

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-08-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.7434 OF 2015

Narasimhan Chakravarthi Srinivasan ...

Petitioner

-vs-

1.Additional Director (Industrial Safety and Health),
A-28, Industrial Estate,
Guindy,
Chennai-600 032.

2.The Deputy Director of Industrial Safety
and Health (Inspector of Factories)
No.6, Lalbahadur Sasthri Street,
Periyakuppam,
Thiruvallur - 602 001. ...

Respondents

Writ Petition has been filed, praying for issuance of a writ of mandamus, directing the first respondent to pass appropriate orders in respect of its show cause notice, dated 09.06.2014, after giving due opportunity to the petitioner by considering the explanation of the petitioner, dated nil, received by the first respondent on 06.08.2014.

For petitioner : Mr.S.Ravindran

For respondents : Mr.R.Vijayakumar,
Addl.Govt.Pleader

O R D E R

By consent, the Writ Petition is taken up for final disposal.

2. The deponent of the affidavit is the occupier of the petitioner private limited company, namely, M/s.Stumpp Schuele & Somappa Auto Suspension Systems Pvt.Ltd., and he would state that the company is engaged in the manufacture of suspension products used in automative applications and the factory is situated at No.139, Karanai Village, Perambakkam Post, Thiruvallur-631 402, and it is also covered under the Factories Act, in short, "the Act".

3. The petitioner would further state that on 28.05.2014, the first respondent inspected the establishment of the petitioner, and during the inspection, it has demonstrated that it has been duly complying with various provisions of the Act, and the first respondent was also satisfied. However, to its shock and surprise, a show cause notice was issued on 09.06.2014, alleging violation of various provisions of the Act as well as the provisions of the Contract Labour (Regulations and Abolition) Act, 1970. The petitioner, in response to the said show cause notice, submitted a reply on 06.08.2014.

4. The grievance of the petitioner is that the respondents have not passed any orders based on the reply submitted by him, and, instead, they launched prosecution under S.T.C.Nos.341 to 351 of 2014 on the file of Judicial Magistrate, Thiruvallur, which proceedings were put to challenge in W.P.Nos.588 and 1222 to 1231 of 2015 and this Court has entertained the said Writ Petitions and granted interim stay of the criminal proceedings.

5. It is the specific case of the petitioner that the show cause notice, dated 09.06.2014, issued by the first respondent is contrary to the judgments, reported in 2007 (4) LLN 828 and 2011 (2) LLJ 525, and hence he has come forward to file this Writ Petition.

6. Learned counsel for the petitioner has drawn the attention of this Court to the above cited judgments and would submit that in similar facts and circumstances, this Court has held that appropriate orders should be passed in accordance with law in respect of the response given to the show cause notice, against which, appeals are also provided under Section 107 of the Act, and, accordingly, directed the respondent therein to consider the explanation submitted by the petitioner therein and pass orders in accordance with law, and also granting liberty to the parties, to work out their remedy, and hence prays for similar orders.

7. Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader, appearing for the respondents, by drawing the attention of this Court to the counter affidavit of the respondents, would submit that Section 107 of the Factories Act would not attract to the facts and circumstances of the present case, and, in view of the violations committed by the petitioner, appropriate sanction was also obtained for launching criminal prosecution and the said prosecution is pending on the file of Chief Judicial Magistrate, Thiruvallur, and prays for dismissal of the Writ Petition.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it. It is relevant to extract the relevant portions of the Division Bench judgment of this Court passed in Inspector of Factories, Vellore, v. Showa Engineering Ltd., Sholinghur, reported in 2007 (4) LLN 828, which read as under :

