

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 29.02.2008

Coram

The Honourable Mr. Justice P.K. MISRA

and

The Honourable Mr. Justice K. CHANDRU

W.A. No.887 of 1992

Workmen of Jothi Engineering Works,
rep. by Tamil Maanila Thozhilalar Sangam
through its General Secretary
Shri K. Nityanandam Appellant

..vs..

1. The State of Tamil Nadu,
rep. by the Secretary to
Government,
Department of Labour and
Employment,
Fort St. George,
Madras - 9.
2. The Management of Jothi
Engineering Works,
Chinnachokkikulam,
Madurai - 2. Respondents

Appeal filed against the order dated 30.4.1992 passed in W.P. No.14159 of 1991 and writ petition presented under Article 226 of the constitution of India to issue a Writ of mandamus directing the 1st respondent to refer the Industrial Dispute raised by the petitioner union dated 23.1.90 pertaining to the bogus closure by the 2nd respondent effected on 6.11.89.

For Appellant : Mr. V. Prakash,
Sr. counsel for
Mr. N. Ravichandran

For Respondents : Mr. M. Dhandapani,
Spl. Govt. Pleader for R1

N.A. for R2

JUDGMENT

(Judgment was delivered by K. CHANDRU, J.)

Heard Mr. V. Prakash, learned senior counsel appearing for the appellant-union on 28.2.2008 and at his request, the matter was subsequently posted today and also heard learned Special Government Pleader appearing for the first respondent. The second respondent-Management, though served, is not present either in person or through counsel.

2. The appellant-Union, which is a registered union, raised an industrial dispute regarding the alleged closure of the second respondent-union at Madurai under Section 2(k) of the Industrial Disputes Act. After failure of conciliation, the Conciliation Officer sent a report to the first respondent-State Government. The State Government, by G.O.(D) No.882 Labour and Employment Department dated 2.9.1991, refused to refer the dispute to the Labour Court, by exercising the power under section 10(1) of the Industrial Disputes Act. It is stated in the said order that the second respondent-Management is a very small establishment and they have also justified the reason for closure and the workmen have received statutory compensation and closed their accounts. Therefore, there is no question of any reference of the issue of adjudication.

3. Aggrieved by the same, the appellant-union filed W.P. No.14159 of 1991. The matter was heard by the learned Single Judge. By an order dated 30.4.1992, the writ petition was dismissed. Learned Judge recorded the statement of the learned counsel for the second respondent that even if the reference is made, it will only be a stale reference and factory licence has also been surrendered and no manufacturing activity was shown to have been carried on by the second respondent. In the light of the same, learned Judge referred to a Division Bench judgment of this Court in M/S. SHAW WALLACE AND COMPANY v. STATE OF TAMIL NADU, REP. BY THE COMMISSIONER AND SECRETARY, LABOUR DEPARTMENT AND OTHERS (1988-I-LLJ 177) and held that it is for the Government to arrive at a prima facie conclusion of referring the dispute and if the Government is of the opinion that there is no case made out, there is no obligation to refer the same. There is no illegality in the order of the first respondent. Against the said order, the present writ appeal has been filed.

4. However, when the matter came up on 26.6.2000, since no step was taken for serving the second respondent, the writ appeal was dismissed. It was contended by the learned counsel for the appellant that the appellant has filed an application for serving the second respondent through substitute service and that was not taken note of by this Court. Subsequently, on his application, the writ appeal was restored on 3.8.2007 and came to be posted before this Court.

5. Mr. V. Prakash, learned senior counsel appearing for the appellant, strenuously submitted that placing reliance upon the

Division Bench judgment cited supra was erroneous. Even in the said judgment, the Division Bench held that under Section 10(1) of the Industrial Disputes Act, reference is a rule and refusal is an exception. He also submitted that during the proceedings before the Conciliation Officer, the Authorities are not allowed to give any evidence. There is no material for the Government to come to the conclusion that the factum of closure has been proved.

6. Learned counsel also submitted that the industrial disputes Act does not make any difference in small establishment or big establishment and so long as it is an industry within the meaning of 2(j) of the Industrial Disputes Act, there cannot be any distinction on the question of reference. Learned counsel also submitted that it is only a camouflage and the industry is carrying on its business in the very same place and pursuant to the so called closure, the order of termination was issued by K.N.K. Indira, who had predeceased her husband and her husband had died even on 8.6.2001 and the legal heirs have been continuing the said business. It is also stated that in the same location, the same owners are running the business in the name of Jothi Krishna Pumps.

7. Learned counsel brought to the notice of this Court, the judgment of subsequent Division Bench of this Court, reported in 2007-II-LLJ 983 (KARUR VYSYA BANK LTD. v. KARUR VYSYA BANK EMPLOYEES' UNION), wherein P. SATHASIVAM, J. (as he then was), has referred to all the contentions and on the question of Section 10 of the Industrial Disputes Act, held that the order of the Central Government in refusing to refer the dispute, which related to the claim of Jewel Appraisers for regularization, was wrong and the learned Single Judge was correct in directing reference of the dispute and also referred to the decision of the Supreme Court in which it was held that the Government's power under section 10 read with 12(5) is very limited and the Government, in the guise of ordering reference, cannot go into the merits of the dispute.

