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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.03.2022

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.44581 of 2016

Workmen of Sodecia India Private Limited
Through Sodecia India Thozhilalar Sangam,
Reg.No.224/KPM,
Rep. by its General Secretary,
No.133, Gangai Amman Kovil Street, Thabalmedu Village,
Bhukkathurai Post, Padalam Via.,
Kancheepuram District - 603 308. ...Petitioner

Vs.

1. The Government of Tamilnadu,
rep. by its Secretary
Department of Labour and Employment,
Chennai - 600 009.
2. The Management of Sodecia India Private Limited,
No.133, Gangai Amman Kovil Street, Thabalmedu Village,
Bhukkathurai Post, Padalam Viz.,
Kancheepuram District - 603 308. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in connection with G.O.(D) No.487 dated 11.09.2015 and quash the same and direct the 1st respondent to refer disputes that were declined to be referred under the aforesaid Government order.

For Petitioner	..	Mr.S.Abinesh for K.Sudalai Kannu
For Respondents	..	Mr.L.S.M.Hasan Fizal Additional Government Pleader for R1.
		Ms.Sheeba Priyadharshini for Mr.Srinath Sridevan for R2



ORDER

The petitioner is a trade Union representing and espousing the cause of its members who are workmen employed in the 2nd respondent Company.

2. According to the petitioner, the 2nd respondent has a factory at Thabalmedu Village at Kancheepuram District, wherein automobile components are being manufactured. The 2nd respondent Company employs more than 500 workers and out of which, only 167 workers are permanent and other workers have been treated as trainees, denying them various benefits as applicable to permanent employees. Many of the workmen are working on contract basis also.

3. The petitioner Union has raised charter of demands and approached the Labour authorities for conciliation and settlement of the dispute. The Labour authority, in respect of the charter of the demands conducted conciliation proceedings but however failed to bring about a comprehensive conciliation in the matter and submitted a failure report to the Government on 16.02.2015.

4. Subsequently, the Government vide order dated 11.09.2015 declined to refer substantive demands of the petitioner Union. The Government, while declining to refer certain disputes appears to have adjudicated the workmen claim and its management reply on merits and then, refused to refer the same for adjudication before the competent forum, namely Labour Court/Tribunal. Challenging the said G.O., the petitioner Union is before this Court.

5. The learned counsel appearing for the petitioner would submit that it is not open to the Government to consider the claim/ demands of the workmen on merits and refuse to refer the same for adjudication before the competent forum in terms of the scheme of the Industrial Dispute Act and according to Section 10 of the Act. According to the learned counsel, number of decisions have been rendered on the subject matter holding that it is not for the Government to consider the claims on merits as the Government is only an administrative authority and cannot embark on a judicial examination of the workers demands.

6. In this regard, the learned counsel would refer to the Division Bench decision of this Court reported in 1988(1) LLJ 177 Mad (Shaw Wallace & Co. Ltd. v. State of Tamilnadu). The learned counsel would also refer to the decision of this Court in W.P.No.12705 of 2019 dated 24.07.2019.



7. On behalf of the 2nd respondent Ms. Sheeba Priyadharshini appeared. On behalf of the 1st respondent counter affidavit has been filed. In the counter affidavit, it is stated that the Government had given sufficient reasons for not referring the demands for adjudication. According to the counter affidavit, the Government after referring to the charter of demands raised on behalf of the petitioner Union, the reply submitted by the 2nd respondent Management and on appreciation of the failure report by the Assistant Commissioner of Labour, had come to a categorical conclusion not to refer certain demands raised on behalf of the petitioner Union.

8. The learned Additional Government Pleader reiterated the above position during his oral submission. The learned counsel for the 2nd respondent would submit that the action of the Government in declining to refer the dispute is in order as those disputes are not to be referred for adjudication as the same are without any merits.

9. This Court considered the submission of the learned counsels appearing for the parties.

10. The law on the issue is well settled that it is not for the Government to appreciate the demands of the workmen on its merits and come to any conclusion against them and decline to refer the dispute for adjudication by the Labour Court or the Tribunal. The Courts have consistently held that the function of the Government is only administrative in nature and it cannot play the role of judicial authority, while taking a call on the demands made by the workmen seeking conciliation and in the event of failure for adjudication by the Labour Court or Tribunal. Although the learned counsel referred to the Division Bench judgment reported in 1988(1) LLJ 177 Mad (Shaw Wallace & Co. Ltd. v. State of Tamilnadu), in subsequent decision by this Court in W.P.No.12705 of 2019 dated 24.07.2019, the final conclusion of the Division Bench has been extracted. Therefore, in the fitness of things, it is sufficient to refer to the decision of this Court rendered in the aforementioned writ petition as found in paragraphs 2 to 9 extracted hereunder.

2. Mr.V.Prakash, learned Senior Counsel for the petitioner would submit that it is not for the Government to adjudicate the dispute between the labour and the management and decline to refer the dispute, since the Government is not empowered to embark upon adjudication of disputes as between the labour and management as held by various Courts including the Hon'ble Supreme Court of India.

