

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****AD-HOC NO. WP-LD-VC-46 OF 2020****WRIT PETITION (ST.) NO. OF 2020**

Samaj Samata Kamgaar Sangh

... Petitioner

Versus

Navi Mumbai Municipal Corporation & Ors.

... Respondents

Mr.Bhavesb Parmar a/w. Mr.Rahul Gaikwad i/b. Gravitas Legal for the Petitioner.

Mr. Sandeep Marne for Respondent No. 1.

Mr.A.C.Singh, Additional Solicitor General a/w. Mr. Aditya Thakkar, Mr. D.P.Singh for Union of India.

Mr.P.P.Kakade, GP a/w. Ms. A.A.Purav, AGP for the State.

CORAM : S.J.KATHAWALLA,**DATE : 27TH MAY, 2020****P.C. :**

1. The Petitioner – Samaj Samata Kamgaar Sangh (hereinafter referred to as the ‘**Petitioner Sangh / Union**’) has filed the above Writ Petition on behalf of the 6277 alleged ‘contract workers’ (‘**Kamgaars**’) employed with the Respondent No. 1 – Navi Mumbai Municipal Corporation (hereinafter referred to as “**the Corporation**”) for the following reliefs :

“(a) This Court be pleased to direct the Respondents to arrange for good quality hand gloves, N95 face masks, hand sanitizers and PPE’s for all kamgaar.

(b) This Court be pleased to direct the Respondents to arrange for

water connection at all Hazeri Shades for kamgaar to wash themselves before leaving so as to protect themselves and their families from Covid-19.

c. This Court be pleased to direct the Respondents to extend the daily allowance of Rs.300/- as per its notification dated 7th April, 2020 to the kamgaar.

d. This Court be pleased to direct the Respondents to extend the benefits as declared by the Finance Minister – Mrs. Nirmala Sitharaman during the press conference conducted on 26th March, 2020 to the kamgaar of the Petitioner Union.”

2. Though according to the Corporation, the Members of the Petitioner Sangh / Union are contract workers, the Petitioner Sangh / Union has refuted the said stand taken by the Corporation and has pointed out that there is a dispute pending in this regard before the Industrial Tribunal, being Reference (IT) No. 96 of 2019.

3. According to the Petitioner Sangh / Union, out of 6277 Kamgaars, 3261 Kamgaars are involved in Solid Waste Management, including day-to-day road cleaning and transportation of garbage. About 693 Kamgaars are employed in the health department, which includes duties at four Corporation Hospitals and 23 urban health posts across Navi Mumbai. About 65 Kamgaars are employed on cemetery cleaning duty.

4. The first grievance raised in the above Writ Petition by the Petitioner Sangh / Union is that the said 6277 Kamgaars are not provided with any protective

material/gear to protect them from the COVID-19 virus, such as hand sanitizers, hand gloves, face masks, PPEs etc. and also adequate water is not being provided for washing their hands and feet after they carry out their duties. However, the said grievance is taken care of by a workable Order of this Court dated 14th May, 2020, read with the Order dated 15th May, 2020.

5. The next grievance of the Petitioner Sangh / Union is that though the Municipal Commissioner of the Navi Mumbai Municipal Corporation has, by his Circular dated 7th April, 2020, sanctioned Rs.300/- as the daily allowance to the workers and employees of the Corporation, the same is not paid to the Kamgaars on the ground that they are contract labourers.

6. It is true that the Municipal Commissioner of the Corporation has issued a Circular dated 7th April, 2020, wherein he has observed that despite the workers of the Corporation facing difficulties in reaching their workplace and in procuring food / meal services due to the lockdown, the workers are “**fulfilling their responsibilities by risking their lives**”. The Commissioner has also observed that under Section 67 (c) of the Maharashtra Municipal Corporation Act, 1949, he is entitled to spend any amount for the betterment and protection of the public in such emergencies, and has directed payment of an allowance of Rs.300/- per day to its working officers and working staff during the lockdown.

