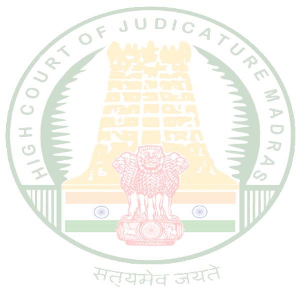
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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
07.09.2023	13.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.2247 OF 2023
AND
W.M.P. NOS.2328, 2330 & 2332 OF 2023

Maiva Pharma Employees Union
187/5, 9th Cross Street
Kamaraj Nagar, Chinna Elasagiri
Hosur 635 126, Krishnagiri Dist. .. Petitioner

- Vs -

1. Joint Director
Industrial Safety & Health
3/2A, Seetharam Nagar
Hosur 635 126.

2. Deputy Director
Industrial Safety & Health
3/2A, Seetharam Nagar
Hosur 635 126.

3. Maiva Pharma Pvt. Ltd.
No.32, SIPCOT Industrial Complex
Phase-I, Hosur 635 126
Rep. By its Senior Manager (HR & IR)
Mr. Karthi. .. Respondents

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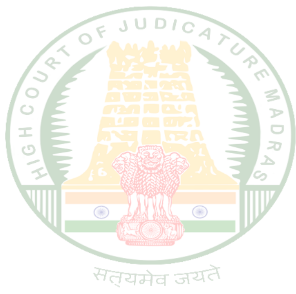
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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records from the 2nd respondent Deputy Director, Industrial Safety and Health, Hosur, relating to the order dated 12.01.2023 bearing reference Na.Ka. N.24/2023 and N.Pa.Mu/A/30/2023 and quash the same as illegal, arbitrary , without jurisdiction and consequently direct the 2nd respondent to declare the festival days suggested by the petitioner Union under Rule 4 of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Rules, 1959 as the festival holidays.

For Petitioner : Mr. N.G.R.Prasad, for
Mr. K.K.Ram Siddhartha, for
M/s.Row & Reddy

For Respondents : Mr. Sanjay Mohan, for
M/s.Ramasubramaniam Associates for R-3
Mr. M.S.Premkumar, GA for RR-1 & 2

ORDER

Assailing the order passed by the 2nd respondent in approving the list of festival holidays submitted by the 3rd respondent as arbitrary, illegal and for a consequential direction to declare the days mentioned in Annexure ‘A’ as

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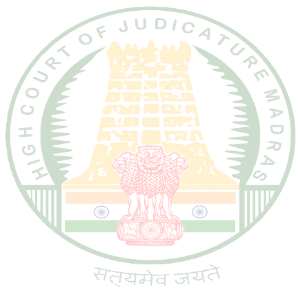
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festival holidays, as suggested by the petitioner, the present petition has been filed.

2. It is the case of the petitioner that the 3rd respondent is engaged in the manufacture of pharmaceutical products and employs 125 workers; 50 workers were termed as Management Trainees; 100 workers are termed as Contract Labourers; 50 fixed term employees and about 450 staff are working in the 3rd respondent.

3. It is the further case of the petitioner that Sunday is a holiday with the 3rd respondent. The 3rd respondent is registered under the Factories Act, 1948 and is covered under the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 (for short 'the Act'). It is the case of the petitioner that Section 3 of the Act contemplates 4 national holidays, whether it falls on a Sunday or not. That apart, the employees are entitled to 5 festival holidays.

4. It is the further case of the petitioner that before finalizing the 5 festival holidays, the 2nd respondent, in consultation with the employer and

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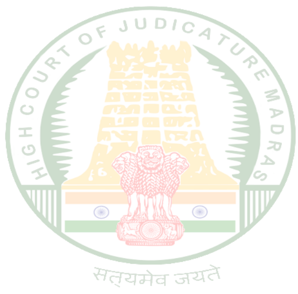

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employees may specify the 5 festival days, which could be treated as holidays. It is the further case of the petitioner that the 3rd respondent, without consultation, suggested the following 5 festival holidays for the year 2023, of which 3 festival days fall on a Sunday, which by itself is a holiday :-

S. No.	Description of Festival	Date & Day
1	Pongal	15.01.2023 – Sunday
2	Tamil New Year	14.04.2023 – Friday
3	VinayakarChathurthi	17.09.2023 – Sunday
4	Vijaya Dasami	24.10.2023 – Tuesday
5	Deepavali	12.11.2023 - Sunday

5. It is the further case of the petitioner that on 20.12.2022, the petitioner sent a representation to the 3rd respondent requesting it to consult the employees in compliance of Rule 3 of the Tamil Nadu Industrial Establishments (National & Festival Holidays) Rules, 1959 (for short 'the Rules'). However, the 3rd respondent, without consulting the employees and displaying its proposal in the manner specified under Rule 3, unilaterally displayed Form V by choosing the festival days in such a way that 3 of them fell on Sunday, which otherwise is a holiday. Therefore, the Union sent a representation dated 27.12.2022 to the 1st respondent and suggested the following 5 days :-

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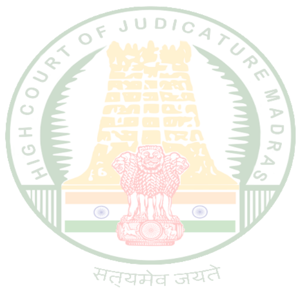

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S. No.	Description of Festival	Date & Day
1	Pongal	16.01.2023 – Monday
2	Tamil New Year	14.04.2023 – Friday
3	VinayakarChathurthi	22.03.2023 – Wednesday
4	Vijaya Dasami	24.10.2023 – Tuesday
5	Deepavali	13.11.2023 - Monday

6. It is the further case of the petitioner that the office bearers of the petitioner Union met the 1st respondent and submitted Form IV and they were informed that the 2nd respondent is the appropriate authority. Thereafter, the petitioner met the 2nd respondent on 2.1.2023 and explained the actions of the 3rd respondent in totally disregarding the provisions of the Act and Rules, whereinafter the Union was invited for talks on 5.2.2023, which ended in failure.

7. It is the further case of the petitioner that only after the petitioner Union raised an objection vide letter dated 27.12.2022, the petitioner was invited for talks clearly reveal that the display of Form V as early as on 24.12.2022 is totally illegal as it was done unilaterally and no proposal was sent to the Authority under the Act. It is the further case of the petitioner that

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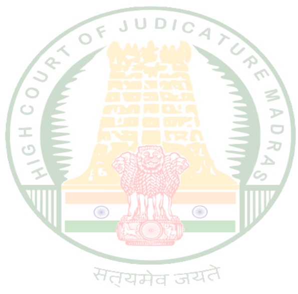

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the petitioner met the 2nd respondent on 2.1.2023 and 10.01.2023 to ascertain the status of their representation dated 27.12.2022.

8. It is the further case of the petitioner that the 2nd respondent, who is the authority under Section 3 of the Act, vide the impugned order dated 12.01.2023, rejected the claim for 16.1.2023 and went with 15.1.2023, which is a Sunday, which otherwise even is a holiday. Similar fate was meted out with regard to the substitute suggested for VinayakarChathurthi with Telegu New Year and a holiday for Deepavali on 13.11.2023.

9. It is the further case of the petitioner that the 2nd respondent has rejected the suggestion of the petitioner on two grounds, viz., (i) that only alternative festivals can be chosen and that alternative dates for the festivals cannot be chosen and (ii) that majority of the employees have agreed to the proposal sent by the 3rd respondent. On the above grounds, the representation of the petitioner was rejected.

