



WEB COPY

W.P.No.166'



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.11.2023

DELIVERED ON: 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.16678 of 2008

M.P.No.1 of 2008

The Management of EID Parry India Limited,
Nellikuppam,
Cuddalore District.
Rep. by its Vice President.
...Petitioner

vs.

1.The State of Tamil Nadu
rep. by Deputy Secretary
Labour and Employment (B2) Department,
Fort St.George,
Chennai – 600 009.

2.The District Collector Cuddalore,
Cuddalore.

3.The Commissioner of Labour,
Department of Labour,
DMS Building, Teynampet,
Chennai – 600 006.

4.V.Sathiya Seelan
5.S.Vanatharaj
6.D.Raja Durai Kannu
7.N.Paul Jeyaraj
8.K.Mohammed Ghouse
9.S.Kalaiselvi
10.Mrs.K.Vatsala



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11. Mrs.B.Subbulakshmi
12. A.Natarajan
13. Mrs.T.Visalatchi
14. S.Saroja
15. V.Annamalalai
16. G.Kalyankumar
17. G.Vennila
18. Mrs.R.Alamelu

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st respondent in GO (D) No.241 dated 07.07.2008 and quash the same.

For Petitioner : Mr.S.Haroon Al Rasheed

For Respondents: Mr.R.Neethi Perumal for R1 to R3
Government Advocate
Mr.S.T.Varadarajulu for R4, R5 to R14, R16 to R18
R-15 dismissed (vide Court order dt.12.01.2012)

ORDER

The Writ Petition has been filed challenging the recovery notice dated 07.07.2008 in G.O.(D) No.241 issued by the first respondent directing the second respondent to recover a sum of Rs.20,80,875.43 from the petitioner by virtue of the award of the Labour Court made in I.D.No.115 of 1973.

2.Heard, Mr.S.Haroom Al Rasheed, learned counsel appearing for the petitioner, Mr.R.Neethi Perumal, learned Government Advocate, appearing for the respondents 1 to 3 and Mr.S.T.Varadarajulu, learned counsel appearing for respondents 4, 5 to 14 and 16 to 18.



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3.The learned counsel for the petitioner would submit that, within one compound at Nellikuppam three factories were functioning though owned by different companies, where one among the factory was that of the petitioner's. He would contend that in the year 1930 an unregistered establishment of stores for the employees of all the three factories was started which used to provide essential commodities such as food grains, groceries, textiles etc to the employees at a reasonable price. The Store was managed by a committee consisting of the representatives of the management and the workmen of the three factories and it had its own bye-laws governing its day to day activities. On 31.07.1972 the stores were closed by the Managing committee after following the due process of law.

4.He would submit that against the closure few of the workmen through their Union raised an industrial dispute against the petitioner management alleging that the closure was bad in law as the stores were not a separate undertaking or establishment. The Tribunal passed an award stating that the claim of the workmen seeking reinstatement cannot be granted and that the workmen are entitled to the notice pay and closure compensation under Section 25 FFF of the Industrial Dispute Act. He would further submit that the second and third respondents from the year 2004 had directed the petitioner to remit the amounts due to the workers who had raised industrial dispute in I.D No.115 of

1973. The petitioner as time and again replied to the first respondent, stating



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that the petitioner is not the employer of the respondents 4 to 18, and that the Industrial Dispute raised by the respondents 4 to 18 was dismissed. He would further contend that the Managing Committee of the stores has offered all statutory dues including notice pay and closure compensation to the respondents/workmen.

5.He would further submit that the respondents 4 to 18 had filed a W.P.No.12053 of 2008 before this court directing the first respondent to pass an order on Form U. The petitioner had complied with the legal requirements and there were no order under Section 33 C (2) computing the money due to respondents 4 to 18. The first respondent on 10.06.2008 sent a show cause notice to the petitioner with regard to the claim of respondents/workmen, for which the petitioner has also sent their reply. The first respondent then issued recovery notice dated 07.07.2008 in GO (D) No.241 directing the second respondent to recover a sum of Rs.20,80,875.43 from the petitioner being the amount due to respondents 4 to 18 in view of the award passed by the Labour Court in I.D. No.115 of 1973. Therefore the petitioner management has filed this Writ Petition to quash the G.O.(D) No.241 dated 07.07.2008 and pray before this court to allow this writ petition.

