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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.P. No.727 of 2012
and
W.M.P. No.1 of 2012

Madras Management Association,
MMA House,
represented by its President Mr. Ravi Viswanathan .... Petitioner

vs.

1. The Deputy Commissioner of Labour (Minimum Wages),
(The Appellate Authority under Tamilnadu Shops and Establishments Act, 1947),
DMS Complex, Anna Salai, Teynampet, Chennai-600 006.

2. Prof. V. Chandrasekhar .... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India seeking to issue Writ of Certiorari, calling for the records connected with TSE-II/7/2009 on the file of 1st respondent, i.e., the Deputy Commissioner of Labour (Minimum Wages), Chennai-600 006 (The Appellate Authority under Tamilnadu Shops and Establishments Act, 1947) and to quash the order dated 14.11.2011 made therein.

For Petitioner : Mr. Sanjay Mohan, Senior Counsel
for Mr. R. Jayaprakash

For Respondents : Mr. L.J. Krishnamoorthy [for R2]

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No appearance [for R1]

ORDER

This Writ Petition is filed challenging the order passed by the 1st respondent, the Deputy Commissioner of Labour (Minimum Wages), Chennai-600 006 (The Appellate Authority under Tamilnadu Shops and Establishments Act, 1947) vide No.TSE-II/7/2009 dated 14.11.2011.

2. The case of the petitioner is that the Madras Management Association was founded in the year 1956 and registered under the Societies Registration (Act XXI of 1860) and it is a non-profit public charitable (Educational) Institution. The learned counsel for the petitioner would submit that the prime objective of the petitioner is to promote management education, training, thought and development and strives to develop and nurture management expertise, combining Indian ethos with International Management thoughts and practices. It has grown to be the largest affiliate of All India Management Association (AIMA) and has emerged as an inspiring role model for other Local Management Associations in the country. In recognition of its excellent all round activities in propagating the message of professional management in all facets of business, commercial and industrial activity, it has emerged as the winner of AIMA Best LMA Award for 1997-98, and for five

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successive years from 2001-2002 to 2005-2006 and for the years 2009-2010 and 2010-2011.

3. The learned counsel for the petitioner would further submit that the petitioner was conferred with the "National Excellence Award" for the year 2007-2008 in recognition of continuously winning "AIMA Best LMA Award" in Category 1 from 2001 to 2006 and also for the continued excellence in all round activities in propagating professional management in this part of the country. The activities of the petitioner's Association are as follows:-

The petitioner's association organizes short duration Management Development Programmes to develop the management skills among working executives at all levels in the form of workshops, seminars, lectures and management video programmes. It also carries out medium to long term certificate courses aim at providing opportunity for development of executives / entrepreneurs. The courses carried out by the Centre for continuing Education include HRM, Financial Management, Retail Management, etc., The petitioner is also having a Centre for providing family business to discuss and understand the dynamics, patterns and specific challenges invovled in running Family Owned Enterprises.

4. The learned counsel would further submit that in view of the above activities, it is clear that the petitioner establishment is to be treated as educational

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establishment and cannot be treated as commercial establishments under Tamil Nadu Shops and Establishments Act. The 2nd respondent was appointed as a Manager, MMA, Centre for continuing Education vide its communication dated 19th August 2006 and after having agreed the terms and conditions of the appointment, the 2nd respondent joined the services of the petitioner on 25.08.2006. Subsequently, the 2nd respondent was confirmed on 17.03.2007 after completion of probationary period and he was given increase in salary periodically after considering his performance in carrying out the activities which are required under the Centre for continuing education.

