

(2001) 06 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No. 10415 of 2001 and W.M.P. No's. 15016 and 16050 of 2001

Pondicherry Pond's (India) Ltd., Leather Products Division
Employees Welfare Union

APPELLANT

Vs

Union Territory of Pondicherry and Others

RESPONDENT

Date of Decision : 25-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 LLJ 681

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : V. Prakash, for the Appellant; R. Natarajan and A.L. Somayaji, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The above writ petition is filed by Pondicherry Pond's (India) Leather Products Division Employees' Welfare

Union for the issuance of a writ of mandamus directing second and third respondents not to give effect to its notice of lay off dated April 30, 2001,

in respect of the workers of Hindustan Lever Ltd., Pond's Factory at Arumparthapuram, Pondicherry and holding that the said notice, dated April

30, 2001, is void ab initio and ultra vires of the provisions of Section 25-M read with Section 9-A of the Industrial Disputes Act.

2. The above writ petition has been filed on the following facts:

The unit at Arumparthapuram was an establishment under the provisions of Industrial Disputes Act, hereinafter referred to as the Act, employed

196 permanent workers out of which 117 workers were transferred to other locations which transfer orders are the subject-matter of dispute in

Industrial Dispute No. 8 of 2000. The management securing the transfer of the workers was with a view to close down the factory in violation of

Section 25-O of the Act and the same is the subject-matter of writ petition in W.P. No. 4865 of 2000 on the file of this Court. On April 30, 2001,

the third respondent has put up a lay-off notice saying that no production has been carried on at Arumparthapuram unit for the past six months,

which is in violation of Section 25-M of the Act. Hence, the present writ petition with the prayer as stated above.

3. On May 23, 2001, notice of motion returnable by four weeks was ordered and further interim injunction has also been granted till then. Notice

of motion has been ordered on the ground that it was represented that before issuing the notice of lay-off, prior permission of the Government has

not been obtained in terms of Section 25-M(1) of the Industrial Disputes Act, 1947.

4. The Manager of the second respondent filed a counter. In the counter, besides controverting the various allegations, made in the affidavit, filed in

support of the writ petition, contended inter alia that the present writ petition is directed only against the second and third respondents and they

being a private company are not amenable to the writ jurisdiction of this Court and as such, the writ petition is ex facie not maintainable. Further,

for the alleged grievance of the petitioner, remedies are available through the machinery constituted under the Act. On facts, it is the contention of

the respondents that a German firm called GABOR, who are originally placing orders for shoe uppers, which is manufactured in the respondent

unit, refused to place orders on the Arumparthapuram factory, which led to a situation, where the third respondent could not carry on its activities

nor gainfully utilise the services of the available work force. All the employees including those falling under the category of workmen within the

meaning of Section 2(s) of the Act, barring 46 workmen were deployed to other centres. After February, 2000, there was hardly 22 workmen in

the Arumparthapuram factory and even among them, some of them left service on their own volition and as on date, there are only 13 workmen

and are remaining idle and paid wages for more than a year. In the aforesaid situation, the third respondent felt that there was no point allowing the

13 workmen to come to the factory premises, remain idle and return home. Hence, by notice, dated April 30, 2001, the 13 workmen were

informed that they will be laid off from May 3, 2001 and as such, the lay-off notice, which is impugned in the writ petition is perfectly valid and

justified and the same cannot be assailed on any ground. It is further contended that the lay-off was given effect to from May 8, 2001 and the

petitioners are very much aware of the same. Without disclosing the same, the petitioner has obtained an order of injunction from this Court on

April 23, 2001. Since the lay-off has already taken effect, there is no scope to injunct the lay off, however by way of caution, the laid off workmen

are permitted to come to the factory and the status quo ante May 8, 2001 has been restored. With these averments, the second and third

respondents filed counter and also filed a petition to vacate the interim injunction granted.

5. Sri Prakash, learned counsel appearing for the petitioner has contended that the factory at Arumparthapuram has employed 196 permanent

workers for the last twelve months and is an establishment covered under Chapter V-B of the Act. When the establishment is so covered under

Chapter V-B of the Act, if the respondents want to impose a lay off of workers, it can be done only in accordance with the provisions of Section

25-M of the Act, which provides for prior permission from the appropriate Government, i.e., Union Territory of Pondicherry in this case, so far as

the present case is concerned, no such prior permission has been obtained by the second and third respondents. Hence, the notice impugned is

ultra vires of the provisions of Section 25-M. He further contended that the action of the respondents reducing the workers is also in violation of

Section 9A of the Act. To support his argument, he contended that Clause 11 of Schedule IV provides that any increase or reduction in the

number of persons employed or to be employed in any occupation or process or department or shift, has to be done only as per Section 9A of the

Act. In the present case, no notice of change has been issued as contemplated u/s 9A. Hence, the reduction of workers is also not in accordance

with Section 9A. With these grounds, Sri Prakash assailed the notice of layoff, dated April 30, 2001.

6. Sri Somayajee learned senior counsel appearing for respondents No. 1 and 2, contended that the writ petition as filed by the petitioner is not

maintainable. He further contended that Chapter V-B of the Act is not applicable to the facts of the present case, since, according to him after

February 2000 there are hardly 22 workmen in the Arumparthapuram factory and even among them, some of them left the service on their own volition and for the past more than twelve months, there are only 13 workmen and all these workmen were remaining idle and paid wages since the unit has no orders for manufacture of shoe uppers and contended that the writ petition, as framed as if the unit covers under Chapter V-B is not correct and the present writ petition has been filed on untrue averment that the Arumparthapuram factory has 196 permanent workmen. He further contended that the prayer in the writ petition as well as the interim order as prayed for cannot be granted since the lay-off has already been given effect with effect from May 8, 2001. The petitioners are very much aware of the same and the prayer as (sic) couched in the writ petition would manifestly prove that the lay off has (sic) been given effect to from May 3, 2001. With the above contentions, the learned counsel prays for vacation of the injunction granted and also dismissal of the writ petition.

