

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.07.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.12613 of 2013
and
M.P.Nos.1 to 3 of 2013

Order Reserved on 23.06.2015 Judgment Pronounced on
15.07.2015

M/s.Regency Ceramics Limited,
Yanam - 533 464.

Rep. by its President (International Operations)
/ Authorized Signatory

... Petitioner

Vs.

1.Government of Puducherry,
represented by
Secretary to Government (Labour),
Labour Department,
Puducherry.

2.Regency Ceramics Staff and Workers Union
(Erstwhile named as Regency Ceramics Officers
and Workers Union),
Represented by its President / Secretary,
D.No.2-9-047, Thota Street,
Yanam - 533 464.

3.Workers Welfare and Rights Protection Front of Yanam,
Represented by its Convener,
Main Road,
Yanam - 533 464

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first respondent in G.O.Rt.No.50/AIL/LAB/J/2013 dated 10.04.2013 and quash the same.

For Petitioner : Mr.V.Karthic
for M/s.T.S.Gopalan & Co.

For Respondents : Mr.A.Tamilvanan (for R1)
Government Advocate (Pondicherry)

Mr.R.Sankarasubbu for R2
R3 - Served (No Appearance)

O R D E R

1. The petitioner is the President of the petitioner's company namely M/s.Regency Ceramics Limited that in the year 1983, the petitioner put up a unit for the manufacture of Ceramic tiles in Yanam, which is part of the unit at Pondicherry surrounded by all sides by the State of Andhra Pradesh. The manufacture of ceramic tiles involves in the use of ball clay, quartz, feldspar and other glazes. It was a gas based manufacturing unit. In course of time, separate legal entities were created for supply of glazes, paper products and logistics. The three legal entities were Regency Transport Carriers Limited, Regma Packaging (P) Limited, Regma Paper Products and Regency Glazes Limited (I & II). In fact the first unit of Regency Glazes Limited was shifted to another area due to pollution problem and it is called as Unit No.II. The ceramic tiles unit was initially using LPG supplied by Public Limited Oil Companies. When once Krishna Godavari Basin commenced producing natural gas, the petitioner started using the natural gas from 1994. In the year 2000, Regma Ceramics Limited, another company of the same group put up a unit at Karaikal, a unit of Pondicherry for manufacture of ceramic tiles. Regency Glazes Limited, Yanam, used to supply glazes even to Regma Ceramics Limited. There was also another company called Regma Packaging Private Limited, which manufactures corrugated boxes for packing of the finished ceramic tiles. Regma Paper Products, Yanam undertakes printing of wrappers. The petitioner has always been paying its workmen fairly reasonable wages. Apart from wages the petitioner was supplying its workmen food, snacks and beverages at highly subsidized charges. The petitioner has also made arrangement for providing free education to the children of the workmen in the Schools and Colleges established by it in Yanam. In January 2011, a handful of workmen nurtured a grievance and wanted to precipitate a confrontation. With the support of a sitting Member of Parliament of the nearby constituency, the second respondent union came to be formed. Initially the second respondent had taken up the issue of 54 casual workmen and also submitted a charter of demands dated 21.05.2011. In August 2011, an employee by name M.S.Murali Mohan was dismissed for an act of misconduct of theft. A section of the disgruntled workmen claiming to be members of the second respondent purporting to take up the cause of M.S.Murali Mohan resorted to go-slow, sabotage, etc. In

December 2011 after a meeting with the president of the company, on 05.12.2011 this section of workmen resorted to work stoppage, sabotage. They damaged some of machinery and cut the conveyor belt. In that context disciplinary action was initiated against 5 workmen and they were placed under suspension pending enquiry.

2. The Government of Puducherry was being appraised about the industrial unrest and not only the Conciliation Officer but also the Administrator, Yanam was holding discussion with the parties to restore normalcy. One such meeting was fixed before the Labour Commissioner on 22.12.2011 at Puducherry. On that day while discussing the charter of demands and other issues, representatives of workmen insisted about the revocation of suspension of 5 workmen against whom the Disciplinary action was initiated for acts of go-slow, sabotage, damage, etc. The meeting ended without any result. In December 2011, there was utter pandemonium and chaos in the factory with practically no production activity. On 02.01.2012, the management informed the workmen that only such of those workmen who give an undertaking that they will maintain peace while attending the work would be permitted to enter the factory for work but the workmen were not prepared to give the undertaking. On 24.01.2012, the Administrator, Yanam, called the parties for a meeting and during the discussions, the workmen agreed to sign a modified letter of undertaking and also the management agreed to discuss all the issues by end of March 2012. However, the workmen were adamant that unless the suspension of the 5 workmen was revoked they would not agree to restore the normalcy. They also demanded the reinstatement of M.S.Murali Mohan. On 25.01.2012, though a meeting was scheduled to be held with the Administrator, in view of the insistence for reinstatement of M.S.Murali Mohan, no understanding could be arrived at. After the meeting on 25.01.2012, the Officers gathered information that the office bearers of the second respondent were planning for a more aggressive action of not only causing damage to properties but also resort to physical violence to the Officers and workmen who were willing to work. On 27th early morning at 7.30 a.m., the workmen were moving in an aggressive mood and standing near Buddha Park and prevented the willing workmen from entering the factory in front of the main gate of the factory in gross violation of the directions given by this Court in A.No.5697 of 2011 in C.S.No.93 of 2011. At about 7.30 p.m. the Police picked up 10 persons under custody and took them to the Police Station. Immediately hearing the same, a group of 30 persons led by the dismissed workman M.S.Murali Mohan went to the Police Station and resorted dharna inside the Police Station. It was understood at about 8.00 a.m. M.S.Murali Mohan complained of chest pain and the workmen surrounding him did not allow the police to take him to hospital. When his condition further deteriorated, the workmen around him permitted the police to take him to hospital and by the time he was taken to the hospital he had collapsed. On hearing the death of M.S.Murali Mohan, the striking workmen attacked the police station and police personnel. Simultaneously one group of workmen

proceeded to the house of the President K.C.Chandrasekar and mercilessly bet him with stick and iron rods. They butchered him to death. Mr.V.B.R.Moorthy, Senior Manager - PR, who also was injured witnessed the torture to K.C.Chandrasekar in the hands of the agitating workmen. The workmen also went to the houses of the various officers, attacked them physically and damaged valuable house-hold items belonging to them. They also caused damage to the properties not only in the Ceramic Factory but also in the nearby factories of Regency Glazes Limited-I, Regency Glazes Limited-II, Regma Packaging Private Limited, Regma Paper Products and also Regency Transport Carriers Limited. The agitating workmen also caused extensive damage to the properties of the educational institutions like Regency Public School, Regency Junior College and Regency College of Education wherein the petitioner has been providing education free of cost to the wards of its employees. They caused very extensive damage to machinery, equipments, electrical lines, control panels, etc. As a result of the orgy of violence unleashed on 27.01.2012, on 31st January, the petitioner was constrained to declare lock out.

3. The agitated workmen not only attacked the human beings but also caused extensive damage to the building, machinery, equipments, fittings, pipe lines, electrical installations and every consumable item which were essential for the running of the factory. After the incident on 27.01.2012, the condition of the petitioner's factory as well as the other factories have all become non functional and the factory operations can be revived only by reconstructing the buildings which were pulled down, importing machinery from Italy and erecting it, restoring the entire factory infrastructure. All these will require apart from huge funds considerable amount of time. The company has made its claim on the National Insurance Company with whom the company's properties were insured. The insurance company sent its surveyor sometime in March 2012. The insurance company's surveyor wanted the machinery supplier from Italy to come and assess the damage and after receipt of their report the Insurance Company would undertake their survey. However, the representatives of the machinery suppliers from Italy could not come to the factory before March 2013. The petitioner is highlighting these factors only to convey the intensity of the damage and the length of time required for reviving the factory operations as it has not received any adhoc/on account payment from the insurance company so far. On 09.05.2012, the Conciliation Officer submitted the Conciliation failure report in respect of ID.46, 66 and issue of lock out.

