

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 27/04/2015

DATED: 01/06/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.9764 of 2015 &
M.P.Nos. 1 and 2 of 2015

T.T.K.PDL Employees Union,
(Earlier London Rubber Company Employees Union),
Reg.No.892/87/CPT,
Rep. by its General Secretary,
No.35, Old Trunk Road,
Pallavaram,
Chennai - 600 043. Petitioner

Vs.

- 1.Government of Tamil Nadu,
Rep. by its Secretary,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.
- 2.The Assistant Commissioner of Labour (Conciliation),
Sriperambadur,
Kancheepuram District.

- 3.The Management,
T.T.K.Protective Devices Limited,
(Formerly TTK - LIG Limited),
Rep. by its Managing Director,
No.35, Old Main Road,
Pallavaram Branch,
Chennai- 600 043. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Mandamus, forbearing the third respondent from altering the service conditions of the members of the petitioner union whose names are given in the Annexure to the affidavit filed in support of the writ petition in any manner including discontinuance of service or failing to provide employment in any manner without getting permission under Section 33 of the Industrial Disputes Act, 1947, in the

Industrial Disputes dated 05.02.2015 raised by the petitioner union regarding wages revision which is pending conciliation before the second respondent as dispute No.B/89/2015 and dispute dated 24.03.2015 regarding the illegal closure and enmass transfer of employees who are concerned in this writ petition, whose names are given in the annexure of the affidavit * and further direct the second respondent to conciliate and effect settlement and if no settlement is forthcoming to submit failure report under Section 12(4) of the Industrial Disputes Act and in turn direct the first respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader for R1 & R2

Mr.Ravi &
M/s.Gupta and Ravi for R3

O R D E R

The petitioner submits that the third respondent (T.T.K.Protective Devices Limited) was started in the year 1952 and it is engaged in the manufacture of condoms and it is marketing its product under the name of Kohinoor and Durex. The third respondent established its factory in Chennai and it has been market leader in the field. Initially it was doing the business under the name "London Rubber Company". In view of expansion of business and market requirement, the third respondent started yet another unit at Virudhunagar in the year 1995 and third unit at Puducherry during the year 2003. In the third respondent Company, there were about 186 employees and 50 staff working at Chennai. There are about 263 employees and 80 staff in Virudhunagar. In Puducherry, there are about 250 employees and 50 staff working. The petitioner union is the single union which represent the entire work force in Chennai. The petitioner further submits that in respect of the service conditions of the employees, the Union and the third respondent entered into settlement. The last settlement was in January 2009 and the period of the settlement came to an end by March 2013. The petitioner union had been insisting the third respondent to come to the negotiation table and arrive at a settlement. The third respondent instead of negotiating with the union, had been threatening the employees to go on Voluntary Retirement Scheme, as otherwise it will close the industry. By saying so, about 124 employees and 20 staff were made to go on VRS during January 2015. In this process, there are only 62 employees and 30 staff in Chennai. The third respondent had been in full swing of its

production activity. After making the employees to go on VRS, the unit in Virudhunagar and Puducherry, which are also manufacturing the same product are giving over time work to the employee working in those units. However, the third respondent failed to negotiate with the union and enter into fresh settlement regarding revision of wages.

2. The petitioner further submits that in such circumstances, the petitioner union has raised dispute on 05.02.2015 regarding the revision of wages before the second respondent. The second respondent has taken the dispute on file as B/89/2015 and has initiated conciliation proceedings. In this regard, the second respondent had issued notice dated 12.02.2015 and fixed the conciliation meeting on 19.02.2015. The third respondent immediately after receiving the conciliation notice, had issued notice dated 18.03.2015 stating that it is suspending the operation of its factory at Pallavaram and the employees are transferred to Virudhunagar Unit and that the employees should report at Virudhunagar on or before 31.03.2015. This was done primarily to see that the rest of the employees also leave their employment and the third respondent is not required to negotiate on the revision of wages and other benefits. It is further submitted that the third respondent also has a packaging unit at Mahindra City, Singaperumal Koil and in that 30 employees and 5 staff were working. When this was pointed out in the course of conciliation on 24.03.2015, the third respondent has also closed that on 25.03.2015 and taken all those work to Puducherry. The petitioner immediately brought this illegal attempt to close the factory to the notice of the second respondent. The second respondent noticed that the third respondent had employed more than 100 employees in the Pallavaram Unit within a period of preceding 12 calendar months and that closure of the Pallavaram Unit is in violation of Section 25 O of the I.D. Act, 1947, as no prior permission is obtained from the first respondent and consequently, advised the third respondent to open the factory. However, the third respondent is alleging as if the closure of the Pallavaram Unit is not in violation of Section 25 O of the I.D. Act, 1947 and that the employees should report at Virudhunagar. On 24.03.2015, the petitioner union has also raised dispute questioning the illegal closure and to cancel the illegal transfers to Virudhunagar. The conciliation on the said dispute has also been initiated by the second respondent. The dispute regarding wages revision and the dispute regarding illegal closure are now conciliated together. The next conciliation is on 01.04.2015.

