



W.P.No.31458 of 2023 & W.M.P. Nos. 31077, 31079 & 31082 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

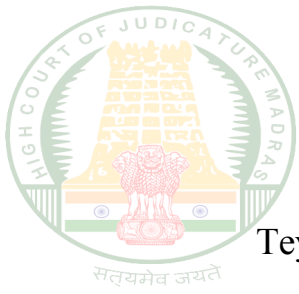
W.P.No.31458 of 2023 &
W.M.P. Nos. 31077, 31079 & 31082 of 2023

Tamil Nadu State Transport Employees' Federation,
Represented by its General Secretary,
No.52, Cooks Road,
Ptteri, Chennai 600 012

...Petitioner

Vs.

1. Government of Tamil Nadu,
Represented by the Additional Chief Secretary,
Transport Department,
Government of Tamil Nadu, Fort. St. George,
Chennai 600 009.
2. The Additional Chief Secretary,
Labour Welfare and Skill Development Department,
Fort St. George,
Chennai 600 009.
3. The Commissioner of Labour,
O/o. The Commissioner of Labour,
DMS Complex,
Teynampet, Chennai 600 006.
4. The Special Joint Commissioner of Labour,
O/o. The Commissioner of Labour,
DMS Complex,



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Teynampet, Chennai 600 006.

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5. Metropolitan Transport Corporation Limited,
Represented by its Managing Director,
Pallavan Illam, Anna Salai,
Chennai 600 002.
6. State Express Transport Corporation Limited,
Represented by its Managing Director,
Thiruvalluvar Illam,, Pallavan Salai,
Anna Salai, Chennai 600 002.
7. Tamil Nadu State Transport Corporation (Villupuram)
Limited,
Represented by its Managing Director,
3/137, Salamedu, Vazhudareddy,
Villupuram 605 602.
8. Tamil Nadu State Transport Corporation (Salem) Limited
Represented by its Managing Director,
12, Ramakrishna Road, Seerangapalayam,
Salem 636 007.
9. Tamil Nadu State Transport Corporation (Coimbatore) Limited
Represented by its Managing Director,
37, Mettupalayam Road,
Coimbatore 641 043.
10. Tamil Nadu State Transport Corporation (Kumbakonam) Limited
Represented by its Managing Director,
New Railway Station Road,
Kumbakonam 612 001.
11. Tamil Nadu State Transport Corporation (Madurai) Limited
Represented by its Managing Director,
Bye pass Road, Madurai 625 002.
12. Tamil Nadu State Transport Corporation (Tirunelveli) Limited
Represented by its Managing Director,
Kattabomman Nagar, Tirunelveli 682 002. ... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus,

(i) Calling for records pertaining to the tender notification issued by the 5th Respondent on 30.09.2023 in Tender Document No. 63/ 14563/ NA2/ MTC/ 2023 quash the same and consequently direct the Respondents 5 to 12 to fill up all the existing regular vacancies in the post of driver, conductor, driver- Cum- Conductor and technical staff strictly in accordance with the directions issued by the 1st Respondent in G.O. (Ms) No.25 Transport (C1) Department dated 14.02.2023 and G.O. (Ms) No.111 Transport (C1) department dated 21.07.2023 and in accordance with the recruitment rules.

(ii) directing the respondents 5 to 12 to maintain status quo and not to alter the conditions of service adversely in any manner and till the dispute in letter No.C1/11293/2023, dated 20.04.2023 pending on the file of the 4th respondent is either settled or adjudicated by the Tribunal/Labour Court

(iii) directing the 4th respondent to conclude the conciliation proceedings pending before him in letter No.C1/11293/2023, dated 20.04.2023 relating to the two demands covered by the strike notice dated 18.04.2023 issued by the federation; to bring an amicable settlement and to submit failure report to the 2nd respondent in the event of failure of conciliation; the 2nd respondent to refer the said dispute for adjudication to the Tribunal/Labour Court.