7. This Court enquired from the Advocate for the Corporation as to why the Corporation is not considering extension of the same benefit to only those

Kamgaars employed through the contractors, who are involved in COVID-19 related duties assigned by the Corporation. In response, the Corporation stated that since the Members of the Petitioner Sangh / Union i.e. the Kamgaars are employed by the contractors to carry out the work of the Corporation under contracts executed by and between such contractors and the Corporation, the Kamgaars are not entitled to claim parity and receive the said allowance which the Corporation has agreed to pay to its officers and its workers, including the workers who are directly appointed by the Corporation on contract basis.

8. In my view, the above stand of the Corporation, is unfair, especially under the present circumstances. Some of the contract workers are admittedly carrying out the COVID-19 related duties, assigned by the Corporation through the contractors. The Circular issued by the Corporation makes it clear and it is also confirmed by its Advocate that the Corporation has agreed to pay to its officers and its workers, including the workers who are directly appointed by the Corporation on contract basis, the said allowance of Rs. 300/ per day, on the ground that, despite them facing difficulties in travelling from their residence to the workplace and in procuring meals, they are “**fulfilling their responsibilities by risking their lives**”. It cannot be disputed that the Kamgaars too, who are involved in COVID-19 related duties assigned by the Corporation through the contractors, are facing the very same difficulties as those faced by the officers and the workers of the Corporation, including the workers who are directly appointed by the Corporation on contract basis, and the

Kamgaars are also “**fulfilling their responsibilities by risking their lives**”. In my view, **the risk taken** by the employees / workers / Kamgaars in carrying out COVID-19 related duties for the Corporation cannot be differentiated / distinguished on their employment being directly with the Corporation or through the contractors. In so distinguishing between its own employees and the Kamgaars, the Corporation is seen to be making a tacit statement, that the Kamgaars though discharging the Covid related duties as the Corporation’s own employees, are either not ‘risking their lives’, or despite doing so, need to be paid differently only due to their employer being the contractor and not the Corporation. To say the least, this would be an extremely unfair and unjust yardstick to use, to value human lives differently.

9. The other issues raised by the Corporation, justifying non payment of allowance to the Kamgaars, are set out hereunder, along with my response.

(i) **That the Kamgaars are provided transportation.**

In response to an inquiry, whether transportation is also provided to the employees, who according to the Corporation are entitled to the aforestated daily allowance of Rs. 300/-, the answer by the Corporation is in the affirmative. Thus, this defence raised by the Corporation to justify the non-payment of allowance to the contract workers discharging COVID related duties, does not assist the Corporation in any way.

(ii) **That the Kamgaars are receiving a salary of Rs.20,000/- per month.**

The Advocate appearing for the Petitioner Sangh / Union has disputed this statement on Affidavit, and has pointed out that the Kamgaars are receiving an approximate sum

of only Rs.13,000/- per month.

(iii) **That in view of the lockdown, the quantum of solid waste as well as the dirt and garbage generated on the roads, has reduced and the Kamgaars are only working for four hours instead of eight hours in a day.**

In response to a query by the Court whether in that case, the Corporation will allow the Kamgaars to work only for four hours instead of eight, the answer was obviously in the negative.

(iv) **That considering the huge reduction in receipt of revenue, paying allowance to the Kamgaars will create additional burden on the Corporation, when in fact the State Government has directed various measures for reduction of expenses by government and public bodies.**

In this regard, it may be pointed out that there are various different ways/measures which can be adopted by the Government and by the public bodies to reduce expenses, instead of reducing the same by discriminating between the daily allowance of the Kamgaars attending to COVID-19 related duties and the employees of the Corporation also attending to COVID-19 related duties, both of whom are “**fulfilling their responsibilities by risking their lives**”.

(v) **That the contract workers of the other Corporations would demand the said benefit.**

Issues faced by different Corporations can be redressed, as and when the same arise, considering the facts and circumstances in each case.

(vi) **That the daily allowance is for encouraging the municipal staff to attend the duties during lockdown and therefore some part of encouragement cost should also be borne by the concerned contractor, who continues to earn profits out of the contract even during lockdown.**

The Corporation is well aware that it is not possible for the Court in its extra ordinary jurisdiction under Article-226 of the Constitution of India to access / ascertain the profits earned by the contractors and / or to direct them to share a part of their profits with the Kamgaars.

