



W.P.No.9045 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2024

PRONOUNCED ON : 04.07.2024

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.9045 of 2024

and

W.M.P.No.10052 of 2024

United Labour Federation
Represented by its Secretary,
Regn. No.2657/CNI,
No.149, 4th floor, C.J.Complex,
Thambu Chetty Street,
Chennai-600 001.

...Petitioner

-Vs-

1.Government of Tamil Nadu
Represented by its Secretary,
Labour and Skill Development (B2) Department,
Fort St.George, Chennai-600 009.

2.The Management of SAME DEUTZ-FAHR INDIA private limited
Represented by its Managing Director
No.72-M, SIPCOT Industrial Complex
Walaja Taluk

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
pleased to issue a writ of Certiorarified Mandamus, calling for the records of the 1st



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respondent Government in connection with the impugned G.O(D)No.133 dated 01.03.2024 and quash the same and direct the 1st respondent Government herein to refer the demands covered by the said G.O. for adjudication.

For Petitioner : Mr.V.Prakash
Senior Counsel
for M/s.A.M.Radhaa Priya

For Respondents : Mr.R.U.Dinesh Rajkumar for R1
Additional Government Pleader
M/s.G.Kalyan Jhabakh
for M/s.Surana & Surana for R2

ORDER

This Writ petition is filed seeking issuance of a writ of Certiorarified Mandamus to quash the G.O(D)No.133 dated 01.03.2024 passed by the 1st respondent Government and direct the 1st respondent Government to refer the demands covered by the said G.O. for adjudication and issue further orders.

2. The brief facts of the case as per the records are hereunder:-

The petitioner is the Secretary of the petitioner Union which is the only recognized union in the 2nd respondent factory. The 2nd respondent factory was started in the year 1996 which manufactures tractors, harvesters and diesel engines. It is running under three divisions viz., Tractor Plant, Engine Plant and



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Engine Plant-3. Out of 400 workers, 189 workers alone are permanent and remaining workers are apprentices, probationers and contract labourers and all of them are engaged directly in the manufacturing process.

3. On 09.12.2019, a wage settlement was entered between the petitioner union and the 2nd respondent management for a period of three years commencing from 09.12.2019 to 30.06.2022. On 29.06.2022, the petitioner Union addressed a letter to management terminating the settlement in accordance with Section 19(2) of the Industrial Dispute Act, 1947 and presented a new charter of demands to the 2nd respondent management on 29.06.2022. On 05.08.2022 and on 07.09.2022, the petitioner union sent a reminders to the management to hold negotiation on charter of demands, but there was no response from the management. The petitioner union, therefore, raised the industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 before the Conciliation Officer, Vellore on 31.01.2023. The 2nd respondent management appeared before the Conciliation Officer and submitted it's response on 11.08.2023. Finally, the Conciliation Officer has issued a conciliation failure report and forwarded the same to the Government for passing appropriate orders.



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4. Despite the failure report of the Conciliation Officer in Ref.No.Na.Ka.No.52/2023 dated 05.10.2023, the Government did not pass orders referring the industrial dispute raised by the petitioner Union. Basing on the failure report dated 05.10.2023, the petitioner has filed W.P.No.1276 of 2024 for a direction to the Government to consider the reference for industrial dispute covered by the conciliation failure report under Section 10(1) of Industrial Disputes Act, 1947 within a time stipulated. On 22.01.2024, the orders have been pronounced and the same is extracted hereunder:-

“3. Considering the limited prayer of the petitioner, the first respondent Government is directed to consider and take a decision on whether the Industrial Dispute covered by conciliation failure report bearing Ref.No.Na.Ka.No.52/2023 dated 05.10.2023 should be referred under Section 10 of the Act, within two weeks from the date of the receipt of a copy of this order”.

5. Subsequent to the said order of this Court, the 1st respondent Government has issued orders of reference vide G.O(D).No.132 dated 01.03.2024 referring certain demands and issued G.O(D).No.133 dated 01.03.2024 declining to refer



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certain demands. Aggrieved by the G.O(D).No.133 dated 01.03.2024, this writ petition is filed.

