

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.4.2010

CORAM:

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.No.9226 of 2010

N.Ramasundaram

.. Petitioner

Vs.

1. The Secretary to Government  
Home - Prohibition & Excise Department  
Fort St.George, Secretariat  
Chennai - 600 009.
2. The Managing Director  
Tamil Nadu State Marketing Corporation Ltd.  
(TASMAC), Head Office, 4<sup>th</sup> Floor  
CMDA Tower II, Egmore, Chennai - 8.

.. Respondents

Prayer: Petition under Article 226 of the Constitution of India for issue of writ of Mandamus to declare 1.5.2010 as holiday for the employees of TASMAC as per Section 3 of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 along with wages.

For Petitioner : Mr.K.Balu

For Respondents: Mr.N.Senthil Kumar  
Additional Govt. Pleader  
for 1<sup>st</sup> respondent  
Mr.J.Ravindran  
for 2<sup>nd</sup> respondent

ORDER

This writ petition raises the importance of the "May Day", which is widely celebrated on the First day of the month of May every year by the working class.

2.1. Hundred and two years have elapsed since Chicago's Haymarket episode. During this hundred years, the spirit of May Day has continued to inspire the working-class movement of the world. What happened between May 1 and May 4 of the year 1886 at Chicago was the climax of the eight-hour's movement that was raging in Europe and America in the second half of the nineteenth century. And this

unleashed a new phase of the International working-class movement not just on the question of eight-hour's day, but on issues with wider ideological implications.

2.2. Subsequent to the Haymarket happenings, the eight-hour movement or more precisely the movement for shortening of working hours did not, however, remain confined in Europe and America only. It spread to other parts of the world too with the onset of modern industrial capitalism there. After the decision of the Paris Congress of 1889, May Day began to be observed gradually in other countries also.

2.3. In India too, which fell subjugated to the British Colonialists in the middle of the eighteenth century, the movement for shortening of working hours began in the last quarter of the nineteenth century when a modicum of industrialization started appearing. For India, however, it took a pretty long time for the working class to concretely voice the demand for eight-hour's work and to start observing May Day, as the day of solidarity of the international working class.

2.4. May Day happenings in Chicago occurred in a surcharged political climate when the American working-class movement surged forward under the guidance of an enlightened leadership whose battle-cry was the downfall of capitalism and ushering in a socialist society. The decision for internationalization of May Day was also taken by a highly politicalized leadership belonging to various socialist groupings of Europe.

2.5. In Indian condition at that period, when the country was groaning under colonial plunder and rapacity, and when the working class was just at a germinating stage, the question of observance of May Day by the Indian Labour could not arise at all. It was only after the first world war and particularly the October Revolution of Russia, when the first rays of Marxian thoughts started penetrating India, that a situation arose when initiative could be taken by individuals or groups of individuals for calling upon the working class for observance of May Day.

2.6. Thus it is seen that observance of May Day began in India in an isolated way or sporadically on the initiatives of english-tend and radicalized individuals until the year 1927 when the All India Trade Union Congress - the national level class organization of the Indian Labour took a formal decision to observe May Day through out India and called upon the working class for doing so.

2.7. But it was not an easy task for the workers of India to observe May Day. Persecution by the colonial administration followed in large measure. But despite this panicky reaction by the colonial government, consciousness of the labour started growing and May Day began to be observed in a more and more widespread manner in India. (See: May Day and Eight Hours' Struggle in India - Sukomal Sen, K.P.Baghchi & Co, 1988).

3. The question that arises for consideration in this writ petition is whether the employees of the Tamil Nadu State Marketing Corporation Limited (for short, "TASMAC") are entitled to avail an holiday on 1.5.2010, i.e., on May Day, together with wages.

4. The petitioner, who is the General Secretary of the Thamizhaga TASMAC Pattali Thozhir Sangam, has filed the present writ petition seeking for a direction to the respondents to declare 1.5.2010 as holiday for the employees of the TASMAC as per Section 3 of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 (for short, "Act 30 of 1958") along with wages.

5. The claim of the petitioner was that the TASMAC was incorporated in the year 1983 as a Government owned Company and is doing wholesale distribution of IMFL and is a monopoly wholesale dealer. From 29.11.2003, the second respondent took over the retail vending business of Indian Made Foreign Liquor (IMFL). The second respondent is running 6500 shops throughout the State and is employing about 30000 employees. Each of the shop is run by a Shop Supervisor, a Salesman and a Bar Assistant and they are only paid consolidated wages. It is also claimed that they are working for more than 12 hours a day without lunch break or any weekly holiday or National holiday and they were not paid any extra wages for the overtime work done even on the declared National holidays.

6. It was further claimed that the TASMAC had a turnover of Rs.3,698 Crores during the year 2003. For the year 2008-2009, its turnover had reached the limit of 12,800 Crores. Out of the same, the Excise Revenue to the State Government alone was Rs.3650 Crores (2003), which had now reached Rs.11,223 Crores during 2009. It is claimed that the entire earning was due to the slogging by the workers. In spite of their discharging their duties they have not been given the holidays as per Act 30 of 1958.