10. The above views of the Court were conveyed to the Advocate for the Corporation on 15th May, 2020. This Court also explained to the Advocate for the Corporation that in the present pandemic situation, when the Kamgaars who are admittedly fulfilling their responsibilities by carrying out COVID-19 related duties by risking their lives, it is necessary for one and all to adopt a humane approach towards these warriors of COVID-19, instead of raising the aforestated defences. The Court also requested the Advocate for the Corporation to do his duty outside the Court, and after considering the list of Kamgaars carrying out the COVID-19 related duties, submitted by the Learned Advocate for the Petitioner Sangh / Union, give written submissions of the Corporation to the Court by 18th May, 2020, despite the matter being closed for orders.

11. Thereafter, the Deputy Municipal Commissioner of the Corporation has filed his Affidavit, wherein he has pointed out that all the Kamgaars set out in the list

submitted by the Advocate for the Petitioner Sangh / Union are not carrying out COVID-19 related duties. He has submitted that without prejudice to the contention of the Corporation that they are not required to pay any allowance to contract workers, if the Court is of the view that allowance be paid to the contract workers, the Corporation may be allowed to certify the exact contract workers who are involved in COVID-19 related duties, and payment of special allowance be restricted only to such certified contract workers, on the basis of their attendance. It is also submitted that the contractors be directed to provide details of such certified contract workers at the end of each month along with their attendance to the Corporation for payment of the allowance to the contractor, who in turn would disburse the same amongst the entitled workers. It is submitted that the Court may consider fixing lower amount of daily allowance to the contract workers on the grounds, which are already set out and dealt with in paragraphs 8 and 9 above. It is submitted that this Court may also clarify that the payment of such allowance shall not create employer-employee relationship between the Corporation and the contract workers.

12. In view of the above as far as the payment of the daily allowance is concerned, the following urgent Interim Order is passed :

i. The Corporation shall certify the names of the Kamgaars involved in the COVID-19 related duties and forward a list of the same to the Advocate for the Petitioner Sangh / Union within a period of one week from the date of uploading of this Order.

ii. For the reasons set out in paragraph 8 and 9 above, the said certified Kamgaars shall be paid allowance per day at the rate paid to the other employees / workers by the Corporation under its Circular dated 7th April, 2020.

iii. The payment of special allowance to the certified contract workers shall be made on the basis of their attendance. For this purpose, the contractors shall provide the details of such certified contract workers at the end of each month (starting from May, 2020) along with their attendance to the Corporation for payment of the allowance to the contractors, who in turn shall disburse the same amongst the entitled workers.

iv. The allowance shall be paid without prejudice to the rights and contentions of the parties, including the rights and contentions in the dispute pending before the Industrial Tribunal being Reference (IT) No. 96 of 2019.

13. The next grievance of the Petitioner Sangh / Union is that the Central Government, vide its Press Conference conducted by the Finance Minister of India on 26th March, 2020, had announced a Special Insurance Scheme that would cover the Kamgaar working as Safai Karmacharis, ward boys, nurses, ASHA workers, paramedics, technicians, doctors and specialties and other health workers, as well as workers at Government Health Centres and Wellness Centres. However, the Corporation has not accepted that the said Scheme is also applicable to the workers of the Petitioner Sangh / Union.

14. Mr. A.C. Singh, Learned Additional Solicitor General on behalf of the

Union of India has submitted that upon the Corporation certifying the names of the worker/s working in health care facilities and involved in direct contact and care of COVID-19 patients, irrespective of whether they are direct workers/employees of the Corporation or contract workers, shall be covered under the Special Insurance Scheme.

15. The Learned Advocate appearing for the Corporation states that the insurance claims would be certified by the Corporation in respect of all contractual workers working in health care facilities, irrespective of numbers, provided they are in direct contact and / or care of COVID-19 patients. The statement is accepted.

16. Stand over to 12th June, 2020 for further orders / hearing.

17. Liberty to apply.

18. This Order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.

(S.J.KATHAWALLA, J.)