6.Countering his arguments the learned counsel appearing for respondents

<https://www.mhc.tn.gov.in/judis>

4, 5 to 14, 16 to 18 worked under the E.I.D Parry Employees Stores and it was



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closed in the year 1973 against which they raised an I.D No.115 of 1973 and an award was passed on 30.01.1976. As per the award, respondents 4 to 18 were entitled to notice pay and closure compensation under Section 25 FFF of the Industrial Dispute Act. But the respondents/workmen had not received any compensation or reply from the petitioner management. The workmen had given a petition to the Chief Minister Cell dated 14.06.2004 based on the petition the office of the CM Cell directed the third respondent to consider and pass orders and the Commissioner of Labour by his letter dated 31.07.2004 directed the Labour Officer, Cuddalore to take necessary action on the petition.

7.He would submit that based on the direction of the Labour Officer, Cuddalore, a conciliation notice was sent to the petitioner and to the respondents 4 to 18 fixing the conciliation dates on 19.07.2005, 31.08.2005, 19.09.2005 and 05.10.2005 respectively and report was submitted on 06.12.2005 for which the petitioner in their reply had stated that the respondents 4 to 18 are not the employees of the petitioner and that they had worked only with the stores and the award in the industrial dispute was not passed against the petitioner, but, however, there was no representation from the petitioner Management during the conciliation talks held on various dates.

8.He would submit that the award of the tribunal was passed in the year

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1976 and still the workmen has not received any benefits as per the award nor



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the petitioner has challenged the award till date. He would further submit that the Government has got powers to implement the award under Section 29 and Section 33 C (1) of the Industrial Disputes Act by issue of certificate to recover the money under Revenue Recovery Act. The notice pay and closure compensation under Section 25 FFF of the Industrial Disputes Act is very much determinable and easily computed, as the Act itself clearly states that the amount for closure compensation is computed on the basis of 15 days salary for every one year. He would further contend that the petitioner management had not appeared before the Conciliation officer and before the Commissioner of Labour in spite of several notices being served, the petitioner had not produced any records to disprove or disclaim the amount due to the respondents 4 to 18 other than stating that the workmen are not the employees of E.I.D Parry Management.

9.He would further submit that the first respondent issued a recovery notice in G.O.(D).No.241, dated 07.07.2008 as per the award of the Labour Court to recover the amount under Section 33 C (1) of the Industrial Disputes Act. He would submit that the respondents 4, 5 to 14, 16 to 18 submitted their petition on 22.01.2007 to the Commissioner of Labour, claiming the monetary benefits as per the Award. The petitioner sent their reply stating that I.D.No.115 of 1973 is not against E.I.D Parry India Limited and there is no necessity to pay any compensation. He would submit that the Government has done its statutory



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duty, and without challenging the award, the employer is not entitled to raise an objection now and cannot refuse to settle the amount. There is no infirmity in the recovery notice issued by the first respondent, hence seeks to dismiss this writ petition.

10.Mr.R.Neethi Perumal, learned Government Advocate for the respondents 1 to 3 would concur with the submissions made by Mr.Varadarajulu, learned counsel appearing for the private respondents.

11.I have heard the submissions on behalf of the respective parties and have perused the materials available on record before this Court.

12.The *lis* involved in this Writ Petition is with regard to the claim of the respondents 4, 5 to 14, 16 to 18 for closure compensation as ordered by the Industrial Tribunal in I.D.No.115 of 1973 which had been made on 30.01.1976 and published in the Government Gazette on 03.03.1976.

13.The petitioner had disputed that as per the award there was no order as against the petitioner for it to pay compensation as stipulated in the impugned order. However, the learned counsel appearing for the private respondents had categorically submitted that the petitioner was a party respondent in the



Tribunal would have to be paid only by them.

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14. In such view of the matter, it would be necessary to analyse the award passed by the Industrial Tribunal. The Industrial Tribunal had framed two issues which are as follows:

(a) Whether the non-employment of 29 workers mentioned in the Annexure-2 is justified and if not in what relief they should be entitled to.

(b) To compute the relief if any awarded in terms of money if it could be computed.

On the aforesaid issues, the Tribunal had given a factual finding that the Employees Stores at Nellikuppam which the respondents 4, 5 to 14, 16 to 18 was started in the year 1930 to provide essential commodities to the employees of the E.I.D Parry Ltd., Parry's Confectionery Ltd. and Bush Boake Allen Ltd., at a fair and reasonable price. It has also recorded a finding the stores have been managed by a Managing Committee consisting of the representatives of the Management and the selected representatives of the employees in all these three companies.