(iv) directing the 4th, 3rd and 2nd respondents to initiate Criminal Prosecution against the Respondents 5,6 & 10 and their officials under



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Sections 29, 25U, 31 (1) & 31 (2) read with Section 34(1), for having violated Sections 9A, 29 and 33(1) (a) of the ID Act within a specified time based on the complaints given by the petitioner federation on 24.04.2023, 05.05.2023 & 19.10.2023.

For Petitioner : Mr.V.Ajoy Khose

For R1 to R4 : Mr.D. Gopal, Government Advocate
For R5 : Mr. R.Ramanlal,
Additional Advocate General IV
Assisted by Mr.A.Vinoth Raj
Standing Counsel.

For R6 : Mr.L.S.M. Hasan Fizal,
Additional Government Pleader
Standing Counsel for SETC

For R7 : Ms. P.S. Pavithra
For R8 : Mr. M. Aswin
For R9 : Mr. A. Sundaravadhanan
For R10 : Mr. M. Murali Vinodh
For R11&R12 : Mr. C. Gauthamaraj

ORDER

Challenging the tender document, bearing No. 63/ 14563/ NA2/ MTC/ 2023 dated 30.09.2023, issued by the 5th respondent and praying for quashing the same and for further directions to fill up the existing regular vacancies through proper process as agreed upon in the Settlement with the Tamil Nadu State Transport Employees' Federation, the petitioner, represented by its General Secretary, has filed this petition.



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There are 12 respondents out of which the 5th respondent is the

Metropolitan Transport Corporation Ltd., Chennai.

2. Briefly the facts:

The petitioner Federation is a Trade Union registered under the Trade Union Act, 1926 with Registration Number 2468/MDS. It is affiliated to the CITU. It is also one of the unions which is the signatory to the Wage Settlement with the 5th respondent, Metropolitan Transport Corporation Ltd., and other different units. Respondents 1 and 2 are the Additional Chief Secretaries of Transport and Labour Welfare Department respectively, while respondents 3 and 4 are Commissioner of Labour and Special Joint Commissioner of Labour, all representing the Government of Tamil Nadu. The 6th respondent is the State Express Transport Corporation Ltd., while respondents 7 to 12 are the different District Units of State Transport Corporation i.e., Villupuram, Salem, Coimbatore, Kumbakonam, Madurai and Tirunelveli. The 5th respondent had issued a tender notification dated 30.09.2023 for engaging drivers and conductors through a man power agency (outsourcing) to operate regular bus operations. Hence, this Writ Petition challenging the same.



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3. Mr.V.Ajoy Khose, learned Counsel for the petitioner Union

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would contend that even as early as 1992 an agreement was arrived at between the Union and the 5th respondent that all direct recruitments would be done by the Management through the Employment Exchange and only the employment offered to the children of the employees who die in harness would be an exception. He further contended that there were many existing vacancies for the posts of drivers and conductors and that by adopting a new recruitment procedure of out sourcing by open auction for contractors, the Management has violated the terms of the mutual agreement. It was also contended that such unhealthy practices, that too, when the matter has been referred for conciliation would lead to labour unrest. According to him there are many unemployed youth who know driving and who have registered their names in the Employment Exchange and by bypassing the regular agreed procedure, the floating of a tender for such recruitment is unacceptable, unethical and illegal. He referred to the letter C1/11293/2023 dated 20.04.2023 issued by the Special Joint Labour Commissioner to the respondents 5 to 12 advising them to maintain 'status quo' till conciliation talks get over on the matter. He also referred to G.O.(Ms) No.111 dated 21.07.2023 issued by the Transport Department permitting all State Transport Undertakings to



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recruit driver-cum-conductors instead of conductors in their respective

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Corporations as one time measure by following the procedure adopted during previous recruitment processes by utilising the service of Institute of Road Transport for assessing the driving skills of the candidate. He also contended that this was the procedure adopted earlier as evident in G.O.(Ms) No.25 dated 14.02.2023 issued by the Transport (C1) Department. He also pointed out that there is no specific order waiving the requirement of recruitment through the Employment Exchange and such a tender in the midst of conciliation talks and 'status quo' order is arbitrary and capricious.

