

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders : Reserved on - 13.03.2015
Pronounced on - 06.11.2015

CORAM:-

THE HON'BLE MR. JUSTICE T.RAJA

Writ Petition No.32401 of 2006
and
M.P. No.1 of 2006

M/s.Taj Madras Flight Kitchen
Pvt. Limited,
8, Officers Lines,
272/273 G.S.T. Road,
Pallavaram, Chennai 600 043
Represented by
its General Manager.

.... Petitioner

Vs.

Assistant Inspector of Labour,
St. Thomas Mount,
No.22, Parthasarathy Nagar,
3rd Street,
Adambakkam,
Chennai 600 088.

.... Respondents

Petition under Article 226 of the Constitution of India for the
issuance of a writ of certiorari as stated therein.

For Petitioner : Mr.Shivathanu Mohan Sanjay,
for M/s.S.Ramasubramaniam & Associates

For Respondent : Mr.R.Govindasamy,
Additional Government Pleader

O R D E R

The petitioner herein seeks for issuance of a writ of
certiorari to call for the records relating to the Order in
Rc.No.253/06, dated 28.07.2006, passed by the respondent herein
viz., Assistant Inspector of Labour, Chennai-88, and to quash the
same.

2. Learned counsel for the petitioner, in an assiduous endeavour to assail the impugned order passed by the 2nd respondent directing the petitioner-Establishment, which has been hitherto treated as a 'Factory' in terms of the Factories Act, 1948, to get registered under the Tamil Nadu Catering Establishments Act, 1958 (in short TNCE Act) that too without affording an opportunity of being heard to the petitioner, would submit that the petitioner is engaged in preparation of foodstuff in its premises for being served in the National and International Flights of various Airlines and that the foodstuff was never served in or inside its premises/Factory where the manufacturing process of the foodstuff takes place. According to him, when the petitioner-Unit had already been recognized as a Factory and, till this date, has been complying with the provisions of the Factories Act, the question of requiring them to register the Unit under the TNCE Act would never arise at all for the simple reason that the foodstuff prepared/manufactured by the petitioner is not for provision or consumption inside the premises of the petitioner. It is specifically submitted by the learned counsel that, if at all the petitioner could be brought within the definition of 'Catering Establishment' as per Section 2(1) of the TNCE Act, it can be done only if the petitioner/factory operates a Restaurant or Residential Hotel within its manufacturing unit/Factory. Further, the TNCE Act provides two essentialities viz., refreshments or meals must be provided in the premises to public; and refreshments or meals must be consumed there-at by public, in order to bring the Unit under the purview of the Act for getting it registered there-under. Admittedly, when meal/foodstuff is neither provided nor consumed by the public in the premises of the petitioner, the provisions of the TNCE Act can never be applied to them. In other words, as the petitioner's Unit does not have any semblance to an Establishment in terms of the TNCE Act and the same, having been registered under the Factories Act and treated all these years only as a 'Factory' with periodical renewal of its licence granted under the Factories Act, the impugned order is absolutely misdirected and hence, the same is liable to be quashed; he pleaded.

3. Per contra, learned Additional Government Pleader appearing for the respondent, by referring to the counter affidavit, would submit that the petitioner, without even submitting a reply to the impugned letter directing them to register the Establishment under the TNCE Act, has rushed to this Court that too, without even impleading the necessary

parties/Government Authorities concerned. According to him, still, the petitioner has the remedy of projecting his case and grievance before the Authority under the TNCE Act and hence, the writ petition is absolutely misconceived. So stating, he prayed for dismissal of the writ petition.

4. I have carefully considered the rival submissions advanced on either side.

The only issue for consideration in regard to the prayer of the petitioner is as to whether the respondent is right in issuing the impugned order against the petitioner, directing them to register the Unit under the TNCE Act when the petitioner had long back obtained a valid Licence under the Factories Act for the manufacturing process of foodstuff involved in their Unit and, as on the date of filing of the writ petition, such Licence remained valid with periodic renewals?

