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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2021

DATE OF DECISION : 13.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.576 of 2015

Raptakos Brett and Co Ltd.,
142, Velacherry Road
Chennai 600 042

...Appellant/2nd Respondent

-vs-

1. Raptakos Brett Employees Union
rep by its General Secretary
142, Velacherry Road, Guindy
Chennai 600 042

...1st Respondent/Petitioner

2. The Deputy Commissioner of Labour
DMS Compound, Teynampet
Chennai 600 006

...2nd Respondent/1st Respondent

Appeal filed under Clause 15 of the Letters Patent, against the order dated 01.12.2014 made in W.P.No.29883 of 2013.

Prayer in W.P.No.29883 of 2013

Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the second respondent from operating the Closed Circuit Television (CCTV) and to remove the same from the rest room of male workers as it is contrary to the directions of the first respondent and it violates right to privacy, decency and is in violation of Article 21 of the Constitution of India.

For Appellant :: Mr.G.Anand for
for M/s T.S.Gopalan & Co.

For Respondents :: Mr.N.G.R.Prasad for
M/s Row & Reddy for R1
Mr.T.Arunkumar
Government Advocate for R2



JUDGMENT

T.RAJA, J.

This writ appeal has been filed by a private company, Raptakos Brett and Co Ltd., Chennai, after suffering an order of writ of mandamus under Article 226 of the Constitution of India for removal of the Closed Circuit Television Units (CCTVs) installed in the rest room and lockers room, to prevent and avoid theft of the articles/valuables belonging to the workmen.

2. Mr.G.Anand, learned counsel appearing for the appellant, raising the basic issue that no writ under Article 226 of the Constitution of India shall be issued against the private men or private body, argued that when the appellant is a private factory situated in Velacherry at Chennai and also in Thane, Mumbai and Roha. Maharashtra, all the factories of the appellant are manufacturing pharmaceutical and nutraceutical products for the past 80 years. Since various state-of-the-art technologies are being installed from time to time to make the products affordable to the common men and customers, for harnessing the human resources, it has been paying a fairly very high wage to its workmen, at the same time, it wanted to ensure that the working time of the available manpower during shift hours are properly availed with optimum use. Secondly, when there were frequent complaints of theft made by the workmen from the lockers room provided by the appellant to them to make sure that the workmen are not taking lame excuses to sleep in the rest room and also to avoid any theft of workmen's belongings from the lockers room, the appellant management has installed the CCTVs all over the factories including the lockers room, as the factory buildings are spread in a vast area and there is also very large open space available within the factory. Besides, the rest room and toilet facilities are provided in a building away from the production area. In addition thereto, there are separate rest rooms for men and women workers and the rest rooms are fitted with lockers to change over to uniform and keep their belongings safely. If all the workmen come forward to report for duty wearing their full uniforms, then the need for changing the dress could be eliminated. Inside the rest room, urinals are also provided in separate closed enclosures with no visibility of the persons while using the toilet and the rest rooms are also fitted with fans.

3. Further, when the appellant faced several instances from both Mumbai and Chennai factories that the workmen were frequently slipping away from the place of work in the guise of going to toilet and spending the duty time for which they are paid wages, it became impossible to monitor the movement of all the personnel during the entire shift operations. As the factory area in Chennai covered an area of 100 grounds, it therefore



became imperative that the movement of employed manpower during shift hours is kept under vigil, so that it will act as a deterrent for anyone to sneak away from working hours more than the time required for answering the calls of nature. Since the rest room is meant for the workmen to keep their belongings in the lockers and for changing their home dress to the factory uniform, in the year 2009, in Thane factory at Mumbai, CCTVs were installed in 28 locations including 6 rest rooms. There was no resistance or demur on the part of the workmen. Although these workmen are members of a powerful trade union like the first respondent herein, there was no objection for installing the CCTVs in all the places other than the toilet room. Even before installing the CCTVs in Thane factory at Mumbai, a study was made in the areas where there was movement of men and only thereafter, CCTVs were installed in Thane factory in the year 2009 and subsequently in 12 areas in the Chennai factory, CCTVs were installed in the year 2012.

4. However, objecting to the installation of CCTVs in various places inside the private factory owned by the appellant, without even knowing the fundamental and rudimentary legal position, the writ petition has been filed seeking a mandamus against the private factory to remove the CCTVs from the rest room of male workers citing that it violated the right to privacy, decency and also violated Article 21 of the Constitution of India. Mr.G.Anand, learned counsel further submitted that the writ petition against the private factory, first of all, is not legally maintainable under Article 226 of the Constitution of India. This crucial settled legal position has been overlooked by the learned single Judge. Secondly, when the CCTVs were installed in the factory of the appellant after identifying 38 areas including 2 rest rooms where movement of men required vigil, barring the toilet rooms of men and women, and the movement of even officers, managers, supervisory staff were also subject to vigil of CCTVs to regulate their movement and keep them under watch to deter them needlessly being away from their work place, the first respondent union, raising objection to the installation of CCTVs, took up the matter to the second respondent before whom the appellant appeared and explained that the grievance of the first respondent was wholly unjustified. As the role of the Conciliation Officer is to mediate and bring about a settlement and if no settlement is arrived at, to submit his failure report, based on which it is for the Government to decide whether the reference for adjudication should be made or not, without appreciating the reasons that it is not within the province of the Conciliation Officer to give directions, the second respondent issued a letter dated 29.10.2013 directing the appellant not to activate the CCTVs contrary to the existing and prevailing customs in the State of Tamil Nadu. As there is no question of violation of



