

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25322 of 2017

and

WMP.Nos.26779 of 2017 and 20179 of 2018

M/s. Dimexon Diamonds Limited,
Unit -III,
S.F. No. 256, Trichy Road,
Kannampalayam,
Sulur Post,
Coimbatore - 641 402,
Represented by its Authorized Signatory-N. Baskaran
...Petitioner

vs

1. State of Tamil Nadu,
Represented by its Secretary,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.

2. Kovai Mavatta Thanga Nagai Matrum Vairam
Cutting Thozhilalar Munnetra Sangam,
Represented by its General Secretary,
123, Padake Gounder Street,
Ondipudur, Coimbatore - 641 016.

3. Coimbatore District Diamond Cutting & Polishing
Employees Union,
Represented by its General Secretary,
No.40, TN Chinna Swamy Avenue,
Peelamedu, Coimbatore- 641 004.

4. Coimbatore District General Engineering &
Mechanical Workers Union,
Represented by its General Secretary,
T. Balan Nilaiyam,
161, Ganapathy Puthur,
3rd Street, Ganapathy Post,
Coimbatore-641 006.

5. The Presiding Officer,
Labour Court,
Coimbatore-18.

6.R.Navaneetha Krishnan,
Secretary, CITU,
Unit III, M/s. Dimexon Diamonds Limited,
No.161, Ganapathy Pudur,
III Street, Ganapathy Post,
Coimbatore- 641 006.
By order dated 13.11.2019, Sixth respondent
is impleaded by SMSJ. In WMP. 4308/2018

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for the records of the first respondent in G.O.(D).No.463, Labour and Employment (D1) Department and quash its order dated 07.08.2017.

For Petitioner : Mr. S. Ravindran, Senior Counsel
for Mr. S. Bazeer Ahamed
For Respondents : Mr. J. Ramesh, AGP for R1
R2 and R3- No appearance
Mr. V. Ajay Khose for R4
R5- Labour Court
Ms. L. Parvin Banu
for M/s. Row and Reddy for R6

O R D E R

The order issued by the first respondent in G.O.(D). No.463, Labour and Employment (D1) Department dated 07.08.2017 regarding the reference made is sought to be quashed in the present Writ Petition.

2. The learned counsel appearing on behalf of the writ petitioner management made a submission that the petitioner is engaged in the manufacture of diamonds. The petitioner is having two factories in Coimbatore i.e., Unit-I and Unit-III and the distance between these two units is only 28 kilometres. Since there was a drop in the demand for diamond products of the petitioner-company, they have taken a decision to merge these two units. After conducting a study, the functioning of Unit I and Unit -III, it was decided that entire function of Unit III should be performed by Unit I itself. By intimation dated 08.11.2016, 26.11.2016 and 07.12.2016, the petitioner informed the workmen of Unit III of its decision to shift the manufacturing activities from Unit III to Unit I from 09.01.2017 onwards and that all the workmen in Unit III should report for work in Unit I. Out of 303 workers in Unit III, only 25 % workmen reported for duty in Unit I and remaining 240 workmen resigned from services of the petitioner by accepting ex-gratia payment apart from legal dues.

3. The respondent unions raised industrial dispute on behalf of the 34 workmen questioning the shifting of work place before the Labour Officer, Coimbatore.

4. The petitioner management pointed out that shifting of work place cannot be the subject matter of industrial dispute in terms of Section 2 (k) of the Industrial Disputes Act. However, the first respondent has referred the above dispute for adjudication to the 5th respondent in GO(D).No.463, Labour and Employment (D1) Department. Hence, the petitioner is constrained to move the present Writ Petition.

5. The learned counsel appearing on behalf of the writ petitioner reiterated that the reference made cannot be termed as a dispute within the definition of Section 2 (k) of the Industrial Dispute Act and therefore the Government order is liable to be scrapped. This apart, the distance between these two units run by the original management is about 28 kilometres and the same would not affect the service conditions of the employees concerned.

6. This Court is of the considered opinion that factual aspects as well as legal grounds can be adjudicated before the 5th respondent who is the competent authority to deal with the reference made by the first respondent. Section 2 (k) of the Industrial Disputes Act defines "Industrial dispute means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person". Thus the provision provides enormous scope for adjudication. The interpretation of such a provision cannot be seen in narrow campus. In view of the fact that the various difficulties or inconveniences or violations of terms and conditions of service, all can be put forward by the workmen concerned before the Labour Officer concern and such grievances cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. There must be scope for the workmen to have their grievance adjudicated upon in a practical and pragmatic manner. In the event of High Court proceeding to decide such issues, this Court is of the considered opinion that the true and real spirit of the meaning is not only become diluted but it amounts to interference with certain duties which are conferred on those authorities competent to adjudicate upon the issues on merits and with reference to certain practical and pragmatic circumstances as well as the pleadings of the parties in this regard. Therefore the High Court should refrain from interfering with the adjudication of such disputed facts as the same would cause prejudice to either of the parties and therefore all such issues are to be left open for complete

adjudication with reference to the terms and conditions, factual aspects and other practical difficulties if any or otherwise.

7. This being the principles to be followed, this Court is of the opinion that in normal practise the High Court would not interfere with such reference unless it is totally illegal. Even if there are some issues regarding the maintainability then also the High Court should refrain from adjudicating the issue, so as to ensure that the rights of the parties are properly adjudicated in the manner known to law. Therefore High Court need not usurpt the powers of the original authority for the purpose of appreciation of facts and circumstances. Under these circumstances the writ petitioner management is at liberty to place all the facts including legal issues regarding the maintainability of reference before the first respondent for the purpose of adjudication and the 5th respondent is directed to afford an opportunity to the parties for the purpose of vindicating their grievance and decide the matter as expeditiously as possible. With the above observations, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mrn

To

1.The Secretary,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.

2.The Presiding Officer,
Labour Court,
Coimbatore-18.

+1cc to Mr.Bazeer Ahamed, Advocate, S.R.No. 94666
+1cc to Mr.Row & Reddy, Advocate, S.R.No. 94813
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No. 94414
+1cc to the Government Pleader, S.R.No. 94643

W.P.No.25322 of 2017
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CP(CO)
GN(20/02/2020)