4. The Chief Labour Commissioner (Central), New Delhi, called the parties for a discussion in the office of the Regional Labour Commissioner, Hyderabad. The Chairman and Managing Director of the petitioner company was directed to come for discussion. In the course of the discussion, all the officials were harping that some positive assurance should be given as to when the lock out would be lifted and work should be resumed. Though the Chairman and Managing

Director of the petitioner pleaded with them that the lifting of the lock out and resumption of work depends on the working condition of the factory being restored and that depends upon several circumstances which are beyond the control of the petitioner. It was also pleaded that a claim has been made to the insurance company and the insurance company has yet to send its surveyor to assess the damage. It was only after the survey by the surveyor, the claim for damages would be taken up for consideration. When once that funds are given, once again the petitioner could approach the financial institutions for the additional financial support. Thereafter orders have to be placed for machinery in Italy and only after the machineries are imported they could be erected. Having regard to the various imponderables, it was not possible to give an assurance about the date of resumption of work. However, owing to the pressure of the higher officials like the Chief Labour Commissioner (Central) and other Authorities, the Chairman and Managing Director also made it impossible to leave the meeting without making commitment. In that situation, the Chairman and Managing Director was pressurized to say that he would consider lifting of lock out within 10 days and it was so recorded. However all the pleadings and difficulties involved for resumption of work were placed on record so that one can discern in what context the reference for 10 days time to lift the lock out could have been secured. On 11.05.2012, the Chief Labour Commissioner and other officials were invited to the factory and after having witnessed the actual damage, they were fully aware that it was just not possible to lift the lock out within 10 days. On 24.05.2012, the petitioner addressed a letter to Secretary to Government, Labour, Puducherry narrating the entire events from January 2011 upto 10.05.2012 when the purported commitment was extracted.

5. On 07.06.2012, the Government of Puducherry made 4 references in G.O.Rt.98, 99, 100 and 101 and the issues referred as follows:

"Whether the dispute raised by Thiru.B.Sivarama Sastry and other 53 workers against the management of M/s.Regency Ceramics Limited, Yanam over their non employment are justified?"

"Whether the dispute raised by Thiru.Sathibabu and other 620 workers against the management of M/s.Regency Ceramics Limited, Yanam over refusal of employment are justified?"

"Whether the dispute raised by the workers of Regency Ceramics Limited, Yanam, against the management of M/s.Regency Ceramics Limited, Yanam over charter of demands such as (i) grant of Dearness Allowance, (ii) implementation of regular increment at regular period (iii) regularisation of all the workmen employed directly intermediary such as casual loading and unloading (iv) revision of wages to Rs.8,500/- per month, etc. are justified?"

"Whether the dispute raised by the workers of Regency Ceramics

Limited and Regma Packaging (P) Limited, Yanam represented by Regency Ceramics Officers and Workers Union against the management of M/s.Regency Ceramics Limited, Yanam and M/s.Regma Packaging (P) Limited, Yanam regarding the lock out declared by the management is illegally justified?"

The disputes are now pending before the Industrial Tribunal, Puducherry.

6. It is submitted that Section 10(1) of the Industrial Disputes Act, inter alia vests with the appropriate Government with the power to refer an industrial dispute to the Labour Court or industrial tribunal for adjudication. The Government is also empowered to make establishments which are not parties to the industrial dispute also be parties to the order of reference for adjudication. As per Section 10(2) of the I.D. Act where parties to the industrial dispute agree for a reference of an issue for adjudication and if the appropriate Government is satisfied about it, it can make the reference. It is not uncommon that the workmen not only raise industrial dispute making demands but also resort to collective action in the form of strike to press the demands. After going on strike they may pursue the dispute before the conciliation machinery. Similarly the employer can raise an industrial dispute about his requirements and pursue them as an Industrial Dispute. The employer could also declare lock out to press the workmen to accept his proposed terms of employment. When once the issues on which the industrial dispute is raised and for which they go on strike or lock out was declared are referred for adjudication then there was no point in the parties pursuing their action in the form of strike or lock out on the same issue. It was in that context, by Section 10(3) of the I.D. Act, the Government is empowered either while making reference or after making the reference of a dispute to pass an order prohibiting the continuance of strike or lock out.

7. On 22.10.2012, the first respondent issued a show cause notice stating that in the meeting held before the Regional Labour Commissioner on 10.05.2012 that the lock out would be lifted by 20.05.2012, that the petitioner did not take steps to lift the lock out and that therefore in the interest of peace it was necessary to prohibit the continuance of lock out and therefore the petitioner should show cause why an order shall not be made under Section 10(3) of the I.D. Act prohibiting the continuation of lock out. On 29.10.2012, the petitioner gave a reply explaining the circumstances for continuance of lock out. There was a further representation dated 31.10.2012 addressed to the Chief Minister, Government of Puducherry. On 10.04.2013, the first respondent issued G.O.50 in exercise of the powers under Section 10(3) of the I.D. Act holding that the lock out was declared when the conciliation proceedings were pending, that the lock out was there even on the date the 4 references were made on 07.06.2012, that in the meeting held on 10.05.2012, the petitioner tentatively agreed to lift the lock out on 20.05.2012, that the Government issued the show cause notice to lift

the lock out, that the management so far failed to comply with the same and that therefore it issued an order prohibiting the continuance of lock out with immediate effect. Section 22 of the I.D. Act deals with the subject of declaration of strikes and lock outs in public utility service. Section 23 deals with strikes and lock outs in establishments other than public utility service. In the case of an establishment which is not a public utility service, as in the case of the petitioner's establishment, the lock out will be illegal if it was declared (a) during the pendency of conciliation proceedings before a Board, (b) during the pendency of proceedings before the Labour Court, Tribunal or National Tribunal, (3) during the pendency of arbitration proceedings before an arbitrator under Section 10A of the I.D. Act (4) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. Section 24(2) provides that (i) lock out is illegal if it is commenced or declared in contravention of Section 22 or Section 23; or (ii) if it is continued in contravention of an order made under Sub-section (3) of Section 10 of the I.D. Act. In the instant case, on 31.01.2012 when the petitioner declared lock out no conciliation proceedings was pending before any Board, no proceedings was pending before a Labour Court, Tribunal and National Tribunal, no arbitration proceedings was pending before any arbitrator nor was it declared in respect of the matters covered by the settlement or award during the period of its operations. Therefore the lock out was not illegal. Now an order is being passed under Section 10(3) of the I.D. Act prohibiting the continuance of lock out declared on 31.01.2012. Therefore by reason of this order, continuance of the present lock out may become illegal. If once this becomes illegal, then it gives a right to the workmen to demand wages for the period of lock out on the ground that which is illegal is also unjustified. The question for consideration is that when the violent situation created by the workmen on 27.01.2012 which led to the declaration of lock out on 31.01.2012 and the said situation having not changed was there a cause of action for the first respondent to invoke Section 10(3) of the I.D. Act. Whatever situation which was prevailing on 31.01.2012 continues even as on date and it is not certain how long the situation will continue. When there is no scope to alter the situation or reviving the factory operation in the foreseeable future the workmen being responsible for that situation whether an order passed under Section 10(3) of the I.D. Act making the continuance of the lock out illegal so as to make the workmen entitled to claim wages for the period of lock out is valid in law and justified. This question has to be examined by this Court in the present writ petition. It is submitted that the order of the first respondent in G.O.Rt. No.50/AIL/LAB/2013 dated 10.04.2013 prohibiting the continuance of lock out declared by the petitioner on 31.01.2012 is vitiated by errors of law and jurisdiction and the same is liable to be quashed.