3. The petitioner further submits that the Pallavaram Unit was started first and only after making profit from that unit, the other units at Virudhunagar and Puducherry were started. The product manufactured at all the three units are

one and the same. Therefore, there is absolutely no justification to close the Pallavaram Unit. The Corporate Office of the third respondent is also functioning only from Chennai. The work in three factories have been started and the work had been done all these years. While so, closing of Pallavaram Factory without prior permission under Section 25 O of the I.D. Act is void abinitio and consequent order off transfer is also illegal. The third respondent management alleges that as if it is a suspension of operation. There is no such term as suspension of operation in Industrial Disputes Act 1947. The third respondent after closing the Pallavaram Factory, with utmost impunity alleges as if the same is suspension of operation. Only in such circumstances, the petitioner Union has raised dispute questioning the illegal closure and the transfer. The second respondent is conciliating the disputes raised by them. The second respondent has also advised the third respondent to open the factory, as the closure is illegal. However, the third respondent is exhibiting supine indifference. The third respondent after indulging in an illegal closure, is asking them to go and join at Virudhunagar. This manner in which the third respondent is dealing with its employees who have rendered several years of service is not legal. The third respondent treats the employees like cattle and has no concern for law or any humanitarian consideration as well. The closure effected by the third respondent is per se illegal, as no permission is obtained under Section 25 O of the I.D. Act, 1947. As the closure is illegal, the third respondent is liable to pay wages every month to the members of the petitioner union. The third respondent has further closed the factory when the dispute regarding wage revision was pending, without taking prior permission from the second respondent. Thus the closure is void one. The third respondent after effecting illegal closure, is using all illegal means to deprive the employees of their livelihood.

4. The petitioner further submits that all the employees are working sincerely and honestly. Pending the dispute, the third respondent cannot alter the service conditions of the 92 employees whose names are given in the annexure to this affidavit pending the conciliation of the dispute. On the dispute raised by them, the second respondent has to conciliate and arrive at a settlement and if no settlement is forthcoming, then, he will have to submit failure report. The first respondent in turn has to refer the dispute for adjudication. While so, the third respondent cannot discontinue the services of the members of the petitioner union and make the employees run from pillar to post. When the employees have approached the legal forum, the third respondent, in order to scuttle the same, is all set to deny them employment from 01.04.2015. Hence, the petitioner has filed the above writ petition.

5. The third respondent has filed a counter affidavit in M.P.No.2 of 2015. The third respondent submits that the present petition filed by the petitioner is not maintainable and ought to be dismissed in limini for the following reasons:-

(a) The prayer made in the writ petition is clearly not maintainable for the reason that the issue in question is an Industrial Dispute as defined under Section 2(k) of the Industrial Disputes Act and the remedy of the persons affected is to only raise an Industrial Dispute under the Industrial Disputes Act.

(b) The Division Bench of this Court in the judgment reported in 2015 Vol.2 Law Weekly Page 127 (The Management of Tata Consultancy Services Limited Vs. Selvinth Ganesa Joshua) after referring to Sections 33 and 33A of the Industrial Disputes Act, held as follows:-

"In the afore stated conspectus of the facts, the authority competent to consider the dispute in respect of provisions of Section 33 and also to grant relief in case of contravention is the authority before whom the dispute is pending consideration. Our view in this respect is fortified by an observation of the Supreme Court in Straw Board Manufacturing Company Limited, Saharanpur Vs. Govind AIR 1962, Supreme Court, page 1500. There was no occasion to seek the second relief that is maintaining status quo as required under Section 33 of the Industrial Disputes Act and as such, the second prayer for maintaining status quo as required under Section 33 of the Industrial Disputes Act is also not maintainable when the first respondent has not approached the Conciliation Officer making a complaint in writing that there was a contravention of the requirement of Section 33 by the employer. There was no grievance of non-action or wrong action by the Conciliation Officer in the writ petition. The Writ Court ought to have restrained itself from considering the issue and passing an order. In such view of the matter, we are of the considered opinion that the learned Single Judge has overstepped in passing the order to maintain status quo without referring the matter back to the authority wherein the dispute was pending consideration."

(c) The writ petition filed by the petitioner against the respondent in respect of an issue which is an Industrial Dispute as defined under Section 2(k) of the Industrial Disputes Act is clearly not maintainable in view of the judgment of the Full Bench of High Court reported in 2004 Vol.2 LLN Page 1086 (P.Pitchumani and others Vs. The Management of Sri Chakra Tyres and others), wherein, the Full Bench has held as follows:-

(i) Dismissals, transfers and matters concerning service conditions of employees governed by the Industrial Disputes Act had to be adjudicated by fora created under the said statute and

not otherwise.

(ii) Transfers effected by private players do not involve public duties and involved disputed questions of fact and they should be resolved before fora under the Industrial Disputes Act. In the light of the above judgment, the writ petition itself is not maintainable and deserved to be dismissed straightaway.

