

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2017

DATE OF DECISION : 24.03.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.7219 of 2015 and 33365 of 2016
and

W.M.P.Nos.28824 & 28825 of 2016

in
W.P.No.33365 of 2016

Puthiya Jananayaga Thozhilalar
Munnani Integra Automation Workers Branch
Rep by its Secretary, Regn.No.43/TVR
No.110/63, N.S.K.Salai
Kodambakkam
Chennai 600 024

... Petitioner in both WPs

-Vs-

1. Government of Tamil Nadu
Rep by its Secretary
Labour and Employment Department
Fort St. George
Chenna 600 009 ... 1st Respondent in both WPs
2. The Assistant Commissioner of
Labour (Conciliation)-I
SIPCOT Complex
Irunkattukottai
Sriperumbudur 602 117 ... R2 in WP.7219 of 2015
2. The Deputy Commissioner of
Labour II,
DMS Compound, Chennai 06. ... R2 in WP.33365 of 2016
3. The Management
Integra Automation Pvt. Limited
No.487 Valarpuram Village
Perambakkam Road
Sriperumputhur 602 105 ... R3 in both WPs

Prayer in W.P.No.7219 of 2015 : Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to forbear the third respondent from altering the

service conditions of the members of the Trade Union whose names and details is enclosed in the annexure to this petition including discontinuance of their services and removing the materials, machinery or closing the factory or any act which will result in non-employment, without getting prior permission from the second respondent under Section 33 of the Industrial Disputes Act 1947 in the industrial dispute viz., dated 5.1.2015 raised by the petitioner Union and further direct the second respondent to conciliate and effect settlement under Section 12(3) and if no settlement is forth coming to submit failure report under Section 12(4) of the Industrial Disputes Act, 1947 and in turn to direct the first respondent to refer the dispute for adjudication before the competent adjudicator.

Prayer in W.P.No.33365 of 2016 : Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the entire records with relating to the proceedings of the second respondent in Ref.No.C1/5594/2016 dated 10.08.2016 and quash the same and further direct the second respondent to pass orders on the complaint given by the petitioner Union dated 26.08.2016 under Sections 25Q, 25U & 26(2) of the Industrial Disputes Act, 1947.

For Petitioner : Mr.R.Sankarasubbu for
in both WPs Mr.A.Suresh Sakthi Murugan

For Respondents : Mr.M.Elumalai
in both WPs Government Advocate for
R1 & 2
Mr.S.Ravindran
Senior Counsel for
Mr.P.Nehru for R3

ORDER

Two writ petitions have been filed by Pudhiya Jananayaga Thozhilalar Munnani Integra Automation Workers Branch represented by its Secretary. In W.P.No.7219 of 2015, the petitioner has sought for issuance of a mandamus, to forbear the third respondent from altering the service conditions of the members of the Trade Union, whose names and details is enclosed in the annexure to this petition including discontinuance of their services and removing the materials, machinery or closing the factory or any act which will result in non-employment, without getting prior permission from the second respondent under Section 33 of the Industrial Disputes Act, 1947 in the industrial dispute viz. dated 5.1.2015 raised by the petitioner Union, with a further direction to the second respondent to conciliate and effect settlement under Section 12(3) and if no settlement is forthcoming, to submit a failure report under Section 12(4) of the Industrial Disputes Act and in turn to

direct the first respondent to refer the dispute for adjudication before the competent adjudicator. During the pendency of the said writ petition, the second respondent had submitted a failure report on 10.8.2016. Hence the petitioner has filed W.P.No.33365 of 2016 seeking for issuance of a writ of certiorarified mandamus, to call for the entire records in relation to the proceedings of the second respondent in Ref.No.C1/5594/2016 dated 10.08.2016 and quash the same with a further direction to the second respondent to pass orders on the complaint given by the petitioner Union dated 26.08.2016 under Sections 25Q, 25U & 26(2) of the Industrial Disputes Act, 1947. Hence, both the writ petitions were heard together.

