

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.4052 of 2019 and 187 of 2020

W.A.No.4052 of 2019:

M/s.Mahavir Plantation Pvt. Ltd.,
rep. by its Director Lalu T.Bhansali,
Naduvattam,
Nilgiris District.

.. Appellant

vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Labour & Employment Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Labour,
Chennai - 6.

3.The Joint Commissioner of Labour,
Coimbatore.

.. Respondents

W.A.No.187 of 2020:

1.Nilgiris District Estate Workers Union INTUC,
rep. by its President,
Reg. No.614/1947 Near Vinayagar Temple,
Gudalur, Gudalur Post,
Nilgiris - 643 212.

2.Plantation Labour Organisation,
rep. by its President,
Reg. No.108/1982 NLG Sivan Kovil Complex,
Devarshola Bazaar Post, Devarshola,
Gudalur, Nilgiris - 643 207.

.. Appellants

vs.

1.M/s.Mahavir Plantation Pvt. Ltd.,
rep. by its Director Lalu T.Bhansali,
Naduvattam,
Nilgiris District.

2.The State of Tamil Nadu,
rep. by its Secretary to Government,
Labour & Employment Department,
Fort St. George, Chennai - 9.

3.The Commissioner of Labour,
Chennai - 6.

4.The Joint Commissioner of Labour,
Coimbatore.

.. Respondents

Appeals filed under Clause 15 of the Letters Patent against the order dated 4.10.2019 passed by the learned Single Judge in W.P.No.27850 of 2017.

WP.No.27850 of 2017 prayer in:

Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of certiorarified Mandamus, calling for the records relating to the order of the 1st respondent in G.O.M.S.No.423 Labour and Employment Department dated 31.07.2017 and the order in Ref.No.C/4616/2016 dt.10.03.2017 passed by the 3rd respondent and the order letter No.A1/6790/2014 dated 28.06.2017 passed by 2nd respondent.(prayer amended as per order dated 04/10/2019 in W.M.P.No.24517/2018 in WP.27850 of 2017)

For Appellant : Mr.AR.L.Sundaresan
in W.A.No.4052/2019 Senior Counsel
and for M/s.V.P.K.Gowtham
respondent No.1 in
W.A.No.187 of 2020

For Appellants : Mr.Naveenkumar Murthy
in W.A.No.187 of 2020

For Respondents

: Mr.V.Jayaprakash Narayanan
State Government Pleader
for respondents in
W.A.No.4052/2019 and
respondent Nos.2 to 4 in
W.A.No.187 of 2020

COMMON JUDGMENT

(Delivered by The Hon'ble Chief Justice)

W.A.No.4052 of 2019 has been filed by the Company that owns Tea Estates in The Nilgiris, Tamil Nadu. The appeal questions the impugned judgment dated 4.10.2019 by the learned Single Judge in a writ petition that had been instituted by the appellant challenging the recovery proceedings initiated by the State Government under a recovery certificate issued as per the provisions of the Tamil Nadu Revenue Recovery Act, 1864 for realization of the amount that has already been paid by the Government pursuant to the proceedings in Contempt Petition (C) No.16 of 2012 in Writ Petition (C) No.365 of 2006 (International Union of Food Agriculture and others v. Union of India and others) pending before the Apex Court. The recovery has been ordered pursuant to the directions dated 4.4.2018 of the Apex Court.

2. The appellant Company challenged the recovery proceedings contending that in the absence of any computation of the amount in accordance with the provisions of Section 33C(1) of the Industrial Disputes Act, 1947, a liability cannot be fixed on the Company and consequently, the recovery proceedings without any such adjudication should not have been resorted to by the Government. This would amount to negating the entire adjudicatory process envisaged under law and therefore, any recovery which is penal in action, cannot be resorted to, except otherwise than in accordance with law.

3. The learned Single Judge, after having traced out the entire history of the claim of the workers and the litigation that has travelled up to the Apex Court, came to the conclusion that it is for the Management to approach the appropriate forum for questioning the merits/demerits of any such claim, but that cannot justify interference with the recovery proceedings which otherwise is under the authority of the order of the Apex Court referred to above.

