Tamil Nadu Medical Services ... vs Tamil Nadu Medical Services ... on 17 May, 2024

Author: Sanjay Karol

Bench: J.K. Maheshwari, Sanjay Karol

REPORTABLE

2024 INSC 446

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6511 OF 2024
(Arising out of SLP(C)No.30005 of 2019)

TAMIL NADU MEDICAL SERVICES
CORPORATION LIMITED … APPELLANT(S)

Versus

TAMIL NADU MEDICAL SERVICES
CORPORATION EMPLOYEES WELFARE
UNION & ANR. …RESPONDENT(S)

WITH
CIVIL APPEAL NO.6512 OF 2024
(Arising out of SLP(C)No.2649 of 2020)

G. SUMATHI & ORS. … APPELLANT(S)

Versus

TAMIL NADU MEDICAL SERVICES
CORPORATION LTD. & ANR. …RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. Leave to appeal by special leave granted.

1|SLP(C)30005/2019 THE APPEALS

2. The cross appeals, one by the Tamil Nadu Medical Services Corporation Limited1 and the other by

the Tamil Nadu Medical Services Corporation Employees Welfare Union2, question the judgment and order dated 9th August, 2019, passed by the High Court of Judicature at Madras in W.P.Nos.17133 of 2001 and 15241 of 2009 respectively. The position of the parties is in accordance with SLP(C)No.30005 of 2019.

3. The impugned judgment came to be passed in Writ Petition No.17133/2001 which was directed against order dated 31st March, 2001 of the Inspector of Labour, Circle-III, Chennai3, by which the claim of 53 workmen to be conferred permanent status in the Corporation was accepted, while the claim of 42 others was rejected.

4. W.P. No.15241 of 2009 was filed by 22 out of the said 53 workmen seeking a writ of mandamus to be granted employment in the Corporation as per the order of the Inspector of Labour.

1 Hereinafter 'the Corporation'. 2 Hereinafter 'the Union'.

3 Hereinafter 'Inspector of Labour'.

2|SLP(C)30005/2019 QUESTIONS BEFORE THIS COURT

5. The questions that this Court is to consider are –

(i) Whether the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 would apply to the parties?

(ii) Whether by way of the impugned judgment, the suggestion to institute an 'Industrial Disputes Claim' questioning non-employment was sustainable, given that the Inspector of Labour had already passed orders in that regard?

FACTS IN BRIEF

6. The Corporation was incorporated under the Indian Companies Act, 1956 on 1st July, 1994. Its management is under the State of Tamil Nadu. It has employed various workmen in different capacities, including the appellants in the appeal arising out of SLP(C)No.2649 of 2020. Such employees had sought regularization under the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent

3|SLP(C)30005/2019 Status to Workmen) Act, 19814. Such representations being unsuccessful, two Writ Petitions bearing Nos.17263 and 17147 of 1998 were preferred before the learned Single Judge of the High Court.

7. The learned Single Judge5, vide judgment and order dated 21st July, 2000 passed the following directions:

> "19....

1. The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981) is applicable to the second respondent corporation.

2. The 'Inspector' having jurisdiction over the second respondent is directed to inspect and verify the records of the second respondent corporation and pass appropriated orders under Sec.3 of the said Act with regard to the claim made by the members of the petitioner Union;

3. The 'Inspector' is also directed to consider the claim made by the petitioner Union regarding employment on Saturdays to the members of the petitioner Union;

4. The 'Inspector' is further directed to determine the above referred questions within three months from the date of a copy of this order after affording an opportunity of being heard to both parties; and

5. Till an order is passed by the 'Inspector' as stated above, status quo as on date shall be maintained by both parties. Writ petitions are allowed to the extent mentioned above. No costs. All the miscellaneous petitions are closed." 4 Hereinafter 'the Act'.

5 Annexure P1, pg 61.

8. Pursuant to the above order, the Inspector of Labour passed order dated 31st March, 20016, wherein the following issues were framed :

"ISSUES

(a) Whether the act pertaining to conferment of permanent status of Workmen could be made applicable to the respondent Establishment

(b) Whether the authorized office under the aforesaid act being Labour Inspector has got the authority to try this case?

