



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.09.2020	Pronounced on: 14.09.2020
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CORAM::

The Honourable Dr.Justice G.Jayachandran

S.A.No.1069 of 2009

Tamil Nadu Atomic Power
Employees Union (A Government of India Enterprise)
Rep.by its President,
DAE, Township, Kalpakkam,
Kanchipuram District. ... Appellant/ Defendant

/versus/

Nuclear Power Corporation of India Ltd.,
(A Government of India Enterprise),
Rep.by its Senior Manager(Personal & Industrial Relations),
Madras Atomic Power Station,
Kanchipuram District. ... Respondent/ Plaintiff

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree rendered by the Additional Subordinate Judge, Chengalpattu in A.S.No.34 of 2006 dated 19.08.2008 in and by which he confirmed the judgment and decree rendered by the learned District Munsif cum Judicial Magistrate, Thirukazhukundram in O.S.No.54 of 2004 dated 06.01.2006.

For Appellant : Mr.V.Selvaraj

For Respondent : Mr.Vijayshankar, SCGSC

J U D G M E N T

(The case has been heard through video conference)

Against the concurrent findings of the Courts below granting permanent injunction, the aggrieved defendant has filed the present second appeal.

2. The plaintiff is the Nuclear Power Corporation of India Limited located within the campus of Madras Atomic Power Station at Kalpakkam. It is a Government of India enterprises. The defendant is the Employees Union in the plaintiff's establishment.

3. The plaint averment is that, the plaintiff's organisation is a public sector undertaking under the Department of Atomic Energy. It is engaged in production of electric power to cater the needs of Southern states of India. Considering the sensitivity of the plaintiff's organisation, the Government of Tamil Nadu has notified in the gazettee on 03/11/1995 as prohibited area, the entire area where the plaintiff establishment is located. Thereby the access to general public is restricted.

4. In the Joint Consultative Council Meeting held at Mumbai on 26/08/1995, understanding arrived among the Management and the Unions that the Employee's Union will not conduct any demonstration, slogan shouting, union meeting within 1.6 Kms of the plant premises.

5. Contrary to the agreement, whenever the Union wants to agitate against the Management, the members of the defendant Union used to assemble near the west gate and also in front of the Administration Building Portico and other prohibited area raise slogans, conduct gate meetings, prevent loyal employees from ingress and egress to the plant.

6. On 02/04/2002 in one such gate meeting the crew members of the organisation were badly affected. It caused hardship for the other employees to have ingress and egress to the plant. Being a atomic power plant, it runs round the clock with three shifts. The conduct of the defendant Union members jeopardise the safety and security of the plant.

7. Hence, suit for permanent injunction restraining the defendants, its office bearers, members, agents and any other persons acting on their behalf and their behest, conducting any demonstration, gherao, raising slogans inside the premises or within the prohibited area and also within the 100 meters distance from Central Industrial Security Force (CISF) main gate (South gate), conducting sit in strike and preventing other shift workers from attending to their shift work within the plant and prohibited area and also within the 100 meters distance from CISF main gate (South gate), interfering with the ingress or egress of the employees, officers, customers, guests of the plaintiff to and from the power station in any manner.

8. In their written statement, the defendant Union denied the plaint averments. It denied the existence of any agreement in Joint Consultative Meeting or a Code of Discipline between the plaintiff's Management and the defendant Union as averred in the plaint. The maintainability of the suit

questioned on the ground that the subject matter of the suit is an industrial dispute. Civil Court has no jurisdiction to entertain the suit. It was claimed that the Union has right to agitate in lawful manner after giving statutory notice for strike. Their right to strike cannot be washed away. The south gate is 4 Km away from the operating island which is the important zone containing nuclear installation. The defendants never indulged in any unlawful activities till date. The gate meetings are conducted in a lawful manner without causing any inconvenience to anybody. Being a vexatious litigation the suit has to be dismissed.

