

**Tamil Nadu Civil Supplies Corporation Ltd., Rep. by Its Senior Regional Manager Vs. B. Purushothaman and the Deputy Commissioner of Labour (Appeal), Appellate Authority Under the Tamil Nadu Shops and Establishments Act 1947**

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**Court :** Chennai

**Decided On :** Mar-10-2003

**Reported in :** (2003)IILLJ715Mad

**Judge :** K. Govindarajan, J.

**Acts :** [Constitution of India](#) - Article 226

**Appeal No. :** W.P. No. 18643 of 1997

**Appellant :** Tamil Nadu Civil Supplies Corporation Ltd., Rep. by Its Senior Regional Manager

**Respondent :** B. Purushothaman and the Deputy Commissioner of Labour (Appeal), Appellate Authority Under the Tami

**Advocate for Def. :** V. Prakash, Adv. for R1

**Advocate for Pet/Ap. :** John, Adv. for Ramasubramaniam & Associates

**Disposition :** Petition allowed

**Judgement :**

ORDER

K. Govindarajan, J.

1. The petitioner-corporation has filed the above writ petition seeking to quash the impugned order passed on 18.6.1997 in I.A. No. 47/97 in T.S.E Case No. 20/96 by the 2nd respondent.

2. The first respondent is an employee of the petitioner-Corporation. A charge memo was issued to him on 13.12.1993 alleging that he misappropriated a sum of Rs.4,25,545.75. After getting explanation and holding an enquiry, in the memo dated 24.1.1996 the enquiry officer submitted his report holding that the charges were proved. The first respondent submitted his further explanation after receiving the second show cause notice. Order of removal was passed on 20.5.1996. Against the order of removal, the first respondent filed an appeal to the 2nd respondent. Before the 2nd respondent, the petitioner-corporation filed an application in I.A. No. 47/1997 raising preliminary objection that the Tamil Nadu Shops and Establishments Act 1947, hereinafter called 'the Act', has no application to the petitioner-Corporation and so the 2nd respondent has no authority to deal with the appeal filed by the first respondent. In spite of the said objection, the impugned order dated 18.6.1997 was passed dismissing the said application holding that the Act will apply to the petitioner-corporation. Hence, the petitioner-corporation has filed the above writ petition.

3. Heard Mr. John, learned counsel appearing for M/S. Ramasubranmaniam & Associates and Mr. V. Prakash, learned counsel appearing for the first respondent.

4. The only question that has to be decided in this case is, whether the Act will apply to the petitioner-Corporation so as to enable the first respondent to file appeal, against the order of dismissal, before the second respondent.

5. Before going into the above said issue raised, I am inclined to deal with the scope of the Act. The Act is to provide for the regulations of conditions of work in shops, commercial establishments, restaurants, theatres and other establishments, and for certain other purposes. Section 2(3) of the Act defines 'Commercial Establishment'. Section 2(6) of the Act defines 'establishment', which means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishments as the State Government may by notification declare to be an establishment for the purposes of this Act. From the above said definitions, it is clear that any commercial establishment will come within the purview of the Act and so, any employee of the establishment can file appeal under Section 41(2) of the Act. But, under Section 4(1)(c) of the Act, the establishments under the Central and State Governments, local authorities, the Reserve Bank of India, a railway administration operating any railway and Cantonment authorities are exempted from the application of the Act. Otherwise, the application of the Act can be suspended by the State of Tamil Nadu under Section 6 of the Act. In the present case, the Government of Tamil Nadu, in G.O.Ms. No. 379, Labour Department dated 17.2.1984 exercising the powers under Section 6 of the Act exempted all the establishments under the control of the Tamil Nadu Civil Supplies Corporation in Tamil Nadu from all the provisions of the said Act, except sections 11(1), 25, 31, 41, 43, 45, 50 and 51 of the Act, subject to the conditions mentioned therein for a period of three years on and from 15th March 1984. The second respondent relying on the said G.O., has come to the conclusion that Section 41 of the Act is applicable to the first respondent as the said provision was not exempted and as the period of the G.O. had also over. The judgment cited by the learned counsel for the petitioner reported in C.V.RAMAN VS. BANK OF INDIA 1988 II LLN 156 was found to be inapplicable to the facts of the present case. The second respondent ultimately came to the conclusion that since the Government themselves issued the Government Order dated 17.2.1984 exercising powers under section 6 of the Act exempting only certain provisions, it cannot be said that the entire provisions of the Act is inapplicable to the petitioner-Corporation, especially when during the relevant period, the Government Order referred supra had lapsed.

