

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3789 of 2015 and
M.P.Nos.1 & 2 of 2015

TASMAC Uzhiyar Manila Sammelanam
Rep. by its General Secretary,
No.27, Mosque Street, Chepauk,
Chennai - 600 005.

.. Petitioner

V.

1.State of Tamil Nadu rep. by its
Secretary to Government,
Department of Labour and Employment,
Secretariat, Fort St. George, Chennai - 600 009.

2.The Industrial Tribunal,
II Floor, City Civil Court Building,
Madras High Court Campus, High Court,
Chennai - 600 104.

3.The Managing Director,
Tamil Nadu State Marketing Corporation,
(TASMAC), Floor No.4,
Thalamuthu Natarajan Malligai,
Gandhi Irwin Road, Egmore, Chennai - 600 008

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent G.O.(D). No.432 dated 19.09.2014 filed and marked as Ex - 'A' and quash the same and consequently directing the 1st respondent to refer the industrial dispute to the 2nd respondent for adjudication under Section 10(1) of the Industrial Disputes Act, 1947 within a period of 4 weeks from the date of order of this Court and the 2nd respondent Tribunal to dispose of the same within 6 months from the date of reference.

For Petitioner .. Mr.V.Stalin for M/s.Row & Reddy

For Respondents 1 & 2.. Mr.R.Lakshmi Narayanan
Additional Government Pleader

For 3rd Respondent .. Mr.S.Muthuraj

ORDER

The petitioner is a registered Trade Union consisting of employees working in the 3rd respondent Corporation. The

challenge in this writ petition is to an order passed by the 1st respondent in G.O.(D).No.432 dated 19.09.2014 refusing to refer the charter of demands raised by the petitioner Union to the Tribunal for adjudication. The petitioner Union contended that they have been paid unduly low wages and none of the statutory protection was granted to them and the action of the 3rd respondent Corporation would amount to an unfair labour practice. The petitioner Union raised 45 demands and the matter was under conciliation, but however, nothing could be settled during the Conciliation Proceedings and the Assistant Commissioner of Labour (Conciliation) submitted his Failure Report on 12.11.2007. Though such a Failure Report was submitted on the said date, the same was not promptly forwarded to the Government and only by proceedings dated 18.10.2012 and 16.09.2014, the matter was forwarded to the Government through the Commissioner of Labour. Even thereafter there was a stalemate in the matter which necessitated the petitioner to approach this Court to file a writ petition in W.P.No.472 of 2013 wherein the petitioner Union prayed for referring the charter of demands for adjudication to the Tribunal and to dispose of the same within a time frame. After hearing the learned counsels for the parties, the said writ petition was disposed of by order dated 15.07.2014. The operative portion of the order reads as follows:

"5. According to me, as per Section 12(5) of the Industrial Disputes Act, on a consideration of the report of the Conciliation Officer, if the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal, it may make such reference. Further, where the appropriate Government does not make such a reference, it shall record the reasons therefor. In this case, admittedly, a failure report was sent by the third respondent in respect of various issues raised by the petitioner even on 12.11.2007 and on receipt of the same, no action has been taken by the first respondent either to make a reference or decline the reference by stating the reasons.

6. In the judgments relied upon by Mr.N.G.R.Prasad, the learned counsel for the petitioner, the order of the Government declining to make reference was challenged and in that context, the Supreme Court held that the Government ought to have made a reference having regard to the facts of those cases. According to me, the present facts of the case are different and in this case, the Government has not passed any order either

making reference or declining to make reference.

7. Hence, the writ petition is disposed of, by directing the first respondent to pass appropriate orders on the basis of the failure report submitted by the third respondent, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

Pursuant thereto, the impugned order has been passed.

2. The learned counsel for the petitioner submitted that the impugned order is illegal and not sustainable and contrary to the decisions of the Hon'ble Supreme Court in the case of V.Veerarajan and others V. Government of Tamil Nadu and others reported in 1987(1) SCC 479 and Sarva Shramik Sangh V. Indian Oil Corporation Limited and others reported in 2009 (11) SCC 609.

3. It is the submission of the learned counsel for the 1st respondent that while considering the charter of demands and the failure report, virtually adjudicated the dispute and prejudged the matter and went into the merits of the petitioner's claim and therefore, the impugned order calls for interference.

4. I have heard the learned Additional Government Pleader appearing for respondents 1 and 2 on the above submissions. The law on the subject has been laid down in several decisions and one of the recent decisions being in the case of Sarva Shramik Sangh (cited supra). After taking into consideration the earlier decisions on the said point the Hon'ble Supreme Court summarised the circumstances under which a writ of mandamus would be issued to the appropriate Government to reconsider the refusal to make a reference. The operative portion of the said decision reads as follows:

"37. Thus it can safely be concluded that a writ of mandamus would be issued to the appropriate Government to reconsider the refusal to make a reference, where (i) the refusal is on irrelevant, irrational or extraneous grounds; (ii) the refusal is a result of the appropriate Government examining the merits of the dispute and prejudging/ adjudicating/determining the dispute; (iii) the refusal is mala fide or dishonest or actuated by malice; (iv) the refusal ignores the material available in the Failure Report of the Conciliation Officer or is not supported by any reason."