2. Mr.R.Sankarasubbu, learned counsel for the petitioner has submitted that all the employees working in the third respondent company were paid with only meagre wages and moreover they were compelled to work for more than ten hours per day without giving any benefit of overtime wages. Under these circumstances, the employees made an attempt to form an Union. However, the third respondent thwarted the same by dismissing the employees who are in the forefront to form the Union. The third respondent Management also does not like the employees who organized themselves to form the Union. In this regard, they have been indulging in all kinds of unfair labour practice by threatening the employees to leave from the petitioner Trade Union. However, the petitioner Union made a charter of demands before the third respondent Management on 15.12.2014 and made a demand to resolve all the grievances through negotiations/talks. But the third respondent was not ready to resolve the same. Therefore, the petitioner Union raised an industrial dispute before the second respondent on 5.1.2015 and the same is also pending. Subsequently, after the conciliation talks were conducted by the second respondent on 6.3.2015, the third respondent Management had agreed to consider the charter of demands of the petitioner Union by assuring to take efforts to make the settlement. In view of the improvement shown in the conciliation, the members of the petitioner Union had also withdrawn the strike on 6.3.2015 giving assurance to the third respondent Management that they would not unnecessarily resort to strike. This assurance was also recorded by the second respondent with an advice that since the petitioner Union agreed not to resort to strike, the third respondent also should not resort to lock out. But unfortunately, the third respondent went out of the assurance by removing some of the machineries from the company to another unit at Pollachi under the guise of some repairs. Two of the machineries namely, L09 Puma, L21 LYNX were shifted causing non-employment to the members of the petitioner Union. As per Section 33(1) of the Industrial Disputes Act, every employer has a mandatory obligation to get permission before altering the service conditions of the employees connected with the industrial dispute which is pending for consideration. But

in the present case, the third respondent Management, without getting any prior permission from the second respondent, tried to remove the machineries illegally. Therefore, if the third respondent is not injuncted, the members of the petitioner Union would go jobless. Hence a direction should be issued to the third respondent not to alter the service conditions of the members of the petitioner Union till the dispute is legally settled.

3. Per contra, Mr.S.Ravindran, learned senior counsel for the third respondent Management submitted that the third respondent establishment, commencing its operation from 2013, has been manufacturing their components for the automotive industries and supplying the components to companies in and around Sriperumbudur. But it suffered loss from the financial year 2013-14 with an accumulated loss of Rs.11,94,64,723/- during the financial year 2015-16. Adding fuel to fire, at the instigation of the petitioner, from March 2015, the workmen started indulging in strikes, go-slow, producing high rate of rejections etc., and on many occasions, the members of the petitioner union displayed banners near the premises of banks, which led to the customers and bankers losing confidence. Finally the third respondent, due to the hindrance created by the members of the petitioner union in front of the premises of the third respondent's establishment, filed W.P.No.6625 of 2015 and sought for police protection against the unruly conduct of the workmen and by an interim order dated 10.3.2015, the Inspector of Police, Sriperumbudur was directed to give police protection to the third respondent's establishment to run its manufacturing process peacefully. The said order is still in force. Subsequently, the petitioner union also raised an industrial dispute by its letter dated 5.1.2015 before the Assistant Commissioner of Labour (Conciliation)-I, Irunkattukottai. On notice from the second respondent, the third respondent also informed the second respondent that it was not in a position to consider the increase in wages due to continuous loss suffered by them, thereupon the Assistant Commissioner of Labour (Conciliation)-I submitted his failure report on 9.11.2015. Secondly, the first respondent has referred the said dispute for adjudication vide G.O.Ms.No.346 dated 28.6.2016 to the Industrial Tribunal, Chennai and the said dispute has been numbered as I.D.No.17 of 2016, which is also pending before the Tribunal and the matter also was posted for filing claim petition by the petitioner union on 10.2.2017. Therefore the prayer of the petitioner to injunct the third respondent from altering the service conditions of the members of the petitioner union from removing the materials, machineries or closing the factory which would result in non employment without getting prior permission from the second respondent under Section 33 of the Industrial Disputes Act has become infructuous.

