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"BBMP" CAN CONDUCT ELECTIONS TO POURAKARMIKAS TRADE UNION BY ITSELF UNDER COUNCIL DECISION OR GET IT DONE UNDER TRADE UNION ACT



By : M.S.Yatnatti Editor and Video Journalist Bengaluru : Demand is made by "BBMP Poura Karmikara and Arogya Gangman Gala Sangaha" that let BBMP conduct elections to it by BBMP itself under council resolution or under Trade union Act by labor department . BBMP in B12 (C1) PR 37/11-12 in council resolution passed and decided to weed out unconnected trade unions operating from BBMP and make only one trade union for permanent employees of BBMP and decided to form "BBMP Poura Karmikara and Arogya Gangman Gala Sangaha" and conducted elections to it as per high court order .BBMP commissioner can conduct the elections as per BBMP resolutions as he is duty bound to implement the council resolutions and again conduct elections as per B12 (C1) PR 37/11-12 or BBMP commissioner can get elections to "BBMP Poura Karmikara and Arogya Gangman Gala Sangaha" by labor department commissioner as it also registered under trade unions as trade Union Act 1926 in TUA//Registration No 07-2012-13 Dated 27-09-2012 and now it is recognized trade union. Manjunatha Prasad BBMP Commissioner has created unnecessary lawlessness and confusion and unwarranted dispute.

"Under BBMP Commissioner, there is complete lawlessness right under his nose". This is how a Mr Narsimha Elected President of "BBMP Poura Karmikara and Arogya Gangman Gala Sangaha" described the prevailing atmosphere in the BBMP, when commissioner Manjunatha Prasad reverses his order of conducting election to "BBMP Poura Karmikara and Arogya Gangman Gala Sangaha" after declaring the election schedule BBMP commissioner had not read amendments and has not read the UDD Circulars and orders, in respect of trade Unions. "Formation of Trade Unions in BBMP Permitted by UDD Order No UDD 49 MNY 2007 Dated 30-03-2010" whereas legal cell of BBMP gave illegal advice to then BBMP Commissioner . Urban Development department issued this order as per the legal opinion received from the Legal Department of Government of Karnataka as approved by Law Secretary Government of Karnataka which permits employees of BBMP to form trade unions as trade Union Act 1926.

The Commissioner BBMP Cannot Overlook UDD Orders. B12 (C1) PR 37/11-12 un-registered organization merged with Registered organization in TUA//Registration No 07-2012-13 Dated 27-09-2012 and now it is recognized trade union. Let Manjunatha Prasad conduct elections under B12 (C1) PR 37/11-12 council resolution or BBMP commissioner can get elections to "BBMP Poura Karmikara and Arogya Gangman Gala Sangaha" by labour department commissioner as it also registered under trade unions as trade Union Act 1926 in TUA//Registration No 07-2012-13 Dated 27-09-2012 but he need to clear confusion created by himself .The question of conducting elections to find out which trade union has majority in BBMP does not arise as all 4500 permanent Poura Karmikara and Arogya Gangman are members in "BBMP Poura Karmikara and Arogya Gangman Gala Sangaha" registered under trade unions as trade Union Act 1926 in TUA//Registration No 07-2012-13 Dated 27-09-2012 and no "BBMP Poura Karmikara and Arogya Gangman " are members in 8 trade unions allegedly want to enter from Back door in BBMP as reported by officially recognized "BBMP Poura Karmikara and Arogya Gangman Gala Sangaha" under council decisions in under B12 (C1) PR 37/11-12 .

The BBMP is constituted under KMC Act and Pourakarmikas are employed by BBMP under KMC Act and though the BBMP has adopted KCSR and CCA for Pourakarmikas for wages and service conditions but even then they remain as Pourakarmikas and appointed as Pourakarmikas and they come under Safai Karmachari Commission and for that reason only BBMP conducted separate elections for Pourakarmikas Sangha and BBMP Noukarara Sangha .

