

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.02.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.28785 of 2018
and
WMP Nos.33623 & 33624 of 2018

United Labour Federation
rep.by its Secretary

..... Petitioner

vs.

1.The Joint Commissioner of Labour,
Certifying Officer under
Industrial Employment(Standing Orders) Act,
6th Floor, DMS Compound,
Teynamper,
Chennai-600 006

2.Management of Severn Glocon India
Private Limited,
rep.by the Managing Director,
F-96 & 97, Sipcot Industrial Park,
Irungatukottai,
Chennai-602 117

3.Severn Glocon Employees Welfare Union,
rep.by its Secretary ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records in connection with the Certified Standing Order dated 12.09.2017 passed by the first respondent in Standing Orders Case File No.A1/3164/2016 and quash the same.

For Petitioner .. Mr.V.Prakash,Sr.Counsel
for M/s.P.Ganeshram

For Respondents ... Mr.J.Ramesh,A.G.P.
For R1
Mr.Yussuf.S.Q. for
M/s.Nathan @ Associates

for R2
Mr.A.Abdul Rahman for R3

ORDER

This writ petition is filed seeking to issue a writ of certiorari calling for the records in connection with the Certified Standing Order dated 12.09.2017, passed by the first respondent, in Standing Orders Case File No.A1/3164/2016 and quash the same.

2.The facts gave rise to the filing of the writ petition would run thus:

(i)The second respondent Management has forwarded a Draft Standing Orders to the first respondent for the purpose of getting the certification, which contains the service conditions of the employees, employed by the second respondent. In response to the Draft Standing Orders circulated by the second respondent Management, on behalf of the petitioner Union various objections have been raised. The petitioner Union, in their memorandum of Objections, has pointed out various factors to be considered by the first respondent in regard to the proposed Draft Standing Orders sent by the Management. On behalf of the Management, a reply has also been filed and thereafter, the petitioner Union has filed Additional Objections once again pointing out the various factors to be considered by the Certifying Officer.

(ii)After consideration of Objections, Additional Objections and the Draft Standing Orders circulated by the Management, it appears that the first respondent has passed an order on 12.09.2017, certifying the Draft Standing Orders by making few marginal changes in the Standing Orders. The Certification, as granted by the first respondent dated 12.09.2019, is the subject matter of challenge in the present writ petition.

3.The learned Senior counsel Mr.V.Prakash, appearing for the petitioner Union would submit that the impugned order passed by the first respondent is liable to be interfered with for more than one reason. The learned Senior Counsel would submit that elaborate procedure has been laid down in the Industrial Employment (Standing Orders) Act, 1946, (hereinafter referred to 'the Act' for short) for the purpose of certification of Standing Orders. According to the learned Senior counsel, the procedures as contemplated under Sections 3, 4 and 5 have not been followed by the first respondent, while granting certification of the Standing Orders. When serious objections have been raised on behalf of the petitioner Union, unfortunately, the first respondent has not considered those

objections and not passed a reasoned order and has chosen to over look the objections and granted certification, in violation of the procedures as contemplated in the Industrial Employment (Standing Orders) Act, 1946.

4.The learned Senior Counsel would also submit that as per Section 11 of the Act 1945, the Certifying Officer is having all the powers of a civil Court for the purposes of evidence and without allowing the petitioner Union to let in evidence in support of their Objections, the first respondent has simply passed an order certifying the Draft Standing Orders submitted by the second respondent Management. Therefore, prima facie it appears that there is lack of application of mind on the part of the first respondent while granting certification of the Draft Standing Orders. The power for receiving evidence etc., is indicated in Section 11 of the Act, which reads as follows:

"11.Certifying Officers and appellate authorities to have powers of Civil Court-(1)Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents and shall be deemed to be a Civil Court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973."

Therefore, the learned Senior Counsel would submit that the Certifying Officer has empowered for taking evidence in the matter and as per the decision of this Court, when the petitioner Union has submitted its Objections for the certification of the Draft Standing Orders submitted by the Management, it is legally imperative on the part of the Certifying Officer to pass a detailed order, after allowing the evidence to be let in, in support of their Objections.

5.The learned Senior counsel would submit that in this case, the first respondent has completely given a go-by to the mandatory procedure as contemplated in the Industrial Employment (Standing Orders) Act, 1946 and has simply accepted the Draft Standing Orders, by suggesting few marginal changes. According to the learned Senior counsel, the impugned order passed by the first respondent reflects no application of mind at all and as such, the same is liable to be interfered with not only for being violative of the procedures as contemplated in the Act, but also for violative of the natural justice.

6.The learned Senior counsel would submit that although there is an Appeal provision in the Act, since the order passed by the first respondent suffers from basic flaw of

not following the procedures established in statute, the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution. In support of his contention, the learned Senior counsel would draw the attention of this Court to the decision of the Hon'ble Supreme Court reported in (1998) 8 Supreme Court Cases 1 - Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai. He would draw the attention of this Court particularly to Paragraph Nos.14 and 15 of the order passed by the Hon'ble Supreme Court, which are extracted hereunder.

