



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2014

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

REVIEW APPLICATION (MD).No.148 of 2014

and MP(MD)No.1 of 2014

Tamil Nadu Fireworks and Amorses Manufacturers
Association, Rep by its President S.S.Vijayakumar,
"TANFAMA Centre", 442, Kamarajar Road,
Sivakasi 626 123.

:Petitioner

Vs.

1.The Principal Secretary to Government,
Department of Labour and Employment,
Fort.St.George, Chennai 600 009.

2.The Director of Industrial Safety and Health,
[Formerly Chief Inspector of Factories],
Chennai 600 014.

3.The Joint Director of Industrial Safety and Health,
[Formerly Deputy Chief Inspector of Factories],
Sivakasi/Virudhunagar.

4.The Deputy Director of Industrial Safety and Health,
[Formerly Inspector of Factories],
Sivakasi.

: Respondents

PRAYER: Review Application is filed under Order 47 Rule 1 & 2 r/w 114 of
the Code of Civil Procedure, to review the judgment, dated 28.04.2014,
made in W.A.(MD).No.1167 of 2012.

Prayer in WA(MD).1167/2012 :

Writ Appeal under clause 15 of letters patent against the order dated
29.10.2012 made in WP(MD)No.2692 of 2012.

Prayer in WP(MD). 2692/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of
India, praying for issuance of a WRIT OF MANDAMUS, to forbearing the
Respondents from in any manner violating the provisions of Section 40 of
the Factories Act.

For Appellant : Mr.M.Sekar

Judgment reserved on 15.09.2014

Judgment delivered on 19.09.2014

O R D E R

M.JAICHANDREN, J.

Heard Mr.M.Sekar, the learned counsel appearing on behalf of the
petitioner.



2. This Review Application has been filed to review the Judgment, dated 28.04.2014, made in W.A.(MD).No.1167 of 2012.

3. The petitioner in the present Review Application is the appellant, in W.A.(MD).No.1167 of 2012. The petitioner herein had filed the Writ Petition, in W.P.[MD].No.2692 of 2012, praying for the issuance of a Writ of Mandamus, forbearing the respondents from, in any manner, violating the provisions of Section 40 of the Factories Act, 1948, [hereinafter referred to "as the Act"].

4. The learned Single Judge of this Court had passed an order, dated 29.10.2012, dismissing the Writ Petition, stating that the petitioner had prayed for vague and general directions. The petitioner had preferred a Writ Appeal, in W.A.[MD].No.1167 of 2012, against the order passed by the learned Single Judge, dated 29.10.2012, made in W.P.[MD].No.2692 of 2012. A Division Bench of this Court, by a Judgment, dated 28.04.2014, had dismissed the Writ Appeal, confirming the order of the learned Single Judge, dated 28.04.2014, made in W.A.(MD).No.1167 of 2012.

5. Seeking to review the Judgment, dated 28.04.2014, made in W.A.(MD).No.1167 of 2012, the present Review Application has been filed by the petitioner, stating that the Judgment passed by the Division Bench, dated 28.04.2014, made in W.A.[MD].No.1167 of 2012, needs to be reviewed, as it has not considered certain important points and grounds, which had been raised and argued, during the hearing of the Writ Appeal.

6. The learned counsel appearing on behalf of the petitioner had submitted that the learned Single Judge was inclined to dismiss the Writ Petition only on the ground that the Writ Petition had been filed by an association, and therefore, the Writ Petition was not maintainable. The learned Single Judge, as well as the Division Bench of this Court have omitted to deal with the substantial points raised in respect of the applicability of the Section 40(2) of the Act.

7. The learned counsel had further submitted that the main issue, which should have been considered, is the question as to whether Section 40(2) of the Act could be invoked to close down the entire factory, for a minor violation said to have been committed by the owner and the occupier of the factory concerned, resulting in heavy financial and other hardship to the owners and the occupier of the factory. It would also result in the closure of the factory, having adverse effect on the employees and their family members of the factory concerned. Therefore, this Court ought to review the Judgment passed by the Division Bench of this Court, dated 28.04.2014, made in W.A.(MD).No.1167 of 2012.

8. In view of the submissions made by the learned counsel appearing on behalf of the petitioner, and on a perusal of the records available, we find no reason to review the Judgment, dated 28.04.2014, made in W.A.(MD).No.1167 of 2012. The claims made by the petitioner are vague and general in nature. The petitioner has not been in a position to show that the claims made by the petitioner are true and correct. Even otherwise, it would not be open to the petitioner to make omni bus claims, for issuing certain directions for the implementation of the Act, as prayed for by him. It is presumed that the authorities concerned would exercise the powers vested with them, under the provisions of the Act, by following the procedures established by law. It is also well settled law

that when there is no error apparent on the face of record, the Review Application need not be entertained, in the light of the Judgment of a Division Bench of this Court in Union of India, rep by the Senior Divisional Commercial Manager, Chennai, Vs. The Registrar, Central Administrative Tribunal, Madras Bench, reported in CDJ 2014 MHC 241, wherein the Division Bench had made a complete survey of several Judgments of the Supreme Court, on this question, and has ultimately, in Paragraph No.10, held as follows:-

"In yet another Judgment reported in 2013 (8) SCC 320, [Kamlesh Verma Vs. Mayawati and others], the Hon'ble Apex Court, after examining various Judgments passed earlier has held as follows"

"12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

In the above Judgment, the Hon'ble Apex Court has laid down the principles as under:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles:

20. Thus, in view of the above, the following grounds of review are maintainable, as stipulated by the statute:

20.1 When the review will be maintainable:-

- (i). Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii). Mistake or error apparent on the face of record;
- (iii). Any other sufficient reason.

The words 'any other sufficient reason' has been interpreted in Chhajju Ram Vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius & others [1955] 1 SCR 520, to mean, "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India Vs. Sandur Manganese & Iron Ores Ltd., ors., JT (2013) 8 SC 275.

20.2. When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii). Minor mistakes of inconsequential import.
- (iii). Review proceedings cannot be equated with the original hearing of the case.
- (iv). Review is not maintainable, unless the material



error, manifest on the face of the order, undermine its soundness or results in miscarriage of justice.

(v). A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi). The mere possibility of two views on the subject cannot be a ground for review.

(vii). The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii). The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix). Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

9. Applying the said legal principles to the facts of the present case, if we analyze the grounds of review, we find no error apparent on the face of record in the Judgment of the Division Bench. Thus, the Review Application is liable to be dismissed. Accordingly, the Review Application is dismissed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

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Department of Labour and Employment,
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4.The Deputy Director of Industrial Safety and Health,
[Formerly Inspector of Factories],
Sivakasi.

+1CC to M/s.M.Sekar, Advocate in SR.53189

+1CC to the Special Government Pleader in SR.53851

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