(d) The prayer for granting an interim injunction till the disposal of the writ petition restraining this respondent from discontinuing the services of the members of the petitioner Union including by transfer of their services is not maintainable in view of the fact that even the Industrial Tribunal / Labour Court has no power to grant relief in the nature of an injunction in a complaint filed under Section 33A alleging contravention of Section 33. Consequently, when there is no power available under the Industrial Disputes Act to grant interim orders, the petition for interim injunction is liable to be dismissed.

(e) The expression "conditions of service" means all those conditions which regulate the holding of a post by a person from time of his appointment till his retirement and even beyond it in matters like salary, promotion, leave, seniority. But the transfer of an employee in a transferable post does not pertain to any condition of service and an order of transfer is therefore one which may be made within the exclusive administrative domain of the employer. It does not involve any condition of service as such. Therefore, when Courts have repeatedly held that when transfer is not a change in service conditions, then Section 33 itself is not attracted and therefore, the writ petition is liable to be dismissed.

(f) Even in a case when there is violation of Section 33 of the Industrial Disputes Act the worker concerned can make a complaint under Section 33 A of the Industrial Disputes Act before the authority before whom the dispute is pending. In the light of the above when there are adequate safeguards in the Industrial Disputes Act itself regarding violation of Section 33 in such a case the question of entertaining the writ petition and granting interim relief does not arise.

(g) In addition to the above, the present writ petition is not maintainable against the third respondent as it is not a State or other authority and are not amendable to the extraordinary jurisdiction of this Court.

(h) Further, the third respondent does not discharge any public duty and consequently, the present writ petition is not maintainable against them.

(i) Even otherwise, the grievances raised by the petitioner cannot be adjudicated in a writ petition, as they involve disputed questions of fact. Further, the issue as to whether any

violation of Section 33 or Section 25(O) has been committed and the measures for remedying the same are provided under the Industrial Disputes Act, 1947 for which the petitioner has an efficacious alternative remedy. The grievance of the petitioner union, if any, arises out of the provisions of the Industrial Disputes Act, 1947 and in such circumstances, since there is a machinery created under the Act for adjudication of the said issues, it is not open to the petitioner to bypass the same and straight away approach this Court by way of writ petition under Article 226 of the Constitution of India.

6. The third respondent submits that before reverting to the allegations in the affidavit, the following facts are required to be dealt with. This respondent was originally known as TTK-LIG Limited. It was a joint venture between the TTK Group, India and SSL International Plc, UK. The said joint venture owned three factories at Pallavaram, Virudhunagar and Pondicherry. Disputes arose between the two joint venture partners which went right up to the Hon'ble Supreme Court of India. A settlement was entered into on 28th September 2012, which was taken on record by the Hon'ble Supreme Court of India on 1st October 2012, in terms of which the joint venture between the TTK Group and the SSL International Plc was terminated. More than 90% of the business carried on by the erstwhile joint venture company came from the manufacture and sale of Durex and Kohinoor brand of condoms. These two brands were owned by SSL International Group, U.K., which was taken over by Reckitt Benckiser Group, U.K. in November 2010. They were licensed to the joint venture company under license agreement in terms of which the joint venture company was granted a license to manufacture and also distribute these branded condoms in India. Consequent to the termination of the joint venture, the license agreement was terminated by Reckitt Benckiser Group as part of the settlement arrived at before the Hon'ble Supreme Court of India. Consequent to the exit of the Reckitt Benckiser Group, the name of the joint venture company (TTK LIG Limited) was renamed as TTK Protective Devices Limited. The aforesaid exit of the joint venture partner and the consequent termination of the licensing agreement to manufacture the two brands of condoms happened during September 2012.

7. The third respondent submits that though as part of the settlement, the third respondent was left with the three factories along with its employees, it could not manufacture the two brands of condoms which constituted more than 90% of its business. Thereafter, the respondent made its best efforts to promote its own brand of condoms and also contract manufacture condoms for other brand owners, but despite its best efforts, it did not receive substantial orders either from the domestic or from export markets to keep all three factories operational. This dismal situation persisted for more than three years. In fact, the factory at Pallavaram was operational only at an

average of 5% capacity utilization against the installed capacity of 560 million pieces. The same was with regard to the factory at Virudhunagar also. In spite of the fact that the capacity utilization was abysmally low, this respondent continued to operate all three factories with the fond hope that there will be improvement in the order situation, so that they can continue to employ all the workmen. Due to low capacity utilization, the workmen at the factory at Pallavaram remained idle for most of the days during the period September 2012 to 2014 and in fact, from 01.09.2014, the workmen of the factory at Pallavaram remained completely idle without any orders. In spite of the aforesaid situation, the third respondent continued to pay full wages to the workmen with the hope that there would be revival. However, when a situation arose wherein the very existence of the third respondent, as a financially viable company became doubtful, it decided to reorganize its business and offered a very generous voluntary retirement scheme (VRS) which was accepted by 123 out of 185 workmen working in the factory at Pallavaram. This VRS was introduced during the month of October 2014. In addition to the above, considering the fact that there are inadequate orders to run three factories, the Management of the third respondent decided to reorganize its business so that the manufacturing requirements on the existing order levels could be carried on in Virudhunagar and Pondicherry. It was felt that the same would improve and sustain the business by reducing costs. The third respondent also felt that the combined strength of the remaining workmen of Pallavaram and Virudhunagar could be utilized in the factory at Virudhunagar, so as to reduce idle time and also to reduce loss that was continuously suffered by the third respondent. Consequently, the third respondent decided to suspend operations at the factory at Pallavaram on 18.03.2015. However, in terms of the order of appointment, the remaining 62 workmen, who were left after the VRS, were transferred to the factory at Virudhunagar. The workmen were called upon to report to the factory manager at Virudhunagar on or before 31.03.2015. This respondent agreed to reimburse the cost incurred by the workmen for travelling to Virudhunagar at the time of their reporting at Virudhunagar.

