

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.10748 of 2003

Devi Spinning Mills Ltd.,
Hosur Bye-pass Road
Vennampatty
Dharmapuri 636 705

... Petitioner

Vs.

The Inspector of Factories
Hosur,
Dharmapuri District

... Respondent

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of respondent in Proceedings B/3367/2002 dated 7.2.2003 and quash the same as illegal, incompetent and further direct the respondent to hold an enquiry, before passing an order.

For Petitioner ... No appearance

For Respondent ... Mr.V.Jayaprakash Narayanan
Spl.G.P

सत्यमेव जयते
ORDER

The petitioner is a Spinning Mill and is a factory within the meaning of Factories Act, 1948. On 13.6.2001, the Inspector of Factories inspected the petitioner Factory and found that they had not renewed the Factory Licence, as required under Section 6(1) of the Factories Act r/w Rule 7(1), (2) and (3) of the Tamil Nadu Factories Rules, 1950. Therefore, a show cause notice was issued to the petitioner and it was followed by launching a prosecution in STC No.37 of 2001 before the Chief Judicial Magistrate, Krishnagiri for the aforesaid violation. One D.Venkatraman on behalf of the petitioner appeared before the learned Chief Judicial Magistrate in STC No.37 of 2001 and

filed an application in C.M.P.No.90 of 2003 seeking extension of time for payment of licence fee. The learned Magistrate appears to have passed the following order in C.M.P.No.90 of 2002 in S.T.C.No.37 of 2001:

"21.3.2003:

Heard. Other side has taken notice and did not oppose. Petition is partly allowed and time to pay licence fee is extended till 7.4.2003."

The respondent issued a Notice dated 7.2.2003, calling upon the petitioner to pay penalty of Rs.1,000/- for the alleged violation, challenging which the petitioner has filed the present writ petition.

2. This writ petition was filed by the petitioner through advocate Mr.V.Raghavachari. At the time of admission, this Court passed the following order:

"Interim stay in respect of payment of penalty alone. The petitioner is granted two weeks time to pay the licence fees."

After receipt of Notice, the respondent filed WVMP No.1436 of 2003 for vacating the stay, in which this Court has passed the following order on 3.9.2003:

"By the impugned proceedings, the petitioner was asked to pay Rs.1,000/- as penalty. The said proceeding is sought to be stayed. As a matter of fact, this Court has granted stay for payment of penalty alone on 8.4.2003. Considering the fact that the penalty is only Rs.1,000/-, I am of the view that there cannot be any stay for the same, accordingly, the interim stay granted on 8.4.2003 is vacated and the petitioner is granted 2 weeks time from today for payment of penalty of Rs.1,000/-."

Mr. V.Raghavachari has also filed a memo dated 17.4.2009, wherein it is stated that the petitioner has taken consent vakalat from him. On 18.11.2009, When the matter was taken up for final disposal, the learned counsel for the petitioner once again submitted that the party had taken back the vakalat. Therefore, the name of the petitioner is printed in the cause list.

3. Today, there is no representation for the petitioner and therefore, this Court perused the case records and heard Mr.V.Jeyaprakash Narayanan, learned Special Government Pleader for the respondents and the following order is passed:

(i) It is the contention of the petitioner that the impugned order seeking payment of penalty is illegal as separate proceedings have to be initiated for such a payment.

(ii) The Inspector of Factories has filed a counter affidavit, wherein he has taken a categorical stand that the show cause notice dated 2.7.2001, which was sent by Registered Post with Acknowledgment Due to the petitioner, was not received by the petitioner for the reasons best known to them. The attempts made by the officials to serve show cause notice on the petitioner also proved futile, since no one came forward to receive the same. That apart, in the counter affidavit, it is stated as follows:

"The Inspector of the Factories, Hosur inspected the factory on 13.6.2001 and found that the licence was not renewed by the Occupier for the year 2001. Based on the above rule, the Inspector of Factories, Hosur issued Show Cause Notice dated 2.7.2001 to the Occupier of the petitioner's mill stating that he has to renew the licence by paying a licence fee of Rs.30,000/- along with additional fee of Rs.9,000/- as per rule 7(3) of Tamil Nadu Factories Rules, 1950. It is pertinent to note that the amount of Rs.9,000/- represents only additional fee and the same was wrongly given as Thanda Kattanam in the impugned order. It is only additional fee for non-payment of licence fee within the stipulated time."

(iii) From the above, it is clear that instead of referring to the demand as additional fee, the officer has erroneously used the expression of "penalty". The petitioner is now attempting to take advantage of the wrong expression employed by the respondent inadvertently. This Court accepts the aforesaid explanation of the Inspector of Factories and holds that the expression "penalty" has been wrongly used in the place of "additional fee".

4. Under Rule 7(1), (2) and (3) of the Tamil Nadu Factories Rules, 1950, the respondent is empowered to charge additional fee for late renewal of licence. Therefore, the contention of the petitioner that they are not liable to pay any amount for late renewal of licence, cannot be accepted.

5. In the result, this writ petition is devoid of merits and is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

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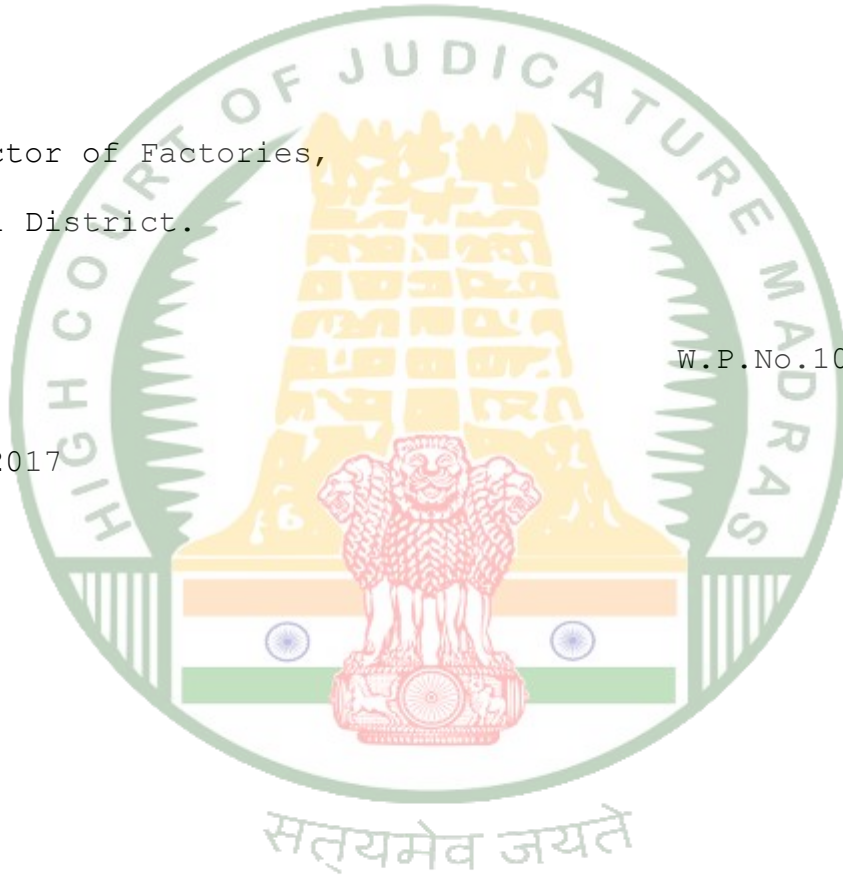
Sub Assistant Registrar

To

The Inspector of Factories,
Hosur,
Dharmapuri District.

W.P.No.10748 of 2003

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