(c) If, the respondent's Management is covered by the Jurisdiction of the aforesaid Act what is the nature of relief that could be awarded to the petitioners?"

9. The Inspector of Labour concluded that G. Sumathi and 52 other workmen were in the service of the Corporation continuously for 480 days over a period of 24 months and accordingly they could be granted permanent status.

10. It is against this order that the judgment and order impugned before us, eventually came to be passed. An appeal assailing the order dated 21st July, 2000 and, an independent writ petition was

filed against the order dated 31st March, 2001 of the Inspector of Labour, and Division Bench vide order 6 Annexure P3, pg.98.

5|SLP(C)30005/2019 dated 10th December 20097 in such proceedings, confirmed both these orders and the Corporation was directed to provide employment to the Respondents, such as those who were before the Court as petitioners (original writ petitioners) in those proceedings. Against such confirmation of the order of the Inspector of Labour, Civil Appeal Nos. 6567 and 6568 of 2012 were preferred.

11. Hence, this Court on 29th March 2010 while issuing notice, stayed the operation of the impugned judgment. Subsequently, on 10th March, 2016, while allowing the appeal, this Court remanded the matter to the High Court, thus-

"3. It has been submitted that while deciding the writ petitions and the connected matters, the High Court did not consider the fact whether the aforesaid Act is applicable to the members of the respondent-Union and the said submission appears to be correct.

4. In the afore-stated circumstances, the impugned judgment is set aside and the matters are remanded to the High Court for considering the same afresh in accordance with law. We are sure that the High Court will hear the matters afresh and decide the same in accordance with law.

5. Interim order dated 29th March, 2010 granted by this Court shall continue till the High Court modifies the same after hearing the concerned parties..." 7 page 205 of paper book

6|SLP(C)30005/2019 THE IMPUGNED JUDGMENT At this juncture, it is worth clarifying that the dismissal of the Writ Appeal Nos.1430 & 1431 of 2000 was not challenged before this Court and what was challenged was the dismissal of W.P.No.17133/2001 and the directions in W.P.No.15241/2009, which took on Civil Appeal Nos.6567 and 6568 of 2012, wherein the Court remanded the matter.

12. Pursuant to the above order of remand, The High Court in its judgment, recorded its agreement with the judgment of the learned Single Judge, reproduced supra. It was observed that the learned Single Judge had extensively examined the constitution of the management of the Corporation, the nature of activities conducted by it, et cetera and then concluded that the Act would apply on the ground that it was an industrial establishment under Section 2(3)(e) of the Act, and that they (the learned Division Bench) concur with the same.

13. It was further observed that since no appeal stood preferred after the writ appeals against the order of

7|SLP(C)30005/2019 the learned Single Judge, were dismissed, the order of the Inspector of Labour had become final. On independent analysis with respect to the application of the act on the Corporation, it was observed as under:

> "50. However on independent analysis of the facts, we categorically hold that the provisions of Tamil Nadu Act, 46 of 1981 are applicable to TNMSC Management, in view of the fact that, TNMSC Management is an industrial establishment as defined under section 2(3)(e) of the Act and that it is an establishment as defined under section 2 (6) of Tamil Nadu Act, 36 of 1947. By the above reasoning be conclusively hold that TNMSC Management is an industrial establishment and is covered under the provisions of Tamil Nadu Act, 46 of 1981." SUBMISSIONS OF THE PARTIES

14. We have heard the learned counsel for the parties and perused the written submission. On behalf of the appellant, it has been submitted :-

> a) That the order dated 10th March, 2016 of this Court was not complied with. The specific plea of the appellant that the Act as also the Tamil Nadu Shops and Establishments Act, 19478 would not be applicable to the appellant. However, the same was not considered by the High Court. The only manner in 8 Hereinafter 1947 Act
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> 8|SLP(C)30005/2019 which the said Act could be applicable was that the Corporation would fall under the definition of 'commercial establishment' under Section 2(3) of the 1947 Act.

b) That the impugned judgment did not analyze whether any of the activities of the Corporation fell under Section 2(3) of the 1947 Act. Section 7 of the Act exempts such of those industrial establishments, that are engaged in construction activities and since some of the activities of the Corporation, include construction, the Corporation would be exempt.

c) That most of the 53 employees who are appellants in Appeal arising out of SLP(C)No.2649 of 2020, who were directed to be given permanent status by the Inspector of Labour, have obtained other profitable employment and the Corporation cannot be forced to grant permanent status.