4. Learned Senior Counsel Mr.AR.L.Sundaresan for the appellant in W.A.No.4052 of 2019, therefore, contends that the

learned Single Judge could not have dismissed the writ petition after having considered the issue of adjudication and consequently the rights of the appellant Company are seriously prejudiced, inasmuch as the appellant Company is being saddled with the liability without any adjudication in respect thereof and without following the procedure contemplated in law.

5. The Nilgiris District Estate Workers Union INTUC and the Plantation Labour Organisation have filed W.A.No.187 of 2020 contending that their rights have also been affected, inasmuch as they have been deprived of their wages and any arrangement made by the Government by moving an affidavit before the Apex Court is virtually an outcome of an adjustment proposed by the State before the Apex Court without indicating any concern about the appellants - Nilgiris District Estate Workers Union INTUC and the Plantation Labour Organisation.

6. It is in the above background that after hearing learned counsel for both the appellants and learned State Government Pleader, we find that the issue in essence relates to the payment or otherwise of wages of the workers of these Tea Gardens, notice whereof was taken in a Public Interest Litigation giving rise to the Contempt Petition before the Apex Court, referred to above. The Apex Court initially issued notices and then passed an order on 21.8.2017 calling upon the State Governments to consider making payment by way of interim relief to the workers "without prejudice to the rights of either sides to have such payment adjusted". A perusal of the said order shows that it has been clearly formulated in a manner so as to ensure that the workers get their wages, but at the same time, without prejudice to the rights of either sides to claim an adjustment of such payments.

7. Learned Senior Counsel for the appellant Company contends that the said order of the Apex Court therefore leaves it open to any such adjustment or computation that can be made. However, in the present case, there has been no computation or adjudication of wages by the competent forum in terms of Section 33C of the Industrial Disputes Act, 1947. He, therefore, submits that the Apex Court itself had preserved these rights enabling the parties to claim their adjustment. He therefore contends that the learned Single Judge ought to have delved into the issue of legal rights involved in the case that has been permitted, and not prohibited, under the orders of the Apex Court.

8. However, we find that while hearing the Contempt Petition and the Writ Petition, the Apex Court passed the next

order on 4.4.2018 and while passing the order in relation to the State of Tamil Nadu, observed as follows:

"IN RE: STATE OF TAMIL NADU

According to the Central Government in the State of Tamil Nadu, an amount of 17 Crores is outstanding and payable to the workmen as dues for the work rendered by them. Shri V.Giri, learned counsel for the State of Tamil Nadu states that as on date, the liability is to the extent of about Rs.9.5 crores.

Undoubtedly, the primary liability is of the employers. However, having regard to the circumstances of this case which we have adverted to earlier we consider it appropriate to pass the following order:

- (i) The State Government would pay the necessary funds of Rs.9.5 Crores to the employees upon verification within 60 days.
- (ii) Notices shall be issued to the workers to present their claims and only upon verification the said amounts shall be disbursed to them.
- (iii) In case the workers have died, the amounts shall be disbursed to the legal representatives upon verification of their status.
- (iv) Upon verification of their identities and claims they shall make payment in chronological order, i.e., those who have retired earlier shall be paid before those who have retired later.
- (v) The process of verification and identification shall be commenced immediately.
- (vi) The Government shall be entitled to recover those amount from all those employers whose primary duty was to pay the wages, as a revenue demand or any other efficacious manner.