4. Per contra, Mr. R.Ramanlal, learned Additional Advocate General for the respondents would contend that the 'status quo' order of the Joint Commissioner of Labour is only advisory in nature and has no legal binding on the 5th respondent. Furthermore, it was contended that it was the Government policy to outsource drivers and conductors in the light of grim situation of shortage of drivers and conductors. According to him, many of the existing drivers and conductors were on prolonged absence and many buses are not being operated for want of drivers and conductors. He also pointed out that the tenure for the contract was only



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one year and the 5th respondent could not think of any other method to tide over this crisis especially with the festive season till the year end and the likelihood of huge crowd thronging the bus terminuses to proceed to their respective home towns. He also wondered as to how the petitioner Union can have any objection to the outsourcing based on a bilateral agreement signed as early as 1992 when things have changed drastically over the last three decades. It was also argued that five rounds of conciliation talks took place and it was only futile. His further contention was that even in 2022 when the Finance Committee authorised the 6th respondent to engage experienced drivers for transport services of passenger buses through open tender, it was not objected by the petitioner Union and the Union cannot take two different stance for two different units. He prayed for the 'out sourcing' process through open tender system to happen without hindrance from the petitioner Union.

5. The learned counsel for the petitioner relied on the Apex Court ruling in *State of Orissa vs. Mamata Mohanty reported in 2011(3) SCC 436* in which it was observed that "*it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without*



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inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit." This was the basis of the judgments in W.P. No.20290 of 2012 and its consequent appeal in W.A.No.1737/2014 of this Court. These judgments did not deal with outsourcing which is the subject matter in the present writ. It is true that the common service rules and the Memorandum of settlement signed between the petitioner Union and the respondent Managements in 1992 stipulated that all appointments by direct recruitment shall be through the Employment Exchange. However, due to the passage of time the settled position of employment vis-a-vis equality got redefined. On this aspect too the



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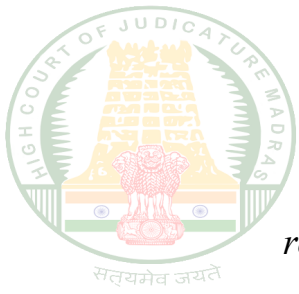
Apex Court in *State of Orissa vs. Mamata Mohenty* (cited supra),

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observed that *"At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution."*

6. The contents of the G.O.(Ms).No.25 dated 14.02.2023 clearly said that

"8. Therefore, the Managing Directors concerned are directed to fill up the above mentioned vacancies through direct



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recruitment by following the procedures as detailed below :

- i. The State Transport Undertakings (STU) shall invite applications only through online mode from eligible candidates by advertising in two leading Newspapers (one in vernacular languages and another in English language) for Direct Recruitment against the vacancies notified for the post of Driver and Driver-cum-Conductor;*
- ii. In addition, the STU has to forward the estimate of vacancy (number of vacancies), educational qualifications required, age qualification, reservation / Communal rotation and preference if any, to the concerned District Employment Exchange (the operational jurisdiction of Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Kumbakonam) to obtain a suitable list of candidates. In respect of State Express Transport Corporation Tamil Nadu Limited, Chennai, the seniority list of registered applicants shall be sought from all the District Employment Exchanges of the State ;*
- iii. The District Employment Exchange shall forward the entire list of registered eligible registrants to the STUs concerned ;*
- iv. Applications received shall be considered based on the following criteria :-*
 - a) Educational qualification.*



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Age verified as per education certificate.

Community certificate.

Driving license for Driver post.

Driving and Conductor license for Driver-cum-Conductor post;

Driving skill test for Driver.

Driving skill and practical test (Conductor) for Driver-cum-Conductor post.

Priority Certificate as stated in G.O.(Ms).No.122, Human Resources Management (K2) Department, dated 02.11.2021 (as per the requirement of the STUs)

b) The name of the candidates registered in the Employment Exchange shall also be considered.

v. A Selection Committee shall be formed under the Chairmanship of concerned Managing Directors of Corporation which will, after due process, select the candidates / applicants as per the existing Government rules / procedures in force.

vi. The Selection Committee shall adhere to the direction of the Hon'ble High Court of Madras in W.A.No.1737 of 2014 dated 20.06.2019 and adopt transparent procedure in assigning marks in the tests or interview wherever necessary and deemed fit.

vii. The services of the institute of Road Transport, Chennai shall be utilised for assessing / testing the applicants /



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candidates driving skills and their basic knowledge in mechanics".

