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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION ST. NO. 21699 OF 2021

Maharashtra State Road Transport
Corporation ..Petitioner
vs.
Sangharsh ST Kargar Sanghatan and ors. ..Respondents

**WITH
INTERIM APPLICATION NO. 906 OF 2022
IN
WRIT PETITION ST. NO. 21699 OF 2021**

Pandurang Baburav Mhatre ..Applicant

IN THE MATTER BETWEEN

Maharashtra State Road Transport
Corporation ..Petitioner
vs.
Sangharsh ST Kamgar Sanghatana and ors. ..Respondents

**WITH
INTERIM APPLICATION NO. 4249 OF 2021
IN
WRIT PETITION ST. NO. 21699 OF 2021**

Manohar Anand Helgaonkar and ors. ..Applicants

IN THE MATTER BETWEEN

Maharashtra State Road Transport
Corporation ..Petitioner
vs.
Sangharsh ST Kamgar Sanghatana and ors. ..Respondents

**WITH
CONTEMPT PETITION ST. NO. 21758 OF 2021**

Maharashtra State Road Transport
Corporation

..Petitioner

vs.

The State of Maharashtra and ors.

..Respondents

Mr. Aspi Chinoy, Sr. Adv a/w Mr. G. S. Hegde a/w Ms. Pinky M. Bhansali a/w Mr Manoj Shirsat for Petitioners.

Mr. Shailesh C. Naidu, Special Counsel a/w Mr. P. P. Kakade, Government Pleader a/w Mr. B.V. Samant, AGP, for State/Respondent No. 3.

Mr Kartikeya Bahadur i/b Mr. Kaustubh R. Gidh for Respondent No.1.

Mr Yogendra Pendse for Respondent No.2.

Dr. Gunratan Sadavarte a/w Dr. Jayshree Patil a/w Mr. Vishal Jadhav a/w Mr. Pradeep Jha a/w Mr. Gurunath Aire a/w Mr. Sandeep Gaikwad for Applicant in IA/4249/2021 and for Respondent No.3 in CP(ST)/21758/2021.

Mrs. Rajashree Kale, Master and Asst. Prothonotary (Judicial), H.C. O.S. Present.

Mr Shekhar Channe, Vice Chairman & Managing Director of MSRTC Present.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: APRIL 7, 2022

P.C.:

1. It is often said that extraordinary circumstances call for extraordinary measures. This happens to be an extraordinary case presenting an extraordinary circumstance calling for an extraordinary measure at our end in exercise of our writ jurisdiction under Article 226 of the Constitution of India.

2. Apart from other deleterious effects that the unprecedented pandemic brought about in the lives of our countrymen, surely the crises that unfolded had its effect on the working of the Maharashtra State Road Transport Corporation (hereafter "MSRTC", for short) and its employees as well. We need not for the present purpose delve deep to find out who between the two was at fault. Suffice it to note, during the testing times of the pandemic, humans may not have acted in the manner they would have acted if things were normal. The employees of MSRTC *inter alia* raised a demand that MSRTC be merged in the Government and they be treated as Government employees. The demand was not accepted. The frailties, from which humans suffer, gave rise to differences and disputes erupting into a situation which tended to go out of control. According to MSRTC, public property was damaged as a result of violence at the instance of its employees. The employees of MSRTC also threatened to resort to a strike. MSRTC felt that a strike by the employees would virtually paralyze the public transport system which MSRTC is statutorily obliged to provide. The competent labour tribunal was also moved, which declared the strike illegal on 29th October, 2021. This writ petition was finally instituted by MSRTC setting out circumstances, which we propose to notice a little later. At or about this time, disciplinary action followed resulting in dismissal/suspension of employees. This added fuel to fire. Employees numbering more than 120 (one hundred twenty), we are informed, took their lives not being able to bear what they felt reflected the inhuman and unreasonable face of MSRTC. With the employees not

returning to work, the public transport system was hindered. Employees have still not returned to work. It is in such a volatile situation that we are tasked to endeavor to find out a just and proper solution to end the impasse.

3. The labour legislations are already in place to resolve any dispute between an employer and its employees. The one-off situation that has occurred in the present case necessitates us to attempt an approach for striking a balance to provide immediate succor to the employees and at the same time ensure that the activity of providing public transport services for the benefit of the common man, which is one of the statutory duties of MSRTC, is resumed at the earliest with full strength. The allegations and counter allegations levelled by MSRTC and its employees against each other are aplenty. Learned advocates Dr. Sadavarte and Mr. Pendse representing the employees are at pains to point out that as a result of the wholly unjustified attitude and approach of the MSRTC, the employees are suffering. They contend that as a result of this unreasonable approach, several employees are apprehending loss of livelihood and have even taken the extreme step of taking their lives. On the other hand, MSRTC says that the demands are unjustified and large number of employees being on strike, not only the public transport system is paralyzed but industrial peace and harmony are at peril.