15. The respondent-Union has submitted –

(a) That the Corporation is attempting to distinguish the status of the respondents by applying

9|SLP(C)30005/2019 the ratio of State of Karnataka v. Uma Devi9 after having exploited them for years together as temporary employees. Reliance has been placed on Maharashtra State Road Transport Corporation v. Casteribe Rajya Parivahan Karmachari Sanghathana10 and particularly, paragraphs 32 to 36 thereof.

(b) Relying on U.P. Power Corporation Limited & Anr. v. Bijli Mazdoor Sangh & Ors.11, it is submitted that the industrial adjudicator, although can vary terms of employment, but cannot do anything violative of Article 14 and if the case at hand is covered by the concept of regularization, the same Rule applies.

(c) Relying on ONGC Limited v. Petroleum Coal Labour Union & Ors.12 and Ajay Pal Singh v. Haryana Warehousing Corporation13, it is urged that the powers of Industrial and Labour Courts were not in consideration in Uma Devi (supra).

(d) A tabular chart has been provided in respect of the 12 appellants in the Appeal arising out of SLP(C)No.2649 of 2020 and it is submitted that since (2006) 4 SCC 1 10 (2009) 8 SCC 556 11 (2007) 5 SCC 755 12 (2015) 6 SCC 494 13 (2015) 6 SCC 321

10|SLP(C)30005/2019 the Inspector of Labour vide its order has declared the eligibility of the said workmen for grant of permanent status, there falls no requirement to raise an industrial dispute questioning the non-employment. Such of those respondents who have reached the age of superannuation would be entitled to compensation in lieu of regularization as recognized in Ranbir Singh v. S.K. Roy, Chairman, Life Insurance Corporation of India & Anr.14.

ANALYSIS AND CONSIDERATION

16. The relevant provisions for the adjudication of the present dispute are reproduced below for ease of reference :-

2. Definitions. - In this Act, unless the context otherwise requires,-

x x x x x (3) "industrial establishment" means-

(a) .....; or

(b) .....; or

(c) .....; or

(d) .....; or

(e) an establishment as defined in clause (6) of section of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947); or

(f) .....; or

(g) any other establishment which the Government may, by notification, declare 14 2022 SCC OnLine SC 521

11|SLP(C)30005/2019 to be an industrial establishment for the purpose of this Act.

(4) "workman', means any person employed in any industrial establishment to do any skilled or unskilled, manual supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied [and includes a badli workman, but does not include any such

person,-

(a) who is employed in the police service or as an officer or, other employee of a prison; or

(b) who is employed mainly in a managerial or administrative capacity; or

(c) who, being employed in a supervisory capacity, [draws wages exceeding three thousand and five hundred rupees per mensem] or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

X x x x

3. Conferment of permanent status to workmen. - (1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty-four calendar months in an industrial establishment shall be made permanent. (2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lock-out [xxx], or a cessation of work which is not due to any fault on the part of the workman.

[Explanation [I]. - [For the purposes of computing the continuous service referred to in sub-sections (1) and (2), a workman shall be deemed to be in continuous service during the days on which] -

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) or under any other law

12|SLP(C)30005/2019 applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the course of this employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

[Explanation II. - For the purpose of this section, Law' includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act.]" (Emphasis supplied)

17. The core issue here is the application of the Act to the Corporation qua the employees and their Union. In order to examine the same, what is to be considered is as to whether the Corporation can be termed as an industrial establishment as per the provisions reproduced supra and whether the members of the Union would qualify as workmen and therefore would be eligible for permanent status under Section 3 of the Act.