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Though this was pertaining to the respondents 6 & 10, the present tender process for outsourcing appears to be a total deviation from this procedure.

7. The Learned Counsel for the 5th respondent contended that when the decision to outsource drivers was decided on 07.06.2022 by the Board of the sixth respondent, it was not challenged by the petitioner Union and obviously his question is why now. The petitioner's Union has come out with a series of letters from the respondents 7 to 12 that no outsourcing is being done in their respective units. However, the 5th respondent has given a letter stating that pursuant to the G.O.(Ms).No.32 dated 31.12.2018, 538 drivers were employed by them through outsourcing. The status of outsourcing by the 6th respondent is not known. The contention of the respondent is that the petitioner's Union has been selective in opposing outsourcing. Though it has been argued that the Government has taken a policy decision on the outsourcing of employees, especially, drivers and conductors, no documentary evidence has been adduced by the respondent to this effect. No doubt that the



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public transport system falls under the category of essential services. The

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with it, besides the driving skill. In fact the first respondent in

G.O.(Ms).No.111 dated 21.07.2023 suggested that the staff shortage in

the category of drivers can be solved by recruiting drivers cum

conductors in future and had permitted the respondents 8 to 12 to recruit

drivers cum conductors by which one driver cum conductor per bus

would suffice. The relevant portion of the G.O. is reproduced below .

"Currently there are large number of vacancies in the category of drivers and conductors. If a driver or conductor goes on sudden leave, the available crew may not fit for the absentees post since he may not be in a position to handle the opposite pair post (i.e.) driver can't handle conductor job or conductor can't handle driver job. This type of practice is in vogue in all STUS except SETC. In cities, bus stops are located at about 800 metres intervals and about one km intervals in towns / villages, driver and conductor positions are necessary and so two posts are unavoidable. If Driver - cum - Conductor (DCC) are recruited in future, 2 DCC can be posted in city / town bus to handle driver and conductor roles. Flexibility in staffing could not be done in the present driver and conductor model if drivers or conductors alone attend duties in more numbers and the



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same is one of the reasons for more buses not being operated. These hurdles can be managed by a flexibility based staffing pattern. Driver cum Conductor (DCC) is one such flexibility based manpower model for operating buses since they qualify in both roles of driver and conductor. If even numbers of DCCs attend the duty, half of buses in DCC numbers can be operated easily. They can be engaged as per demand and requirements of transportation routes. In emergency situations, if there are few passengers on a particular route, the DCC can manage both tasks efficiently, eliminating the need for a pair to operate the bus. Therefore, it is felt that recruiting in staffing pattern models like Driver cum Conductor (DCC) for STUs will provide flexibility for better utilization of fleet. Further, this mode of recruitment of DCC can be undertaken by STUs to manage the large number of vacancies."

This was a feasible solution.

8. The contention of the 5th respondent that the urgent requirement of driver is to be sorted out only by outsourcing is not convincing. The suggestion for a driver - cum - conductors made more sense. The recruitment of drivers by way of open tender system for manpower agencies to provide the drivers is definitely fraught with operational and



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professional risks, it was argued. Some of them are like,

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- a) Accountability in case of dereliction of duty or negligence.
- b) Division of two categories of drivers one directly employed with the petitioner's Corporation and another who come under the Contractor.
- c) Discrimination amongst the employees in payscale and other perquisites / allowances for the same job performed. This tantamount to unfair labour practice.
- d) Lack of ownership in performing the duty of driver when working under two employers.

On the side of 5th respondent, the following advantages were spelt out.

- (a) Many of the buses which are not operated now can be easily operated with the new outsourced drivers.
- (b) Wilful / long absenteeism can be curbed to a large extent.
- (c) The onus of managing the outsourced drivers is relatively easier as the contractor shares a part of the burden.
- (d) Strikes, lockouts and industrial disputes are likely to decline



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making the essential services seam less.

