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W.A.No.2786 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.07.2023

Delivered on: 04.10.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.2786 of 2023

Maiva Pharma Pvt.Ltd.

No.32, Sipcot Industrial Complex,

Phase-I, Hosur-635126.

Rep. by its Senior Manager

(HR&-IR) Mr.Karthi

..Appellant/3rd Respondent

VS.

1. Maiva Pharma Employees Union (R.No.560/drp)

187/5, 9th Cross Street, Kamaraj Nagar,

Chinna Elasagiri, Hosur-635126.

...1st Respondent/ Petitioner

2. Joint Director

Industrial Safety and Health

3/2 A, Seetharam Nagar,

Hosur- 635126

3. Deputy Director

Industrial Safety and Health

3/2 A, Seetharam Nagar,

Hosur- 635126

.... Respondents/ Respondents



W.A.No.2786 of 2023

Prayer: Writ Appeal filed under Clause 15 of the Letters patent Act, to set aside the order dated 13.09.2023 made in W.P.No.2247 of 2023.

For appellant : Mr.Sanjay Mohan, senior counsel for
M/s.S.Ramasubramaniam Associates

For respondents : Mr.N.G.R.Prasad for M/s.Row and Reddy for R1
Mr.V.Ravi, Spl.G.P.for R2 and R3.

JUDGMENT

J.NISHA BANU, J.

This Writ Appeal is filed by the Employees Union, challenging the order passed in W.P No.2247 of 2023 dated 13.09.2023.

2. The Appellant Management is a pharmaceutical manufacturer with 125 workers including management trainees, contract laborers, and fixed-term employees. It is registered under the Factories Act and the Tamil Nadu Industrial Establishments Act.

3. In December 2022, a list of festival holidays was submitted to the relevant authority as per Tamil Nadu Industrial Establishment rules. This list was prepared after discussions with a trade union, which requested that festival



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holidays on Sundays be replaced with holidays on working days. However, the management did not agree to this request, emphasizing the factory's crucial role in drug production for the public.

4. The list of festival holidays dated 30.12.2022, was submitted to the statutory authority on 05.01.2023, after serving the copy upon the trade union. Discussions took place on January 9 and 10, 2023, involving the trade union and management, where the management reiterated its inability to provide holidays on closed days (Sundays) due to the factory's role in drug production. Following the Deputy Director's instructions, a circular was displayed for employees to choose their preferred holiday, and a majority accepted the holidays proposed by management.

5. Out of 850 employees, 638 agreed to the declared festival holidays. Following discussions, the statutory authority declared the festival holidays for 2023 on 12.01.2023, and posted the list on the notice board. The determination of these holidays was made after consulting the Employees trade union. There is no legal basis for demanding holidays on non-closed days, as festival holidays are intended to be observed on the actual day of the festival, even if it falls on a Sunday. Challenging the said order, Employees union preferred Writ petition in



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W.P.No.2247 of 2023, whereby the learned Single Judge passed an order dated

13.09.2023 declaring 13.11.2023 as a substitute holiday for diwali instead of 12.11.2023. As against this order, the present appeal had been preferred.

6. The case of the 1st respondent-employees union is that the employees working under the Appellant management are entitled to four national holidays and five festival holidays, which should be determined in consultation with the employees. However, the management unilaterally proposed festival holidays for 2023, three of which coincided with Sundays—already designated as holidays.

7. The employees union requested compliance with regulations to consult employees about holiday selection but the management ignored this request, leading to a representation from the union suggesting alternative holiday choices. The employees Union met the Joint Director and Deputy Director of Industrial Safety and health to address the concerns about the Appellant Management's unilateral holiday decisions, which disregarded legal provisions. After unsuccessful talks on 05.02.2023, the 3rd respondent rejected the Union's suggestions for festival holidays, opting for dates that coincided with Sundays. The rejection was based on two grounds: (i) that only alternative festivals can be



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chosen and that alternative dates for the festivals cannot be chosen and (ii) that majority of the employees have agreed to the proposal sent by the management.

Since the order of the 3rd Respondent undermines the Act's intent, as it effectively reduces the festival holidays to two days by overlapping with Sundays, lead to a writ petition against the 3rd respondent's order.

8. The learned counsel for the 1st respondent-employees union would contend that an effective consultative process is required under Rule 3 for determining festival holidays, which the Appellant Management failed to follow by not properly consulting employees before submitting a list to the 3rd respondent. This oversight undermines both Rule 3 and the employees' rights, making Rule 4 ineffective. The majority agreement among employees does not justify the inclusion of holidays that coincide with Sundays, as the Act mandates five festival holidays that should not overlap with existing holidays. Additionally, Section 3 of the Act to Article 43 of the Indian Constitution, emphasizing the state's duty to promote decent living standards and leisure for workers. The 3rd respondent's decision is seen as a failure to appreciate this intent.