18. The High Court considered this question in line with Section 2(3)(e), as above, i.e., the definition of 'establishment' provided under section 2(6) of the 1947 Act. It reads thus – "2. Definitions- In this Act, unless there is anything repugnant in the subject or context-

13|SLP(C)30005/2019 x x x x (6) 'establishment' means a shop. commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the 1 [State] Government may by notification declare to be an establishment for the purposes of this Act;"

19. For an establishment to be covered under the definition thereof under the 1947 Act, unless it is one of those specifically mentioned, it must satisfy being a commercial establishment which is defined under Section 2(3) which is as under -

"(3) 'commercial establishment´ means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act."

20. The affidavit dated 16th September, 2009 filed by the Corporation before the High Court records that the actual turnover for the year 2007-2008 is Rs.27.5 crores, vis-à-vis, the value of drugs distributed being at Rs.186.60 crores. The order of the Inspector of Labour records as under -

14|SLP(C)30005/2019 "Further the respondent advanced the arguments that the Tamil Nadu Medical Services Corporation is not functioning with any profit motive, that quality argues are being obtained from quality manufacturing and supplied the same to the consumers without obtaining any service charges and therefore, the respondent's establishment is not attending to any commercial duty and while perusing all the aforesaid factors and also the audited balance sheets of the respondents filed on behalf of the petitioner i.e. for the years 1994-95, 1995- 96 and 1996-97 it is seen that for the year 1994-95 the profit to the tune of Rs.6.96 lakhs and for 1995-96 Rs.8.44 lakhs and for 1996-97 Rs.1.84 lakhs had been obtained. Therefore it is clearly seen that the respondent's establishment has no profit intention as mentioned by the respondent is not at all true."

21. For any establishment to be commercial, it has to be established that the activities undertaken by it are for making some monetary gain. Commercial in the most rudimentary sense means buying or selling of goods in exchange of money. As the above reproduced, uncontroverted paragraph (also recorded by the High Court) establishes, the commercial element was not absent.

22. Further, it was submitted that the activities conducted by the Corporation did not fall under those mentioned under Section 2(3) of the 1947 Act. This submission too, is difficult to accept. The construction work, which the Corporation, by its own

15|SLP(C)30005/2019 admission, carries out, is also for non-governmental bodies such as firms, companies, and individuals. It would be apposite to refer to the observations of the High Court in this regard, in particular, paragraphs 37 and 38 of the impugned decision, which, for ease of reference are reproduced below :

> "37. TNMSC Management is a company registered under the Indian Companies Act, 1956 which iv wholly owned by the Government of Tamil Nadu. The objects of the company as seen from the memorandvm of articles of association are as follows :
>
> "(1) To buy or otherwise acquire all kinds and varieties of generic and patent medicines, drugs, mixtures, formulations, tablets, pills, powders, pharmaceutical and wadical products, needles, syringes, injectables, vaccinesr sera, immunogens, phylacogens, chemicals and surgical dressings, kits and instruments and to sell or supply to various hospitals and other health centres.
>
> (ii) To purchase, distribute, assemble, install, maintain or otherwise deal in all types of capitai quipments and instruments required in hospitals.
>
> (iii)To undertake designing and construction of Hospitals and or other buildings for Government, or for any other person including local authorities, corporations, societies, trusts, companies, firms and individuals.
>
> (iv)To establish modern varehouses and Engineering workshops to manufacture, assemble, repair or otherwise maintain various medical equipments, surgical instruments, diagnostic equipments, fire-

fighting equipments, furniture and – fittings including, hospital furniture and also to undertake civil and other general maintenance of hospitals.

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(v)To establish research and development centres and institutes for medical and para-medical personnel for imparting training in various Techno- Managerial fields." (Emphasis supplied)

38. It is also seen that TNMSC Management has warehouses in channel and in all. The District Headquarters. These warehouses are used for storing of medicines and drugs. It has been specifically held as a fact by the Inspector of Labour in the order dated 31.03.2001, that TNMSC Management had earned profit of Rs.6.95 lakhs in the year 1994-95, Rs.8.44 lakhs in the year 1995-96 mnd As.1.84 lakhs in the year 1996-97. Consequently, any contention raised that it is run on a "no profit basis" has to rejected."

