IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WA.No. 253 of 2008 ( ) IN OP.8057/1996

AGAINST THE ORDER/JUDGMENT IN OP 8057/1996 of HIGH COURT OF KERALA
DATED 09-08-2007

APPELLANT(S)/PETITIONER:

FOOD CORPORATION OF INDIA,
REP. BY THE DISTRICT MANAGER (STORAGE), COCHIN-29.

BY ADVS.SMT.S.KARTHIKA
SMT.K.P.GEETHA MANI

RESPONDENT(S)/RESPONDENTS:
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1. STATE OF KERALA, REP. BY THE
CHIEF SECRETARY TO GOVT., TRIVANDRUM.

2. THE LABOUR WELFARE FUND COMMISSIONER,
VELLAYAMBALAM, TRIVANDRUM.

3. THE LABOUR WELFARE FUND INSPECTOR,
KERALA LABOUR WELFARE FUND INSPECTOR'S OFFICE
KOLLAM-1.

R2 & 3 BY ADV. SRI.K.K.BABU
BY SRI.K.K.BABY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'

ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J

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W.A.No. 253 of 2008

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Dated this the 12th February, 2015

JUDGMENT

Ashok Bhushan, Ag.CJ.

Heard learned counsel for the appellant.

2. This appeal by the Food Corporation of India has been filed against the judgment dated 9.8.2007 in O.P.No.8057/1996. The Original Petition was filed by the petitioner challenging Exhibit P8 show cause notice dated 30.4.1996 issued by the Labour Welfare Fund Inspector under the Kerala Labour Welfare Fund Act, 1975. In the Writ Petition the petitioner prayed the following reliefs:

> *"i) to call for the records and proceedings relating to Exhibits P1, P3 and P5, P6, P7 and P8 and to quash or set aside the same by a writ of certiorari or any other appropriate writ or order, directions and.*
>
> *ii) to declare that the provisions of the Kerala Labour welfare Fund Act are not applicable to the petitioner and therefore the petitioner is not liable to make any contribution as demanded by the respondents.*

iii) to issue a writ of mandamus or a writ or order restraining the respondents from taking any coercive action against the petitioner under the Kerala Labour Welfare Fund Act as per Exhibit B notice or otherwise."

3. The learned Single Judge, by the impugned judgment, has dismissed the Writ Petition rejecting the submission of the petitioner that they are the department of the Central Government and are exempted from the applicability of the Kerala Labour Welfare Fund Act, 1975 by virtue of definition under Section 2(f)(v) of the Act.

4. Learned counsel for the appellant, in support of the Writ Appeal, contended that the provisions of the Kerala Labour Welfare Fund Act, 1975 are not attracted on the Food Corporation of India. It is submitted that the show cause notice was without jurisdiction, hence ought to have been quashed by the learned Single Judge. It is submitted that the Food Corporation of India is fully controlled and managed by the Central Government, hence it is an establishment of the Central Government and thus, clearly exempted as defined in Section 2(f)(v) of the Act.

5. We have considered the submissions of learned counsel for the appellant and perused the records.

6. It is well settled that show cause notice can be challenged in a proceedings under Article 226 of the Constitution of India on the ground that the show cause notice is without jurisdiction. Otherwise, normally this Court does not entertain a Writ Petition challenging show cause notice relegating the petitioner to submit a reply before the authority concerned. However, since learned counsel for the appellant submits that the show cause notice is without jurisdiction, we proceed to examine the said issue.

