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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No. 17091 of 2004

1. The Managing Director
   M/s.Tata Tea Ltd.,
   No.1, Bishop Lefroy Road,
   Kolkatta 700 020.

2. The General Manager
   M/s.Tata Tea Ltd.,
   Regional Office
   Munnar 685 612
   Kerala.

3. The Group Manager
   M/s.Tata Tea Ltd.,
   Annamalai's Group Office
   Old Valparai,
   Valparai 642 127. ... Petitioners

-vs-

The Labour Enforcement Officer (Central),
No.277D, GPK Building, Ganapathy,
Coimbatore 641 006. .... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records on the file of the respondent leading to the impugned notice No.36/1/2004-CBE dated 07.02.2004 and to quash the same, and to direct the respondent not to initiate any action against the petitioners and to grant such other reliefs.

For Petitioners : Mr.C.K.Nandakumar
for M/s.King & Patridge

For Respondent : Mr.K.Srinivasamurthy

O R D E R

This writ petition has been filed, challenging the impugned notice No.36/1/2004-CBE dated 07.02.2004, by which the

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Petitioners were asked to show cause as to why action under Section 9 of the Payment of Gratuity Act, 1972 (in short 'the Act, 1972') should not be taken for the alleged irregularities. The Petitioner also sought a direction to the respondent not to initiate any action against the petitioners.

2. According to the Petitioners/Management, they are into the business of Plantation and even assuming that they have branches in various States, Central Government cannot be said to be an Appropriate Government, as the appropriate Government is defined under Section 2 of the Act, 1972, from which it is clear that the plantation is not included. It is the case of the Petitioners/Management that it is no doubt true that more than 100 employees are employed under the plantation, but only the State Government is the Appropriate Government to decide the issue in question and they are entitled to inspect and see whether the provisions of the Act have been complied with or not. Authorities under Central Government have no jurisdiction and on that score, the impugned notice needs interference by this Court. The petitioners have also relied upon the following judgments of the Apex Court as well as Madras High Court:

i) Jeewanlal (1929) Ltd. and Others vs. Appellate Authority and Others, reported in (1984) 4 SCC 356;

> "17....It would appear that the definition of appropriate government in Section 2(a)(1) in relation to an establishment makes a distinction between establishments and factories. In relation to an establishment belonging to, or under the control of, the Central Government and of a factory belonging to, or under the control of, the Central Government, the appropriate government is the Central Government. But the Central Government is the appropriate government only in relation to an establishment having branches in more than one State. There is no like provision made in relation to such an establishment having factories in different States. We feel that the point relating to the jurisdiction of the Controlling Authority Under Section 3 of the Act. does not really arise. It appears that Messrs Jeewanlal (1929) Ltd. have their registered and head office at Calcutta and branch offices and factories at Calcutta, Bombay and Madras and sales offices at Delhi, Hyderabad and Cochin. It has also two factories in Madras viz., Shree Ganeshar Aluminium Works and Messrs Mysore Premier Metal Factory. It employs about 300 members of clerical staff at the head office and its branch offices throughout the country as well as in its two factories and employs about 1300 workmen in its factories at Calcutta, Bombay and Madras. We are inclined to the view that the Controlling Authority had jurisdiction to entertain the claim of an employee

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working in an office attached to a factory as such an office would be an adjunct of the factory but that is not the question before us. The Controlling Authority has in fact, confined the adjudication of claims in relation to workmen who were employed at the two factories at Madras but declined to entertain the claims of employees who were working either at the branch office at Madras or at the office attached to the factories in question. That being so, the contention relating to jurisdiction of the Controlling Authority Under Section 3 of the Act must fail.

18. It has been our unfortunate experience that a beneficent measure like Payment of Gratuity Act 1972 providing for a scheme of retiral benefit, has been be set with many difficulties in its application. It need not be over emphasised that a legislation of this kind must not suffer from any ambiguity....

