

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 09/07/2015

DATED:21/07/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.11665 of 2014

&

M.P.No.1 of 2014

The Management of MRF Limited,
5285, Tiruvottiyur High Road,
Chennai - 600 019.
Rep. by its General Manager/
Authorized Signatory.

...Petitioner

Vs.

1. The Principal Secretary,
Government of Tamil Nadu,
Department of Labour & Employment,
Fort St. George,
Chennai - 600 009.
2. The Assistant Commissioner of Labour-II,
(Conciliation),
Kuralagam - 600 108.
3. MRF Employees Union,
Regn. No.3069 Rep. by General Secretary,
37, Pattinathar Koil Street,
Thiruvottiyur,
Chennai - 600 019.
4. The Presiding Officer,
Industrial Tribunal,
Chennai.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Mandamus to direct the first respondent to consider the demands of the petitioner placed in its charter of demands dated 06.07.2013 submitted to second respondent vide letter dated 20.11.2013 and morefully, described in the representation dated 28.03.2014 made to the first respondent and pass orders with regard to the same.

For Petitioner : M/s.T.S.Gopalan and Company

For Respondents : Mr.Sanjay Gandhi
Addl. Govt. Pleader for R1 and R2

Mr.K.Sudalaikannu for R-3

R4 - Tribunal

O R D E R

The petitioner submits that the petitioner's factory at Tiruvottiyur is engaged in the manufacture of tyres and related products. Though it is the first establishment set up by the petitioner way back in the year 1962, the petitioner had set up Units at Kottayam in Kerala, Ponda in Goa, Arakonam in Tamil Nadu, Medak in Andhra Pradesh, Puducherry in Union Territory of Pondicherry, Ankanpally in Andhra Pradesh and two Units in Perambalur near Trichy in Tamil Nadu. All these plants are engaged in the manufacture of tyres and allied products made out of Rubber. The petitioner believes that every plant should be self-reliant and no plant should be subsidized at the expense of the other plants. The viability of operation of the plant is assessed by reference to the cost of conversion of natural / synthetic Rubber into a product (Tyres or any other allied products). Further, in view of the severe competition in the automobile tyre industry, every tyre manufacturer has to introduce the State of Art Technology for the process of the manufacture, modernize the plant and also adopt improved techniques to optimize the utilization of the plant capacity so as to derive the optimum output in order to enable the Company to meet its obligations to various constituents including the labour. The petitioner further submits that whenever the wages and service conditions of the workmen come up for revision, the petitioner used to look for some immediate quid proquo for the benefit of all stake holders.

2. The petitioner company further submits that they are never averse to its workmen participating in the legitimate trade union activities. In fact, the third respondent has been recognized as the sole bargaining agent to represent the workmen of the petitioner's plant at Thiruvottiyur. After the emergence of the third respondent, the petitioner had so far concluded 11 long term settlements including the last settlement dated 07.07.2009 which came to an end on 06.07.2013. The petitioner company further submits that the petitioner has always been paying a fair reasonable wage with good service conditions to all its workmen in

all the plants including the one at Thiruvottiyur near Chennai. The culture of industrial relations in Tiruvottiyur plant was always that a part of the revised emoluments should come out of any savings achieved by rationalization of man power or improving the labour productivity. It should also be stated to the credit of the workmen and Office Bearers of the third respondent Union that the commitments made by the Union for the Workmen for higher productivity or saving of labour under the first 10 settlements were fully implemented and thereby it strengthened the bond of relationship between the workmen and the petitioner. Unfortunately, this tradition had derailed following the 11th Tripartite settlement dated 07.07.2009. On account of non-adherence to the norms by the third respondent Union and due to failure in implementing the agreed terms of settlement by the third respondent Union, the petitioner has incurred a production loss of more than Rs.150 Crores till date, i.e, during the period of the earlier settlement, which is in vogue even till date. The petitioner company further submits that even if any technological development is to be implemented or any modern machine is to be operated, its optimum capacity or any other steps taken by the petitioner for improved performance can be fully achieved not only if the workmen make their commitments in fulfilling the said objective, but also carry out the same in the manner agreed between the parties.