8. We find that the order of declining to refer the dispute which is impugned in the writ petition is clearly erroneous on two counts. Whether it is a small establishment or big establishment, it has no relevance to decide the question of referring the dispute. Under the Industrial Disputes Act, what is contemplated is that whether it is an industry within the definition of Section (2)(j) of the Industrial Disputes Act. The factum of closure has been proved. In fact, the first respondent has not even filed any counter. Merely satisfied by circulating the files relating to the Government order.

9. In the light of the order passed by the subsequent Division Bench in 2007-II-LLJ 983 cited supra, we have no hesitation to say that the order of refusing to refer the dispute is illegal and the said order is liable to be set aside and the same is accordingly set aside.

10. Learned counsel submits that the Court itself can make
<https://hcservices.ecourts.gov.in/hcservices/>

an order of directing reference, by placing reliance on the latest decision of the Supreme Court reported in (2007) 5 S.C.C. 273 (RASHTRIYA CHEMICALS & FERTILIZERS LTD .v. GENERAL EMPLOYEES' ASSN.), DR. ARIJIT PASAYAT, J. speaking for the Bench, after referring to the previous decision of the Supreme Court, in paragraph 9 held as follows:-

" 9. The exception to the above is, when the court finds that the appropriate Government refuses (sic. refusal) to make a reference of a dispute, is unjustified. In such circumstances, the court may direct the Government to make a reference (Sankari Cement Alai Thozhilalar Munnetra Sangam v. Govt. of T.N., v. Veerarajan v. Govt. of T.N. and TELCO Convoy Driver's Mazdoor Sangh v. State of Bihar.)"

Therefore, in a given case, the Court finds that the case is made out for reference. Hence, the question of sending the issue back to the Government and the Government to reconsider the matter does not arise and the reasons given by the Government for declining reference cannot stand scrutiny of law.

11. In the circumstances, we direct the first respondent-State Government to pass order of reference referring the dispute raised by the appellant-union, within a period of eight weeks from the date of receipt of a copy of this order. The writ appeal stands allowed accordingly. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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ssa.

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To

1. The Secretary to
Government of Tamil Nadu,
Department of Labour and
Employment,
Fort St. George,
Madras - 9.

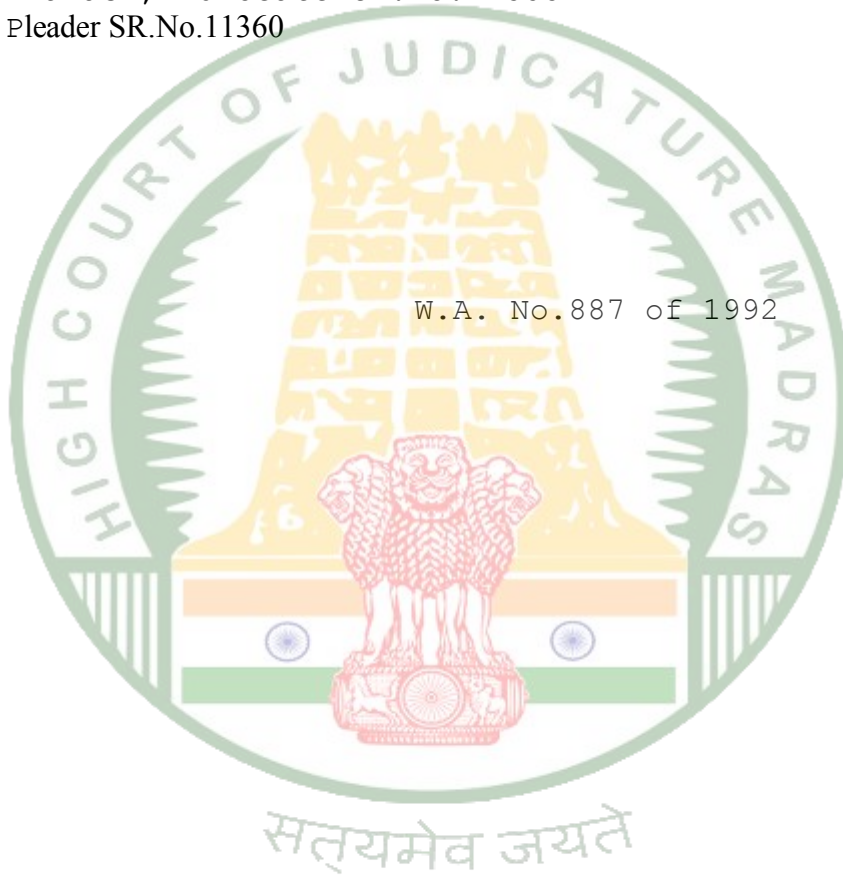
2. The Management of Jothi
Engineering Works,
Chinnachokkikulam,
Madurai - 2.

3. Thiru.K.Nithyanandam
General Secretary
Workmen of Jothi Engineering Works
rep. by Tamil Nadu Manila Thozhilalar Sangam thro.
Madras 10.

1 cc to Mr.V.Prakash, Advocate SR.No.11353
1 cc to Govt.Pleader SR.No.11360

CMP (CO)

MMP 13.3.08



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