



W.P(MD)No.2095 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.2095 of 2019

and

W.M.P.(MD)No.1692 of 2019

- 1.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation,
Plot No.100, Anna Nagar, Madurai.
- 2.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Madurai South, Kappalur, Madurai.

... Petitioners

Vs.

- 1.The Deputy Commissioner of Labour /
Appellate Authority
under the Tamil Nadu Shops and Establishment Act,
Madurai.

2.S.Sivakumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Prohibition, prohibiting the 1st respondent from proceeding with the appeal in I.A.No.2/18 in unnumbered T.N.S.E.Appeal No.-----/2018 filed by the 2nd respondent and reject the same.

For Petitioners : Mr.H.Arumugam



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For R1 : Mr.P.Thambidurai,
Government Advocate
For R2 : No Appearance

ORDER

This Writ Petition is filed to prohibit the 1st respondent from proceeding with the appeal in I.A.No.2/18 in unnumbered T.N.S.E. Appeal No.----- / 2018 filed by the 2nd respondent and reject the same.

2.The learned counsel appearing for the petitioners would submit that when the 2nd respondent was working as Salesman, an audit was conducted on 07.11.2016. At that time, it was found that there is a shortage of goods to the tune of Rs.8,82,244/- and liquor bottles to the tune of Rs.4,48,894/- are kept as unsold. Therefore, he was suspended from service on 17.11.2016 and thereafter, charge memo was issued on 06.10.2017 and following the same, show cause notice was issued along with enquiry report on 22.11.2017, seeking explanation for punishment. Thereafter, being not satisfied with the explanation given by the 2nd respondent, the petitioners passed the dismissal order on 31.03.2018. Aggrieved by the said order, the 2nd respondent preferred an appeal before the 1st respondent under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, (hereinafter referred to as 'the Act').



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3.He would further submit that the provisions of the Act is not applicable to the petitioner Corporation. Therefore, no appeal will lie under Section 41(2) of the Act against the order passed by the petitioners. Therefore, the 1st respondent has no jurisdiction to entertain the appeal filed by the 2nd respondent.

4.Referring to Section 4(1)(c) of the Act, which provides exemption for the State Government, he would further submit that the petitioner Corporation is 100% owned by the State Government. Therefore, the petitioner Corporation is under the control of the State Government and for the purpose of applicability of the Act in terms of the provisions, the State Government has to notify that the provisions of the Act is applicable to the petitioner Corporation. Further, as per letter dated 19.02.2010 issued by the Labour and Employment (K2) Department, the provisions of the Act are not applicable to the petitioner Corporation, in view of the exemption contained in Section 4(1)(c) of the Act.

5.On the other hand, the learned Government Advocate appearing for the 1st respondent would submit that the appeal was filed by the 2nd respondent under Section 41(2) as if the provisions of the Act is applicable to the petitioner



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Corporation. Therefore, taking into consideration the said provision and other relevant provisions of the Act, appropriate orders may be passed.

6. Though notice was served and his name is printed in the cause list, none appeared for the 2nd respondent, which shows that the 2nd respondent is not interested in pursuing this matter.

7. I have given due consideration to the submissions made on either side and perused the materials available on record carefully.

8. Now, the issue to be decided in this Writ Petition is as to whether the Tamil Nadu Shops and Establishments Act, 1947 would apply to the petitioner Corporation.

9. The contention of the petitioner Corporation is that the Act is not applicable to the petitioner Corporation. In the present case, challenge was made by the 2nd respondent against the dismissal order passed by the petitioner Corporation. The dismissal order was passed on 31.03.2018. In view of Section 4(1)(c) of the Act, since the petitioner Corporation is exempted from the provisions of the Act, no appeal can be filed by the 2nd respondent before



the 1st respondent in terms of Section 41(2) of the Act. At this juncture, it would be appropriate to extract Section 4(1)(c) of the Act hereunder:-

“4.Exemption: (1) Nothing contained in this Act shall apply to—

(c) establishments under the Central and State Governments, local authorities, the Reserve Bank of India, a railway administration operating any railway as defined in clause (20) of article 366 of the Constitution and cantonment authorities.”

10.A reading of the above provision shows that the establishment under the Central and State Government, the local authority etc., are exempted from the purview of the provisions of the Act. In the present case, the petitioner Corporation is 100% owned by the State Government and therefore, the petitioner Corporation comes under the purview of the 'establishment' under the State Government. At this juncture, it is also necessary to extract the definition of establishment as defined under Section 2(6) of the Act hereunder:-

“(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.”



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11.A reading of the above shows that any establishment can be brought into the Act by the State Government, for which, the State Government has to come with a notification to declare that the provisions of the Act is applicable for all purposes. However, it is an admitted fact that no such notification has been issued so far. In the absence of any such notification, exemption available under Section 4(1)(c) would apply to the petitioner Corporation. Further, as contended by the learned counsel for the petitioner Corporation, vide letter dated 19.02.2010, the State Government held that the petitioner Corporation comes under the exempted category in terms of the provisions of Section 4 of the Act.

12.In such view of the matter, since this Court has arrived at a conclusion that the Act is not applicable to the petitioner Corporation, against the dismissal order passed by the petitioner Corporation dated 31.03.2018, the 2nd respondent cannot file any appeal under the provisions of the Act before the 1st respondent and therefore, the 1st respondent does not have any power to entertain the appeal filed by the 2nd respondent. Accordingly, this Court restrains the 1st respondent from proceeding further in the subject matter.



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13. With the above observation, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Yuva

To

The Deputy Commissioner of Labour /

Appellate Authority

under the Tamil Nadu Shops and Establishment Act,
Madurai.



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KRISHNAN RAMASAMY, J

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