23. It was argued that the Corporation's activities included construction and therefore it would be exempt from the application of the Act. Section 7 reads thus-

"7. Act not to apply to workmen employed in certain industrial establishment. – Nothing contained in this Act shall apply to workmen employed in an industrial establishment engaged in the construction of buildings, bridges, roads, canals, dams or other construction work whether structural, mechanical or electrical." The language of the provision is clear. It implies that this act shall not apply to those workmen who are engaged in the construction of buildings and the like or other construction work be it structural, mechanical, or electrical. Therefore, those

17|SLP(C)30005/2019 establishments and their workmen shall be exempt, who are engaged exclusively, in the work of construction. The objectives of the Corporation, which have been reproduced15 in the affidavit of the Union before the High Court, state:-

> " x x x
>
> iii) To undertake the designing and construction of hospitals and other buildings for the Government, or any other person including local authorities, corporations, societies, trusts, companies firms and individuals.

..."

24. This, however, in our view would not allow the Corporation to wash its hands off the responsibilities or obligations under the Act, since the construction to be undertaken by the Corporation, is only one of the many activities to be undertaken by it. To take all the workers out of the purview of the Act, especially, when the said workers, like the members of the respondent union, were not the ones undertaking construction is unwarranted.

15 Page 137 of the paperbook in SLP (c) 2649 of 2020

18|SLP(C)30005/2019

25. It was further argued that many of the persons directed to be granted permanent employment by the order of the Inspector of Labour have found profitable employment elsewhere, and as such the SLP on their behalf should be dismissed. We cannot accept this submission. Simply because some of the persons involved in the employment dispute have allegedly found other employment, that does not justify a dismissal of others' claims. Per the written submissions of the appellants in the appeal arising out of SLP(C)No.2649 of 2020, twelve appellants have approached this court. And therefore, it must be seen to its logical conclusion.

26. It was argued before the Courts below that the respondents had not continued in service after a certain point in time, however, the said argument was not accepted and we find no reason to take a different view on fact which since the year 1997 remains proven and recognized by the Courts.

27. As such, both requirements, of the establishment being covered under the definition of industrial establishment as provided and that of the employee

19|SLP(C)30005/2019 having uninterruptedly continued in service for 480 days or more for 24 months, having been met we have no hesitation in holding that the Act would apply to the parties to the present dispute.

28. The next question to be considered is whether the High Court on remand, could have ignored the order of the Inspector of Labour and suggested that the employees raise an industrial dispute questioning their non-employment. The reason for remand, as is seen from the judgment dated 10th March, 2016, was that the High Court had not considered that the Act would be applicable to the parties, which were the very same as the parties before us. In other words, the scope of remand was limited. The order of the Inspector of Labour was passed under the Act. Since the High Court concluded that the Act would apply, there was no reason for it to disturb the finding of the Inspector of Labour and, therefore, it ought to have simply ordered that the order of Inspector of Labour which concluded that the members of the respondent-Union be given permanent employment, be complied with. When an issue stands already decided

20|SLP(C)30005/2019 and such decision does not suffer from any vice of authority or jurisdiction then, putting those who enjoy an order in their favour through the wringer once more of having to re-establish their claim, this time before the authority under the Industrial Disputes Act, 1947, would be unjustified.

29. The appeal filed by the Corporation (Appeal arising out of SLP(C)No.30005 of 2019) is, in terms of the above, dismissed and the appeal filed by the respondent-Union through its President, G. Sumathi (Appeal arising out of SLP(C)No.2649 of 2020) is accordingly allowed with all consequences in favour of the respondent-employees, under the law, to follow.

Pending application(s), if any, shall stand disposed of.

.....J. (SANJAY KAROL) .....J. (PRASANNA BHALACHANDRA VARALE) May 17, 2024;

New Delhi.

21|SLP(C)30005/2019