

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.10.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 25442 of 2019

Doosan Employees Union,
Rep. by its General Secretary,
Regn. No. 512/TVR,
No. 42, Anjaneyar Koil Street,
Poonamallee,
Chennai - 600 056.

... Petitioner

-vs-

1. The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.
 2. The Deputy Commissioner of Labour (Conciliation),
Kuralagam, 3rd Floor,
Chennai - 600 108.
 3. The Management,
Doosan Power Systems India Private Limited,
Rep. By its Division Head,
No. 18/2A, Seneerkuppam By-pass Road,
Poonamallee,
Chennai - 600 056.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the concerned records from the Second and First Respondents, quash the Proceedings of the Second Respondent bearing Na. Ka. No. B/768/2017 dated 03.12.2018 and the order of the First Respondent G.O. (D) No. 337, Labour and Employment (A1) Department, dated 12.06.2019 as illegal, arbitrary and contrary to law and consequently direct the First Respondent to initiate proceedings to prosecute the Third Respondent for indulging in unfair labour practice as enumerated under Section 25 T of the Industrial Disputes Act, 1947, and issue necessary orders to prosecute the Third Respondent under Section 25 U of the I.D. Act, 1947.

For Petitioner : Mr. Balan Haridas

For Respondents: Mr. D.Sathyaraj,
Special Government Pleader (for R1 & R2)

Mr. S.Ravindran, Senior Counsel
for Mr. S.Bazeer Ahamed (for R3)

O R D E R
(through video conference)

Heard Mr. Balan Haridas, Learned Counsel for the Petitioner, Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. S.Ravindran, Learned Senior Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a Trade Union which claims that its members are workmen in the establishment of the Third Respondent. A representation dated 10.11.2017 was made by the Petitioner to the Second Respondent stating that the Third Respondent was indulging in unfair labour practice of threatening its employees to join the association sponsored by it and creating records as if those employees have become members of its association by effecting check off towards subscription, which is punishable in terms of Section 25-T of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short), for which the Third Respondent has to be punished under Section 25-U of the Act and has sought for prosecution of the Third Respondent by a complaint to be made by or under the authority of the appropriate Government in terms of Section 34 of the Act.

3. As there was enormous delay in taking action, the Petitioner had filed the Writ Petition in W.P. No. 14061 of 2018 before this Court, which was disposed by order dated 12.06.2018 directing the Second Respondent to consider the representation dated 10.11.2017 made by the Petitioner, adjudicate the same and pass orders by providing opportunity to all the parties concerned within a period of twelve weeks from the date of receipt of copy of that order. It is borne out from the materials placed on record that in pursuance thereof, the Second Respondent had treated the matter as an industrial dispute and resorted to the procedure for conciliation under Section 12 of the Act and sent a failure report dated 03.12.2018 to the First Respondent. The First Respondent after receipt of the said

report, came to the conclusion that the matter does not require to be referred for adjudication as an industrial dispute before the jurisdictional Labour Court. Aggrieved thereby, the Petitioner has preferred this Writ Petition challenging the said order dated 03.12.2018 passed by the First Respondent and for consequential direction to initiate proceedings to prosecute the Third Respondent.

4. The grievance sought to be ventilated by the Learned Counsel for the Petitioner is that the Petitioner had made a representation for prosecution of the Third Respondent under Section 25-U of the Act for the unfair labour practice committed in terms of Section 25-T of the Act, but the Second Respondent had erroneously treated the same as if it was an industrial dispute and has conducted conciliation proceedings and submitted failure report and the First Respondent in turn refused to refer the matter for industrial adjudication without considering the actual relief that has been sought. In this regard, reliance is placed on the decision of the Division Bench of this Court in Viralimalai Rane TRW Steering Systems Pvt. Ltd., -vs- Government of Tamil Nadu (Order dated 03.06.2019 in W.A. No. 1609 of 2018), where it has been held that the role of the concerned authority of the Government on receipt of the representation under Section 25-T of the Act, is limited to decide whether prosecution under Section 34(1) of the Act could be initiated or not, which has not been done in this case.

5. Learned Senior Counsel appearing for the Third Respondent contends that inasmuch as the Petitioner had participated in the conciliation proceedings without any demur, it is not open to the Petitioner to revive the claim for prosecution of the Third Respondent.

6. After careful consideration of the rival submissions, it is noticed by this Court that Section 34(1) of the Act requires a decision to be taken by the Government as to whether it would have to prosecute the Third Respondent for an offence punishable under the Act by filing a complaint before the jurisdictional Criminal Court as held by the Division Bench of this Court in Viralimalai Rane TRW Steering Systems Pvt. Ltd., -vs- Government of Tamil Nadu (Order dated 03.06.2019 in W.A. No. 1609 of 2018). In other words, the representation as to the commission of the offence under the Act must have been made by the Petitioner to the First Respondent, but no such representation has been made in this case. It is not possible to treat the representation made to the Second Respondent as if it has been deemed to have been submitted to the appropriate Government inasmuch as the role of the Second Respondent in the

procedure for conciliation under the Act is different from prosecution by the appropriate Government for offence under the Act. In that view of the matter, this Court is of the considered view that it is not necessary to delve upon the contentious issues between the parties in the Writ Petition. However, it would not preclude the right of the Petitioner to make necessary representation to the appropriate Government in respect of violation of Section 25-T of the Act for prosecution of the Third Respondent under Section 25-U of the Act for filing a complaint in terms of Section 34(1) of the Act and the time taken in pursuing the matter till the time of disposal of this Writ Petition shall be excluded for the purpose of computation of limitation, if any. Though obvious, it is made clear that no view has been expressed by this court on the merits of the controversy between the parties.

7. In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To

1. The Principal Secretary to the Government of Tamil Nadu,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.
2. The Deputy Commissioner of Labour (Conciliation),
Kuralagam, 3rd Floor,
Chennai - 600 108.

+1 cc to Mr.Balanharidas Advocate sr32189

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