Wherefore Pourakarmikas Sangha was registered under As per Karnataka Trade Union Regulations 1958 and Model Election Rules of Trade Union dated 18-06-1953 Pourakarmikas they sift through dustbins with their bare hands Duties are officially to collect garbage in baskets, segregate them into wet and dry, sweep the streets and finally manually load the collection into lorries. "Pourakarmikas are called to perform all kinds of odd jobs including picking up fallen trees. Residents dump garbage in open spaces inspite of us going from door to door to collect waste. Pushing almost 150kg of garbage in carts up and down the street," Segregating glass pieces, medical waste and septic wastes from drains with bare hands and feet and working amidst poisonous fumes in garbage dumps mean a plethora of health issues and frequent visits to hospitals.Mr Narsimha has submitted memorandum before commissioner about Pourakarmikas Demands: Main among them are the : Pourakarmikas need to be paid their salaries in time . "Why is the BBMP being insensitive to the plight of the workers? The BBMP officials and even the Commissioner expect their salary in the first week of every month. How are the pourakarmikas any different?" He said the BBMP had gone back on the assurances made during the meetings held several time. Contract labor has become a common practice in every department despite several permanent jobs lying vacant. 193 Pourakarmikas have been given same salary by the efforts of Sangha but still they need to be absorbed in permanent cadre in notified areas. All the pourakarmika organisations should unite and fight for their rights The other major demands of the Narsimha included filling up of the 4,000 vacant posts sanctioned on January 30, 2010, within the next three months, banning contract labour tenders, appointment of dependants of the retired pourakarmikas to maintain public toilets, and using auto tippers to clear garbage. The pourakarmikas president Narsimha also demanded pushcarts, trolleys, handgloves, aprons and other equipment for collection of garbage.Hakku Patra and sale deeds need to be given to those Pourakarmikas who have not yet received despite the are eligible to get it as per law.

Pourakarmikas were demanding total abolition of contract system in BBMP and total regularization of Pourakarmikas. Instead of abolishing the contract system government itself is promoting contract labour . One will be contract employee and other will be permanent employee and discrimination among employee and both are paid by BBMP. As per the orders issued by Government of Karnataka nn 07-08-2017 BBMP will recruit 5486 pourakarmikas and others will be contract pourakarmikas will be paid by BBMP directly .Permanent pourakarmikas will have different salaries and contract pourakarmikas will have different salary. No equal pay to equal work. Earlier contractors were exploiting and now government will exploit them. pourakarmikas were demanding that all should be made BBMP employees. Earlier BBMP had announced recruitment of 4000 pourakarmikas and stopped recruitment process stating that according to court order it will regularize the pourakarmikas but without the knowledge of pourakarmikas Bengaluru Minister and chief Minister it challenged the order on flimsy and technical ground and got stay of the order on it and now neither recruitment nor regularization and nor abolition of contract system as promised to high court of Karnataka .

Why BBMP is playing the dirty game with the lives of pourakarmikas is big question being asked by everyone in Karnataka who are interested with welfare of SC ST development. in recent order by HKHC in WP Nos 201021-022/2015 (s-res) dated 5-06-2015 to all commissioners of BBMP ,city corporations of Tumkur Shivamogga , Vijayapura Mngalore Belgaum Bellary Davangere Huballi-Dharwad Kalburgi and Mysuru are directed to take appropriate and immediate steps to regularize the services of daily wade sweepers scavengers or purakarmikas either working on out sorce or through contractors within six months from date of order. The Government could have implemented this order and resolved the issues with pourakarmikas instead it challenged it on a technical ground and got injustice to all pourakarmikas .Reportedly few officers have vested interest and in connivance with few contractors are spell bound to inflict injuries to pourakarmikas by not allowing the BBMP to regularize the pourakarmikas despite legal remedies were available and made BBMP to back stab by challenging the beneficial court order HKHC in WP Nos 201021-022/2015 (s-res) dated 5-06-2015 stopped the recruitment process or regularization process by abolishing contract system . It all dirty game played by few people to inflict injustice on SC ST Persons .This is nothing but atrocity on SC ST persons according to newly amended POA Act 2015 .