20. In retrospect, we wish to impress upon the Government that whenever such doubt or difficulty is expressed by the High Courts in the application of provisions of social security measures viz., retiral benefits, gratuity, provident fund and pension and the like, they must always introduce legislation to cure the defect rather than wait for judicial interpretation by the highest Court. We may also add that the Government may consider the desirability of setting up a National Labour Commission which may be entrusted not only with the task of making periodical review of such social welfare legislations from time to time but also to suggest radical reform of the laws relating to industrial relations which must be brought in time with the changing needs of the society."

ii) Neyveli Lignite Corporation Ltd. vs. J.Satagopan and Others, reported in 1979 (2) LLJ 163;

"10. On consideration of the matter, I think there is force in the argument of Mr. Gopalaratnam that there can only be a factory, mine, oilfield, plantation, etc. and there cannot be an establishment of a factory, major port, mine, oilfield, etc. In Section 1(3) as well as Section 2(e) and (f) the word "establishment" has been used disjunctively in juxtaposition to the words "factory, mine, oilfield, plantation, etc." Merely because the preamble contains the words "or other establishments" and Section 2(a) affords scope for the word "establishment" being prefixed to the words "of a factory" occurring in Sub-clause (c) and "of a major port, mine, oilfield, or railway company" occurring in Sub-clause (d), it is

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not possible to hold that the Legislature intended to enlarge the meaning of the words "factory, major port, mine, oilfield, etc., etc., by tacking on the word "establishment" to them. This inference is inescapable because, as already stated, Sub-clause (g), (i), (j), (l), (m), (n) and (p) restrict the meaning of the appropriate word found in the sub-clauses to the meaning given to them in the parent Acts referred to therein. For example, in Sub-clause 2(g) the word "factory" has been assigned the meaning given to it in Clause (m) of Section 2 of the Factories Act, 1948. Having given such a definition, the Legislature would not have intended to enlarge the meaning of the word "factory" by describing it as "establishment of a factory". Section 2, the wording of which has presumably led the second respondent to hold that there can be an establishment of a mine, is intended to cover (i) establishments belonging to or under the control of the Central Government and (ii) establishments having branches in more than one State, as well as (iii) factories belonging to or under the control of the Central Government and (iv) major ports, mines, oilfields or railway companies. It is on account of the composite nature of the sub-section, the word "establishment" has been used even with reference to factory, major port, mine, etc. Therefore, the view of the second respondent that the Gratuity Act is applicable not only to factories and mines, but also to establishments related to such factories and mines, is not correct."

2.1. It is further case of the Petitioners/Management that unless or otherwise the definition as mentioned in the provisions is specifically extended to the Plantation, situated in various States, including State of Tamil Nadu to the extent that Central Government is the appropriate Government, the authorities cannot usurp the powers, when such rights have not been conferred under the Statute. Hence, it is prayed that the notification has got to be struck down.

3. Per contra, Mr.K.Srinivasamurthy, learned counsel appearing for the respondent vehemently contended that a harmonious reading has to be given to the provisions of Section 1 & 2 and that the word "establishment" includes Plantation. When the Act is applicable to the Plantation in terms of Section 1, it should not be read in isolation and a conjoint reading of Sections 1 & 2 reveals that the plantation is an establishment and when the plantation is situated in more than one State, the Central Government is the appropriate Government. He contended that since the benefits of payment of gratuity was not extended to the employees, an inspection was conducted.

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4. Heard the learned counsel on either side and perused the material documents available on record.

5. On a circumspection of the entire facts and averments put forth by the respective parties herein-above, the core issue involved in this case is as to whether the connotation, viz., 'Appropriate Government', referred to in the provisions of Section 2 of the Act, 1972 denotes 'Central Government' so as to issue a show cause under Section 9 of the Act, 1972 in respect of plantation for the alleged irregularities or it could be treated as an Industrial Establishment. For the sake of deciding the issue, Sections 1 & 2 of the Act, 1972, are extracted below:-

> "1. Short title, extent, application and commencement.-
>
> (1) This Act may be called the Payment of Gratuity Act, 1972.
>
> (2) It extends to the whole of India: Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.
>
> (3) It shall apply to-
> (a) every factory, mine, oilfield, plantation, port and railway company;
> (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
> (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.
> (3-A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.]
> (4) It shall come into force on such date 2 as the Central Government may, by notification, appoint.
>
> 2. Definitions.- In this Act, unless the context otherwise requires,-
> (a) "appropriate Government" means,-
> (i) in relation to an establishment:- (a) belonging to, or under the control of, the Central Government (b) having branches in more than one

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State (c) of a factory belonging to, or under the control of, the Central Government. (d) of a major port, mine, oilfield or railway company, the Central Government."

6. The main argument of the learned counsel for the Petitioners is that merely because the word "establishment" has been placed disjunctively in juxtaposition to the words "factory, mine, oilfield, plantation in Section 1 (3) (a), it cannot be automatically inferred that Section 2(a) affords scope for the word "establishment" being prefixed to the words "of a factory" occurring in Sub-clause (c) and "of a major port, mine, oilfield, or railway company" occurring in Sub-clause (d).

