specific direction to the respondent Corporation to regularise the concerned workmen under the Departmental Labour System and not under the Direct Payment System (DPS) as such. Similarly, the Division Bench proceeded to consider the matter as to whether the direction issued by the Tribunal is acceptable and whether the learned single Judge was right in affirming the said direction. In examining that question, the Division Bench, amongst others, noted as follows: -

> "21. As rightly pointed out by the learned Judge, except the godowns/depots in Tamil Nadu, the Labourers engaged in similar capacity in other parts of the country have been departmentalised or regularised. As a matter of fact, even in this State, in respect of Egmore and port godowns of FCI, the workers have been departmentalised. We already mentioned that Notifications of the Government of India regularising/departmentalising the workers' issue in respect of other States, were placed before the Tribunal. As rightly pointed out by the learned Judge, inasmuch as FCI is a Corporation having transactions throughout India, when it thought fit to regularise the workers in some parts of India, particularly in North, they are not justified in denying such benefits to the workmen in the State. Inasmuch as the main argument on the side of the appellant was projected for remanding the case to the Tribunal as if the materials placed before it were not considered, in the light of the evidence let in before the Tribunal in the form of various orders/Notifications by the Government of India, existence of more work in all the godowns, Food Storage Depots of FCI and of the fact that all those acceptable materials were correctly appreciated by the Tribunal, we are of the view

that there is no case for remand. As rightly pointed out by the learned Judge as well as correctly observed by the Tribunal, the FCI, which is a wing of Government of India, should be a model employer, more particularly, when they are having plenty of continuous work and are in need of more work Force, we are satisfied that both the Unions are justified in their demand for regularisation and for departmentalisation.

22. Under these circumstances, we are in entire agreement with the conclusion arrived at by the Industrial Tribunal in passing award and the reasoning of the learned single Judge in confirming the same. Consequently, both the Writ Appeals fail and are, accordingly, dismissed. No costs. ..."

(emphasis supplied)

It is thus seen that even the Division Bench did not issue any specific direction to the respondent Corporation to regularise the concerned workmen under the Departmental Labour system and not to do so under the Direct Payment System (DPS) as per the policy of 1991. This Court has merely affirmed the view taken by the Tribunal and the Madras High Court. More importantly, the Departmental Labour System has since been notified as a dying cadre.

17. To put it differently, the issue as to regularisation of the concerned workmen under particular labour system had not been put in issue before the Tribunal and upto this Court. A general direction came to be issued to regularise and departmentalise them. Resultantly, the respondents were left with the only option to regularise the concerned workmen as per the extant applicable policy of the Organisation, under the Direct Payment System (DPS).

18. Reverting to the decision of the Kerala High Court in Writ Petition No. 14360/1999 filed for directing implementation of the award in question, the relief claimed was to regularise the concerned workmen under the "Direct Payment System (DPS)" forthwith. That relief was already acceded to by the Corporation in the minutes recorded between the parties dated 12.4.1996. For that reason, the Corporation did not participate in the Reference proceedings in I.D. No. 39/1992 and allowed the I.D. No. 55/1993 to proceed ex-parte. Indeed, the Corporation assailed the awards upto this Court on the basic issue of right and entitlement of the concerned workmen to be regularised. The fact whether regularisation should be under the Departmental Labour System or the Direct Payment System (DPS) was not put in issue at any stage including the appeal decided by this Court. The Corporation having lost on the basic issue of regularisation was obliged to give effect to the award as per its extant policy in that regard in force since 1991.

19. Notably, the relief granted by the Division Bench of the Kerala High Court in Writ Appeal No. 2491/2010 was only for regularisation in the Direct Payment System (DPS) as prayed in the writ petition. In the subsequent writ petition filed before the Kerala High Court being Writ Petition No. 14786/2013, against which the appeal came to this Court being Civil Appeal No. 7961/2014, the relief claimed was for regularisation and to give all other service benefits of Departmental Labour system. This writ petition was dismissed by

the learned single Judge on the finding that the award in question was already substantially complied with. When the matter went up to the Division Bench by way of writ appeal being Writ Appeal No. 1746/2013, the same was disposed of as per the direction issued in the earlier writ petition being O.P. No. 14360/1999 and Writ Appeal No. 2491/2009 referred to above. The relief granted in these proceedings was, therefore, only regarding regularisation in the Direct Payment System (DPS). If that be so, we fail to understand as to how the writ petitioner(s) therein could ask for relief different than regularisation under the Direct Payment System (DPS).

