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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)
Reserved on : 14.02.2025

Pronounced on : 14.03.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.Nos. 7945, 7948, 7949 of 2020
and
W.M.P.No.9381, 9383 and 9385 of 2020

M/s. Panchanathan Fishnet,
Rep. by its Proprietor,
P.Ramesh,
No.20, Kalakshetra Road,
Thiruvanmiyur,
Chennai – 600 041. …Petitioner in all the W.Ps.

Vs.

K.Ravi
S/o. Kannan,
No.33, A Block,
Singaravelan Nagar,
Kuppam, Beach Road,
Thiruvanmiyur,
Chennai – 600 041. …. Respondent in W.P.No.7945 of 2020

G.Murthy
S/o. Gajendran,
No.3, Muthalamman Koil Street,
Kuppam, Kottivakkam,
Thiruvanmiyur,
Chennai – 600 041. ….1st Respondent in W.P.No.7948 of 2020

D.Ramamoorthy,
S/o. Durairaj,

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No.4/82, Muthalamman Koil Street,
Ninarkuppam,
Uthandi, Sholinganallur,
Chennai – 600 119. …1st Respondent in W.P.No.7949 of 2020

M/s. Ashwan Fishnet,
Rep. by its Authorised Signatory,
No.18, Kalakshetra Road,
Thiruvanmiyur,
Chennai – 600 041. … 2nd Respondent in all W.Ps

Prayer in W.P.No.7945 of 2020

To issue a writ of certiorari or any other writ or order or direction in the nature of writ calling for the records in ID.No.52 of 2018 on the file of the 1st Additional Labour Court, Chennai dated 09.12.2019 and quash the same as illegal, arbitrary and against law and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Prayer in W.P.No.7948 of 2020

To issue a writ of certiorari or any other writ or order or direction in the nature of writ calling for the records in ID.No.53 of 2018 on the file of the 1st Additional Labour Court, Chennai dated 09.12.2019 and quash the same as illegal, arbitrary and against law and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Prayer in W.P.No.7949 of 2020

To issue a writ of certiorari or any other writ or order or direction in the nature of writ calling for the records in ID.No.54 of 2018 on the file of the 1st Additional Labour Court, Chennai dated 09.12.2019 and quash the same as illegal, arbitrary and against law and pass such further or other orders as

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this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Prayer in W.M.P.No. 9381 of 2020

To pass an order of stay of all further proceedings in ID. No. 52 of 2018 on the file of the 1st Additional Labour Court, Chennai dated 09.12.2019, pending disposal of the above writ petition.

Prayer in W.M.P.No. 9383 of 2020

To pass an order of stay of all further proceedings in ID.No.53 of 2018 on the file of the 1st Additional Labour Court, Chennai dated 09.12.2019, pending disposal of the above writ petition.

Prayer in W.M.P.No.9385 of 2020

To pass an order of stay of all further proceedings in ID.No.54 of 2018 on the file of the 1st Additional Labour Court, Chennai dated 09.12.2019, pending disposal of the above writ petition.

Appearance of Parties:

For Petitioners in all W.Ps : Mr.Suresh Sampath, Advocate
For M/s. A.Vinupradha, R.Dileepan, and D.Gokul, Advocates

For Respondents 1 & 2 in all W.Ps : No appearance

COMMON JUDGMENT

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Heard.

2. The present three writ petitions have been filed by the Petitioner Management challenging three separate awards passed by the First Additional Labour Court, Chennai, in I.D. Nos. 52/2018, 53/2018, and 54/2018, dated 09.12.2019. By these awards, the Labour Court directed the Petitioner Management, impleaded as the 2nd respondent in all the industrial disputes, to pay compensation as follows: Rs. 1,20,000/- to K. Ravi, the 1st respondent in W.P. No. 7945 of 2020; Rs. 30,000/- to G. Murthy, the 1st respondent in W.P. No. 7948 of 2020; and Rs. 30,000/- to D. Ramamoorthy, the 1st respondent in W.P. No. 7949 of 2020. The awards further stipulated that if the compensation amounts were not paid within 30 days, they would carry an interest of 8% per annum.

3. All three writ petitions were admitted on 15.06.2020. Pending adjudication, this Court, by orders passed in the respective W.M.Ps., directed the Petitioner Management to deposit the following amounts with the Labour Court to the credit of each industrial dispute: Rs. 50,000/- in I.D. No. 52/2018, Rs. 20,000/- in I.D. No. 53/2018, and Rs. 20,000/- in

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I.D. No. 54/2018. The Petitioners filed a compliance memo dated 11.07.2020, confirming that the specified amounts had been deposited with the Labour Court, enclosing photocopies of the cheques as proof. While all the workmen, upon service of notice, entered an appearance through their respective counsel, the 2nd respondent, despite being duly served, chose not to be represented.