We are informed by the State of Tamil Nadu that primary liability is of the employer list of which is as follows:

Address of the Tea Gardens

S.No.	Name of the Tea Estate & Address	Name of the Company & Address
1.	High Forest Estate Post, Valparai, Coimbatore, Tamil Nadu, Pincode - 642127	Mahavir Plantations Pvt. Ltd. 24/1511, Indira Gandhi Road, Kochi - 682003
2.	Liddelsdale & Prospect Liddlellsdaile Estate Naduvattam Post, Ooty Taluk, The Nilgiris, Tamil Nadu - 643224	Mahavir Plantations Pvt. Ltd. 24/1511, Indira Gandhi Road, Kochi - 682003
3.	Manjushree, New Hope & Glenvars New Hope Estate, Hew Hope Post, Gudalur Taluk, The Nilgiris, Tamil Nadu - 643226	Manjushree Plantations Limited, 7E Neelamber Building, 28B Shakespeare Sarani, Kolkata 700017
4.	Seaforth Estate, Seaforth Post, Gudalur Taluk, The Nilgiris, Tamil Nadu - 643228	Mahavir Plantations Pvt. Ltd. 24/1511, Indira Gandhi Road, Kochi - 682003

We accordingly consider it appropriate to direct the State of Tamil Nadu to notify the owners of those Tea gardens about these proceedings before us. Accordingly issue notice to those above Tea gardens through companies/management returnable in two weeks."

9. A perusal of this order indicates that the amount as indicated therein had been tendered by the State Government and the balance of the liability was directed to be disbursed by the State subject to it being recovered from the respective Managements/Companies. The State Government has disbursed the

amount and is now seeking to recover the same. However, it is, at this stage that the Apex Court also issued notices to the Companies, including to the appellant - M/s.Mahavir Plantation Private Limited as well. It is not disputed that the appellant - M/s.Mahavir Plantation Private Limited has already appeared before the Apex Court in terms of the notice so tendered before the Apex Court.

10. It is in this background that the present appeal has been preferred by the Management contending that the learned Single Judge ought to have put the recovery proceedings in abeyance until the adjudication was made before the appropriate forum in terms of the Industrial Disputes Act, 1947. Since the learned Single Judge has declined to do so, the present appeal has been filed.

11. We have considered the submissions raised and there might be substance in the contention of the learned Senior Counsel for the appellant in W.A.No.4052 of 2019 that for the purpose of computing the wages or adjusting the same as observed by the Apex Court itself, an adjudication would be necessary. But that in our opinion should be a primary exercise by the competent authority envisaged under the Industrial Disputes Act, 1947 and not by an adjudication at this stage by the High Court under Article 226 of the Constitution of India. However, we are unable to intervene in the matter as rightly observed by the learned Single Judge that before any such adjudication could take place orders have been issued by the Apex Court authorizing the State Government to proceed with the recovery.

12. In the wake of the aforesaid facts and orders passed, as referred to herein above, we find that the learned Single Judge has rightly arrived at the conclusion that this Court may not intervene in the matter when the Apex Court is already apprised of the entire facts and therefore, in our opinion as well, it will be open to the appellants to approach the Apex Court for any appropriate clarification or any prayer for providing any relief to get the matter adjudicated as per the Industrial Disputes Act, 1947 or otherwise, keeping in view the orders of the Apex Court itself.

13. However, in the wake of the circumstances of the present case, we find that the process of attachment has already commenced as is evident from the letter of the Tahsildar, Udhagamandalam, dated 15.10.2019. In the given circumstances, since the matter is now being dealt with by the Apex Court, we dispose of these appeals with liberty to the appellants to approach the Apex Court for any orders that may be required in

the process.

14. In the special circumstances of the case and in view of the fact that obtaining of orders from the Apex Court may take some reasonable time, we direct the respondent State authorities not to take coercive steps for recovery for a period of two months from today.

The appeals stand disposed of accordingly. No costs. Consequently, C.M.P.Nos.25415, 25416 of 2019 and 2790 of 2020 are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr

To

1.The Secretary to Government,
State of Tamil Nadu,
Labour & Employment Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Labour,
Chennai - 6.

3.The Joint Commissioner of Labour,
Coimbatore.

+1cc to the Government Pleader SR.10405

W.A.NoS.4052 of 2019 and 187 of 2020

SPD(CO)
CB(21/02/2020)

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