

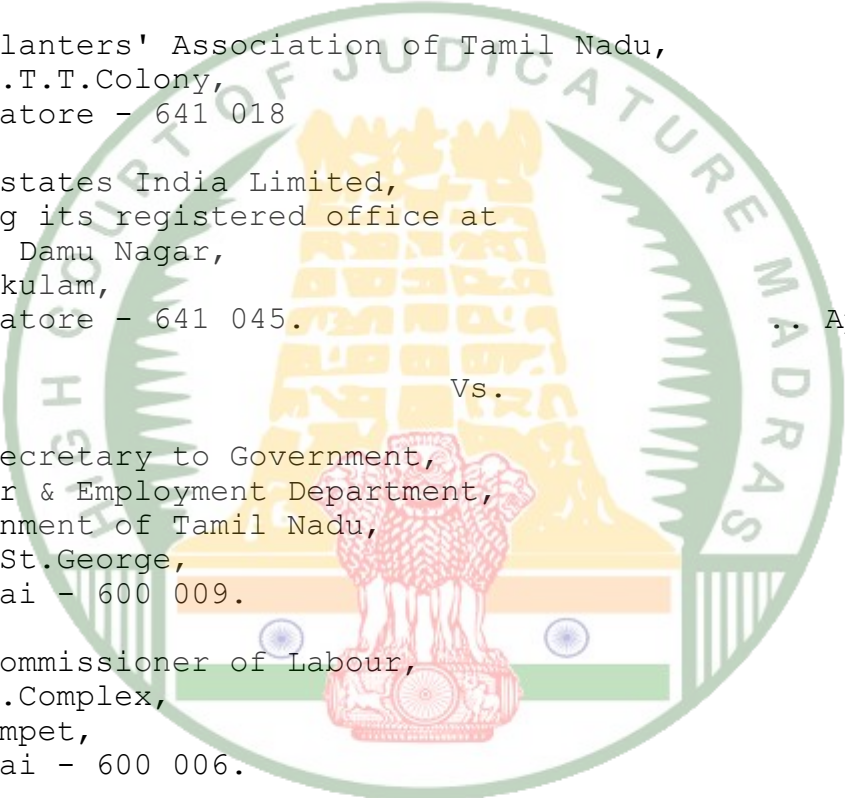
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 7-1-2015

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.No.2277 of 2012
M.P.No.1 of 2012

- 
1. The Planters' Association of Tamil Nadu,
42, A.T.T.Colony,
Coimbatore - 641 018
2. Tea Estates India Limited,
having its registered office at
No.10 Damu Nagar,
Puliakulam,
Coimbatore - 641 045. .. Appellants
- Vs.
1. The Secretary to Government,
Labour & Employment Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Labour,
D.M.S.Complex,
Teynampet,
Chennai - 600 006.
3. The Secretary to Government of India,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi - 110 011. .. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 5.6.2012 passed in W.P.No.30368 of 2007.

Writ of Certiorari to call for the records relating to the order of the first respondent in G.O.Ms.No.183, dt.28.12.2006 and quash the same.

For Appellants : Mr.N.Vijay Narayan
Senior Counsel
for Mr.R.Parthiban

For Respondents 1 & 2 : Mrs.A.Shrijayanthi,
Special Govt. Pleader

For 3rd Respondent : Mr.Su.Srinivasan,
Assistant Solicitor General

Date on which reserved for orders	Date of Pronouncement of orders
5-1-2015	7-1-2015

J U D G M E N T

N.PAUL VASANTHAKUMAR, J.

This writ appeal is preferred against the order of the learned single Judge dated 5.6.2012, dismissing W.P.No.30368 of 2007.

2. The appellants herein viz., The Planters' Association of Tamil Nadu and Tea Estates India Limited, Coimbatore, have filed the writ petition seeking to quash the order issued in G.O.Ms.No.183 Labour and Employment Department dated 28.12.2006, wherein the Government ordered appointment of Welfare Officer in every plantation where 300 and more workers are ordinarily employed, prescribing qualification, duties, conditions of service, etc., in exercise of the powers conferred under sub-Section (1) of Section 43 read with Section 18 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951) by amending Tamil Nadu Plantations Labour Rules, 1955.

3. The primary contention of the appellants before the learned single Judge are that under section 43(3) of the Plantations Labour Act and Rules made thereunder, if made by any Government other than the Central Government, be subject to the previous approval of the Central Government. As prior approval of the Central Government is required, Section 23 of the General Clauses Act, 1897 has to be followed in the strict sense viz., the procedure prescribed thereunder.

