



W.P.No.3326 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.3326 of 2024

and

WMP.No.3581 of 2024

STAHL India Pvt. Ltd.,
No.1/A, Sargunar Salai,
Nagelkeni, Chrompet,
Chennai – 600 044,
Represented by its Authorised Signatory. ... Petitioner

Vs.

1.The Director / Appellate Authority,
Industrial Safety & Health,
T.S.No.47/1, Thiru.Vi.Ka. Industrial Estate,
Guindy,
Chennai – 600 032.

2.The Deputy Director – V,
Industrial Safety & Health,
T.S.No.47/1, Thiru.Vi.Ka. Industrial Estate,
Guindy,
Chennai – 600 032.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the record of the 1st respondent and quash the order dated 01.12.2023 in Appeal No.C3/23754/2023 and direct the 1st respondent to consider the appeal filed



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by the Occupier cum Manager of the petitioner factory on its own merits and pass such further or other orders as this Court may deem fit and proper.

For Petitioner : Mr.G.Anandgopalan

For Respondents : Mr.P.Sanjay Gandhi
Government Advocate

* * * * *

ORDER

This writ petition is filed calling for the record of the 1st respondent and quash the order dated 01.12.2023 in Appeal No.C3/23754/2023 and direct the 1st respondent to consider the appeal filed by the Occupier cum Manager of the petitioner factory on its own merits.

2.The petitioner company is a part of a group of companies having its headquarters in Netherlands and having operations across the globe in more than 25 countries. The petitioner manufactures chemicals used for processing leather. In India, the petitioner has a factory at Kancheepuram, wherein it manufactures chemicals. On 07.07.2023, the 2nd respondent inspected the Registered and Corporate office of the petitioner and opined that the said premises including the Customer Experience Centre is would be a factory within the meaning of the Factories Act. Following the inspection on 07.07.2023, the 2nd respondent issued a show cause notice in Proceeding



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No.B/876/2023 and an inspection report in KPM/URF/2023 dated 31.07.2023 stating that the petitioner's factory had violated various provisions of the Factories Act, 1948. The petitioner initially sought time to file the reply and thereafter on 28.08.2023, filed an elaborate reply answering each of the contraventions along with the supportive documents. Following the reply, the 2nd respondent conducted reinspection on 05.09.2023. After the reinspection, a communication dated 14.09.2023 bearing No.B/876/2023 was issued directing the petitioner to rectify the contraventions within 5 days therefrom, failing which the 2nd respondent warned the petitioner of suitable action without further notice. The petitioner filed statutory appeal on 06.09.2023 under Section 107 of the Factories Act challenging the order dated 14.09.2023. Meanwhile, the respondent passed order dated 29.09.2023. Thereafter, the 1st respondent without considering the appeal on merits dismissed the same by the impugned order dated 01.12.2023 stating that criminal prosecution was already initiated on the administrative side. Hence, the present writ petition is filed challenging the impugned order passed by the 1st respondent in Appeal No.C3/23754/2023 dated 01.12.2023.



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3.It is submitted by the learned counsel appearing for the petitioner that the petitioner preferred an appeal against the order dated 14.09.2023 under Section 107 of the Factories Act, but the first respondent vide the impugned order dated 01.12.2023 erroneously rejected the appeal as not maintainable.

4.The learned counsel relied on the Division Bench Judgment of this Court reported in 2007 (4) LLN 828, in support of his contention that the appeal was maintainable. The Judgment reads as follows:

“Without considering the explanation offered by the management appellant proceeded to initiate prosecution proceedings against the respondent on grounds that the prosecution has to be started within 90 days from the date of knowledge of accident — Employer filed writ petition challenging its prosecution since the explanation was not considered — Department pleaded that the complaint was to be filed within 90 days of the prosecution and that the employer/petitioner wanted to drag the prosecution launched — Reasons given by the respondent-Inspector not justified stating that the employer has lost right for filing appeal against the order of the Inspector — Petition allowed and the



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explanation as submitted by the petitioner/employer be considered”

5.The learned counsel submits that the Hon'ble Division Bench has recognised that there is a right of appeal under Section 107 of the Factories Act against the order dated 14.09.2023.

6.The learned counsel for the respondents on the other hand submits that the impugned order dated 14.09.2023 is a mere communication and therefore the appeal would not lie.

7.I have heard both the learned counsels and I have perused the materials on record.

8.A reading of the order dated 14.09.2023 impugned in the appeal clearly shows that the 2nd respondent concluded that the petitioner establishment is covered by the Factories Act. The Division Bench in the aforementioned Judgment in the case of ***Krishna Srivastava Vs. The Joint Director, Industrial Safety and Health, Chennai*** reported in ***2007 (4) LLN 828*** held that appeal under Section 107 lies against the Order of the



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Inspector. The 1st respondent rejected the appeal stating that it was preferred against a show cause notice and Criminal Prosecution was pending. In my view the 1st respondent has misconstrued the order dated 14.09.2023. In the order a categorical finding was given that the petitioner establishment is a factory. Hence the appeal cannot be said to have been filed against a mere show cause notice. It is further seen that none of the grounds of appeal have been considered by the 1st respondent in the appeal. Even the reason that criminal prosecution is pending is also untenable and the same cannot be a ground for rejecting the appeal. As the 1st respondent has rejected the appeal even without considering the grounds of appeal and for untenable reasons, the impugned order is set aside and remanded for fresh consideration. On remand the 1st respondent is directed to consider the appeal on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

9. Accordingly, this Writ Petition stands allowed with the above directions. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed



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Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order
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To

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Industrial Safety & Health,
T.S.No.47/1, Thiru.Vi.Ka. Industrial Estate,
Guindy,
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N.MALA, J.

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