9. It is also contended that declaring a festival holiday on a day that is



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already a holiday (like a Sunday) defeats the purpose of the Act, which mandates five distinct festival holidays. They emphasize that a proper consultative process is required under Rule 3, which was bypassed by the Appellant Management. This lack of consultation undermines the rights of employees and makes the process ineffective.

10. It is asserted that declaring a Sunday as a festival holiday violates Section 9-A of the Industrial Disputes Act, as it alters conditions of service to the detriment of workers. It is also stressed that the Appellant Management failed to follow procedural requirements, such as displaying holiday notices and consulting employees, leading to an invalid holiday declaration process and prayed before the writ court to set aside the impugned order and declare the days proposed by the employees as holidays instead. For which the Writ Court rightly allowed the claim of the Employee union as prayed for.

11. The learned counsel for the appellant-management would submit that, the consultative process for declaring festival holidays for 2023 was conducted by the Inspector of Labour, involving the trade union and employees, with a majority consenting to the proposed holidays. The management invited the union to discuss changes, but the union did not cooperate. The Inspector's



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process complied with Section 3 of the Act, which mandates that festival holidays must correspond to actual festivals. The learned Single Judge's decision to declare the day after Diwali, which falls on a Sunday, as a holiday was deemed incorrect since it goes against the Act's intention. It was incorrect to introduce the idea of an "effective holiday" and selected a day (Govardhan Puja) that lacks relevance in Tamil Nadu. It is also submitted that holidays should align with the festivals themselves, not be shifted to non-festival days. The definition of "employee" under the Act is broad, including managers and supervisors, thus ensuring their involvement in the consultative process. Therefore, the consultative process led by the Inspector was valid, and the declaration of holidays should remain as determined, reflecting the majority preference of employees. Therefore, the claim of a lack of consultation is misguided, as the majority's wishes were taken into account in the decision-making process.

12. It is also contended by the learned Senior counsel appearing for the Appellant management that Management provided evidence of employee agreement regarding the holiday list, while the union has not substantiated their claim that a majority disagreed. Union's request for alternative holidays is impermissible and contrary to the Act's spirit, concluding that the impugned order should stand without judicial interference.



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13. Heard the submissions made by the learned counsel for the Appellant-Management, the learned counsel for the first respondent and on perusing the materials available on record,

14. A perusal of Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 shows that as per Section 3 of the Tamil Nadu Act, apart from three National holidays, five other holidays for such festivals as the Inspector may in consultation with the employer and the employees, specify in respect of any establishment. If the festivals falls on Sunday, declaring other festival as holiday based on the decision of the Inspector in consultation with the employer and employee, would justify the claim of union and the action of the management.

15. In this context, we would however make it clear that neither the union nor the management can claim that their decision should be final and binding. A perusal of Section 3 of the Tamil Nadu Act shows that it is the Inspector appointed under the Act who has to specify the holidays in consultation with the employer and employee. The section contemplates mutual agreement which would be final and binding. No other material is placed before the court by either side which may be termed as binding terms in the matter of process of



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fixation of Sunday as holiday. There are no specific terms as regards the process by which the holidays are to be fixed and as to whether Sundays could be excluded while fixing holidays.

16. At this juncture, it would be relevant to recall the rights and privileges acquired by the employees as a result of any other law, contract, custom or usage which are more favourable to the employee are protected.

17. Therefore, as pointed out by the learned Single Judge, the Deputy Director, Industrial Safety and Health, is directed to scrupulously follow Section 3 and Rule 3 and adhere to the consultative process upon issuance of notice by the Management to the employees in respect of declaration of festival holidays and after granting an opportunity of hearing as mandated by the provisions. Mutual agreement and also following what Rule contemplates would be final and binding. Both the union and management cannot claim their decisions are final; instead, the Inspector must facilitate mutual agreement between them, which is what determines the final holiday schedule.

18. In the light of the above observations, this writ appeal is disposed of holding that the order of the learned Single Judge, does not warrant any



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interference. No costs.

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(J.N.B.J.)

(P.D.B.J)

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To

1. Joint Director

Industrial Safety and Health

3/2 A, Seetharam Nagar,

Hosur- 635126

2. Deputy Director

Industrial Safety and Health

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