

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.06.2010

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.14005 & 14035 of 2008 &  
M.P.Nos.1 & 1 of 2008

Tradeline Enterprises Pvt. Ltd.,  
rep. by its Managing Director  
Mr.Prashant Palayam ... Petitioner in both W.Ps.

-vs-

1. State of Tamil Nadu  
rep. by its Secretary  
Labour Department  
Fort St.George,  
Chennai 600 009.  
...1st respondent in both W.Ps.  
(deleted as per order dated 25.6.2010 in  
M.P.Nos. 1 and 1 of 2009 in the above W.Ps.)
2. The Deputy Inspector of Labur  
Kancheepuram  
No.11/7, M.M.Avenue  
1<sup>st</sup> Main Raod, Kancheepuram District.  
... Respondent in both W.Ps.

Prayer : The Writ Petitions filed under Article 226 of the Constitution of India for issue of Writ of Certiorarified mandamus to call for the records of the second respondent in issuance of notice dated 08.01.2008 in Na.Nos.14 & 15 of 2008 respectively and quash the same and thereby for bear the respondent from in any mannor instituting any action / proceedings in the nature of penalty or prosecution in respect of violations as alleged in the notice impugned or of any of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 & The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 respectively.

For Petitioner : Mr.S.R.Rajagopal

For Respondent : Mrs.M.Sneha, Govt.Advocate

## C O M M O N   O R D E R

With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for final disposal. Since the petitioner in both the Writ Petitions are one and the same and issue involved is inter connected, these Writ Petitions are disposed of by a common order.

2. W.P.No.14005 of 2008 has been filed to quash the show cause notice issued by the respondent herein dated 8.1.2008 under the provisions of Inter-State Migrant Workmen (Regulation of Employment Conditions of Service) Act, 1979, (herein after referred to as 'the Migrant Workmen Act') and W.P.No.14035 of 2008 has been filed to quash the show cause notice issued by the respondent dated 8.1.2008 under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Contract Labour Act')

3. The facts which are necessary for the disposal of the Writ Petitions are that the petitioner is a Private Limited Company and was engaged in setting up of Textile Unit at Kodi Thandalam, Natarajapuram, Kancheepuram District. The petitioner's registered Office is at Chennai. The petitioner had engaged civil and electrical contractors for establishing the Textile Mill; the civil contract for construction of the factory premises was awarded to one M/s UMK Constructions; construction activities commenced during July 2007 and was in progress. The respondent issued the impugned notice alleging that the petitioner had violated section 4(i) and Rules 3(1) (2)(3) (4) of the Migrant Workmen Act read with 48 and 53(4) of the Rules framed thereunder and also issued a show cause notice alleging that the petitioner had violated section (a) 7(1) read with Rules 17 (1) (2) (3) (4), (b) Rule 74 read with 80 (4), (c) sec.16(1) (b) (c), (2) read with 42(2) and 47 and (d) sec. 17 (1) (b) (2) read with Rule 41(2) of the Contract Labour (Regulation and Abolition) Act, 1970. The petitioner is stated to have submitted his reply on 18.1.2008 and according to the petitioner no orders were passed.

4. It is contended that the impugned notices are without jurisdiction as the respondent has no authority to issue the notice alleging violation of the Migrant Labour Act and the Rules framed thereunder. It is further contended that section 2(d) of the Act defines an "establishment" and as the petitioner has not commenced business/trade in the premises, they would not fall within the definition of establishment empowering the respondent to issue notice. Further the petitioner also does not fall within the definition of the principal employer/contractor as defined under the Migrant Workmen Act and there is no commercial operation. Except for construction activity being carried on in the premises, there is no question of any trade or business empowering or entitling the

respondent to take action, even assuming that the labourers from other States were employed.

