IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.33765 of 2024
& W.M.P.Nos.36575 and 36576 of 2024

State Secretary
Tamil Nadu Tasmac Virpanaiyaalargal Nala Sangam
Regn.No.TNTVRJCL2CHETU-50-21-00006
Head Office, 3/14-Bajana Koil Street
Chembarambakkam, Chennai – 600 123. .. **Petitioner**

Vs.

1.The Additional Chief Secretary
Labour Welfare and Skill Development Department
Government of Tamil Nadu
Fort St.George, Chennai – 600 009.

2.The Managing Director
Tamil Nadu State Marketing Corporation (TASMAC)
Floor No.4, Thalamuthu Natarajan Maaligai
Gandhi Irwin Road
Egmore, Chennai – 600 008.

3.S.Muralidharan
(R3 impleaded as per the order of this Court
dated 12.12.2024 made in W.M.P.No.39030 of 2024)
.. **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, by calling for the records in the impugned circular Na.Ka.No.14/2024 R2/14589/2018 dated 29.10.2024 and quash the same.

For the Petitioner	:	Mr.S.Kumaraswamy
For the Respondents	:	Mr.J.Ravindran Additional Advocate General Assisted by Mr.K.Sathishkumar for R2 Mr.K.Surendran Addl. Government Pleader for R1 For R3 – Mr.S.Muralidharan, P-in-P

ORDER

This Writ Petition is filed calling for the records relating to the impugned Circular in Na.Ka.No.14/2024 R2/14589/2018 dated 29.10.2024 and quash the same.

2. The Writ Petition was filed by the *Tamil Nadu Tasmac Virpanaiyaalargal Nala Sangam*. The case of the petitioner is that it is a trade union functioning in the 2nd respondent – Corporation. The 2nd respondent – Corporation is an industrial establishment within the meaning of the relevant labour welfare legislation. The 2nd respondent – Corporation is yet to frame its

standing orders and get it certified by the appropriate authority. As a matter of fact, the petitioner – *Sangam* has already filed a W.P.No.11508 of 2024 in respect of the same and it is pending.

3. While so, in respect of the complaints relating to the counter staff in the shops run by the 2nd respondent – Corporation, collecting more amounts than the maximum retail price / the price fixed by the Corporation, periodical circulars have been issued. Till date, the matter is covered by the Circular No.2/2019 dated 21.01.2019. By the said Circular, even the fine amount to be levied to the concerned Workman has been fixed and further details were also given concerning the second-time offender or serial offender. Further, how the invoices have to be signed, and how the amount has to be billed were all mentioned in detail. The customers were also alerted to give Whatsapp messages etc., regarding the excess billing. When that Circular was in force, suddenly, now the impugned Circular dated 29.10.2024 was issued.

4. The petitioner – *Sangam* is aggrieved by the impugned Circular in as

much as it states that whenever it is found that a customer has been charged an extra amount, action will not only be initiated against the concerned employee collecting the amount at the counter but all employees, including the supervisor of the shop, will be held jointly responsible. As a result, all of them will be suspended, and further action will be taken.

5. The learned counsel appearing on behalf of the petitioner – *Sangam* would attack the Circular on two grounds. Firstly, when there is a rule of discipline holding that the concerned erring employees alone as responsible, this alters the position and introduces a new rule of discipline and therefore, the impugned action falls within Entry 9 -Schedule IV of the Industrial Disputes Act, 1947 (in short 'the Act'). When the petitioner – *Sangam* is very much functioning in the 2nd respondent – Corporation, the 2nd respondent – Corporation ought to have issued a notice under Section 9A of the Act to the petitioner – *Sangam* as well as the individual employees. In the absence of the same, the impugned Circular is liable to be quashed for violation of Section 9A of the Act.

6. Secondly, the learned counsel would submit that the concept of punishing on vicarious liability or joint liability is unknown to the Indian Law,

and in that regard, he would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Gujaraj Steel Tubes Ltd. And Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others***[1] , more specifically relying upon paragraph No.111. Therefore, the impugned Circular is fundamentally erroneous and therefore, it cannot be sustained.