6. Learned counsel for the petitioner relying on the Memorandum of Association and the Articles of Association of the petitioner-Corporation submitted that though it is a company incorporated under the Companies Act, it is Government owned Corporation and so Section 4(1)(c) of the Act is applicable to the petitioner-corporation, thereby the provisions of the Act cannot be made applicable to the petitioner-Corporation and so the appeal is not maintainable. Learned counsel took me to the various clauses in the Articles of Association and the Memorandum of Association. Learned counsel for the petitioner relying on the judgment reported in C.V.RAMAN VS. BANK OF INDIA 1988 II LLN 156 in support of his submissions, submitted that the Apex Court has come to such a conclusion in the said judgment only on the basis of the fact that the State Bank of India was created under the Act and the Central Government is having a right to liquidate the State Bank of India and also on the basis of other provisions, and the Supreme Court has come to the conclusion that in view of the said provisions, the Central Government have a deep and pervasive control over the State bank of India. According to the learned counsel, the said judgment cannot be made applicable to the facts of the present case because the petitioner-Corporation is not a creature of a Statute and the Government is not having any power to liquidate or wind up the company if they like. According to him, the management of the Corporation lies only with the Board of Directors and so the said judgment cannot be applied to reject the case of the petitioner. Relying on G.O.Ms. No. 379 dated 17.2.1984 issued exercising powers under Section 6 of the Act, learned counsel submitted that even according to the Government, the provisions of the Act is applicable to the petitioner-Corporation but for the said G.O. That is

why the said G.O. had been issued exempting certain provisions. But section 41 of the Act was not exempted. On that basis, the learned counsel submitted that after the period of three years as mentioned in the said G.O., it has to be taken that all the provisions of the Act are applicable to the petitioner-Corporation.

7. From the above said argument, it is clear that if the petitioner-corporation comes under Section 4(1)(c) of the Act, the appeal filed before the 2nd respondent-appellate authority by the 1st respondent cannot be sustained; if it is not so, the said appeal is maintainable and the same has to be disposed of on merits.

8. To decide the above said issue, we have to appreciate whether the petitioner-corporation comes under the State Government. The word 'under' may be used in the Statute in its literal sense as indicating condition of inferiority or subservience or as meaning subject to or in conformity with, denoting curtailment or restriction of, but nevertheless agreement or congruity with, something else to which it is made applicable. According to Venkataramiya's Law Lexicon, 'under' has the same significance as 'by virtue of' 'by or through the authority of'.

9. In the decision in *Ajay Hasia, etc. v. Khalid Mujib Sehravardi and others* 1981 II L.L.N. 613 the Constitution Bench of the Apex Court while deciding the issue whether Jammu and Kashmir Regional Engineering College, Srinagar, was a 'State' under Article 12 of the Constitution, it is held as follows:-

'It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership, which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. ...'

10. In the decision in 1988 II LLN 156 (supra), the Apex Court, on the basis of the above said decision of the Constitution Bench while dealing with the issue whether the Tamil Nadu Shops and Establishments Act was applicable to Banks in view of the provisions contained in Section 4(1)(c) of the Act, has held as follows:-

'12.If the criteria laid down above are applied to the facts of the instant cases it is obvious that even though the State Bank of India and the nationalised banks may not be owned as such by the Central Government and its employees may not be the employees of the Central Government they certainly will fall within the purview of the expression 'under the Central Government,' in view of the existence of deep and pervasive control of the Central Government over these banks.' .. . . .

16. As regards the first reason referred to above we have already pointed out that even if the decisions dealing with Art. 12 of the Constitution are not made the foundation for deciding the point in issue, the principles enumerated therein referred to above particularly with regard to deep and pervasive control are relevant for deciding the point in issue. As regards the second reason referred to above, suffice it to point out that for holding that the State Bank of India and the nationalised banks are establishments under the Central Government which have a corporate structure and have freedom in the matter of day today administration it is not necessary that these banks should be owned by the Central Governments or be under its absolute control in the sense of a department of the Government. With regard to the last reason namely the circumstance that even though Reserve Bank of India is mentioned specifically in the relevant clause containing exemption neither State Bank of India nor the nationalised banks are so mentioned, it may be pointed out that the Reserve Bank of India was established as Shareholders' bank under Act 2 of 1934. As seen above, the Kerala Shops Act and the Andhra Pradesh Shops Act which are of the years 1960 and 1966 respectively were modelled almost on the pattern of the Tamil Nadu Shops Act which is of the year 1947. When S. 4(1)(c) of this Act referred to the Reserve Bank of India in 1947 it obviously referred to it as Shareholders' Bank. The Reserve Bank (Transfer to Public Ownership) Act (Act 82 of 1948), came into force on 1 January 1949 and it was thereafter that the shares in the capital of the Reserve Bank came to belong to the