8. The third respondent further submits that 40 employees belonging to the supervisory cadre, who were not members of the workmen's union, were employed at the factory at Pallavaram as of 1st February 2015. They were not members of any union, nor did they fall under the category of workmen under the provisions of the Industrial Disputes Act, 1947. Out of the 40 staff, 21 staff whose names have been mischievously included in the members list filed by the petitioner, Mr.S.Pragatheeswaran, whose name is found in S.No.74, was transferred to the R & D Department located at Chrompet way back in 2013. Two employees

belonging to the supervisory cadre, and who were employed in the Quality Department whose names are found in S.Nos.67 and 68 were transferred to the Head Office way back in December 2014. Out of the remaining 18 employees, 17 employees were transferred to various locations based on the terms of the letter of appointment in February, 2015. Out of them, except Mr.P.Kumar, whose name is found in S.No.62, all the other employees, have joined duty at the place of transfer and are employed as on date. Now reverting to the allegations contained in the affidavit accompanying the present petition, the third respondent denied the allegation that the deponent of the affidavit is the General Secretary of the petitioner, in view of the fact that to the extent of his knowledge, there is no union in the name and style of TTK PDL Employees Union with registration No.892/87/CPT.

9. The third respondent further submits that there is no employee's union under the name and style of TTK PDL Employees Union with registration No.892/87/CPT. The said registration number originally belonged to London Rubber Company Employees Union. The name of the union was thereafter changed to TTK-LIG Limited Employee's Union with Registration No.892/87/CPT which was affiliated to the AITCU. The said Union represented all the workmen employed in the factory of the third respondent at Pallavaram. Respondent had signed several settlements with the said Union governing conditions of service of all the workmen employed in the factory at Pallavaram. In fact, until recently, the said Union represented the majority of the workmen and had raised Industrial Disputes on their behalf. There is no union under the name and style of TTK PDL Employees Union and the petitioner had filed the present petition with false allegation that the TTK PDL Employees Union was registered with registration No.892/87/CPT. The petitioner, having filed the affidavit with false allegations is liable to be prosecuted and punished for having committed perjury. Hence, the third respondent entreats the Court to dismiss the above writ petition.

10. The petitioner has filed a reply affidavit and submits that the contention that the relief sought for in the writ petition is an Industrial Dispute and therefore, writ is not maintainable, is without substance. The prayer in the writ petition is to direct the second respondent to conciliate on the dispute and in the event of failure of conciliation to submit failure report to the first respondent and in turn, the first respondent to refer the dispute for adjudication and in the meanwhile the third respondent not to alter the service conditions. Therefore, the prayer as sought for in the writ petition, is not an Industrial Dispute and in turn, direct the first respondent to refer the dispute for adjudication in the event of failure of conciliation. The petitioner further submits

that the contention of the third respondent that in view of the judgment reported in 2015 Law Weekly Vol.II Page 127, the writ petition is not maintainable, is not correct. In the present case, the third respondent has closed the Pallavaram Factory without taking prior permission as required under Section 25 O of the Industrial Disputes Act, 1947 and as per Section 33 of the Industrial Disputes Act, 1947. Therefore, the very closure is void, as the closure is in violation of Statutory Provision aforesaid. Therefore, the judgment relied upon by the third respondent has no application to the present case. It is further submitted that as per the judgment of the Supreme Court Section 33 is mandatory and Section 25 O of the I.D. Act, 1947 is also mandatory.

11. The petitioner further submits that the contention of the third respondent that the interim prayer is not maintainable in view of the fact that the Industrial Adjudicator has no power to grant injunction in a complaint filed under Section 33 A of the Industrial Disputes Act, 1947 for violation of Section 33, is without substance. The second respondent under the Industrial Disputes Act, has no power to entertain and adjudicate the complaint filed under Sections 33A of the ID Act, 1947. Further, for statutory violation, a writ petition is maintainable. The third respondent after closing the factory without taking prior permission from the Government as required under Section 25 O of the I.D.Act, 1947, cannot contend that the interim prayer sought for is not maintainable. It is further submitted that the transfer of employees and closing down the factory, amounts to alteration of service condition and for that no prior permission had been obtained from the second respondent, where the disputes raised by the petitioner Union are pending conciliation. The petitioner further submits that the contention of the third respondent that the transfer is not a condition of service and therefore Section 33 is not attracted, is without substance. In the guise of transfer of all the employees, the factory itself is closed and that amounts to alteration of service condition. Therefore, Section 33 of the I.D.Act, is attracted. The petitioner further submits that the contention of the third respondent that even in respect of violation of Section 33, only a complaint under Section 33 A of the Industrial Disputes Act, 1947 can be filed therefore, the writ is not maintainable, is without substance. As stated earlier, the second respondent Conciliation Officer has no power to adjudicate a complaint under Section 33 A of the I.D.Act, 1947. Therefore, the writ petition as filed is in order and maintainable.