BBMP can turn waste into resource at source itself at each ward and reduce the expenditure to bare minimum.It is alleged that BBMP is breeding ground for in unlimited Garbage dumping and unlimited corruption in garbage dumping. BBMP need to use technology and provide transparent process which will reduce the corruption. Tech is changing and providing safe cities .It is time to make Bangalore city a smart city . BBMP should make whole Bangalore as smart city and it is not distant dream as Technology is available and at fast work in making urban living a smarter experience. Technology of course plays a big role and Internet of every things enable interconnections of smart city sub-elements like smart water management ,Smart mobility smart energy smart waste management smart health management etc. It is pertinent to note that for BBMP it is not possible to close one Mandur dumping location and create another Mandur for dumping garbage because no villager want to be dumping ground for un-treated waste. Planning authorities have totally neglected Waste collection and disposal process while developing the township and Layouts. Now BBMP is facing unprecedented problems. At least now BBMP make three collection pits in each ward and Waste need to be separately collected and sorted at the place at each ward at which it is produced and from there it should go to nearby recycling units and wet Garbage need to be disposed after composting to nearby farm land and it should not go to any dumping site .University of agricultural science must be roped in composting the wet garbage at souce at each ward and they can suggest farmers of nearby district to use this compost for increasing agricultural and Vegetable out puts to maximum at using minimum land and As a result, this produces a high quality compost, which comes with the added benefit of being virtually odour free..

The contract labourers have become the employees of the principal employer in course of time and the engagement and employment of labourers through a contractor or outsourcing through a contractor is a mere camouflage and a smokescreen, as it is fact that in contracts regular pourakarmikas also given to contractor , is a fact and established by the contract labourers on the basis of the requisite material and contract documents . In spite of being engaged in permanent and perennial nature of work, nature of employment of overwhelming majority of sanitation workers in all municipalities and corporations in Karnataka are under inhuman contract system. As on date, out of the total 18,709 sanitation workers only 3,178 are on the pay rolls of Bruhat Bengaluru Mahanagara Palike (BBMP) and the remaining are tied under the most exploitative contract system under 79 contractors. These workers clean all the 198 wards in Bangalore that are divided under eight zones. Regular Sanitation workers are being paid a monthly wage of around Rs. 14,000 while their counterparts under contract system are being paid a paltry sum of Rs. 5,054 a month despite enhancement by state Government..It is an open secret that the outsourcing agencies seldom credited the Provident Fund and ESIC amounts in the workers' accounts. The recent Supreme Court ruling that daily wage workers who have worked for at least 240 days in a calendar year are entitled to be regularised has revived the hopes of many who work in the various departments in the State.

Quoting an earlier constitution bench judgment on the issue, the bench comprising Justice A.R. Lakshmanan and Justice Loleshwar Singh Panta said that daily wagers could not claim regularisation if they had not worked for at least 240 days in a calendar year.In citations in Supreme Court of India G.M., O.N.G.C.,Shilchar vs O.N.G.C. Contractual Workers ... on 16 May, 2008 it is held that "It was contended by Mr. Dave that this Court in Uma Devi's case (supra) has clearly opined that the contract or casual labour could not claim regularization and he has in particular emphasized that in the light of the admitted position that at some stage, the workmen were indeed contract employees the ratio of the aforesaid was clearly applicable to the facts of the case. We, however, observe that the aforesaid decision was considered by another Bench of this Court in Pandey's case (supra) wherein it has been held that the ratio of any decision must be understood in the background of the facts of that case and that the case is only an authority for what it logically decides and what logically flows from it. In Pandey's case (supra) the question was as to whether casual employees working in the Electricity Board were entitled to regularization of their services. This is what the Division Bench had to say in paragraphs 16 and 17: "We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devi's case (supra) is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University's case (supra) and Bharat Petroleum Corporation Ltd.'s case (supra), a little difference in the precedential value of a decision. Hence, in our opinion, Uma Devi's case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devi's case (supra) inapplicable to the facts of that case.



Likewise in Steel Authority of India's case this is what the Court had to say: "An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudication/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."

