

W.P.(MD)Nos.21383 & 21384 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2025

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD)Nos.21383 & 21384 of 2018 &
W.M.P.(MD)Nos.19250 & 19251 of 2018

- 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 in both petitions

vs.

- 1.K.Saravanan
- 1.P.Chandrasekaran ...First respondent in both petitions
- 2.The Deputy Commissioner of Labour /
Appellate Authority under the
Tamil Nadu Shops and Establishment Act,
Madurai.
...Second respondent in both petitions



W.P.(MD)Nos.21383 & 21384 of 2018

Common 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.Nos.7/2016 and 10/2016 respectively dated 18.09.2017 and quash the same.

In W.P.(MD)No.21383 of 2018

For Petitioner : Mr.H.Arumugam
For Respondents : Mr.S.M.Mohan Gandhi for R1
Mr.P.Thambidurai,
Government Advocate for R2

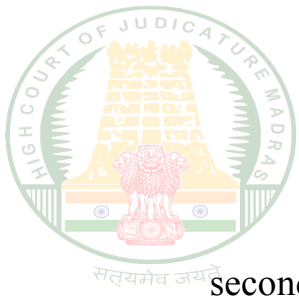
In W.P.(MD)No.21384 of 2018

For Petitioner : Mr.H.Arumugam
For Respondents : No appearance for R1
Mr.P.Thambidurai,
Government Advocate for R2

C O M M O N O R D E R

This writ petitions were filed to quash the impugned orders of the second respondent in TNSE.Nos.7/2016 and 10/2016 respectively.

2. The learned counsel appearing for the petitioners would submit that the first respondents in both the petitions have been suspended on 28.10.2013. The first respondents have challenged the same before the

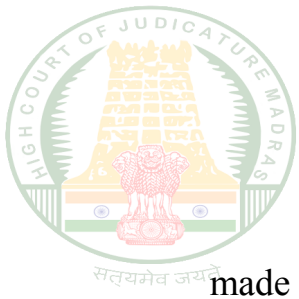


W.P.(MD)Nos.21383 & 21384 of 2018

WEB COPY

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 petitions and passed the impugned orders. According to the learned counsel, the Act will not apply for the TASMAC. The first respondents have 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 respondents and passed the impugned orders. He would further submit that this Court has already passed orders stating that for the TASMAC, 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.

3. On the other hand, the learned counsel appearing for the first respondents in both the petitions would submit that, in the present cases, an order of relieving was passed on 28.10.2013. 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



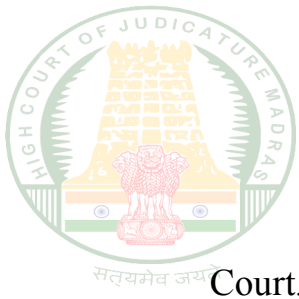
W.P.(MD)Nos.21383 & 21384 of 2018

WEB COPY

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 respondents. Therefore, he would submit that the first respondents were only relieved on 28.10.2013 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 orders. Therefore, he would submit that there is no error in the orders and these writ petitions are liable to be dismissed.

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

5. In the present cases, an order was passed on 28.10.2013, 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 respondents in terms of provisions of Section 41(2) of the Act. The learned counsel for the petitioners, by the referring an order of this



W.P.(MD)Nos.21383 & 21384 of 2018

WEB COPY

Court, would submit that the second respondent does not have any power to entertain the challenge made by the first respondents. 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 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."



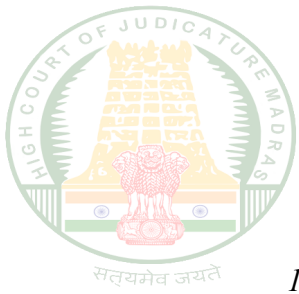
W.P.(MD)Nos.21383 & 21384 of 2018

WEB COPY

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 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.



W.P.(MD)Nos.21383 & 21384 of 2018

WEB COPY

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 cases. With no jurisdiction, the second respondent has entertained the challenge made by the first respondents. The impugned orders are *non est* in the eye of law and they are liable to be set aside.

7. Accordingly, the writ petitions are allowed and the impugned orders passed by the second respondent dated 18.09.2017 in TNSE.Nos. 7/2016 and 10/2016 are set aside. As far as wages under Section 17B of the Industrial Disputes Act, 1947 and subsistence allowance are concerned, the first respondents in both the petitions are granted liberty



W.P.(MD)Nos.21383 & 21384 of 2018

WEB COPY

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

mbi

To

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



WEB COPY



W.P.(MD)Nos.21383 & 21384 of 2018

KRISHNAN RAMASAMY, J.

mbi

W.P.(MD)Nos.21383 & 21384 of 2018

24.01.2025