

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13164 of 2003

Tamil Nadu Tourism Development Corporation Limited,
Tamil Nadu Tourism Complex,
Wallajah Road,
Near Kalaivanaar Arangam,
Chennai-600 002
rep. by its Managing Director.

... Petitioner

Vs.

1.The Commissioner of Labour, Chennai-6.
2.C.Swaminathan
3.R.Chinnadurai
4.S.Sathish Kumar
5.A.L.Shankar
6.The Special Deputy Commissioner of Labour,
Chennai-1.

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in its Proceedings No.S2/3878/03 and quash its order dated 27.2.2003 and direct the 1st respondent to entertain the petitioner's application dated 14.1.2003 filed under Section 51 of the Tamil Nadu & Shops & Establishments Act and decide the case on merits.

For Petitioner :Mr.V.Karthick
for

M/s.T.S.Gopalan & Co.

For Respondents:Mr.R.Vijayakumar

Addl. G.P. for R1 & R6

No Appearance for R2 to R5

O R D E R

Heard Mr.V.Karthick, learned counsel for M/s.T.S.Gopalan & Co. appearing for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for respondent Nos.1 and 6.

2. The petitioner is the Tamil Nadu Tourism Development Corporation Limited and they have filed the writ petition challenging the order passed by the first respondent dated 27.02.2003.

3. The petitioner establishment filed application under Section 51 of the Tamil Nadu Shops & Establishments Act, 1947 (hereinafter referred to the "said Act") contending that the establishment namely Tamil Nadu Tourism Development Corporation Limited will not be an establishment covered under the provisions of the said Act and a request was made to the first respondent to decide its request. It was contended that in terms of Section 4(1)(c) of the said Act, the provisions of the Act will not apply to the establishments in Central and State Governments, Local Authorities, Reserve Bank of India, a Railway Administration etc. Therefore, it was contended that the provisions of the said Act would not apply. At the relevant point of time, respondent Nos.2 to 5 have approached the sixth respondent and filed appeals and it appears that those appeals were pending under Section 41(2) of the said Act. The first respondent, by the impugned proceedings stated that the decision under Section 51 can be given in the normal occasions only and this Section cannot be used as a tool to prolong or defeat an appeal filed by a dismissed employee under Section 41(2) of the said Act before the Appellate Authority and it is open to the petitioner to raise their objection before the Appellate Authority before whom appeals under Section 41(2) are pending and therefore the application filed by the petitioner was returned.

4. The impugned order is challenged by the petitioner on the ground that the provisions of the said Act are not applicable to the petitioner establishment, as they are the Government company and therefore, they are exempt from the provisions of the said Act. Hence, the petitioner is entitled to approach the first respondent to pass an order under Section 51 of the said Act and such an application could not have been returned merely because the private respondents have filed the appeals before the sixth respondent under Section 41(2) of the said Act, more so, when the sixth respondent is an Officer inferior to the rank of the first respondent viz., the Commissioner of Labour. In support of his contention the learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of C.V.Raman v. Management of Bank of India and another, reported in (1988) 3 SCC 105 and also the decision of this Court in W.P.No.18643 of 1997 (Tamil Nadu Civil Supplies Corporation Limited, rep. by its Senior Regional Manager v. B.Purushothaman and another), decided on 10.03.2003.

5. Though the respondents 1 and 6 have entered appearance, they have not filed the counter-affidavit. Despite the service, respondent Nos.2 to 5 have not entered appearance.

6. The legal issue which falls for consideration in this writ petition is as to whether the first respondent could have returned the petitioner's application without taking a decision on merits solely on the ground that the appeals filed

by respondent Nos.2 to 5 are pending before the sixth respondent.

7. Section 51 of the said Act empowers the Commissioner of Labour to decide certain question and it is stated that if any question arises whether all or any of the provisions of the Act apply to an establishment or to a person employed therein or whether Section 50 applies to any case or not, it shall be decided by the Commissioner of Labour and his decision thereon shall be final and shall not be liable to be questioned in any Court of Law. As noticed above, the provisions makes it mandatory for the Commissioner of Labour to decide such an application and render a decision. This is so because the Statute uses the expression "shall". The power of the first respondent is independent and the Act gives such a power to enable the Commissioner of Labour, who is the head of the department to decide such question. Therefore, the first respondent erred in returning the application filed by the petitioner stating that this issue can be agitated at the time of contesting the appeals pending under Section 41(2) of the Act.

8. This Court, while considering the similar issue as regards the applicability of the provisions of the said Act to the Tamil Nadu Civil Supplies Corporation Limited, by an elaborate order, held that the State Government is having effective control over the petitioner (Tamil Nadu Civil Supplies Corporation Limited) and as held by the Hon'ble Supreme Court in the case of C.V.Raman (supra), though the Corporation is having freedom in the matter of day-to-day administration, the State Government is having deep and pervasive control in all deciding factors with reference to the administration of the petitioner (Tamil Nadu Civil Supplies Corporation Limited). Therefore, by applying the decision in the case of C.V.Raman (supra) held that the Act does apply to the said Corporation.

9. In the light of the above, the impugned order has to be necessarily set aside. Accordingly writ petition is allowed and the impugned order is set aside and the matter is remitted back to the first respondent for fresh consideration. The first respondent shall decide the petitioner's application filed under Section 51 of the said Act after notice to the petitioner as well as the respondents 2 to 5 and after affording opportunity of personal hearing to the parties within a period of three months from the date of receipt of the copy of the order. No costs.

bbr

Sd/-
Asst.Registrar

/true copy/

To

1.The Commissioner of Labour, Chennai-6.

2.The Special Deputy Commissioner of Labour,
Chennai-1.

3.The Section, Officer,
VR Section,
High Court, Madras [31/05/2016]

+ 1 cc to M/s.T.S.Gopalan & Co. Advocate Sr 65593/15.

+ 1 cc to The Govt.Pleader, Sr 65724 & 65708/15.

SE/CO
KR/28/12

W.P.No.13164 of 2003



WEB COPY