



W.P.No.18856 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

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Workmen of Aeroto Boldrocchi India Pvt., Ltd.,
Through United Labour Federation,
Regn.No.2657 / CNI
re[. By its Secretary,
149, Thambu Chetty Street,
C.J.Complex, Chennai – 600 001 ... Petitioner

Vs.

1. The Government of Tamilnadu
rep. By its secretary,
Department of Labour and Employment,
Chennai – 600 009
2. The Assistant Commissioner of Labour
(Conciliation – 1)
Sriperumbudur, Sriperumudhur Taluk,
Kancheepuram

3. The Management of Aeroto Boldrocchi
India Pvt., Ltd.,
Irungattukottai,
Sriperumbudur Taluk,
Tamilnadu – 602 105

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with G.O.(D) No.49 dated 31.01.2017 and quash the same and direct the 1st respondent to refer the dispute that has been declined to be referred in aforesaid Government order and issue such



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further or other orders.

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For Petitioner : Mr. V.Prakash
Senior Counsel for
Mr.P.Ganeshram

For Respondent : Mr.R.P.Murugaraja for R1 and R2
Government Advocate
Mr.M.R.Dharanichandar for R3

ORDER

The present Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with G.O.(D) No.49 dated 31.01.2017 and quash the same and direct the 1st respondent to refer the dispute that has been declined to be referred in aforesaid Government order and issue such further or other orders.

2. The brief facts of the case is as follows:-

The petitioner is the Union and the 3rd respondent is the management, engaged in the manufacturing the industrial fans and air pollution control plants supplying it to leading industries, namely, Tata steel, Larsen & Toubro, JSW, Iffco, SISCOOL, NTPC etc., and morethan 100 workers were employed in the 3rd respondent factory. However, only 27 workers are treated as permanent employees and the rest of the workers are treated as 'trainess' and 'contract labourers'. The 3rd respondent does



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not have any license for engaging contract employees.

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(ii) In these circumstances, the petitioner union raised an industrial dispute against the 3rd respondent on 15.07.2015 raising two demands, viz.,
(i) To stop engaging contract customer for taking production in welding department and engage permanent workers in the factory
(ii) To stop taking production using contract labours under the name of Krishna Contract. The management filed counter on 07.09.2015 making allegations against petitioner and the petitioner has also filed its reply to the counter on 28.09.2015, since there was no possibility of amicable settlement, Conciliation Officer issued conciliation failure report dated 10.06.2016 and the same was sent to the 1st respondent dated 21.11.2016.

(iii) The 1st respondent declined to refer the two demands on the ground that the petitioner Union did not give specific dates on which the permanent workers were denied employment. The 1st respondent without application of mind failed to identify the difference between permanent employees nature of work and contract employees nature of job. The said reason assigned by the 1st respondent is without application of mind. Seeking to set aside the said order passed by the 1st respondent, the petitioner has come up with the present petition.

3. The learned senior counsel for the petitioner would submit that the



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impugned order is vitiated by non application of mind to the issues involved and the facts of case and the scope of the power vested in the 1st respondent under Section 10 of the Industrial Dispute Act. Further, the power to refer to an industrial dispute for adjudication is an administrative power and the Government cannot adjudicate with regard to the dispute in the industrial dispute raised by the petitioner union.

4. The learned senior counsel for the petitioner also submits that the 1st respondent without application of mind misconstrued the decision of Hon'ble supreme Court in the SAIL (2001 7 SCC 1) and declined to refer the industrial dispute for adjudication. The learned senior counsel for the petitioner, in support of his contention has relied on the Judgment of the Division Bench of this Court reported in 1987 SCC Online Mad 310 [Shaw Wallace & Co., Ltd., Vs. State of Tamilnadu and another], thereby sought to allow the present writ petition.

5. The learned Government Advocate appearing for the respondents 1 and 2 submits that the 1st respondent has assigned valid reasons for issuance of the Government order and the petitioner has not furnished any details in respect of loss of employment and the grievances sustained by its permanent employees in particular with the welding department relating to their demand. Similarly, the petitioner in support of the 2nd demand, have



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not produced any satisfactory evidence or proof in support of their demand warranting for adjudication before the Industrial tribunal, thereby pleaded to dismiss the petition.

6. Per contra, the learned counsel for the 3rd respondent/ management submits that the company is having registration certificate issued under the contract labour act as a principal employer to engage the contractors and contractor was also having license, as per contract labour act. Further, the contract workers are not involved in the direct production and they are mainly working only in the stores, housekeeping, security, PT and MRT and also working as a helpers to the permanent workers.