10. It is the further case of the petitioner that the order of the 2nd respondent insofar as declaring 3 days which are already holidays as festival

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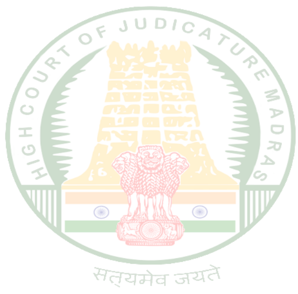
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holidays and not accepting the suggestions made by the petitioner Union defeats the purpose of the Act. It is the case of the petitioner that the 5 festival holidays should normally not be holidays and if the suggestion of the 3rd respondent is allowed to continue, it would give only 2 days as festival holidays to the workmen, thereby robbing the workmen of 3 festival holidays, which fall on a Sunday, which is otherwise a holiday. Aggrieved by the order of the 2nd respondent the present writ petition is filed.

11. Learned counsel appearing for the petitioner submits that an effective consultative process is envisaged under Rule 3, which is to be followed by the employer while issuing notice under Form No.II. However, in the case on hand, without following the procedure contemplated u/r 3 (2), the 3rd respondent had forwarded the list of festival holidays to the 2nd respondent, which is wholly contrary to Rule 3.

12. It is the further submission of the learned counsel that even Rule 4 enables for a change of festival holidays suggested by the employer by means of a consultative process with the employees. Such a procedure is included in

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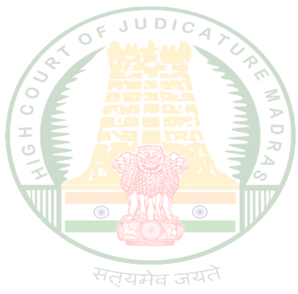
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the Rules only for mutual benefit of either side and the 3rd respondent, not following Rule 3, in effect, defeats the right of the employees, which is safeguarded u/r 4, thereby making Rule 4 redundant.

13. It is the further submission of the learned counsel that the finding that merely because a majority of the employees have agreed to the list in which 3 of the festivals fall on a Sunday cannot be a reason to reject the claim of the other employees as the purpose of the Act is to provide for 5 festival holidays, which effectively means that the 5 festival holidays should not be falling on a holiday, which would otherwise defeat the benefit granted to the employee.

14. It is the further submission of the learned counsel that the 2nd respondent has adopted the principle of purposive interpretation of the Act as the intention of the Act itself is to declare the festival days, which are not holidays. When the festivals fall on holidays, the very same holiday cannot once again be declared to be a holiday, which interpretation is wholly erroneous.

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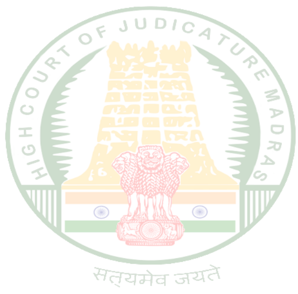
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15. It is the further submission of the learned counsel that Section 3 of the Act has to be interpreted in the context of Article 43 of the Constitution of India, which casts a duty on the State to endeavour by suitable legislation that all workers, agricultural, industrial or otherwise, ensure wage and a decent standard of life and full enjoyment of leisure and social and cultural opportunities. However, the leisure and enjoyment mandated under Article 43, which is ingrained in Section 3 of the Act resulting in the declaration of 5 festival days as holidays, has been given a go-by by the 2nd respondent by not properly appreciating the intent of the law makers and, therefore, the said rejection requires interference.

16. Learned counsel, to substantiate the aforesaid contention, placed reliance upon the decision in the case of ***M.R.F. Ltd. – Vs – Inspector, Kerala Government &Ors.*** wherein, the amendment to increase the festival holidays from 7 to 13 was upheld. In the case on hand, the petitioner merely seeks modification of the festival holidays as mandated under the Act, which is wholly permissible within the scheme of the Act and the Rules.

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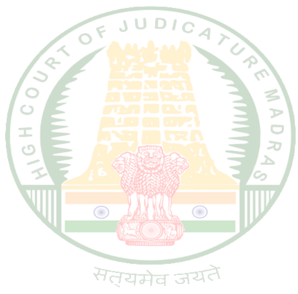
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17. It is the further submission of the learned counsel that there is no necessity to declare any holiday for festivals, which falls on a holiday, as even otherwise the said day is a holiday and only keeping the aforesaid fact in mind, the Legislature had thought it fit to specifically provide for five festival holidays u/s 3 of the Act and, therefore, the relevant provision, read in conjunction with Article 43 of the Constitution, harmonious interpretation ought to be given that any festival falling on a holiday, cannot be counted for the purpose of festival holiday and either festival or another day should be given towards holiday.

18. It is the further submission of the learned counsel that only with that object in mind, consultative process has been mandated u/r 3 and if the consultative process is either by-passed or frustrated, as has been done by the 3rd respondent, the very intent of the provision gets defeated.

19. It is the further submission of the learned counsel that even otherwise, declaring a Sunday, which is already a weekly holiday, as a festival

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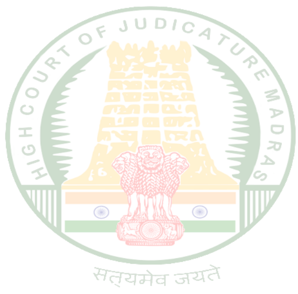
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holiday would be in violation of Section 9-A of the Industrial Disputes Act because it would be an alteration of the conditions of service, which is prejudicial to the workmen.

20. It is the further submission of the learned counsel that in the present case, no notice has been given to the workmen to decide on the festivals, which would be declared as a holiday. In this regard, reliance is placed on the decision of the Supreme Court in ***Lokmat Newspapers Pvt. Ltd. (1999 (6) SCC 275)***, wherein the emphasise has been placed by the Supreme Court on interpreting the word holiday, which is meant for the welfare of the workers.

21. Learned counsel placing reliance on the decision of the Apex Court in ***Tata Iron & Steel Co. Ltd. – Vs – The Workmen (2000 (1) CTC 184)***, rejected the contention of the Management in the said case that it would be immaterial for the workmen if any other day other than Sunday is declared as a holiday and the Supreme Court in the said case held that Sunday is qualitatively different for the family as it is that day the children will be at

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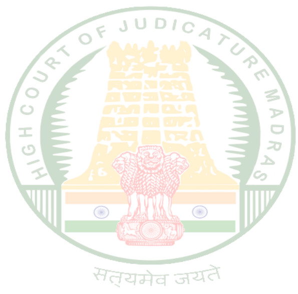
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home away from school and the day can be utilised by congregating together by visiting relatives.

22. On the basis of the above ratio laid down, it is the submission of the learned counsel that the 3rd respondent cannot convert a holiday, which is otherwise a weekly holiday into a festival holiday as both are qualitatively different and allowing the 3rd respondent to go ahead with the same is nothing but depriving the workmen of their legitimate right to which they are otherwise entitled in view of Article 43 of the Constitution.

23. Alternatively it is the submission of the learned counsel that the stand of the 2nd respondent that the petitioner had asked for alternate days and not alternative festivals, as it is only festival holidays, which is mandated under the Act and the Rules, cannot be the basis to reject the claim of the petitioner, as the workmen, as per the provision of the Act and the Rules, are entitled for 5 days festival holidays.

