

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.44464 of 2016

Workmen of M/s.Ashahi India Glass Ltd.,
Rep. By United Labour Federation,
Through its Secretary.
...Petitioner
Vs.

1. Government of Tamil Nadu,
Rep. by its Secretary,
Department of Labour & Employment,
Fort St.George, Chennai 600 009.
2. The Honourable 1st Additional Labour Court,
Madras High Court Campus,
Chennai 600 104.
3. The Management of M/s.Ashahi Indian
Glass Ltd., Nos.76 to 81,
SIPCOT Industrial Park,
Irungattukottai, Sriperumpudur,
Kancheepuram - 602 105
...Respondents

Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in connection with the 2nd Respondent's order bearing Ref.No.Pal/54983/2014 dated 27.08.2015 and quash the same and direct the 1st Respondent to amend the terms of reference in G.O.D.No.141 dated 05.05.2015 as sought for by the Petitioner in its letter dated 11.04.2015 and issue further order or direction.

For Petitioner : Mr.V.Prakash, Senior Counsel
for M/s.K.Sudalaikannu

For Respondents : Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader for R1
Mr.Ravi for M/s.Gupta & Ravi for R3
R2 - Court

O R D E R

Challenging the order of the second respondent dated 27.08.2015 and for a consequential direction to the first respondent to amend the terms of reference in G.O.D.No.141 dated 05.05.2015 as sought for by the Petitioner in its letter dated 11.04.2015, the present writ petition has been filed.

2.The petitioner raised disputes before the Conciliation Officer. By the Government Order in G.O.D.No.141 Labour and Employment Department dated 05.05.2014, only two disputes have been referred. According to the petitioner, the issue as to whether the contract entered into between the third respondent and the contractors is sham and nominal and therefore the members of the petitioner are in fact the workers of the third respondent, has not been referred. Thus the petitioner made a representation seeking amendment to the terms of reference, which was rejected by the Commissioner, who has not been arrayed as a party in this writ petition. Though the said order is challenged, perhaps, it is a oversight.

3.Learned senior counsel appearing for the petitioner would submit that admittedly the dispute was one taken up by the Conciliation Officer, who made a report touching upon it to the Government. However, the Government has not included the dispute which the petitioner seeks to include now. Therefore, appropriate orders will have to be passed on that.

4.Learned counsel appearing for the third respondent submits that the person who passed the order dated 27.08.2015 has not been arrayed as a party respondent, the Government Order has not been challenged and in any case, there is no power available to modify or vary the Government Order. Incidentally, it is further submitted by the learned counsel for the petitioner that it is for the Labour Court to go into the said issue as all the contractors have been arrayed as party respondents.

5.This Court is of the view that the official respondents and the authority who passed the impugned order are statutory authorities and therefore, their presence as such is not very much required for adjudication.

6.Admittedly, reference has been made. The power of the Government qua a reference is rather limited. It is not as if the Government has rejected the reference on the issue which the petitioner seeks to include. The issue is as to whether the agreement inter se between the contractors and the third respondent is genuine or not. According to the petitioner, the agreements are sham and nominal. Though the Conciliation Officer

has sent a report touching upon this issue, perhaps by oversight, the Government has not looked into the same. Admittedly, the contractors are parties before the Labour Court. The object of reference and the adjudication by the Labour Court is to resolve the dispute between the parties. There is no necessity to challenge the Government Order in the absence of any litigation on this aspect. It can at best be termed as a negligence on the part of the Government in not touching upon this issue.

7.This Court is satisfied that the issue to be raised has got connection to the other issues, which have been referred to. The power of the Labour Court is rather wide. In any case, the Labour Court will have to go into the incidental issue, if any, even if we go by the disputes referred. The case of the petitioner has to be seen as a whole for deciding the issues which have already been referred. The present dispute which the petitioner seeks to include has to be gone into in one way or the other. Therefore, the objections raised in the opinion of this Court are at best technical in nature. What the petitioner seeks is an adjudication on merits of all the disputes raised. It is not as if the disputes sought to be raised are irrelevant or stale. Certainly, it lies within the jurisdiction of the Labour Court.

8.In such view of the matter, this Court is inclined to issue a direction to the Labour Court to go into the issue as to whether the agreement entered into between the contractors and the third respondent in the present writ petition is sham and nominal.

9.With the above direction, the writ petition stands disposed of. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Department of Labour & Employment,
Fort St.George, Chennai 600 009.

2. The ^I Additional Labour Court,
Madras High Court Campus,
Chennai 600 104.

+1 CC to M/s. K. Sudalai Kannu, Advocate sr 41395
+1 CC to Gupta & Ravi, Advocate sr 41532
+1 CC to Govt. Pleader sr 42127

W.P.No.44464 of 2016

NR (CO)
sp/27/6



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