

CHENNAI PORT TRUST

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v.

THE CHENNAI PORT TRUST INDUSTRIAL EMPLOYEES
CANTEEN WORKERS WELFARE ASSOCIATION AND ORS.

(Civil Appeal No. 1381 of 2010)

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APRIL 27, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

*Service Law – Claim for parity with regular employees – When justified – Workers/employees employed by appellant-Port Trust provided with the facility of canteen – Respondent No.1-Association of employees working in the canteen filed writ petition in High Court for direction to appellant to treat the employees working in the Canteen as the regular employees working in appellant-Port Trust and accordingly pay them all attendant and monetary benefits at par with the regular employees – Writ petition allowed by Single Judge – Order upheld by Division Bench – On appeal, held: In view of identical facts involved in **Indian Petrochemicals’s** case wherein Supreme Court issued a writ of mandamus against the main employer in relation to employees working in the canteen, Division Bench rightly relied upon the said decision in granting relief to the members of the respondent-Association – No fault in the findings recorded by Division Bench recorded on the basis of undisputed facts and documents on record – Constitution of India – Art.226.*

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Dismissing the appeal, the Court

HELD: 1.1 The Division Bench rightly relied upon the decision of Supreme Court in **Indian Petrochemicals** case and compared the facts of the above case with that of the case at hand and found great similarities in both for granting relief to the members of the respondent (Association). The Division Bench took note of 20 factors of this case, which were found identical to the facts involved in **Indian Petrochemicals’s** case wherein Supreme Court had issued a writ of mandamus against the main employer in relation to such employees working in the canteen run for the benefit of the employer. [Paras 13, 14] [641-A-C]

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A **1.2 No fault is found in the said findings recorded by the Division Bench as these findings were recorded on the basis of undisputed facts and documents on record of the case. That apart, these findings were recorded keeping in view the facts involved and law laid down by Supreme Court in the case of Indian Petrochemicals. [Para 15] [644-C]**

B **1.3 The approach and the reasoning of the two Courts below (Writ Court and Division Bench) while deciding the writ petition and the appeal arising out of the writ petition keeping in view the law laid down by Supreme Court in the case of Indian Petrochemicals is just, proper and legal. In other words, if on the undisputed facts, Supreme Court has granted benefit to the canteen workers in the case of Indian Petrochemicals then there is no reason that on the same set of undisputed facts arising in this case, the Court should not grant the benefit to the employees/workers in this case. It is more so when no distinguishable facts are pointed out in this case *qua* Indian Petrochemical's case. [Paras 17, 18] [644-E-G]**

Indian Petrochemicals Corporation Ltd. and Anr. v. Shramik Sena & Ors. (1999) 6 SCC 439 : [1999] 1 Suppl. SCR 47 – relied on.

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Case Law Reference

[1999] 1 Suppl. SCR 47 relied on Para 13

F **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1381 of 2010.**

From the Judgment and Order dated 21.02.2006 of the High Court of Judicature at Madras in Writ Appeal No. 66 of 2006.

G **Keshav Thakur, Rajesh Singh Chauhan, Anil Kaushik, Abhishek Mishra, Rajinder Singh, Shiv Prakash Pandey, B. Vinodh Kanna, A. Sriram, M. Yogesh Kanna, Jayanth Muth Raj, P. V. Dinesh, Advs. for the appearing parties.**

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The Judgment of the Court was delivered by

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ABHAY MANOHAR SAPRE, J. 1. This appeal is directed against the final judgment and order dated 21.02.2006 passed by the High Court of judicature at Madras in Writ Appeal No.66 of 2006 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and affirmed the judgment and order dated 24.08.2005 passed by the Single Judge of the High Court in Writ Petition No.6872 of 2001 by which the Single Judge allowed the writ petition filed by respondent No.1 herein.

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2. Few relevant facts need to be mentioned hereinbelow to appreciate the question involved in the appeal.

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3. The appellant is “Chennai Port Trust” at Chennai. It has been in existence for the last many decades and has a large administrative and technical set up to run their multifarious activities on the Port.

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4. Large numbers of workers/employees are employed by the Port Trust who work round the clock in shifts to run and maintain the activities of the Port Trust. These Port Trust workers/employees are provided with the facility of canteen. A Co-Operative Society called “Chennai Port Trust Industrial Employees Co-operative Canteen Limited” runs the Canteen. It has been running since 1964. This canteen has employed a large number of employees to run the canteen. The employees working in the canteen have formed an Association known as “Chennai Port Trust Industrial Employees Canteen Workers Welfare Association” (for short called “Association”)-respondent No.1 herein.