4. Adding further, the learned senior counsel stated that admittedly on submission of the failure report by the Assistant Commissioner of Labour, (Conciliation)-I, Irunkattukottai, the second respondent herein on 9.11.2015, the State Government has referred the dispute to the Industrial Tribunal for adjudication on 28.6.2016 by issuing G.O.Ms.No.346 and now the said I.D.No.17 of 2016 is pending before the Tribunal. Therefore, Section 33 of the Industrial Disputes Act has no application, hence the writ petition is not maintainable. Again denying the allegation of the petitioner that the third respondent was compelling its workmen to work more than 10 hours per day and the establishment was paying only meagre wages to the workmen, an admission has been made by the third respondent in the counter affidavit that two machineries used in the establishment were shifted. However, it is justified that as these two machineries were not being used in the third respondent's establishment, there is nothing wrong to shift the same and the said shifting of these two machineries was done with the knowledge of the workmen, who fully appreciated the stand of the third respondent, because no prejudice was caused to them. However, if there is any genuine violation of the conditions stipulated under Section 33 of the Industrial Disputes Act, the remedy of the party is to complain before the Conciliation Officer under Section 33 of the Act. On the contrary, the petitioner's wild allegation before this Court cannot even attract the compliance of Section 33 of the Act. Under this background, he has prayed this Court not to grant any injunction against the third respondent by invoking the writ jurisdiction under Article 226 of the Constitution. In support of his submissions, he has also relied upon two judgments of this Court passed by Vinod Kumar Sharma, J., in Central Organisation Tamil Nadu Electricity Employees' North Chennai Thermal Power Station Branch rep.by its Branch Secretary, Chennai v. Tamil Nadu Generation and Distribution Company rep.by its Chairman, Chennai and others, 2011 (3) LLJ 727 and by S.Vaidyanathan, J., in W.P.No.44769 of 2016 dated 29.12.2016 (Puthiya Jananayaga Vagana Ottunargal and Techniciankal Sangam, Chennai v. Government of Tamil Nadu rep.by its Secretary, Labour and Employment Department and others).

5. Heard the learned counsel for the parties.

6. So far as the relief sought for in W.P.No.33365 of 2016 is concerned, it has become infructuous, since the Assistant Commissioner of Labour (Conciliation)-I, Sriperumpudur had already submitted his failure report under Section 12(4) of the Act on 10.8.2016. However, in order to maintain industrial peace, on the advise of the Secretary to Government, Labour and Employment Department, the Joint Commissioner of Labour, Chennai instructed the Deputy Commissioner of Labour-II, Chennai to conciliate the above matter by calling the records from the

office of the Assistant Commissioner of Labour (Conciliation)-I, Sriperumbudur and considering the urgency of the matter, he has called for conciliation as per Rule 59A of the Industrial Dispute Rules on 3.8.2016 and subsequently adjourned the matter to 5.8.2016. When both the parties, viz., the management and the petitioner union participated on the said date, finding that no conciliation was possible to arrive at a settlement, a failure report was submitted to the Government for reference, based on which the Government had issued the G.O.Ms.No.346 dated 28.6.2016 for adjudication and the same is pending in I.D.No.17 of 2016 before the Industrial Tribunal, Chennai. Therefore, this Court finds that the prayer has become infructuous.