12. The petitioner further submits that the contention of the third respondent that it is not a "State" and that it is not discharging any duty and public duty and therefore, writ is not maintainable, is without substance. It is submitted that for

a violation of statutory provision, viz., Section 25 O and Section 33, a writ petition is maintainable. In any event, the petitioner's prayer is to refer the dispute for adjudication and in the meanwhile not to alter the service condition. Therefore, the writ petition as filed is in order and the relief sought for in the writ petition is in accordance with law. The contention of the third respondent that for any violation of Section 33 and Section 25 O, the petitioner can approach only machinery under the I.D.Act, is without substance. In this regard, it is submitted that for statutory violation a writ petition is maintainable. In any event, the prayer in the writ petition is only to refer the disputes for adjudication and in the meanwhile not to alter the service condition. Such a prayer is in order and maintainable.

13. The petitioner further submits that the contention of the third respondent that it has suspended the operation of its Pallavaram Factory on 18.03.2015 and 62 workmen left out after the VRS have been transferred to Virudhunagar, is without substance. It is submitted that more than 100 employees worked in 12 calendar months immediately preceding 18.03.2015. The third respondent on 18.03.2015 abruptly closed the factory. In order to effect the closure, the 62 workmen along with the other staff had been transferred in an illegal manner. The transfer effected is to effect the closure. These 62 employees at no point of time were subjected to transfer in their entire service. Therefore, the transfer in the background of the closure, will make it clear that it had been done in violation of Section 25 O of the I.D.Act, 1947 and without taking prior permission. It is further submitted that to allege as if the operation in the Pallavaram factory has been only suspended from 18.03.2015 and there is no closure is contrary to truth and reality. There is no terminology of suspension of operation in Industrial Disputes Act. Only to camouflage the illegal closure, the third respondent by clear afterthought is alleging as if it had only suspended the operation of the Pallavaram factory. The petitioner further submits that the contention of the third respondent that 40 employees belonging to supervisory cadre are not members of the petitioner union, is without substance. The third respondent subsequent to filing of the writ petition had threatened those employees and appears to have won over them and to allege that they are not members of the petitioner union is incorrect. It is submitted that only fearing losing employment, it appears that the staff have now gone back on their intention to be part of the Union to question the illegal act of the third respondent.

14. The petitioner further submits that the contention of the third respondent that there is no union by name TTK PDL Employees Union with registration number 892/87/CPT and that the

petitioner has no locus standi to represent any workman, is without substance. The petitioner union was started for the employees of the third respondent. As per the Bye-Laws, the President of the Union is always an outsider. Till the year 2006, the petitioner Union was with the AITUC. From September 2006 onwards Mr.Suba Thangarasu of New Democratic Labour Federation was the President. Under his leadership, the petitioner Union entered into Settlement on 17.12.2009 under Section 12(3) of the Industrial Disputes Act, 1947. Certain disgruntled elements spread false rumors against the President of the Union and removed him illegally. Thereafter, another outside President was brought in without convening the General Body. Further, the Union election was announced suddenly and new office bearers were elected. After the assumption of the new office bearers, the third respondent Management stopped even the existing benefit. When the employees started asking questions to the office bearers in this regard, many employees were removed from the Union without following the bye-laws. In such circumstances the employees gave petition to convene the General Body and the General Body was convened on 22.12.2013. In the General Body the term of office bearers was terminated, the removed employees were brought into the Union and fresh elections were conducted and office bearers were elected. The General Body also approved changing the name of the Union in tune with the name of the third respondent Management. Therefore, the contention that there is no Union in the name of the petitioner is false. Initially, the Union was registered on 10.11.1987 in the name of "London Rubber Company Employees Union. Thereafter, the company name changed as "TTK LIG" and accordingly the Union name was changed. Thereafter, when the third respondent once again changed its name, the petitioner union changed its name as TTK PDL Employees Union. This is as per the decision of the General Body on 22.12.2013. Knowing all these facts well, the third respondent Management to divert the issue is questioning the petitioner union's locus standi on the basis of change of union name. The fact remains that the members of the petitioner Union are employees of the third respondent and only in respect of them dispute has been raised and this writ petition also being filed.

