

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 06/07/2015

DATED : 10/12/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.27005 of 2013

&

M.P.Nos.1 and 2 of 2013

M/s.Jyothy Laboratories Limited,
A Company incorporated under the
Companies Act, 1956, having its Registered
Office at Ujala House, Ram Krishna Mandir Road,
Kondivita, Andheri (East),
Mumbai-400 059.
Represented by its
Mr.Atindra Basu.

... Petitioner

Vs.

1.The Appellate Authority,
Tamil Nadu Shops & Establishments Act, 1947,
Office of the Deputy Commissioner,
Labour (Minimum Wages),
Chennai-600 006.

2.B.N.Sivarama Krishna Prasad,

3.Henkel AG & Co.KGaA,

Represented by its Chairwoman of Supervisory Board,

Henkal AG & Co.KGaA, Head Quarters,

Henkelstrasse 67, 40589,

Dusseldorf, Germany.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records and documents pertaining to the said Interim Application - TSE-II/IA 3/2013 in TSE-II/11/2012 and after examining question of the legality and propriety thereof and to quash the impugned order dated 22.08.2013 passed by the first respondent under the Tamil Nadu Shops and Establishments Act, 1947.

For Petitioner : Mr.ARL Sundaresan, Senior Counsel
for Mr.V.P.Raman

For Respondents : Mr.P.R.Thiruneelakandan for R2
R1 (served) (No appearance)
R3 - Not ready (No appearance)

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ORDER

The petitioner is a company incorporated under the provisions of the Companies Act, 1956 having its registered Office at Ujala House, Ram Krishna Mandir Road, Kondivita, Andheri (East), Mumbai. The petitioner is

one of the most well-known Fast moving consumer goods (FMCG) Companies in India and conducts business of manufacturing / marketing of various consumer products. Many of which have become house-hold names such as "Pril", "Margo soap", "Neem Active toothpaste", "Henko", "Ujala", "Exo" etc. The first respondent is the Appellate Authority constituted under the Tamil Nadu Shops and Establishments Act, 1947. The second respondent is the original appellant in the appeal filed under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 inter alia, against the petitioner. The second respondent is an individual residing at the address as more particularly stated in the cause title. The third respondent is the second respondent in the appeal filed by the second respondent under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947.

2. The petitioner has filed the above writ petition challenging the order dated 22.08.2013 passed by the first respondent under the Tamil Nadu Shops and Establishments Act, 1947 in TSE-IIA 3/2013, filed by the second respondent, being an IA filed under Order 16 Rule 6 and Section 151 of Civil Procedure Code, 1908.

3. The petitioner has further submitted that in May 2011, the petitioner acquired a majority stake in Henkel India Limited (hereinafter referred to as "HIL"), a company inter alia, manufacturing / marketing detergent and cosmetics products. The name of HIL was thereafter changed to Jyothy Consumer Products Limited ("JCPL") around August 2012. Subsequently, on or after August 2012, the registered office of JCPL was shifted from Chennai to Mumbai. Simultaneously, the regional sales office of JCPL in Chennai was closed down and was shifted to Bangalore. Due to the aforesaid changes the Chennai Office of JCPL was closed down and all the employees therein were offered a transfer to various locations in India. The second respondent was working as an Assistant Manager at the regional office of JCPL located at Chennai. Considering that the regional office of JCPL was closed down, the second respondent, like other employees was also offered a transfer to Karaikkal factory of JCPL vide letter dated 29th September 2012. However, the second respondent did not join the services of JCPL and hence, on account of unauthorized absence from workplace his name was struck off from the muster roll of JCPL. Subsequently, on 15.11.2012, the second respondent filed an appeal being TSE II/11/2012 on the alleged ground that his services were terminated without any reasonable cause.