5. It is further submitted that the petitioner was paying incentive to its employees based on their performance. In order to ascertain their performance, it is the practice of the petitioner to invite Key Result Areas (KRA) from the employees and the petitioner was also requested to submit his KRA to the Executive Director and the 2nd respondent sent email dated 10.06.2009 to the Executive Director and various committee members. In the said mail, instead of sending KRA as required by the management, he made various allegations on the procedural aspects of the petitioner and made personal allegations against Executive Director. When the Managing Committee received the copy of email dated 10.06.2009, the Managing Committee received the copy of email dated 10.06.2009, the Managing Committee

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was of the view that in the light of the allegations made by the 2nd respondent in that email, it was necessary to have him to appear before the Managing Committee and hence an email dated 17.06.2009 was sent to him to appear before the Managing Committee on 18.06.2009 at 6.00 p.m. and the 2nd respondent also confirmed that he would appear before the said Committee. The Executive Director also a Member of the Managing Committee recused himself from the proceedings as the allegation under the subject matter viz., the grievance made by the 2nd respondent related to him.

6. The learned counsel would further submit that the 2nd respondent made representations to this Managing Committee on 18.06.2009 and during the meeting, he informed the Management Committee about his grievances against the Institution and also against the Executive Director and in the meeting, the Management Committee suggested to the 2nd respondent to meet the Executive Director for mutual discussion. Thereafter on 19.07.2009, the Management Committee (with the exclusion of Executive Director) decided to call for an explanation from the Executive Director in regard to the allegation made by the 2nd respondent and the Executive Director also submitted his explanation to the Management Committee. Subsequent to the above, the 2nd respondent was on continuously leave and the said leave was sanctioned by the petitioner. Though the 2nd respondent's grievances were

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pending before Managing Committee, all of a sudden, the 2nd respondent sent a mail dated 22.07.2009 to various persons and the Managing Committee members of the petitioner alleging that the petitioner and ED harassing him (marked as Ex.A.10). In the said mail, the 2nd respondent mentioned that there is no grievance redressal mechanism in MMA and that his wife may take up the alleged issue to the press. In the said mail dated 22.07.2009, he also confirmed that on 18.06.2009, his grievance was being enquired by the Managing Committee members and however, according to him the enquiry was not up to the mark. Thereafter, the 2nd respondent was informed by the Managing Committee to appear before it on 23.07.2009 and 31.07.2009.

7. The learned counsel further submitted that the petitioner understood from the media reports that the 2nd respondent has filed a complaint before the Human Rights Commission of Tamil Nadu against the petitioner and the same was dismissed for want of merit. Subsequent to the dismissal of the above complaint, the 2nd respondent himself flashed / gve news to "Deccan Chronicle" dated 04.08.2009 and in fact, during the cross examination, the 2nd respondent had admitted that the contents in Column No.3 of the above news is correct. After the publication of the above said news item, the appellant communicated the said facts to the management on 04.08.2009 through his email dated 04.08.2009. In order not to jeopardize the career of the 2nd respondent, two letters were issued to him both of the same date by

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the Managing Committee. One letter dated 13.08.2009 pointing out to him that the Managing Committee was unable to repose confidence in him any longer and therefore it was invoking its contractual right and issued a separate letter of termination. Accordingly, based on the contract of employment, the petitioner issued a letter dated 13.08.2009 to the 2nd respondent (enclosing Cheque dated 13.08.2009 for Rs.1,14,800/- (Rs.1,29,000/- less TDS Rs.14,200/-) representing 3 months' salary. Therefore, the 2nd respondent's services were terminated vide letter dated 13.08.2009 wherein the reasonable cause for the termination of the 2nd respondent was categorically mentioned. Aggrieved by the order of termination issued by the petitioner, the 2nd respondent herein filed an appeal before the 1st respondent and the same was numbered as TSE-II/7/2009 and the petitioner appeared through its counsel and filed a detailed counter statement on merits as well as questioning the applicability of Tamil Nadu Shops and Establishments Act to the petitioner. The 2nd respondent ws examined in chief and he was duly cross examined by the petitioner's counsel. During the cross examination, the 2nd respodent admitted that (i) there was no prior enmity between himself and the petitioner, (ii) MMA is non profit organization, (iii) he appeared before the Managing Committee on 18.06.2009, (iv) he filed complaint before Human Rights Commission and that (v) the said complaint against the management was published by at Deccan Chronicle on 04.08.2009. During the pendency of appeal itself, the 2nd respondent has attained the age of

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superannuation. After hearing the submission made (both oral and written arguments), the 1st respondent allowed the appeal filed by the 2nd respondent vide its order dated 14.11.2011 and in the said orders, the Appellate Authority has observed that there is no evidence to show that the 2nd respondent's grievance was pending before the Management Committee, when he gave news items to the Deccan Chronicle against Management.