7. *Per contra,* the learned Additional Advocate General would submit that the Circular is not framing any rule less a new rule. He would submit that there is already a Circular dated 18.07.2023, which is referred to as Sl. No.7 in the impugned Circular, and therefore, nothing new is being introduced by the present Circular. He would further submit that the impugned Circular will not in any manner amount to the introduction of new rules of discipline and, therefore, will not come under any Entry under the IV Schedule of the Act, and therefore, there is no violation of Section 9A of the Act. Further, he would submit that if at all anybody is aggrieved by the Circular, it would be the employee who claims that he did nothing wrong and yet, by the Circular, he has been punished. No such person has approached this Court, and this Court need not entertain the Writ

1 (1980) 2 SCC 593

Petition on behalf of the petitioner – *Sangam*. The matter of disciplinary enquiry is an individual matter, and therefore, the trade union should not be permitted to interdict the same. According to him, even assuming that there is a violation of Section 9A of the Act, then there is an alternative remedy very much available to the petitioner – *Sangam,* to raise an industrial dispute, and when there is an efficacious alternate remedy, this Court need not entertain the Writ Petition. The learned Additional Advocate General would rely upon the Judgment of the Hon'ble Supreme Court of India in ***the Assistant Commissioner of State Tax and Others Vs. M/s Commercial Steel Limited,***[2] more specifically rely upon the paragraph No.11 of the said Judgment.

8. The Party-in-Person, who was impleaded as the 3rd respondent for the grievance expressed by him, would submit that in this case, it can be seen that in the majority of the shops, all these employees collude with each other and share the extra money. He would submit they would even tamper with the QR Code and collect Rs.20/- or like sums extra on the actual sum and therefore, the Circular is very much necessary and quashing the Circular would only lead to

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greater violation of the rights of the customers. In support of his submission, the Party-in-Person would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Olga Tellis Vs. Bombay Municipal Corporation***[3] and ***D.K.Yadav Vs. J.M.A. Industries Ltd.***[4] to contend that quashing the Circular would only infringe the fundamental right under Article 21 of the Constitution of India. He would rely upon the Judgment of ***Om Kumar Vs. Union of India***[5] to submit that when the Circular is reasonable and when it would stand the test of proportionality, balancing the rights, the Circular should be upheld. He would further rely upon the Judgment in the ***State of Haryana Vs. Piara Singh***[6] and ***LIC Vs. Consumer Education and Research Centre***[7] would submit that the workers who are violating the rules cannot be heard to cry about their rights. By relying upon the Judgment in ***Zee Telefilms Vs. Union of India***[8] would submit that the Circular can be read in harmony with the statutory provisions. He would further rely upon the Judgment in ***Vineet Narain Vs. Union of India***[9] that the Circular can be appropriately interpreted and read down.

3 (1985) 3 SCC 545
4 (1993) 3 SCC 259
5 (2001) 2 SCC 386
6 (1992) 4 SCC 118
7 (1995) 5 SCC 482
8 (2005) 4 SCC 649
9 (1998) 1 SCC 226

9. I have considered the rival submissions made on either side and perused the material records of the case.

10. As regards the contention raised regarding violation of Section 9-A of the ID Act, it has to be first seen whether the TASMAC which is formed with the avowed purpose of carrying on the duty of the state to promote prohibition and selling liquor will be an industry or not. Sale of liquor is held to be ‘res extra commercium’ by the Hon’ble Supreme Court of India in Khoday Distilleries Ltd and others -Vs- State of Karnataka and others (1995 1 SCC 574). Therefore, whether that would also be an ‘industry’ has to be gone into. The grievance of the workmen as regards the Circular issued by the 2nd respondent – Corporation which is a State-owned entity, can otherwise be considered in this Writ Petition.