8. The first respondent/Secretary to Government has filed a

counter statement stating that on 12.08.2011 the workers of M/s.Regency Ceramics Limited have raised an Industrial dispute against the Management M/s.Regma Ceramics Limited, Yanam, over the removal of 54 workers before the Assistant Inspector of Labour-cum-Conciliation officer for Yanam Region. He further submits that on 19.08.2011, the said workers have also raised another industrial dispute against the management of M/s.Regency Ceramics Limited, Yanam over charter of demands before the Assistant Inspector of Labour-cum-Conciliation Officer, Yanam Region and sought the intervention of the conciliation authority to negotiate over charter of demands and reinstatement of terminated workers with back wages.

9. He submits that the Assistant Inspector of Labour, Yanam being the Conciliation Officer under the Industrial Disputes Act, 1947 initiated conciliation and conducted proceedings on various dates for the two industrial disputes over non employment of 54 workers and charter of demands. The petitioner, employees insisted to consider their charter of demands. The petitioner employees insisted to consider their charter of demands like regularization of services, granting of annual increments, revision of wages and to reinstate the terminated workers especially Thiru.M.S.Murali Mohan. The management have filed their common reply statement dated 02.09.2011 and denied the allegations raised by the petitioner employees. They had stated that there are some contract / casual workers working purely on need basis and their services can be removed at any point of time as per their choice and requirement of the management. In the meanwhile certain employees were suspended and one employee was terminated from service. As both parties insisted for conciliation at higher level, a meeting was held by the Commissioner of Labour, Puducherry on 22.11.2011. Since, the employees insisted for reinstatement of the suspended employees and also the terminated employee Thiru.M.S.Murali Mohan, the management representative stated that the suspended employees have committed grave misconduct and they cannot be reinstated in service till the completion of disciplinary proceedings. The Commissioner of Labour had advised the management to provide an opportunity to the employees to rectify the mistakes if any. The management representative sought time to discuss with the top level management and another meeting was scheduled to be held on 04.01.2012. However, on the said date, the workers had not turned up citing the reason that they had financial constraints to come to Puducherry from Yanam and so, they have not turned up. The Commissioner of Labour-cum-Chief Conciliation Officer instructed the Assistant Inspector of Labour, Yanam to have further discussions at Yanam under the guidance of Regional Administrator, Yanam.

10. He submits that on 10.01.2012 the employees had filed a representation over refusal of employment of 621 employees. In the subsequent conciliation meeting held on 19.01.2012 before the Assistant Inspector of Labour, Yanam the management had insisted for submission of an undertaking by the employees to the effect that they

will perform the normal duties entrusted to them and maintain discipline in the factory. But the employees refused to give the undertaking in this regard and the next meeting was posted on 25.01.2012. During the meeting held before the Regional Administrator, Yanam on 23.01.2012, the management initially insisted for an undertaking and the employees objected over certain clauses in the undertaking and finally the employees agreed to sign the undertaking after removing few clauses. The employees further insisted to reinstate 7 suspended employees and M.S.Murali Mohan. The management representative stated that they are ready to reinstate seven suspended employees except M.S.Murali Mohan. In the conciliation meeting held by the Assistant Inspector of Labour, Yanam on 25.01.2012, the employees have stated that they were refused employment because they had refused to sign the individual undertaking. The conciliation authority advised the management to consider the plea of the petitioner employees over reinstatement of M.S.Murali Mohan and the suspended employees. And the next hearing was posted on 31.01.2012. Meanwhile, on 27.01.2012 violence erupted at factory premises and some other places and the management declared lock out in M/s.Regency Ceramics Limited on 31.01.2012 and M/s.Regma Paper Products, Yanam on 02.02.2012.

11. He further submits that on 22.02.2012, the Regency Ceramics Staff and Workers Union (Erstwhile named as Regency Ceramics Officers and Workers Union), raised another industrial dispute against the management of M/s.Regency Ceramics Limited and M/s.Regma Paper Products, Yanam before the Assistant Inspector of Labour, Yanam over lockout. The Conciliation Officer at Yanam initiated conciliation and the management filed a letter dated 16.04.2012 and requested to close the conciliation proceedings and submit a report to the Government. The Assistant Inspector of Labour, Yanam, issued report on failure of conciliation vide Nos.66/AIL-Y/ID/2011-12/33 (dispute over non-employment of 54 workers), 46/AIL-Y/ID/2011-12/33 (charter of demands), 77/AIL-Y/ID/2011-12/33 (over refusal of employment of 621 workers) 78/AIL-Y/ID/2011-12/33, dated 09.05.2012 (over the dispute of Lock-Out) vide G.O. Rt.No.98, 99, 100 and 101 dated 07.06.2012 and the issues were referred to the Industrial Tribunal, Puducherry and the same are still pending for adjudication.

12. He further submits that in the meeting held on 10.05.2012 in the presence of Chief Labour Commissioner (Central) and the Deputy Labour Commissioner, Puducherry in the office of the Regional Labour Commissioner (Central), Hyderabad with the Chairman-cum-Managing Director of the Regency Ceramics Limited, Yanam, the management tentatively agreed to lift the lock out on 20.05.2012. But, subsequently in the letter dated 24.05.2012 they have stated that as the Insurance Company has to furnish a detailed survey report on the damages done to the plant and machineries which is under process, they require some more time to consider to lift the lock out.

13. He further submits that the Regency Ceramics Staff and

Workers Union (erstwhile named as Regency Ceramics Officers and Workers Union) and Workers Welfare and Rights Protection Front of Yanam have requested the Government to issue orders under Section 10 (3) of Industrial Disputes Act, 1947 prohibiting the continuance of lock out observed by the management of M/s.Regency Ceramics Limited, Yanam. M/s.Workers Welfare and Rights Protection Front, Yanam in its letter dated 16.09.2012 has expressed fear and apprehension that the petitioner herein is taking steps to remove all the machinery from the plant with an intention to shift the industry. The Rights Protection Front has further stated that the plant is in 100% running condition. He further submits that in consideration of the representation received and in order to restore industrial peace, a show cause notice No.8478/AIL/LAB/J/2012 dated 22.10.2012 was issued to both the managements of M/s.Regency Ceramics Limited and M/s.Regma Packaging (P) Limited, Yanam as to why an order prohibiting Lock-out should not be issued under Section 10(3) of the Industrial Disputes Act, 1947. But, the management in their representations dated 29.10.2012 and 31.10.2012 have stated that there is no progress in restoring the plant. After considering the objections, orders under Section 10(3) of the Act was passed. He further submits that even after lapse of many days, the management failed to comply with the directions issued in the said notice and to take necessary steps for operating the plant and therefore the reasons stated by the management is far from truth and not acceptable. The contention by the management that they were forced to accept for lifting of Lock-out by 20.05.2012 in the meeting held with the Chief Labour Commissioner (Central) is false and therefore denied.