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Section 33 of the Industrial Disputes Act, the writ petition has been filed under Article 226 seeking a mandamus against the private factory restraining them from operating the CCTVs and to remove them from the rest room of the male workers, as it is contrary to the direction of the second respondent, on the premise that the action of the appellant affects the dignity and self-respect of the workmen working in the factory. Mr.G.Anand, after some arguments, raising heavy objection on the maintainability of the writ petition against the private factory, submitted that the appellant will not install any CCTVs inside the rest room and they will install the CCTVs only in the lockers room and other sensitive places where the workmen are unnecessarily sleeping away from the work spot and wasting the valuable duty hours. Besides, in the lockers room, frequent theft complaints are being filed, so if the CCTVs are installed, it will only help them avoiding the theft of their valuables. To this effect, he has also filed an affidavit dated 30.6.2021.

5. Per contra, Mr.N.G.R.Prasad, learned counsel appearing for the first respondent/writ petitioner contended that the appellant, on an earlier occasion, prevented the workmen from getting rest during rest hours. As per long standing practice, the management provided 5 relievers who work side by side with regular workers in the shift. The said 5 relievers look after the production when the other relieved workers go to relieve themselves for 15 minutes during the reliever break. Between 11.00 AM and 11.15 AM and from 4.00 PM to 4.15 PM, all the workmen will go to the rest room after stopping the machines. This was the customary practice prevailing in the appellant's management all along. But the appellant took exception to these 5 workers relieving and other workers going and relaxing for 15 minutes. In fact they wanted the workmen to work in the 15 minutes without interruption to augment production. Therefore, they asked the security staff not to allow the workers to go out of the factory gate during lunch time. The Vice President of the Union took exception to this inhuman treatment and asked the security personnel not to stop the workers, for which he was suspended on 1.1.2008 and there was a protest against this arbitrary action also. Again when the CCTVs were installed in all other places including the rest room, objection was raised to this method of surveillance. Ignoring the protest, the appellant management installed the CCTVs in 38 areas and they even wanted to install in the rest room leaving little scope for the workmen's privacy, which is in violation of Article 21 of the Constitution of India and also Sections 9-A and 33 of the Industrial Disputes Act. Since the appellant management did not pay any heed to this strong protest, industrial dispute was raised before the second respondent/Conciliation Officer, who also issued the letter dated 29.10.2013 directing the appellant to stop the installation of the CCTVs in the rest room.



review, in the case on hand, since there is no infringement of privacy by the State, the first respondent/writ petitioner cannot lay their claim before this Court under Article 226 of the Constitution of India. In the judgment of the Hon'ble Apex Court in Justice K.S. Puttaswamy (Retd.) v. Union of India (supra), Hon'ble Justice Sanjay Kishan Kaul (in his separate opinion) recognizing the breach of privacy committed by private individuals/private entities/non-State actors, called upon the legislature to legislate on this issue and ensure privacy of individuals against other citizens as well. Since the Constitution of India states that fundamental rights enshrined in Part III can only be enforced against State as defined in Article 12, we are of the considered opinion that the writ of mandamus issued by the learned single Judge against the private factory management is not legally sustainable, hence, the first respondent-Union has to work out their remedy before the appropriate forum. However, that need does not arise, because, interestingly enough, the appellant has now filed an affidavit undertaking that no CCTVs will be fitted in the dress changing room and toilet inside the factory premises. The relevant portions as such are extracted hereunder:-

"2. I state that without going to the merits and the maintainability of the writ petition, I state that the room adjacent to the Rest Room will be made available to the workmen for changing to their uniform. This room will be exclusively for the permanent workmen. The temporary workmen will be given another room. I am filing a plan of the area for better appreciation of facts by this Court.

3. I state that the area as "Gents Rest Room (1)" has the CCTV and lockers. The room next to it marked as "Temporary Rest Room"(II) will be given to the workmen for changing their dress and they can access the men's toilet through this room. Further the door to access the toilet in the Gents Rest Room shall be closed/locked to ensure privacy. I further state that no CCTV will be fitted in the new area to be allotted to the workmen for changing their dress.

I humbly state that this Hon'ble Court may kindly take on record this affidavit and be pleased to allow the writ appeal and pass such or further orders as this court may deem fit in the interest of justice."



Paragraph-3 of the above affidavit filed by the appellant shows that they will not install the CCTVs in the toilet and dress changing area. The affidavit further states that the Temporary Rest Room will be given to the workmen for changing their dress and they can access the men's toilet through this room. Further the door to access the toilet in the Gents Rest Room shall be closed/locked to ensure privacy. Hence, recording the affidavit of undertaking dated 30.6.2021 filed by the appellant that no CCTVs will be fitted in the dress changing room and also in the toilet in the factory premises of the appellant, the writ appeal stands disposed of. Consequently, M.P.No.1 of 2015 is closed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

SS

To

The Deputy Commissioner of Labour
DMS Compound, Teynampet
Chennai 600 006.

+1cc to M/s.T.S.Gopalan & Co, Advocate, S.R.No.40468
+1cc to Mr.N.G.R.Prasad, Advocate, S.R.No.40229
+1cc to the Government Pleader, S.R.No.40743

W.A.No.576 of 2015

SSD[co]
NSK 16/09/2021