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W.P.No.16169 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.16169 of 2017

and

WMP.Nos.17468 of 2017 and 36424 & 36425 of 2018

The Management of Computer Graphics Ltd.,
Rep. by its Managing Director,
No.31-A, 9 & 10, SIDCO Industrial Estate,
Chennai – 600 098.

...Petitioner

Vs.

1. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai.
2. The General Secretary,
Computer Graphics Limited Staff Union,
No.31/9 & 10, SIDCO Industrial Estate,
Ambattur, Chennai – 600 098.
(Last known Address:
E2, SSVK Soundharyam Flats,
Sundaramoorthy Street, Gnanamoorthy Nagar,
Ambattur, Chennai – 600 053.

...Respondents

Petition filed under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to quash the impugned
award of the first respondent in I.D.No.20 of 2010 dated 29.7.2016.



WEB COPY



W.P.No.16169 of 2017

For Petitioner : Mr.S.Suresh Kumar

For Respondents : Mr.V.Prakash, Sr.C for
Mr.K.Sudalaikannu, for R2

ORDER

This Writ petition has been filed seeking to quash the award passed by the 1st respondent dated 29.07.2016 in I.D.No.20 of 2010.

2. The case of the petitioner is that, the petitioner company is registered under the Indian Companies Act and involved in the business of distributing Konica Minolta brand colourfull and allied products and also used to import the said products from its supplier and convert the same in their factory at Ambattur and Athipet and market the same through their outlets all over India. Whiles, due to introduction of the digital camera technology, as there was no demand for the photographic films, the suppliers have stopped production and supply in the year 2007 and due to which, the petitioner company has also stopped its production and majority of the employees have resigned their job and subsequently, all the money due to the employees were settled on 18.09.2009. Since, only six members



W.P.No.16169 of 2017

have not resigned their job and they remained in the rolls, the petitioner company, in order to provide employment to the said employees, with a good intention issued transfer order to them, transferring them to the other branches of the petitioner, which was also accepted by the said employees in writing and the machineries were also transferred to Goa. However, the said employees, who claim to be members of the 2nd respondent union failed to report to duty and absented themselves from the date of receipt of the said order and instead of complying with the transfer order, they raised conciliation proceedings and failure of which, resulted in raising of dispute in I.D.No.20 of 2010 before the 1st respondent, who in turn passed the present impugned award dated 29.07.2016 holding that, the transfer of the said six workmen is not legally valid and the workmen are eligible for closure compensation. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that, admittedly the said six workmen were employed in the petitioner's factory situated in Ambattur and Athipet and due to the predicament faced by the petitioner, it



W.P.No.16169 of 2017

was forced to close its units in Ambattur and Athipet and even in the said situation, for the welfare of its employees, it introduced the voluntary retirement scheme (in short 'VRS') with adequate terminal benefits and majority of its employees have accepted the said scheme and resigned their job and only the 6 workmen have refused to accept the said scheme. Though the petitioner was financially stable and had valid licence, however, as there was no need for photographic films, due to introduction of digital camera the unit was forced to be closed and the petitioner was forced to suspend its manufacturing activities and close its units, which is an unavoidable situation and is beyond its control. Further, the dispute which was referred relates only to the transfer order, but the 1st respondent, had unnecessarily gone into whether the petitioner followed the procedures contemplated under Section 25-O of the Industrial Disputes, Act, 1947 (in short 'Act') i.e., procedure for closing down an undertaking, which is wholly unsustainable, since Chapter V-B of the ID Act is not applicable to the petitioner units and there is no illegal closure and no provisions of ID Act was violated and permission as mandated under Chapter V-B particularly Section 25-O of the ID Act is not necessary. Further, the said transfer orders issued to the said



W.P.No.16169 of 2017

workmen by the petitioner is issued well in terms of its standing orders.

Accordingly, he prayed for appropriate orders.

4. Per contra, the learned Senior Counsel appearing for the 2nd respondent submitted that even on a bare perusal of the counter affidavit filed by the petitioner before the 1st respondent, it is evident that, the manufacturing activities of the petitioner came to stand still and as a result of which, they forced majority of its employees employed in its Ambattur and Athipet units to accept the VRS introduced by the petitioner and settled their dues on 18.09.2009. However, as some of the members of the 2nd respondent have not accepted the same, the transfer orders came to be issued against them by the petitioner management in order to wreck vengeance, which is a clear violation of Rule 20 of the amended Standing orders of the petitioner. For better appreciation, the relevant paragraph is extracted hereunder:

“20. **TRANSFER:**

i The Company will be at liberty to transfer an employee from one department to another department or from one shift to another shift according to the exigencies of work. They may be transferred to any of



WEB COPY



W.P.No.16169 of 2017

the Company's sister concerns anywhere in and around Chennai without affecting various conditions of service after a day's prior intimation.

ii If the workman resists such a transfer, he shall be deemed to be absent from duty and corresponding deductions will be made from his salary as per provisions of the Payment of Wages Act without prejudice to any other disciplinary action that may be initiated against him ”

In view of the above amended standing order particularly 20(i), it is evident that the employees should be transferred only in and around Chennai, whileso, in the present case, some of the members of the 2nd respondent union were transferred to Delhi, Kolkatta and Goa, which is very much contrary to its own standing orders and it is clearly a vindictive action. Further, the petitioner company was closed with a *malafide* intention, without obtaining prior permission and the same is in contravention of Section 25-O of the ID Act. Hence, the 1st respondent, after taking into consideration all the above said facts, have rightly passed the present impugned award as against the petitioner, which does not warrants interference of this Court. Accordingly, he prayed for dismissal of this Writ petition.



W.P.No.16169 of 2017

WEB COPY 5. Heard the learned counsel for the petitioner and the learned Senior Counsel appearing on behalf of the 2nd respondent and perused the material documents placed on record.

6. It is the claim of the petitioner that, the petitioner management is involved in the business of distributing, importing and marketing the Konica Minolta brand colourfull and allied products all over India, by receiving the same from its supplier and due to predicament faced by it due to the introduction of the digital camera technology, the petitioner company has also stopped its production and majority of the employees have resigned their job by accepting VRS and all the money due to the employees were settled on 18.09.2009 barring the six persons, and in order to ensure their employment, the petitioner issued transfer orders to them, however, instead of complying with the transfer order, the 2nd respondent union instituted conciliation proceedings and the same ended before the 1st respondent, who in turn passed the present impugned award as against the petitioner.



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7. A perusal of the counter affidavit filed by the petitioner before the 1st respondent makes it clear that, the manufacturing activities in the petitioner's units in Ambattur and Athipet came to a stand still and no production was carried out in the said units and the above said statement itself shows that, the units were closed down and thereafter, they have settled the entire dues to its employees except the six employees. Thereafter, the transfer order came to be issued.

8. The above said act of the petitioner management itself clearly demonstrate that the factory was completely closed down, however, contrary to Section 25-O of the ID Act, no prior permission was obtained by the petitioner management. For better appreciation, the relevant section is extracted hereunder:

“25-O. Procedure for closing down an undertaking.—

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:



W.P.No.16169 of 2017

WEB COPY

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refused to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:



WEB COPY



W.P.No.16169 of 2017

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months"

9. A perusal of the above Section makes it clear that, where no permission has been obtained nor was sought for, the closure of the undertaking would be deemed to be illegal. Therefore, it is evident that the



W.P.No.16169 of 2017

requisition for permission is mandatory and before an unit is closed down, mandatory permission has to be obtained by the management and the management cannot try to wriggle out of the same by saying that it is not required to obtain any permission as it is not covered by Section 25-O.

10. In view of the above, this Court is of the view that the petitioner management has closed down its unit, contrary to provisions of the ID Act and the workmen are entitled for closure compensation as mandated under Section 25-O(6) of the ID Act .

11. Further, the standing orders of the Management does not permit the relocation of the employees to any unit of the Management outside the limits of the present unit, viz., Chennai and, therefore, the transfer order issued to the workmen is also illegal as per the amended standing orders. However, driving the parties once again to approach the Labour Court under Section 33C(2) of the ID Act will not resolve the issue and as the employees are not paid with the closure compensation which they are entitled to and making them wait for further time period, until the conclusion of the 33C(2) proceedings, will be nothing but an act of depriving their legitimate rights.



W.P.No.16169 of 2017

12. Hence, in order to strike balance, this Court fixes a compensation of Rs.5,00,000/- payable to the six workmen, who are members of the 2nd respondent union as one time full quit and the petitioner management is directed to pay Rs.5,00,000/- to each of the workman within a period of two weeks from the date of receipt of a copy of this order. Further, it is made clear that, the workmen are entitled for PF and gratuity amount, other than the above said Rs.5 Lakhs.

13. In the result, award passed by the Labour Court stands modified with the aforesaid directions and the Writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous petitions are closed.

04.09.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai.

12/13



WEB COPY



W.P.No.16169 of 2017

M.DHANDAPANI, J.

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