11. The grievance of the employees seems to be that as a matter of rule, now all the Workmen are sought to be suspended and action being taken. In this regard, it is essential to extract paragraph No.111 of the Judgment of the Hon'ble Supreme Court of India in ***Gujaraj Steel Tubes Ltd's case*** (cited supra), which

reads as under:-

> "111. The cardinal distinction in our punitive jurisprudence between a commission of enquiry and a court of adjudication, between the cumulative causes of a calamity and the specific guilt of a particular person, is that speaking generally, we have rejected, as a nation, the theory of community guilt and collective punishment and instead that no man shall be punished except for his own guilt. Its reflection in the disciplinary jurisdiction is that no worker shall be dismissed save on proof of his individual delinquency. Blanket attainder of a bulk of citizens on any vicarious theory for the gross sins of some only, is easy to apply but obnoxious in principle. Here, the arbitrator has found the Sabha leadership perverse, held that the strikers should have reasonably reported for work and concluded that the Management had, for survival, to make do with new recruits. Therefore what?"
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> (emphasis supplied)

12. Therefore, there is no question of misconduct on the basis of community guilt. At the same time, it is stated by the respondents that many times it is found that all the employees of the shop collude together and collect an extra amount and it has been shared among them, that is how the action is necessitated. There can be no quarrel over the proposition that in such a case, such a charge can be levied against all the employees of the Corporation that they all jointly indulged in the said activity and committed the misconduct. Therefore, unless there is a *prima facie* material pointing out the said event, merely based on the Circular fastening community liability action should not be

taken. To that extent, the impugned Circular can be read down by this Court.

13. As a matter of fact, the learned Additional Advocate General would submit that such a rule is there in the earlier Circular itself. A perusal of the earlier Circular dated 18.07.2023, it is seen that it only stipulates action against the employees of the shop, who are indulging in the said exercise. Therefore, it cannot be said that this was the same position earlier in the Circular.

14. As far as the regular rules of discipline, on a query by this Court, the learned Additional Advocate General would submit that it is in the process of being drafted. Therefore, the larger issue of whether the Tasmac Corporation is an industry and whether it is necessary for them to frame certified standing orders are not gone into in this Writ Petition.

15. When the Circular applies to every Workman, it is general. This is one of the circumstances where the trade union can be permitted to approach this Court by way of Article 226 of the Constitution of India. Apart from the question raised by the petitioner – *Sangam*, concerning the specific averments that are

made by the impleaded Party-in-Person, the learned Additional Advocate General, upon instructions, would submit that the entire activities of the 2nd respondent – Corporation are being digitised and will be software driven. Once the computerisation is implemented, by scanning the bottles automatically, the price of the bottle will be shown in the computerised billing system, and it will show only the exact Maximum Retail Price fixed by the respondent – Corporation. Then, if the customer buys more than one bottle, automatically upon scanning every bottle, the total will be displayed in the bill, and if the customer resorts to pay the same by way of a QR code by any portal, it is only the exact amount which will be taken, and no extra amount will be charged. This process is in the offing, and in any event, before March, 2025 all the shops throughout the State of Tamil Nadu will be fully computerised. The QR code system will be in force, and the extra amount collection complaint will not be there. The new system will be foolproof of the shop supervisors or the shop employee tampering or any other person tampering or creating a QR code for a higher sum. The said submission is recorded.

16. For all the above reasons, this Writ Petition is disposed of on the

following terms:-

(i) The impugned Circular No. Na.Ka.No.14/2024 R2/14589/2018 dated 29.10.2024 is upheld, in as much as it postulates taking of action against all the employees of the shop, however only upon a *prima facie* case being made out that all the employees of the shop are involved in the said action of collecting the extra amount from the customer and not by way of community guilt, as a matter of rule and as a matter of routine.

(ii) No costs. Consequently, the connected miscellaneous petitions are closed.

12.12.2024

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Neutral Citation : Yes

To
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Labour Welfare and Skill Development Department
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Fort St.George, Chennai – 600 009.

2.The Managing Director
Tamil Nadu State Marketing Corporation (TASMAC)
Floor No.4, Thalamuthu Natarajan Maaligai

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D.BHARATHA CHAKRAVARTHY, J.,

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