



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.7969 of 2010

and

M.P.(MD).Nos.1 and 2 of 2010

M/s.Seyadu Beedi Company,
No.4-G, Salai Street,
Sindhu Poondurai,
Tirunelveli-627 001.
Rep. by its Managing Partner,
T.E.S.Fathu Rabbani

... Petitioner

Vs.

1. The Assistant Inspector of Labour,
6th Circle, No.15-B,
19th Cross Street, Maharajanagar,
Tirunelveli-627 011.

2. A.Rajaram,
The Assistant Inspector of Labour,
6th Circle, No.15-B,
19th Cross Street, Maharajanagar,
Tirunelveli-627 011.

3. The Commissioner of Labour,
DMS Compound,
Teynampet, Chennai.

... Respondents

[R3 impleaded as a party respondent as per order
dated 15.09.2010 in M.P.(MD).No.3/2010]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, to call for records relating to the impugned order passed by the first respondent in his proceedings No.1/2010 dated 03.06.2010 and quash the same as illegal.

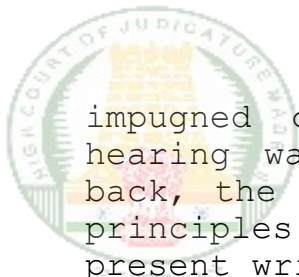
For Petitioner	:	Mr.Jerin Mathew for M/s.Ajmal Associates
For Respondent Nos.1& 3	:	Mr.D.Muruganantham, Additional Government Pleader
For Respondent No.2	:	Mr.C.Arul Vadivel @ Sekar



ORDER

This writ petition is filed against the impugned order passed by the first respondent in his proceedings No.1/2010 dated 03.06.2010.

2.The case of the petitioner is that the petitioner is a partnership firm and is engaged in the manufacture and sale of Beedi. The said Beedi Company was established nearly eighty years back and it provides employment to over 25,000 persons either directly or indirectly. The Beedies manufactured by the petitioner are marketed mainly in Tamilnadu and Sri Lanka. The petitioner firm is complying with all the provisions contained in various statutes without committing any default. While so, the first respondent, who is the competent authority notified under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, (hereinafter shall be referred to as "the Act") started to act in a high-handed manner with malafide intention against the petitioner management. The 2nd respondent, who is the holder of the post as 1st respondent is acting with malafide intention, he has been arrayed in his personal capacity as the second respondent. It is the further case of the petitioner that the 2nd respondent, without realising his nature of job under the Act, is overstepping his jurisdiction and has directed the management to comply with the provisions contained in Employees Provident Fund and Miscellaneous Provisions Act, 1952. He is also in the habit of using intemperate language against the management in his communication, which are also slanderous in nature. In view of the harassment made by the first respondent, the petitioner made a complaint in writing on 09.03.2009 to the Commissioner of Labour, who is superior to the first respondent. In response to the said complaint, an enquiry was instituted against the first respondent and the Deputy Commissioner of Labour, Tirunelveli conducted the enquiry and found that the charges levelled against the first respondent were true and based on his report, the first respondent was transferred and posted as Superintendent in the office of the Labour Officer (Social Securities Scheme), Ramnad. Challenging the said transfer order, the petitioner filed a writ petition in W.P.No.6521 of 2009, and this Court set aside the transfer order on 16.12.2009. Again the first respondent was posted in the present place and keeping in mind the earlier complaint, as an act of victimization and in continuance of his mala fide acts had chosen to pass the impugned order wherein he had transferred the license Nos.80 to 96 belonging to various contractors to the name of the petitioner Company and stated that all the employees employed by the above contractors would become the employees of the petitioner Company and that the petitioner should take steps for covering them under the EPF Act within 15 days. Further, he has also stated in the impugned order that the holders of passbooks of one Sharaiat Finance Limited will be deemed Beedi workers. Before passing the



impugned order, dated 03.06.2010, no opportunity of personal hearing was given to the petitioner and behind the petitioner's back, the impugned order has been passed, which is in violation of principles of natural justice and, challenging the said order, the present writ petition is filed.

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3.The learned counsel for the petitioner submits that the first respondent has no jurisdiction to pass orders against the petitioner Management. He further submitted that the first respondent is not the competent authority to issue such a direction to the petitioner to pay EPF contribution to the Provident Fund Authority for the so-called employees, whose licence were transferred in the name of the petitioner Company, within 15 days, and any act in furtherance of the same has to be done by the authorities concerned under the provisions of the Act. Further, as per Rule 11 of the Tamil Nadu Beedi and Cigar Workers (Conditions of Employment) Rules, 1968, the license already granted is transferable to the legal heirs only in the event of death of the licensee and not otherwise. Hence, the act of the first respondent in transferring the license, which stood in the name of various contractors to the name of the petitioner, that too, without even giving a personal hearing to the petitioner, is against the law. Further as per the provisions contained in Section 4 (6) of the Act, if any licence has been obtained by misrepresentation or fraud or that the licensee has contravened or failed to comply with any of the provisions of the Act or the Rules made thereunder or any of the terms or conditions of the licence, then the competent authority may, after giving the holder of a licence an opportunity of being heard, cancel or suspend any licence granted or renewed. Hence, the first respondent's act is contrary to the above said Rules and Act and it is not sustainable in law and it is purely done with a mala fide intention. Hence, he prays for allowing this writ petition.