24. It is the submission of the learned counsel that without following the procedure of displaying the notice of holidays in the places specified and

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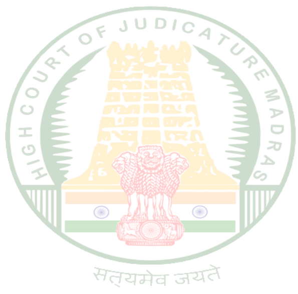

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the festival holidays, which were sought to be declared, were sent to the Authority as per Section 4 of the Act and though the petitioner had submitted representation to the 3rd respondent the same was not considered properly and further the representation sent by the petitioner pointing out the non-compliance of Section 4 of the Act which led to the 3rd respondent calling upon the petitioner to discussion. It is the further submission of the learned counsel that inviting the petitioner for discussion is wholly an exercise in futility as Rule 5 (1) of the Rules prescribes that Form V has to be sent to the Authority before the commencement of the calendar year and calling the petitioner for discussion on 5.1.2023 is clearly in violation of the Act and Rules, as it is after the commencement of the calendar year.

25. The 3rd respondent has to formulate the proposal to be sent to the Authority u/s 3 (2) after discussion with the petitioner, however, without following the said procedure, the list of holidays were sent to the 1st respondent and, thereupon calling the petitioner for discussion is wholly against the spirit and intent of the Act and the Rules.

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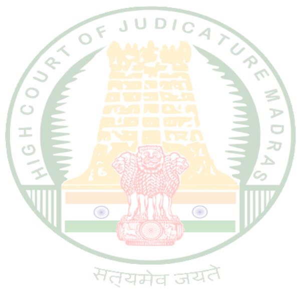
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26. Drawing the attention of this Court to the manner in which the holidays that fall either on Saturday or Sunday, which is a weekly holiday, the prevalent practice in the various countries like USA, UK, China areplaced before this Court to impress that any holiday that falls on a weekly holiday is pushed to the next day so that it is in the welfare of the workmen. Therefore, it is prayed that the impugned order is wholly perverse, irrational, unreasonable and it is based on an act, which is in stark violation of the Act and the Rules and, therefore, the same deserves to be set aside with consequential direction for declaring the days sought for by the petitioner as holidays in lieu of the holidays that falls on Sunday.

27. Per contra, learned counsel appearing for the 3rd respondent submitted that the Act compels the employer to give five holidays only on account of "festivals", which literally means that it is a condition precedent that there should be a festival that occurs that requires holiday on the day the festival occurs.

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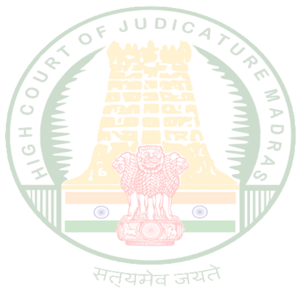

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28. It is the further submission of the learned counsel that Section 3 of the Act provides the 2nd respondent, in consultation with the employer and employees to determine the holidays. It is the further submission of the learned counsel that the definition of *"employee"* found in Section 2 (b) of the Act is extremely wide unlike the definition of *"workmen"* found under the Industrial Disputes Act to include employees in the cadre of Managers and Supervisors, who have a right of say in the consultative process to determine which of the days of festival should be selected for the purpose of declaring the holidays.

29. It is the submission of the learned counsel for the petitioner that majority of the employees of the petitioner have placed their wish to what the festival holidays should be, which was placed before the 2nd respondent, based on which the 2nd respondent had declared those days as holidays in the impugned order. When the majority of the employees have exercised their right to a particular day being declared as holiday for the purpose of festival, the stand of the petitioner that there was no consultative process is wholly misconceived.

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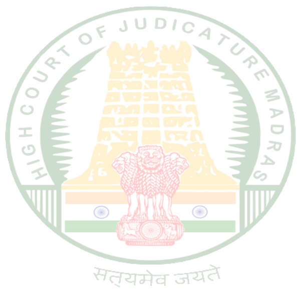
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30. It is the further submission of the learned counsel that not putting up of notice suggesting holidays without consulting the Union or not the authority competent to determine the festival holidays as per Section 3, after following the process of consultation and taking note of the majority view of all the employees, passed the impugned order declaring the festival holidays, which cannot be said to be erroneous.

31. It is the further submission of the learned counsel that even otherwise, a weekly holiday on which a festival falls, a holiday is declared only for the purpose of celebrating the said festival and whether it falls on a weekly holiday or any other day is immaterial as what is to be seen is only the need for the workmen to celebrate the festival for which holiday is given. When the workmen are not deprived of their right to celebrate the festival, as even otherwise the workmen are on a holiday, the claim by the workmen that an alternate day should be given in cases where a festival falls on a weekly holiday is not what the intent of the Act is and, therefore, the impugned order is perfectly in order and the same does not warrant interference.

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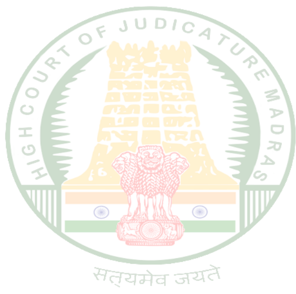
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32. Learned Government Advocate appearing for the 2nd respondent submits that the 2nd respondent is the authority under the Act and when the 3rd respondent suggested the 5 festival days to be declared as holidays of which 3 fall on Sunday, which by itself is a holiday, in the absence of the Act mandating that if a festival day falls on a Sunday, another day should be declared as a holiday, the 2nd respondent, on the basis of the concurrence for the list of holidays given by the majority employees, submitted by the 3rd respondent, invited the Management and the petitioner for talks, however, the petitioner failed to attend the enquiry on the date prescribed, but came the day after and raised the very same demand.

33. It is the further submission of the learned Government Advocate that the affidavit of the petitioner itself clearly states that even before the list of festival days were displayed, notice was given to the petitioner calling upon them for talks and as the petitioner did not present themselves for the consultative process, the 3rd respondent had proceeded to file Form IV before the 2nd respondent.

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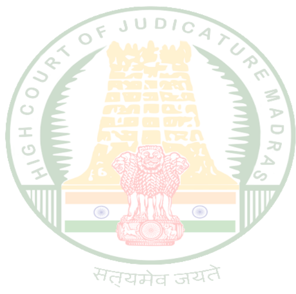
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34. It is the further submission of the learned Government Advocate that the 3rd respondent had given the list of employees who have signed giving their willingness with regard to the festivals that are to be declared as holidays, but the petitioner has not placed any material to show that the workmen, majority of them have not agreed for the same and in the absence of any material, the claim of the petitioner for declaration of other days, which do not fall on Sunday as festival holidays, is wholly impermissible, as it would be against the spirit of the Act and, therefore, prays that the impugned order is perfectly in order and no interference is warranted.

35. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on in support of the respective contentions.

36. Before embarking upon appreciating the contentions advanced by the learned counsel on either side, the relevant provisions of the Act and the

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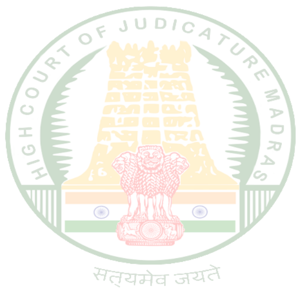
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Rules, which have a bearing on this case, needs to be glimpsed so that a cumulative appreciation of the submissions can be made.

