

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.07.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.12705 of 2019

United Labour Federation,
through its Secretary Regn.No.2657/CNI
No.149, Thambu Chetty Street,
Chennai - 600 001. Petitioner

Vs.

- 1.The Government of Tamil Nadu
Rep. By its Principal Secretary to Govt.,
Labour & Employment (A2) Department,
Fort St. George, Chennai - 600 009.
- 2.The Management of Foxconn Technology
(India) Private Limited,
rep. By its Managing Director,
SIPCOT Hi-Tech SEZ,
SIPCOT Industrial Park Phase II,
Sunguvarchatram, Sriperumbudur Taluk,
Kancheepuram District - 602 106. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with G.O.(D) No.620 dated 01.11.2018 and quash the same and direct the 1st respondent to refer the disputes/demands declined to be referred under G.O.(D)No.620 dated 01.11.2018 expeditiously.

For Petitioner : Mr.V.Prakash
Senior Counsel
For M/s.Karthikeyani M.

For 1st Respondent : Mr.K.K.Ramesh
Additional Government Pleader

For 2nd Respondent : Mr.S.Makesh

ORDER

The present writ petition has been filed challenging the order passed by the 1st respondent vide G.O.(D)No.620, Labour and Employment (A2) Department, dated 01.11.2018 declining to refer certain disputes out of 32 demands raised by the petitioner Federation. According to the impugned Government Order, 19 demands out of total 32 demands raised by the Federation are not liable to be referred for adjudication. Therefore, the Federation is before this Court challenging the refusal of the Government to refer those demands which are incorporated in the Government Order impugned in this writ petition.

2.Mr.V.Prakash, learned Senior Counsel for the petitioner would submit that it is not for the Government to adjudicate the dispute between the labour and the management and decline to refer the dispute, since the Government is not empowered to embark upon adjudication of disputes as between the labour and management as held by various Courts including the Hon'ble Supreme Court of India.

3.The learned Senior Counsel would rely on the decision of the Division Bench of this Court reported in 1988 I L.L.N. 172 [Shaw Wallace & Co. Ltd. V. State of Tamil Nadu (by Commissioner and Secretary, Labour Department) and another] wherein a Division Bench has laid down certain parameters as to when the Government could decline to refer the dispute for adjudication and when it could not decline to refer further dispute. The relevant portion of the judgment in paragraph 32 is extracted as under:

"32.On a final analysis, the following principles emerge:

(1) The Government would normally refer the dispute for adjudication;

(2) The Government may refuse to make reference, if

(a) the claim is very stale;

(b) the claim is opposed to the provisions of the Act;

(c) the claim is inconsistent with any agreement

between the parties;

(d) the claim is patently frivolous;

(e) the impact of the claim on the general

relations between the employer and the employees in the region is likely to be adverse; and

(f) the person concerned is not a workman as defined by the Act.

(3) The Government should not act on irrelevant and extraneous considerations.

(4) The Government should act honestly and bona fide

(5) The Government should not embark on adjudication of the dispute.

(6) The Government should not refuse reference on the ground that domestic enquiry was fairly and properly held and punishment awarded was appropriate."

4. The learned Senior Counsel would also draw the attention of this Court the observation of the learned Division Bench of this Court at paragraph 20 of the Judgment, which is extracted hereunder:

"20. It is no doubt true that the Supreme Court has in the above passage recognised the power of the Government to consider prima facie the merits of the dispute. It has taken care to define the limits expressly by stating that the Government should not purport to decide any question of law finally; nor should it purport to reach final conclusions on disputed questions of fact. This shows that when the Government refuses to make a reference of the dispute to the Tribunal, it shall not decide any disputed questions of fact or disputed questions of law. Any decision of the Government on such a question would become final in the event of its refusal to make a reference. The Supreme Court had also indicated the grounds on which a reference could be rejected in the sentences italicised by us."

5. He would therefore submit that in the case on hand, the Government has analysed the claim of the employees and decided not to refer the disputes, as if the Government is final adjudicating authority in the matter. Therefore, the impugned Government Order is directly in contravention of the order passed by the Division Bench of this Court, as aforementioned.

6. According to the learned Senior Counsel, the scheme of Industrial Disputes Act does not empower the Government to embark upon needless adjudication of the dispute between the labour and management and only in such of those disputes, which are identified by the Division Bench of this Court in the aforesaid order, the disputes could be declined to be referred. According to

the learned Senior Counsel, the present order declining to refer the disputes as mentioned in the impugned G.O. itself do not come within the exceptions carved out by the Division Bench of this Court.

7. At this, the learned counsel appearing for the 2nd respondent /management would submit that the Government felt that certain disputes were not worthy enough to be referred for adjudication and the same would not call for any adjudication. Therefore, he would submit that the power to decline is always with the Government.

8. This Court considered the submissions made on behalf of the petitioner and also the submission made on behalf of the management. As rightly contended by the learned Senior Counsel for the petitioner that the Government has needlessly embarked upon the adjudication of the certain disputes raised by the petitioner Federation and declined to refer the same as if it was the sole and final authority to decide disputes. When the Government is not clothed with the power of adjudication in the scheme of Industrial Disputes Act, the present order issued by the Government refusing to refer several disputes which are part of the charter of demands raised by the petitioner Federation is patently illegal and cannot be countenanced in law.

9. From the reasons assigned for refusal to refer the dispute, it appears that the Government has needlessly embarked upon adjudication on merits of the demands raised on behalf of the employees and such adjudication is impermissible in law and the same is also in contravention of the law laid down by the Division Bench of this Court as aforementioned and also various decisions of the Hon'ble Supreme Court of India on the subject matter. It appears that refusing to refer such of those disputes as found in the impugned order do not fall within any of the exceptions carved out by the learned Division Bench of this Court in its order as above and therefore, the impugned order is liable to be quashed.

10. In view of the above, the impugned order in G.O. (D).No.620, Labour and Employment (A2) Department, dated 01.11.2018 is set aside and the Government is directed to refer the disputes, which are the subject matter of the Government Order (D).No.620 dated 01.11.2018, within a period of eight weeks from the date of receipt of a copy of this order.

11.The Writ Petition is allowed, as indicated above.
No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

Sgl
To

- 1.The Principal Secretary to Govt.,
The Government of Tamil Nadu
Labour & Employment (A2) Department,
Fort St. George, Chennai - 600 009.
- 2.The Managing Director,
The Management of Foxconn Technology
(India) Private Limited,
SIPCOT Hi-Tech SEZ,
SIPCOT Industrial Park Phase II,
Sunguvarchatram, Sriperumbudur Taluk,
Kancheepuram District - 602 106.
- 3.The Government Advocate,
High Court, Madras.

+1cc to Mr.Makesh , Advocate SR.No. 63219

+1cc to Mr.Sudalai kannu , Advocate SR.No. 63644

W.P.No.12705 of 2019

gp (CO)
A.SK(09/09/2019)

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