5. It is further contended that the show cause notices are empty formalities and no useful purpose would be served by submitting explanations. The petitioner has further stated that in order to purchase peace, they have filed an Application in Form No.I with the Labour Department after the issuance of show cause notices on 7.3.2008 and remitted the fee of Rs.150/-. The further contention being that the Contractor who is engaged in the civil construction is covered under the provisions of the building and other construction works (Regulation of Employment and Conditions of Service) Act 1996 and hence the respondent has no jurisdiction to issue the impugned notices. In spite of the same the petitioner is being harassed and therefore they are before this Court seeking to quash the show cause notice.

6. In the affidavit filed W.P.No.1035 of 2008, it has been filed challenging the show cause notice issued under the Contract Labour Act, the petitioner has contended that the respondent has no jurisdiction to issue a notice alleging violation of the provisions of the Act and Rules framed thereunder as the petitioner would not fall within the definition of section 2(e) of the Act which defines an establishment since they are yet to commence any production activity in the premises and only construction is being carried on.

7. The learned counsel appearing for the petitioner by placing reliance on the definition of the term establishment as defined under section 2(d) of the Contract Labour Act would contend that since no trade or business or manufacture or occupation is carried on the date of inspection by the respondent, the provisions of the Act cannot be made applicable to the petitioner. The learned counsel further relied upon the statement of objects and reasons of the Migrant Workmen Act and would contend that the scope of the enactment has been misconstrued and made applicable to the petitioner. It is further contended that after the explanation was submitted by the petitioner, no orders were passed by the respondent and the petitioner was fully justified in approaching this Court to quash the show cause notices. Further only in December 2008, summons were received from the criminal Court as prosecution was launched against the petitioner, the issues raised in the present Writ Petitions cannot be raised before the criminal Court and therefore the petitioner should be permitted to agitate the question of jurisdiction before this Court. It is further contended that the respondent has pre-decided the issue and the show cause notice is an empty formality and therefore the petitioner could maintain the Writ Petitions.

8. The learned counsel placed reliance on the decision of the Hon'ble Supreme Court in (1974) 2 SCC 121 [NAWABKHAN ABBASKHAN Vs.



THE STATE OF GUJARAT]; [1998] 8 SC 1 [ WHIRLPOOL CORPORATION Vs. REGISTRAR OF TRADE MARKS, MUMBAI AND OTHERS] and (2006) 12 SCC 33 [SIEMENS LTD., Vs. STATE OF MAHARASHTRA AND OTHERS] in support of his contentions.

9. Per contra, the learned Government Advocate by relying upon the counter affidavits would contend that the respondent inspected the construction site and based on such inspection, the impugned show cause notices were issued for violation of the provisions of the Migrant Workmen Act and the Contract Labour Act. After obtaining the proper approval from the competent authority, charge sheet has been filed against the petitioner for violation of both these enactments and the same has been taken on file as STC Nos. 196, 197 and 198 of 2008 on the file of the learned Judicial Magistrate, Uthiramerur and on 3.4.2008 summons has been issued to the petitioner for hearing on 19.5.2008 and the cases were adjourned to 9.6.2008 since the summons could not be served on the petitioner and at that stage the present Writ Petitions have been filed. The learned Government Advocate would further contend that there are no merits in the Writ Petitions, the Writ Petitions filed against the show cause notices are not maintainable and the respondent was well within his jurisdiction to issue the impugned notices.

10. Considered the submissions made by the learned counsel appearing on either side and perused the materials available on record as well as the relevant file circulated by the learned Government Advocate.

11. The Migrant Workmen Act was enacted with a view to eliminate the abuses to which the workmen recruited from one State and taken for work to another State were subjected by Contractors and others who are recruiting them and the intention of the legislature was to make it applicable to every establishment in which five or more Inter-State migrant workmen are employed or were employed and it will also be applied to other contractors who employ or employed five or more Inter-State migrant workmen. The statement of objects and reasons of the Act states that the establishment proposing to employ Inter-State migrant workmen will be required to be registered under the provisions of the Act.

