

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.45053 of 2006
and
M.P.No.1 of 2006

R.Seshasayee,
Managing Director,
Ashok Leyland Limited,
19, Rajaji Salai,
Chennai - 600 001. ... Petitioner

Vs.

The Deputy Chief Inspector of Factories,
No.6/9 & 10, Lal Bhagadur Sastri Street,
2nd Floor, Periyakuppam,
Tiruvallur - 602 001. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus forbearing the respondent from enforcing the provisions of the Factories Act to the Petitioner's establishment in Regional Sales Office at Sembarambakkam, Tiruvallur District.

For Petitioner : Mr.S.Haroon Rasheed for
M/s.T.S.Gopalan & Co.

For Respondent : Mr.R.S.Selvam
Government Advocate

O R D E R

Writ Petition is filed for issuance of Writ of Mandamus forbearing the respondent from enforcing the provisions of the Factories Act to the Petitioner's establishment in Regional Sales Office at Sembarambakkam, Tiruvallur District.

2.The petitioner is having factories at Ennore and Hosur in Tamil Nadu, Bhandara in Maharashtra and Alwar in Rajasthan. They manufacture chassis for commercial vehicles. The chassis manufactured by the petitioner in the factories referred to above are complete in all respects and fit for sale. The petitioner is having Regional Sales Office at Sembarambakkam,

near Chennai. The chassis received from the factories are kept in the Regional Sales Office at Chennai. The petitioner is having Regional Sales Office in every State. The Regional Sales Office raises the invoice and delivery related documents and the dealers / customers take delivery from Regional Sales Office. The petitioner also delivers at the place of customers or dealers on their instructions. The Regional Sales Office at Sembarambakkam is situated in an area of 7 acres and approximately 600 to 700 chassis are stored in the said Regional Sales Office for sale. The Regional Sales Office handles about 1000 chassis in a month. In view of large number of chassis stored in an open yard and sometimes duration of the storage of few chassis is longer, the battery may require recharging or the tyres may require inflation or some touching on the paints may have to be done. The said Regional Sales Office is having a battery charger and a compressor to inflate the tyres and also facility for doing minor painting and touch up. These activities does not undergo any transformation. The petitioner engages casual workmen as and when required for the said work. The petitioner has engaged an outside security agency to provide security.

3. On 06.09.2006, the respondent visited the Regional Sales Office of the petitioner at Sembarambakkam and found that 15 persons were working in the establishment. Out of 15 persons, 3 were executives and 5 were security guards. Only 7 casual workers worked at that time and executives and security guards are not workmen as defined in the Factories Act, 1948. On 18.09.2006, the respondent issued notice to the petitioner calling upon the petitioner as to why it shall not be prosecuted for not having complied with the provisions of Factories Act, 1948. The respondent mistakenly issued the said show cause notice as the petitioner was using 2.5 HP compressor and the work of battery charging, inflating of tyres and repairing was done by the use of power. The petitioner on 09.10.2006 sent detailed reply and submitted that the petitioner would not be a factory within the meaning of Section 2(m) of the Factories Act, 1948 and requested for personal hearing. The respondent, without giving any personal hearing, rejected the explanation of the petitioner on 06.11.2006 and proceeded to enforce the provisions of the Factories Act, 1948. The respondent has not given finding with jurisdiction and the petitioner's right to appeal is also defeated. In the circumstances, the petitioner has come out with the present Writ Petition. In support of his contention, he produced the judgment of the Hon'ble Apex Court reported in (2001) 7 SCC 394 [Hussan Mithu Mhasvadkar Vs. Bombay Iron & Steel Labour Board and another], wherein at paragraph No.5 of the judgment, it has been held as follows:

"...5. On a careful consideration of the respective submissions of the learned counsel on either side, we are of the view that in a case of the nature where the Labour Court as well as the High Court entertained doubts about the status of the appellant as a workman within the meaning of Section 2(s) of the I.D. Act, instead of embarking upon an adjudication in the first instance as to whether the respondent-Board is an Industry or not so as to attract the provisions of the Industrial Disputes Act, ought to have refrained from doing so and taken up the question about the status of the appellant for adjudication at the threshold and if only the finding recorded was against the appellant refrained from adjudicating on the larger issue affecting the various kinds of other employees, as to the character of the Board, as an industry or not. The larger issue should have been entertained for consideration only in a case where it is absolutely necessary and not when the claim before it could have been disposed of otherwise without going into the nature and character of the Undertaking itself."