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9. One aspect which is true is that even in Public Transport System, private players have thrived and sustained in the business. But profit has been their main motto. Secondly, the private sector whatever be the type of vehicles deployed and the facilities offered, remain in an unorganised sector with no control over the hours of duty or the timely wage disbursement. This cannot be said about the Public Sector Units like the respondents 5 to 12. They come under the organised sector. Though there are whispers of exploitation and over work, it is only an exception rather than a rule. Public Sector Undertakings like the respondents 5 to 12 are in the service of the public at a cheaper cost. The employees do have a prescribed code of conduct and the element of ownership and responsibility is very much higher than the private sector employees.

10. The reservation system in direct recruitment by the respondents takes a back seat in case of contractual employment through man power agencies. The contractors have no compulsion to have reservation implemented. The checks and balances available in the regular drivers



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may not be present in contractual employment. The one inevitable

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consequence in outsourcing is that when two categories of drivers are

created the equality as enshrined in the Constitution of India goes for a

toss. In my opinion, this divide is likely to cause further trouble for the

Management and also for the employees. Thus, the apprehension of the

Union / Federation that the service conditions of the existing driver is

likely to be affected / altered has force in it. Having different salaries

for different drivers is another form of discrimination and unfair labour

practice. This dangerous experiment would have cascading effect besides

the discrimination aspect. For example if an accident happens what is the

stand of the Transport Corporation in it. If the Compensation Act does

not apply to the outsourced drivers, would it not cause grave injustice ?

The argument putforth on the side of the Corporation is that the

absenteeism has adversely affected the transport services. Standing

Orders can tackle this problem. Standing orders in disciplinary matters

can always be tightened. The percentage of long absentees is definitely

not negligible. But bilateral agreements have to be made for tackling this

menace. The contention of the Corporation that labour unrest is a

perennial problem but what if the new set of drivers form a separate

union and strike work. Unions are always looked upon with contempt as



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if they exist to hamper smooth functioning. But it is untrue. It is essential

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to have Union like a strong opposition party in a democratic set up. The conscience of the ruling party or the Management would always remain alert. In my opinion, the contention of the Union has merit. Mass recruitment of drivers by way of open tender system is not a solution to the present shortage. In fact it would only add up to the present woes. In my opinion, the tender system of engaging drivers through man power agencies may not augur well for the respondents 5 to 12. In this context it is pertinent to highlight the number of industrial disputes filed by the drivers/conductors of respondents 5 to 12, before the Labour Courts/Tribunals/for adjudication. The Standing Orders are clear and any misconduct or dereliction of duty by them is dealt with in a manner prescribed in the said Standing Orders and yet there are many litigations. Respondents 5 to 12 may save much through such contractual labour but at what cost is a million dollar question. In my opinion the respondents 5 to 12 are advised to adopt a more transparent and easier process to recruit drivers instead of venturing into the outsourcing mode through man power agencies.

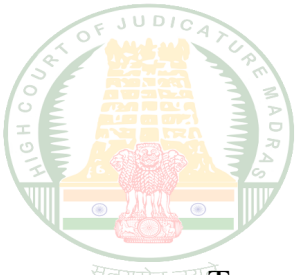


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WEB COPY 11. In the result, the Writ Petition is allowed except for the fourth prayer for criminal prosecution against the respondents 5, 6 and 10 as the same is unwarranted and is dismissed. No costs. Consequently connected Writ Miscellaneous Petitions are closed. The tender notice dated 30.09.2023 in Tender Document No.63/ 14563/ NA2/ MTC/ 2023 is set aside.

15.11.2023

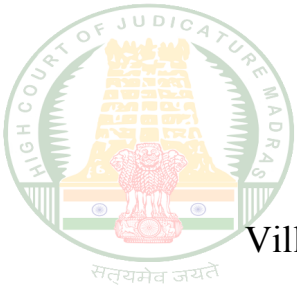
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Index : yes/no
Speaking /Non speaking Order



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To
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Represented by the Additional Chief Secretary,
Transport Department,
Government of Tamil Nadu, Fort. St. George,
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2. The Additional Chief Secretary,
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Villupuram 605 602.

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R.HEMALATHA, J.

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