7. So far as the relief sought for in W.P.No.7219 of 2015 is concerned, much reliance was placed on the judgment of this Court in the case of Central Organisation of Tamil Nadu Electricity Employees' North Chennai Thermal Power Station branch represented by its Branch Secretary v. Tamil Nadu Generation and Distribution Company represented by its Chairman and others, 2011 (3) LLJ 727. Let us now look into the facts of the aforesaid case. The case of the petitioner therein shows that the workmen were not given any increase in wages or weekly off on the seventh day in spite of the demand by the workmen, which resulted in their going on strike. In spite of the workers going on strike, the matter was not resolved. Therefore, the petitioner-Union submitted a demand dated 4.8.2010 to the respondents and the management asked the workers to call off their strike with the assurance that the fourth respondent would resolve the settling of the demand within and before the next day evening. Only on the assurance given by the fourth respondent, the strike was called off and the workmen resumed their work. However, as per the assurance, the fourth respondent did not resolve or settle any issue till the end of 5.8.2015, which led to the filing of the complaint by the petitioner union to the Deputy Chief Labour Commissioner (Central), Chennai with a request to revise the minimum wages and other wages as per the various labour welfare legislations and the said complaint was also forwarded by the Assistant Labour Commissioner (Central), Chennai to the Commissioner of Labour, Chennai for appropriate action. The further stand of the petitioner showed that when the conciliation proceedings were pending before the Conciliation Officer, the fourth respondent has to maintain status quo and they cannot be permitted to appoint any new persons in preference of the workmen working with it. During the pendency of the conciliation proceedings, the said writ petition was filed seeking a mandamus, forbearing the respondents therein from altering the conditions of service of the 190 workmen in any manner till the dispute pending before the Conciliation Officer is either settled or adjudicated by the competent Labour Court/Industrial Tribunal.

8. When this Court granted an interim order of status quo, the management filed a vacate stay petition, on the ground that the second stage of the work came to an end, whereas the third stage is technical in nature, for which they require employees having technical knowledge, therefore, in view of the order of status quo passed therein, their work has come to a standstill, on the basis of a Division Bench judgment of this Court in the case of Project Director v. District General Workers' Union (CITU), (2010) 4 LLN 397, wherein the Hon'ble Division Bench has laid down that when the disputed questions of fact are involved, then writ jurisdiction cannot be invoked and by setting aside the single Judge order, the workers were relegated to avail the remedy under the Industrial Disputes Act. In this background, the learned Judge, considering the facts and circumstances of that case, observed that when the relief claimed was only interim, whereas the main dispute was pending before the authorities under the Industrial Disputes Act, it is not permissible to invoke the jurisdiction under Article 226 of the Constitution of India, in view of the alternative remedy under Section 33 of the Industrial Disputes Act. In other words, the learned single Judge has come to the conclusion that the writ petition cannot be entertained even if alternative remedy is available. Secondly, it was also observed that it is not possible to allow a party to carry on two parallel proceedings, namely, with regard to the main dispute and qua the interim relief. Thirdly, it was also observed that there was a disputed question of fact as to whether the workmen represented by the petitioner union were technically qualified to carry on the work.

9. Now coming to the judgment passed by S.Vaidyanathan, J. in W.P.No.44769 of 2016 dated 29.12.2016 (Puthiya Jananayaga Vagana Ottunargal and Techniciankal Sangam v. Government of Tamil Nadu represented by its Secretary, Labour and Employment Department, Chennai and others), the facts were that the petitioner therein raised an industrial dispute with regard to the charter of demands. In that case also, the petitioner union had raised a dispute. But some of the members of the union were suspended and after their suspension, they were also charge sheeted by the management. In such circumstances, it was held that merely because an industrial dispute is pending, the Industrial Disputes Act nowhere states that the management should fold their hands and keep quiet and would not proceed further during the pendency of the dispute against the employees who were placed under suspension. On this score, the prayer sought for in the writ petition was refused, for the reason that if this Court grants any interim relief not to alter the service conditions of the employees, that would also be mixed up with the other employees who are already placed under suspension prior to the raising of the dispute.

