



W.P.(MD)No.23060 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2025

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD)No.23060 of 2018 &
W.M.P.(MD)Nos.20952 of 2018 and 25768 of 2024

1.The Managing Director,
Tamil Nadu State Marketing Corporation,
Chennai.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation,
Madurai.

3.The District Manager,
Tamil Nadu State Marketing Corporation,
Sivagangai District.

...Petitioners

vs.

1.K.Ravindran

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

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the impugned order of the second respondent in TNSE.No.5/2016 dated 18.09.2017 and quash the same.



W.P.(MD)No.23060 of 2018

ORDER

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This writ petition was filed to quash the impugned order of the second respondent in TNSE.No.5/2016.

2. The learned counsel appearing for the petitioners would submit that the first respondent has been suspended on 31.05.2013. The first respondent has challenged the same before the second respondent under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 [hereinafter referred to as 'the Act' in short]. The second respondent has also entertained the petition and passed the impugned order. According to the learned counsel, the Act will not apply for the TASMAL. The first respondent has invoked the jurisdiction wrongly. Though that was brought into the knowledge of the second respondent, the second respondent entertained the challenge made by the first respondent and passed the impugned order. He would further submit that this Court has already passed orders stating that for the TASMAL, the Act would not apply. In support of his contentions, he relied upon the order passed by this Court in W.P.(MD)No.2095 of 2019 dated 22.11.2024.



W.P.(MD)No.23060 of 2018

WEB COPY

3. On the other hand, the learned counsel appearing for the first respondent would submit that, in the present case, an order of relieving was passed on 31.05.2013. Thereafter, the said order was challenged before the second respondent. According to him, it is only an order of relieving and not an order of suspension. Therefore, he would submit that under the provisions of the Act, challenge has been made before the second respondent. Further, he would submit that neither wages under Section 17B of the Industrial Disputes Act, 1947 nor subsistence allowance was paid to the first respondent. Therefore, he would submit that the first respondent was only relieved on 31.05.2013 and only to cover up the defect made in the order of relieving, subsequent orders of termination were passed on 24.03.2017. Taking into consideration of these aspects, second respondent passed the impugned order. Therefore, he would submit that there is no error in the order and this writ petition is liable to be dismissed.

4. I have given due consideration to the submissions made on both sides and perused the materials available on record.



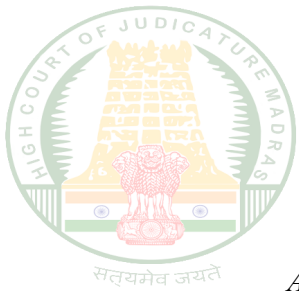
W.P.(MD)No.23060 of 2018

WEB COPY

5. In the present case, an order was passed on 31.05.2013, whether it is a relieving order or a suspension order is not the issue here. The issue in the present writ petition is only with regard to the jurisdiction of the second respondent to entertain the challenge made by the first respondent in terms of provisions of Section 41(2) of the Act. The learned counsel for the petitioners, by the referring an order of this Court, would submit that the second respondent does not have any power to entertain the challenge made by the first respondent. The relevant portion of the order passed by this Court in W.P.(MD)No.2095 of 2019, dated 22.11.2024 is extracted hereunder.

"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



W.P.(MD)No.23060 of 2018

WEB COPY

Act hereunder:-

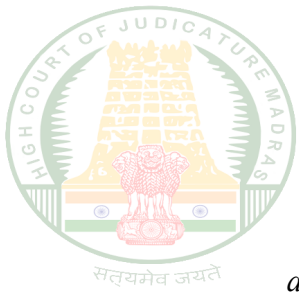
“4.Exemption: (1) Nothing contained in this Act shall apply to—

(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.”

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



W.P.(MD)No.23060 of 2018

WEB COPY

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."

6. A perusal of the above order clearly shows that the issue in the present cases is no more a *res integra*. It is obvious that the Act will not apply to the present case. With no jurisdiction, the second respondent has entertained the challenge made by the first respondent. The impugned order is *non est* in the eye of law and it is liable to be set aside.



W.P.(MD)No.23060 of 2018

WEB COPY

7. Accordingly, the writ petition is allowed and the impugned order passed by the second respondent dated 18.09.2017 in TNSE.No.5/2016 is set aside. As far as wages under Section 17B of the Industrial Disputes Act, 1947 and subsistence allowance are concerned, the first respondent is granted liberty to raise the same along with other issues before the appropriate Authority and workout the same in the manner known to law. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.01.2025

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

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



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W.P.(MD)No.23060 of 2018

KRISHNAN RAMASAMY, J.

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W.P.(MD)No.23060 of 2018

24.01.2025