14. He further submits that in the case of Chittivalasa Jute Mills Limited Vs. The Principal Secretary to Government, Labour Employment Training Factories Department, Government of Andhra Pradesh and others while discussing an identical case, the Andhra Pradesh High Court has quoted the following paragraph from the order in Mysore Kirloskar Limited Vs. State of Karnataka.

"Therefore, when the validity of the Lock out or strike is the subject matter of reference, certainly the Government has the power to prohibit" continuance of such strike or lock-out which is the subject matter of the reference, pending disposal of the said dispute being adjudicated. Such an interpretation would serve not only the cause of justice but also the object with which the legislation is passed. In the absence of any express words prohibiting continuance of strike or Lock-out which is the subject matter of reference itself, the only interpretation that can be placed and this provision is the Government as the power to prohibit the continuance of any strike or Lock-out which itself is the subject matter of reference and continuance of any strike or Lock-out in connection with dispute referred for adjudication which is in existence on the date of reference. In that view of the matter, I am of the view that the order passed by the Government prohibiting the continuance of Lock-out which is the subject matter of reference itself under Section 10 (1) of the Act is valid and legal and do not suffer from any

illegality".

15. He submits that in the present case the Lock-out itself has been referred as one of the four disputes and they are pending the consideration of the Industrial Tribunal. Therefore it is clearly evident that all the three ingredients for attracting the application of section 10(3) of the Industrial Disputes Act, 1947 are present. He further submits that in the case of Eenadu Press Workers Union and Others Vs. Government of Andhra Pradesh and others, the Andhra Pradesh High Court has held that "The main object of section 10(3) is to maintain an atmosphere of peace and calm when the matter referred to is being adjudicated upon by the Tribunal or the Labour Court. It will not be conducive to industrial peace if side by side with the adjudication of the dispute by the Tribunal, a strike or lock-out continues. It would be like having a truce and a war at the same time. It was therefore, felt by the Legislature that the Government which refers the dispute for adjudication should be empowered to prohibit the continuance of a strike or lock-out in connection with such dispute. If it is to be held that in such circumstances the Government is bound to issue a show cause notice to the parties, as to why they should not prohibit the continuance of strike or lock-out, the very object of Section 10(3) would be frustrated. If a notice is given to the employees to show cause against the continuance of strike, the management would also insist upon an opportunity to show cause that the strike should be prohibited. Similarly in the case of lock-out, an opportunity to the management would also involve, an opportunity to the employees to rebut the case of the management. In the result, the Government will be faced with the responsibility of deciding the respective cases to some extent even though the main dispute is pending before the Tribunal for adjudication. The most important step is to first prevent the continuance of the strike or lockout and the very object of Section 10(3) would be defeated if it is held that it is incumbent on the Government to issue notices to the employees and the management and to hear them, which would lead to considerable delay in passing the order prohibiting the continuance of the strike".

16. He further submits that only after considering the plight of the large number of workmen and all the letters/representations of the management as well as the assurance given to lift the Lock-out by the management and the fact of prolonged continuation of Lock-out and also the judgments of Hon'ble Andhra Pradesh High Court Orders under Section 10(3) of I.D. Act, 1947 cited supra, the Government issued orders prohibiting the continuance of lockout declared by the management of M/s.Regency Ceramics Limited and M/s.Regma Packaging (P) Limited, Yanam. He further submits that more than a thousand workers and their families are depend upon the petitioner for their livelihood. If the order of stay passed by this Court in M.P.Nos.1 and 1 of 2013 in Writ Petition Nos.12613 of 2013 and 12614 of 2013 is not vacated, irreparable loss and damage would be caused to the workmen and their families. He further submits that Chairman and

Managing Director, Regency Ceramics Limited, Yanam in the reply dated 31.10.2012 to the show cause notice No.8478/AIL/J/Lab/2012, dated 22.10.2012 to explain as to why orders under Section 10(3) of the Industrial Disputes Act, 1947 prohibiting the continuance of lock-out cannot be issued, has stated that due to several procedural formalities at least a minimum period of six months would be required to lift lock-out. It almost eight months have lapsed since the reply has been received seeking six months extension to lift lockout and make it operational. Hence the petition has no merits.

17. The second respondent namely M/s.Regency Ceramics Staff and Workers Union General Secretary has filed a counter statement stating that the Regma Packaging Private Limited, Regma Paper Products and Regency Glazes Limited I and II, Regency Transport Carriers Limited were the correlated sections to the Regency Ceramics Limited i.e. petitioner's company. In the same way their workforce and managerial staff were inter-transferable among all of these sections. Altogether two said sections aid to produce the end product of petitioner company. While Regma paper products, Regma Packaging deals with packing process to the finished product alike Regency Transport Carriers, transports the same to all over India. As such they deny the petitioners averments that the Regma Packaging Private Limited, Regma Paper Products and Regency Glazes Limited I and II, Regency Transport Carriers Limited are the separate legal entities and the same should be strictly proved by the petitioner herein.

18. It is submitted that the workforce / workers / members of their Union, who were on the roles of Petitioner Company could get transfer to the Regma Ceramics Limited, situated in the Karaikal, Puducherry with an malafide intention by selectively picking the workers those who raise their voice against the managements unfair attitude and thereby crushes any raise of oppose at its bud stage. It is further submitted that the whole contention was false and blatant lie and thereby denied and thus petitioner is put to strict proof of the same. On contrary, at least, Minimum wage was also not paid to the large number of workers from several years. More to the point, the petitioner used to disburse the said salaries of the workers without fixing any date in a month and some time stop the payment of salaries to two or three months also. These consequences lead almost all the workers to fell in deep debts in the want of leading their domestic life.

19. It is submitted that our Union was formed in the year 2011 January whereas by that time the workers of this company have been constantly pushed into turmoil due to the management's harsh and coercive methods of extracting work in violation of labour laws. These violations lead all of us to unite and form into their Union. Consequently, they placed several demands before the petitioner management like (a) fixing a date for salary payment as per Payment of Wages Act with a motive to prevent irregular payments prevailing

by that time (b) equal bonus that being paid to the Karaikal workers of the petitioner company (c) to regularize the service of workers who were serving for more than 15 years (d) to implement 8 hours work for a day to every worker (e) facilities like drinking water and providing uniform dress etc. Due to adamant attitude, no heed was paid by the petitioner management to solve the same. At this juncture, they celebrated the May Day in the year 2011 which is first after formation of their Union after duly informing to the petitioner herein. In this Celebrations, every worker of the petitioner company participated by becoming members of their Union. The social activists, rights organizations and different trade union leaders of several parties and political parties participated and made success of that meeting. On that, the petitioner management took hatred view on all the workers more particularly on the active participants of their Union and started its vindictive methods on them. In that connection, in the month of May 2011, petitioner management as its first stroke, victimised the 54 casual workmen wherein among them 45 were women and 9 were men workers on a false and trumped up allegation that all of them were absent on May Day. During taking the said decision the petitioner company had not taken into the account of their blemishless long 15 years service which ought not to be done so. As such we have taken up the said cause and moved to the labour authorities. Apart from that, the Charter of Demands i.e. both statutory and non statutory, raised in the Month of December 2010, has got no response from the management side as such no negotiations took place between the union / second respondent and the petitioner herein. However they continuously put their effort for negotiating with the petitioner, on these demands, so that they could be resolved in amicable manner but their hope went in vain. Finally, they placed both the above said disputes before the concerned labour authorities whereby the labour authorities admitted as a dispute and conducted conciliations. While things stood so, the management has continued its vindictive acts towards the workers / active participants of the second respondent Union. In the month of August 2011, an employee by name M.S.Murali Mohan, a founder member of their Union, was dismissed for an alleged act of misconduct which is in fact false and cooked up by the management with a mounted enmity on him for his active role of Trade Union activism. The petitioner management bore grudge on the said workmen because he fought ferociously and restlessly against the managements unfair labour activities. Some of the antecedents that lead in his leadership were that when their union was waiting for obtaining registration under trade union act, the management came to know about the same clandestinely and made its move against the Union Office bearers by issuing malafide transfer orders to the 9 office bearers and posted them to Karaikal manufacturing unit located 800 kms away from Yanam. There then Mr.M.S.Murali Mohan who was keeping the workers united by that time inspired the workers exposed the hidden agenda of the petitioner management that designed to smash their Union formation in the bud stage and thereby seriously opposed the said malafide transfers. Upon great persistence, the Administrative officials of

