

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.06.2019
CORAM
THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
Writ Appeal No.1609 of 2018

Viralimalalai Rane TRW Steering Systems Pvt Ltd
Employees Union, Regd.No.272/PDK represented
by General Secretary, C/o S.Elango, SIEU Office
Viralimalalai - 621 326, Pudukkottai District.

... Appellant

-Vs-

1.The Government of Tamil Nadu
represented by Secretary, Department of Labour
and Employment, Chennai 600 009.

2.M/s.Rane TRW Steering Systems Private Limited
Plant No.1, FIG Gear Division
Boothakudi Village, Viralimalalai-621 326
Pudukkottai.

... Respondents

For Appellant : Mr.V.Prakash, Senior Counsel
for M/s.K.Sudalai Kannu

For Respondents: Mr.N.Srinivasan, Addl.Govt.Pleader for R1
M/s.Gupta & Ravi - for R2

Prayer : Writ Appeal under Clause 15 of the Letters Patent against
the order passed in W.P.No.14181 of 2017 dated 10.04.2018.

Prayer in W.P.No.14181:

Writ Petition is filed under Article 226 of the Constitution
of India for the issuance of a writ of Mandamus directing the 1st
Respondent Government of Tamil Nadu to commence and conclude the
enquiry and take necessary action against the 2nd Respondent
management under Section 25 T of the Industrial Disputes Act as
per the Complaint given by the petitioner Union on 08.03.2017.

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J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

This appeal has been filed, aggrieved by the order of the
learned Single Judge dated 10.04.2018, dismissing the Writ
Petition No.14181 of 2017 (Viralimalalai Rane TRW Steering Systems
Pvt Ltd Employees Union -Vs- Government of India and another), by
which the learned Single Judge has held that it is only upon on
adjudication and findings of unfair labour practice under Section

25-T and 25-U of the Industrial Disputes Act, 1947 that a direction can be sought to the State Government to consider the representation submitted by the petitioner workmen, for initiating the prosecution proceedings against the concerned person in the Management, by filing complaint under Section 34 of the Act.

2. Learned Senior Counsel appearing for the petitioner workmen Mr.V.Prakash submitted that the complaint was filed before the concerned Secretary of the Department of Labour and Employment, Chennai on 07.03.2017, which was required to be decided by the concerned Secretary, in terms of Section 34 of the Act, which is quoted below for ready reference.

"34. Cognizance of Offences :- (1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government."

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act."

3. Sub Section(1) of the said Section 34 requires the complaint to be filed by the competent authority of the appropriate Government in the concerned Court and unless the complaint is made by or under the authority of the Appropriate Government, no Court can take cognizance of the offence punishable under the Act. The appellant Union herein has approached the concerned Secretary to the Government to decide the complaint or representation as contemplated under Section 34 of the Act. Though the said provision of the Act was not referred in the body of the said complaint dated 08.03.2017, it appears that when the complaint was not decided by the concerned Secretary of the Department of Labour and Employment, the appellant had approached this Court by way of a writ petition, seeking a mandamus direction to the said Secretary to decide the said complaint. It is upon this writ petition that the learned Single Judge has given the impugned observation of the pre-condition for adjudication and findings of unfair labour practice as per Section 25-T or Section 25-U of the Act, by which the appellant Union is aggrieved.

4. Learned counsel for the Management, however supported the impugned order.

5. Having heard the learned counsel on both sides, we are of the opinion that the requirement of any finding by the competent Court or authority about the unfair labour practice as a pre-requisite for deciding the representation or application under Section 34(1) is not called for. If such an application or representation is filed before the concerned authority of the Government, he has to decide the same and decide whether to initiate the prosecution under Section 34(1) of the Act or not. The writ petition was filed before this Court only seeking a

mandamus direction to the concerned Secretary to decide the same expeditiously, but in that process, it appears that certain observations have been made by the learned Single Judge, which were not called for.

6. Therefore, in our opinion, the present writ appeal deserves to be allowed and the same is allowed, and setting aside the order passed by the learned single Judge dated 10.04.2018 in W.P.No.14181 of 2017, the first respondent viz., Secretary to Government, Department of Labour and Employment, is directed to decide the said complaint or representation filed by the appellant Union on 08.03.2017 in accordance with Section 34(1) of the Industrial Disputes Act, as expeditiously as possible, preferably within three months from today.

7. The objections to the same by the Management can be raised before the first respondent / Secretary to Government.

8. The writ appeal is allowed accordingly. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

KST
To

1. The Secretary to Government
Department of Labour and Employment,
Chennai 600 009.

+1cc to M/s.K.Sudalai Kannu , Advocate SR.No. 45305
+1cc to M/s.Gupta, Advocate SR.No. 44841

A.SK (25/06/2019)

W.A.No.1609 of 2018

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