4. As large number of employees are involved, as also keeping the larger public interest in mind, we had called upon the parties to deliberate with each other, for, an effective dialogue with due communication of each other's viewpoints is

one of the better ways for arriving at an amicable resolution or at least help in resulting in some breakthrough to end the impasse.

5. One way of dealing with the present situation was to allow the request made by Mr. Aspi Chinoy, learned senior advocate appearing on behalf of MSRTC for withdrawal of the writ petition leaving the affected parties to seek recourse for redressal of their grievances through the mechanism provided by the labour enactments.

6. However, the present situation reminds us of the observations made by the Supreme Court in the case of **M.C. Mehta Vs. Union of India**¹, where Their Lordships, though in a different context in a petition filed under Article 32 of the Constitution of India expressed, which we take as a guide. The Supreme Court expressed thus:

"As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with new problems which arise in a highly industrialised economy."

7. We are further reminded of the guiding principles evolved by the Supreme Court over the years that the interest of the employees needs to be safeguarded. The Supreme Court in the case of **Ramniklal N. Bhutta Vs. State of Maharashtra**², in paragraph 10, propounded the principle that High Courts must balance the competing interests.

8. We also draw support from the observations made by Their Lordships in **Mafatlal Industries Ltd. and ors. Vs.**

1 AIR 1987 SC 1086

2 1997 (1) SCC 134

Union of India and ors.³, wherein Their Lordships observed that the writ jurisdiction of the High Courts cannot be circumscribed by the provisions of the enactments; however, they will certainly have due regard to the legislative intent of them and would exercise their jurisdiction consistent with the provisions of the Acts, i.e., to effectuate the regime of law and not to abrogate the same.

9. Bearing these principles in mind, we proceed to set out a few relevant facts pleaded in the writ petition. MSRTC filed the present petition on November 03, 2021 seeking the following substantive relief:

(a) That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ/direction/order directing the Respondents and all the employees of the Petitioner Corporation to refrain from proceeding with the proposed rally/strike/stoppage of work from midnight of 03.11.2021 and/or thereafter."

MSRTC applied for interim relief in terms of prayer clause (b) which reads thus:

"(b) that pending the hearing and final disposal of the present Petition this Hon'ble Court be pleased to direct the Respondents and all the employees of the Petitioner corporation to refrain from proceeding with the proposed rally/strike/stoppage of work from midnight of 03.11.2021 and/or thereafter."

10. MSRTC averred that it is established by the State Government of Maharashtra as per the provisions of Section 3 of the Road Transport Corporation Act, 1950 (hereafter "the said Act", for short). Section 34 of the said Act empowers the State Government to give to the Corporation general instructions to be followed and such instructions may also

3 (1997) 5 SCC 536

include directions relating to recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks. Chapter V of the said Act empowers the State to make provisions to the extent of the State's control over the administration and financial affairs of MSRTC. MSRTC ferries 7 million passengers daily on 13,700 routes. It has a fleet of around 16,500 buses which caters to the travel needs of the people in various towns and cities within Maharashtra and adjoining States.

11. On the basis of a communication received, it was confirmed that the members of the respondents 1 and 2 - Unions would proceed on strike. According to MSRTC, it is rendering public utility services within the meaning of Section 2(n) of the Industrial Disputes Act, 1947 (hereafter "ID Act", for short). It is the case of MSRTC that the strike is *per se* illegal as it is in breach of the provisions of clause (a) of sub-section (1) of Section 22 of the ID Act which requires notice of six (6) weeks before going on strike. One of the Unions by its letter dated October 19, 2021 submitted to the Vice President and Managing Director of MSRTC informed that from October 27, 2021, the said Unions are going on hunger strike in the entire State of Maharashtra for non-compliance of the following demands:

"(1) the petitioner-Corporation should be merged in State Government and the employees of the Corporation should be provided benefits as per the State Government employees; (2) the petitioner-management should pay 3% increment in wages and house rent allowance @ 8%, 16%, 24% as per circular dated 30.06.2018 before Diwali festival; (3) the

employees of the Corporation who has committed suicide, their family should be paid Rs. 25 lakhs economical help and provide employment to one person from their family; & (4) during the Covid-19 pandemic period the employees who are expired due to Covid disease, their family should be paid Rs. 50 lakhs by way of compensation."

