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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.6.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.39112 of 2004 & WMP.NO.46637 OF 2004
(heard through video conferencing)

The Salem District Lorry Owners
Association rep.by its President
V.Chennakesavan,5,Block A,Gundu Chetty,
Eri lorry stand,Shevapet,Salem-636001.

...Petitioner

Vs

1.The Inspector of Factories,
Gokulam Road, Fairlands,
Salem-636016.

2.The Assistant Inspector of Factories,
No.2, Fairlands, Office of the
Inspector of Factories, Gokulam
Road, Salem-636016.

...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to call for the
records relating to the proceedings of the second respondent's
orders issued in Aa/4904/ 2004 dated 01.11.2004 and in
Na.Ka.No.E/4904/2004 dated 01.12.2004 and quash the same.

For Petitioner : Mr.D.Shivakumaran
For Respondents : Ms.A.Madhumathi, SGP

ORDER

I have heard Mr.D.Shivakumaran, learned counsel for the
petitioner and Ms.A.Madhumathi, learned Special Government
Pleader appearing for the respondents.

2. This writ petition has been filed challenging the
proceedings of the second respondent dated 01.12.2004 rejecting
the reply given to the show cause notice dated 01.11.2004 and
initiating prosecution against the petitioner for not having
obtained the registration under the Factories Act, 1948.



3. The petitioner is a retail outlet of M/s.Bharat Petroleum Corporation Limited (for short, the BPCL) selling diesel, petrol and lubricants and the retail outlet has been established after obtaining a no objection certificate from the District Collector, Salem and also requisite permissions and approvals from various authorities. The petitioner obtained registration under the provisions of the Tamil Nadu Shops and Establishments Act and they are registered dealers under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956.

4. While so, the second respondent issued a show cause notice dated 01.11.2004 threatening to initiate prosecution against the petitioner on the ground that the petitioner had not obtained licence under the Factories Act, 1948. The petitioner submitted an elaborate reply dated 19.11.2004 setting out the nature of activities done by them and stating that they did not carry on any manufacturing process, that they obtained registration under the Tamil Nadu Shops and Establishments Act and that the products dealt with by them in retail were being supplied by the BPCL, a Government of India enterprise. Ultimately, the petitioner requested to drop the proceedings. However, the second respondent passed the impugned order rejecting the reply and initiating prosecution.

5. The impugned order has been stayed when the writ petition was entertained by order dated 29.12.2004.

6. Firstly, the impugned order is a non speaking order and it has not considered any of the objections placed by the petitioner in their reply dated 19.11.2004. This would be sufficient to quash the impugned order. That apart, from the grounds raised by the petitioner, it is seen that the Secretary to Government of Tamil Nadu, Labour and Employment Department, vide letter dated 22.12.2015 addressed to the Director of Industrial Safety and Health proposed to exclude petrol, diesel and LPG dispensing pumps from the purview of the Factories Act, 1948, as they are covered by the Legal Metrology Act, 2009 and the officers under that are notified as Competent Authorities to inspect the premises and that the same is being done from 01.4.1964.

7. Further, it has been mentioned that various labour welfare legislations like the Shops and Establishments Act, the Payment of Wages Act, the Minimum Wages Act, the Wornen's Compensation Act, the Payment of Gratuity Act, the Payment of Bonus Act, etc., are enforced by the Labour Department officials to ensure welfare of the employees in petrol retail outlet. Therefore, the State Government decided not to expand the definition of 'factory' to petrol, diesel and LPG dispensing



pumps, which are only dispensing stations and not producers or creators of any industrial activities.

8. The second respondent appeared to have brushed aside the vital fact that the petitioner is registered under the provisions of the Tamil Nadu Shops and Establishments Act. In any event, the impugned order is a non speaking order without considering the objections of the petitioner and therefore, deserves to be quashed.

9. In the result, the writ petition is allowed and the impugned order is quashed. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

1.The Inspector of Factories,
Gokulam Road,Fairlands,
Salem-16

2.The Regional Transport Authority, Tirupur,
Coimbatore District.

WP.No.39112 of 2004&
WMP.No.46637 of 2004

RGN (CO)
GS(01/07/2020)