37. Section 3 of the Act relates to grant of National, Festival and Special Holidays, and the same is quoted hereunder :-

> *"**3. Grant of National, Festival and Special Holidays -** (1)Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the 1st May, the 15th August and the 2nd October and five other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment.*
>
> *(2) Notwithstanding anything contained in sub-section (1), the Government may, having due regard to any emergency or special circumstances prevailing in the State or any part thereof, by notification, declare any other day as a special holiday, to the employees of the industrial establishments, as it may deem fit.*

38. Section 4 of the Act relates to the duty of the employer to send a statement and also cause it to be put up on the notice board in respect of the holidays permissible in each calendar year as provided for u/s 3 and the said provision is quoted hereunder :-

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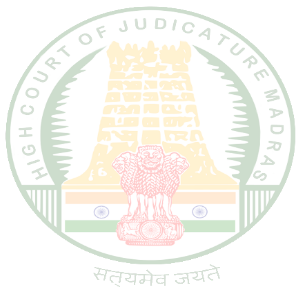
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*"**4. Employer to send statement to Inspector**—Every employer shall send to the Inspector having jurisdiction over the area in which the industrial establishment is situated, and display in the premises of the industrial establishment, a statement showing the holidays allowed in each calendar year under section 3, in such form, within such time and in such manner as may be prescribed."*

39. On a conjoint reading of Sections 3 and 4 of the Act it is evident that every employee is entitled to holidays of one whole day on four particular days, which are National Holidays and in addition to the same, the employee is entitled to *five other holidays* for such festivals as the Inspector may, in consultation with the employer and the employees specify and further before such declaration is made by the Inspector, a duty is cast on the employer to send a statement to the Inspector having jurisdiction with regard to the holidays and also to display the same in the premises of the industrial establishment showing the holidays allowed in each calendar year.

40. Therefore, it is evident that while a statement is sent to the Inspector, as a simultaneous act, the employer is to display on the notice board the list of holidays that is to be given for the festivals and it is a

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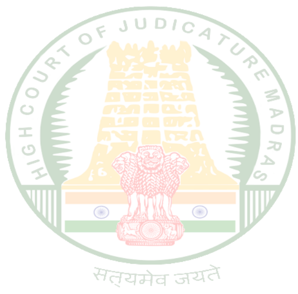
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necessary procedure, which safeguards the interests of both the employer and the employee, when the process of consultation takes place before the Inspector, in case any objection is raised by the employee and the consultative process is also a mandatory procedure for securing the interest of either parties.

41. In the above backdrop, the contention of the 2nd respondent in its counter that it is not mandatory for the 2nd respondent to have a consultative process between the employer and employee, as the term used in the said provision u/s 4 is *"may"* and, therefore, it is the discretion of the 2nd respondent, is wholly a flawed interpretation of the said provision. The use of the word *"may"* in Section 4 only signifies that where there is no difference of opinion as to the holidays, there is exclusion of the consultative process and in such a case, the 2nd respondent may do away with the consultative process. However, when there are objections raised by the employees u/r 3 (3), a duty is cast on the Inspector, after considering the proposal of the employer and the objections of the employees specify the festivals which shall be holidays u/s 3 of the Act. The word *"may"* would be significant in the said position as if

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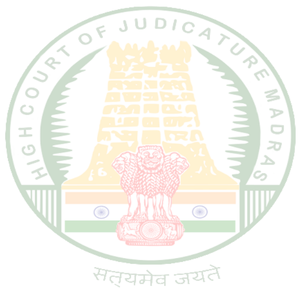

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any objection is raised, then the Inspector shall, in consultation with the employer and employee specify the festival holidays. The word *"may"* used in Rule 3 (2) should, therefore, be read as *"shall"* as is used in Section 3 of the Act. Therefore, where there is objection with regard to the festival holidays, it is mandatory for the Inspector to hold a meeting before issuing a declaration with regard to the festivals, which days are to be declared as holidays.

42. Rules have been framed in exercise of powers conferred under sub-section (1) and (2) of Section 12 of the Act. With regard to the declaration of holidays for festivals, as is provided u/s 3 of the Act, the necessary rule providing the manner in which such declaration is to be made is provided for u/r 3 and 4 and for better appreciation the same is extracted hereunder :-

> *"**3. Specification of festival by Inspector –** (1) Every employer shall, within thirty days from the date on which the Act comes into force, in the case of an industrial establishment existing on such date and within thirty days from the date of commencement of work in the case any of new industrial establishment, send induplicate together with a copy of the notice mentioned in sub-rule (2) to the Inspector having jurisdiction over the area in which the industrial establishment is situated, his proposal for the specification of festivals in Form No. 1:*

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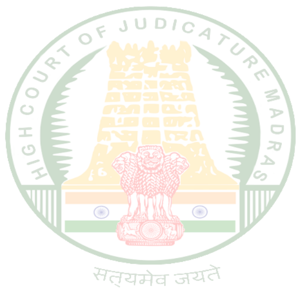
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Provided that in case of any industrial establishment, the Inspector may, if he thinks fit, extend the period within which the proposal for the specification of the festivals should be sent.

(2) The employer shall, on the day on which he sends to the Inspector the proposal mentioned in sub-rule (1), display in the premises of the industrial establishment in such manner as can be readily seen and read by the employees a notice in Form No. II specifying the period within which objections or suggestions of the employees referred to in sub-rule (3) shall be sent to the Inspector:

Provided that the employer may consult the employees before formulating his proposal mentioned in sub-rule (1).

(3) Objections or suggestions, if any, to the proposal of the employer shall be sent to the Inspector having jurisdiction over the area in which the industrial establishment is situated by the employees or by the trade unions representing the employees within a period of 15 days from the date on which the notice mentioned in sub-rule (2) is displayed in the premises of the industrial establishment.

(4) The Inspector shall, after considering the proposal of the employer and the objections and suggestions, if any, of the employees received within the period specified in sub-rule (3), specify the five festivals for which holidays are to be allowed under section 3.

(5) The festivals specified by the Inspector under sub-rule (4) shall be communicated to the employer in Form No. III. The employer shall, within seven days of receipt of the communication, exhibit in his industrial establishment a copy thereof in such manner as can be readily seen and read by the employees.

4. Change of the festivals specified – *(1) The employer or a majority of the employees or any trade union representing a*

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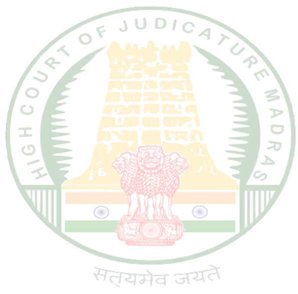

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substantial number of employees in any industrial establishment in respect of which festivals have been specified under section3, may, at any time, apply to the Inspector for a change in all or any of the festivals sospecified.

(2) The application for changing the specified festivals shall be sent to the Inspector having jurisdiction over the area in which the industrial establishment is situated in Form No. IV in duplicate.

(3) The provisions of rule 3 shall, mutatis mutandis apply to the change of festivals under this rule.

(4) The change made by the Inspector in the specified festivals under this rule shall be communicated to the employer in Form No. III in duplicate. The employer shall, within seven days of receipt of the communication, exhibit in his industrial establishment a copy thereof in such manner as can be readily seen and read by the employees. The festivals so changed by the Inspector shall take effect from the 1st day of the calendar year immediately following the year in which such change is effected."

43. It is the specific case of the petitioner that the notice to be displayed in the notice board by the employer with regard to the festivals, which are sought to be declared as holidays, as provided for u/s 3 r/w Rule 3 has not been complied with and without compliance of the same, the statement has been forwarded to the 2nd respondent with regard to the days,

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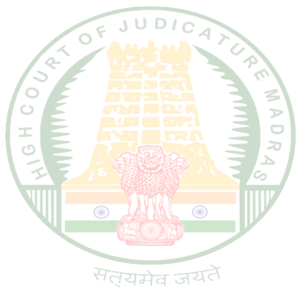
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which are marked as festival holidays and, therefore, there is violation of the provisions of the Act and the Rules.

