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W.P.Nos.27971, 28422, 28425, 28429, 27964 & 27967 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.27971, 28422, 28425, 28429, 27964 & 27967 of 2023
and W.M.P.Nos.27477, 27969, 27973, 27979, 27469, 27474, 36558,
36557, 36556, 36555, 36554, 36553, 36550, 36548, 36546 of 2023
and 1203 & 1202 of 2024

The Management of Cambodia Mills,
Rep. by the General Manager,
Cambodia Mills
A unit of National Textile Corporation Ltd.,
Ondiputhur
Coimbatore – 641 016.

...

Petitioner in all W.P's.

/vs/

Jamunarani S	...	Respondent in W.P.No.27971/2023
Bagyalakshmi P	...	Respondent in W.P.No.28422/2023
Poongodi M	...	Respondent in W.P.No.28425/2023
Kalamani D	...	Respondent in W.P.No.28429/2023
Annapoorani G	...	Respondent in W.P.No.27964/2023
Pappathi R	...	Respondent in W.P.No.27967/2023

Writ Petitions are filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the Industrial Tribunal, Tamil Nadu, Chennai in A.P.Nos.46, 34, 37, 39, 41 & 45 of 2019 and quash its award dated 14.11.2022.



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In all W.P's.:

For Petitioner ... Mr.P.Raghunathan
for M/s.T.S.Gopalan and Co.Advocates

For Respondent ... Mr.K.M.Ramesh
Senior Counsel
for Mr.V.Subramani

COMMON ORDER

These writ petitions have been filed challenging the order of the Industrial Tribunal, Tamil Nadu, Chennai in A.P.Nos.46, 34, 37, 39, 41 & 45 of 2019 dated 14.11.2022.

2. Mr.P.Raghunathan, the learned counsel for the petitioners, submitted that the respondents were dismissed on 25.12.2018 and the approval petitions have been filed on the same date considering the fact that the Industrial Dispute raised by the Union on behalf of the workers of the petitioner's mill inclusive of the respondents was pending in I.D.No.24 and 25 of 2010 before the Industrial Tribunal, Chennai.

2.1 The learned counsel for the petitioners further submitted that as per the Industrial Disputes (amendment) Act, 2010, the definition of



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“appropriate Government” has been enlarged and in view of the expanded

inclusion of appropriate Government, the petitioner's establishment also fall under the definition of “Appropriate Government”. However the petitioner's establishment would also fall under the Central Government establishment and hence the petitioner's establishment is not required to file any approval petition approving the order of dismissal before the State Government authorities. But, by overlooking the amendment, the petitioner's establishment has filed the approval petition which got rejected subsequently. Even though the approval petition has been filed in respect of 18 workmen, 12 out of the 18 workmen have consented to grant approval subject to their liberty to file Industrial Dispute before the Central Government Industrial Tribunal (CGIT). These respondents have not consented and they continued to contest the approval petition. The approval petition got rejected and thereby the order of dismissal did not come into effect. Hence, this writ petition has been filed by the Management challenging the order of rejection of approval.



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2.2 The learned counsel for the petitioner submitted that though the petitioner has filed the approval petition before the State Authority, the legal position existed at the relevant point of time will not confer any jurisdiction on the state government authority and hence by act of parties, no jurisdiction could be conferred on the forum which did not have any jurisdiction under law.

3. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Kalidas Dhanjibhai Vs. State of Bombay reported in (1954) 2 SCC 591***. The said case has arisen out of a dispute brought by an individual who has registered his establishment under Section 2(27) of the Bombay Shops and Establishments Act, 1947 consequent to certain prosecution for non-compliance of the Act. The argument advanced before the Court by the appellant is that his establishment would not come under the definition of “Shop” and hence the very application of the Act against him is illegal. The Court has rendered a finding that just because the petitioner had registered his establishment under the definition “Shop”, though he would not fall under the ambit, that will not confer jurisdiction of authorities under the



Bombay Shops and Establishments Act, 1947. For the sake of convenience,

the relevant paragraph of the said judgment is extracted hereunder:

“ ... 11. The learned High Court Judges were influenced by matters which we consider inconclusive. The appellant applied for registration under the [Bombay Act](#) and in the statement made under [section 7](#) he called his establishment a "workshop" and described the nature of his business as a " factory ". The learned Judges considered that this imported an admission that his establishment was a " shop " because of the use of the word "shop" in "workshop". This might have raised an inference of fact against the appellant had nothing else been known but when the facts are fully set out as above and admitted, the appellant's opinion about the legal effect of those facts is of no consequence in construing the section. No estoppel arises. The appellant explained that the matter seemed doubtful, so, to be on the safe side and avoid incurring penalties for non-registration should it turn out that his concern was hit by the Act, he applied for registration. It is to be observed that though he applied on 12th April, 1949, he was not registered till 4th May, 1950, and the certificate was not given to him till 8th January, 1951. The present prosecution was launched on 4th April, 1951. Government itself seems to have been in doubt. However, that is neither here nor there. What we think was wrong was placing of the burden of proof on the appellant, in a criminal case, because of a so-called admission. The learned High Court Judges also advert to the fact that though the appellant's concern was registered as a "shop" he made no protest and did not have recourse to [section 7\(3\)](#) of the Act.”