10. But in the present case, first of all, there is no dispute with regard to the technical qualification of the members of the petitioner union to continue as workmen in the third respondent's establishment. The third respondent also in the counter affidavit has admitted that the petitioner union made a charter of demands to increase their wages and that they were not in a position to pay the increased wages due to the loss suffered by them. Therefore, issuing a direction to the third respondent not to alter the service conditions of the members of the petitioner Union without taking prior permission from the second respondent could not, in my opinion, cause any prejudice to the third respondent. Secondly, no doubt, now the first respondent State Government has referred the dispute by issuing G.O.Ms.No.346 dated 28.6.2016 to the Industrial Tribunal, Chennai in I.D.No.17 of 2016, which is pending for adjudication. Thirdly, when the dispute is seized of by the Industrial Tribunal, Chennai, whether the petitioner Union can come to this Court seeking injunction by keeping two parallel proceedings, is a question, no doubt, that needs an answer.

11. To answer the said question, the third respondent in paragraph-6 of the counter affidavit has admitted that they have shifted two machineries. But, however, it was justified that the said two machineries were not being used in the third respondent's establishment and they were also shifted with the knowledge of the workmen, who fully appreciated the stand of the third respondent. That clearly shows that the third respondent had shifted the two machineries without the permission of the second respondent. Although it was stated by the third respondent in the counter affidavit that with the knowledge of the petitioner union, the said two machineries were shifted, such justification does not find place in Section 33(1) of the Industrial Disputes Act. The reason is that only with the express permission in writing of the authority before which the proceeding is pending, no employer shall alter, to the prejudice of the workmen concerned, the conditions of service immediately before the commencement of such proceeding. In this context, it is relevant to extract Section 33(1) of the Industrial Disputes Act, which reads as follows:-

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.--(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) to (5)"

12. A close reading of Section 33(1) of the Industrial Disputes Act shows that during the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal in respect of an industrial dispute, no employer shall alter the conditions of service applicable to them without the express permission of the authority before which the proceeding is pending. As there is a clear admission by the third respondent that they had shifted the two machineries, resulting in non employment to the workmen, without the prior permission of the authority, this Court is of the considered opinion that unless the third respondent is further prevented from shifting the other machineries, many workmen would be rendered jobless by shifting of other machineries and this would go against the purport of Section 33(1) of the Industrial Disputes Act.

13. When the facts of the present case are completely different, wherein the third respondent had shifted the two machineries without the permission of the second respondent, as highlighted above, which is in violation of Section 33(1) of the Industrial Disputes Act, this Court directs the third respondent not to alter the service conditions including the shifting of any more machineries from their establishment till the disposal of the I.D.No.17 of 2016 pending before the Industrial Tribunal. Needless to mention that the Industrial Tribunal, Chennai shall proceed with the pending dispute on all other issues, without being influenced by any of the observations made by this Court, on merits and dispose of the same expeditiously, preferably within a period of six months from the date of receipt of a copy of this order. Accordingly, W.P.No.7219 of 2015 is allowed to the extent indicated above. Consequently, M.P.No.1 of 2015 is closed. In view of the above order, W.P.No.33365 of 2016 is

dismissed as infructuous. Consequently, W.M.P.Nos.28824 & 28825 of 2016 are also dismissed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

ss

To

1. The Secretary to Government
Labour and Employment Department
Fort St. George
Chenna 600 009
2. The Assistant Commissioner of
Labour (Conciliation)-I
SIPCOT Complex
Irunkattukottai
Sriperumbudur 602 117
3. The Deputy Commissioner of
Labour II,
DMS Compound, Chennai 06.

+2cc's to Mr.P.Nehru, Advocate, S.R.Nos.18406 & 18405
+2cc's to Mr.S.Parthasarathy, Advocate, S.R.No.18502

W.P.Nos.7219 of 2015 & 33365 of 2016

RSY(CO)
CA(24.03.2017)

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