44. It is borne out by record that the 3rd respondent Management has not in unequivocal terms stated that they have complied with the provisions of Section 3 and Rule 4 by displaying the notice in the notice board simultaneously while sending the statement to the 2nd respondent, however, the 2nd respondent, who is oblivious to the said act of the 3rd respondent, has come before this Court and stated that there is compliance with Section 3 and Rule 4 of the Act. This Court is at a loss to understand as to how such an inference could be drawn by the 2ndrespondent in the absence of any materials and further it is not the duty of the 2nd respondent to draw inferences, but is bound strictly by the provisions of the Act.

45. Therefore, the contention of the petitioner with regard to non-compliance of Section 3 and Rule 4 bears substance, which will be discussed in the later portion of the order. However, at the present juncture, the whole genesis of the case lingers on whether the festival day, which falls on a

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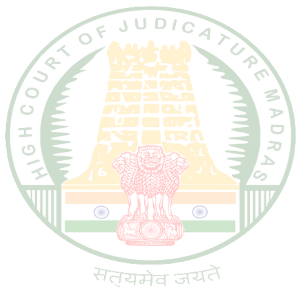
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Sunday, which is already a declared holiday, the holidays for such festivals could be given on any other day is the only issue that requires to be considered by this Court.

46. The petitioner lays its claim on Article 43 of the Constitution to impress upon this Court that the benefits which have been granted to the workmen, including time for leisure, is ingrained in Section 3 and harmoniously reading Section 3 alongwith Article 43, of necessity, any festival day, which falls on a holiday, the said day cannot be treated as a festival holiday, but it could at best be termed only as a weekly holiday and an alternative day should be provided to the workmen, either for the said festival or some other festival leave should be given.

47. However, the claim of the 2nd and 3rd respondents is that the holidays are earmarked only for festivals and, therefore, even if the festival falls on a weekly holiday, the said day could be declared as a holiday and no other day other than the day of the festival could be declared as a holiday as Section 3 mandates specifically that the holiday is to be declared only for such

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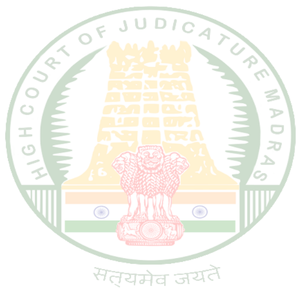

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of those festivals, which have been mutually agreed upon. It is the further stand of the 3rd respondent that insofar as the workmen are concerned, Sunday is not a weekly holiday for the workmen, as they work in shifts and it is a weekly holiday only for the administrative personnel and, therefore, the petitioner cannot claim that a weekly holiday has been declared as a holiday. Further, it is the stand of the 3rd respondent that a majority of the employees have agreed upon the declaration of the holidays and the miniscule portion of the employees represented by the petitioner cannot have any grievance and they cannot maintain their claim.

48. The Apex Court in *MRF case (supra)*, placing emphasis on Article 43 of the Constitution in relation to the increase in the number of holidays brought in by way of amendment to the Kerala Industrial Establishments (National & Festival Holidays) Act, 1958, which increase was assailed by the Management, the Supreme Court held as under :-

> *"We begin with an extract from, what is known as, the locus classicus, written down by Patanjali Sastri, C.J., in the State of Madras vs. V.G. Ros, 1952 SCR 597 = AIR 1952 SC 196 :-*

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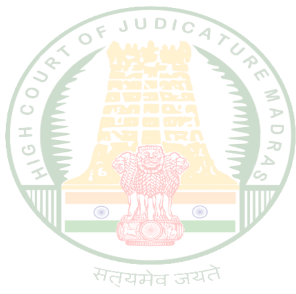
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"<u>It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict</u>. In evaluating such elusive factors and forming their own conception of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have in authorising the imposition of the restrictions, considered them to be reasonable."

** * * * * * *

In examining the reasonableness of a statutory provision, whether it is violative of the Fundamental Right guaranteed under Article 19, one cannot lose sight of the Directive Principles of State Policy contained in Chapter IV of the

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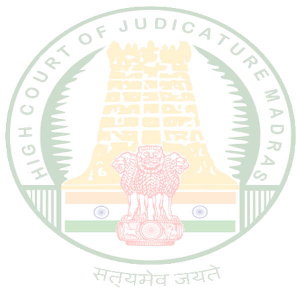

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Constitution as was laid down by this Court in Saghir Ahmad vs. State of U.P., AIR 1954 SC 728 = (1955) 1 SCR 707 as also in Mohd. Hanif Qureshi vs. State of Bihar, 1959 SCR 629 = AIR 1958 SC 731.

This principle was also followed in Laxmi Khandsari's case (supra) in which the reasonableness of restrictions imposed upon the Fundamental Rights available under Article 19 was examined on the grounds, amongst others, that they were not violative of the Directive Principles of State Policy. On a conspectus of various decisions of this Court, the following principles are clearly discernibly (1) While considering the reasonableness of the restrictions, the Court has to keep in mind the Directive Principles of State Policy.

(2) <u>Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public</u>.

(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Clause (6) of Article 19.

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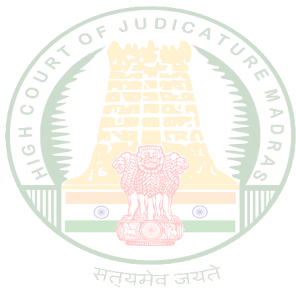
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(5) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind. (See: State of U.P. vs. Kaushailiya, (1964) 4 SCR 1002 = AIR 1964 SC 416) (6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise. (See: KavalapparaKottarathilKochuni @ Moopli Nayar vs States of Madras and Kerala. (1960) 3 SCR 887 = AIR 1960 SC 1080: O.K. Ghosh vs. E.X. Joseph. (1963) Supp. (1) SCR 789 = AIR 1963 SC 812) ....

Article 43 of the Constitution provides as under:- "43. Living wage, etc., for workers. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."

This Article enjoins the State to endeavour to secure to all workers, be they agricultural, industrial or otherwise, a living wage and proper conditions of work so as to assure to them a decent standard of life and full enjoyment of leisure and social

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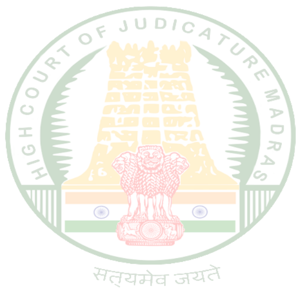

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and cultural opportunities. The idea, therefore, is that the workers would not be compelled to work on all days. While other employees may enjoy national and festival holidays, the workers in an industry or an agricultural farm must work throughout and should not avail of any holiday is not the philosophy of Article 43. As human beings, they are entitled to a period of rest which would enable them to fully enjoy their leisure and participate in social and cultural activities. It was for this reason that this Court in Manohar Lal vs. State of Punjab, (1961) 2 SCR 343 = AIR 1961 SC 418, upheld the compulsory closure of shop on one day. This decision was followed in Ramdhandas vs. State of Punjab, (1962) 1 SCR 852 = AIR 1961 SC 1559 upholding the restriction placed on the opening and closing hours of the 'shop. Both these decisions were followed in Collector of Customs, Madras vs. Nathella Sampathu Chetty, AIR 1962 SC 316 = (1962) 3 SCR.