6. It is submitted by the learned counsel for the petitioner that the Government has no business to adjudicate, to consider as to whether some of the demands can only be referred to the Labour Court for adjudication and that the jurisdiction of the Government in referring the dispute basing on the failure report is not an adjudicatory function and therefore, sought for setting aside the G.O.(D).No.133 dated 01.03.2024 with direction to refer all the disputes as per the failure report to the Tribunal for consideration.

7. The learned counsel for the respondent has mainly submitted that some of the issues raised in the charter of demands which were found in the report of the Conciliation Officer are frivolous and therefore, cannot be permitted to be referred including that of one in respect of grant of interim orders.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.



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9. This Court, in W.P.No.44581 of 2016 has observed as follows:-

“10. The law on the issue is well settled that it is not for the Government to appreciate the demands of the workmen on its merits and come to any conclusion against them and decline to refer the dispute for adjudication by the Labour Court or the Tribunal. The Courts have consistently held that the function of the Government is only administrative in nature and it cannot play the role of judicial authority, while taking a call on the demands made by the workmen seeking conciliation and in the event of failure for adjudication by the Labour Court or Tribunal. Although the learned counsel referred to the Division Bench judgment reported in 1988(1) LLJ 177 Mad (Shaw Wallace & Co. Ltd. v. State of Tamilnadu), in subsequent decision by this Court in W.P.No.12705 of 2019 dated 24.07.2019, the final conclusion of the Division Bench has been extracted. Therefore, in the fitness of things, it is sufficient to refer to the decision of this Court rendered in the aforementioned writ petition as found in paragraphs 2 to 9 extracted hereunder.

2. Mr.V.Prakash, learned Senior Counsel for the petitioner would submit that it is not for the Government to adjudicate the dispute between the labour and the management and decline to refer the dispute, since the



Government is not empowered to embark upon adjudication of disputes as between the labour and management as held by various Courts including the Hon'ble Supreme Court of India.

3.The learned Senior Counsel would rely on the decision of the Division Bench of this Court reported in 1988 I L.L.N 172 [Shaw Wallace & Co. Ltd. V. State of Tamil Nadu (by Commissioner and Secretary, Labour Department) and another] wherein a Division Bench has laid down certain parameters as to when the Government could decline to refer the dispute for adjudication and when it could not decline to refer further dispute. The relevant portion of the judgment in paragraph 32 is extracted as under:

'32.On a final analysis, the following principles emerge:

for
(1) The Government would normally refer the dispute adjudication;

(2) The Government may refuse to make reference, if
(a) the claim is very stale;
(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;
(e) the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse; and
(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.

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

4. The learned Senior Counsel would also draw the attention of this Court the observation of the learned Division Bench of this Court at paragraph 20 of the Judgment, which is extracted hereunder:

20. It is no doubt true that the Supreme Court has in the above passage recognised the power of the Government to consider prima facie the merits of the dispute. It has taken care to define the limits expressly by stating that the Government should not purport to decide any question of law finally; nor should it purport to reach final conclusions on disputed questions of fact. This shows that when the Government refuses to make a reference of the dispute to the Tribunal, it shall not decide any disputed questions of fact or disputed questions of law. Any decision of the Government on such a question would become final in the event of its refusal to make a reference. The Supreme Court had also indicated the grounds on which a reference could be rejected in the sentences italicised by us.?

5. He would therefore submit that in the case on hand, the Government has analysed the claim of the



employees and decided not to refer the disputes, as if the Government is final adjudicating authority in the matter. Therefore, the impugned Government Order is directly in contravention of the order passed by the Division Bench of this Court, as aforementioned.

6. According to the learned Senior Counsel, the scheme of Industrial Disputes Act does not empower the Government to embark upon needless adjudication of the dispute between the labour and management and only in such of those disputes, which are identified by the Division Bench of this Court in the

aforesaid order, the disputes could be declined to be referred. According to the learned Senior Counsel, the present order declining to refer the disputes as mentioned in the impugned G.O. itself do not come within the exceptions carved out by the Division Bench of this Court.

