

In the High Court of Judicature at Madras

Dated: 30.11.2007

Coram:

The Honourable Mr.Justice K.Chandru

W.P.No.35943 of 2007
& M.P.No.1 of 2007

Videsh Sanchar Nigam Limited,
4, Swami Sivananda Salai,
Chennai-600 002,
Rep. by its General Manager Mr.K.Prakash

.. Petitioner

vs.

1. The Special Deputy Commissioner of Labour (Appeals),
Authority under Section 41 of the
Tamil Nadu Shops & Establishments Act, 1947
DMS Compound, Chennai-600 006.

2. Commissioner of Labour,
Authority under Section 51 of the Tamil Nadu
Shops & Establishments Act, 1947,
DMS Compound, Chennai-600 006.

3. S.Gajendran

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Mandamus, directing the first respondent
to defer all further proceedings in TSE.No.18 of 2007, till the second
respondent decides the application in T.N.S.E.No.2 of 2007.

For petitioner : Mr.Vijayan for M/s.King & Patridge

For respondents 1 & 2 : Mrs.Bhavani Subbarayan, Addl.G.P.

Order

Heard the arguments of Mr.Vijayan, learned counsel representing
M/s.King and Patridge, for the petitioner-VSNL and Mrs.Bhavani Subbarayan,
learned Additional Government Pleader taking notice on behalf of
respondents 1 and 2 and have perused the records.

2. The prayer of the Writ Petitioner-Videsh Sanchar Nigam Limited (for short, VSNL), is to prevent the appeal filed by the third respondent which was numbered as TSE.Case No.18 of 2007, pending before the first respondent-The Special Deputy Commissioner of Labour (Appeals) for consideration, since the petitioner-VSNL had filed a petition under Section 51 of the Tamil Nadu Shops and Establishments Act, 1947 before the second respondent-Commissioner of Labour in TNSE.Case No.2 of 2007 to decide the question whether the provisions of the Tamil Nadu Shops and Establishments Act, 1947 (for short, the TNSE Act) will apply to them or not.

3. The third respondent, aggrieved by the order passed by the petitioner-VSNL, dated 13.7.2007, terminating his services, invoked the provisions of Section 41 of the TNSE Act and filed appeal before the first respondent and requested for setting aside the order dated 13.7.2007. However, to forestall the said proceedings initiated under Section 41 of the TNSE Act, the petitioner-VSNL moved the second respondent in TNSE.Case No.2 of 2007 to declare that TNSE Act is not applicable to the petitioner-VSNL.

4. Learned Counsel appearing for the petitioner-VSNL, after making certain submissions, wanted to withdraw the Writ Petition. This Court, refused the permission sought for withdrawal of the Writ Petition, because, the issue raised by the petitioner-VSNL has already been answered by this Court in the decision reported in 1977 (II) L.L.J. 202 (S.Ramanathan vs. Saroja Mills Ltd., Madurai). Therefore, the question of the petitioner-VSNL being relegated to either of the authority, namely the second respondent or the first respondent, is unnecessary, and it will amount to further waste of time deciding the same issue again and again.

5. The only contention of the petitioner-VSNL is that they do not fall within the definition of Section 2(3) of the TNSE Act, which defines the term "Commercial Establishment", which is as under:

" ... an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishment as the State Government may by notification declare to be a commercial establishment for the purposes of this Act."

Therefore, the petitioner-VSNL submits that since the question of applicability of the TNSE Act will have to be necessarily decided by the second respondent-Commissioner of Labour, until such time, he renders a finding, the first respondent should not be allowed to proceed with the

appeal filed by the third respondent-S.Gajendran, under Section 41 of the TNSE Act.

6. The prayer for issuance of a Writ of Mandamus, will arise only if the first respondent-Special Deputy Commissioner of Labour (Appeals) clutches on to a jurisdiction, which was not conferred by the provisions of the TNSE Act. But when once the Court finds that there is no jurisdictional error or lack of jurisdiction on the part of the first respondent, there is no question of entertaining the Writ Petition of this nature.

7. Since this Court had already decided a similar issue, there is nothing that the second respondent can decide in terms of Section 51 of the TNSE Act in TNSE.No.2 of 2007 filed by the petitioner-VSNL.

8. The only contention of the petitioner-VSNL before the second respondent is that they are a Company which does not come within the definition of Section 2(3) of the TNSE Act, which defines the 'commercial establishment' (extracted above) and therefore, the provisions of the TNSE Act will not apply.

9. In paragraph 10 of the affidavit filed in support of the Writ Petition, it is averred as follows:

"10. VSNL is not carrying on the business of advertisement, commission, forwarding or commercial agency. VSNL is not an insurance company, joint stock company, bank, broker's office. Thus, VSNL will not come under the purview of commercial establishment as defined under section 2(3) of the Act. Needless to state that VSNL is not an eating-house, shop, residential hotel, theatre or a place of public investment or entertainment. There is no notification issued by the State Government extending the provisions of the Act to Telecommunication Providers such as VSNL. It is therefore submitted that the Act is not applicable to VSNL."