3. The petitioner-Company further submits that even before the expiry of the settlement dated 07.07.2009, on 09.05.2013 itself, the third respondent submits its charter of demands. On 06.07.2013, the petitioner gave its requirements which included issues where the workmen have not fulfilled their commitments in terms of the settlement dated 07.07.2009. It listed out the pending issues on the settlement by its letters dated 14.12.2009, 10.08.2010, 12.04.2011, 04.06.2011, 23.08.2011, 29.09.2011, 21.12.2011, 27.01.2012, 09.03.2012 and 11.02.2013. After the settlement dated 07.07.2009, there is a change of leadership in the Union and the new leadership had erroneously assumed that it was not bound by the commitment made by the previous Office Bearers under the earlier long term settlement. Such an attitude on the part of the third respondent is against the spirit of collective bargaining and this attitude would erode the credibility of the Union for any meaningful negotiation on their demands. Unfortunately, any amount of counseling on the part of the petitioner has not yielded any positive result. The leadership of the Union adopted a disingenuous stand that issues covered by the settlement are to be implemented by the Management in exercise of its managerial power and the union is in no way responsible or answerable for non-implementation of the issues. It is further submitted that in the discussions on the charter of demands dated 09.05.2013 submitted by the third respondent Union, the petitioner insisted that the issues in the long term settlement dated 07.07.2009 should be addressed in the first instance, so that

any meaningful discussion can take place on the further improvement of productivity and also revision of wages and allowances. Unfortunately, the third respondent took an untenable stand that their demands for revision of wages and service conditions should alone form part of the negotiation and did not make any concentrated proposal even for revising norms or rationalization of man power. The petitioner-company further submits that the third respondent-Union took up their charter of demands to the Conciliation Machinery, which is the second respondent herein mentioned for its intervention. Naturally, the petitioner also placed its charter of requirements dated 06.07.2013 to the second respondent vide its Letter dated 28.11.2013. Before the second respondent, both the parties maintained their respective stand and as a result, no consensus could be arrived at.

4. The petitioner-Company further submits that on 23.01.2014, the second respondent submitted his conciliation failure report. This report made reference to the issues raised by the petitioner. The petitioner was led to believe that based on the conciliation report of the second respondent dated 23.01.2014, the demands made by the petitioner by way of requirements in its letter dated 06.07.2013 would also be considered and an order would be passed either referring the issues or declining to refer the issues for adjudication. However, on 21.03.2014, the first respondent passed Orders in G.O.108 referring 20 demands of the third respondent to the Industrial Tribunal, Chennai for adjudication. Pursuant to the said order of reference, the fourth respondent has admitted the dispute as ID No.8/2014. The petitioner immediately on receipt of G.O. passed by the first respondent gave a representation on 03.04.2014 (dated 28.03.2014) pointing out that the demands had not been considered by the first respondent and requesting him to pass appropriate orders with regard to the demands of the petitioner. However, till date the first respondent has not replied with regard to the representation of the petitioner.

5. The petitioner-Company further submits that when an employer and a body of workmen of such employer make demands on the other and in such an event, both the demands should be considered as to whether or not a reference for adjudication was called for and if so, to make a reference. In the instant case, though the petitioner and the third respondent made demands on each other and both the demands were taken up for consideration, it is not known as to why the first respondent has not made any order either declining or referring for adjudication. It is not clear whether the Conciliation Officer who has made reference to the demands of the petitioner had made any recommendations or not on the merits of the demands for not referring to adjudication. In this regard, the petitioner also submitted a representation dated 28.03.2014 to the first respondent. It is more than a month since the order of

reference was made and the petitioner was hoping that some communication would be received from the Government about the disposal given to the demands made by the petitioner. However, there has been no communication. It is in these circumstances, the petitioner is obliged to seek the intervention of this Court to give a direction to the first and second respondents to complete the conciliation process and pass an order of either referring or not referring the demands by the petitioner. Hence, it was prayed for a direction to the respondents 1 and 2 to discharge their duties in processing the demands of the petitioner and pass appropriate orders in terms of the provisions of Section 10 of the ID Act.

6. The petitioner-company further submits that the demands of the third respondent have already gone to the fourth respondent for adjudication in I.D.No.8 of 2014 and first hearing of the same is fixed on 28.04.2014. It is appropriate that the demands of the petitioner also go before the Adjudicating Authority / fourth respondent for a comprehensive consideration of the demands of the petitioner as well as that of the third respondent. It is therefore, just and necessary that the fourth respondent does not proceed with the dispute in I.D.No.8 of 2014. Hence, the above writ petition has been filed.