12. The writ petition came up for admission before this Court (Vacation Court) on November 3, 2021 when *inter alia* the following order was passed:

"2. The above Writ Petition is filed by the Petitioner-Maharashtra State Road Transport Corporation (MSRTC) against the Respondents/Sangharsh ST Kamgar Sanghatana and another *inter alia* seeking the following relief :

"(a) That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ/direction/order directing the Respondents and all the employees of the Petitioner Corporation to refrain from proceeding with the proposed rally/strike/stoppage of work from midnight of 03.11.2021 and/or thereafter;"

3. The Learned Advocate for the MSRTC has drawn our attention to the order dated 29th October, 2021 passed by the Industrial Court, Mumbai in Complaint (ULP) No.217 of 2021 filed by the MSRTC against the Maharashtra State Transport Kamgar Sanghatana and 26 Others under Items 1, 2(a), 2(b), 3, 5 and 6 of Schedule III of the MRTU & PULP Act, 1971, restraining the employees of the MSRTC from proceeding with the illegal strike until further orders. By the said Order, a notice is directed to be issued to the Respondent Nos.4 to 27 and the same is made returnable on 15th November, 2021.

4. Despite the aforesaid order, the Respondents have today issued a notice *inter alia* stating therein that unless a written assurance is given to them by MSRTC that the employees of MSRTC will be treated as employees of the State Government, the employees of the MSRTC will go on an indefinite strike from today midnight of 3rd November, 2021 and will continue the same.

5. MSRTC has therefore moved this Court and have submitted that its employees despite the order dated

29th October, 2021 passed by the Industrial Court, have decided to go on strike which is illegal. It is submitted that this action on behalf of the Respondent - Union is nothing but an attempt to blackmail the MSRTC who are required to run buses to enable members of the public to reach different destinations during the festive season / days.

6. It is submitted that since the Respondent – Union has today at 4.15 p.m. issued a notice that they will be going on strike from midnight of 3rd November, 2021, the MSRTC is left with no time in their hands to move the Industrial Court, Mumbai, whose order is being breached by the Respondent Union and therefore they have no other alternative but to knock the doors of this Court seeking the relief prayed for in the above Writ Petition.

7. In view of the above facts and circumstances and keeping in mind the immense hardship and inconvenience that will be caused to the members of the public who have fixed their travel plans through MSRTC buses during the festive days, we direct the Respondents i.e. all the employees of the MSRTC to refrain from proceeding with the proposed rally/strike/stoppage of work from mid night of 3rd November, 2021 and/or thereafter, until further orders.

8. Stand over to 4 th November, 2021 at 11.00 a.m.

9. All concerned to act on an ordinary copy of this order duly authenticated by the Private Secretary/Personal Assistant of this Court."

13. Upon the respondents being served, the writ petition was again heard on November 4, 2021 when inter alia the following order came to be passed:

"3. The Learned Advocate for the MSTRC has drawn our attention to the order dated 29th October, 2021 passed by the Industrial Court, Mumbai in Complaint (ULP) No.217 of 2021 filed by the MSRTC against the Maharashtra State Transport Kamgar Sanghatana and 26 Others under Items 1, 2(a), 2(b), 3, 5 and 6 of Schedule III of the MRTU & PULP Act, 1971, restraining the employees of the MSRTC from proceeding with the illegal strike until further orders. By the said Order, a notice is directed to be issued to

the Respondent Nos.4 to 27 and the same is made returnable on 15th November, 2021.

4. Despite the aforesaid order, the Respondents have today issued a notice inter alia stating therein that unless a written assurance is given to them by MSRTC that the employees of MSRTC will be treated as employees of the State Government, the employees of the MSRTC will go on an indefinite strike from today midnight of 3rd November, 2021 and will continue the same.

5. MSRTC has therefore moved this Court and have submitted that its employees despite the order dated 29th October, 2021 passed by the Industrial Court, have decided to go on strike which is illegal. It is submitted that this action on behalf of the Respondent - Union is nothing but an attempt to blackmail the MSRTC who are required to run buses to enable members of the public to reach different destinations during the festive season / days.

6. It is submitted that since the Respondent - Union has today at 4.15 p.m. issued a notice that they will be going on strike from midnight of 3rd November, 2021, the MSRTC is left with no time in their hands to move the Industrial Court, Mumbai, whose order is being breached by the Respondent Union and therefore they have no other alternative but to knock the doors of this Court seeking the relief prayed for in the above Writ Petition.

