



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.092019

CORAM

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THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.R.P. (PD) (MD)No.1051 of 2011
and M.P(MD) No.1 of 2011

Kovilpatti Sarvodaya Sangh,
Kalugumalai,
represented by its' Secretary

... Petitioner
Petitioner/Respondent

Vs.

Saraswathi

... Respondent/Respondent
Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition and thereby set aside the order dated 22.03.2011 in TSE.No.10 of 2004 passed by the Principal Secretary / Commissioner of Labours, Madras against Order in I.A.No.2 of 2005 in T.N.S.C.No.10 of 2010 dated 06.01.2006 passed by the Deputy Commissioner of Labours, Tirunelveli.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.Pon Senthilkumaran

ORDER

The Management has challenged the order passed by the Principal Secretary / Commissioner of Labours, Chennai.

2.The respondent herein had filed a petition before the Labour Commission, Tirunelveli under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 challenging a termination. The Management had taken the defence that the Shops and Establishments Act would not apply to the Management and filed an application seeking determination of this issue. The learned Labour Commissioner, Tirunelveli by an order, dated 06.01.2006 had held that the issue as to whether the Act would apply to the Management or not is an issue that has to be considered by the Commissioner of



Labour, as per the Section 51 of the Act. The said order was challenged by the Management in C.R.P.(MD)No.286 of 2007 and the same was later dismissed as withdrawn.

3.The Management thereupon, moved the Commissioner of Labour, Chennai questioning the jurisdiction of the Deputy Commissioner of Labour in hearing the application moved by the respondent under Section 2 of the Tamil Nadu Shops and Establishments Act, 1947. The Principal Secretary / Commissioner of Labours by the impugned order held that the remedy of the Management is only to approach the High Court since the Deputy Commissioner of Labour, Tirunelveli held that the Act does not apply to the petitioner Sangh. The Commissioner had also dismissed the application as infructuous and unsustainable. The said order is subject matter of challenge in this civil revision petition.

4.The learned counsel appearing for the Management would submit that they have moved an application under Section 51 before the Commissioner. The Act would clearly state that if any question relating to whether all or any of its provisions apply to an establishment or to a person employed therein, should be decided by the Commissioner of Labour and the said decision would be binding on all and should not be called in question by any Court of law. The learned counsel drew my attention to G.O. 1496(LAB) dated 03.04.1959, in which, the Government of Madras (then Government) has exempted all Khadi Vastralayas of the Tamilnadu Sarvodaya Sangh, Tirupur from the provisions of the Act. He would also draw the attention of the this Court to the certificates issued to the petitioner by the Tamilnadu Sarvodaya Sangh, Tirupur, in which, it has been clearly stated that the petitioner Sangh is the authorised Sangh of the Tamil Nadu Sarvodaya Sangh, Tiruppur.

5.The learned counsel for the respondent, on the other hand, would argue that any issue with reference to whether the Act would apply or not is entirely within the jurisdiction of the Commissioner of Labour and this power cannot be conferred on any Court of law.

6.However, a reading of the order would clearly indicate that the Commissioner of Labour, Tirunelveli had refrained from taking up the application as it was clearly stated in the G.O.No.1496, dated 03.04.1959 that the petitioner Sangh is not covered by the provisions of the Act.

7.A reading of the G.O., does not give raise to any ambiguity as regards the non-application of the provisions of the Tamil Nadu Shops and Establishments Act to the petitioner Sangh. Therefore, the Deputy Commissioner of Labour has erred in holding that the Act would apply because the provisions of the Act does not cover the petitioner Sangh.



8.In the result, Civil Revision Petition is allowed and the order of the Principal Secretary / Commissioner of Labours, Chennai and consequently the order in I.A.No.2 of 2005 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

Gns

To

1. The Principal Secretary / Commissioner of Labours,
Madras.
2. The Deputy Commissioner of Labours,
Tirunelveli.

+1 CC to M/s.B. RAJESH SARAVANAN, Advocate SR-90638.

+1 CC to M/s.S. PONSENTHIL KUMAR, Advocate SR-90828.

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