4. The case of K. Ravi, the 1st respondent in W.P. No. 7945 of 2020, is that he was initially appointed as a casual labourer by the 2nd respondent on 01.01.1997, and his services were confirmed on 01.01.1998. He was engaged in knitting fishnets and manufacturing fishing nets and had worked for a period of 20 years. However, on 31.07.2016, he was denied entry at the workplace gate, where he found all other employees of the company also waiting outside a locked gate.

5. Subsequently, he continued to visit the company for several months but discovered that the 2nd respondent was carrying on the business behind closed doors with a different set of employees, offering lower wages and without providing any service benefits. Consequently, he issued a legal notice on 25.01.2017, but it was returned undelivered. A second legal notice

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was sent to the proprietor of the 2nd respondent at his residential address on 06.02.2017, which was duly received, but no response was given. His last drawn salary was Rs. 12,000/-.

6. Subsequently, he raised an industrial dispute before the Labour Officer III, Chennai. As the conciliation efforts failed, a failure report dated 03.08.2017 was issued to him. Relying on this report, he filed a claim statement before the First Additional Labour Court, which was registered as I.D. No. 52/2018 against the 2nd respondent. Thereafter, he filed I.A.No. 103/2018, seeking to implead the writ petitioner management as the 2nd respondent in the dispute. In support of this application, he filed an affidavit wherein, paragraphs 3 and 4, he made the following averments:

> "*I state that, I have filed the above said I.D.No.52 of 2018 without implead the M/s. Panchanathan Fish net and its Managing Directors P.Ramesh, as necessary parties in I.D.no.52 of 2018. Further I state that, the Respondent Company M/S.Ashwan Fishnet and M/s.Panchanathan Fishnet are Family concern and the both company's registered address are same and they have common work shop. I had working that work shop as Permanent Labour. The respondent company and M/s. Panchanathan Fishnet were started by one Mr.Panchanathan, who is Father of Both Company's managing Directors. The respondent company and M/s.Panchanathan Fishnet are same concern.*

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I state that, after create of M/s.Ashwan Fishnet, I and other labour were working with common at in the common workshop. Thereafter I and other labours were continue to work for M/s.Ashwan Fishnet as employee and the respondent had paid salary for me and other labour. The both company are Family concern and both are same and they jointly doing business in the same address. They are clearly cheating me with intention to avoid and settle the service benefits so without implead the M/s.Panchanathan Fishnet and its managing Directors Mr.P.Ramesh, I will not get any legal remedy before this Hon'ble Court and M/s.Panchanathan Fishnet is necessary parting in the above I.D.No.52 of 2018. So it is necessary to implead. M/s. Panchanathan Fishnet as 2nd Respondent in I.D.No.52/2018."

7. The petition for impleadment was opposed through a counter statement filed by P. Ramesh, the sole proprietor of M/s. Panchanathan Fishnet. In the counter, it was contended that the petitioner management was not the employer of the workman and, therefore, the dispute under Section 2A was not maintainable against them. It was further stated that the original respondent, Ashwan Fishnet (2nd respondent), had wound up its business. One of its partners, Mr. Naveen Kumar, subsequently established a new company under the name *JFN Fishnet Manufacturer* at No. 62, Old Bypass Road, Pethikuppam, Gummidipoondi, with his wife, Jayapriya, as its proprietrix.

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8. On these grounds, it was argued that the respondent workman had no right to claim employment under the present writ petitioner, as they were not his employer.

9. The present writ petitioner company is a sole proprietorship, with P. Ramesh as its proprietor. It was clarified that Rajesh, who was mentioned in the proceedings, is not a partner of the company. The company's name was derived from the late father of P. Ramesh. Furthermore, it was asserted that the respondent workman had never been employed in the petitioner's company.

10. It was also pointed out that another workman, G. Saravanan, who had raised a similar dispute in I.D. No. 55/2018 against the petitioner, subsequently filed a memo before the Labour Court, stating that he had been offered employment in the sister company at Gummidipoondi. Taking note of this, the Labour Court recorded the memo on 05.07.2019, and the dispute in I.D. No. 55/2018 was marked as settled.

11. Notwithstanding the objections raised by the writ petitioner, the Labour Court allowed the impleading application filed by the respondent

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workman through an order dated 22.10.2018. Following this, based on a memo filed by the workman, the cause title was amended, and the present writ petitioner was added as the 2nd respondent in the proceedings. The order dated 22.10.2018, by which the writ petitioner was impleaded in each of the three disputes, is not the subject matter of challenge in these writ petitions. After the impleadment, the workman in each of the industrial disputes examined himself as PW1 and submitted documents, which were marked as Ex.W1 to Ex.W7. The 2nd respondent remained *ex parte* throughout the proceedings. The writ petitioner, P. Ramesh, son of Panchanathan, who was impleaded as the 2nd respondent, filed a proof affidavit, examined himself as MW1, and was also cross-examined.