10. In paragraph 2 of the affidavit filed in support of the Writ Petition, the petitioner-VSNL itself describes that it was incorporated as a Company on 19.3.1986 under the Indian Companies Act, 1956, as a wholly owned Government Company to take over the activities of erstwhile Overseas Communication Services with effect from 1st April, 1986. Subsequently, the said Company had disinvested its shares in VSNL and the Government of India divested a portion of VSNL's equity shares to certain funds, Banks and financial institutions controlled by the Government in the year 1992

and to the general public in the year 1999 and in the year 1997, the Government of India sold some of its equity holding through Global Depository Receipts, following which VSNL was listed in the London Stock Exchange and in 2000, VSNL became the first public sector undertaking of India to be listed on the New York Stock Exchange and in February 2002, the Government of India sold 25% of the equity shares in VSNL in favour of the Tata Group and it has become a Company controlled by the Tata Group. This itself will go to show that the petitioner-VSNL is a share-holding company and comes within the definition of the Joint Stock Company. When once it is a "Joint Stock Company", then automatically, it is covered by the ingredients of Section 2(3) of the TNSE Act, where the term 'commercial establishment' includes a Joint Stock Company.

11. As stated earlier, similar question came up for consideration before this Court in the decision reported in 1977 (II) L.L.J. 202 (cited supra) and a learned Judge of this Court held as under in paragraph 5 of the said decision:

"5. ... The expression "commercial establishment" is thus defined in cl.(3) of S.2 of the Act:

" 'commercial establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishment as the State Government may by notification declare to be a commercial establishment for the purposes of this Act."

It is pointed out by the learned counsel for the petitioner that the Thiagarajar Mills wherein he is employed is a joint stock company and, therefore, a "commercial establishment" within the meaning of the definition just above extracted, and that on that account, he fulfils all the conditions laid down in sub-cl.(iii) of cl.(12) of S.2. The argument appears to me to be sound. It is true that the petitioner does not belong to the clerical department of an industrial undertaking, and that part of Thiagarajar Mills in which he works does not fall under that portion of the definition of "commercial establishment" which talks of such a department. But a department of that type is not

the only thing which is regarded as a commercial establishment. Clause (3) of S.2 of the Act embraces within its fold various types of establishments and says that an establishment which is not a shop, but which fulfils one of the numerous other alternatives specified therein would be a commercial establishment. Thus, an establishment which is not a shop, but which--

- (i) carries on the business of advertising, or
- (ii) carries on the business of commission, or
- (iii) carries on the business of forwarding, or
- (iv) carries on the business of commercial agency,

or

(v) is a clerical department of a factory or industrial undertaking, or

(vi) is an insurance company, or

(vii) is a joint stock company, or

(viii) is a bank, or

(ix) is a brokers' office, or

(x) is an exchange, or

(xi) is an establishment notified by the State Government to be a commercial establishment, would be a commercial establishment within the meaning of cl.(3) of S.2 of the Act. According to the petitioner, Thiagarajar Mills is a joint stock company. If that be so, it will have to be regarded as a commercial establishment within the meaning of cl.(3) of S.2. Now it is a concern admittedly owned and being run by Saroja Mills Ltd. which is a joint stock company. This fact, however, is regarded by the learned counsel for the respondents as irrelevant. He argues that Thiagarajar Mills itself should be a joint stock company, and as it is not one, we cannot look upon its ownership in order to find out whether it is a joint stock company or not. The argument has to be rejected as a fallacious. When cl.(3) of S.2 talks of an establishment being a joint stock company, it necessarily refers to its constitution and, therefore, to its ownership and not to the type of work done by it, even though most of the other requirements of the clause would appear to make the nature of the business transacted by an establishment as the criterion for finding out whether it is a commercial establishment or not. This is so because the words "joint stock company" do not envisage the nature of work transacted by the establishment concerned. In order to find out whether an establishment is a joint stock company or not, it will have to be seen as to who is running it without reference to the nature of the business carried on by it and then to be determined whether the owner is a

joint stock company or not. If it is, the establishment must be regarded as a commercial establishment."

12. Therefore, in the light of the finding that the petitioner-VSNL is a "Joint Stock Company", and covered by the provisions of Section 2(3) of the TNSE Act, the prayer sought for by the petitioner to stall the proceedings of the first respondent from hearing the TSE.Case No.18 of 2007 till the second respondent decides the application in TNSE.No.2 of 2007, is clearly misconceived. The Writ Petition is devoid of merits and the same is liable to be dismissed.

13. The proceedings of the petitioner-VSNL initiated before the second respondent in TNSE.No.2 of 2007 under Section 51 of the TNSE Act, will become infructuous by the findings rendered herein. The first respondent-Special Deputy Commissioner of Labour (Appeals) is directed to proceed with the appeal filed by the third respondent-Gajendran, under Section 41 of the TNSE Act in TSE.Case No.18 of 2007, on merits and in accordance with law.

14. With the above observations, the Writ Petition is dismissed. No costs. The Miscellaneous Petition is closed.
cs

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Special Deputy Commissioner of Labour (Appeals),
Authority under Section 41 of the
Tamil Nadu Shops & Establishments Act, 1947
DMS Compound, Chennai-600 006.

2. The Commissioner of Labour,
Authority under Section 51 of the Tamil Nadu
Shops & Establishments Act, 1947,
DMS Compound, Chennai-600 006.

+ One cc to M/s King and Partridge, Advocate SR 70950

+ One cc to Govt Pleadeer SR No.71105

JRG (co)

sg 07/12/07

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