It may be pointed out that the State of Kerala in its counter-affidavit pleaded that in order to introduce the amendments in the Parent Act by which the number of the national and festival holidays were increased, the Government took into consideration the change in social conditions, the developments in the State and the number of holidays enjoyed by other sectors. It was pleaded that the outlook towards Labour has undergone a drastic change since the enactment of the Parent Act in 1958. The contention of the appellants that the increase in holidays would result in the

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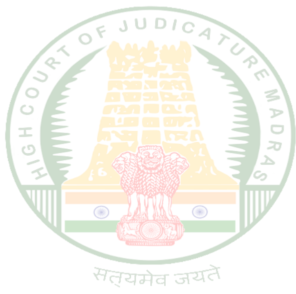
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loss of production was refuted by the State on the ground that the power to increase production required healthy Labour force. Some recreation and rest would make the Labour more fit and capable of doing their work more efficiently and satisfactorily which would result in more production. The Kerala Institute of Labour and Employment had already made a study of paid holidays available to industrial workers in Kerala State in 1982 and after studying the conditions prevailing in about one hundred and eighty public and private industrial establishments as to the national and festival holidays available to their workers had published a report. As per the analysis made in that report, it was noticed that the number of paid holidays available to industrial workers in the public sector in Kerala ranged from seven to twenty one days and in private sector, from seven to seventeen days. It was also noticed that the Government of India had declared sixteen holidays while Government of Kerala had declared eighteen holidays for the year 1990 which were repeated in 1991. Having regard to the factors enumerated in the counter-affidavit as also to the Directive Principles of State Policy contained in Article 43, we are of the opinion that the Act by which the national and festival holidays have been increased in fully constitutional and does not, in any way, infringe the right of the appellants to carry on their trade or business under Article 19(1)(g). The compulsory closure of the industrial concern on national and festival holidays cannot be

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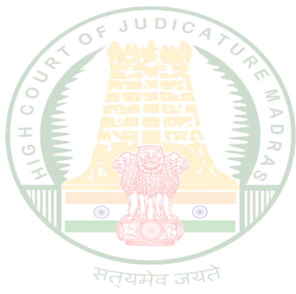
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treated as unreasonable. It is protected by Clause (6) of Article 19 and, therefore, cannot be treated to be violative of the Fundamental Right under Article 19(1)(g)."

(Emphasis Supplied)

49. The emphasis laid by the Supreme Court on Article 43 was for the specific purpose that Article 43 makes a provision to the workers, among other things, for a decent standard of life and full enjoyment of leisure, social and cultural opportunities. It is only with the benevolent object in mind, that the concept of weekly holiday was carved out in the week so that the labour would be fit for the next course the coming week. Resultantly, Sunday was declared as a weekly holiday for the employees. In the same stretch, the present Act and the Rules have been enacted so that the workmen could also equally have the benefit which is extended to the other employees of the establishment. Only with that aim in mind, the law makers, consciously have defined the term *"employee"* under the Act unlike the Industrial Disputes Act, in which the definition relates to *"workman"*.

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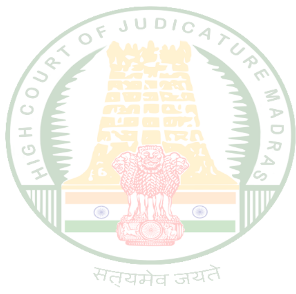

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50. In respect of industrial establishments, round the clock production is a necessity so that the plant keeps running and productivity increases, which in turn would be of benefit to both the employer and the workmen. However, the same should, in no way, jeopardize the leisure to which the workmen would otherwise be entitled to. While the employees on the administrative front are provided with certain benefits, which are not normally given to the employees in the production wing, who are defined as workmen, however, the interest of the workmen vis-a-vis the other employees should not be deprived, thereby, the equality enshrined under Article 14 of the Constitution is equally extended uniformly.

51. Section 3 of the Act uses the expression *"five other holidays each of one whole day for such festivals"* and stress is laid on the term *"five other holidays"*, which holidays are to be declared for festivals. In effect, the use of the term *"holiday"* clearly signifies that the day which should be declared as a holiday, in other words mean that such declaration could only be a working day which is to be declared as a holiday as a day, which is already a declared holiday cannot be declared once again as a holiday by the industrial

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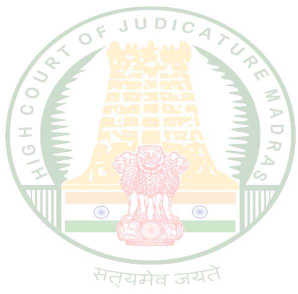
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establishment for the purpose of any festival, even if the said festival falls on a holiday. If such a narrow construction is given, then it would defeat the rights of the workmen to the five holidays, which they would otherwise be entitled for the purpose of celebrating the festivals.

52. Further, this Court, for the sake of coming to a reasonable understanding and appreciation of the case, deems it fit to pose itself a question. Are there only the above five festivals, which could be declared as holidays. It could be stated without an iota of contradiction that the employer would always try to gain the better advantage if all the festivals fall on Sunday, which is a weekly holiday, as it need not give any holiday to its workmen, thereby production would not be affected, without paying any additional wages to the workmen, if they are asked to work, as provided for u/s 5 of the Act. Anticipating such a situation, the law makers have, in foresight, brought within the fold of Section 3, the consultative process to be held by the Inspector between the employer and the employees so that they could arrive at the five days, which could be declared as festival holidays by the employer on mutual understanding, thereby, the industrial claimant is also conducive.

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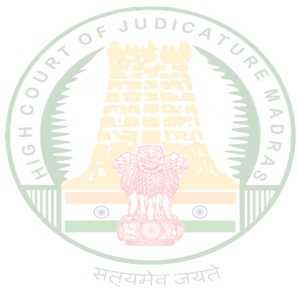
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However, in the present case, the said aspect has been given a go-by and the 2nd respondent, as notice has not been given by the 3rd respondent when the list of festival holidays were forwarded to the 2nd respondent and the 2nd respondent, without properly appreciating the intent of Section 3, had negated the case of the petitioner.

53. Only for the aforesaid purpose, the built-in mechanism of consultation with the employer and the employee has been provided for u/s 3 of the Act r/w Rule 3 of the Rules. Therefore, if the said provision of consultation is not complied with, definitely it would be a violation which would warrant the interference of this Court.

54. Section 5 of the Act deals with the wages to be paid to the employee. Clause (b) of sub-section (2) of Section 5 provides that where an employee works on any holiday allowed u/s 3, he shall, at his option, be entitled to twice the wages or wages for such day and to avail himself of a substituted holiday with wages on one of the three days immediately before or after the day on which he so works.

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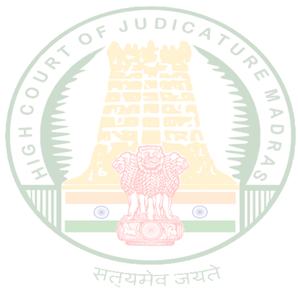

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55. Now if the festival holiday is declared on a Sunday, which is a weekly holiday, what would be the entitlement of the employee towards wages. Would it be only in respect of the weekly holiday or would it also be in respect of the festival holiday. In this backdrop, it is evident that the construction of Section 3 of the Act is very clear, in that it is not merely mentioned that it is five other holidays, but it is each of one whole day for such festivals. A weekly holiday, by no means could be considered as fulfilling the above prescription, as even otherwise the said day is a holiday. There is no necessity to grant any festival holiday on a day, which is already a holiday. Therefore, the weekly holiday would not partake the character of the holiday, which is provided for u/s 3 of the Act.