15. A further finding of fact has also been elucidated that the Managing Committee was vested the Authority under the bye-laws to run the Employee Stores efficiently. A further finding of fact had also been elucidated by the

Tribunal that it was a Managing Committee which had decided to close down



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the Stores. These facts were recorded by the Industrial Tribunal based upon the said fact, the Industrial Tribunal proceeded to hold that the closure was legal & justified and had held that the workmen would be entitled to notice pay and closure compensation under Section 25 FFF of the Industrial Disputes Act in an appropriate proceeding. Even though the Industrial Tribunal had framed an issue as regards to a relief of computation, it had not ventured upon in deciding as to what would be the notice pay and closure compensation. Further, it has also given a specific finding that they would be entitled to closure compensation and notice pay which the Employee Stores had paid to 18 other employees.

16.From the aforesaid analysis, it could be seen that the Industrial Tribunal had not computed the amount and had only directed that the same could be done in an appropriate proceeding. This award of the Industrial Tribunal had been made on 30.01.1976. Thereafter, the respondents 4 to 18 who were also the petitioners before the Industrial Tribunal had not sought to initiate any appropriate proceedings as per the award. But, however, after three decades they have approached the Government. Further, the petitioner before the Industrial Tribunal viz., the EID employees/employees union being aggrieved against the award dated 30.01.1976 had approached this Court in W.P.No.3174 of 1976. The said Writ Petition which came to be dismissed by the Hon'ble

Division Bench of this Court in its order dated 02.02.1979. From a perusal of the order of the Division Bench, it could be seen that the Hon'ble Division Bench



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had given a specific finding that the Employee Stores is an independent entity dehors the three factories which include the petitioner herein. For better appreciation, the relevant paragraphs are extracted hereunder:

“For a proper appreciation of the issues, we proceed upon the admitted facts which have been noted even by the Labour Court. There are three different companies. E.I.D.Parry, Nellikuppam engaged in the manufacture of sugar co. and alcohol at Nellikuppam. There is a confectionery limited, owned and managed by Parry's confectionery. A third company by name Bush Boake Allen engaged in the manufacture of essences. For all these factories, there is a stores at Nellikuppam to provide essential commodities such as foodgrains, grocery, textile and luxury goods to the employees at fair and reasonable price. The employees of all these three companies are allowed credit basis. By a reading of the bye-laws of the employees stores, it is clear that the employees stores has nothing to do with the three factories. Therefore, it is an independent entity. If it is an independent entity, certainly there can be a valid closure of the same under Section 25 F F F of the Industrial Disputes Act, because it would be an establishment. From this point of view, it becomes distinct because that was a case in which the painting section was not an independent undertaking while that is not the case here. In such case, the Court is entitled to look into the question whether the closure is a genuine one or is it by



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way of pretext. The facts and circumstances in the instant case do clearly establish that the closure is bonafide and genuine one. It is not with a view to avoid any legal liability on the part of the management. This is what has been found at the end of paragraph No.10. Again, in paragraph No.11 after referring to the decisions in Indian Metal and Matallurgical Corporation vs. Industrial Tribunal, Madras (1952 – I, L.L.J. 364) and Chinnappan Vs. Kaleeswarar Mills Ltd. (1968 I, L.L.J. 352), it has been held that the workmen could not sustain their contention that there was no closure. We are in entire agreement with these factual findings. We have to uphold the award which says that the employees involved in the adjudication would be entitled to closure compensation. We see no error of law apparent on the face of the record in which event alone we can interfere under certiorarified jurisdiction. Consequently, the writ petition is hereby dismissed. However, we make no order as to costs.”

The said judgment had not thereafter taken on appeal and had become final between the parties. The respondents 4, 5 to 14, 16 to 18 who were members of the said union now cannot seek to claim that they were in employment of the petitioner company and therefore, it is the liability of the petitioner company to pay them the compensation.



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the petitioner is not only hit by delay & laches but also not maintainable against the petitioner as it is a categorical finding of the Division Bench of this Court that their employment was with an independent entity viz., the Employees Stores.

18.For the reasons stated above, I am inclined to interfere with the order impugned in this Writ Petition.

19.In fine, the Writ Petition is allowed and the order impugned in this Writ Petition is set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

22.12.2023

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

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- 1.The Deputy Secretary
Labour and Employment (B2) Department,
Fort St.George,
Chennai – 600 009.
- 2.The District Collector Cuddalore,
Cuddalore.
- 3.The Commissioner of Labour,
Department of Labour,
DMS Building, Teynampet,
Chennai – 600 006.



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K.KUMARESH BABU, J.

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**A pre-delivery order in
W.P.No.16678 of 2008**

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