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5. The Association-respondent No.1 herein filed a writ petition being W.P. No.6872 of 2001 in the High Court at Madras against the appellant herein (Chennai Port Trust) espousing the cause of their members (employees working in the Canteen) and sought a writ of mandamus against the appellant - Chennai Port Trust (respondent No.3 in the writ petition) directing the appellant to treat the employees working in the Canteen to be the regular employees of the Chennai Port Trust and accordingly pay them all attendant and monetary benefits at par with the regular employees of the Chennai Port Trust.

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A 6. According to the writ petitioner (employees concerned), they have been working in the Canteen for decades and regularly catering and fulfilling the needs of the employees of the Port Trust. According to the Association, the members of the Association - employees working in the canteen are entitled to claim the same benefit and perks which are being given to the regular permanent employees of the Chennai Port Trust. The Association also pointed out the similar instances of other government organizations wherein the benefits of this nature were given to the employees working in the organizations alike the members of the Association in question.

C 7. The Chennai Port Trust mainly opposed the writ petition on two issues. First, the Chennai Port Trust has no control whatsoever over any of the activities of the Canteen in question including any control over its employees and second, the question as to whether the canteen employees are to be treated as employees of the Chennai Port Trust or not is a question of fact and, therefore, the writ petition is not the effective remedy to decide this question. According to the Chennai Port Trust, such issues should be raised before the Industrial Tribunal for its adjudication.

E 8. The Writ Court (Single Judge) allowed the writ petition filed by the Association (respondent No.1 herein) and accordingly issued a writ of mandamus against the appellant (Chennai Port Trust), as prayed by the writ petitioner in their writ petition. In other words, the writ Court granted the reliefs claimed by the writ petitioner in their writ petition.

F 9. The appellant (Chennai Port Trust) felt aggrieved and filed intra court appeal before the Division Bench in the High Court. By impugned judgment, the Division Bench dismissed the appeal and upheld the order of the Single Judge, which has given rise to filing of the present appeal by way of special leave by the Chennai Port Trust.

G 10. Heard Mr. Keshav Thakur, learned counsel for the appellant and Mr. Anil Kaushik, Mr. B. Vinodh Kanna and Mr. Jayanth Muth Raj, learned counsel for the respondents.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

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12. In our considered view, the Writ Court (Single Judge) and the Division Bench were right in their reasoning and the conclusion. A

13. The Division Bench, in our opinion, rightly relied upon the decision of this Court in **Indian Petrochemicals Corporation Ltd. and Anr. vs Shramik Sena & Ors.**, (1999) 6 SCC 439 and compared the facts of the above case with that of the case at hand and found great similarities in both for granting relief to the members of the respondent (Association). B

14. The Division Bench in Paras 14 and 15 of the impugned judgment took note of 20 factors of this case, which were found identical to the facts involved in **Indian Petrochemicals's case** (supra) wherein this Court had issued a writ of mandamus against the main employer in relation to such employees working in the canteen run for the benefit of the employer. It is apposite to reproduce Paras 14 and 15 of the impugned judgment which read as under: C

“14. Even before the learned single Judge, the Port Trust objected to deciding the factual issues in proceedings under Article 226 since the appropriate forum is only the Labour Court or the Tribunal. The learned single Judge observed that the averments in the affidavit have not been specifically denied in the counter affidavit except to state that the Management of the Port Trust has no control over the functioning of the canteen. Therefore, apart from a general denial, the various assertions were not specifically denied. The learned single Judge then proceeded to set down the various facts and circumstances that show the administrative control exercised by the Port Trust over the Canteen, and they are as follows : D E F

(i) The fact that the establishment is kept open during the entire 24 hours with employees working in several shifts is not denied. Thereby, the necessity of the workmen to have their food inside the factory itself is confirmed and that the canteen is mainly intended only for the workers. G

(ii) The fact that the Rules framed by the Society for running the canteen shall be subject to the approval of the Chairman is not denied. This proves that the ultimate control of the administration of the canteen is with the Port Trust. H