7. The first and second respondents have filed a counter affidavit and resisted the above writ petition. The first and second respondents submit that this writ petition is related to the manufacturing activity of the petitioner-Management and the activities concerning the Trade Union - third respondent herein and do not relate to these respondents. The first and second respondents further submit that the third respondent Trade Union on behalf of the workers commenced settlement talks with the Management and raised charter of demands. On failure to arrive at settlement with regard to the charter of demands raised, the third respondent Trade Union approached the second respondent for commencement of Conciliation Proceedings. The first and second respondents further submits that before the second respondent, no settlement was arrived between the parties. Based on the failure report of the second respondent dated 23.01.2014, the State Government had obtained necessary reports from the Commissioner of Labour with regard to referring the charter of demands raised by Trade Union for adjudication before Industrial Tribunal.

8. The first and second respondents further submit that in respect of the charter of demands raised by the third respondent, the writ petitioner Management has not submitted any reply. On the other hand, it has been alleged that the demand raised by them has not been considered by the second respondent. The Management has represented on 28.03.2014 to the first respondent and the petitioner-Management was infused to file their

demands as part of reply before the Tribunal while Industrial Dispute is being heard by the Tribunal. The first and second respondents further submits that the second respondent only on careful analysis of the charter of demands raised by the third respondent-Trade Union on providing sufficient opportunity to both writ petitioner and third respondent was not able to solve the dispute and hence, they submitted their failure report dated 23.01.2014 under Section 12(4) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947). It is also submitted that the petitioner's representation dated 26.03.2014 and the report of the Commissioner of Labour, Ad-hoc interim increase was carefully examined and it was already referred to the Industrial Tribunal, Chennai by the Government in G.O.(D)No.108, Labour and Employment Department, dated 21.03.2014.

9. The first and second respondents further submit that each and every demand raised has been considered in consonance with provisions of the Act and in pursuant to the order passed by this Court in W.P.No.28243 of 2013. They further submit that the first respondent, in accordance with provisions enumerated under the Act and by taking consideration of the Conciliation Report of the second respondent and the report from the Commissioner of Labour dated 18.02.2014, issued G.O.(D)No.108, Labour and Employment Department, dated 21.03.2014 referring to 20 demands of the third respondent Trade Union for proper adjudication before Industrial Tribunal, Chennai and further by G.O.(D)No.109, Labour and Employment Department, dated 21.03.2014, the first respondent rejected 16 demands which were raised by the third respondent Trade Union for referring before Industrial Tribunal for adjudication. In furtherance of issuance of G.O.(D)No.108, Labour and Employment Department, dated 21.03.2014, the fourth respondent/Industrial Tribunal have taken on file the Chartered demands in I.D.No.8/2014 and the same is pending adjudication. The first and second respondents further submit that the first respondent assigned valid reason for referring 20 demands of the third respondent / Trade Union for adjudication before Industrial Tribunal and the writ petitioner-Management, can very well appear before the Industrial Tribunal and the fourth respondent herein in I.D.No.8/2014 and put forth their grievance. On the other hand, the writ petitioner without participating in the above Industrial Dispute has raised flimsy reason and filed the present vexatious writ petition seeking for direction to consider the demands of the writ petitioner.

10. The first and second respondents further submit that the second respondent in exercise of the powers conferred upon it, proceeded with the Conciliation Proceedings. In view of the reasons of not arriving to a settlement, the second respondent submitted its failure report and the first respondent in a proper manner on appraising the facts and circumstances in respect of each demand raised by the writ petitioner and third respondent passed G.O.(D)

No.108, Labour and Employment Department dated 21.03.2014, referring 20 demands of the third respondent for proper adjudication, in pursuant to which I.D.No.8 of 2014 has been taken on the file of the fourth respondent. The first respondent by issuance of G.O.(D)No.109, Labour and Employment Department, dated 21.03.2014, declined to refer 16 demands before Industrial Tribunal for adjudication. Neither the issuance of G.O.(D)No.109, Labour and Employment Department, dated 21.03.2014 has been challenged. The Writ petitioner, having not chosen to challenge the Government Order aforesaid, do not have any right or authority in filing the present writ petition. In view of issuance of G.O.(D)No.108 and G.O.(D)No.109, Labour and Employment Department, dated 21.03.2015, the writ petition is neither maintainable in law nor on facts. Hence, the first and second respondents entreat the Court to dismiss the above writ petition.