Yanam involved into the issue and suggested the management to stop such vindictive approach against the workers. As such the management withdrew the malafide transfer orders issued against the office bearers of the Union. Since then the petitioner management has been waiting to take revenge against him and finally removed him in the month of August 2011 on false accusation of misconduct. The said facts were conveniently concealed by the Petitioner herein in the present petition for the reasons best known to them. It is therefore submitted that they in toto deny that the averments of the petitioner stated in the para-4 that in January 2011, a handful of workmen nurtured a grievance and wanted to precipitate a confrontation with the support of a sitting Member of Parliament of the nearby constituency, their union came to be formed and a section of the disgruntled workmen claiming to be members of the second respondent purporting to take up the cause of M.S.Murali Mohan resorted to go slow, sabotage etc. and in December 2011 after a meeting with the President of the Company, on 05.12.2011 the Section of workmen resorted to work stoppage, sabotage, they damaged some of the machinery and cut the conveyor belt and in that context disciplinary action was initiated against by workmen and placed under suspension pending enquiry and further state all the above allegations are false and baseless and created for the purpose of this case and the petitioner is put to strict proof of the same.

20. It is additionally submitted that in the Month of November 2011 workers asked the management to pay the equal bonus that was being paid to the workers in the Karaikal unit and also to pay the increment. The management informally held a meeting with the workers and informed them that they are ready to pay bonus but said that it will not be equal to bonus receiving by the Karaikal workers. But regarding to the increment, the management agreed to pay and at the same time imposed a condition on the workers that they could receive the increment after reaching the targeted production as set by the petitioner management. The workers took it up as a challenge and worked hard to increase the production. Within no time the workers increased the production (i.e. 36,000 sq. mts. per day within 15 days) whereby all the go downs of the petitioner company were totally filled with the said production. Consequently, the five office bearers of the union turned up to the management to fulfill the promise of paying of the increment. Surprisingly, the management breached its promise and adamantly rejected the request of the said office bearers by saying that they would not pay the increment. In addition, the management victimized these said five-office bearers, who went to ask about the increment, and further stopped in entrusting the work to the remaining workers and kept them idle except taking attendance. Similarly, management further stopped paying Gas bills and electricity bills which are essential to run the Company and burnt the records of the production over that period. To mask their unfair and unholy acts the management started blaming workers and falsely propagated on workers as they were involved in go-slow, sabotage, damage etc. Meanwhile, the Commissioner of Labour

sent a letter dated 12.12.2011 intimating both the management and their Union to attend for conciliation over the disputes of Charter of Demands pending with them. On that day i.e. on 22.12.2011 management adamantly refused to discuss the said issue with them and left the respected office. Thereafter, at the surprise of workers, on 02.01.2012 the management pressurized all the workers working in "C" shift (midnight) to put signature on an undertaking brought with them and those who refuse to sign on were necked out from the workplace by security personnel. It is therefore submitted that the averments of the petition in para-5 that the Government of Pondicherry was being appraised about the industrial unrest and not only the Conciliation Officer but also the Administrator, Yanam was holding discussion with the parties to restore normalcy and one such meeting was fixed before the labour Commissioner on 22.12.2011 at Puducherry and on that day while discussing the charter of demands and other issues, representatives of workmen insisted about the revocation of suspension of 5 workmen against whom the Disciplinary action was initiated for acts of go-slow, sabotage, damage, etc. and the meeting ended without any result and in December 2011, there was utter pandemonium and chaos in the factory with practically no production activity and before Regional Administrative Officer of Yanam i.e. on 24.01.2012, the workmen agreed to sign a modified letter of undertaking and also management agreed to sign a modified letter of undertaking and also management agreed to discuss all the issues by end of March 2012 and that however, the workman were adamant that unless the suspension of the 5 workmen was revoked they would not agree to restore the normalcy and they also demanded the reinstatement of M.S.Murali Mohan were all false, baseless and distorted version of the petitioner. In fact, management adamantly refused the requests of Regional Administrative Officer of Yanam made to the petitioner management to press for the undertaking from the workers with a view to establish the industrial peace and harmony which also went in vain.

21. It is submitted that the entire averments of petitioner herein are false and cooked up for this case as such the entirety was a distorted version and were specifically herein denied and to put to strict proof of the same. All the incidents that were occurred all over Yanam on 27.01.2012 was in CBI investigation by virtue of the common order of this Court dated 27.06.2012 in CrI.O.P.No.3902 to CrI.O.P.No.3907 of 2012. However, in the month of February 2012, they had made their submissions at length to all the authorities in the representations submitted therein while disputing the Lock-out demanding it to declare the same as illegal. Muchless, these are needless and unwarranted for appreciation in this petition since already same were ceased in said criminal petition.

22. It is submitted that the contention of petitioner that agitated workmen not only attacked the human beings but also caused extensive damage to the building, machinery, equipments, fittings, pipelines, electrical installations and every consumable item which

were essential for the running of the factory is hereby denied as false and purposefully invented to victimize the workers in the guise of said allegations. In fact, in the early hours on 27.01.2012, M.S.Murali Mohan and a handful of workers were discussing the union affairs at a place some 300 mts. away to regency factory. The Yanam police suddenly swooped on M.S.Murali Mohan beat him and pushed him into the jeep. The workers forced themselves into the jeep to follow M.S.Murali Mohan. He was taken to Yanam Police Station and was beaten black and blue by the police and he collapsed in the said Police Station. Upon great persistence of the workers he was shifted to Government Hospital, Yanam, but was declared by the doctor as brought dead. Subsequently untoward incidents occurred in and around the Yanam. But due to the managements ugly tactics the Yanam police got influenced to them and booked several innocent workers in false criminal cases more particularly on those who were active participants in Union activities. However, the Police Officials of Yanam, who acted as per the directions of the petitioner management in that period, were charged by the C.B.I., for registering false cases an innocent workers whereby clearly establishes the nexus between the management and police officials. It is submitted that they deny the contention of the petitioner herein stated in the said para-7 of the petition that after the incident on 27.01.2012, the condition of the petitioner's factory as well as the other factories have all become non functional and the factory operations can be revived only by reconstructing the buildings which were pulled down, importing machinery from Italy and erecting it, restoring the entire factory infrastructure and all these will require apart from huge funds considerable amount of time as false and set a fictitious story created with an ulterior motive to harass the workers and also to gain wrongfully from the insurance companies and Government. No damage was occurred as well no possible damage can be done to any part of the machinery since they were made with heavy metals for which no insurance company is coming forward to help on the fiction of losses set up by the management. Despite that no factory inspector has also been allowed by the management into the factory to assess the damage. On the other hand if the kiln of the factory does not run in the given temperature the rollers in that will become useless and of course that can be repaired with little expenditure. That much could occur because the management failed to clear the electric bills and Gas bills from December 2011 and additionally it stopped the work from then onwards and kept the factory under undeclared lock-out since 02.01.2012.