4. The petitioner has further submitted that during the pendency of the aforesaid appeal, by an order dated 12.04.2013, passed by the Hon'ble Bombay High Court in a scheme of amalgamation and merger of JCP and the petitioner, the said JCPL merged and amalgamated with the petitioner. In view thereof, the said JCPL (earlier known as Henkel India Limited) no longer exists in the eyes of law and is now defunct. The petitioner has craved leave to refer to and reply upon a copy of the Certificate of Change of Name and Certificate of Change of Registered Office issued by the registrar of Companies, State of Tamil Nadu evidencing the change of name of HIL to JCPL as and when produced. In order to achieve a more efficient utilization of capital and in order to strengthen the base for future growth, it was decided to amalgamate and merge JCPL with the petitioner. Consequently, as per the provisions of the Companies Act, 1956, the parties approached the Hon'ble Bombay High Court for approval of the aforesaid scheme of amalgamation and merger of JCPL with the petitioner. The petitioner further submits that by an order dated 12.04.2013, passed by the Hon'ble Bombay High Court, the scheme of Amalgamation of JCPL with the petitioners was approved. The petitioner states that consequently, JCPL ceased to exist in the eyes of law and the entire management and business of JCPL was taken over by the petitioner.

5. The petitioner has further submitted that regrettably, the second respondent proceeded to file an application before the Hon'ble Appellate Authority under the Tamil Nadu Shops and Establishments Act 1947, Office of the Deputy Commissioner of Labour (Minimum Wage) Vide TSE - 11/11/2012 for quashing the termination letter dated 29.10.2012 issued by HIL on the grounds of wrongful termination under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947. Vide the said application, the second respondent, alleged that no enquiry was conducted and the second respondent was wrongfully terminated without assigning any reasonable and justifiable cause. The petitioner filed its reply to the said TSE-11/11/2012 and the said proceedings are pending before the aforesaid Appellate Authority. In the aforesaid application being TSE-11/11/2012, the second respondent, after filing his affidavit in lieu of evidence has taken out an interim application being TSE-II/1A 3/2013 for directing the petitioner to produce the following documents at the time of recording evidence.

- 1) Share Transfer Agreement dated 05.05.2011 and
- 2) Approved Scheme of Amalgamation of Henkel India Ltd., & Jyothy Laboratories Ltd.,

6. The petitioner has further submitted that the said interim application was ostensibly filed by the second respondent to know on what terms and conditions the petitioner had purchased the shares of JCPL at the time of amalgamation and merger of the said parties. The aforesaid documents have absolutely no nexus or connection whatsoever to the merits of second respondent's aforesaid appeal pending before the first respondent and nor are the said documents relevant for the decision to be arrived in the said Appeal filed by the second respondent. For the sake of brevity and with a view to avoid duplication, all the documents annexed to the aforesaid TSE-II/1A 3/2013 filed by the second respondent be treated as documents annexed and exhibited herein and as if forming an integral part of the present writ petition. A reply was filed by the petitioner before the first respondent in the said TSE-II/1A 3/2013 whereby the petitioner inter alia submitted that the documents requested to be produced by the second respondent had no relevance to the issue in question viz., the alleged wrongful termination of the employment of the second respondent by the petitioner. The reply further stated that the second respondent was governed by the terms and conditions of his appointment and therefore was bound by the same and the second respondent

could not traverse beyond the terms and conditions of his appointment. Therefore, there was clearly no proximity of the production of the documents as sought by the second respondent, to the issue in question under the Main Appeal being TSE-11/11/2012. By order dated 22.08.2013, the first respondent decided not to dismiss the petition as filed by the respondent No.2 and also directed the petitioner to file the two documents requested by the second respondent vide the aforesaid interim application. Hence, the petitioner entreats this Court to quash the impugned order dated 22.08.2013 passed by the first respondent under the Tamil Nadu Shops and Establishments Act, 1947.