8. The learned counsel further submitted that the mere fact that the service tax is involved, does not render the petitioner anything other than an educational institution. Even as per the findings of the impugned order, the programmes are being conducted for imparting knowledge to members and even non-members. The fact that the fee is collected or that non-members attend such programmes does not in any way make the petitioner any less an educational institution and it would not render an establishment within the meaning of the Tamil Nadu Act.

9. The learned counsel appearing for the petitioner, in support of his contentions, has relied upon the judgments in ***Ruth Soren vs. Managing Committee, East I.S.S.D.A. and others reported in MANU/SC/741/2000 and Air India Corporation, Bombay vs. V.A. Rebellow and others reported in***

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MANU/SC/0414/1972.

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10. The counter affidavit was filed by the 2nd respondent in November 2021. The learned counsel for the 2nd respondent would submit that the petitioner Association was registered under the Societies Registration Act and it is not a company registered under the Registration of Companies. Further the association was managed by Committee members who are all honorary members of high dignitaries who are not taking part in the day to day activities and the entire show was run by the Executive Director who is acting as the High Commander. He is actually a retired person from military. When the 2nd respondent was holding the charge as manager of the association, the retired Wing Commander R. Vijayakumar holding charge of the Executive Director and he was autocratic and never listen to any one acting himself to his whims and fancies in the problems. The petitioner's association is now based on profit motive and they were collecting the huge amounts by conducting commercial courses, placements and also collecting GST. The above can be seen on the advertisement published by them for conducting the courses. The Association is subject to file Profit and Loss account and to send a copy of which to the Registrar of Societies. The association was also paying bonus to its employees every year and this could be seen even in the appointment order on the description of the payment of wages under column '8' as only bones / incentives (maximum of 2

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months gross salary) whereas, the Anna University or Madras University or any other university in India, no bonus or service tax is being collected by them.

11. The learned counsel would further submit that the association had filed a false affidavit before the Labour Court stating that the 2nd respondent was in office when the enquiry was conducted and in fact he was on leave, at the time of enquiry and that the fact was deliberately omitted in the affidavit for the reason best known to them. He further submitted that the Labour Court has clearly stated that there was no question of loss of confidence on the 2nd respondent, it is very clear that due to the action taken by the association, the 2nd respondent was put to mental agony, sufferance and also caused loss of reputation among the institutions like Loyola Institute of Business Administration, Anna University, Madras University wherein the 2nd respondent was taking part time classes to the students and his knowledge and experience was parted with the students and all his activities have been jeopardized by the action of the association. The association has to compensate for the loss caused to the 2nd respondent for loss of reputation and also for the ill health due to their draconian activities. The Labour Court by passing an order of setting aside the dismissal order, directed the petitioner to reinstate the 2nd respondent. By filing this Writ petition, the petitioner delayed the process and even after the superannuation period. Hence the 2nd respondent is entitled to get back wages about Rs.30,42,404/-

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(Rupees Thirty Lakhs Forty-Two thousand Four Hundred and Four only) along with interest and also the retirement benefits from the day of superannuation . The association is also liable to pay compensation of Rs.50 lakhs towards causing mental agony and sufferance and also loss of reputation.

12. **Heard both sides and perused the materials available on record.**

13. On perusal of the records, it can be seen that the petitioner association is an Educational Institution and not a commercial Establishment under the Tamil Nadu Shops and Establishments Act, 1947 (ACT XXXVI of 1947) and the relevant provision /definition of the Act is extracted below for better appreciation and understanding:

> *"An Act to provide for the regulation of conditions of work in shops, commercial establishments, restaurants, theatres and other establishments, and for certain other purposes.*
>
> *WHEREAS it is expedient to provide for the regulation of conditions of work in shops, commercial establishments and for certain other purposes.*
>
> *2. Definitions- In this Act, unless there is anything repugnant in the subject or context -*
>
> *(1) 'child' means a person who has not completed fourteen years.*
>
> *(2) 'closed' means not open for the service of any customer or open to any business connected with the establishment.*
>
> *(3) 'commercial establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.*
>
> *(6) 'establishment' means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the [State] Government may by notification declare to be an establishment for the purposes of this Act.*
>
> *(16) 'shop' means any premises where any trade or business is carried on or where*

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services are rendered to customers and includes office, store rooms, godowns and warehouses, whether in the same premises or otherwise, used in connection with such business but does not include a restaurant, eating-house or commercial establishment".

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From the above, it is crystal clear and evident that the petitioner association is not a commercial Establishment as held by the 1st respondent. On this score alone, the impugned order is liable to be quashed.

14. The grievance of the 2nd respondent against the petitioner Institution especially the Executive Director is that the said grievances were pending with the Managing Committee, without waiting for the decision of the Committee, he had threatened by way of email dated 22.07.2009, which was also marked as Ex.A.10 to take the issue to Press and he also informed in the same mail that his grievance has been enquired by the Managing Committee but not upto the marks. The 2nd respondent has gone to the Media (Deccan Chronicle) dated 04.08.2009 in regard to his grievance against the petitioner institution and it is evident from the typed set of papers filed by the petitioner, the same was also informed by the 2nd respondent in the cross examination and he also communicated the same by way of email dated 04.08.2009. The 2nd respondent has also preferred a complaint before the State Human Rights Commission (SHRC) and the same was dismissmed for want of merits. The letter dated 13.08.2009 was sent to the 2nd respondent on 13.08.2009 pointing out to him that the petitioner is unable to repose confidence on him any

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longer. **The above stand taken by the petitioner association is correct and sustainable because by going to the Media (Deccan Chronicle dated 04.08.2009) and the complaint given before the State Human Rights Commission, undoubtedly he has defamed and tarnished the image of the Institution**.

15. **The 1st respondent Appellate Authority observed in the order that there is no evidence that the 2nd respondent's grievance was pending before the Managing Committee and the same is also untenable for the simple reason that in the cross examination, he has admitted that he appeared before the Managing Committee on 18.06.2009. The mere fact that the service tax is paid does not render the petitioner institution come within the meaning of "Establishment" as defined in The Tamil Nadu Shops and Establishments Act 1947, (ACT XXXVI of 1947) as definition is already extracted supra**. In this regard, the petitioner has relied on the judgment of the Hon'ble Supreme Court in ***Ruth Soren vs. Managing Committee, East I.S.S.D.A. and others reported in MANU/SC/741/2000,*** in which in Para 4, it is held as follows:-

> "*4. An 'establishment' for the purposes of the Act means an establishment which carries on any a business, trade or profession or any work in connection with, or incidental or ancillary thereto. Concept of industry, as defined under the Industrial Disputes Act, would include any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen. There is an organised activity between employers and employees to impart education. Such an activity, though may be industry will not be a profession, trade or business for the purposes of*

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> *Article 19(1) under the Act. Therefore, the view taken by the Division Bench of the High Court is unexceptionable. The High Court did appreciate that Unni Krishnan's case (supra) itself made a distinction between what was stated in Bangalore Water Supply & Sewerage Board v. A. Rajappa (supra)*".

From the above facts, it is crystal clear and evidence that the petitioner institution is not an "establishment" under the Tamil Nadu Shops and Establishment Act 1947 and the Act is not applicable to the case on hand.

16. The learned counsel has also relied upon a judgment in ***Air India Corporation, Bombay vs. V.A. Rebellow and others reported in MANU/SC/0414/1972,*** with regard to loss of confidence. The relevant portion in Para 16 reads as follows:-

> "*The complainant, it may be remembered had to deal with Air-Hostesses in the performance of his duties and if the appellant was not fully satisfied beyond suspicion about his general conduct and behaviour while dealing with them, it cannot be said that loss of confidence was not bona fide. Once bona fide loss of confidence in affirmed the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, if bona fide, is in our opinion final and not subject to review by the industrial adjudication. Such opinion may legitimately induce the employer to terminate the employee's services; but such termination can on no rational grounds be considered to be for misconduct and must, therefore be held to be permissible and immune from challenge*".