23. In response to the para No.8 it is true that on 09.05.2012, the conciliation officer submitted the conciliation failure report in respect of ID 46, 66 and issue of lock out. In response to the para-9 it is submitted that all the averments that mentioned were not happened in the knowledge of second respondent and any how the petitioner is put to strict proof of the same.

24. It is true that on 07.06.2012, the Government of Puducherry

made 4 references in G.O.Rt.98, 99, 100 and 101 and the issues referred respectively were:

"Whether the dispute raised by Thiru.B.Sivaram Sastry and other 53 workers against the management of M/s.Regency Ceramics Limited, Yanam over their non employment are justified?"

"Whether the dispute raised by Thiru.Sathi Babu and other 620 workers against the management of M/s.Regency Ceramic limited of Yanam over refusal of employment is justified?"

"Whether the dispute raised by the workers of the Regency Ceramic limited, Yanam, against the Management of M/s.Regency Ceramics limited, Yanam over chartered of demands such as (i)grant of dearness allowance (ii)implementation of regular increment at regular period (iii)Regularization of all the workmen employed directly intermediary such as casual loading and unloading (iv)revision of wages rupees of 8500/- per month, etc. are justified?"

"Whether the dispute raised by the workers of Regency Ceramics Limited and Regma Packaging (P) Limited, Yanam represented by Regency Ceramics Officers and workers Union against the Management of Regency Ceramics Limited and Regma Packaging (P) Limited, Yanam regarding the lockout declared by the management is illegal / justified?"

25. It is true that the disputes are now pending before the Industrial Tribunal, Puducherry whereat the respondent wantonly dragging the case without filing the counter since one and half year. It is submitted that till today the second respondent Union has not at all resorted any kind of strike in the petitioner factory. With a motive to maintain industrial Peace and harmony it has given representations to both management and labour authorities on their grievances and rights that are being violated since all these years by the petitioner management. In spite of resolving their righteous claims the management always acted harshly and used its coercive and tyrannical methods and suppressed the workers' rights. Anyhow, after great persistence from the workers side the labour authorities acted accordingly on their representations and conducted conciliations on all the disputes raised by their against management. Subsequently, the said disputes have been referred to Industrial Tribunal, Puducherry upon the report prepared by the Conciliation officer as per Section 12(4) of the Industrial Disputes Act. It is therefore submitted that the petitioner has misconstrued the law for which the entire pleadings in para 12, 13, 14 and 15 of the petition as such prima facie it should be rejected and any how the same will no way come to rescue the petitioner herein for several reasons both in fact and law.

26. It is further submitted that workers / second respondent had not gone to any strike or any protest prior to the 27.01.2012 and in

fact it is the petitioner herein who denied the workers into the entry of the factory from 02.01.2012 by bringing the undertaking issue without giving any prior notice to all the workers whereby the same amounts to unfair labour practices. Sudden disallowing of workers into the factory by the management without giving prior intimation is unfair and thereby disallowing the workers who refused to sign on it has to be called as undeclared lock-out. Nevertheless, the said dispute was also referred to the Industrial Tribunal whereas still pending adjudication. Apart from that, the issue of justifiability of lock-out was also pending adjudication before the Industrial Tribunal of Puducherry and the petitioner can raise the said averments at there. As per the industrial jurisprudence, the Government after receiving the failure report on any dispute from the conciliation officer wherein after perusing the same, if the Government still believes, that there is a dispute existing between both the parties, they have to invoke Section 10 to refer the dispute to Labour Court or Industrial Tribunal. The same was done by the Government in this case on the dispute of justifiability of lock-out and with regard to the other disputes. If once, a dispute is referred under Section 10 of the I.D. Act the continuance of the Lock-out has to be prohibited by the appropriate Government under Section 10(3) of the I.D. Act with an obligation to bring industrial peace and harmony. When the validity of Lock-out is the subject matter of reference, certainly the Government has power to prohibit the continuance of Lock-out which is the subject matter of reference, pending disposal of the said dispute being adjudicated. On the other hand that the pleadings of the petitioner herein that the prior to the issuance of Lock-out dated 31.01.2012 there were no disputes pending in conciliation is utter false and misleading statement and not a plausible reason to excuse the petitioner and the petitioner herein is put strict proof of the same. In addition another dispute regarding the non-employment to 620 workers from 02.01.2012 by the petitioner was also under process for conciliation upon basing on their representation dated 04.01.2012. Both the disputes regarding charter of demands and removal of 54 workers were very much in conciliation process. Law empowers the authorities to conduct conciliation to disputes between the management and workmen in the private establishments and the same was being implemented differently by different bodies in different states. In regard to Puducherry, labour officers notified by the Government were empowered to conduct conciliation over any industrial dispute as such prior to 31.01.2012 there are two disputes pending conciliation. On the other hand, the dispute regarding lock-out alone is an Industrial dispute and that has also been referred to the Industrial Tribunal, Puducherry, which was now pending adjudication. As such, the grounds that raised by the petitioner to challenge G.O.50 issued by the Labour Department has no merits, unsustainable and even no plausible reason was mentioned for the maintenance of writ petition as such the petition deserves to be dismissed with costs.

27. It is further submitted that subsequent to the imposition of

Lock-out the management acted as per its whims and fancies effecting the workman / Union and violated the law that ought to be maintained at the period of Lock-Out and brought jolt to the industrial peace and harmony. New workers have been appointed in the factory and duties were entrusted to them. Bank accounts maintained for disbursing the salary of the workers were misused and forced them to settle the accounts by the management which ought not to be done without workers consent. Administrative actions have been taken against several hundreds of workers by violating principles of natural justice which is nothing but unfair labour practices. Some of the machinery of petitioner factory in Yanam has been removed and shifted to Karaikal factory which in turn amounts to unfair reduction of workmen in rolls whereby falls under unfair acts of management. However at present all these disputes were being pending conciliation upon the representations / complainant of the second respondent. It is further submitted that the Government ought to prohibit the lock-out immediately after referring the disputes i.e. I.D.11,12,13,14 of 2012 to the Industrial Tribunal, Puducherry. But for the reasons best known to the first respondent is has taken the decision against the continuance of Lock-out by invoking Section 10(3) of the I.D. Act after one year and that too upon after great persistence of the second respondent herein thus continuance of Lock-out was prohibited by issuing G.O.Rt.No.50/AIL/Lab/J/2013 dated 10.04.2013. All the reasons stated in the said Government Order were worthwhile to prohibit the continuance of lock-out and found no legal infirmity. To curtail the vindictive attitude shown by the petitioner management against all the poor workers in this intervening period and to bring industrial peace and harmony the said lock-out should not be allowed to continue. Almost all the workers lives were in miserable conditions since one and half year. In fact the management has neatly evaded the salaries that ought to be paid to the workers for the months of November, December 2011 and January 2012. On the other hand petitioner has been making the money to its product by transporting to all over India produced by the workers heavily in the month of November 2011 by the workers / members of the second respondent and with those profits it remained with no pain. However, the contentions in the 17th para were not sustainable in the eye of law. Therefore, they pray this Court to declare the G.O.Rt.No.50/Lab/AIL/J/2013 dated 10.04.2013 issued by the first respondent herein questioned, as valid and upheld the same by dismissing the present petition as devoid of merits by imposing heavy costs in the interests of justice.

