IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12316 of 2016
and
W.M.P.No.10643 of 2016

ABI Showatech (India) Limited,
(LAP Division)
represented by its Occupier - S.Ravindran,
Pulivalam Village & Post,
Banavaram Via,
Walaja Taluk,
Vellore District - 632 505. .. Petitioner

vs.

1. The Joint Director of Industrial Safety and Health - 1,
   Tamil Nadu Housing Board Office Campus,
   Sathuvacharai,
   Vellore - 600 009.

2. Five Men Committee,
   Affiliated to CITU,
   C/o.A.Babu,
   78/516, Pilliyar Kovil Street,
   Puliyakannu, Ranipet Via,
   Walaja Taluk,
   Vellore District - 632 405. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to decide the preliminary issue as prayed for by the petitioner in its preliminary objection dated 17.03.2016.

For Petitioner : Mr.S.Ravindran

For Respondents : Mr.R.Rajeswaran
Special Government Pleader [R1]

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O R D E R

By consent, the main Writ Petition itself is taken up for final disposal. Heard Mr.S.Ravindran, learned counsel for petitioner and Mr.R.Rajeswaran, learned Special Government Pleader for first respondent.

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2. In the light of the order this Court proposes to pass, notice to second respondent is dispensed with.

3. The petitioner organization has filed this writ petition praying for issuance of a writ of mandamus directing the first respondent to decide the preliminary issues as prayed for by the petitioner in its preliminary objection dated 17.03.2016.

4. The second respondent Union filed a claim statement before the first respondent under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, (hereinafter referred to as 'Act') for conferring such status on behalf of workmen of the petitioner organization. The petitioner raised preliminary objections before the first respondent stating that (i) a common proceeding could not be entertained under the provisions of the Act (ii) the second respondent is not entitled to question the nature of contract whether it is sham or not, before the first respondent (iii) According to the petitioner, on whose behalf the second respondent has filed the claim petition, are not in employment and (iv) in terms of Section 3 of the Act unless a person is in employment, he cannot demand status of employment and in this regard, reliance has been placed on the decisions of this Court in Management of Hanil Tube India Pvt. Ltd. vs. The Competent Authority & Inspector of Factories [CDJ 2012 MHC 564] and Management Madras Aluminum Company Ltd. Mettur Dam vs. The Deputy Chief Inspector of Factories, Salem & Others [CDJ 2013 MHC 2985]. Copies of the two decisions were also filed along with the preliminary objections dated 17.03.2016. The second respondent has also filed counter.

5. The petitioner has filed this writ petition presumably under the apprehension that the first respondent will not consider the preliminary issues and will proceed to decide the matter on merits. Learned counsel for the petitioner submitted that the first respondent is not inclined to consider the preliminary issue but seeks to adjudicate the matter on merits.

6. It is too early for this Court to express any opinion on the submission of the learned counsel for the petitioner since the writ petition is taken up for hearing without notice to the second respondent. In any event, the petitioner having filed an application raising certain issues as preliminary objections and the second respondent having filed their counter, fairness in procedure would demand that the first respondent shall decide the issues as first among the other issues. It is made clear that the first respondent shall decide the issues raised by the petitioner as first among the other issues which the first respondent may frame. It is made clear that this Court has not

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gone into the merits of the petitioner's claim nor has made any remarks on the second respondent. It is open to the parties to place all factual and legal submissions before the first respondent. The first respondent shall decide the matter independently without in any manner being influenced by this order.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

gm

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

The Joint Director of Industrial Safety and Health - 1,
Tamil Nadu Housing Board Office Campus,
Sathuvacharai,
Vellore - 600 009.

+ 1 cc to Mr.S.Ravindran, Advocate SR 20706

+ 1 cc to Govt.Pleader SR 20902

rsi(co)
prk22/4

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