7. The second respondent has filed a counter affidavit and resisted the above writ petition. The second respondent submits that he and other 12 employees who are the appellants in the pending appeals before the Authority under the Tamil Nadu Shops and Establishment Act, 1st respondent herein, were employees of the Henkel India Limited (HIL) Henkel Marketing India Limited (HMIL) Companies which are subsidiary companies of German based multinational company viz., Henkel AG & Co. KGaA, third respondent herein. The third respondent decided to close its business operation in India

and to sell the movable and immovable assets to the Indian Company viz., M/s.Jyothy Laboratories Limited (JLL), writ petitioner herein. Pursuant to that the shares of the Management of Henkel were transferred in the hands of JLL, but the JLL and the Henkel did not come forward to enter into tri-party agreement with the workers, trade union with regard to the service condition of the works on transfer management, undertaking of Henkel. Hence, the workers, trade union had objected the transfer of undertaking of Henkel to JLL and they had not acceded to transfer their service to JLL and they demanded severance compensation on transfer management, undertaking of Henkel to JLL. Hence, the service of the all the employees employed in the Henkel were put to an end and they were paid severance compensation in terms of 25FF of the Industrial Dispute Act and to that effect an agreement was signed with the individual employees and also 18(1) Settlement was signed with the trade union and later the same was converted into 12(3) settlement.

8. The second respondent has further submitted that the employees including the second respondent employed in the Corporate Office of the Henkel at Chennai were given assurance that their service will be

retained even after transfer of undertaking to JLL. But, contrary to the said assurance on transfer undertaking of Henkel to JLL their service were illegally terminated without even assigning sufficient cause for such of document to decide the right and liabilities of the employer and employees under Section 25 FF of the ID Act. The writ petitioner, afraid to produce those documents and in order to deprive the severance compensation of second respondent and other appellants, filed the above said writ petition questioning the jurisdiction of the first respondent in invocation of power under the Civil Procedure Code in summoning the aforesaid documents. In the said writ petition, the petitioner mainly contended that (i) The Appellate Authority under the Tamil Nadu Shops and Establishments Act is not a civil Court and as such, they have no jurisdiction to invoke the power under the Civil Procedure Code to entertain the application for summoning the said documents, (ii) The aforesaid documents are privileged and confidential documents and it shall not be summoned (iii) and the said documents are not relevant to the said appeals.

9. The second respondent has further submitted that the appellants are workmen of the HIL and HMIL and they are entitled to compensation under Section 25FF of the ID Act on transfer of undertaking of

Henkel to JLL and the termination of the appellants clearly falls under Section 25 F of the ID Act. Though the appellants raised an appeal before the first respondent under the Tamil Nadu Shop and Establishments Act, as far as the right and liabilities of the employees and employer, in respect of the transfer of undertaking or retrenchment of workmen is concerned it shall be decided in accordance with Section 25F, 25FF of the ID Act, which prevail over the state enactment viz., Tamil Nadu Shop and Establishments Act. The said issue has been settled by the Appellate Authority in his order in I.A.Nos.16 to 27/2014 in TSE termination. Hence, the terminated employees numbering 13 including the second respondent preferred an appeal before the Appellate Authority under the Tamil Nadu Shops and Establishments Act, the first respondent herein, challenging the order of termination, and the said appeals are now pending enquiry posted on 18.03.2015.

10. The second respondent has further submitted that pending the said appeals, the writ petitioner herein informed to the Appellate Authority that the entire shares of the Henkel were transfer to JLL and they had taken over the control of management of the Henkel and the said company was merged with the JLL and scheme of amalgamation also approved by the High

Court of Bombay and as such, the said two companies viz., HIL, HMIL are no longer in existence. The second respondent and the other appellants filed an application to amend the prayer so as to decide the right and liabilities of the employer and employee under Section 25FF of the Industrial Dispute Act and prayed for severance compensation as paid to the similarly placed employees of the Henkel. The appellate authority allowed the said application for amendment IA Nos.16 to 27/2014 in TSE 11/8 to 20 of 2012 vide its order dated 17.06.2014. As against which no appeal has been preferred by the writ petitioner and as such, it has become final and the main prayer in the said appeal amended as per the aforesaid order.