28. The highly competent counsel Mr.S.Ravindran, appearing for the petitioner submits that the petitioner has put up a unit for the manufacture of Ceramic tiles in Yanam which is part of unit of Pondicherry surrounded all sides by Andhra Pradesh. The manufacture of Ceramic tiles involves use of ball clay, quartz, fieldspar and other grazes. The unit was a gas based manufacturing unit. In the couse of time three legal enterties were Regency Transport Carriers Limited, Regma Packaging (P) Limited, Regma Paper Products and

Regency Glazes Limited (I & II). In the year 2000, the Regnar Ceramics Limited, another Company of the same group put up a unit at Karaikal, a unit of Puducherry for manufacture of ceramic tiles. Regency Glazes Limited, Yanam, used to supply glazes even to Regnar Ceramics Limited. There was also another Company called Regnar Packing Private Limited, which manufactures corrugated boxes for packing of the finished ceramic tiles, Regnar Papar Products, Yanam, undertakes printing of Wrappers.

29. The learned counsel further submits that the petitioner's Company paying fair salaries to the workman besides providing food items at high subsidized rates. Further the Company has established educational facilities for the children of the Company's workforce. Under these circumstances, the 2nd respondent Union has been formed with the support of a member of parliament. In the month of August 2011 one M.S.Murali Mohan was dismissed for an act of committing theft of Company's property. Hence, the 2nd respondent Union purporting to take up the cause of M.S.Murali Mohan resorted to go slow and damage of Company Machinery. Hence, the Company had initiated disciplinary action against five erring workmen, subsequently, they were placed under suspension pending inquiry. The Conciliation Officer discussed the matter with the management and the workers but it was vain. On 02.01.2012, the management informed the workmen that only such of those workmen who give an undertaking that they will maintain peace. While attending the work would be permitted to enter the factory of work but the workmen were not willing to give such an undertaking. On 25.01.2012 again a meeting was held with the Administrator, in view of the insistence for reinstatement of M.S.Murali Mohan but no compromise was arrived up. On 27.01.2012 at about 07.30 a.m. The workforce were moving in an aggressive mood and were standing near Budha Park and prevented the willing workmen from entering the factory, through the main gate. The Police personnel arrested 10 persons. Immediately, about 30 person went to the police station and resorted to Darna. At the point of time, the suspended employee M.S.Murali Mohan complained of Chest Pain, immediately, the Police personnel rushed him to the hospital but the workmen were restraining the Police personnel, finally the police personnel were permitted to take the person to the hospital wherein he had expired. Immediately, the workforce attacked to the police station. One group of workmen attacked the President K.C.Chandra Sekar with deadly weapons and butchered him. The Senior Manager Mr.Murthy, had also sustained injuries. The workforce went to the various officers who are attached to the factory were attacked by the workforce. The workmen caused damage to the factory and also to the educational institutions at extensive levels. Hence, the management declared a lockout on 31.01.2012 due to uncontrollable conditions and unrest exhibited by the workforce. After the unfold incident caused by the workforce the factory including the Co-unit have become non-functional, besides the workforce had damaged all the infrastructure including valuable machinery, as such the Company had been totally not fit for running. The Insurance Company had not paid

any amount towards the damages, hence the Company has become defunct. The Conciliation Officers submitted the Conciliation failure report in respect of I.D.No.46, 66 and the issue of Lock-out. Under these circumstances, the Chief Labour Commissioner had conducted a meeting in the presence of both parties and at that time the officials agreed to lift the lock-out subject to the factory returns to returning condition and the atmosphere being peaceful.

30. The highly competent counsel further submits that the claim of the petitioner company remains unsettled with no compensation. Hence, the original position of the company is not being restored. Under these circumstances, the Chief Labour Commissioner pressurized the Managing Director of the Company for lifting of the lock-out within 10 days. On 11.05.2012, the Chief Labour Commissioner and other officials had visited the factory and noted the extensive damages. Thereafter, the management had sent a letter dated 24.05.2012 to the 1st respondent herein and revealed the entire incidents from January 2011 to 10th May 2012.

31. The highly competent counsel Mr.A.Tamilvanan, appearing for the 1st respondent submits that the workers have also raised another Industrial Dispute against the management of M/s.Regency Ceramics Limited, Yanam, over chapter of demands before the Conciliation Officer and sought the intervention of the Conciliation Authority to negotiate over the charter of demands of reinstatement of terminated workers with back wages. The management have filed a common reply and opposed the same. In the meantime, the management suspended certain employees while one employee was terminated from services. The Commissioner of Labour had advised the management to provide an opportunity to the employees to rectify the mistakes if any. The employees had filed a representation on 10.01.2012 over refusal of employment of 621 employers. In the subsequent conciliation meeting held on 19.01.2012 the Assistant Labour Officer, had insisted on the management for the submission of an undertaking by the employees to the affect that they will perform the normal duties entrusted to them and maintain discipline in the factory. However, the employees refused to give an undertaking. Finally, the employees agreed to sing the undertaking after the removal of a few conditions. Thereafter, the management declared a lock-out. The Regency Ceramic staff and workers union raised another Industrial dispute against the management. The Conciliation Officer initiated conciliation proceedings and the management filed a reply, as a result the Assistant Inspector of Labour issued a report on the failure of conciliation.

32. The very competent counsel further submits that a meeting was held on 10.05.2012, in the presence of the Chief Labour Commissioner, Deputy Labour Commissioner, Pondicherry and Regional Labour Commissioner. Aggrieved with the Chairman-cum-Managing Director of Regency Ceramics Ltd., the management tentatively

aggrieved to lift the lock-out on 20.05.2012. Subsequently, in their letter dated 24.05.2012, they have stated that the Insurance Company has to publish a detailed survey report on the damages done to the plant and machineries therein. The 3rd respondent herein had submitted a letter dated 16.09.2012 as expressed that the management is taking steps to remove all the machinery from the plant with an intention to shift the industry. Since, the plant is in 100% running condition. Subsequently, a show cause notice was issued to the managements and the management stated that there is no progress in restarting the plant.

33. The learned counsel further submits that the management submitted a reply on the show cause notice stated that due to several procedural formalities atleast a minimum period of six months would be required to lift out the lock-out. It is almost eight months that have elapsed, since the reply has been received seeking six months extension to lift the lock-out and make it operational. Hence, the 1st respondent has issued the impugned Government Order.

34. The learned counsel Mr.R.Sankarasubbu, appearing for the 2nd respondent submits that the photos of the petitioner filed herein are entirely purposely concocted but are not genuine. There is an earliest report regarding the extent of alleged damage occurred to the petitioner's factory either from the Government authorities concerned or from the management side. Actually no damage had occurred in the factory. The petitioner/management is demanding excessive damages, hence the Insurance Company is denied to release any amount as compensation. Further, as per page No.1 of the material book it showed as vehicle shed, but it is only a cowshed. The photos submitted by the management is not showing the actual situation of the factory. Further, as per these photos of the management there in no indication of damage in the factory. The management has created the photographs for the purpose of the case but not showing the present condition of the factory. As such the management has manipulated the photos for their benefit.

35. The highly competent counsel Mr.R.Sankarasubbu, further submits that the Company which is aiding the packing of its products wherein about 1000 women employees are working at this unit. All the members are in the 2nd respondent's union. The management had not paid in minimum wages to the large member of workers for several years. The petitioner used to disperse the said salaries of the workers without fixing a particular date, sometimes the petitioner had not paid the salaries of the workforce for 2 to 3 months consecutively. The union placed several demands before the management fixing for salary, equal bonus that being paid to the Karaikal workers of the petitioner Company to regularize the services of worker to implement eight hours work drinking water and uniform dresses. The management had not come forward to solve the problems of the union members.