7. In view of the above facts and circumstances and keeping in mind the immense hardship and inconvenience that will be caused to the members of the public who have fixed their travel plans through MSRTC buses during the festive days, we direct the Respondents i.e. all the employees of the MSRTC to refrain from proceeding with the proposed rally/strike/stoppage of work from mid night of 3rd November, 2021 and/or thereafter, until further orders.

8. Stand over to 4th November, 2021 at 11.00 a.m.

9. All concerned to act on an ordinary copy of this order duly authenticated by the Private Secretary/Personal Assistant of this Court.

2. Despite the Respondents being served with the above

order, none appear for the Respondents. However, the learned Advocate appearing for MSRTC on instructions states that Respondent No. 1 Union – Sangharsh ST Kargar Sanghatana has agreed to abide by the orders passed by this Court and has not proceeded with the proposed agitation / strike. However, Respondent No. 2 Union – Maharashtra Rajya Kanishth Vetanshreni ST Karmachari Sanghatana led by Shri Ajaykumar Gujjar, has continued with the agitation / strike and has categorically informed MSRTC that they will continue with the agitation / strike. In view thereof, 59 out of 250 depots of MSRTC are currently non functional and therefore not plying any buses.

3. In view of the above, we are prima facie satisfied that Respondent No. 2 Union - Maharashtra Rajya Kanishth Vetanshreni ST Karmachari Sanghatana led by Shri Ajaykumar Gujjar is guilty of committing willful breach of not only the Order passed by the Industrial Court, Mumbai dated 29th October, 2021 but is also guilty of committing willful breach of the Order passed by this Court dated 3rd November, 2021. Before taking any stern action against Respondent No. 2 Union - Maharashtra Rajya Kanishth Vetanshreni ST Karmachari Sanghatana, led by Shri Ajaykumar Gujjar, we call upon Shri Ajaykumar Gujjar to file his Affidavit on 5th November, 2021 at 2.30 p.m. explaining as to why action should not be taken against him for committing willful breach of the order dated 3rd November, 2021 passed by this Court. We further direct Shri Ajaykumar Gujjar to ensure that he as well as the members of the Respondent No. 2 Union - Maharashtra Rajya Kanishth Vetanshreni ST Karmachari Sanghatana led by him, abide by the Order passed by this Court dated 3rd November, 2021 until further orders. Shri Ajaykumar Gujjar is also directed to remain present before this Court on 5th November, 2021 at 2.30 p.m. along with his Affidavit, failing which the Court shall be constrained to pass necessary orders to ensure his presence before this Court including issuing a warrant of arrest against him.

4. A copy of this Order shall be forthwith served by the learned Advocate appearing for the Petitioners on Shri Ajaykumar Gujjar through all permissible modes of

service.

5. All concerned to act on an ordinary copy of this order duly authenticated by the Personal Assistant of this Court."

14. The writ petition then was heard from time to time, at times through Video Conferencing as the pandemic had affected physical hearings in this Court. It would next be relevant to reproduce the order dated November 8, 2021 passed by this Court when with the assistance of the parties and their advocates and after considering their suggestions/inputs, this Court constituted a Committee to sympathetically consider the demands of the workers of MSRTC, the principal demand being that they should be treated as employees of the State Government. The order dated November 8, 2021 reads thus:

"Admittedly, the demand of the workers of the MSRTC is that they should be treated as employees of the State Government. For this reason workers of MSRTC as stated in our earlier orders are on strike. Though by our earlier Orders we have directed the workers to resume their duties and the Order has been breached, an attempt has been made to amicably resolve the above issue raised by the workers, by requesting the Government to sympathetically consider the demand of the workers of the MSRTC. With the assistance of the parties and their Advocates before us and after considering their suggestions/inputs, the following Order is passed :

A] A Committee shall be constituted today itself, comprising of the following officials:

- (i) The Chief Secretary, Government of Maharashtra;
- (ii) Additional Chief Secretary, Finance Department, Government of Maharashtra; and
- (iii) Additional Chief Secretary, Transport, Government of Maharashtra.

(iv) The Managing Director of MSRTC shall act as a co-ordinator and assist the above Committee. He

shall have no powers in the decision making.

B] The Committee shall hear the representatives of the 28 unions and the representatives of the MSRTC and thereafter, submit their decision/recommendations to the Chief Minister, State of Maharashtra.

C] The Chief Minister, State of Maharashtra will consider the recommendations and submit the same to the Court with his views/opinion on the said recommendations.