17. The learned counsel also relied on the order passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in the case of ***The Deputy Director of***

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Income Tax (Exemptions)-III, Chennai – 34 v. M/s. Madras Management Association, Chennai, in which the petitioner here in this case, is the respondent before the Income Tax Appellate Tribunal, wherein it was held by the Tribunal tha tthe activities of the petitioner are related to education and therefore, they are entitled to exemption under Sectin 11 of Income Tax Act. The relevant portions are extracted hereunder:-

> "*3. The facts as emanating from the records are: The assessee is a trust registered u/s.12A(a) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') since 1980. The Assessing Officer while completing the scrutiny assessment for the assessment year 2009-10 held that since the assessee is not imparting formal education it is not covered by the provisions of Section 2(15) of the Act. The A.O thus held that the assessee is not eligible to claim the benefit of Sec.11 of the Act. In the assessment year 2010-11, the Assessing Officer vide order dated 21.01.2013, held that objects of the assessee fall within the ambit of "general public utility". Since the assessee has ventured in the nature of trade, commerce or business during the relevant year and has received fees as consideration for services rendered in excess of Rs.10 lakhs, the proviso to Sec.2(15) are invoked.*
>
> *Aggrieved by the assessment orders in the respective assessment years, the assessee preferred appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) after examining the objects, the activities being carried out by the assessee and the decision of the Ahmedabad Bench of the Tribunal in the case of Ahmedabad Management Association vs. JDIT 28 ITR (Trib.) 349, held that the activities of the assessee are covered by one of the main limbs of "charitable purpose", ie., education. He further held that the assessee is eligible for claiming exemption u/s.11 of the Act and allowed the appeals of the assessee for both the assessment years.*
>
> *Against these findings of the First Appellate Authority, the Revenue has filed appeals for both the assessment yeas before the Tribunal.*
>
> *6. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below. It is an undisputed fact that the assessee is enjoying benefit of Sec.12A(a) of the Act since 1980. The assessee is carrying on its charitable activities viz., providing education in accordance with its objects. The status of the*

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assessee as charitable organization has been accepted by the Department right from the beginning. For the first time in assessment year 2009-10, activities and the objects of the assessee were questioned.

8 (6) In view of the above, we are in complete agreement with the view taken by the Tribunal that the activities of the assessee are related to the education and therefore, is entitled to exemption under Section 11 of the Act. At this stage, it is required to be noted that right from the assessment year 1995-96 till 2008-09 the activities of the assessee has been considered by the Revenue as educational activities. Considering various activities of the assessee as narrated by the Assessing Officer in Paragraphs 4 and 5 of the assessment order and considering the decision of the Division Bench of this court in the case of Gujarat State Co-operative Union (supra) we confirm the view taken by the Tribunal that the activities of the assessee – Ahmedabad Management Association – is related to education and, therefore, is entitled to exemption under Section 11 of the Act as claimed.

8(7). Under the circumstances, the question raised in the present tax appeal is answered against the Revenue and in favour of the assessee. Consequently, the present tax appeal deserves to be dismissed and is, accordingly, dismissed. However, in the facts and in the circumstances of the case, there shall be no order as to costs".

18. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court, this Court is of the considered view that the order passed by the 1st respondent, the Deputy Commissioner of Labour (Minimum Wages), Chennai-600 006 (The Appellate Authority under Tamilnadu Shops and Establishments Act, 1947) vide No.TSE-II/7/2009 dated 14.11.2011 is liable to be quashed and thereby quashed.

19. In the result, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Neutral Citation:Yes/No

To

The Deputy Commissioner of Labour (Minimum Wages),
(The Appellate Authority under Tamilnadu Shops and Establishments Act, 1947),
DMS Complex, Anna Salai, Teynampet, Chennai-600 006.

J. SATHYA NARAYANA PRASAD.J.,

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