



W.A.(MD) No.1204 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.1204 of 2016

and

C.M.P.(MD) No.7959 of 2016

P.Govindarajan

.. Appellant/2nd Respondent

Vs.

1.The Secretary,
Ramanathapuram District,
Sarvodaya Sangh 66,
Kanthadai Street,
Srivilliputhur-626 125.

.. 1st Respondent/Petitioner

2.The Appellate Authority,
Under the (Deputy Commissioner of Labour)
Tamil Nadu Shops and Establishment Act,
Sundaram Theatre Road,
K.K.Nagar, Madurai.

.. 2nd Respondent/1st Respondent



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Prayer: Appeal filed under Clause 15 of the Letters Patent against the judgment dated 21.06.2012 passed in W.P.(MD) No.2460 of 2007.

For Appellant	:	Mr.V.R.Venkatesan
For R1	:	Mr.S.Arivalagan
For R2	:	Mr.N.Muthuvijayan Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This appeal is directed against an order passed by a learned Single Judge of this Court in W.P.(MD) No.2460 of 2007, dated 21.06.2012.

2. The appellant herein had moved the 2nd respondent herein for certain reliefs under the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as “the Act” for brevity). The 1st respondent was served with the notice of the said proceedings and it appeared before the 2nd respondent and informed that it had taken out an application under Section 51 of the Act to decide whether the 1st respondent would fall within the ambit of the Tamil



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Nadu Shops and Establishments Act, 1947. Even as this was pending before the Commissioner of Labour, the 2nd respondent had disposed of the matter on 31.01.2007 upholding the contentions of the appellant herein. In its order, the 2nd respondent had mentioned that the 1st respondent had only produced the information regarding pendency of some application filed under Sec. 51 of the Act and has not produced any order of the Commissioner of Labour passed in the said petition. He then proceeded to dispose of the petition filed by the appellant herein in his favour.

3. This was challenged by the 1st respondent before this Court in W.P.(MD) No.2460 of 2007. In the order, which is now under challenge, this Court had held that in fitness of things, the 2nd respondent ought to have waited till the Commissioner of Labour had disposed of the petition filed by the 1st respondent under Sec.51 of the Act. This order is now under challenge.

4. Learned counsel for the appellant made two pointed statements:

(a) That on 11.05.2007, the Commissioner of Labour had passed his decision in a petition filed by the 1st respondent under Sec. 51 of the



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Act, holding that the 1st respondent will fall within the ambit of the Tamil Nadu Shops and Establishments Act, 1947. Now, inasmuch as the Commissioner had passed an order, even though subsequent to the order of the 2nd respondent (which was challenged before the learned Single Judge), the fact remained that it was decided in favour of the appellant. Therefore, the learned Single Judge ought not to have held that the 2nd respondent ought to have waited till the Commissioner of Labour had passed his order under Sec. 51 of the Act; and

(b) That today, the appellant is more than 70 years old and any further delay will render the entire exercise meaningless.

5. In response, the learned counsel for the 1st respondent argued that while this respondent chooses to accept the decision of the Commissioner of Labour holding that the 1st respondent will come under the purview of the Tamil Nadu Shops and Establishments Act, 1947, yet this has happened after the 2nd respondent had passed his order on 31.01.2007. In deed, on the merit of the appellant's claim before the 2nd respondent, the 1st respondent did not even have an opportunity to produce any evidence.



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6. This Court weighed the rival submissions. There are two aspects which need to be noticed:

- (a) On the date the 2nd respondent had passed his order, the Commissioner had not taken his decision yet under Sec.51 of the Act. To this extent, this Court does not find that there is any error in the approach of the learned Single Judge; and
- (b) The Commissioner passed his order under Sec.51 of the Act even as early as on 11.05.2007, but this order does not appear to have been brought to the notice of the learned Single Judge when he decided the matter on 21.06.2012. The entire order now impugned in this appeal nowhere refers to the order passed by the Commissioner, dated 11.05.2007.

7. What is contextually significant is that on the date when the 2nd respondent had passed the order (on 31.01.2007), the 1st respondent's petition for deciding its status *vis-a-vis* the application of the Act was still pending and that the 1st respondent had only moved for an adjournment citing the



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pendency of its petition under Section 51. Therefore, it never had an opportunity to defend the action instituted by the appellant.

8. While this Court is sympathetic to the plight of the appellant as he is around 70+ years now, yet this Court ensure that rule of fairness in procedure is never compromised. Possibly if the order of the Commissioner dated 11.05.2007 had been brought to the notice of the learned Single Judge, the course of the proceedings might have been different. That was not done and this was created essentially by the appellant and on the date when the 2nd respondent disposed of the matter, when issue of jurisdiction was still pending before the Commissioner, the 1st respondent cannot be expected to produce the evidence on the merit of the appellant's contention. To deny it will be against the rule of fairness and violative of the principles of natural justice. In view of the same, this appeal is liable to be dismissed.

9. Accordingly, this Writ Appeal is dismissed, and the order dated 21.06.2012 passed in W.P.(MD) No.2460 of 2007 is hereby confirmed. The 2nd respondent is now required to hold an enquiry after giving due opportunity to



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the 1st respondent to produce its evidence. And given the age of the appellant, the 2nd respondent is required to complete the enquiry within a period of three months. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) (P.V.M., J.)
01.04.2024

Note: Issue order copy by 03.04.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR

To

The Appellate Authority,
Under the (Deputy Commissioner of Labour)
Tamil Nadu Shops and Establishment Act,
Sundaram Theatre Road,
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