

In the High Court of Judicature at Madras

Dated : 17.12.2015

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.39788 and 39789 of 2015
and
MP.Nos.1 and 1 of 2015

Narasimhan Chakravarthi Srinivasan,
Occupier, M/s.Stumpp Schuele &
Somappa Auto Suspension Systems
Pvt.Ltd. Thiruvallur ...Petitioner in WP.No.
39788 of 2015

N.K.Ramesh, Manager, M/s.Stumpp
Schuele & Somappa Auto Suspension
Systems Pvt.Ltd. ...Petitioner in WP.No.
39789 of 2015

Vs

The Additional Director, Industrial
Safety and Health, A-28 Industrial
Estate, Guindy, Chennai-32. ...Respondent in both WPs

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of Writs of Certiorari to call for the
records of the respondent in Proceedings No.A2/638/2015 and
quash its order dated 27.11.2015.

For Petitioners : Mr.S.Ravindran

For Respondent : Mr.R.Vijayakumar, AGP

COMMON ORDER

Mr.R.Vijayakumar, learned Additional Government Pleader
takes notice for the respondent. Heard the learned counsel for
the petitioners. By consent, the writ petitions are taken up for
final disposal.

2. In both these writ petitions, the challenge is to the
identical orders passed by the respondent, in and by which, the
petitioners are sought to be prosecuted.

3. The petitioner in W.P.No.39788 of 2015 is the occupier of the factory and the petitioner in W.P.No.39789 of 2015 is the manager of the factory. By the impugned proceedings, the respondent pointed out that the defects indicated in the proceedings dated 6.8.2014 have not been rectified and that therefore, prosecution is to be initiated against the petitioners. The occupier of the factory filed an earlier writ petition in W.P.No.7434 of 2015 challenging the proceedings dated 6.8.2014 on the ground that he was threatened to be prosecuted for non compliance of the defects indicated in the order dated 6.8.2014. The said writ petition in W.P.No.7434 of 2015 was heard and by an order dated 11.8.2015, it was disposed of by issuing the following directions :

"In the light of the above facts and circumstances, this Court directs the first respondent to take into consideration the reply dated 6.8.2014 submitted by the petitioner in accordance with law and pass final orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner and till then, the jurisdictional Inspector of Factories shall defer further proceedings in S.T.C.Nos.332 to 340 of 2014 pending on the file of the Chief Judicial Magistrate, Thiruvallur."

4. It is further seen that the manager of the factory has also filed a separate writ petition in W.P.No.1222 of 2015 against a similar proceedings. In that writ petition, this Court granted an order of interim stay on 20.1.2015 and the writ petition is still pending. After the writ petition filed by the occupier viz. W.P.No.7434 of 2015 was disposed of, the occupier sent a representation on 12.10.2015 to the respondent requesting for the grant of personal hearing. By a communication dated 4.11.2015, the respondent fixed the personal hearing on 12.11.2015. On receipt of the communication dated 4.11.2015, the occupier, again by a further representation dated 9.11.2015, sought adjournment by giving any other date after 18.11.2015.

5. Though the representation dated 9.11.2015 has been received by the office of the respondent on 12.11.2015, as could be seen from the official seal affixed in the representation dated 9.11.2015, the impugned order came to be passed on 27.11.2015, which, according to the occupier, is antedated, since the concerned officer retired on 30.11.2015 and the petitioner has received the order on 12.12.2015. It is seen from the postal covers that the order itself was dispatched only on 10.12.2015.

6. In so far as the case of the manager is concerned, though the writ petition filed by him in W.P.No.1222 of 2015 is still pending and interim orders are in force, the respondent, in an arbitrary manner, by referring to the writ petition W.P.No.7434 of 2015 filed by the occupier, issued a similar order and this order has also been received by the manager on 12.12.2015.

7. From the above, it is clear that the order passed by the respondent is arbitrary and unreasonable. The direction issued by this Court in the earlier writ petition is clear and the impugned order clearly shows that the respondent has violated the direction issued by this Court. Furthermore, the writ petition filed by the manager is pending consideration by this Court and the interim order is still in force. Therefore, there is no justification for the respondent to initiate prosecution.

8. In view of the above, the writ petitions are allowed, the impugned order is set aside, as it is to be held unsustainable in law and the respondent is restrained from initiating any prosecution against either the occupier or the manager till the disposal of W.P.No.1222 of 2015 filed by the manager. No costs. Consequently, the above MPs are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Additional Director, Industrial Safety and Health, A-28
Industrial Estate,
Guindy, Chennai-32.

+1cc to Mr.S.Ravindran, Advocate, S.R.No.68002

+1cc to the Government Pleader, S.R.No.68819

vsn(CO)

kra (12/01/2016)

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and MP.Nos.1 and 1 of 2015