Central Government. In this background no undue emphasis can be placed on the circumstance that the State Bank of India or the nationalised banks did not find mention in the provision containing exemption even though Reserve Bank of India was specifically mentioned therein. For the reasons stated above the aforesaid decisions of the Kerala High Court and the Andhra Pradesh High Court deserve to be set aside.

17. On the view which we have taken namely that the State Bank of India and the nationalised banks are establishments under the Central Government we do not find it necessary to consider the question as to whether these banks are establishments which not being factories within the meaning of the Factories Act, 1948, are, in respect of matters dealt with in the Tamil Nadu Shops Act governed by a separate law for the time being in force in the State so as to be entitled to claim exemption under Cl.(f) of Sub-sec.(1) of S. 4 of the said Act or of the corresponding provisions in the Kerala Shops Act and the Andhra Pradesh Shops Act.'

11. From the above said decisions of the Apex Court, if the State Government is having deep and pervasive control over the petitioner-corporation, it has to be taken that such corporation is established under the State Government.

12. To appreciate the same, it is necessary for us to deal with the Memorandum of Association and Articles of Association of the petitioner-corporation.

13. The petitioner-corporation was incorporated under the provisions of the Companies Act 1956, on 24th April 1972. According to the Articles of Association of the petitioner-corporation, no invitation shall be issued to the public to subscribe for any shares in or debentures of the Company. The Company is being managed by the Directors being appointed by the Governor. As per Article 74 of the Articles of Association of the petitioner-corporation, the Governor is having power to determine the number of Directors of the Corporation. He is also having power to remove any Directors including the Chairman and to determine the period for which the Chairman and the Managing Director to hold their respective post. According to Article 76 (5)(a) and (5)(b) of the Articles, prior approval has to be obtained from the Government for creation or upgradation of higher posts mentioned therein and also for appointments and promotions to the post which are one level below the Managing Director and Chief Executive Officer. The Governor is having power under Article 77 of the Articles to appoint any one of the Directors of the Board to be the Managing Director or a Board of Management consisting of two or more Directors or other person as General Manager of the Corporation for the conduct or management of the business of the Company. Even with respect to salary and allowances, the same can be fixed only by the Governor. The decision of the Board regarding resolution passed by the Board with respect to certain matters mentioned under Article 87 of the Articles can be implemented only after getting approval from the Governor. Article 112 of the Articles gives power to the Company to get the annual reports of the Company. Under Article 122 of the articles, notwithstanding anything contained in any of the Articles, the Governor, may from time to time, issue such directives as he may consider necessary in regard to conduct of the business of the Company or Directors thereof and in like manner may vary and annul any such directive and the Director shall give immediate effect to the directives so issued.

14. From the above said Articles, it is clear that the State Government is having effective control over the petitioner-corporation. As held by the Apex Court, though the petitioner-corporation is having freedom in the matter of day to day administration, the State Government is having deep and pervasive control in all deciding factors with reference to the administration of the petitioner-corporation. So the decision of the Apex Court in 1988 II LLN 156 (supra) will squarely apply to the facts of the present case and so Section 4(1)(c) of the Act does apply to the petitioner-corporation as it has to be construed as an establishment under the State Government and thereby its claim for exemption from the purview of the Act has to be sustained.

15. Learned counsel appearing for the 1st respondent submitted that when the Government themselves issued the Government Order dated 17.2.1984 exercising powers conferred under Section 6 of the Act granting exemption with reference to certain provisions of the Act, now the petitioner-corporation cannot

come forward with a different case. Merely because the Government have wrongly exercised the said power, the 1st respondent cannot take advantage of the same to contend that the petitioner is estopped from relying on Section 4(1)(c) of the Act. There cannot be any estoppel with reference to the statute. In view of the above, the said submission of the learned counsel for the 1st respondent cannot be sustained and so the appeal filed by the 1st respondent before the 2nd respondent is not maintainable. Hence the impugned order dated 18.6.1997 passed by the 2nd respondent is set aside.

16. For all the reasons stated above, this writ petition deserves to be allowed and is allowed accordingly. No costs. W.M.P. Nos. 29395/1997 and 8155/1998 are closed.

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