36. The learned counsel further submits that in the month of May 2011, the management had victimized 54 casual workers, hence the union took the issue to the labour authorities. However, the union continuously put in their efforts for negotiating with the management on these demands but it was in vain. Therefore, the issue placed before the Labour authorities wherein the conciliatory proceedings were conducted, while, so the actual participants of the union by name M.S.Murali Mohan, was dismissed on the ground of misconduct without conducting any inquiry. Further, the management had transferred nine office bearers and posted them to Karaikal manufacturing unit which is 800 Kilometers away from the present unit. Knowing the same administrative officials of Yanam involved into the issue and suggested to the management to stop such vindictive approach against the workers, hence the transfer orders were withdrawn by the management. The management had enforced the highest punishment on the workman M.S.Murali Mohan, that is a dismissal from services, hence a section of workmen resorted to work stoppage and damaged some of the machinery and cut the conveyor belt. Therefore, disciplinary action had been initiated and placed all the workmen under suspension.

37. The learned counsel further submits that the management had not paid equal bonus on par with the workers of the Karaikal unit. However, the management finally agreed to pay increment on condition that after reaching the targeted production as set by the management, accordingly the workers increased the production but the management had not paid the increment as promised by them. Subsequently, the management stopped in entrusting the work to the workers and kept them idle except taking the attendance. The management further stopped paying gas bills and electricity bills besides the management burnt the records relating to the production during the period. Under these circumstances, the Commissioner of Labour had sent a communication dated 12.12.2011 to the management and workforce for conciliation over the disputes of demands pending with them. But, the management was not responding to anything consecutive. Instead of that the management forcibly obtained an undertaking from the "C" shift workers for continuing the production.

38. The learned counsel further submits that the management and the workmen agreed to discuss all the issues before the Regional Administrative Officer of Yanam in the month of March 2012, but the workmen demanded that unless the suspension of the five workmen were revoked and demanded the reinstatement of M.S.Murali Mohan, is not appropriate. The learned counsel further submits that the management locked out the factory which is illegal. Further, the workforce had not damaged the factory building or machinery or equipments or fittings or electrical installations; as alleged by the management. On 27.01.2012, the active workman M.S.Murali Mohan was discussing the worker's problem three meters away from the factory and at that time, the police personnel, who were attached to Yanam Police Station, attacked him and pushed him into a jeep and had beaten him severely.

Immediately, he was taken to the hospital, wherein he was declared as dead. Further, on the instigation of the management, the Yanam Police registered a case against the innocent workman. The factory is in a fit condition to operate and no damage has occurred in the said factory. The management wantonly and deliberately had not operated the electric bills and gas bills from December 2011, in order to close the factory.

39. The learned counsel further submits that the workforce had not at all resorted to any kind of strike in the petitioner factory. Further, the said disputes had been referred to Industrial Tribunal, Pondicherry, upon the report prepared by the Conciliation Officer, which is pending adjudication. As such, the petitioner to challenge the G.O.No.50, issued by the Labour Department had no merits. The imposition of lock-out violated the law and caused injustice to the employees. Further, some of the machinery of the factory at Yanam has been removed and shifted to Karaikkal factory by the management, the act of the management is in order to avoid running of the factory. Hence, the Government Order issued by the Government is fit to be operated upon. Hence, the learned counsel entreats the Court to dismiss the above writ petition.

40. The highly competent counsel, Mr.P.Murugesan, Senior Counsel appearing for the Government submits that on 19.08.2011, the workers raised dispute against the management over removal of 54 workers before the Assistant Inspector of Labour-cum-Conciliation Officer. Again another dispute was raised against the management on 19.08.2011 before the Conciliation Officer to negotiate over charter of demands and reinstatement of terminated workers with backwages. Under the circumstances, certain employees were suspended and one employee was terminated from service. The Commissioner of Labour had advised the management to provide an opportunity to the employees to rectify the mistakes, if any. Before, the Assistant Inspector of Labour, the management had insisted for submission of an undertaking by the employees to the effect that they would perform the normal duties entrusted to them and maintain discipline in the factory. But, the employees refused to give the undertaking. The management are ready to reinstate seven suspended employees but the employees refused to accept the same. On 27.01.2012, a violence erupted at factory premises and some often places and the management declared a lock-out on 31.01.2012.

41. The management tentatively agreed to lift the lock-out on 20.05.2012. Subsequently, they sent a letter seeking some more time to consider to lift the lock-out. Hence, a show cause notice was issued on 22.10.2012 to the management and sought explanation regarding the lock-out. But the management failed to consider the notice. At the time of hearing this Court has directed the Government/1st respondent to submit the correct position of the factory situation. Accordingly, the learned Senior Counsel, has filed a report regarding administration, structural aspects and

running condition of the petitioner factory. The learned senior counsel has submitted that seven relevant Officers have conducted joint inspection on 06.06.2015. As per report submitted by the seven officers, the factory building was found to be in burned out condition and the same appears to be in a dilapidated condition. As such, the entire building has to be completely repaired. Besides, all the machineries have to be completely replaced and fresh test certificates should be obtained for all the equipments as required under law. Therefore, the Senior Counsel informed the Court that the factory is not in a fit condition to operate.

42. From the above discussion this Court is of the view as follows:

(i) The management had declared a lock-out with effect from 31.01.2012, hence the matter referred to the 1st respondent herein, wherein the management had given a written undertaking dated 24.05.2012 and agreed to lift the lock-out on 20.05.2012, subsequently, the management expressed their inability stating that they are unable to operate the company since damages done to the plant and machinery, therefore they are claiming insurance which is under process, hence they require some more time considering in the lifting of the lock-out. However, the same was not done within a reasonable period due to some unavoidable circumstances at the factory namely untoward incidence happening to the plant and equipment by the workforce;

(ii) The 1st respondent had issued a show cause notice to the management and asked them to lift the lock-out in order to restore a normal industrial peace and also passed an impugned order restraining the management on the continuation of the lock-out. This order has been passed on 10.04.2013. This Court collected a report from the Government dated 06.06.2015, wherein seven officers conducted a spot enquiry and studied the running condition of the factory and submitted a detailed report before this Court. As per the said report the factory is not suitable for operating the same as per the conditions prevailing;

(iii) The earlier order dated 10.04.2013 passed by the 1st respondent cannot be executed based on the joint report by seven officers who are the subordinates to the 1st respondent stating that all the machineries, plant, structural stability were completely for repair/replacement. This Court accepts the report submitted by the Government, hence the impugned order is not fit to be operated upon any further;

(iv) The workforce will not be prejudiced in allowing the above writ petition, since the case is pending before the Industrial Tribunal between the workforce and the management, wherein all relevant issues may be decided.

43. On considering the facts and circumstances of the case and

arguments advanced by the learned counsel on all sides and on perusing the typed set of papers, this Court is of the view as expressed in (i) to (iv), the above writ petition is allowed. Consequently, the 1st respondents order in G.O.Rt.No.50/AIL/LAB/J/2013, dated 10.04.2013 is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Government of Puducherry,
represented by
Secretary to Government (Labour),
Labour Department,
Puducherry.

+1 cc to M/S.T.S.Gopalan & Co Advocate sr.35832

+1 cc to Mr.R.Sankarasubbu Advocates sr.36530

W.P.No.12613 of 2013
and
M.P.Nos.1 to 3 of 2013

jsv(co)
aa14/08/2015

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