D] Upon such report being submitted to this Court, all contentions of the parties are kept open.

E] The entire exercise shall be completed within a period of twelve weeks from today.

F] The Committee shall inform the Court every fortnight qua the progress made by them i.e. the status of the hearing given by them to the 28 unions as well as the representatives of the MSRTC.

G] The Government Resolution (GR) notifying the formation of the above Committee for the purpose of considering the issue raised by the workers of the MSRTC, namely, to treat them as employees of the State Government will be issued today by 3.00 pm.

H] The meeting of the Committee will be held at 4.00 p.m. and the minutes will be placed before the Court at 5.00 p.m. recording therein that the Committee has met today pursuant to the GR to consider the issue raised by the workers of the MSRTC that they be treated as employees of the State Government and fixing the next meeting within 10 (ten) days from today.

I] Upon such minutes reaching the Court at 5.00 pm before us and being perused by all the Advocates present before us, the unions representing the employees of MSRTC shall forthwith withdraw the strike/agitation and resume their duties.

J] None present before us have raised any objection to this order since it protects the interest of all the parties before us.

Stand over to 5.00 p.m., today."

15. At 5.00 p.m. on November 8, 2021, when the writ petition was called out again, this Court passed the following

order, the relevant portion of which reads thus :-

"8. At 5.00 p.m., when the matter was called out, the G.R. as well as the Minutes of the first meeting have been produced before this Court. In the said G.R., it is interalia categorically recorded that in the hearing held before the High Court on 8th November, 2021 i.e. today, the High Court has constituted a three member Committee to consider the issue of the employees of MSRTC being treated as employees of the State Government. In the Minutes of the first meeting held by the three Member committee, it is once again categorically recorded that the Committee has been constituted to consider the demands of the employees of MSRTC to be treated as employees of the State Government and keeping in mind the said issue, the Committee has had preliminary discussions in regard to the same.

9. Thus, everything that Shri Sadavarte had demanded on behalf of the employees of MSRTC before withdrawing the strike/agitation has been complied with. However, Shri Sadavarte now states that the G.R. issued by the State Government is not in line with the G.R. issued by the State Government dated 28th October, 2020 in the case of reservations pertaining to the promotion of SC and ST. We see no substance in this submission. Shri Sadavarte again submits that several employees of MSRTC have committed suicide and some of them have in their suicide notes blamed the Chief Minister for the same. Shri Sadavarte has also urged the Court to take a note of the fact that he is representing approximately 98000 workers /employees of MSRTC, who are supporting the stand taken by him in Court.

10. We do not understand why the employees of the MSRTC have now backed out from what they themselves wanted the Government to consider. Despite them having repeatedly breached the orders passed by this Court, the Court when informed that some of the employees of MSRTC have committed suicide, as stated earlier, kept the issue of breach of our orders aside and requested the State Government to consider the demands of the employees of the MSRTC. The State Government has

co-operated fully qua the demand of the employees of MSRTC by issuing the G.R. as well as calling the preliminary meeting and submitting the minutes of the meeting as suggested / demanded by the employees of the MSRTC. We fail to understand how by not wanting to abide by the order passed by this Court in the morning session and insisting on continuing to breach the orders of the Court, the employees stand to gain and how such an adamant stand taken by the employees of MSRTC will prevent their colleagues from taking the drastic step of committing suicide in future.

11. Advocate Shri Tafti who is instructing Shri Sadavarte on behalf of the employees of MSRTC seeks to withdraw his Vakalatnama / appearance in the matter. He is allowed to do so.

12. Before we could proceed to pass an order directing the Registry to issue notices to the office bearers of the Respondent No.2 Union for repeatedly committing breach of the orders passed by this Court, the learned Advocate for the MSRTC submitted that there are several individuals who are manning depots of MSRTC and who are guilty of wilful disobedience of the orders passed by this Court dated 3rd and 4th November, 2021. In view thereof, we have asked the learned Advocate for the Petitioner to take out appropriate proceedings as advised. The learned Advocate representing MSRTC therefore, seeks time to take out / file a Contempt Petition. Stand over to 10th November, 2021."

16. The petition thereafter was heard by the co-ordinate Bench on several occasions. In one such order dated November 22, 2021, this Court recorded that those employees, i.e., drivers and conductors who have shown their willingness to extend co-operation to MSRTC for plying buses, may be permitted to ply the buses either in urban area or rural area so that the general public or the school going children are not put to any further sufferance. In the

meantime contempt petition alleging willful breach of the orders passed by this Court was filed by MSRTC.