9. The Trial Court after considering the rival pleadings had framed the following issues:

1) Whether the plaintiff is entitled for the relief of permanent injunction as prayed ?

2) What other relief ?

10. One witness on each side and 9 exhibits on the side of the plaintiff, 7 exhibits on the side of the defendant were marked. The Trial Court relying upon the judgments reported in 1994 (2) LW 476, 2002 LLR 254, Delhi HC and 2002 LLR 393, Calcutta HC, held that the Civil Courts have jurisdiction to entertain suits of these nature to protect the civil right of the other employees who are entitled to have free ingress and egress to the plant without any disturbance.

11. Referring Ex.A-2 the Government Gazetee notification dated 15/02/1989 declaring the area around the Atomic Plant as prohibited area by the state Government and Ex.A-1 the Joint Consultative Council meeting resolution, the trial Court granted permanent injunction restraining the defendant union members from carrying on union activities within 100 meters from the main gate. The trial Court has taken into consideration the security risk in allowing the defendants union members and representatives to conduct gate meeting or slogan raising within the prohibited area and near the sensitive installations.

12. The appeal suit filed by the defendant was dismissed by the first appellate Court confirming the reasons assigned by the trial Court.

13. In this second appeal, the learned counsel for the appellant contended that, civil suit is not maintainable to restrain the recognised trade union from exercising its rights in the form of protest and by conducting gate meetings. The

alleged understanding between the Management and the Unions in the Joint Consultative Council is not a settlement under Section 18 or under Section 12(3) of the Industrial disputes Act. The prohibitory decree of injunction had taken away the fundamental right of the workman under Article 19 of the Constitution.

14. The learned counsel for the appellant referring Ex.A-1 submitted that the minutes of the JCC would show that there was no agreement regarding the distance. Clause 16.5 only resolve that the unions should follow the code of discipline. In fact, subsequent to the suit, the Management and the Unions have arrived at a 12(3) Settlement on 05/08/2017 agreeing to follow the standing order and code of discipline while strike. However, the permanent injunction granted in this case is taken undue advantage by the Management and they are not permitting any form of strike.

15. The learned Senior Central Government Standing Counsel representing the respondent submitted that the civil suit is always maintainable whenever civil right is at peril. The plaintiff organisation was forced to seek legal recourse after the appellant union members unmindful of the security risk indulged in gate meetings disturbing the crew members and slogan shouting in the front of the administrative office disturbing the peaceful function of the plant. The right of the union to strike is not prohibited it is only restricted to 100 meters from the main gate. Any reasonable restriction to the fundamental right is permissible in law. No right is absolute without restriction. As far as the decree of permanent injunction granted by the Civil Court it is only upto 100 meters from the south gate and the area declared as prohibited by the State Government.

16. Right to form association or union is a fundamental right guaranteed under Article 19 (1) (c) of the Constitution. This covers variety of right including expressing the grievance in lawful and peaceful manner. However this right is subject to reasonable restriction in the interest of sovereignty or integrity of India, public order and morality.

17. In All India Bank Employees Association -vs- National Industrial Tribunal and others [(1962) 3 SCR 269], wherein the Constitutional Bench of the Supreme Court specifically held that even very liberal interpretation of sub-clause (C) of clause (1) of Article 19 cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise.

In Communist Party of India (M) -vs- Bharat Kumar and others [(1998) 1 SCC 201], a three-Judge Bench of Supreme Court approved the Full Bench decision of the Kerala High Court by holding thus:-

"...There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. In this case, the Apex court affirmed the view of the Kerala High Court that, "no political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it."

18. In the instant case, the plaintiff has demonstrated before the Civil Court through Ex.A-4 to Ex.A-8, that the members of the appellant union in the name of gate meeting and slogan shouting are disturbing the industrial peace. The reasonable restriction is imposed on them by the Civil Court which has jurisdiction under section 9 of the Code of Civil Procedure to try cases of these nature. There is no bar under the Industrial Dispute Act or any other statute for the Civil Court to entertain suits when the civil right of the larger public is affected. The fundamental right of any individual or group of individuals is subservient to the fundamental right of larger public. When there is conflict between two fundamental right or between two groups over exercise of their respective fundamental rights, the right which would advance the public interest should be enforced through the process of the court.