56. Article 43 comes into play here, which clearly provides that it is the duty of the State to endeavour to secure to all workers, be they agricultural, industrial or otherwise, a living wage and proper conditions of work so as to assure to them a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The idea, therefore, is that the workers

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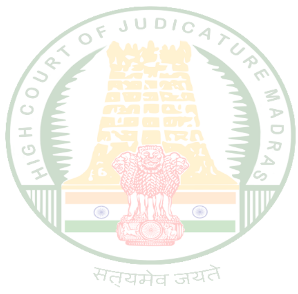
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would not be compelled to work on all days. While other employees may enjoy national and festival holidays, the workers in an industry or an agricultural farm must work throughout and should not avail of any holiday is not the philosophy of Article 43. As human beings, they are entitled to a period of rest which would enable them to fully enjoy their leisure and participate in social and cultural activities. *(See : M.R.F. Ltd. Case – supra)*.

57. In this regard, it is the stand of the respondents that the majority of the employees have given their consent for the declaration of festivals as made by the 3rd respondent, which was placed before the 2nd respondent, which was taken into consideration, which resulted in the 2nd respondent declaring the said days as festival holidays. However, it is the averment of the petitioner in its affidavit that there are 125 permanent workers, 50 persons are Management Trainees, 100 persons are working as contract labourers, 50 fixed term employees and 450 staff working with the 3rd respondent. The 3rd respondent has not given break-up of the administrative staff and the workmen working in the production side. In the absence of the detail, merely because majority of the employees have given their consent cannot alone be

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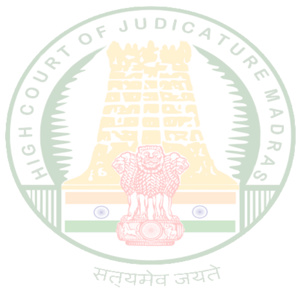

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the yardstick to determine that the employees have agreed to the declaration of festival holidays made by the 3rd respondent.

58. Weekly holiday given for the administrative side is different from a holiday given to the workmen on the production side. Not all workmen on the production front go on a holiday on the same day, even on a Sunday, but when it turns out to be a National Holiday and a festival holiday, necessarily, the entire work force is given a holiday. But at the same time, the workmen, who are given a weekly holiday should not be robbed of the same under the pretext of a festival, which is not the intent of Article 43.

59. When on a weekly holiday, the employee would have codified personal works, which he would discharge for his family in addition to spending fruitful time with his family, however, on a festival day, the entire family is engrossed in the festivities and seldom any other household work is done. In fact, it is not leisure, which is involved in a festival holiday; rather, festivals are a form of obeisance which is paid to the Lord Almighty. That would not fall within the ambit of leisure, but could be taken within the fold of

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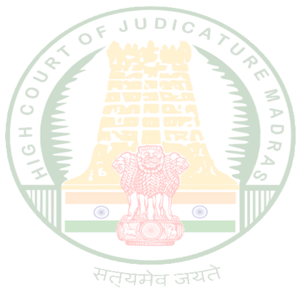
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cultural activities. The activity of leisure could be clubbed only with the weekly holiday prescribed on the Sunday of every week. If that leisure is taken away from the employee by declaring a festival holiday on the day when the weekly holiday falls, the employee is denied of his rightful holidays which is provided for u/s 3 of the Act.

60. Further, the festivals, which fall on weekly holidays, cannot be treated as holidays for the simple reason that no declaration by the employer or the Inspector is required to declare the said day as a holiday. The said day is already a holiday and that being so, declaration of the very same day as a holiday by the authority is nothing but the deprivation of the right of the workmen to the festival holidays. Therefore, a weekly holiday cannot once again be declared as a holiday under any name, be it a festival holiday or special holiday. Exception to the same can be drawn only in respect of the Four National Holidays, which are declared u/s 3 of the Act. However, as stated above, a consultative process preceding such declaration is a mandatory condition, when there is objection raised and, therefore, without

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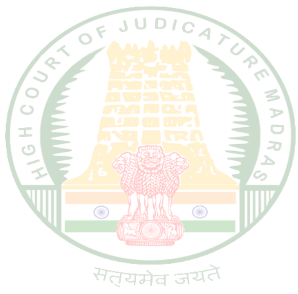

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following the same, the weekly holidays cannot be redeclared as festival holidays.

61. Further, what is to be pointed out is the fact that there are many festivals of many religions, which falls outside the weekly holiday. The respondents could very well have declared the said days as festival holidays had it followed the provision of displaying the notice and held a consultative process. However, the 3rd respondent has not done so, for which reason is very simple – the Management does not want to be deprived of its production, whereas, an employee can lose their holiday and stand deprived. That is not the intent of the Act and only for the said reason, the Act contains checks and balances in the form of notice by the employer, consultative process by the Inspector and objections and suggestions by the employee, which all put together would result in a conducive climate in the industry.

62. The reasonableness articulated by Patanjali Sastri, C.J. (as His Lordship then was) in ***State of Madras – Vs – V.G.Ross (1952 SCR 597 :: ARI 1952 SC 196)*** , which has been extracted in the decision in *MRF case (supra)*

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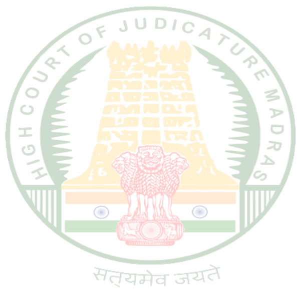
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clearly codifies that the nature of right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition, the prevailing conditions at the time should all be considered while holistically giving a judicial verdict.

63. Applying the scale of values, the legislative intent of the statute should be the touchstone on which the provision should be analysed and such being the case, the law makers, conscious of the fact that there would tend to be divergence of views in declaring the five other holidays for festivals as provided for u/s 3 of the Act, had provided for issuance of notice and consultation with the employer and employees as the fulcrum of the process.

64. Failure of the process as mandated under the Act, which is borne out by record, as the averment of the petitioner with regard to the displaying of the notice calling for objections having not disputed by the 3rd respondent, necessarily, the violation of the provision, renders the further process of

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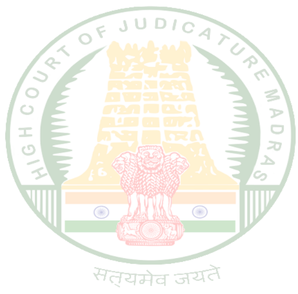
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declaration of the festival holidays wholly perverse and the same deserves to be interfered with.

65. Further, Section 11 of the Act protects the rights and privileges granted to the employees under the other laws, which would stand unaffected, meaning thereby that any change in the leave with wages and holidays as provided for under 4th Schedule of the Industrial Disputes Act would stand as a safeguard with regard to the rights of the workmen and, therefore, the holidays to which the employees are entitled to under the Act as a condition of service, cannot be deprived by giving a different interpretation which goes against the interest of the employee.

66. A submission was advanced on behalf of the respondents that a holiday can be declared only for festivals and not otherwise. True it is that the said submission deserves consideration, but at the same time, it should not rob the benefit conferred on the workmen in the form of five holidays other than the four National Holidays. If the five holidays, which are to be given for festivals, for the sake of argument, falls on Sunday, which is a weekly holiday,

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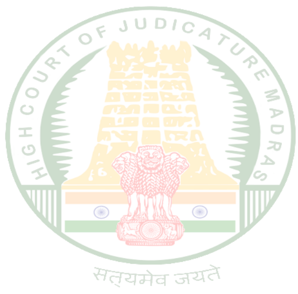
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then necessarily upon consultation with the employees, the employer has to find a via-media for declaring other festivals as holidays based on the collective workforce in the establishment. Only such a system would result in a conducive environment both for production for the employer and contentment for the employee.