7. At this, the learned counsel appearing for the 2nd respondent /management would submit that the Government felt that certain disputes were not worthy enough to be referred for adjudication and the same would not call for any adjudication. Therefore, he would submit that the power to decline is always with the Government.

8. This Court considered the submissions made on behalf of the petitioner and also the submission made on behalf of the management. As rightly contended by the learned Senior Counsel for the petitioner that the Government has needlessly embarked upon the adjudication of the certain disputes raised by the petitioner Federation and declined to refer the same as if it was the sole and final authority to decide disputes. When the Government is not clothed with the power of adjudication in the scheme of Industrial Disputes Act, the present order issued by the Government refusing to refer several disputes which are part of the charter of demands



raised by the petitioner Federation is patently illegal and cannot be countenanced in law.

9. From the reasons assigned for refusal to refer the dispute, it appears that the Government has needlessly embarked upon adjudication on merits of the demands raised on behalf of the employees and such adjudication is impermissible in law and the same is also in contravention of the law laid down by the Division Bench of this Court as aforementioned and also various decisions of the Hon'ble Supreme Court of India on the subject matter. It appears that refusing to refer such of those disputes as found in the impugned order do not fall within any of the exceptions carved out by the learned Division Bench of this Court in its order as above and therefore, the impugned order is liable to be quashed.

11. In view of the above, the impugned order in G.O.(D).No.487 Labour and Employment (A2) Department, dated 11.09.2015 passed by the 1st respondent is hereby set aside”.

10. Considering the above decision of this Court, it is clear that in order to refuse any one of the demands of the charter, the Government should satisfy that the charter demands are opposing the provisions of the Act, or that the claim is frivolous, or that the claim is stale etc.,

Section 10(A) of the Industrial Disputes Act, 1947 is extracted hereunder:-

10A. Voluntary reference of disputes to arbitration.-



(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(1A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within 1[one month] from the date of the receipt of such copy, publish the same in the Official Gazette.*

3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the



reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3) issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.]

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be. 2[(4A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.*

(5) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to arbitrations under this section.]

11. On perusal of Section 10-A of the Industrial Disputes Act, 1947 and on perusal of decisions of this Court in W.P.No.44581 of 2016 dated 23.03.2022, it is clear that a role of the Government is only administrative in nature and not in the capacity of adjudication. The Government cannot even discuss as to whether the demands made in the charter are reasonable or not.



12. On perusal of the impugned order, it is clear that reference was refused on the ground that the demands will depend upon the financial condition of the management. In respect of certain medical allowances, it is mentioned by the Government that employees are covered under ESI thereby, it is not in dispute. In respect of incentive is concerned, it is observed that the incentive is given at the discretion of the management. Therefore, the same was refused. Similarly, all the 22 demands in the charter were rejected.

13. In respect of interim orders are concerned, the learned counsel for the petitioner has brought to the notice of this Court that under Section 10(4) of the Industrial Disputes Act, it is settled legal proposition, that the interlocutory orders can be passed. In respect of other demands also, the Government has simply refused to refer it on the simple ground that granting of those demands will be subject to financial condition of the management. In view of the discussion made above, it is clear that the Government has no role to play while referring the industrial dispute. However, the Government is not a mere post office to simply refer the dispute to the Industrial Tribunal. However, if it is found that the demands are perverse and that they are not connected to industrial dispute, the



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Government, to some extent, can exercise due diligence while referring the matter to the Industrial Tribunal.

14. In view of the discussion made above, the impugned order vide G.O(D).No.133 dated 01.03.2024 suffers from irregularity thereby, the writ petition is required to be allowed directing the Government to refer rest of the demands as mentioned in the letter of the Conciliation Officer to the Industrial Tribunal/Labour Court for appropriate action. No costs. Consequently, the connected miscellaneous petition is closed.

04.07.2024

Index:Yes/No
Internet:Yes/No
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To

The Secretary
Labour and Skill Development (B2) Department,
Fort St.George,
Chennai-600 009.



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Dr.D. NAGARJUN,J.,

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**Pre-Delivery Order made in
W.P.No.9045 of 2024 and
W.M.P.No.10052 of 2024**

04.07.2024