7. The Kerala Labour Welfare Fund Act, 1975 has been enacted to provide for the constitution of a Fund for promoting the welfare of labour and for certain other matters connected therewith. The said enactment extends to whole of State of Kerala. Section 2(f) defines "establishment". Section 2(f) of the Kerala Labour Welfare Fund Act is quoted as below:

*"2. **Definitions**.-*

xx xx

(f) "establishment" includes:-

(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (Central 63 of 1948) or any place which is deemed to be a factory under sub-section (2) of Section 85 of that Act;

(ii) a motor transport undertaking as defined in clause (g) of Section 2 of the Motor Transport workers Act, 1961 (Central act 27 of 1961);

(iii) any land used for growing trea, rubber, coffee, cardamom, oil palm cocoa, in which ten or more persons are employed or where employed in any day of the preceding twelve months;

(iv) any commercial establishment within the meaning of clause (4) or any shop within the meaning of clause 15 of Section 2 of the Kerala Shop and Commercial Establishment Act, 1960 (34 of 1960), which employs or on any working day during the preceding twelve months employed, two or more person:

(v) an establishment, including a society registered under the Societies Registration Act, 1860 (Central Act 21 of 1860) or the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (XII of 1955), which carries on any business or trade or any work in connection therewith or ancillary thereto and which employs, or on any working day during the proceeding twelve months employed, more than twenty person; but does not include an establishment (not being a factory) of the Central or any State Government;

(vi) any other establishment which the Government may, by notification in the Gazette, declare to be an establishment of the purpose of this Act;"

8. The definition of "establishment" is an inclusive definition. It is well settled that inclusive definition has to be given a wider meaning and no restricted interpretation has to be given. In the present case, the appellant relies on Section 2(f)(v) and submits that it is covered by

exclusionary clause. Sub-clause (v) contains an exclusionary clause. But, it does not include an establishment (not being a factory) of the Central or any State Government. The definition clause further provides in sub-clause (vi) that the Government is empowered to declare by notification any other establishment for the purpose of the Act.

9. The thrust of the submission is that the Food Corporation of India, being a Corporation controlled and managed by the Central Government, is exempted and is covered by the exclusionary clause mentioned therein. The exclusionary clause covers an establishment of the Central Government or any State Government. The words used are “establishment of the Central Government”, where the Food Corporation of India, which is a Corporation constituted under the Food Corporations Act, 1964, can be held to be establishment of Central Government. The Food Corporation of India has been established under Section 3 of the Act. The Corporation is

a body corporate with the name aforesaid, having perpetual succession and a common seal. Management of the Corporation vests in the Board of Directors as defined in Section 7 of the Act. The Food Corporation of India having thus independent identity, which is a statutory Corporation, cannot be treated to be an establishment of the Central Government. Section 3(2) of the Food Corporations Act, 1964 is quoted as below:

> *"3.**Establishment of Food Corporation of India.-** (1) xx xx*
>
> *(2) The Corporation shall be a body corporate with the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by that name, sue and be sued."*

10. The purpose and intent of exclusionary clause (v) was to exclude establishment of Central or State Government. It is true that the Corporation is an authority under Article 12 of the Constitution. However, a body, which is an authority under Article 12 of the Constitution,

cannot be treated to be part of the establishment of the Government by itself.

11. The learned Single Judge in its judgment has rightly placed reliance on a judgment of this Court reported in ***Food Corporation of India v. Angamali Municipality*** (1994(1) KLT 977). The provisions of the Kerala Labour Welfare Fund Act, 1975 has been enacted for promoting the welfare of labour and the definition of "establishment" under Section 2(f) being an inclusive definition, the exclusionary clause has to be given a restricted meaning. The provisions of the Act has to be interpreted in a manner so as to advance the object of the 1975 Act.

12. In view of the aforesaid discussion, we are of the view that the Food Corporation of India is not covered in the exclusionary clause of Section 2(f)(v) of the Kerala Labour Welfare Fund Act, 1975 and there was no lack of jurisdiction in issuing Exhibit P8 show cause notice to the petitioner. We, thus, do not find any error in the judgment

of the learned Single Judge dismissing the Writ Petition. We, however, observe that in the event the appellant has not yet filed any reply to the show cause notice, it may file reply to the show cause notice within a period of four weeks from today.

With the above observation, the Writ Appeal is dismissed.

ASHOK BHUSHAN
ACTING CHIEF JUSTICE

A.M.SHAFFIQUE
JUDGE

vgs13/2/15