7. I have heard the arguments of the learned counsel on either side and perused the materials on record.

8. Sri Prakash, learned counsel appearing for the petitioner has contended that it is eminent that there is gross infringement of a statutory provision

and in such circumstances, the contention as to the maintainability of the writ petition has to be rejected and for that purpose, he relied on the

judgment of this Court in *Voltas Volkart Employees Union v. Voltas Ltd.* 2001 I LLJ 969 . In that case, a declaration was sought for against the

management in unilaterally changing the service condition as illegal and contrary to the Industrial Disputes Act and consequently to direct the

respondent not to effect any change in service conditions except by means of a settlement or an award or by giving a notice u/s 9A of the Act. The

case of the petitioner in the said cited case was that the company grants 12 days of National and festival holidays from one extra day for the year in

the case of extraordinary situation. The same has been agreed to by the union and the management as early as December 28, 1984 and from

1984, the management used to send the list of National and festival holidays during December of every year and ask the union to select 12 days

according to the choice of the workers but the management for the year 1999 instead of intimating the list of holidays, affixed in notice board the

list of holidays for the year. The holidays requested by the union for the months of January, February and March 1999 were accepted and

declared but unfortunately, the management refused to declare Good Friday as a holiday and directed the workers to report for work. According

to the petitioner, the management, started deviating from the practice of granting holidays as per the list sent by the union. As per Section 3 of the

Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, the employee shall be allowed in each calendar year 9 holidays.

Section 11 of the said Act protects the festival holidays and also the rights and privileges of any employee should not be curtailed. The employees

have been enjoying 12+ 1 National and festival holidays which are selected by them and the said practice was in vogue for a long time. The

management cannot withdraw any customary concession or privilege or change in usage except by issuing a notice u/s 9-A of the Act. On the said

facts, the Division Bench of this Court has found that there is a violation or non-compliance of statutory provisions of Section 9-A of the Act and

following the judgment of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, :and also South Arcot District Central Co-

operative Bank Ltd., Employees Association v. Deputy Commissioner of Labour reported in 1999 (4) LLN 1102. It was held that the writ

petition is maintainable in cases where it is established that there is a flagrant violation of the mandatory provisions of the Industrial Disputes Act,

1947 which constitute unfair labour practice or alteration of service conditions and the situation is so monstrous. In the facts of the present case, I

am not able to subscribe my view to the contention of the learned counsel Sri Prakash and I am of the view that the reliance of the judgment of the

Division Bench is misplaced. It is the specific and categorical averment of the petitioner in the affidavit filed in support of the present writ petition

that out of 196 employees, 117 were redeployed, which order of the management is the subject- matter of the dispute in Industrial Dispute No. 8

of 2000. The abovesaid specific averment is available at Para. 6 of the affidavit filed in support of the writ petition. Hence, admittedly, the

correctness of the redeployment of 117 workers out of 196 workers is under consideration before the authorities constituted under the Industrial

Disputes Act in I.D. No. 8 of 2000. Hence, the fact remains that only 50 workers are working in the factory.

9. In the factual situation, as stated earlier, whether the correctness of the transfer of workers is in accordance with Section 9-A or not is not

before this Court and it is in the anvil of the Labour Court in industrial dispute. Consequently, the application of Chapter V-B on the facts of the

present case is rather doubtful and the fact of number of persons employed in the unit is a disputed question has to be resolved only by the

machinery provided under the Industrial Disputes Act.

10. As seen from the prayer couched in the main writ petition as well as in the interim order, there is no relief sought for against the first respondent

- the Union Territory of Pondicherry and virtually the relief sought for is against respondents No. 2 and 3 - the company incorporated under the

provisions of the Companies Act.

11. The Supreme Court in the decision in VST Industries Ltd. v. VST Industries Workers Union reported in 2001 I LLJ 470 reported in the

nature of function of the company, i.e., whether the company is performing any public duty is an important factor for determining the company's

amenability to writ jurisdiction under Article 226. If the company is not performing any public duty and the condition of the service of workmen is

violated, then the Supreme Court held that there is no justification to hold that such activity will amount to public duty and consequently held that a

writ petition is not amenable. The same is the view taken by the Supreme Court in the decisions in Workmen in Canteen in S.R.F Ltd. v.

Government of Tamil Nadu reported in 1996 (2) LLN 965 which is against the decision reported in 1996 III LLJ (Supp) 370 rendered by the

Division Bench of our own High Court.

12. In view of the abovesaid judgments of the Supreme Court and in the facts and circumstances of the case, as narrated above, particularly, the

relief sought for is against respondents No. 1 and 2, who are the company incorporated under the provisions of the Companies Act and

manufacturers of shoe uppers are not performing any public duty and if at all, as from the averments made in the affidavit, the grievance of the

petitioner is the conditions of service of the workmen are violated, and further no relief is sought for as against the first respondent - the Union

Territory of Pondicherry, though it is arrayed as a party, I am of the view that the present writ petition is not maintainable. However, it is open to

the petitioner to seek recourse to the remedies available under the Industrial Disputes Act.

13. Therefore, the writ petition is dismissed. No costs. The interim injunction granted on May 23, 2001 is hereby vacated. Consequently, the connected W.M.Ps. are closed.

14. It is admitted by the second respondent that in view of the order passed by the Court the petitioner was allowed to be inside the second respondent unit. Taking into consideration the above, Sri Prakash pleaded for a payment of salary for those periods. Hence. I direct the second respondent to pay the wages for the period for which the stay granted was in force.