4.Per contra, the learned Additional Government Pleader submits that the first respondent, after inspecting the premises of the petitioner as well as the other contractors and after issuing show cause notice and after obtaining explanation from the petitioner, has passed the impugned order dated 03.06.2010. Hence, there is no violation of principles of natural justice. The grievance of the petitioner that the complaint given by the petitioner leading to the transfer of the respondent, which was finally set aside by this Court to be the cause of the respondent taking action against the petitioner with mala fide intent, is not based on any materials. The order impugned in this petition is well within the scope of the Act and within the jurisdiction of the 1st respondent there is no need for interference. to interfere with the order impugned in this writ petition.

5.Learned counsel appearing for the second respondent, who has been arrayed in his personal capacity as the person holding the



initiated against the petitioner for very many alleged irregularities in the manufacture of Beedies, with a view to prohibiting the self-employment scheme. In this regard, learned counsel for the 2nd respondent submitted that similar issue was already been considered by the Hon'ble Apex Court in the case of ***M.G.Beedi Works v. Union of India, reported in AIR 1974 SC 1832*** and the the Hon'ble Apex Court in its decision in SLP.Civil 1262 of 1987 dated 19.11.1991 issued a direction to the Labour Inspector to implement Beedi and Cigar Workers (Conditions of Employment) Rules, 1968 in letter and spirit in order to protect Beedi Home Workers. In compliance of the above said direction the second respondent issued show cause notice to the petitioner under Section 7(1) of the Act and after obtaining the explanation from the petitioner, passed the impugned order. Further during the enquiry, the second respondent found that the petitioner company has violated all Labour laws and, therefore, the second respondent was forced to take action. The action of the 1st respondent being in consonance with the provisions of the Act, the impugned order passed by the 1st respondent is within jurisdiction and wholly sustainable. Accordingly, he prays for dismissal of this writ petition.

6.Heard the contentions advanced by the learned counsel on either side and perused the materials available on record.

7.The petitioner mainly raised the following three issues for consideration :-

i) Whether there is violation of principles of natural justice by not granting opportunity to the petitioner calling for explanation;

ii) Whether the first respondent has jurisdiction for initiating proceedings under Section 7(1) of the Act; and

iii) Whether the first respondent has jurisdiction to issue a direction to the petitioner company to pay the EPF contribution.

(i) Admittedly, the petitioner is a Beedi manufacturing company and for certain alleged irregularities, the first respondent initiated proceedings against the petitioner under Section 7(1) (b) of the Act. The Hon'ble Supreme Court has already passed slew of directions for protecting and safeguarding the welfare of the Beedi workers and directions were issued to the Labour Officer to implement the Act and Rules in letter and spirit. It is the stand of the respondents that in compliance thereof, the first respondent issued a show cause notice to the petitioner company, reference of which is found in the impugned order and explanation was sought for, which was submitted on 27.02.2009, 13.04.2009 and 26.04.2010. The above being evidenced by materials available on record, the stand of



the petitioner that he was not provided with opportunity, which is a blatant violation of principles of natural justice is unsustainable. Therefore, on the first issue, this Court holds that the petitioner was granted reasonable and sufficient opportunity to explain his stand and there is no violation of principles of natural justice.

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(ii) Insofar as the second issue is concerned, a perusal of Section 7(1) of the Act reveals that the Inspector of Labour may, within the local limits, make examination and hold such enquiry as may be necessary for ascertaining whether the provisions of the Act have been or being complied with. A careful analysis of the above said provision makes it clear the Inspector of Labour has power to inspect any beedi factory premises to find out as to whether the provisions envisaged under the Act is properly implemented or not. Therefore, the inspection of the petitioner's factory premises by the 1st respondent and conduct enquiry for the purpose of safeguarding and protecting the rights of the Beedi Workers is fully in compliance with Section 7 (1) of the Act and, therefore, it cannot be said that the action of the 1st respondent is without jurisdiction. Accordingly, the 2nd issue is also answered against the petitioner.

(iii) Insofar as the third issue is concerned, learned counsel for the second respondent drew the attention of this Court to the order passed by the EPF Organization, Tirunelveli, which is a quasi-judicial order, against the petitioner under Section 7-A of the Employees Provident Fund Act, 1952. In continuation of the said order, for violation of the Labour Laws, including the present Act, the first respondent issued show cause notice to the petitioner company on 26.03.2009, pointing out the various malpractices committed by the petitioner in obtaining licence in the name of contractors in order to avoid the EPF contribution to the employees of the petitioner company and after finding that the malpractices committed by the petitioner company stood established, the first respondent transferred all illegal licence obtained in the name of the contractors to the name of the petitioner's company. Subsequent to the said direction, further order was passed directing the petitioner company to pay the EPF contribution for the employees within the prescribed time, if not already paid. It is not in dispute that the 1st respondent has no jurisdiction to collect the EPF contribution, but was clearly within its jurisdiction to issue the above direction in view of the order passed by the EPF organisation to the petitioner company directing payment of contribution for its employees. Therefore, this Court has no hesitation to hold that the order passed by the 1st respondent directing recovery of EPF contribution from the petitioner is perfectly legal and valid. Accordingly, the third issue is also answered against the petitioner.

8. In the light of the above facts, the present petition is unsustainable and, accordingly deserves to be dismissed.

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Accordingly, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

PJL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Assistant Inspector of Labour,
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19th Cross Street, Maharajanagar,
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2. The Commissioner of Labour,
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Order made in
W.P(MD)No.7969 of 2010 and
M.P. (MD) .Nos.1 and 2 of 2010
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SRS (05/03/2021) 6P : 3C