17. Thereafter, on December 20, 2021, the copy of the report made by the Committee was taken on record. After noting the contents, further directions regarding resumption of duties by employees willing to join were made by an order dated December 22, 2021.

18. The writ petition was then heard on February 11, 2022 when the following order came to be passed by us:

"1. By an order dated November 8, 2021, a co-ordinate Bench of this Court constituted a committee of officials named therein for the purpose of hearing the representatives of the petitioner/Maharashtra State Road Transport Corporation and the representatives of 28 unions and for submitting its decision/recommendations to the Chief Minister, State of Maharashtra. The Chief Minister, State of Maharashtra, in turn, was required to consider the recommendations of the committee and to submit his views/opinion on such recommendations before the Court by February 5, 2022. Mr. Naidu, learned advocate appearing for the State submits that compliance of the order dated November 8, 2021 is in progress in the right earnest and that some more time is required, at least till February 18, 2022, to place a report before the Court that the order dated November 8, 2021 has been complied with in its entirety.

2. Since we are informed that the State has proceeded in right earnest to comply with the order dated November 8, 2021 and an extension has been prayed for, which is not unduly long, we grant the prayer of Mr. Naidu. The recommendations of the committee together with the views/opinion of the Chief Minister, State of Maharashtra shall be filed before the Registrar General of this Court in a sealed cover by close of working hours of February 18, 2022. The Registrar General shall take care to place the sealed cover before us on **February 22, 2022** when this writ petition shall be called out once again at 2.30 p.m."

19. On February 22, 2022, we perused the recommendations made by the Committee and at the request of Shri S.C. Naidu, learned special counsel appearing on behalf of the State posted the matters to February 25, 2022. On February 25, 2022, upon hearing the parties, we passed the following order:

- "1. List the writ petition along with the interim applications on **11th March 2022 at 2.30 p.m.**
2. We have perused the records produced by Mr. Naidu, learned special counsel appearing on behalf of the State and record satisfaction that the report of the 3-member Committee constituted in terms of the direction of this Court has been looked into and approved by the Hon'ble Chief Minister.
3. It is submitted by Mr. Naidu that the report prepared by the Committee, in the event of its acceptance, would entail huge financial implications/commitments on the part of the State and that approval of the Cabinet is necessary, wherefor two weeks' time may be granted. We leave it open for the Cabinet to consider the report and take an appropriate decision thereon, which shall be informed to us on the returnable date.
4. We place it on record that we have neither accepted nor rejected the report of the Committee."

20. A request was made by the State seeking extension of time to file the requisite affidavit in terms of the order dated March 11, 2022 passed by us. For ease of reference we reproduce the order dated March 22, 2022 which reads thus:

- "1. Interim Application No. 1686 of 2022 is at the instance of the State of Maharashtra, respondent no. 3 in Writ Petition Stamp No. 21699 of 2021, seeking extension of 15 days' time to file the requisite affidavit in terms of the order dated March 11, 2022 passed by us. The order dated March 11, 2022 after referring to the submission of Mr. Naidu, special counsel appearing for the State that the competent authority has been looking

into the report of the 3 (three) member Committee constituted by this Court, by its order dated November 8, 2021, and that a decision on acceptance or otherwise of such report is likely to be taken within a short period of time, required an affidavit to be filed to place on record the ultimate decision. It is pleaded in the application that necessary submissions are in the process of being made before the Cabinet in respect of the recommendation of the committee and extension may be granted to finalize the decision of the Cabinet on such committee report.

2. The application was filed on March 17, 2022 and 5 (five) days have passed since. Therefore, instead of extending the time by 15 days, as prayed, we extend the time for filing the requisite affidavit by April 1, 2022. The application stands disposed of. No costs.

3. Copy of the affidavit must, however, be circulated to the parties.

4. The writ petition along with any pending application shall be listed on **April 5, 2022 (First on Board)**.

5. It is submitted before us on behalf of the employees of the petitioning Corporation by Dr. Gunaratan Sadavarte, learned advocate, that despite number of employees having succumbed to Covid-19, no compensation has been paid. It is asserted that around 350 applications have been submitted for ex-gratia compensation.

6. Mr. Naidu assures this Court that once photocopies of the applications filed by the employees are provided to the Government Pleader's office by Thursday (March 24, 2022), steps to disburse compensation to the deserving applicant would be expedited.

7. We have no doubt that the State shall proceed in terms of the assurance of Mr. Naidu and disburse the compensation in accordance with law to such of the applicants who are found to be eligible therefor in terms of the relevant scheme."