In the present case the writ petitioners (respondents herein) only wish that they should not be discriminated against vis-à-vis the original employees of the Electricity Board since they have been taken over by the Electricity Board "in the same manner and position". Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the society because 4.5.1990 they cannot be denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularization of the employees of the Electricity Board who were working from before 4.5.1990. To take a contrary view would violate Article 14 of the Constitution. We have to read Uma Devi's case (supra) in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The Constitution is the supreme law of the land, and any judgment, not even of the Supreme Court, can violate the Constitution." We are therefore of the opinion that in the light of the aforesaid observations, Mr. Dave's argument that the workmen being on a contractual, were not entitled to any relief, cannot be accepted and the large number of judgments cited by Mr. Dave, on this aspect, cannot be applied to the facts of the case. Objects of the Act: The object of the Act in terms of the preamble is to abolish contract labour wherever it is possible and regulation of contract labour where such abolition is not possible. Chapter 3 deals with registration of establishments employing contract labour. Section 10 deals with prohibition of employment of contract labour. Section 10 has undergone several judicial scrutiny in terms of the several case laws. Courts have considered the object of the Act. The Supreme Court has considered the object of the Act in and also in the subsequent judgment. In both these judgments, the Supreme Court has disapproved the system of contract labour holding it to be 'archaic' 'primitive' and of 'baneful nature'. These two judgments have been subsequently noticed by the Supreme Court in 1990 Supp SCC 668. The Supreme Court after referring to these judgments has chosen to hold in para 6 that the contract labour system which is nothing but an improved version of bonded labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and it has to be liberally construed. The same is noticed in subsequent judgments as well. In fact in these cases itself the Government noticed the object of the Act in terms of the judgment and ruled that the underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. When the judgment of this court was challenged before the Supreme Court, the Supreme Court confirmed the same. Therefore what is clear to this Court is that the main object of the act is to abolish as to regulate contract labour in terms of the statute and in terms of intention of the legislature in the matter.

The history of urban local self-governing bodies (commonly called Municipalities) in Karnataka State dates back to more than a century. These local bodies are again classified into various categories like Corporations, Cities, Town Municipalities and Town Panchayats depending upon the population. The Municipal bodies are now governed by the provisions contained in Karnataka Municipalities Act, 1964 (for City Municipalities, Town Municipalities and Town Panchayats) and Corporation Act, 1976 (for Corporations). The Government of Karnataka has reconstituted the municipalities according to the 74th Constitutional Amendment Act. The towns have now been classified based on the population and other criteria as Town Panchayat (Population 10,000 to 20,000), Town Municipal Councils (Population 20,000 to 50,000) City Municipal Councils (Population 50,000 to 3,00,000) and City Corporations (Population 3.0 lakhs and above). On this basis, at present there are 10 City Corporations, 41 City Municipal Councils, 68 Town Municipal Councils and 94 Town Panchayats in the state. Also for specified areas like industrial areas where municipal services are required to be provided, the government has created 5 Notified Area Committees (NAC). In order to discharge the above responsibilities, Municipalities have been vested with the powers to levy certain taxes and fees. Also, the State Government transfers a portion of its general revenues to the urban local bodies. The main sources of income of the municipalities are derived from (a) taxes on building and lands, (b) user charge for water supply (c) license fee for regulating the building construction activities and fee from other trade license. The municipalities can also raise loans from Central and State Governments and Financial Institutions to meet expenditure under capital heads of accounts. Government through Directorate of Municipal Administration supervises the functioning of the municipalities. Government directly supervises the functioning of the Corporations. The Directorate has the responsibility to supervise the function of the municipalities, work out suitable human resource policies, exercise disciplinary control over the staff of municipalities, monitor the tax collection of ULBs, lay down policies for transparency in expenditures, hear appeals against the decisions of municipalities, release the Government transfers to the ULBs, as well as implement schemes like SJSRY (for urban poverty alleviation), IDSMT, Nirmala Nagar. The Directorate also collects statistics from ULBs and helps in the preparation of municipal statistics. The Directorate also inspects municipalities, interacts with both elected representatives and the employees to find out both genuine and specific problems of urban administration and urban municipal services and work out the solutions for those problems.

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