7. It is also claimed that when an employee works on a holiday, under Section 5(2)(b) of Act 30 of 1958, he is entitled for twice the wages and also wages for such day and to avail himself of a substituted holiday. The petitioner/Union also made a representation on 22.4.2010 requesting the respondents to declare 1.5.2010 as a holiday and since no reply was forthcoming, the present writ petition was filed.

8. When the matter came up on 29.4.2010, this Court directed notice to be issued to Mr.J.Ravindran, learned standing counsel for the second respondent/TASMAC. This Court also directed Mr.N.Senthil Kumar, learned Additional Government Pleader to take notice for the first respondent.

9. Today when the matter was called, Mr.J.Ravindran, learned standing counsel for the second respondent/TASMAC produced a letter dated 23.2.2010 issued by the Principal Secretary to Labour Department and addressed to the second respondent stating that by



virtue of Section 10(1)(c) of Act 30 of 1958, the provisions of Act 30 of 1958 will not apply to TASMAC.

10. Since it is the sheet-anchor of the stand of the second respondent/TASMAC, it is necessary to extract the said letter in its entirety:

"I am directed to invite attention to the letter cited wherein it has been stated that on examination of the provisions contained in the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958, TASMAC is fully exempted from the application of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 solely as it is an establishment under the control of the State Government; and that the Act itself does not apply to their retail vending shops and hence Government may issue necessary notification in this regard.

2) In this connection, it is informed that it is seen from sub-section (1-A) (a) of Section 17-C of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937) that the Tamil Nadu State Marketing Corporation Limited is a Corporation wholly owned and controlled by the State Government. Inasmuch as Tamil Nadu State Marketing Corporation Limited is wholly owned and controlled by the State Government, it is clear that the Tamil Nadu State Marketing Corporation Limited is an establishment under the control of the State Government and consequently the provisions of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 are not applicable in view of the exemption contained in clause (c) of sub-section (1) of section 10 of the said Act. Hence, I am directed to state that, issue of any notification in this regard does not arise."

(emphasis added)

He also requested that since tomorrow being the 1<sup>st</sup> day of May, they will have difficulty in declaring the day as an holiday.

11. Since the issue involved is one of the fundamental right of workmen guaranteed by law and the provisions of the law are so clear, it is unnecessary to adjourn this matter only on the ground that the petitioner had come to this Court at the last minute. If a law prescribes an employer to declare a holiday, it does not require the workmen to make a demand for it. On the contrary, it is for the employer to declare holidays on the basis of the various labour enactments. Violation of observing the National and Festival holidays has been made as a penal offence under Section 8 of Act 30 of 1958 and hence, the law is mandatory.

12. It is suffice to state that it is the stand of the second respondent that they are not obliged to declare holidays because the provisions of Act 30 of 1958 will not apply to them. It is also claimed that they are coming under the exemption provided under Section 10(1)(c) of Act 30 of 1958, which is as follows:

"Section 10. Exemptions. - (1) Nothing contained in this Act shall apply to -

(a) to (b) .....

(c) any industrial establishment under the control of the Central or any State Government, local authority, Reserve Bank of India, a railway administration operating any railway as defined in clause (20) of Article 366 of the Constitution or a cantonment authority"

Before going into the provisions, it must be noted that Act 30 of 1958 was enacted with a view to grant National and Festival holidays to persons employed in industrial establishments in the State of Tamil Nadu. The term "industrial establishment" is defined under Section 2(e) of Act 30 of 1958. Section 2(e)(i) reads as follows:

"Section 2(e): "industrial establishment" means, --

(i) any establishment as defined in clause (6) of Section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXIII of 1947)"

13. The second respondent is running shops and is squarely covered by the provisions of the Tamil Nadu Shops and Establishments Act, 1947. The term "shop" is defined under Section 2(16) of the Tamil Nadu Shops and Establishments Act, 1947. Though Section 4(1)(c) of the Tamil Nadu Shops and Establishments Act, 1947 exempts an establishment under the Central Government, it can be safely said that the second respondent is only a Government owned Company and it cannot be said to be an establishment under the State Government. There is no doubt that the Act 30 of 1958 will apply to the second respondent/ TASMAC.

14. If once Act 30 of 1958 applies, Section 3 provides for grant of National and Festival Holidays. Section 3 of Act 30 of 1958 is as follows:

"Section 3: Grant of National and Festival Holidays. - Every employee shall be allowed in each calendar year a holiday of one whole day on the 26<sup>th</sup> January, the first May, the 15<sup>th</sup> August and the 2<sup>nd</sup> October and five other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment."

It must be noted that so far as declaration of 1<sup>st</sup> May of every year which is celebrated as May Day, it came to be introduced by the Tamil Nadu Act 7 of 1970, with effect from 25.4.1970.