21. On April 6, 2022, with a view to resolve the dispute, we made some suggestions to Mr. Chinoy, learned senior advocate appearing on behalf of MSRTC, as in our opinion, if the suggestions were acceded to, that could result in final

disposal of the writ petition at this stage securing the interest of all the parties.

22. Accordingly, we have heard the parties today. Our attention is invited to the observations and recommendations of the action committee constituted by the G.R. dated November 8, 2021. The relevant portion of the observations and the recommendations read thus:

"Considering the above information submitted by the Corporation, it reveals that the Corporation will have to bear losses for a period of about four years. It appears that the Corporation will be able to incur its own expenses from its own income thereafter. The Committee also noticed that for the last two years, the Corporation was unable to pay salary of its employees in time due to paucity of funds and this has resulted in dissatisfaction among the employees. It is observed by the Committee that the Corporation need to be funded by the Government for paying the salaries of S.T. Employees on time. As per the provision of Section 23(1) of the Road Transport Corporation Act, 1950, the State Government may provide the capital required by the Corporation. The Section reads as follows.

Section 23 : Capital of the Corporation-(1) The State Government may provide to a Corporation established by that Government any capital that may be required by the Corporation for the purpose of carrying on its undertaking or for purposes connected therewith on such terms and conditions, not inconsistent with the provisions of this Act, as that Government may determine.

Thus the Committee is of the opinion that as per the above provisions, the Government may provide capital to the Corporation. The Corporation needs the aid from the Government in the present situation. According to the information submitted by the Corporation, it will be necessary to provide funds to the Corporation for the salaries of the employees at least for next four years.

In view of above, following are the recommendations

of the Committee.

Recommendations of the Committee :

1. The legal provisions applicable under Road Transport Corporation Act, 1950 and other applicable Acts, Rules and Regulations as well as considering Administrative and Functional aspects, it is not possible to absorb the employees of the Corporation into the State Government while at the same time, keep intact the separate identity of the Corporation. Hence the Committee recommends that this demand may not be accepted.
2. Similarly, after considering the legal provisions as well as Administrative and Functional aspects, it is not possible to merge the Corporation along with its employees in the State Government and to carry out the business of passenger transport as expected of the Corporation through the Government Department. Hence the Committee recommends that this demand may also not be accepted.
3. Considering the current financial condition of the Corporation, the Committee recommends that the State Government should provide required funds to the Corporation for the salary of all the employees through its budgetary provision at least for next four years. A decision regarding further continuation of this financial support may be taken after reviewing financial performance of the Corporation at the appropriate time."

23. In the affidavit dated March 31, 2022 filed on behalf of the respondent no.3-State of Maharashtra, affirmed by Shri Rajendra Motiram Holkar, Joint Secretary, Home (Transport) Department, Mantralaya, Mumbai, it is stated that the report of the three member Committee having been placed before the State Cabinet on March 23, 2022 for taking an appropriate decision, the State Cabinet approved the recommendations. Learned counsel for one of the employee's Union, Shri Sadavarte, was at pains to submit that the principle grievance of the employees of MSRTC that they

should be absorbed by the State Government has not been accepted and hence the grievance of the employees cannot be said to be redressed.

24. We are afraid that it will not possible for us to test the validity of the said report and the recommendations in the writ petition filed by MSRTC. It is always open for the aggrieved Union/employees to challenge the report/recommendations by taking recourse to appropriate proceedings under the relevant legislations. We keep that liberty open. Suffice it to observe that the State Government has accepted the recommendations to the extent of the State Government providing the required funds to MSRTC for the salary of all the employees through budgetary provision at least for the next four years and that the decision regarding further continuation of this financial support will be taken after reviewing financial performance of MSRTC at the appropriate time.

25. During this period of strike, MSRTC has proceeded with disciplinary action against the employees and even gone to the extent of terminating the services of some of the employees. It is also reported that they have discontinued the services of some casual and daily rated workers.

26. When we called out the matters yesterday, i.e., April 6, 2022, we had made a few suggestions for MSRTC to consider. Today, Shri Aspi Chinoy has placed on record a circular issued by MSRTC communicated to the concerned division/officials regarding an opportunity being extended to the employees of MSRTC to join and attend their duties. The communication dated March 25, 2022 is taken on record and marked 'X' for

identification.

27. Perusal of the said communication dated March 25, 2022 reveals the approach of MSRTC in the matter of extending an opportunity to the employees who are dismissed/on strike/under suspension to join duties by March 31, 2022. Shri Sadavarte expressed some concerns and apprehension as regards the circular. To obliterate these concerns, though Shri Aspi Chinoy was hesitant to accept some of the suggestions of this Court, after some deliberations, assured us that the order passed by this Court would be complied with in its letter and spirit considering the nature of the litigation.