7. This Court is not going into the question of irregularities said to have been committed by the Petitioners, as the issue before this Court is whether the Central Government has got the jurisdiction to conduct inspection on the Petitioner premises or not. It is true that the words factory, mine, oil field, port and railway company are found incorporated in Sections 1 & 2 of the Act, 1972 and the word 'plantation' has been referred to only in Section 1 alone and not in Section 2 of the Act, 1972. This Court cannot legislate, by incorporating the word 'plantation' into Section 2, which is not actually found therein. Though the Act is applicable to plantation, the Petitioners' Tea plant do not fall within the ambit of plantation, which is actually referred to under Section 1 of The Plantations Labour Act, 1951 (hereinafter referred to as 'the Labour Act, 1951) and it may be a plantation as per Section 2(f) of the Labour Act 1951.

8. Section 2 of the Act, 1972 defines what is a mine, a factory, oil field, plantation, port, railway company including the notification that may be published in the official gazette. The definition of establishment has not been defined under the Act, 1972. It does not mean that the reference to the word 'establishment' to be looked at from the Tamil Nadu Shops and Establishments Act. When Section 2 of the Act, 1972 is unambiguous, this Court is not inclined to include the word 'plantation' into Section 2 and hold that the Central Government is the appropriate Government. It is no doubt true that the State Government is the appropriate Government for the establishment in which inspection was conducted by the Central Government officials. It is not necessary that the total extent of area mentioned in the Labour Act, 1951 should be available for the Payment of Gratuity Act to be extended, as Section 2(f) of the Labour Act, 1951 alone has been legislatively incorporated under the provisions of the Payment of the Gratuity Act and not the entire provisions of the Labour Act, 1951.

9. It is similar to the one under the Tamil Nadu Industrial

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Establishments (Conferment of Permanent Status to Workmen) Act, 1981, wherein the word 'establishment' alone has been borrowed from the Tamil Nadu Shops and Establishments Act. The Tamil Nadu Shops and Establishments Act is not applicable to certain Establishments like Banks, etc., in view of Section 4 (1) (c) of the 1947 Act. Though Nationalized Banks may not be an establishment under the Shops Act, it is an establishment under the context of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, as definition of 'establishment' alone has been legislatively incorporated. Thus, it is obvious that the entire provisions of the Shops Act have not been legislatively incorporated into the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

10. The word 'establishment' in Section 1(3)(b) of the Act is not to be restricted as referring to 'commercial establishments' alone and the said Act will apply even to institutions, which are exempted under Shops and Establishments Act. There is no doubt that a liberal construction has to be given to the expression and any institutions or organization where systematic activity is carried on by employing ten or more persons would fall within the ambit of the provisions of the Act. The words 'any law for the time being in force' would include an establishment under the EPF Act also, i.e., if it is an establishment within the meaning of EPF, it will be an establishment under the Payment of Gratuity Act, by virtue of Section 1(3)(b) thereof.

11. In the present case on hand, as discussed supra, the employer in this case cannot be treated either as a shop or establishment, but a Plantation. Even assuming that it is an establishment coming under the control of the Central Government, at no stretch of imagination, it can be construed that Central Government is the appropriate Government for the Management in this case to deal with issues arising under the Act, 1972.

12. In the light of the aforesaid legislative process, if the present case is tested, it can be easily understood that the word 'establishment' has not been defined under the Act, 1972 and what is not specifically mentioned in the enactment cannot be borrowed or legislatively incorporated in the provisions of the Payment of Gratuity Act to give a special meaning to 'plantation' and extend powers to the Central Government to inspect the plantation. Finding much force in the contention of the petitioners, this Court is of the view that the impugned notification has no legs to stand and the same is liable to be interfered with.

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13. Accordingly, this Writ Petition is allowed. It is needless to state here that this order will not preclude the State Government Authorities from exercising their official duties, if they are advised to do so. In case any documents are seized by the Authorities of the Central Government, it shall be returned to the Petitioners/Management, within a period of one month from the date of receipt of the order. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

dpq/ar

TO

The Labour Enforcement Officer (Central),
No.277D, GPK Building, Ganapathy,
Coimbatore 641 006.

+1cc to Mr.King & Patridge, Advocate, S.R.No.29546
+1cc to Mr.K.Srinivasamurthy, Advocate, S.R.No.29548

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