

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2017

CORAM :

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.18787 of 2016
and WMP.No.16396 of 2016

Talbros Podhu Thozhilalargal Sangam
Rep. by its General Secretary,
Regn. No.18TVR,
No.24/74, Pughazhenth Street,
Chelliamman Nagar,
Athipet, Ambattur,
Chennai - 600 058.

...Petitioner

vs.

1. The Government of Tamil Nadu
Rep. by its Secretary,
Labour and Employment Department,
Fort St. George Town,
Chennai - 600 009.

2. The Management of Talbros Automative
Components Ltd.,
No.22-B, Sidco Industrial Estate,
Ambattur, Chennai - 600 098.

3. The Presiding Officer
Industrial Tribunal,
Chennai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus, calling for the records in connected with G.O.(D). No.160, dated 14.03.2016 of the first respondent and quash the same and further directed the first respondent herein (Government) to refer the issue formulated in Para 6 of the order / Judgment in W.P.No.26726 of 2015 pronounced on 17.12.2015.

For petitioner : Mr.V.Prakash, Senior Counsel
for Mr.K.Sudalaikannu

For respondents : Mr.M.Elumalai, Govt. Advocate for R1
Mr.E.Sathish Kumar for R2
R3 - Tribunal

The petitioner has questioned the correctness of the G.O. (D).No.160, dated 14.03.2016, to quash the same with the consequential direction to the Government to refer the issue formulated in Para 6 of the order, dated 17.12.2015 passed in W.P.No.26728 of 2015.

2. Mr.V.Prakash, learned Senior counsel appearing for the petitioner would submit that a wage revision settlement took place between the petitioner union and the second respondent management expired on 30.03.2013. Subsequently, a fresh charter of demand was raised for wage revision by the petitioner union, but the bilateral negotiation between the parties could not reach in amicable settlement, where the petitioner union was not ready to accept some unreasonable terms and conditions due to high rise in the cost of living. As a result, the management imposed a lock out on 16.08.2014, however, it was termed as a closure. But when the business of the factory was continuing by the second respondent, a question arose whether the alleged closure of factory on 16.08.2014 is genuine or whether it was a lock out.

3. In any event the said question should be decided only by the judicial forum constituted under the Industrial Disputes Act. Finally after many deliberations, the Government, the first respondent herein referred the issue relating to the wage revision in G.O.(D).No.413, dated 11.08.2015. However, it omitted to refer the Industrial Disputes relating to whether the alleged closure of the factory on 18.10.2014 by the second respondent is genuine or whether it is lockout. Therefore, the petitioner filed Writ Petition in W.P.No.26728 of 2015, seeking issuance of writ of mandamus directing the first respondent therein to refer the issue mentioned in the schedule for reference, namely (a) Whether the cessation of operation of the factory M/s. Talbros Automotive Components at No.22B, SIDCO Industrial Estate, Ambattur, Chennai - 600 098 is a case of lockout or closure ? If it is a case of lockout whether the same is legal and justified ? and (b) To what relief the workmen are entitled to ?

4. Considering the genuineness of the prayer made by the petitioner union, this Court disposed of the writ petition with a direction to the first respondent to consider the petitioner's claim on the following two issues :

"(a) Whether the cessation of operation of the factory M/s. Talbros Automotive Components at No.22B, SIDCO Industrial Estate, Ambattur, Chennai - 600 098 is a case of lockout or closure ?

If it is a case of lockout whether the same is legal and justified ?
(b) To what relief the workmen are entitled to ?"

5. Pursuant thereto instead of complying with the said direction issued by this Court, the first respondent / Government issued G.O.(D).No.160, dated 14.03.2016 referring the issue to the Industrial Dispute to decide whether the closure is legal and justified.