"2.The writ petitions are filed against the show cause notice, dated 17 December 2002, on the basis of the inspection conducted on 29 October 2002 with reference to the occurrence of accident on 26 October 2002 in the premises of the writ petitioner and the writ petitioner was directed to give his explanation within a period of seven days. Accordingly, by letter, dated 8 January 2003, the Manager of the writ petitioner submitted his explanation and also requested 15 days time on behalf of the writ petitioner to give a detailed explanation. A memo was sent by the Inspector of Factories on 13 January 2003, negating the request made by the writ petitioner. Thereafter, a reply was sent on 22 January 2003. Before receipt of the above said reply, as the complaint has to be lodged within 90 days from the date of accident i.e., 26 October 2002, a proposal was submitted on 14 January 2003 to the Chief Inspector of Factories, Chennai, for getting sanction to launch criminal prosecution against the writ petitioner as well as the Manager. Aggrieved by the action of the respondent, writ petitions are filed contending that as contemplated under Section 88 of the Factories Act, immediately after the occurrence of the accident, it was intimated to the Inspector. Though it is denied by the Inspector, after consideration of the explanation submitted by the Manager and the writ petitioner on 8 January 2003 and 22 January 2003, the respondent should have passed an order in accordance with law, against which, an order of appeal is provided under S.107 of the Factories Act. Therefore, in view of not considering the explanation submitted by the Manager and the writ petitioner, dated 8 January 2003 and 22 January 2003, respectively, launching the prosecution mainly on the ground that they have to launch the prosecution within a period of three months from the date of knowledge of the accident is illegal, contrary to the provisions of the Factories Act and detrimental to the interest of the petitioner, as they have lost the right of appeal provided under the statute and they also have a right to seek time to comply with the lapses pointed out during the inspection by the Inspector and the limitation starts from that date instead of 90 days from the date of knowledge of the accident. Therefore, the order is set aside. The only reason for not considering the explanation submitted by the Manager on 8 January 2003 is that they want to drag on the prosecution which has to be launched

within a period of three months from the date of the accident and the show cause notice, dated 17 December 2002, was not treated as a final order, which is illegal.

3. We are not able to accept the explanation offered by the respondent that the show cause notice, dated 17 December 2003, is not a final order, which is quite contrary to the provisions of the Act and consequently on the alleged presumption that they want to drag on the proceedings and that the limitation of three months has lapsed, the prosecution launched against the petitioner in C.C.No.3 of 2003 is set aside. The respondent is directed to consider the explanation submitted by the writ petitioner dated 8 January 2003 and 22 January 2003 in reply to the show cause notice, dated 17 December 2002 and pass appropriate orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the parties have to work out their remedy, viz., seeking extension of time to comply with the lapses pointed out by the Inspector under Explanation 2 under S.106 of the Factories Act. Accordingly, the writ petitions are allowed and writ appeals are dismissed. Consequently, connected W.A.M.Ps. are dismissed. No costs."

9. Though it is contended by the learned counsel for the petitioner that criminal prosecution cannot be launched till the disposal of the reply submitted to the show cause notice, a perusal of Section 106 of the Act does not contemplate or prescribe such a procedure. Be that as it may, the first respondent, after receipt of reply to the show cause notice, is bound to dispose of the same in accordance with law.

10. In the light of the above facts and circumstances, this Court directs the first respondent to take into consideration the reply, dated 06.08.2014, 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 Chief Judicial Magistrate, Thiruvallur.

11. Writ Petition is disposed of accordingly. No costs.
Consequently, the connected M.P.No.1 of 2015 is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

dixit

To

- 1.Additional Director (Industrial Safety and Health),
A-28, Industrial Estate,
Guindy,
Chennai-600 032.
- 2.The Deputy Director of Industrial Safety
and Health (Inspector of Factories)m
No.6, Lalbahadur Sasthri Street,
Periyakuppam,
Thiruvallur - 602 001.
3. The Inspector of Factories, Thiruvallur
4. The Chief Judicial Magistrate, Thiruvallur

copy to: The Section Officer,
"Writ Section"High Court Madras-104

+1 cc to Mr.S.Ravindran Advocate sr.42300

W.P.No.7434/2015

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