He then referred to another judgment of the Hon'ble Apex Court reported in (2007) 1 SCC 705 [Srinivasa Rice Mills and Others Vs. ESI CORPN.], wherein paragraph Nos.18 and 26 of the judgment, it has been held as follows:

"...18. Before an Act is made applicable, in the event, a dispute is raised, the authorities exercising statutory power must determine the jurisdictional fact. Applicability of the Act would be a jurisdictional question. The Employer is entitled to raise such a question before the appropriate authority. Such a question can also be raised for the first time before a court exercising the power of judicial review although ordinarily the same should be raised before the concerned authority as a preliminary issue. [See Management of

the Express Newspapers (P) Ltd., Madras v. Workers and Others, AIR 1963 SC 569, para 15]

26.It may be true that Appellants would be bound to comply with the provisions of the Act, as noticed hereinbefore, for the period 1st August, 1999 to 31st July, 2000, but indisputably they were entitled to show that even for the said period, the provisions of the Act had no application."

4.The respondent filed counter affidavit. Mr.R.S.Selvam, learned Government Advocate appearing for the respondent contended that 15 persons were employed in that premises and manufacturing process were carried on with the aid of power. The manufacturing process and security work are connected with. The petitioner occupied the premises of 7 acres and he can handle large number of chassis at a time and battery charging, inflating tyres, repainting the chassis and changing of tyres and batteries could be performed in time. Accounting, arranging and securing the chassis undergoing such repair and adaption is an absolute necessity in the premises. For handling about 1000 chassis in a month and storing about 600 to 700 chassis at a time, three persons were employed in administrative work and 5 persons were employed as security guards. Hence, all 15 persons including all 5 security guards and 3 executives employed in administrative work were all workers as per Section 2(1) of the Factories Act, 1948. The learned Government Advocate further submitted that the reply to the show cause notice was not sent by the petitioner, but the same was sent by another employee of the company by name S.Venkataraman, DGM-Legal with frivolous citation. The petitioner being the occupier of the factory neither sent a reply nor requested for a personal hearing. The petitioner is discharging his duties and statutory obligations under the Factories Act, 1948 and hence he should be tried and should be dealt suitably as per the Law and the workers employed in the petitioner's factory at Sembarambakkam should not be deprived of their legal rights and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as Mr.R.S.Selvam, learned Government Advocate appearing for the respondent and perused the entire materials on record.

6.The petitioner contended that the petitioner is having Regional Sales Office at Sembarambakkam and 15 persons were working at the time of inspection of the respondent on 06.09.2006. Out of the 15 persons, only 7 are casual workers and

3 were executives and 5 security guards. The work done in the said office is not manufacturing process as defined in Section 2 (k) of the Factories Act, 1948. As per Section 2 (m) of the Factories Act, 1948, the term factory means any premises wherein ten or more workers are employed by using power in the manufacturing process.

7. In the present case, the specific case of the petitioner is that in the Regional Sales Office, 3 executives and 5 security guards were working and only 7 casual workers were working when the respondent visited the Regional Sales Office. From the counter affidavit filed by the respondent it is seen that the respondent has not denied that 3 executives and 5 security guards were working. On the other hand, it is their contention that all the 15 persons are workers as per Section 2 (k) of the Factories Act, 1948. There is nothing on record to show that servicing and minor repair works of printing and painting of broken parts are done in the Regional Sales Office. In view of the above, the Regional Sales Office will not be a factory as the petitioner is not doing any manufacturing process by employing 10 or more persons on any day of preceding 12 months.

8. For the above reason, this Writ Petition is allowed as prayed for. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

krk
To

The Deputy Chief Inspector of Factories,
No.6/9 & 10, Lal Bhagadur Sastri Street,
2nd Floor, Periyakuppam,
Tiruvallur - 602 001.

+1 CC to Mr.T.S. Gopalan & Co, sr 52626.
+1 CC to Govt. Pleader sr 53417.

W.P.No.45053 of 2006 and
M.P.No.1 of 2006

CA(CO)
SP(19/08/2019)