28. It is stated before us that some of the employees have reported back for work. In a matter of such nature, we would ordinarily be loath in interfering having regard to the lis of this nature as adequate remedies are available under the existing labour legislations. As indicated earlier, considering the magnitude of the problem, we decided to intervene, in the interest of justice. We appreciate the approach of the Mr. Aspi Chinoy appearing for MSRTC along with Mr. Hegde in taking a proactive stand on instructions. We propose to dispose of the writ petition in terms of the following order having regard to the overall facts and circumstances.

ORDER

(a) In the event, the employees of MSRTC who are on strike report for work on or before April 22, 2022, MSRTC shall permit such employees to join duties. In

case such employees join and report for duties, MSRTC shall not take any disciplinary action against such employees on the ground that they have participated in the strike. Any action, if already initiated against such employees, shall stand withdrawn. This would also cover the cases of those employees on strike to whom notices have been issued for showing cause as to why their services should not be terminated. Such show cause notices shall stand withdrawn upon those employees joining duties and reporting for work in the manner stated hereinabove.

(b) The employees whose services have been transferred during the strike period shall be allowed to join at the place of their posting prior to the issuance of such transfer. Such orders of transfer to stand revoked if they join on or before April 22, 2022.

(c) As regards causal/temporary employees whose services have been terminated on account of their participation in the strike, such employees will be permitted to join, if they report for work on or before April 22, 2022.

(d) It is brought to our notice that permanent employees dismissed pursuant to a disciplinary action taken against them have filed departmental appeals under the relevant rules and regulations of MSRTC. Such appeals shall be disposed of within a period of four weeks from date with a warning and the concerned employees shall be reinstated in service. In respect of those employees who have not filed departmental

appeals against the orders of dismissal, such employees may file appeals within a period of three weeks from date. The said appeals shall be decided within a period of four weeks from date of receipt of the appeal memo, whereupon such appeals shall be disposed of in the same manner as aforesaid. The orders of dismissal shall then stand revoked. If no appeal is filed within the time frame as above, it shall be presumed that the concerned employee is not interested to join duty and the order of termination shall have full effect. However, those who join and report for duty after disposal of the appeals shall be entitled to continuity of service but not back wages.

(e) The statement made by Mr. Aspi Chinoy that MSRTC will comply with circular no. 33 dated October 29, 2021 passed by the Board, at page 245 in Writ Petition No. 4249 of 2021, regarding payment of special incentive allowance of Rs.300/- per day with effect from March 23, 2020 up to December 31, 2020 to those employees who have actually worked during the pandemic period is accepted. The arrears, if any, in respect of such allowance shall be paid within a period of eight (8) weeks from date.

(f) Insofar as the retired employees of MSRTC are concerned, it is expected that the employer's share of contribution towards the provident fund dues would be deposited with the provident fund department within the time stipulated by the Employees Provident Fund Act, 1952 and scheme framed thereunder. We hope and trust

that the provident fund department shall pay to the employees such amounts that are admissible under the scheme without any delay. If any application is pending for payment of retiral dues, either with the Board of Trustees or with the provident fund department, the same be dealt with and decided within one (1) month from date.

(g) The applications made for compensation in Covid death cases be dealt with and decided as expeditiously as possible and in any event, within a period of four (4) weeks from date.

(h) We make it clear that this order is passed keeping in mind the circular dated March 25, 2022 issued by MSRTC and the humanitarian considerations involved. The present order is passed in the peculiar facts and circumstances of this case and shall not be treated as a precedent.

(i) Considering that this order is passed keeping the interest of the employees in mind, we expect the employees to abide by the aforesaid directions. Any failure to abide by these directions would expose the employees to be proceeded against by MSRTC in accordance with law.

(j) We hope and trust that criminal prosecution launched against the employees shall not be pursued further by MSRTC.

(k) We appreciate the efforts and approach of learned senior advocate Mr. Aspi Chinoy and learned advocate Mr. Hegde for MSRTC in adopting a proactive stand,

assisting this Court in deciding this writ petition.

(I) It is expressly made clear that we have not considered the challenge to the recommendations of the Committee on merits and all contentions in that regard are left open to be agitated before the appropriate forum.

29. The writ petition is disposed of with no order as to costs. In view of disposal of the writ petition, all pending interim applications as well as the contempt petition do not survive and the same stand disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)