19. Permitting to gather and agitate, to shout slogan and to gherao within the security sensitive areas like the plaintiff premises where atomic plant is installed, may lead to breach of security. It may cause security threat to nation in general and to the installation in particular. A restriction of 100 meters away from the premises outer compound for all these activities is reasonable and a good balance between fundamental rights of life and liberty of the others, fundamental right of trade of the plaintiff Management and the fundamental right of association vest with the defendant Union.

20. Therefore, this Court concur and confirm the judgment and decree of the Courts below. It is also to be noted that the restrain order of injunction is only upto 100 meters from the main gate and within the prohibited area and not beyond that. The injunction decree cannot be construed as a ban on respondent union activities anywhere beyond the 100 meters.

21. In the result, the Second Appeal is dismissed. No order as to costs.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

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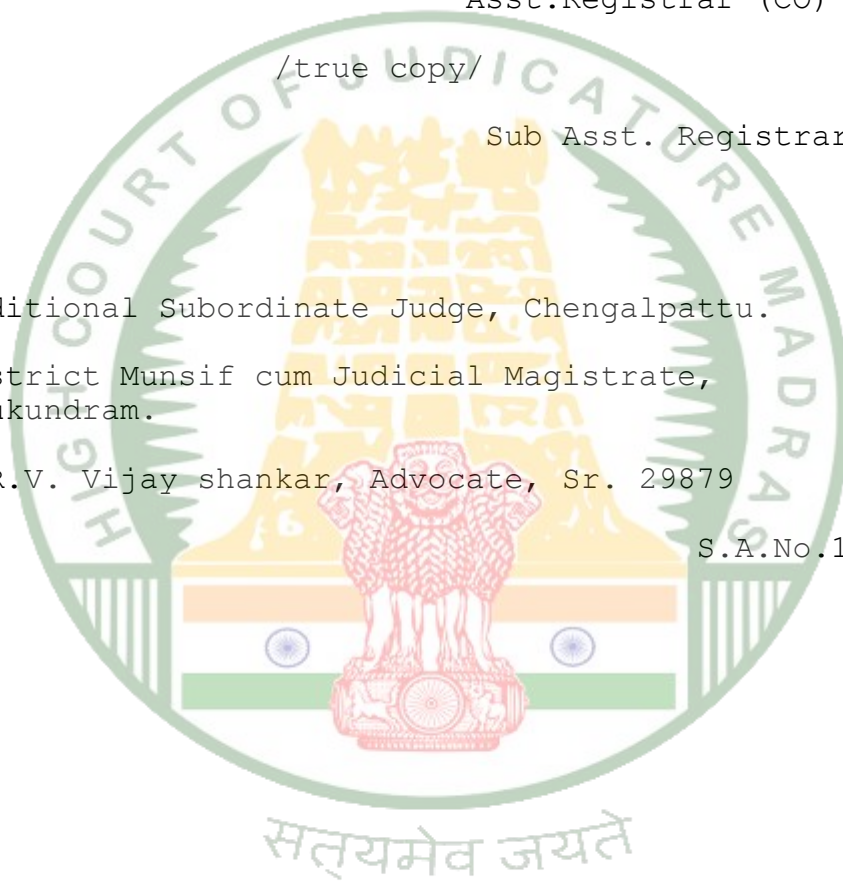
1.The Additional Subordinate Judge, Chengalpattu.

2.The District Munsif cum Judicial Magistrate,
Thirukazhukundram.

1 cc to MR.V. Vijay shankar, Advocate, Sr. 29879

S.A.No.1069 of 2009

SVI (CO)
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