5. Before proceeding further, it is but relevant to refer to Section-2(k) of the Factories Act, which reads as follows:-

"(k) "manufacturing process" means any process for-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal,

[(ii) pumping oil, water, sewage or any other substance; or]

(iii) generating, transforming or transmitting power; or

[(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;] [or]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; [or]

[(vi) preserving or storing any article in cold storage;]."

Section 2(m) of the Factories Act defines the term 'Factory' to mean thus:

" "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,— but does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)], or ⁷ [a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place]. "

Coming to the TNCE Act, 1958, while Section-2(1) thereof defines 'Catering Establishment' to mean a 'Restaurant' or 'residential hotel', Section 2(11) of the said Act defines the term Residential Hotel as 'any premises in which the business of providing dwelling accommodation and supply of meals to any member of the public or a class of the public is carried on' and Section 2(12) defines the term 'Restaurant' as 'any premises in which is carried on the business of the supply of refreshments or meals to the public or a class of the public for consumption on the premises'.

6. After contrasting the provisions contained in the aforesaid two different Acts viz., Factories Act and TNCE Act, this Court could see that, in order to attract the provisions of the TNCE Act, one of the essentials involved is that foodstuff or meals should be supplied in or inside the premises to the public for consumption thereat. Admittedly, it is the case of the petitioner that the foodstuff prepared by them is not for 'consumption in or on the premises' but to be served in the National and International Flights operated by various Airlines. That being the admitted position, this Court now needs to examine as to in what way the provisions of the TNCE Act would have relevance to the petitioner's Unit ?

7. In order to qualify an Establishment as a 'Factory' under the Factories Act, the basic essentials include the aspect that manufacturing process should be carried out,

- a) with the aid of power; and
- b) with the employment of more than ten workers,

as provided in Section 2 (m) of the Factories Act. According to the petitioners, only on fulfilment of the said criterion, the authorities had issued in their favour the licence under the Factories Act. It is their emphatic case, not even denied by the respondent, that they are only engaged in the activities of preparation of food which is a 'Manufacturing Process' as per Section 2 (k) of the Factories Act. In fact, umpteen number of decisions including the pronouncements of the Apex Court settled the position of law that cooking and preparing food items is a 'manufacturing process'. In that line, in G.L. Hotels Ltd. vs. T.C.Sarin (1993-4-SCC-363), the Hon'ble Supreme Court even included 'Hotels' to fall within the purview of 'Factory' by ruling thus:-

"5. Since the manufacturing process in the form of cooking and preparing food is carried on in kitchen and the kitchen is a part of the hotel or a part of the precinct of the hotel, the entire hotel falls within the purview of the said definition (of 'Factory').

In the same line, the decisions rendered in Poona Industrial Hotels Ltd., vs. I.C. Sarin and another (1983-Vol.63-FJR-354) and ESI Corporation vs. ITC, Hotel Ashok, Bangalore (1984-64-FJR-184) already answered the issue in clear terms that manufacture of food constitutes a 'Factory'. In that line, if the case of the petitioner is looked into, this Court has no difficulty to hold that the petitioner Unit is a 'Factory' and that the impugned order seemed to have been passed without properly identifying the nature of the petitioner's Unit.

8. As already mentioned, only after the petitioner fulfilling the prerequisites as obligated under the Factories Act, it was issued with a Licence under the said Act by the Labour Department, Government of Tamil Nadu. In this regard, it is pertinent to point out that, even way back on 09.07.1999, by remitting a sum of Rs.36,000/- through Demand Draft towards Licence Fee, the petitioner had applied to the Deputy Chief Inspector of Factories, IV Division, Chennai, for renewal of the licence issued to them under the Factories Act. The petitioner has also filed in the typed-set a copy of the Licence issued upto 31.12.2005 and also a copy of the Application, dated 25.10.2005, seeking renewal of the said licence to evidence the factum that the licence issued for the petitioner-factory was being renewed

periodically. The records show that the writ petition was filed during September 2006 and that the licence issued to the petitioner under the Factories Act was renewed upto 31.12.2006. Therefore, when the petitioner-Factory has been all along treated as an Establishment falling under the provisions of the Factories Act, it is very strange, as to on what basis, the respondent herein proceeded to issue the impugned order, warranting the petitioner to bring the Unit within the realm of the TNCE Act.