7. That apart, the learned counsel for the 3rd respondent also submits that after commencement of petitioner – union, the workers are not giving production, which was given by them earlier during the year 2012 and raised various disputes. Also, the dispute was raised by the petitioner union to abolish the contract labour in certain areas in the respondent company and the same can be raised only before the Government and they are the final authority to decide the said dispute under Section 10 of the Contract Labour Act, 1970.

8. Lastly, the learned counsel for the 3rd respondent submits that



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there is no jurisdiction to decide the said issue under Section 10(1) of the Industrial Dispute act to refer the dispute related to the abolishing of contract in certain areas in the company and relied on the following Judgments to substantiate the case.

(i) Judgment of the Hon'ble Supreme Court of India reported in (W.P.(Civil) No.7982 of 1983 [BHEL Workers' Association, Hardwar & Others and others Vs. Union of India and others.

(ii) Judgment of High Court of Bombay in Civil Application Nos.501 and 522 of 1984 [S.B.Desmukh, Chief Regional Manager, State Bank of India, Nagpur Vs. The State represented through the Labour Enforcement Officer & Another.

(iii) Judgment of High Court of Bombay in W.P.Nos.2386/85 [Philips Workers Union, Thane Vs. State of Maharashtra and Another]

(iv) Judgment of High Court of Rajasthan in W.P.No.742/1982 [Thekedar Mazdoor Union Vs. Judge, Industrial Tribunal and Another]

(v) Judgment of High Court of Orissa in O.J.C.No.4460/1992 [Hira Cement Workers Union Vs. State of Orissa and Others]

9. Heard the learned senior counsel for the petitioner, learned Government Advocate for the respondents 1 and 2 and the learned counsel for the 3rd respondent and perused the documents placed on record.



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10. It is well settled Law that where a power has been given to do a certain thing in a certain way, the thing must be done in that way or not at all, and other methods of performance are necessarily forbidden. In view of the Contract Labour (Regulation and Abolition) Act, 1970 provides for prohibition of employment of contract labour and the mode of such prohibition is stipulated in Section 10 of the said Act, it would be wholly incompetent for the same matter to be agitated by way of an industrial dispute. In the circumstances, the authorities under the Industrial Disputes Act will have no jurisdiction to decide the lis. The grievances of Contract labourer and retrenchment of employees of a contractor can only be mitigated by appropriate government in accordance with the provisions of the Central Act.

11. That apart, both under Section 10 as well as the under Section 10-A of the Industrial Disputes Act, what is referred is an 'Industrial dispute' and the preconditions for making the reference was also same, only difference being that under Section 10, only the State Government makes the reference and under Section 10-A parties to the dispute makes the reference. If the reference is not entertainable or specifically provided for in a special statute like the Contract Labour (Regulation and Abolition) Act,



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then, adjudicator will have no jurisdiction to entertain the same.

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12. It is pertinent to point out that in the Judgment rendered by the **Hon'ble Division Bench of this Court reported in 1987 SCC Online Mad 310 [Shaw Wallace & Co., Ltd., Vs. State of Tamilnadu and another]** among other things at paragraph no.31 and at paragraph no.32 it is held as follows:-

“31.....We do not also find any distinction between cases falling under Section 2-A of the Act and other cases in so far as the discretion of the Government to make reference is concerned. The only requirement in cases falling outside Section 2-A of the Act is that the Government should form an opinion that an industrial dispute exists or is apprehended. Otherwise, in the matter of exercise of discretion whether to make reference or not, there is no difference whatever.

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 state;*
 - (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;*



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

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

13. On a perusal of the impugned order it is seen that the 1st respondent while rejecting the request of the petitioner indicated that though the petitioner seeks employment to the permanent workers in the welding section, but failed to provide specific dates on which the permanent workers at the welding section were denied employment and there was no details regarding the loss suffered by the workmen.

14. Be that as it may, in the interest of justice, this Court is of the opinion that the workers as well as the management shall be given one more chance to submit their details regarding the demands made before the 1st respondent within a period of one week from the date of receipt of copy of this order and in turn, the 1st respondent is directed to consider the plea of



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the petitioner / Union, workmen and 3rd respondent / Management, based on the documents or any other details regarding this issue being provided by them and decide the issue afresh within a period of three months thereon.

With the above observation, the present Writ Petition is disposed of.

No costs.

25.07.2023

Index:Yes/No; Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

1. The Government of Tamilnadu
rep. By its secretary,
Department of Labour and Employment,
Chennai – 600 009
2. The Assistant Commissioner of Labour
(Conciliation – 1)
Sriperumbudur, Seriperumudhur Taluk,
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V.BHAVANI SUBBAROYAN J.

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