67. Therefore, this Court is of the considered view, that holistically considering the provisions of the Act and testing the impugned order as against the said provisions, this Court has no hesitation to hold that not only the provisions have not been followed, which clearly renders the impugned order perverse and arbitrary, but the unreasonableness in the order is writ large, as without following the provisions and giving the requisite opportunity to the employee, the order has come to be passed, which is also evident from the counter filed by the 2nd respondent. Therefore, necessarily, this Court is inclined to set aside the impugned order.

68. However, the declaration of holidays for festivals is on a year-on-year basis and the year 2023 has almost come to a close. Of the three

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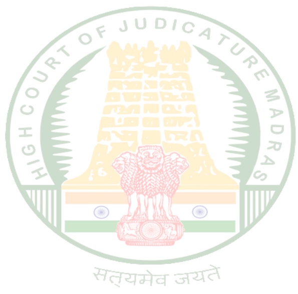
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holidays, which have been declared as festival holidays, the festival Pongal having fallen on 15.01.2023, has since got over and, therefore, nothing survives for adjudication insofar as 15.01.2023 is concerned.

69. However, in respect of the festival holiday for Vinayakar Chathurthi, which falls on 17.09.2023, it is not disputed by either parties that initially the Government of Tamil Nadu had declared 17.09.2023 as a holiday for Vinayakar Chathurthi, which has since been modified by the Government as one falling on 18.09.2023, which is a Monday. Therefore, there would be no impediment for the 2nd respondent to declare 18.09.2023 as a festival holiday towards Vinayakar Chathurthi by invoking its power u/r 4 of the Rules. Accordingly, this Court directs that the 2nd respondent shall change the festival holiday falling on 17.09.2023 towards Vinayakar Chathurthi to 18.09.2023 in line with the orders passed by the Government.

70. Insofar as the festival holiday which is declared on 12.11.2023 towards Deepavali, which falls on a Sunday, this Court has already held that festivals, which falls on a weekly holiday cannot once again be declared as a

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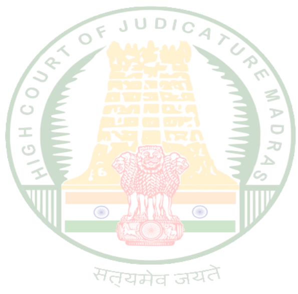

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festival holiday unless a consultative process has been undertaken by the Inspector and a consensus has been arrived at. Without consensus, declaring a festival holiday on a day, which is already a declared holiday, would not be conducive in the interest of the workmen as well as the Management. However, in the case on hand, it is to be pointed out that the consultative process as envisaged u/s 3 of the Act and Rule 3 of the Rules have not been complied with, thereby, this Court had set aside the impugned order passed by the 2nd respondent.

71. In the aforesaid backdrop, the declaration of festival holidays is a process year-on-year and in the present case, the holidays pertain to the year 2023 of which almost nine months have gone by. Therefore, remanding the matter to the 2nd respondent at this distant point of time to follow Rule 4 of the Rules would be an exercise in futility, as by the time the consultative process is initiated, the year would have come to a close. Therefore, in the interest of justice and to render substantial justice to either party, necessarily this Court has to invoke its extraordinary jurisdiction and exercise its inherent

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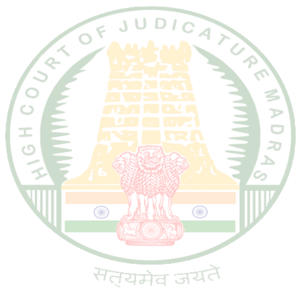

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powers by declaring another day in lieu of a holiday on Deepavali, which falls on 12.11.2023, which being a Sunday is a weekly holiday.

72. it is a known fact that in Tamil Nadu, following the day of Deepavali, Govardhan Puja is celebrated, which in a sense cannot be said to be a festival, nevertheless, it is a very important occasion where obeisance is paid to the Lord Almighty, acting as the saviour of the human folk and praying for prosperity, safety and health. Deepavali falling on a weekly holiday, it is even the claim of the petitioner that the next day be declared as a festival holiday. Though in *stricto senso*, Govardhan Puja is not a festival declared so by the Government, however, in the circumstances of the present case, on the aforestated facts and circumstances, this Court, necessarily has to exercise its inherent jurisdiction under Article 226 of the Constitution and declare 13.11.2023 as a festival holiday in lieu of 12.11.2023, which has been declared as a festival holiday, on account of Deepavali, which has been set aside by this Court.

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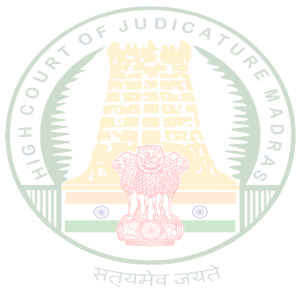

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73. Accordingly, for the reasons aforesaid, this writ petition is allowed in the terms below mentioned :-

i) *The impugned order passed by the 2nd respondent is set aside;*

ii) The claim for a festival holiday in lieu of 15.1.2023 does not survive any longer as the same has become infructuous, the said date having already been over;

iii) *In view of the declaration of 18.9.2023 as a festival holiday for Vinayakar Chaturthi by the Government of Tamil Nadu, the said day shall be declared as festival holiday by the 2nd respondent and necessary order shall be passed forthwith and communication be given to all the employees;*

iv) The festival holiday declared on 12.11.2023 in lieu of Deepavali shall stand modified and instead the holiday shall be given to all the employees on 13.11.2023;

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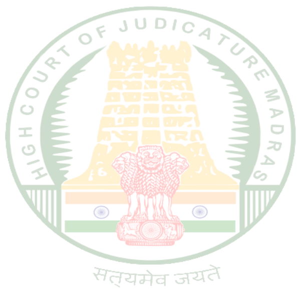

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v) *In view of the foregoing discussion, the 2nd respondent is directed to scrupulously follow Section 3 and Rule 3 and adhere to the consultative process upon issuance of notice by the Management to the employees in respect of declaration of festival holidays and after granting an opportunity of hearing as mandated by the aforesaid provisions, pass appropriate orders declaring festival holidays.*

vi) Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

13.09.2023

Index : Yes

GLN

To

1. Joint Director
Industrial Safety & Health
3/2A, Seetharam Nagar

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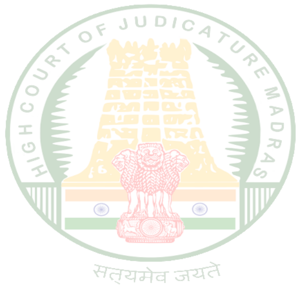
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2. Deputy Director
Industrial Safety & Health
3/2A, Seetharam Nagar
Hosur 635 126.

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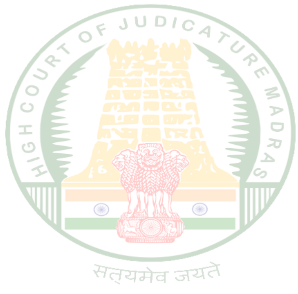

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M.DHANDAPANI, J.

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PRE-DELIVERY ORDER IN
W.P. NO.2247 OF 2023

Pronounced on
13.09.2023

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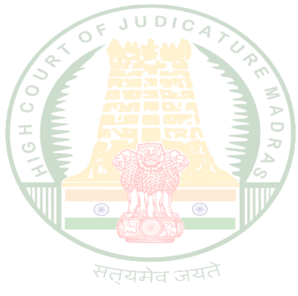

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