5. Thus, in terms of the decision of the Hon'ble Supreme Court, four circumstances have been pointed out under which the

Writ Court will direct the appropriate Government to reconsider the refusal to make a reference. The case on hand would fall within the second parameter mentioned in the Judgment of the Hon'ble Supreme Court where the refusal is a result of the appropriate Government examining the merits of the dispute and prejudging/adjudicating/determining the dispute. A perusal of the impugned order shows that so far as the first demand is concerned, as regards the conferment of permanent status to the employees working in the 3rd respondent, the respondent has refused to refer the dispute to the Industrial Tribunal on the ground that the employees have got efficacious remedy under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. Therefore, so far as the reason assigned in respect of Demand No.1 is concerned, this Court is of the view that the stand taken by the Government in the impugned Government Order is justified. Therefore, the employees have to necessarily resort to the provisions of the said enactment which is a Special Enactment and adjudicate their claims. In so far as the remaining issues are concerned, the Government has given certain reasons and on a perusal of the reasons given which are identical for several of the demands, it is clear that the Government has prejudged the dispute and rather adjudicated the dispute and has gone into the merits of the dispute which has been thus clearly prohibited while considering the matter as to whether a dispute should be referred for adjudication. Thus, the reasons assigned in so far as the Demand Nos.2 to 45 being in clear conflict with the embargo placed on the Government as pointed out by the Hon'ble Supreme Court in the aforementioned Judgment, the impugned order calls for interference.

6. Accordingly, the Writ Petition is partly allowed and the impugned order is quashed in so far as the Government has declined to refer the Demand Nos.2 to 45 is concerned and there will be a direction to the 1st respondent to take a conscious decision in the matter bearing in mind the legal principle laid down by the Hon'ble Supreme Court. In so far as the Demand No.1, as already held that the reason for refusal to refer is just and proper and it is open to the petitioner Union to file appropriate application under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 before the appropriate forum. The 1st respondent is directed to consider the entire matter in terms of the above direction within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar



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To

1. Secretary to Government,
State of Tamil Nadu,
Department of Labour and Employment,
Secretariat, Fort St. George, Chennai - 600 009.

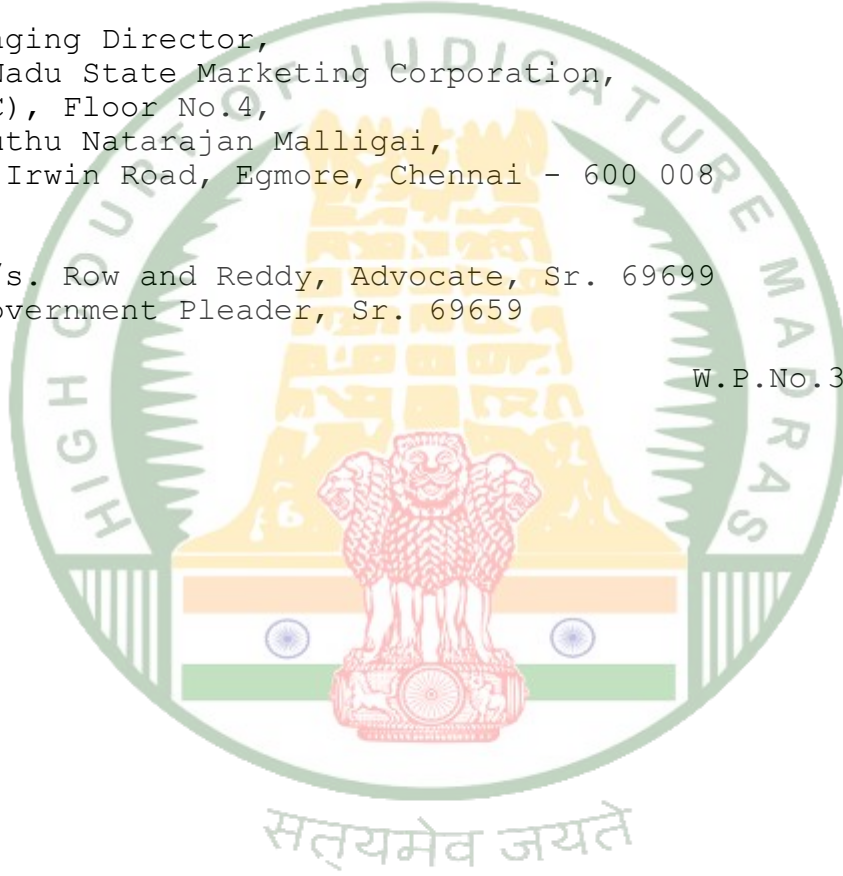
2. The Presiding Officer
Industrial Tribunal,
II Floor, City Civil Court Building,
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3. The Managing Director,
Tamil Nadu State Marketing Corporation,
(TASMAC), Floor No.4,
Thalamuthu Natarajan Malligai,
Gandhi Irwin Road, Egmore, Chennai - 600 008

1 cc to M/s. Row and Reddy, Advocate, Sr. 69699
1 cc to Government Pleader, Sr. 69659

W.P.No.3789 of 2015

GJ (CO)
kk 12/1



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