15. The petitioner further submits that the contention of the third respondent that no notice of conciliation has been issued, is not correct. The conciliation talks are under progress and the third respondent has also given reply on 01.04.2015. While so, it is not known on what basis, the third respondent is alleging that there is no conciliation pending. It is not under dispute that the petitioner Union has raised dispute regarding wage revision, dispute regarding illegal closure and en-masse transfer of employees and the same is pending before the second respondent. While so, the third

respondent for the sake of this case is alleging that there is no dispute pending conciliation. The petitioner further submits that the contention that the writ petition is abuse of process of law, is untenable. The third respondent after closing the factory at Pallavaram in an arbitrary manner and leaving the employees high and dry, had emboldened to allege as if the above writ petition is in abuse of process of law. The third respondent with utmost impunity has violated the law and pushed the employees along with their family members to starvation. The third respondent having violated the law cannot question the above writ petition filed by the petitioner Union to safeguard the interest of the employees. The petitioner further submits that the Corporate office of the third respondent is at Chennai. The order secured by the Corporate Office is executed by the three factories, viz., Pallavaram Factory, Virudhunagar Factory and Pondicherry Factory. While so, it is false to allege that the Pallavaram Factory has only 5% of orders. All the orders are purposely diverted to other two factories with a sole intention to close the Pallavaram Factory illegally. In fact only out of the profits made out the Pallavaram Factory, the factory at Virudhunagar and Pondicherry were set up. Regular production is carried out at the factories at Virudhunagar and Pondicherry. This itself will belie that there is no orders. Only to close down the Pallavaram factory, deliberately from September 2014, the third respondent has stopped production.

16. The petitioner further submits that the third respondent had been doing the packing work till 24.03.2015 by utilizing three Supervisory staff viz., Mr.Prabhakar, Mr.Sreenivasan and Mr.Arularasan and by engaging 30 contract employees. The packing work was done in factory named S.T.Engineering. When this has been questioned, that process has been stopped. The petitioner further submits that the third respondent through Mr.Saranyan, Managing Director and Mr.Kalyanaraman, Corporate Managing Director, through Loud Speaker informed that the Pallavaram Factory will be closed. The speech rendered by the aforesaid two persons has been recorded. While so, the third respondent now falsely alleges as if only the production has been suspended and that the factory is not closed. The petitioner further submits that the allegation that the employees are paid wages without production for three years is false. Only in September 2013, there was no production at the instance of the third respondent. From September 2012 to August 2014, all the employees have been paid incentive for the production. The very fact that the production incentive has been paid will demonstrate that the third respondent has enough orders and the third respondent has closed the Pallavaram factory without any justification.

17. The petitioner further submits that the third respondent has alleged that it has 560 million production capacity and out of that only 5% production had been made. The third respondent in order to produce 560 million had been parallelly conducting a company by name "packwell" by engaging 29 permanent employees and by engaging 400 contract employees to do the regular production work. Apart from this, the third respondent has been engaging 400 contract employees in the Pallavaram Factory and all this contract employees were utilized for the regular production. Thus with 1000 employees, the third respondent had been making 560 million production. The third respondent by engaging only 186 employees before announcing VRS, had been making production to that extent. Therefore, the third respondent has sufficient orders and the employees are also co-operating for the production. However, the third respondent with a diabolic intention has closed the Pallavaram Factory. The petitioner further submits that in spite of the interim order, the third respondent continued its closure and left the employees in lurch. Consequently, the employees are suffering. Therefore, there is no semblance of justification to vacate the interim order already granted. Hence, the petitioner entreats the Court to allow the above writ petition.

18. The highly competent counsel Mr. Balan Haridas appearing for the petitioner submits that the petitioner's union member wages revision issue is pending on the file of the second respondent herein. Besides this, the third respondent transferred the employees and illegally closed the factory. Further, the highly competent counsel submits that the third respondent's company was started in the year 1952 and it is engaged in the manufacture of condoms and it is marketing its product under the name of Kohinoor and Durex. The third respondent established the factory in Chennai and subsequently, started another unit in Virudhunagar in the year 1995 and also started another unit at Pondicherry in the year 2003. At the Chennai Unit 186 employees and 50 staff numbers, likewise at Virudhunagar 263 employees and 80 staff members are working. At the third Unit at Pondicherry, there are about 250 employees and 50 staff members. The petitioner Union is a Single Union, which represents the entire work force in Chennai.

19. The highly competent counsel appearing for the petitioner further submits that regarding service conditions of the employees a settlement was arrived at between the Union and the Management in the month of January 2009 and the period of the settlement came to an end by March 2013. Thereafter, the Union requested the Management for negotiation across the table to arrive at a settlement. Under the circumstances, the Management asked the employees to go on voluntary retirement, failing which, the factory will be closed. Now, 124 employees

and 20 staff members have been made to go on voluntary retirement service during the month of January 2015. Now, 62 employees and 30 staff members are with the Chennai Unit. The other two Units functioning at Virudhunagar and Pondicherry are also manufacturing the same products and the employees are being given overtime jobs. The Management refused to enter into a fresh agreement regarding a revision of wages. Hence, the Union raised a dispute before the Assistant Commissioner of Labour at Sriperambadur, wherein, the proceedings is pending and posted the same on 19.02.2015 for further counselling. After receiving the notice by the third respondent from the second respondent, the Management had issued a notice dated 18.03.2015 stating that it is suspending the operation of its factory at Pallavaram and the employees are transferred from Virudhunagar Unit and the employees should report at Virudhunagar on or before 31.02.2015.