"14.The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "Any other purpose.

15.Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

7.According to the learned Senior counsel, the action of the first respondent in not affording reasonable opportunity to the petitioner, while granting certification for the Draft Standing Orders, is in violation of the principles of natural justice and the order passed by the authority is clearly without jurisdiction and therefore, it is not necessary for the parties

to resort to the appeal provision.

8. The learned Senior counsel would also draw the attention of this Court to the decision of the learned Single Judge of this Court in W.P.No.5814 of 2018, dated 02.04.2018, in which the learned Judge has held that once the Certifying Officer, under the Scheme of the Statute, exercises a quasi judicial function, he is expected to follow the procedure as contemplated under the Act. Therefore the learned Senior Counsel would submit that in this case, admittedly such procedure has not been followed by the first respondent and therefore, the certification granted by the first respondent is not sustainable in law and liable to be set aside.

9. On the other hand, the learned counsel appearing for the second respondent/Management had serious objections in allowing the writ petition. He would submit that the first respondent has considered the objections and passed the order, which need not be interfered with at all. It is well within the purview of the first respondent to consider the objections and pass necessary orders and in this case, the first respondent has considered the objections and also suggested some changes to the Model Standing Orders and therefore, it cannot be gain said that the first respondent has not applied his mind at all.

10. Heard the learned Senior counsel appearing for the petitioner Union and also the learned counsel appearing for the second respondent.

11. As rightly contended by the learned Senior counsel appearing for the petitioner, once the Statute prescribes certain procedure to be followed while issuing certification for the Draft Standing Orders, the same has to be strictly followed by the authority concerned. In this case, obviously and very plainly, the first respondent has not followed the procedure as contemplated under Sections 3, 4 and 5 of the Act. A specific contention has been raised by the learned Senior Counsel appearing for the petitioner Union that the parties ought to have been allowed to let in evidence in support of their objections, as the same is also contemplated under the Industrial Employment (Standing Orders) Act, 1946, but the first respondent has not considered such plea and has violated the procedure contemplated under the Act. This is more so because when the authority exercises a quasi judicial function, he is expected to afford reasonable opportunity to the parties concerned while passing orders. Moreover, when a certification for Draft Standing Orders is issued, the same is going to bind the service conditions of the employees in future and therefore, the authority has the responsibility to afford reasonable opportunity to the Unions, in order to appreciate their objections in a manner known to law. Unfortunately, the first

respondent has given a go-by to such procedure and has passed a non-speaking order by suggesting some cosmetic changes, which have no impact on the objections raised by the Union.

12. Moreover, as rightly contended by the learned Senior counsel for the petitioner the availability of alternative remedy of appeal under the provisions of the Industrial Employment (Standing Orders) Act is no bar for filing the Writ petition, since the order passed by the first respondent is in violation of established principles of natural justice and also the order is wholly without justification. Mere existence of alternative remedy is no bar for entertaining the Writ Petition, since the bar imposed on the Constitutional Courts is self-imposed and it is only a matter of convenience and public policy. Therefore, this Court is of the view that the present writ petition can be entertained, since the first respondent, while passing the order impugned, has not followed the mandatory procedure as contemplated in the Act.

13. On the whole, there appears to be no application of mind when the first respondent has passed the order. A mere perusal of the documents would disclose that on behalf of the Petitioner Union, several objections were raised and instead of allowing the parties to adduce evidence in support of their objections, unfortunately, the authority has simply brushed aside those objections and passed the order.

14. In the said circumstances, this Court is of the considered view that the order impugned in the present writ petition is liable to be set aside and accordingly the same is set aside and the writ petition stands allowed. The matter is remitted back to the first respondent for fresh consideration in regard to the certification granted to the Model Standing Orders submitted by the second respondent/Management. The first respondent is directed to afford a reasonable opportunity to both the petitioner Union as well as the Management before granting any certification to the Model Standing Orders. In case, the parties want to let in any evidence, the same shall be permitted and on the basis of the objections put forth on behalf of the parties, the first respondent is directed to pass a reasoned order. The first respondent is also directed to consider each of the objections earnestly and thereafter, arrive at a conclusion on those aspects. The first respondent is directed to complete the enquiry in regard to the above and pass orders within a period of six months from the date of receipt of copy of this order.

In the result, the writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

msk
To

1. The Joint Commissioner of Labour,
Certifying Officer under
Industrial Employment (Standing Orders) Act,
6th Floor, DMS Compound,
Teynamper,
Chennai-600 006

+1 CC to Govt. Pleader sr 17002.
+1 CC to Nathan & Associates sr 16695.
+1 CC to Mr.K.SudalaiKannu, Advocate sr 16864

W.P.No.28785 of 2018

AD (CO)
SP (13/03/2019)

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