

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.37065 to 37067 of 2005

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W.M.P.Nos. 17477, 17478, 24296, 39699, 39700 & 39701 of 2005

&

W.V.M.P.Nos.1615 & 1616 of 2006

W.P.No.37065 of 2005

The Management of Kempf (India) Ltd.,
by its Director,
38, Mettupalayam Road,
Coimbatore - 43.

...Petitioner

..Vs..

1.The Assistant Commissioner of Labour - 3,
Coimbatore.

2.S.Sundaram, General Secretary,
Kempf (India) Employees Union,
No1/32, M.P.M.Nagar, Eachanay (Post),
Chettipalayam Road, Coimbatore - 641 021.
(R.2 impleaded as per Order dated 01.11.2006)
in WPMP 17479/06 in WPMP 39699/05 in WP 37065/05

W.P.No.37066 of 2005

A.C.Mahesh

...Petitioner

सत्यमेव जयते

..Vs..

The Assistant Commissioner of Labour - 3,
Coimbatore.

...Respondent

W.P.No.37067 of 2005

Sangeetha Mahesh

...Petitioner

..Vs..

The Assistant Commissioner of Labour - 3,
Coimbatore.

...Respondent

Common Prayer: Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondent in Na.Ka.No.760/04, quash the notice dated 27.09.2005 issued under Section 25-R of the Industrial Disputes Act, 1947.

For Petitioner : M/s.R.Asokan
(in all the WPs)

For Respondents : Mr.D.Suriyanarayan, AGP
(for R.1)
Mr.S.N.Ravichandran
(for R.2)
(in W.P.No.37065/05)

COMMON ORDER

The writs on hand are filed to quash the notice dated 27.09.2005 issued by the respondent under Section 25R of the Industrial Disputes Act.

2.The facts in nutshell to be considered for the purpose of deciding the present writ petitions are that the petitioner is a Company incorporated under the Companies Act, 1940. The company was manufacturing propeller shafts and joint kits required for automobile industry. Due to continued labour unrest the management was forced to close down the factory during the year 1990.

3.The learned counsel appearing on behalf of the management mainly contended that the impugned notice issued under Section 25R of the I.D.Act is not maintainable, in view of the fact that the management had complied with the provisions of Section 25-O of the Industrial Disputes Act, 1947 and the petitioner has not violated the provisions of the I.D.Act, and very initiation of prosecution itself is null and void.

4.Section 25R contemplates that any employer who closes down an undertaking without complying with the provisions of Sub Section (1) of Section 25-O shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs.5,000/- or with both.

5.Thus, the notice was issued under the pretext that the petitioner management has not complied with the provisions of Section 25-O of the I.D.Act. Contrarily, the learned counsel appearing on behalf of the petitioner management is able to establish that the Government issued orders in G.O.(1D) No.644, Labour and Employment Department dated 17.06.1991 stating that the Government granted permission to the Management of Kempf

(India) Limited to close down their factory at No.38, Mettupalayam Road, Coimbatore - 43. When the Government has granted permission to close the factory with reference to Section 25-O of the I.D.Act, the prosecutions cannot be initiated and therefore the impugned notice was issued without any jurisdiction or by exercising the jurisdiction in a wrongful manner.

6.Accordingly, the impugned notice issued under Section 25R of the I.D.Act in proceedings dated 27.09.2005 is quashed and the writ petitions stand allowed. No costs. Consequently all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mrm

To

The Assistant Commissioner of Labour - 3,
Coimbatore.

+1cc to Mr.S.N.Ravichandran, Advocate SR.No.86962

+1cc to Mr.R.Asokan, Advocate SR.No.85974

W.P.No.37065 to 37067 of 2005

LN(CO)
GMY(08/11/2019)

सत्यमेव जयते

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