- A (iii) It is only the workers belonging to the Port Trust who are eligible to become members of the Society and not others.
- (iv) It is only the nominee of the Port Trust who can act as the Chairman of the Co-operative Society.
- B (v) The Port Trust administration has the right to audit the accounts of the canteen.
- (vi) Electricity and water are supplied by the Port Trust free of charge. The premises is also held by the Society rent free.
- C (vii) As per bye-law 15, the fourth respondent Society, the President as well as four other contractors shall be nominated by the Registrar only in consultation with the Chairman of the Chennai Port Trust.
- D (viii) The Port Trust provides cost of the staff employed by the canteen, maintains the building, reimburses 100% of the fuel costs and all the benefits to the canteen employees.
- E (ix) The prices of the food stuff are very cheap and the food is carried in trickles to the workers in the Marshalling Yard, ONGC Pipeline, Oil Dock, Diesel Loco and such other places where a canteen cannot be established and specifically intended only for the workers.
- F (x) The Executive Engineer (Mechanical) of the Port Trust has been nominated as the President of the canteen and the entire canteen affairs are handled and controlled by the Chief Mechanical Engineer of the Port Trust.
- G (xi) The financial matters are controlled by the Financial Adviser and Chief Accounts Officer of the Port Trust.
- (xii) The President of the fourth respondent controls all policy matters concerning the canteen.
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(xiii) It is a matter of common knowledge that at least as far as Chennai Port Trust is concerned, it is located in a place that the nearest restaurant or canteen would be at least two to three kilometres away from the entrance of the Port Trust. Therefore, the canteen is a must not only for employees, but also for the entire staff at various levels and also visitors having official and commercial dealings with the Port Trust. The Port Trust itself is a very large and sprawling area from one end to the other. Therefore, the canteen is an indispensable necessity to the Port Trust.

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The learned single Judge thereafter observed that none of the aforesaid positive claims of the writ petitioner are denied by the respondents. It is only because there was no dispute on facts that the learned single Judge proceeded to decide the matter, though the workmen had directly filed the writ petition without approaching the Tribunal.

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15. If we see the Indian Petrochemical's case, the similarity of the factual issues is quite startling. In that case –

(a) The canteen has been there since the inception of the appellant's factory.

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(b) The workmen have been employed for long years and despite a change of contractors, the workers have continued to be employed in the canteen.

(c) The premises, furniture, fixture, fuel, electricity, utensils etc. have been provided for by the appellant.

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(d) The wages of the canteen workers have to be reimbursed by the appellant.

(e) The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor.

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(f) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.

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- A **(g) The workmen have the protection of continuous employment in the establishment.**

B **On the basis of the above facts, the Supreme Court arrived at the opinion that the workmen were the workmen of the management and by the same process of reasoning, the learned single Judge also came to the conclusion that the canteen workmen were the workmen of the Port Trust. We see no error in this reasoning.”**

C 15. We find no fault in the aforementioned findings recorded by the Division Bench as, in our view, these findings were recorded on the basis of undisputed facts and documents on record of the case. That apart, these findings were recorded keeping in view the facts involved and law laid down by this Court in the case of **Indian Petrochemicals** (supra)

D 16. Mere perusal of the decision rendered in the case of **Indian Petrochemicals** (supra) would go to show that in that case also, somewhat similar question, which is the subject matter of this appeal, had arisen at the instance of the employees working in canteen. This Court (Three Judge Bench) elaborately examined the question and took note of the relevant undisputed facts, which had bearing over the question, granted the reliefs to the employees concerned.

E 17. In our considered opinion, the approach and the reasoning of the two Courts below (Writ Court and Division Bench) while deciding the writ petition and the appeal arising out of the writ petition keeping in view the law laid down by this Court in the case of **Indian Petrochemicals** (supra) is just, proper and legal.

F 18. In other words, if on the undisputed facts, this Court has granted benefit to the canteen workers in the case of **Indian Petrochemicals** (supra) then there is no reason that on the same set of undisputed facts arising in this case, the Court should not grant the benefit to the employees/workers in this case. It is more so when no distinguishable facts are pointed out in this case *qua* **Indian Petrochemicals’s** case(supra).

G 19. We are, therefore, in agreement with the approach, reasoning and the conclusion arrived at by the two Courts below.

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20. We are, however, not impressed by the submission of the learned counsel for the appellant (Chennai Port Trust) when he contended that the writ Court should not have entertained the writ petition and instead the respondent (Writ Petitioner-Association) should have been granted liberty to approach the Industrial Tribunal/Labour Court for adjudication of the dispute raised by them in the writ petition.

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21. In the first place, writ Court having entertained the writ petition and granted relief on merits, this objection has lost its significance now; Second, the appellate Court also having gone into the merits of the case and affirmed the order of the writ Court on merits, it is too late to entertain such submission, which is technical in nature; and third, the findings on merits have been recorded by the two Courts on the basis of undisputed facts/documents requiring no trial on facts.

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22. It is for these reasons, we are of the view that the submission of learned counsel for the appellant has no merit.

23. Though learned counsel for the appellant argued some more issues but they did not impress us so as to reverse the findings of the two courts below and in any case, in the light of the findings recorded by the two Courts below, which are based on the law laid down by this Court in the case of **Indian Petrochemicals** (supra), we need not entertain his submissions.

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24. In the light of the foregoing discussion, we find no merit in the appeal, which fails and is accordingly dismissed.

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