20. Reliance was placed by the petitioners on the dictum in paragraph 23 of the judgment dated 20.8.2018 in Civil Appeal Nos. 10499/2011 and 10511/2011, which reads thus: -

> "23. It was then brought to our notice that similar industrial reference alike the one in the present case was also made in relation to the FCI Branch at West Bengal and the said reference was answered in favour of workers' Union. The matter was then taken to the High Court unsuccessfully and then carried to this Court at the instance of the FCI in Civil Appeal No. 7452 of 2008 and the appeal was dismissed on 20.07.2017 resulting in upholding the award of the Industrial Tribunal. It was stated that the FCI then implemented the award, as is clear from the notice on 05.10.2017, in favour of the concerned workers. Be that as it may, since we have upheld the impugned order in this case on the facts arising in the case at hand, we need not place reliance on any other matter, which was not before the High Court."
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> (emphasis supplied)

21. The petitioners have adverted only to the opening part of this paragraph. The crucial part, in our opinion is, the latter (highlighted) part, wherein the Court has made it clear that the judgment relied upon was not being taken into account for deciding the appeal.

22. In West Bengal Food Corporation of India Workmen's Union (supra) involving a case arising from the proceedings and order dated 8.3.2001 passed by the High Court of Calcutta in C.R. No. 5498 (W) of 1991, which is extracted in the order passed by this Court, dated 20.7.2017, the Court opined that order in the said case had directed the respondents to frame a scheme or to find ways and means to absorb the concerned workmen. That direction can have no bearing on determination of the matters at hand, being contempt petitions. For the same reason, the subsequent orders passed in contempt petition in the said appeal will have no bearing on the present case. For, these petitions will have to be decided strictly on the basis of the awards passed in the References in question and the judgment of the Madras High Court/Kerala High Court and this Court, being contempt action.

23. In the present case, as noticed earlier, no specific direction has been given to the Corporation to regularise the concerned workmen only in the Departmental Labour System. Furthermore, the Departmental Labour System is now a dying cadre and the policy of the Corporation at the relevant time entailed regularisation of such workmen only

under the Direct Payment System (DPS). Thus understood, no contempt action can be initiated on the basis of general direction to the respondents to regularise and departmentalise the concerned workmen. For, it is not possible to hold that intrinsic in the general direction was to ordain the respondents to regularise and departmentalise the concerned workmen under the Departmental Labour System in the teeth of the extant policy of the Corporation in force since 1991 regarding regularisation against Direct Payment System (DPS).

24. Reverting to the decision of this Court in Anil Ratan Sarkar (supra), it was a case in which crystal-clear direction was given to the management to treat the concerned employees at par with another set of specified employees. Further, despite six rounds of litigation, the management kept on taking defence of its bona fide understanding of the situation, which came to be deprecated. Had it been a case of clear direction by the Tribunal, the High Court or this Court, and an attempt was made to interpret, or so to say, misinterpret, such direction, to regularise the employees concerned under the Departmental Labour System, and if such direction was not to be complied with by the respondent Corporation, the situation could have been viewed differently - being a contempt action. In the present case, it is not a moonshine defence as was the finding recorded in the reported decision.

25. Suffice it to observe that no case for initiating contempt action against the respondent Corporation and its officers has been made out. We need not, therefore, analyse any other aspect of the matter, which would require rewriting of the judgments on the basis of which this contempt action has been instituted. That cannot be countenanced in contempt proceedings.

26. Accordingly, these petitions fail and are dismissed. Show cause notices stand discharged. Pending interlocutory applications, if any, shall stand disposed of.