6. Assailing the impugned order, Mr.V.Prakash, learned Senior counsel would submit that when there is a clear and candid direction passed by this Court in W.P.No.26728 of 2015, dated 17.12.2015, the first respondent / Government has to consider the petitioner's claim on the aforesaid two issues. Unilaterally the Government cannot step into the shoes of the Tribunal and refer the issue whether the closure is justified. Taking support from the Judgment of the Hon'ble Apex Court in Management of the Express Newspapers (P) Ltd., Madras v. Workers and others, reported in AIR 1963 SC 569, distinguishing what is closure and lockout, he would submit that when there is a theoretical distinction between closure and lockout, the said issue needs to be decided legally only by the Tribunal. Adding further, it is stated that when the learned Tribunal has to decide (a) Whether the cessation of operation of the factory M/s. Talbros Automotive Components at No.22B, SIDCO Industrial Estate, Ambattur, Chennai - 600 098 is a case of lockout or closure ? If it is a case of lockout whether the same is legal and justified ? (b) To what relief the workmen are entitled to ?, the first respondent / Government who has no authority to decide the nature of the reference, wrongly referred the short issue as though there was a closure, without referring to decide the case of lockout to the Tribunal. Therefore, the impugned G.O.(D).No.160, dated 14.03.2016 issued by the first respondent is liable to be set aside for two reasons. Firstly the direction issued by this Court in its order, dated 17.12.2015 passed in W.P.No.26728 of 2015 has been completely overlooked and secondly the Government has no authority to decide the issue whether it is a case of lockout or closure.

7. Per contra, Mr.E.Sathish Kumar, learned counsel appearing for the second respondent would submit that when the second respondent Establishment was closed due to unreasonable charter of demand made by the petitioner union, the first respondent / Government giving top priority to the issue to maintain the Industrial hormonal has rightly issued two G.Os, namely G.O.(D). No.413, dated 11.08.2015 and subsequently by intervention of this Court in W.P.No.26728 of 2015 by order, dated 17.12.2015,

the present impugned G.O.(D).No.160, dated 14.03.2016 has been issued, referring the issue whether the closure is justified and also to decide to what relief the workmen is entitled to and hence, no interference by this Court is required, he pleaded.

8. This Court clearly finds no merit in the submissions made by the learned counsel appearing for the second respondent for two reasons. Firstly, this Court by order, dated 17.12.2015 passed in W.P.No.26728 of 2015 entertaining the petitioner's writ petition has formulated the reference as follows :

"(a) Whether the cessation of operation of the factory M/s. Talbros Automotive Components at No.22B, SIDCO Industrial Estate, Ambattur, Chennai - 600 098 is a case of lockout or closure ?
If it is a case of lockout whether the same is legal and justified ?

(b) To what relief the workmen are entitled to ?"

While dealing with the same, in Paragraph 6 of the order in the said writ petition, this Court has given a specific and candid direction to the first respondent to consider the petitioner's claim on the following two issues :

"(a) Whether the cessation of operation of the factory M/s. Talbros Automotive Components at No.22B, SIDCO Industrial Estate, Ambattur, Chennai - 600 098 is a case of lockout or closure ?
If it is a case of lockout whether the same is legal and justified ?

(b) To what relief the workmen are entitled to ?"

9. While this Court directed the first respondent to consider the aforesaid issues, the first respondent by the impugned G.O.(D).No.160, dated 14.03.2016 making a reference to the Tribunal to decide whether it is a case of closure, if it is so whether it is legal and justified, is wholly misconceived. Secondly it is a well settled legal position that the disputes raised by the union needs to be finally decided legally only by the Labour Court or Industrial Tribunals and not by the Government. But in the present case, when the petitioner union are agitating the issue whether it is a closure or lockout, the Government while complying the direction issued by this Court in W.P.No.26728 of 2015, dated 17.12.2015, in my considered opinion has wrongly referred the dispute before the learned Tribunal without referring the entire issue namely (a) Whether the causation of operation of the factory M/s. Talbros Automotive

Components at No.22B, SIDCO Industrial Estate, Ambattur, Chennai - 600 098 is a case of lockout or closure ? If it is a case of lockout whether the same is legal and justified ? (b) To what relief the workmen are entitled to ?

10. In view of the above, the impugned G.O.(D).No.160, dated 14.03.2016 is quashed and consequently, the first respondent is directed to adhere to the order passed by this Court in W.P.No.26728 of 2015, dated 17.12.2015 and pass appropriate orders, within a period of three weeks from the date of receipt of a copy of this order.

11. The writ petition stands allowed with the above direction. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Secretary,
The Government of Tamil Nadu
Labour and Employment Department,
Fort St. George Town,
Chennai - 600 009.
2. The Management of Talbros Automotive
Components Ltd.,
No.22-B, Sidco Industrial Estate,
Ambattur, Chennai - 600 098.

3. The Presiding Officer
Industrial Tribunal,
Chennai.

+1cc to Mr.Sathish kumar, Advocate, S.R.No.11300
+1cc to Mr.Sudalaikannu, Advocate, S.R.No.11048
+1cc to the Government Pleader, S.R.No.11172

W.P.No.18787 of 2016

RJ(CO)
RS(20/04/2017)