4. Mr.N.Vijay Narayan, learned Senior Counsel appearing for the appellants initially argued that before the draft notification was issued in G.O.Ms.No.65, Labour and Employment Department dated 25.4.2005, no prior permission/approval was obtained from the Central Government. To verify the said fact, this Court called for the files and the approval granted by the Ministry of Labour and Employment, Government of India, dated 28.2.2005 was produced before this Court and the same was also allowed to be perused by the learned Senior Counsel appearing for the appellants and he was very much satisfied

with the said approval granted. The learned Senior Counsel thereafter argued that after the draft amendment was issued in G.O.Ms.No.65 Labour and Employment Department dated 25.4.2005, appellants prayed for dropping the proposal of appointment of Welfare Officer in plantations and the said objections were also received by the first respondent on 24.6.2005 as per Speed Post acknowledgment. The learned Senior Counsel also submitted that one other association viz., United Planters Association, Southern India, also submitted their objections on 2.11.2005. The learned Senior Counsel contended that without forwarding the said objections to the Central Government, the State Government issued the impugned G.O.Ms.No.183 Labour and Employment Department dated 28.12.2006 by amending the Tamil Nadu Plantation Labour Rules, 1955 and the said procedure adopted viz., not placing the objections before the Central Government for its consideration, which is mandatory as per Section 23 of the General Clauses Act, 1897 is not sustainable. The learned Senior Counsel fairly submitted that in this appeal he is not pressing any other point, except the issue of not placing the objections submitted by the appellants before the Central Government prior to issuance of the Government Order impugned before the learned Single Judge. The said submission is recorded. In support of the said contention, learned Senior Counsel relied on the judgment of the Supreme Court reported in AIR 1972 SC 892 : (1972) 1 SCC 696 (Municipal Corporation, Bhopal v. Misbahul Hasan).

5. Mrs.A.Shrijayanthi, learned Special Government Pleader on perusing the files maintained by the first respondent/Government of Tamil Nadu submitted that the objections received from the appellants have not been sent to the Central Government and the Tamil Nadu Government itself overruled the objections and passed the impugned Government Order. The learned Special Government Pleader further submitted that not forwarding the objections to the Central Government is only a procedural violation and the impugned order having been issued for the welfare of the Plantation Labourers, which was also upheld by the learned single Judge, need not be interfered.

6. Mr.Su.Srinivasan, learned Assistant Solicitor General appearing for the third respondent submitted that approval was obtained from the Central Government prior to the issuance of the draft amendment, however, the objections received after issuance of draft amendment were not forwarded to the Central Government before issuing the final amendment.

7. We have considered the rival submissions made by respective counsels and perused the file produced by the learned Special Government Pleader where from we could find that the objections submitted by the appellants were not forwarded to the Central Government.

8. The issue arises for consideration is as to whether the Tamil Nadu Government was justified in not forwarding the objections received from the appellants to the Government of India before issuing the impugned Government Order/amendment, directing the Employers of every Plantation wherein 300 and more workers are ordinarily employed, to appoint at least one Welfare Officer, etc.

9. The Plantations Labour Act, 1951 is a Central Enactment. Section 43 of the said Act empowers the State Governments to frame rules to carry out the purposes of the Act and as per sub-section (3) to Section 43, all rules made under this Act shall, if made by any Government, other than the Central Government, be subject to the previous approval of the Central Government. Thus, previous approval of the Central Government is mandatory for framing rules by the State Government under Section 43(3) of the Act. The procedure to be followed in such contingencies viz., getting previous approval of the Central government for issuing any rule or bye-law is stated in Section 23 of the General Clauses Act, 1897, which reads as follows:

"23. Provisions applicable to making of rules or bye-laws after previous publication.—Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

(1) the authority having power to make the rules or bye-laws shall before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [Government concerned] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Official Gazette of a rule or bye-law purporting to have been made

in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made."

As per Section 23(3) draft rules should be published and the objections/suggestions, which may be received shall be forwarded to the Central Government under Section 23(4) and the Central Government also shall consider the objections or suggestions and thereafter publication shall be made under Section 23(5).

10. In this case, prior approval was obtained for issuing draft rules, which reads as follows:

"No.S-66012/1/2005-IR(PL)
Government of India
Ministry of Labour & Employment

New Delhi
the 28th Feb, 2005

To
Shri M.B.Pranesh, IAS,
Principal Secretary to the Government,
Govt. of Tamil Nadu,
Secretariat,
Chennai.