11. The second respondent has further submitted that in the appeal, the TSE II/IA3/2013 in TSE II/11/2012, the second respondent sought for certain document viz., (i) share transfer agreement dated 05.05.2011 and 2) the scheme of amalgamation approved by the Bombay High Court to ascertain on what terms and conditions the JLL acquired the Henkel group of Companies. The learned Appellate Authority invoking the provisions of Order 16 Rules 6 and 151 of Civil Procedure Code ordered the writ petitioner herein to produce the aforesaid II/8 20 of 2012, dated 17.06.2014,

against which the writ petitioner has not been preferred any appeal and as such, it became final binding the parties to the said proceeding, and it cannot be agitated again in this writ petition. Section 41 of the TN Shop and Establishments Act has not contemplate any procedure to deal the appeals preferred under Section 41 of the Act, but Rule 8(3) contemplate that the procedure is to be adopted by the Appellate Authority under the Act is summary in nature. The said provision is akin to Section 11A of the Industrial Dispute Act. When the Tribunal is vested with such a quasi judicial power to decide and determine the right and liabilities of the parties, the Tribunal can follow their own procedure or follow the procedure contemplated under the Civil Procedure Code to render complete justice to the parties. This point has been considered by the Hon'ble Apex Court in its judgment rendered in **AIR 1981 SC 606** and **AIR 1985 SC 294** and the same is followed in the judgment reported in **AIR 1997 MP 172**.

12. The second respondent has further submitted that with regard to the other contention that the documents which are sought for production are confidential document shall not be summoned, the second respondent has submitted that the said documents are not confidential document and the

production of the said document before the Court of law has not been excluded by any law. In fact, the said document is share transfer agreement and scheme of amalgamation and the second respondent and the other appellants are one of the shareholders of the HIL, HMIL and further the said transfer agreement is referred in the public notice issued by the respondent for amalgamation of the said companies, therefore it is a public document submitted before the concerned authorities for approval of the share transfer and approval of the scheme of amalgamation. It is for the writ petitioner to prove that the aforesaid two documents are confidential documents and they have privilege under any law from producing or disclosing the said documents. In the absence of such protection under any law, the writ petitioner shall not claim the said documents as confidential documents. In fact, the said documents are public document and the public and the share holder are entitled to view the said document and they have right to raise objection as the terms and conditions of the share transfer have not been mentioned and only after inviting such objection and only after consideration of the same, the amalgamation scheme shall be approved by the company Court.

13. The second respondent has further submitted that with regard to the relevancy of the said documents, the said share transfer agreement and the scheme of amalgamation are very crucial document to decide the right and liabilities of the employer and employees in this case. While transfer of undertaking of Henkel to JLL, all the employees of Henkel, except the appellants employed in the Henkel Corporate Office, were paid settlement. The Managerial category person employed in the Henkel Corporate Office were also paid settlement. But the appellants were given assurance by the Henkel that the Jll is willing to take up the service of the appellants with same condition and their settlement amount was handed over to the JLL and in the event of termination or retrenchment of their service they will be paid severance compensation as paid to the Henkel employees and to that effect an agreement was signed between the Henkel and JLL. Believing the same the appellants were working continually, but after the JLL took over the Management of Henkel, all of a sudden the service of the appellants were terminated with an ulterior motive to deny the payment of severance compensation of the appellants. Therefore, in this case the said documents are vital and essential as it is to ascertain on what terms and conditions as to the service condition of the appellants the undertaking of Henkel was transferred to JLL and what was

the agreed terms between the Henkel and JLL in share transfer agreement as to their liabilities towards the employees including the appellant. Further, under Section 25FF of the ID Act, the transferor company is liable to pay the compensation to its workers unless contrary to that any agreement was signed between the transferor and transferee companies. Hence, to decide and determine the right and liabilities of the employees and the employer viz., Henkel and JLL, the said documents are essential and there is no irregularity, illegality in the impugned order. Hence, the second respondent entreats the Court to dismiss the above writ petition.