3. The learned Senior Counsel would rely on the



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decision of the Division Bench of this Court reported in 1988 I L.L.N. 172 [Shaw Wallace & Co. Ltd. V. State of Tamil Nadu (by Commissioner and Secretary, Labour Department) and another] wherein a Division Bench has laid down certain parameters as to when the Government could decline to refer the dispute for adjudication and when it could not decline to refer further dispute. The relevant portion of the judgment in paragraph 32 is extracted as under:

32. On a final analysis, the following principles emerge:

(1) The Government would normally refer the dispute for adjudication;

(2) The Government may refuse to make reference, if

(a) the claim is very stale;

(b) the claim is opposed to the provisions of the Act;

(c) the claim is inconsistent with any agreement between the parties;

(d) the claim is patently frivolous;

(e) the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse; and

(f) the person concerned is not a workman as defined by the Act.

(3) The Government should not act on irrelevant and extraneous considerations.

(4) The Government should act honestly and bona fide

(5) The Government should not embark on adjudication of the dispute.

(6) The Government should not refuse reference on the ground that domestic enquiry was fairly and properly held and punishment awarded was appropriate.?

4. The learned Senior Counsel would also draw the attention of this Court the observation of the learned Division Bench of this Court at paragraph 20 of the Judgment, which is extracted hereunder:

20. It is no doubt true that the Supreme Court has in the above passage recognised the power of the Government to consider prima facie the merits of the dispute. It has taken care to define the limits expressly by stating that the Government should not



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purport to decide any question of law finally; nor should it purport to reach final conclusions on disputed questions of fact. This shows that when the Government refuses to make a reference of the dispute to the Tribunal, it shall not decide any disputed questions of fact or disputed questions of law. Any decision of the Government on such a question would become final in the event of its refusal to make a reference. The Supreme Court had also indicated the grounds on which a reference could be rejected in the sentences italicised by us.?

5.He would therefore submit that in the case on hand, the Government has analysed the claim of the employees and decided not to refer the disputes, as if the Government is final adjudicating authority in the matter. Therefore, the impugned Government Order is directly in contravention of the order passed by the Division Bench of this Court, as aforementioned.

6.According to the learned Senior Counsel, the scheme of Industrial Disputes Act does not empower the Government to embark upon needless adjudication of the dispute between the labour and management and only in such of those disputes, which are identified by the Division Bench of this Court in the aforesaid order, the disputes could be declined to be referred. According to the learned Senior Counsel, the present order declining to refer the disputes as mentioned in the impugned G.O. itself do not come within the exceptions carved out by the Division Bench of this Court.

7.At this, the learned counsel appearing for the 2nd respondent /management would submit that the Government felt that certain disputes were not worthy enough to be referred for adjudication and the same would not call for any adjudication. Therefore, he would submit that the power to decline is always with the Government.

8.This Court considered the submissions made on behalf of the petitioner and also the submission made on behalf of the management. As rightly contended by the learned Senior Counsel for the petitioner that the Government has needlessly embarked upon the adjudication of the certain disputes raised by the petitioner Federation and declined to refer the same



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as if it was the sole and final authority to decide disputes. When the Government is not clothed with the power of adjudication in the scheme of Industrial Disputes Act, the present order issued by the Government refusing to refer several disputes which are part of the charter of demands raised by the petitioner Federation is patently illegal and cannot be countenanced in law.

9. From the reasons assigned for refusal to refer the dispute, it appears that the Government has needlessly embarked upon adjudication on merits of the demands raised on behalf of the employees and such adjudication is impermissible in law and the same is also in contravention of the law laid down by the Division Bench of this Court as aforementioned and also various decisions of the Hon'ble Supreme Court of India on the subject matter. It appears that refusing to refer such of those disputes as found in the impugned order do not fall within any of the exceptions carved out by the learned Division Bench of this Court in its order as above and therefore, the impugned order is liable to be quashed.

11. In view of the above, the impugned order in G.O.(D). No.487 Labour and Employment (A2) Department, dated 11.09.2015 passed by the 1st respondent is hereby set aside.

12. The 1st respondent is directed to refer the disputes for adjudication which were declined to be referred in terms of the enclosures to the impugned order.

13. The 1st respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

14. The Writ Petition is allowed, as indicated above. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi



To

1. The Secretary, Government of Tamilnadu,
Department of Labour and Employment,
Chennai - 600 009.

2. The Management of Sodecia India Private Limited,
No.133, Gangai Amman Kovil Street,
Thabalmedu Village,
Bhukkathurai Post,
Padalam Viz.,
Kancheepuram District - 603 308.

+1cc to M/s. Srinath Sridevan, Advocate, S.R.No.19847

+1cc to the Government Pleader, S.R.No.19923

W.P.No.44581 of 2016

SKM(CO)
RN(04/04/2022)