11. The highly competent counsel appearing for the petitioner submits that the petitioner's factory is engaged in the manufacture of tyres and other allied products. The petitioner's company Unit is set up at various places. All these Units are engaged in the manufacture of tyres and allied products manufactured out of rubber. The petitioner believes that every plant should be independent and no plant should be subsidized at the expenses of the other Units. The viability of the operation of the factory is assessed by reference to the cost of conversion of natural synthetic rubber into a product. In view of severe competition in the automobile tyre industry every tyre manufacturer has to introduce the State of Art Technology for the process of the manufacturing, modernize the plant and also adopt improved techniques to optimize the utilization of the plant capacity so as to derive the optimum output in order to enable the Company to meet its obligations to various constituents including the labour force. Whenever the wages and service conditions of the workforce come up for revision, the petitioner immediately adopts the convenient methods to cater to the requirement of the stakeholders.

12. The highly competent counsel appearing for the petitioner further submits that the third respondent / employees Union has been recognized as the sole bargaining agent to represent the workmen of the petitioner's plant at Thiruvottiyur. The third respondent / Union of workers and the petitioner herein have settled 11 long term settlements. The Management is paying reasonable wages to all the workmen. Unfortunately, this tradition had derailed following the 11th Tripartite settlement dated 07.07.2009 and on account of non-adherence to the norms by the third respondent-Union and due to failure in implementing the agreed terms of settlement by the third respondent herein, the Management has incurred a production loss of more than 150 crores till date. Further, after the expiry of settlement dated 07.07.2009, on 09.05.2013 itself, the third respondent submitted

his charter of demands on 06.07.2013 and the Management has given its requirements which included issues where the work force had not fulfilled their commitments in terms of settlement dated 07.07.2009. It listed out the pending issues on the settlement by the Management letter on various dates. After the settlement dated 07.07.2009, there is a change of leadership in the Union and new leadership had erroneously assumed that it was not bound by the commitment made by the previous Office Bearers under the earlier long term settlement and such an attitude on the part of the Union is against the spirit of collective bargaining and this attitude would erode the credibility of the Union for any meaningful negotiation on this demand.

13. The highly competent counsel appearing for the petitioner further submits that unfortunately any amount of counseling on the part of the petitioner has not yielded any positive result. For the discussions on the charter of demands dated 09.05.2013 submitted by the third respondent-Union, the petitioner insisted that the issues in the long term settlement dated 07.07.2009 should be addressed in the first instance, so that any meaningful discussion can take place on the further improvement of productivity and also revision of wages and allowances. The third respondent / work force took an untenable stand that their demands for revision of wages and service conditions should alone form part of the negotiation and did not make any concrete proposal even for revising norms or rationalization of man power. The Union took up their charter of demands to the Conciliation Machinery, which is the second respondent herein mentioned for its intervention. Naturally, the petitioner also placed its charter of requirements dated 06.07.2013 to the second respondent vide its letter dated 28.11.2013. Before the second respondent / Assistant Commissioner of Labor-II (Conciliation) both the parties maintained their respective stands and as a result, no consensus could be arrived at.

14. The highly competent counsel appearing for the petitioner further submits that the second respondent submitted his conciliation failure report on 23.01.2014. The petitioner was led to believe that based on the conciliation report of the second respondent dated 23.01.2014, the demands made by the petitioner by way of requirements in its letter dated 06.07.2013 would also be considered and an order would be passed either referring the issues or declining to refer the issue for adjudication. However, on 21.03.2014, the first respondent passed orders in G.O.108 referring 20 demands of the third respondent to the Industrial Tribunal, Chennai for adjudication. Pursuant to the said order of reference, the fourth respondent has admitted the dispute as I.D.No.8 of 2014. The petitioner immediately on receipt of G.O. passed by the first respondent gave a representation on 03.04.2014 pointing out that the demands have not been considered by the first respondent and

requested him to pass appropriate orders with regard to the demands of the petitioner. However, till date, the first respondent has not replied with regard to the representation of the petitioner.