20. The highly competent counsel appearing for the petitioner further submits that the third respondent is also having a packing unit at Mahindra City, Singaperumal Koil, wherein 30 employees and 5 staff were working and the same was revealed to the second respondent at the time of conciliation dated 24.03.2015. However, the third respondent closed the factory on 25.03.2015 without prior notice (i.e, within a period of 90 days) as per the Industrial Disputes Act and violated Section 25(o) of the said Act. The third respondent had not obtained permission from the first respondent for closing the factory and directed the employees to go and join at Virudhunagar. The action of the Management by way of transfer and closing the factory are causing injustice to the employees. Now, the illegal closure and transfer are pending before the second respondent herein. After starting the Pallavaram Unit, the factory made huge profits out of which, Virudhunagar and Pondicherry Companies were started. The Management products at all the 3 units are one and the same and without assigning any valid reasons, the Management closed the factory at Chennai. The highly competent counsel further submits that the second respondent had given appropriate advice to the third respondent to reopen the factory. The third respondent is liable to pay wages to the employees, every month until the dispute comes to an end. Hence, the highly competent counsel entreats the Court to allow the above writ petition and prevent the third respondent for altering the service condition of employees. The highly competent counsel for the petitioner further submits that the employees are willing to join at the Pondicherry Unit. In support of his contentions, the highly competent counsel has cited the following judgments:-

(i) M.C.P.THOTHILALAR SANGAM v. CHEMPLAST SANMAR, LTD., reported in 1997 (4) LLN 673

"Constitution of India Article 226 - Industrial

Disputes Act, 1947, S.9A and Sch.IV - Writ against private employer - Maintainability - Management and workmen entering into a settlement under which management agreed to pay fixed amount every month in lieu of bonus to those falling outside the purview of Payment of Bonus Act, 1965 - The union terminated this settlement and the employer refused to make payment for the period after the expiry of settlement - Held, the action of management is violative of statutory provisions under S.9A and writ of mandamus is maintainable against private employer in such cases - Until new contractor or award replaces the previous one, the former settlement or award will regulate the relation between parties."

(ii) T.N.State Apex Co-op. Bank Ltd., v. T.N.S.A.C.B. Pensioners Assn.

"Constitution of India (1950), Article 226 - Tamil Nadu Co-operative Societies Act (27 of 1975) - Industrial Disputes Act (14 of 1947), Section 12(3) - Settlement under Section 12(3) of I.D.Act - Pension Scheme - Fixation of pension - Writ petitions - Existence of alternate remedy not absolute bar to entertain petitions."

(iii) The Senior Regional Manager, TNCSC v. M.Chinnappan, Superintendent (P & M), TNCSC(DB)

"INDUSTRIAL DISPUTES ACT, 1947 (147 OF 1947), Sections 33 (1)(a), 33(3)(b) 33(4) - TAMIL NADU INDUSTRIAL DISPUTES RULES, 1958, Rule 65(iv) - Protected Workmen - Condition precedent for suspension of "Protected Workmen" - Prior Sanction - On perusal of impugned order it is very clear that Order of Suspension has not been issued to maintain industrial peace or discipline among Employees - As rightly held by learned Single Judge, any alteration of conditions of service of "Protected Workmen" shall not be made except with prior permission in writing in terms of Sections 33(3) and (4) of ID Act - Detailed procedure has been envisaged under Rule 65 - Moreover Department has not disclosed any valid reasons except for using phrase that suspension was ordered in the interest of Appellant-Department - Therefore, Order of Single Judge in setting aside impugned Order of Suspension does not warrant interference - Writ Appeal dismissed."

21. The highly competent counsel Mr.Ravi appearing for the third respondent submits that the transfer of an employee in a transferable post does not pertain to any condition. The transfer order rests within the Exclusive Administrative

nominees of the Management. The transfer is not a change in service conditions. If there is any violation of Section 33, Industrial Disputes Act, the worker can make a complaint under Section 33A of the Industrial Disputes Act before the concerned authorities. The highly competent counsel further submits that most of the employees and staff members went on voluntary retirement scheme and some of the employees are willing to join at Virudhunagar Unit. The highly competent counsel further submits that the above writ petition is not maintainable since for the dispute between the employees and employer, the petitioner has to approach the proper forum, viz., Labour Court. As such, the issue pertaining to the Salary cannot be decided by way of writ petition. If the employees are aggrieved for closing the factory or for transfer, they have to approach before the Industrial Tribunal, under Section 33A of the Act. The petitioner is seeking relief against the third respondent herein, which is not a State or Central Government or even quasi Government. Therefore, the writ petition is not maintainable. The first and second respondents are Government authorities, but the petitioner is not seeking relief from any of the above mentioned. Therefore, the grievance raised by the petitioner cannot be adjudicated by the above writ petition. It is not open to the petitioner to bypass the same and approach this Court by filing the writ petition under Article 226 of the Constitution of India.