15. The second respondent has not received any specific exemption in terms of Section 10(2) of Act 30 of 1958. Under Section 11 a non obstante clause is introduced by which the rights and privileges of an employee if he is protected by any other law, contract, custom or usage and if such rights and privileges are more favourable to him, those alone are protected. Section 3 of Act 30 of 1958 will override the other terms of contract between the parties.

16. It is significant to note that as per the amending Tamil Nadu Act 17 of 1971, Section 3 reads as follows:

"Curtailment of a holiday in lieu of 1<sup>st</sup> May to be null and void.- The curtailment by any employer on or after the 25<sup>th</sup> April 1970 a holiday in lieu of the holiday allowed on the 1<sup>st</sup> May shall be, and shall be deemed always to have been null and void."

17. It is the intention of the State Government not to grant exemption in respect of the 1<sup>st</sup> day of May because of its significance of being celebrated as May Day by the working class throughout India. Such significance was felt by the State Government. That was the reason why the said day was made as a compulsory holiday. In terms of the said Section 3 of Amending Act, it was said that any curtailment by the employer of that holiday after 25.4.1970 will be declared to be null and void.

18. The contention that it is an establishment coming under Section 10(1)(c) of Act 30 of 1958 cannot be accepted because a Government owned Company cannot be said to be an establishment under the control of the State Government and it is a body corporate by itself. The Supreme Court in Steel Authority of India Ltd. v. National Union Waterfront Workers, [2001] 7 SCC 1 framed a question in paragraphs [50] and [51] of the judgment as to the definition of the term "establishment" under Section 2(1)(e) of the Contract Labour (Regulation and Abolition) Act, 1970 as follows:

"50. The definition of "establishment" given in Section 2(1)(e) of the CLRA Act is as follows:

"2. (1)(e) 'establishment' means-

(i) any office or department of the Government or a local authority, or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on;"



51. The definition is in two parts: the first part takes in its fold any office or department of the Government or local authority – the government establishment; and the second part encompasses any place where any industry, trade, business, manufacture or occupation is carried on – the non-government establishment. It is thus evident that there can be plurality of establishments in regard to the Government or local authority and also in regard to any place where any industry, trade, business, manufacture or occupation is carried on."

19. In answer to that query, in paragraphs 125(1)(a) and 125(1)(b) the Constitution Bench held as follows:

"125. The upshot of the above discussion is outlined thus:

(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oil field or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government."

(emphasis added)

20. In that case the Steel Authority of India, which is a  
<https://hcservices.ecourts.gov.in/hcservices/>

Central Government owned Company was not brought within the term "establishment" under the control of the Central Government. The appropriate Government in respect of the Steel Authority of India was held to be the State Government. Therefore, the term "under the control of the State Government" has got a different connotation and it will not apply to a Government owned Company which is registered as a Government company under Section 617 of the Companies Act. It has got its own name, seal and succession and is a body corporate different from the Government.

21. The counsel for the respondent also brought to the notice of this Court a Division Bench judgment in W.P. (MD) No.12346 of 2008, dated 6.1.2009 (P.Kani @ Mohan v. The Chief Secretary to Government of Tamil Nadu, Chennai) wherein a direction was sought to the second respondent to declare 1<sup>st</sup> January of every year as a holiday for all the TASMAL shops. This Court rejecting the request in paragraph [4] observed as follows:

"4. Having heard the counsel on either side, we are of the considered view that it is the policy of the Government and the Court cannot interfere with the same and issue any direction. Utmost, the first respondent can consider the representation, dated 21.12.2008, stated to have been sent by the petitioner and pass orders, according to law."

22. In that case the question was to declare 1<sup>st</sup> January of every year as a holiday for TASMAL and the Division Bench held that it is a policy decision of the Government. The case on hand is on a different footing, under Section 3 of Act 30 of 1958, there is a statutory declaration for entitlement of the workmen for such a holiday. Therefore, in the light of the clear mandatory provision in law and also the factual matrix placed before this Court, this Court has no hesitation to hold that the employees of the second respondent are entitled to holiday as a matter of right on the 1<sup>st</sup> May of every year.

23. The Government must think that maximizing its revenue through excise duty alone should not be its sole object. They must consider the plight of the workers health and the obligation cast by Articles 41 and 43 of the Constitution of India.

Accordingly, the writ petition stands allowed. The second respondent is directed to grant the employees of the TASMAL an holiday on the 1<sup>st</sup> day of May in terms of Section 3 of Act 30 of 1958 forthwith. No costs.

Sd/-  
Asst. Registrar

//true copy//

Sub Asst.Registrar



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To:

1.The Secretary to Government  
Home - Prohibition & Excise Department  
Fort St.George, Secretariat  
Chennai - 600 009.

2.The Managing Director  
Tamil Nadu State Marketing Corporation Ltd.  
TASMAC), Head Office, 4<sup>th</sup> Floor  
CMDA Tower II, Egmore, Chennai - 8.

1 cc to Mr.K.Balu, Advocate, Sr.No.29733

1 cc to Mr.J.Ravindran, Advocate, Sr.No.29610

W.P.No.9226 of 2010

JSV {CO}  
TP/5.5.2010.



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