12. Similarly the Contract Labour Act was enacted to abandon wherever possible or practicable the employment of contract labour and was intended to prevent the exploitation of contract labour, introduce better conditions of service and to regulate the contract labour so as to ensure payment of wages and provisions of essential amenities.

13. The definition of the term establishment under both these Acts are identical so as to cover any place where any industry, trade, business, manufacture or occupation is carried on. The

contention of the petitioner is that they do not fall within such definition since their Textile Unit was not established at the relevant point of time when inspection was conducted by the respondent and only construction activities were going on. Prima facie it is clear that the definition of the terms establishment has been very widely couched and it covers 'any place which could also cover a working site'.

14. The other contention raised by the learned counsel for the petitioner is that even assuming if the provisions of the Act are applicable, the Contractor's work is covered under the provisions of Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 who has engaged the workmen, they are not covered under these enactments and the petitioner cannot be penalised. However, it is to be noted that the Act also defines the term principal employer under section 2(g) of Act 37 of 1970 and from the facts, it prima facie appears that the petitioner would fall within such definition. Therefore, it is clear that the show cause notices issued cannot be termed to be without jurisdiction. The issue as to whether the petitioner could be made liable for violation of these statutes or in other words whether the provisions of statutes could be made applicable to the petitioner are matters to be contested before the Court of Judicial Magistrate, Uthiramerur, in which the prosecution cases are pending. Though it has been stated that the petitioner has submitted their explanation to the show cause notice, no opportunity or acknowledgment from the respondent has been filed to show that the explanation was submitted within the time stipulated. From the file, it is seen that though notices dated 08.01.2008 were served and received by the petitioner on 04.03.2008, no reply was submitted and thereafter the Inspector of Factories by proceedings dated April 2008 in Omu No.E/776/08 has granted permission to launch prosecution (pages 45 to 55 of the file C.No.15/2008)

15. Be that as it may, the stage of the proceedings has now culminated in charge sheets being filed against the petitioner and the cases are pending in STC Nos. 196, 197 and 198 of 2008 before the competent criminal Court and at this stage the petitioner cannot contend that the show cause notices have to be quashed and if the same are quashed, the prosecution itself would have a natural death. In support of his contention, the learned counsel relied upon the case of (1974) 2 SCC 121 [NAWABKHAN ABBASKHAN Vs. THE STATE OF GUJARAT], referred supra.

16. Since prima facie, I am satisfied that the show cause notices cannot be held to be without jurisdiction, the decision relied on by the learned counsel does not in any manner advance the case of the petitioner. In any event, since the matter is now pending before the competent criminal Court, this Court is not inclined to express any final opinion as regard the merits of the

contentions raised by the petitioner as to whether the provisions of both these statutes are applicable. These issues could very well be thrashed by the petitioner in the pending prosecution case and establish that the prosecution itself is not sustainable. Therefore, this Court is not inclined to entertain the present Writ Petitions filed against the show cause notices issued under the provisions of the Inter-State Migrant Workmen (Regulation of Employment Conditions of Service) Act, 1979 and the Contract Labour (Regulation and Abolition) Act, 1970.

17. For the reasons stated above and also taking note of the fact that prosecution has been initiated and the petitioner has also received summons from the competent criminal Court as early as December 2008, the Writ Petitions are liable to be dismissed. It is made clear that the reasoning given in the preceding paragraphs are only prima facie conclusions arrived at by this Court for the purpose of appreciating the contentions raised by the petitioner. The dismissal of the present Writ Petitions will not preclude the petitioner from raising all legal contentions and all other defences which are open to them in the pending prosecution cases.

The Writ Petitions are dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

rpa

Sd/-  
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

To

1. The Deputy Inspector of Labour  
Kancheepuram  
No.11/7, M.M.Avenue  
1<sup>st</sup> Main Road, Kancheepuram District.

- 2 ccs to Mr.S.R.Rajagopal, Advocate SR.46483, 46484
- 1 cc to Government pleader SR.47028

TRM(CO)  
EU 8.07.2010.

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