22. The highly competent counsel appearing for the third respondent further submits that 123 employees have accepted voluntary retirement scheme out of 185 workmen. The voluntary retirement service scheme was effected in the month of October 2013. The Management felt that the combined strength of the remaining workmen of Pallavaram and Virudhunagar could be utilized at the factory in Virudhunagar so as to reduce idle time and also to reduce loss that was regularly accruing by the third respondent. Hence, the third respondent suspended the operation at the Pallavaram Factory from 18.03.2015. The petitioner's union consisting of 62 workmen, were transferred to the Virudunagar Factory after giving them travelling allowance. The highly competent counsel appearing for the third respondent further submits that at the co-Unit of Pondicherry, there is surplus employees are working as such, the petitioners cannot be accommodated in the Pondicherry Unit. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition. In support of his contentions, the highly competent counsel has cited the following judgments:-

(i) VST INDUSTRIES LTD., VST INDUSTRIES WORKERS' UNION reported in (2001) 1 Supreme Court Cases 298

"A. Constitution of India - Art. 226 -Jurisdiction
- Private person, amenability of - Company
incorporated under Companies Act - Nature of function

i.e. whether performing any public duty, an important factor for determining the company's amenability to writ jurisdiction under Article 226 - Company engaged in manufacture and sale of cigarettes - Canteen set up in the factory of the Company being run through contractor - Held, activity will not amount to any public duty - High Court cannot issue writ of mandamus at the instance of the canteen employees directing the Company to treat those employees as employees of the Company - Labour Law - Factories Act, 1948.

B. Labour Law - Industrial Disputes Act, 1947 - S.2(s) - Workmen - Employees of canteen set up in the factory of the Company employing more than 250 persons - Canteen being subsequently run through contractor - Whether canteen employees to be treated as workmen of the Company - Factors to be considered - On facts held, canteen shall be deemed to be run by the Company itself and as such its employees were workmen of the Company.

C. Labour Law - Factories Act, 1948 - S.46 - Whether canteen can be run within the refinery area - No material to show that the canteen was located in hazardous area - Moreover, canteen can be located in an appropriate place - Hence contention that the canteen cannot run as it was located in the refinery area, on facts, not acceptable."

(ii) MGMT. of GE P.C. (P) Ltd., v. Workmen of GE P.C.(P) Ltd.

"Constitution of India, Article 226 - Writ - Maintainability against private party - Matter relating to violations under the Industrial Disputes Act - Single Judge allowing writ - Appeal against - The Contention that the appellant is a private party and is not discharging any public duty is not rebutted - Writ petition held not maintainable - Appeal allowed - Petitioner directed to raise the matter under Industrial Disputes Act."

(iii) INDIAN ADDITIVES, LTD. V. INDIAN ADDITIVES, EMP. UNION reported in 2005 (1) LLN 878

"Transfer - Transfer of employee challenged on ground that it is in the middle of the academic year and such transfer would affect his children's education - Held, no error of law has been shown - A writ does not lie ground of sympathy or compassion - Transfer is an incidence service and will not generally be interfered with by Courts."

23. From the above discussions, this Court is of the view that:-

(i) The third respondent suspended the Factory Operation without serving mandatory notice as per law, hence, it goes against it. However, considering the present situation, the third respondent had settled the benefits under the voluntary retirement scheme for 123 employees out of 185 total workforce. Hence, it is near impossible to run the factory with such a meagre strength of workers.

(ii) The third respondent / Management has offered employment to the petitioner at the Virudhunagar Factory, which is co-unit of the Pallavaram Unit, on the same status salary etc.

(iii) The third respondent has also offered the usual voluntary retirement benefits as per the terms and conditions on par with the co-employees numbering 123.

(iv) The highly competent counsel appearing for the petitioner submits that the employees are willing to join at the Pondicherry Unit. However, the highly competent counsel appearing for third respondent replied that 62 employees cannot be accommodated at the Pondicherry Unit since there is surplus employees who are working at the Pondicherry Unit. Therefore, this Court cannot compel the third respondent to provide employment to the employees in the petitioner Union at the Pondicherry Unit.

(v) Likewise, this Court cannot compel the third respondent / Management to restore the original position of the factory in order for the running of the same, since the third respondent has given two options to the employees viz., either the employees can join at the Virudhunagar Unit or receive benefits under the voluntary retirement scheme of the Management.

24. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers and the views of this Court as mentioned above (i) to (v), this Court dismisses the above writ petition since the Management has come forward to protect the employees of the petitioner-Union by way of providing the same jobs at their Co-Unit at Virudhunagar or even prepared to pay benefits under the voluntary retirement scheme and to treat the employees with their co-employees on par. Therefore, there is no prejudice to the petitioner-Union whatsoever.

25. In the result, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

r n s

To

1. The Secretary,
Government of Tamil Nadu,
Labour and Employment Department,
Fort St. George,
Chennai- 600 009.
- 2.The Assistant Commissioner of Labour (Conciliation),
Sriperambadur,
Kancheepuram District.

1 cc to M/s.Balan Haridas, Advocate, Sr. 25734
1 cc to M/s. Gupta and Ravi, Advocate, Sr. 25578

W.P.No.9764 of 2015 &
M.P.Nos. 1 and 2 of 2015

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