Subject: Plantation Labour Act, 1951 - (Central Act, 69/1951) and Tamil Nadu Plantation Labour Rules, 1955 - made thereunder amendments to Tamil Nadu Plantation Labour Rules - Approval of G.O.I. under Section 43(3) of the Act.

Sir,
I am directed to refer to your letter No.29919/12/2003-9 dated 14.12.2004 on the above subject and to say that this Ministry have no objection for insertion of Chapter VIII on Welfare Officers in the Tamil Nadu Plantation Labour Rules, 1955 as proposed by the Govt. of Tamil Nadu.

This issues with the approval of Minister of Labour & Employment.

Yours faithfully,

Sd/-xxxxxxxx
(Anand Kumar)
Assistant Director"

Pursuant to the above approval, draft rules were issued in G.O.Ms.No.65 Labour and Employment Department dated 25.4.2005 and

objections were called for. Admittedly, the first appellant submitted its objection on 23.6.2005, which was acknowledged by the first respondent viz. the State Government on 24.6.2005 as per the Speed Post acknowledgment. It is also admitted by the learned Special Government Pleader that the objections received from the first appellant was not forwarded to/placed before the Central Government for its comments/consideration and the objections were overruled by the State Government itself. The same is an error, which goes to the root of the matter and against the procedure prescribed under Section 43 of the Plantations Labour Act, 1951 read with Section 23 of the General Clauses Act, 1897.

11. Whether the prescribed procedure is bound to be followed by the State Government, wherein permission from the Central government is required for issuing Rules or bye-laws under section 23 of the General Clauses Act came up for consideration before the Hon'ble Supreme Court in AIR 1972 SC 892 : (1972) 1 SCC 696 (Municipal Corporation, Bhopal v. Misbahul Hasan) and in paragraph 13 it is held thus,

"13. The legislative procedure envisaged by Section 24, set out above, is in consonance with notions of justice and fair-play as it would enable persons likely to be affected to be informed so that they may take such steps as may be open to them to have the wisdom of a proposal duly debated and considered before it becomes law. This mandatory procedure was not shown to have been complied with here."

The facts in the said case was one of alteration of date of retirement of an employee of Municipal Corporation of Bhopal, and the age of superannuation having been altered without following the mandatory procedures, the Division Bench of Madhya Pradesh High Court set aside the reduction of age of retirement from 58 to 55, which was affirmed by the Hon'ble Supreme Court.

12. The said position is reiterated in the judgment of the Supreme Court reported in AIR 1994 SC 2263 : (1994) 4 SCC 42 (Ghaziabad Development Authority v. Delhi Auto and General Finance (P) Ltd).

13. It is also a well settled proposition of law that when statute prescribes certain things to be done in a particular manner, the same shall be done only in that manner and not in any other manner.

14. In the light of the above proposition of law and in the light of the decisions of the Hon'ble Supreme Court read with Section 43 of the Plantations Labour Act, 1951 and Section 23 of the General Clauses Act, 1897, we are unable to uphold the impugned Government Order, which was upheld by the learned single Judge. Consequently we

set aside the order of the learned single Judge dated 5.6.2012 made in W.P.No.30368 of 2007 as well as the amendment issued in G.O.Ms.No.183 Labour and Employment Department dated 28.12.2006 granting liberty to the first respondent to forward the objections, received from the appellants as well as any other objections received, to the third respondent and thereafter proceed in accordance with law, regarding final amendment to be issued.

The writ appeal is allowed with the above liberty. No costs. Connected miscellaneous petition is closed.

Sd/-
Deputy Registrar
Dated:20.1.15

True Copy

Sub Assistant Registrar

To

1. The Secretary to Government, Labour & Employment Department, Government of Tamil Nadu, Fort St.George, Chennai - 600 009.
 2. The Commissioner of Labour, D.M.S.Complex, Teynampet, Chennai - 600 006.
 3. The Secretary to Government of India, Ministry of Labour, Shram Shakti Bhavan, New Delhi - 110 011.
- +1 cc to Mr.R.Parthiban, Advocate,SR.959
+1 cc to Mr.Su.Srinivasan, Advocate,sR.678
+1 cc to Government Pleader,SR.931

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krd 21/1

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Pre-Delivery Judgment in

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