15. The highly competent counsel appearing for the petitioner further submits that when an employer and a body of workmen of such employer made demands on the other and in such an event, both the demands should be considered as to whether or not a reference for adjudication was called for and if so to make a reference. In the present case, though the petitioner and the third respondent made demands on each other and though both the demands were taken up for consideration, but the first respondent has not made any order either declaring or referring for adjudication. It is not clear whether the Conciliation Officer who has made reference to the demands of the petitioner had made any recommendations or not on the merits of the demands for not referring for adjudication. In this regard, the petitioner also submitted a representation dated 28.03.2014 to the first respondent. After receipt of the said representation, there has been no communication. Hence, the highly competent counsel entreats the Court to give direction to the first and second respondents to complete the conciliation process and pass orders. The demands of the Union have already gone to the fourth respondent / Industrial Tribunal for adjudication in I.D.No.8 of 2014, which is pending. It is appropriate that the demands of the petitioner Company is taken up before the Adjudicating Authority / fourth respondent for a comprehensive consideration of the demands of the petitioner as well as the third respondent. Therefore, the highly competent counsel entreats the Court to give suitable direction to the first and second respondents on this issue.

16. The highly competent Additional Government Pleader Mr.Sanjay Gandhi appearing for the first and second respondents submits that the first respondent had referred the dispute for adjudication on 20.12.2007 and issued a G.O. for adjudication and directed the Industrial Tribunal to submit its award within three months. The Management's representation dated 06.07.2013 is now under consideration. Further, the petitioner made a representation on 28.03.2014 regarding Industrial Dispute and productivity, wage and other benefits, but the issue was not resolved before the Conciliation Centre. However, the highly competent Additional Government Pleader submits that the first respondent will take necessary steps on the said representation at the earliest.

17. The highly competent Additional Government Pleader appearing for the first and second respondents further submits that the representation made by the petitioner dated 26.03.2014 is not maintainable. Further, the dispute is between the Management and the trade Union and as such, the first and second respondents do

not relate to the above issue. Further, no settlement has been arrived between the parties before the second respondent. Based on the failure report of the second respondent dated 23.01.2014, the State Government had obtained necessary reports from the Commissioner of Labour with regard to referring the charter of demands raised by the trade Union for adjudicating before the Industrial Tribunal. Further, the Management has not submitted any reply in respect of the charter of demands raised by the third respondent herein. The Management has represented on 28.03.2014 to the first respondent and the petitioner-Management was infused to file their demands as part of reply before the Tribunal, while Industrial Dispute is being heard by the Tribunal. The work force had raised 20 demands and out of them 16 demands were rejected by the first respondent and referred before the Industrial Tribunal for adjudication. Now, the chartered demands had been taken on file of the fourth respondent as I.D.No.8 of 2014. In view of the G.Os.108 and 109 passed by the first respondent, the above writ petition is not maintainable. Hence, the highly competent Additional Government Pleader entreats the Court to dismiss the above writ petition.

18. The highly competent counsel Mr.K.Sudalaikannu appearing for the third respondent submits that as per G.O.(D) No.108, Labour and Employment Department, dated 21.03.2014, issued by the first respondent, the dispute between the workforce and Management has been referred to the Industrial Tribunal, Chennai for adjudication. Accordingly, the Industrial Tribunal, Chennai had issued a summon to the Management and the Union for their appearance on 28.04.2014 at 10.30 a.m. Due to the non co-operation of the Management, the case in I.D.No.8 of 2014 is pending for more than one year.

19. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels and on perusing the typed-set of papers, this Court directs the first respondent to consider the petitioner's demand, placed in his charter of demands dated 06.07.2013 submitted by the second respondent vide letter dated 20.11.2013 and more fully described in the representation of the petitioner dated 28.03.2014 made to the first respondent, for adjudication before Industrial Tribunal immediately and that the Industrial Tribunal is directed to take into consideration the demands of the Management and that of the Union comprehensively before adjudication and then pass an award within six months.

20. In the result, the above writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The Principal Secretary,
Government of Tamil Nadu,
Department of Labour & Employment,
Fort St. George, Chennai - 600 009.
2. The Assistant Commissioner of Labour-II,
(Conciliation),
Kuralagam - 600 108.
3. The Presiding Officer,
Industrial Tribunal,
Chennai.

1 CC to M/s.T.S.Gopalan and Company, Advocate SR.No. 36813

1 CC to Mr.K.Sudalaikannu, Advocate SR.No. 36894

RV (CO)
PSI (24.07.2015)

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