

Regional Manager, Tamil Nadu Civil Supplies Corporation Ltd. Vs. A. Kalyanasundaram and Assistant Commissioner of Labour, Appellate Side, Under the Tamilnadu Shops and Establishment Act

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Court : Chennai

Decided On : Feb-15-2008

Reported in : (2008)IIILLJ941Mad; (2008)3MLJ347

Judge : Elipe Dharma Rao and ;S.R. Singharavelu, JJ.

Acts : Tamil Nadu Shops and Establishment Act, 1947 - Sections 6, 11(1), 25, 31, 41, 41(1), 41(2), 43, 45, 50 and 51; [Constitution of India](#) - Article 366

Appeal No. : Writ Appeal No. 1321 of 2001 and C.M.P. No. 11824 of 2001

Appellant : Regional Manager, Tamil Nadu Civil Supplies Corporation Ltd.

Respondent : A. Kalyanasundaram and Assistant Commissioner of Labour, Appellate Side, Under the Tamilnadu Shops a

Advocate for Def. : S. Mukundhan, Adv. for ;Sarvabhovanum Associates for R1 and ;K. Balasubramanian, Spl.GP. for R2

Advocate for Pet/Ap. : R. Ponnusamy, Adv.

Disposition : Appeal dismissed

Judgement :

S.R. Singharavelu, J.

1. The writ appeal is directed against the order dated 1.11.1995 of the learned single Judge in W.P. No. 8015 of 1985, in dismissing the writ petition filed by the Regional Manager, Tamil Nadu Civil Supplies Corporation Limited, Tirunelveli, that was filed to quash the orders of the Assistant Commissioner of Labour, Appellate Side, under the Tamil Nadu Shops and Establishment Act, Tirunelveli (second respondent), made in TNSE A. No. (M) 4/83 in 18/78 dated 31.3.1984.

2. That order of the Appellate Authority was made at the instance of the appeal filed by the first Respondent viz., A. Kalyanasundaram. That appeal was filed under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947, against the order of the appellant herein.

3. In that appeal, it was contended by the first respondent that he was employed as a Bill Clerk in the Management's retail shop at Kayalpattinam from 14.3.1975, that two more persons also were employed in the shop, that the Senior Regional Manager inspected the shop on 12.10.1975, that in pursuance of the inspection regarding shortage of commodities like wheat, sugar, boiled rice and raw rice found thereon, a charge memo was given on 20.12.1975 levelling certain allegations. In the meanwhile the Taluk Supply Officer, Tiruchendur inspected the shop and submitted his report. On the strength of the report of the

Tahsildar, Tiruchendur, the first respondent was placed under suspension. Subsequently, charges were framed against him. Thereafter it was provisionally concluded to discharge him from service. Ultimately, final orders were passed removing him from service. According to the first respondent enquiry was not conducted properly and that he was not allowed to cross-examine the witnesses. On the side of the management it was contended that the delinquent himself has admitted the misconduct and repaid the amount of shortage. The appellate authority upon hearing the matter set aside the order of removal of the first respondent from the service passed by the Regional Manager, Tamil Nadu Civil Supplies Corporation, on the ground that the Senior Regional Manager himself has certified on the statement to the effect that they were recorded before him and while signing the order of removal he has signed it in the capacity as Senior Regional Manager and not in the capacity of the Enquiry Officer.

4. It is as against such order dated 31.3.1984 of the Appellate Authority, viz., the Assistant Commissioner of Labour, Tirunelveli, the appellant (the Regional Manager, Tamil Nadu Civil Supplies Corporation), has filed the writ petition contending that there was due enquiry according to law upon the following charges:

i. The President of Town Panchayat, Kayalpattinam had seized a cycle, 3 bogus family cards and 20 Kgs. of sugar red handed from a person who had purchased the sugar from the shop with the connivance of the staff in the CRS.

ii. That a verification of the sugar account revealed that there were sales of 46-1/2 kgs of sugar on 6.12.1975 and that the bill clerk had made bogus entries in the sales register with the aid of the check register;

iii. That they had distributed sugar to the bogus cards which did not find a place in A Register, but issued receipts noting down the genuine family cards Nos. for which sugar was not drawn actually for the month of November, 1975.

5. Even before the Appellate Authority, before whom the workman preferred an appeal under Section 41(1) of the Tamil Nadu Shops and Establishments Act, 1947, on behalf of the workman it was contended that there was no domestic enquiry as contemplated in the above said provision; and what was done was only a personal enquiry, which was not in accordance with the above mentioned Section 41(1). A reading of Para No. 11 of the order of the Appellate Authority would go to show that the contention of the appellant herein was that there was a domestic enquiry held against the workman.

6. But both the Appellate Authority as well as the learned single Judge found that the order of removal was signed by the appellant only in the capacity of Senior Regional Manager and not in the capacity of an enquiry officer. Therefore, the learned single Judge concurred with the finding of the Appellate Authority that there was no domestic enquiry properly conducted as contemplated under Section 41(1) of the Tamil Nadu Shops and Establishments Act, 1947.