4. It is held that the act of the appellant by mistakenly registering his



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establishment under the Bombay Shops and Establishments Act, 1947, will not act as an estoppel against him and consequently the prosecution initiated against him has to be set aside.

5. In the judgment of this Court held in ***Trichinopoly City Co-operative Bank Ltd., Vs. Additional Commissioner for Workmen's compensation and another reported in 1957 SCC OnLine Mad 366***, reference was made about the judgment of the Calcutta High Court in the case of ***Jyoti Prakas Vs. Bagala reported in 36 Cal.L.J. 124*** and the law regarding the point of jurisdiction is laid down as under:

“ .. For the validity of a judgment in a suit, this jurisdiction over the subject matter must exist throughout the proceedings as well at the time of its institution as at the time of its disposal.”

6. It is further submitted that the petitioner has filed an application before the Industrial Tribunal during the proceedings of the Approval Petition that the Management should be given with an opportunity to prove the misconduct against the respondents in the event of the Tribunal coming



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to a conclusion that the disciplinary proceedings are initiated on the grounds of violation of principles of natural justice. But the same was not given to the petitioner.

7. Mr.K.M.Ramesh, the learned Senior Counsel for the respondents, submitted that during the pendency of the approval proceedings before the Tribunal, the Industrial Dispute was very much pending before the State Tribunal in I.D.Nos.24 and 25 of 2010. It is further submitted that the Industrial Dispute continues to be pending before the State Government and hence there is no question of lack of competence or jurisdiction on the point of the Tribunal which dealt the approval petition. It is further submitted that the petitioner has raised the point of lack of competence and jurisdiction only during the course of the argument of the learned counsel for the petitioner and not any time before including it as a ground in this writ petition.

8. The contention is that so long as the Industrial Dispute is pending before the State Tribunal the approval for dismissal ought to have been



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obtained before the relevant state government Tribunal and hence there is

no question of lack of competence and jurisdiction. Even after the approval

petition was dismissed, the petitioner Management did not take any steps or

initiate proceedings to declare the pending Industrial Dispute before the

State Tribunal as illegal in view of the amendment brought in the year

2010. In fact the point has not been raised before the Industrial Tribunal in

order to enable the respondents to effectively defend the same during the

proceedings. At the time when the amendment was brought in the year

2010, there would have been thousands of Industrial Disputes pending with

regard to those establishments which have been covered under the amended

definition of appropriate Government falling under the Central Government.

Unless the amendment Act explicitly states that the pending Industrial

Disputes would get transferred to CGIT or persons concerned should bring

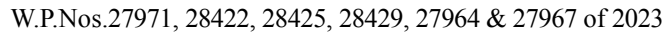
a fresh Industrial Dispute before the CGIT, it cannot be presumed that the

Industrial Disputes pending before the Tribunal have become void. In the

absence of any orders to that effect the act of the petitioner in filing

approval petition before the State Government authority seeking approval

for the dismissal made during the pendency of the Industrial Dispute cannot



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10. So far as the other ground that Industrial Tribunal did not grant any opportunity to the petitioner to let in any evidence to prove the misconduct in the event of its adverse finding as to the adherence of the



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principles of natural justice, it appears that the petitioner has filed separate application in I.A.No.45 of 2023 by raising a prayer to correct the order made in the Approval Petition on 14.11.2022. In the said order, the learned Presiding Officer of the Industrial Tribunal relied on the judgment of the Hon'ble Supreme Court in the case of ***Karnataka State Road Transport Vs. Lakshmiddevamma and another reported in (2001) 5 SCC 433*** wherein it is held that it is the duty of the Management to raise a definite plea at the appropriate stage and the Tribunal need not take the pain of assisting the Management and thus dismissed the application. The petitioner did not challenge the above order by way of filing any writ petition.

11. The learned counsel for the petitioner submitted that the above observation of the Court in I.A.No.45/2023 is not correct because the petitioner had filed an application seeking the above liberty even during the pendency of the appropriate proceedings and that has not been taken into consideration while passing orders in the approval petition. In fact in the prayer of the petition made in the approval petition also the petitioner did



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not seek any alternative remedy of granting him an opportunity to adduce evidence to prove the misconduct in the event of rendering an adverse finding on the compliance of the principles of natural justice. However, the relief sought in the subsequent application filed seeking an order to reserve the above right has been returned. In the I.A.No.45 of 2023 filed by raising the above point, the Court has dealt the same and dismissed the same.

12. When the efforts taken by the petitioner to reserve the right by way of filing a separate application during the pendency of the approval petition which has been reiterated in the subsequent application in I.A.No.45 of 2023 for seeking correction of order, the petitioner could very well challenge the same but so far he has not challenged the same. In whichever way the matter is looked into, I do not find any factual or legal infirmity in the order rejecting the approval of dismissal issued by the petitioner establishment.



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13. In the result, these Writ Petitions are dismissed. No costs.

Connected miscellaneous petitions are closed.

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Index: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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To:
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The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai



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R.N.MANJULA ,J.

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