12. The Labour Court, after considering the oral and documentary evidence placed before it, concluded that the writ petitioner was responsible for the non-employment of the workmen in all three industrial disputes. In paragraphs 10 to 13 of the impugned awards, the Labour Court explicitly held that liability for the workmen's non-employment rested with the writ petitioner. The Labour Court reasoned that merely operating under different names while engaging in a similar business does not absolve the writ petitioner of responsibility following the closure of the 2nd respondent.

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It further noted that the writ petitioner was conducting business at 20, Kalakshetra Road, Thiruvanmiyur, and highlighted an admission made by MW1, who stated that at Door No. 18 in the same location, there was only one house situated. Although the workman's address contained a clerical mistake, the Labour Court observed that the writ petitioner was fully aware of the actual circumstances and ought to have produced appropriate documents to establish that their business was conducted by a distinct entity. In paragraph 12, it recorded the following observations:

> *"12. ....When the companies are not limited companies as per the Companies Act and it's a proprietoryship, the liability goes to the person who owns the company. Further, the cross examination of M.W.1 would clearly expose the petitioner's contention that he is uncertain among the brothers who is actually running these business and the questions in the cross examination made to M.W.1 are evasively answered disowning his liability. The fact that the second respondent is the son of the said Panchanathan and his brother is Magesh who is stated to be running JFN Fishnet as claimed by the second respondent and according to the petitioner Aswan Fishnet which was originally run in the present premises. Therefore it is clear that the second respondent is trying to take advantage of the innocence of the poor labourer has made to loiter him in the streets without giving any particulars of the proper ownership despite his continuance of the business in the same premises."*

13. Based on these findings, the Labour Court held that the writ petitioner was liable to pay compensation to the workmen. It further distinguished the judgment cited by the writ petitioner and concluded that

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the writ petitioner and the second respondent were, in essence, the same entity, as they were owned and controlled by the brothers and sons of Panchanathan. The Labour Court also observed that the testimony of MW1 was evasive. In light of these circumstances, the Labour Court awarded monetary compensation of Rs.1,20,000/- in one case and Rs.30,000/- each in the other two cases. These amounts were determined to be approximately equivalent to either retrenchment compensation under Section 25FF(b) of the Industrial Disputes Act or closure compensation under Section 25FFF of the Act.

14. Before this Court, the petitioner submitted certain documents that were not presented before the Labour Court. The primary contention raised here is that the Labour Court erred in imposing liability on the petitioners, particularly as they are not the employers, and their impleadment was improper. In the case of Saravanan, it was acknowledged that he was employed by a sister company.

15. Although this case primarily details the factual dispute concerning a single workman, K. Ravi, it is pertinent to note that the circumstances of the other two workmen are identical. Therefore, their cases are not

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elaborated here.

16. This Court is not inclined to accept the contentions raised or to admit documents that were not presented before the Labour Court. In this context, reference must be made to the judgment of the Supreme Court in *Royal Talkies, Hyderabad v. Employees State Insurance Corporation*, reported in (1978) 4 SCC 204, wherein the question of who qualifies as an employer was addressed. Though the ruling was in the context of the ESI Act, the principles established therein remain applicable.

> "*The reach and range of the definition is apparently wide and deliberately transcends pure contractual relationships. We are in the field of labour jurisprudence, welfare legislation and statutory construction which must have due regard to Part IV of the Constitution. A teleological approach and social perspective must play upon the interpretative process.*"

> "*Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. 'in connection with the work of an establishment' only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do any thing which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment. Surely, an amenity or facility for the customers who frequent the establishment has connection with the work of the*

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establishment."

"*All that the statute requires is that the work should not be irrelevant to the purpose of the establishment. It is sufficient if it is incidental to it. A thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either.*"

"*Much depends on time and place, habits and appetites, ordinary expectations and social circumstances."*

17. Furthermore, in a general observation, Justice V.R. Krishna Iyer, in his judgment in *Hussainbhai v. Alath Factory Thozhilali Union*, reported in (1978) 4 SCC 257, remarked:

"*The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution.....Indian Justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the rule of life. And life, in conditions of poverty aplenty, is livelihood and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour.*"

" *The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence*

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of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.

"*If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefits and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off.*"

18. In light of the foregoing, this Court finds no infirmity in the three impugned awards. Accordingly, all three writ petitions lack merit and stand dismissed. However, there shall be no order as to costs.As a consequence of the dismissal, the workmen, who are the 1st respondents in each of the writ petitions, are entitled to withdraw the amount deposited with the Labour Court pursuant to the interim order of this Court. The writ petitioner is also

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directed to pay the balance amount to the workmen directly, without compelling them to initiate recovery proceedings, within one month from the date of receipt of this order. Consequently, all three Miscellaneous Petitions also stand dismissed.

14.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Copy to:

The Presiding Officer,
First Addl. Labour Court,
High Court Campus,
Chennai – 600 104.

DR. A.D.MARIA CLETE, J.

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Pre-delivery Judgment in
W.P.Nos. 7945, 7948, 7949 of 2020
and
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