14. The learned senior counsel appearing for the petitioner has submitted that the petitioner Company is manufacturing various household consume products such as Prill, Margo Soap, Neem Active Toothpaste, Henko, Ujala, Exo etc. The third respondent made a share transfer agreement, dated 05.05.2011. Subsequently, the petitioner Company has been changed. The registered office has been shifted from Chennai to Mumbai. Simultaneously, the regional office in Chennai was closed down and the same was shifted to Bangalore. All the employees were transferred to various locations in India. The second respondent was working as an Assistant Manager in the Regional

Office at Chennai. He was also transferred to Karaikkal factory, vide letter dated 29.09.2012. But, he did not report duty subsequently. Hence, on account of the unauthorized absence, he was terminated from service on 29.12.2012. Against the said termination order, he had preferred an appeal before the first respondent. During the pendency of the appeal, the Bombay High Court in a scheme of amalgamation and merger, merged and amalgamated JCPL with the petitioner Company. Under these circumstances, the second respondent had filed an interim application before the first respondent to direct the petitioner Company to produce certain documents, namely, share transfer agreement, dated 05.05.2011 and approved scheme of amalgamation of Henkel India Limited and Jyothi Laboratories Ltd. The first respondent had allowed the application and directed the petitioner Company to produce the said documents to the second respondent.

15. Further, the learned senior counsel has submitted that the petitioner Company has acquired a majority stake in Henkel India Limited. Thereafter, the name has been changed. The first respondent had directed the petitioner Company to produce those two documents, which were not required to decide the issue arising in TSE-IIA 3/2013. In the said case, the issue as to

whether the termination of the second respondent herein is justified or not. For deciding the said issue, these two documents were irrelevant. The second respondent's allegation was that he was terminated from service wrongfully. Furthermore, he was not worked with the petitioner Company as per the conditions imposed by the petitioner Company.

16. The learned counsel appearing for the second respondent has submitted that the shares and management of Henkel India Limited were transferred in the hands of the petitioner Company. Both companies did not come forward to enter into a tripartite agreement with the workers with regard to the service conditions. Hence, the Trade Union had objected to the transfer of undertaking of the Henkel India Limited with the petitioner Company and they have not conceded to transfer their services to the petitioner Company and the employees had demanded severance compensation on transfer management, undertaking of Henkel to JLL. Hence, the services of all the employees, who were employed in Henkel, were put to an end and they were paid severance compensation as per Section 25ff of the Industrial Dispute Act and to that effect an agreement was signed with the individual employees and 18(1) settlement was signed with the Trade Union. Subsequently, the same

was converted into 12(3) settlement.

17. Further, the learned counsel has submitted that the second respondent employed with the Corporate Office of Henkel at Chennai were given an assurance that their service will be retained even after transfer of undertaking to JLL. But, contrary to the said assurance, their service was illegally terminated without giving any valid reason. If the petitioner has produced the said two documents, then the first respondent can render justice to the parties without any lacuna. The petitioner Company is a Multinational Public Limited Company. As such, the said documents are public document. On the basis of those two documents, the rights and liabilities of the employer and employee can be determined. Hence, the learned counsel has prayed this Court to dismiss the writ petition.

18. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the first respondent had directed the petitioner Company to produce two documents to decide the issue with regard to termination of second respondent herein from service. Further,

the first respondent is the competent authority and he has ample power to verify the said documents. In such circumstances, this Court does not find any error or illegality in the impugned order, dated 22.08.2013, and hence the writ petition is liable to be dismissed.

19. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

10/12/2015

Internet : Yes / No
Index : Yes / No

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To:
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