9. Even though the impugned order is seen to have been passed, based on the High Court's order, dated 15.10.2003, passed in Crl.O.P. No.34655 of 2003, to conclude that this Court itself had already declared the petitioner as an Institution not falling under the purview of the Factories Act but only under the TNCE Act and therefore, the impugned order cannot be faulted with, a careful scrutiny of the said order of this Court would reveal that the petitioner in that Criminal Original Petition was one Saj Flight Service (P) Limited/a different entity and not M/s.Taj Madras Flight Kitchen Pvt. Limited/the petitioner herein; therefore, the very foundation of the impugned order itself goes destroyed. Thus, by looking at any angle, this Court hardly finds any justification to sustain the impugned order, directing the petitioner to get registered under the TNCE Act when already the manufacturing process of the petitioner is covered by a valid licence under the Factories Act, issued by none else than the Labour Department of the State.

In fine, the impugned order, dated 28.07.2006, passed by the respondent herein, is set aside. Writ Petition stands allowed, however, there will be no order as to costs. Connected Miscellaneous Petition stands closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

JI.

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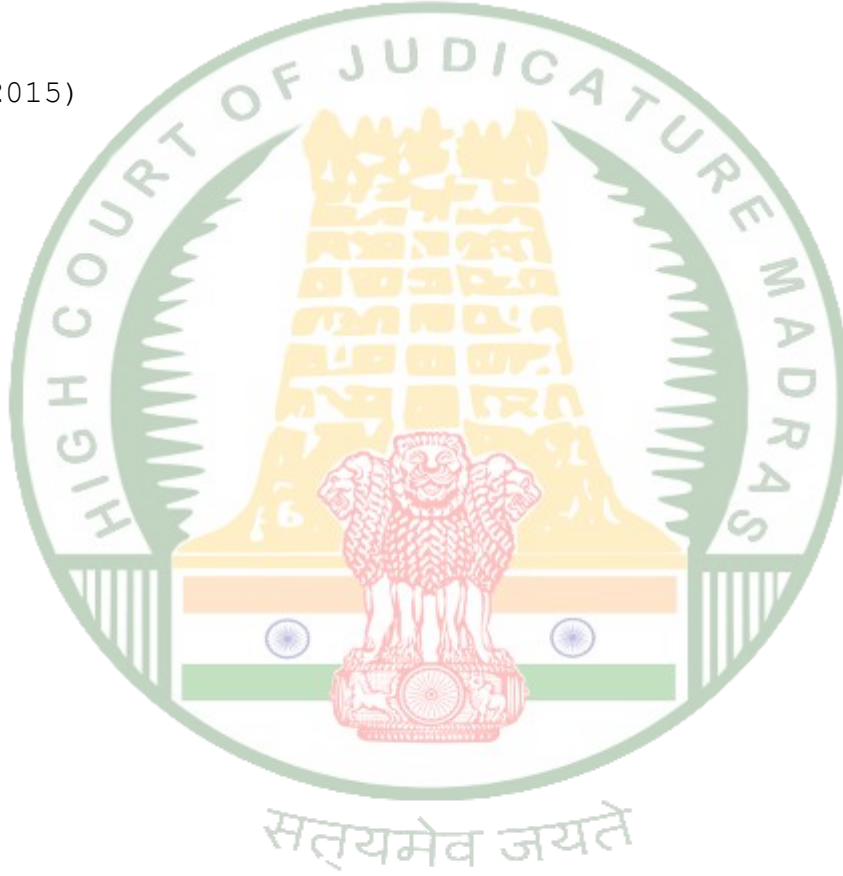
To

Assistant Inspector of Labour,
St. Thomas Mount, No.22, Parthasarathy Nagar,
3rd Street, Adambakkam, Chennai 600 088.

+1cc to M/s.S.Ramasubramaniam & Associates, Advocate,
S.R.No.61471

W.P No.32401 of 2006

RSK(CO)
CA(10/12/2015)



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