7. So far and so long the appellant herein was only contending that there was a proper domestic enquiry conducted as contemplated under Section 41(1) of the Act. It is now before us an argument was advanced as if no provision of the Tamil Nadu Shops and Establishments Act is applicable against the Civil Supplies Corporation, which is an establishment under the State Government. In this connection, the learned Counsel relies upon Sections 4(1)(c) and 41(1) of the said Act, which runs as follows:

4 Exemption.--(1)Nothing contained in the Act shall apply to:

(a)...

(b)...

(c) establishments under the Central and State Governments, local authorities, the Reserve Bank of India, a railway administration operating any railway as defined in Clause (20) of Article 366 of the Constitution and cantonment authorities;

41. Notice of dismissal.--(1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice of wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.

It was further argued that as the State Government exercises a deep and pervasive control in the administration of the Corporation, it is an establishment of the State Government, falling within the ambit of Section 4(1)(c) of the Tamil Nadu Shops and Establishments Act and therefore, no provision of that enactment including Section 41(1) of the Act, under which the appeal was entertained by the Appellate Authority, would be applicable to the Civil Supplies Corporation.

8. Therefore, the crux of the contention of the appellant herein is that the appeal preferred by the workman before the Appellate Authority itself is unsustainable and the order of setting aside the removal of the workman passed by the Appellate Authority is itself invalid in the eye of law; consequently the order of termination of the workman made by the appellant herein is sustainable.

9. On the other hand, the learned Counsel for the first respondent submitted that there is a G.O. passed by the Government of Tamil Nadu in G.O.Ms. No. 379 dated 17.2.1984, which is only in exercise of the powers conferred by Section 6 of the Tamil Nadu Shops and Establishment Act, 1947, wherein the Government has exempted all the Establishments under the control of the Tamilnadu Civil Supplies Corporation in Tamilnadu from all the provisions of the said Act, except Sections 11(1), 25, 31, 41, 43, 45, 50 and 51 subject to some conditions mentioned therein.

10. Therefore, it was argued that in exercise of the powers conferred by Section 6 of the said Act there was an exemption from all the provisions of the said Act as against the establishments under the Control of Tamil Nadu Civil Supplies Corporation; and that it was excepting Section 41 and other provisions. Therefore, it was argued that Section 41 of the said Act would be applicable and based upon that Section 41 alone the appeal was preferred by the first respondent. So, it was argued on behalf of the first respondent that when once the G.O. itself was passed in exercise of powers conferred by Section 6 of the said Act, there is no question of G.O. overriding the Section 4(1)(c) inasmuch as the G.O. itself was passed in exercise of powers conferred by Section 6 of the same Act.

11. On behalf of the first respondent/workman an unreported judgment of the Division Bench of this Court dated 6.11.2007 made in W.A. No. 1184 of 1999 and W.P. No. 9014 of 1994 was relied upon. That was also a writ appeal preferred by the Tamil Nadu Civil Supplies Corporation against the order of the learned single Judge in W.P. No. 1945 of 1997. By the said order the learned single Judge in this case having noticed that the enquiry was vitiated, upheld the order of the Appellate Authority. Such order was challenged in the above writ appeal.

12. Similar argument was advanced that the appeal preferred under Section 41(1) of the Tamil Nadu Shops and Establishments Act, is itself unsustainable in the eye of law and therefore, the order of Appellate Authority setting aside the order of the Regional Manager is illegal. In other words, it was contended that as per Section 4(1)(c) of the Act, no provision of the said Act, including Section 41, under which the appeal was preferred by the workman before the Appellate Authority, would be applicable to Civil Supplies Corporation which was acting under the State Government. Such an argument was discountenanced by the Division Bench of this Court in the above said writ appeal by observing in para 10 of its judgment that no pleading was made by the Corporation as to in which manner it was guided and controlled by the State of Tamil Nadu and that the State of Tamil Nadu was also not made a party in the writ petition to find out whether they accept the Corporation as its establishment. It was further observed that without taking into consideration of the relevant provisions, it is not open to the Court to give any finding as to whether the State Government is having deep and pervasive control over the Corporation and thus it is an establishment under the State of

Tamil Nadu.

13. It was further observed that from the notification in G.O.Ms. No. 379 dated 17.2.1984 issued under Section 6 of the Tamil Nadu Shops and Establishments Act, exemption was granted for all other provisions except certain provisions including Section 41.

14. In the present case without going to the aspect as to whether the Civil Supplies Corporation is an establishment under the State Government, as the State Government was not made a party, it is very much made clear that there was no domestic enquiry held, if not as per Section 41(1) of the Tamil Nadu Shops and Establishments Act, at least as per the principles of natural justice. This aspect is evident from the fact that the Regional Manager has signed the papers only in such of his capacity and not as an enquiry officer. This was vividly discussed in the order of the Appellate Authority. In the absence of making the State Government as a party to this writ appeal, it is not open for the appellant to say that they are exempted from the provisions of the Tamil Nadu Shops and Establishments Act, 1947. Therefore, whether Section 41 is applicable to the present facts of the case or not, even as per principles of natural justice when there was no domestic enquiry conducted properly, and when there was no enquiry officer appointed and the order of removal was only done by the appellant herein, we are of the considered view that the enquiry was not conducted properly. Therefore, we consider it appropriate to dismiss the writ appeal by confirming the order of the learned single Judge as well as the finding of the Appellate Authority.

16. The writ appeal fails and is dismissed accordingly. No order as to costs.

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