

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2016

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.P.Nos.8291 of 2006, 23748 & 23749 of 2011
and
WMP.Nos.9228, 9236 of 2006; 40 of 2013 and 7761 of 2006

W.P.No.8291 of 2006:

Ponds Hindustan Lever Limited
Ex.Mercury Employees' Welfare Association,
(Regn.No.126 of 2004)
rep. by its President,
Thiraviam Complex, Kamarajar Road,
Kodaikanal-624 101,
Dindigul District,
Tamil Nadu. .. Petitioner

-vs-

- 1.Hindustan Unilever Limited,
rep. by its Managing Director,
Hindustan Lever House,
Back Bay Reclamation,
Mumbai.
- 2.State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Labour,
Fort St. George,
Chennai-600 009.
- 3.The Chief Inspector of Factories,
Chennai.
- 4.The Deputy Inspector of Factories,
Sivakasi,
Tamil Nadu.
- 5.The Certifying Surgeon,
Officer of the Deputy Inspector of Factories,
Sivakasi, Tamil Nadu.
- 6.The Tamil Nadu Pollution Control Board,
rep. by its Chairperson,
100, Anna Salai,
Chennai.

7.Union of India,
rep. by its Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhawan,
New Delhi-110 001.

.. Respondents

(Respondent No.1 name corrected as
Hindustan Unilever Limited as per the
order dt. 09.03.2016)

W.P.No.23748 of 2011

Hindustan Unilever Limited
101, Santhome High Road,
Chennai.

Rep. by its Legal Manager
Ganesh Parameshwaran

.. Petitioner

vs.

Union of India,
rep. by its Under Secretary,
Ministry of Labour and Employment
Shram Sakthi Bhavan,
Rafi Marg,
New Delhi.

.. Respondent

W.P.No.23749 of 2011

A.R.Kasi Viswanathan

.. Petitioner

vs.

Union of India,
rep. by its Under Secretary,
Ministry of Labour and Employment
Shram Sakthi Bhavan,
Rafi Marg,
New Delhi.

.. Respondent

Writ Petition No.8291 of 2006 filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the 2nd and 7th respondents to evolve a scheme of economic rehabilitation and health care for the ex-workers of the 1st respondent's Clinical Thermometer Factory at Kodaikanal and other victims, who have suffered exposure to the toxic mercury emitted by the 1st respondent and direct the 1st respondent to bear the costs of the same; direct the 2nd and 7th respondents to prosecute the 1st respondent for violation of the provisions of the Factories Act, 1948 and the various

Environmental Laws, Regulations and Orders with regard to the operations of the 1st respondent's Clinical Thermometer Factory at Kodaikanal, Tamil Nadu and direct the 7th respondent, Union of India to revise the occupational health and safety standards with reference to mercury exposure in the Factories Act, 1948 and the compensation amounts in the Workmen's Compensation Act, 1923.

Writ Petition Nos.23748 & 23749 of 2011 filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records of the respondent comprised in its Order No.C-018019/08/2011-ISH.II dated 09.09.2011 appointing a Committee and, quash the same in so far as it deals with the first term of reference.

For Petitioner in : Mr.R.Vaigai
W.P.8291/2006

For Petitioners in : Mr.Satish Parasaran
W.P.23748 & : for Mr.Madhan Babu
23749/2011 &
Respondent No.1
in W.P.8291/2006

For Respondents : Mr.STS.Moorthy
Government Pleader for R2 to R5
in W.P.8291/2006
Mrs.Rita Chandrasekaran for R6
in W.P.8291/2006
Mr.V.Venkatesan
SCGSC for R7 in W.P.8291/2006 &
respondent in W.P.23748 & 23749/2011
Mr.Suhith Parthasarathy,
Advocate Commissioner.

COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Writ Petition No.8291 of 2006 has been filed by the Ponds Hindustan Lever Limited Ex. Mercury Employees' Welfare Association against Hindustan Lever Limited and the State Government authorities apart from Union of India on account of the health damages suffered during working in the factory.

2. With the assistance of the learned counsel for parties, a settlement has been worked out and that is why W.M.P.No.7761 of 2016 had been filed. We may notice that the name of the first respondent in W.P.No.8291 of 2006 stands changed as Hindustan Unilever Limited. Memo of parties be corrected accordingly.

3. The prayer made in W.M.P.No.7761 of 2016 is for taking on record the settlement dated 04.03.2016 signed by the petitioner and respondent No.1, making consent of the other respondents unnecessary. The obligations have to be discharged by 28th March, 2016, for which appointment of an Advocate Commissioner is sought and it is proposed that Mr.Suhrith Parthasarathy (Mobile No.8939717592) Advocate, No.39, Law Chambers, High Court, Chennai-600 104 be appointed as the Advocate Commissioner and the matter has to be thereafter reported for compliance to this Court. Ordered accordingly.

4. The fee of the Advocate Commissioner is to be paid by the first respondent in W.P.No.8291 of 2006 and it is proposed and agreed that keeping in mind the larger task involved, it should be fixed at Rs.4,00,000/- (Rupees Four Lakhs), apart from out of pocket expenses.

5. In view of the aforesaid, W.M.P.No.7791 of 2016 is ordered.

6. There are, however, certain directions required to be passed in the writ petitions as a consequence of the aforesaid application and the settlement arrived at between the parties.

7. The parties jointly request that the warrant issued to the Advocate Commissioner shall be in the following terms:-

"(1)The Advocate Commissioner shall oversee the handing over of Cheques by Hindustan Unilever Limited to the beneficiaries enlisted in Annexure - A & B of the Memorandum of Settlement dated 04.03.2016 (Para VI (e) pg. 15)

(2)Each beneficiary shall prove his/her identity to the Advocate Commissioner by producing valid photo identity card issued by the Government before receiving the Cheque.

(3)In case the beneficiary/beneficiaries is/are the legal heirs of a deceased person, then such beneficiary/beneficiaries shall also produce the Legal Heir Certificate before receiving the Cheque.

(4)The beneficiaries shall furnish two originals of duly executed affidavit in the format annexed to the Memorandum of Settlement as Annexure - E to the Advocate Commissioner before receiving the Cheque. One original affidavit received from each of the beneficiary shall be handed over by the Advocate Commissioner to Hindustan Unilever Limited before handing over the Cheques. (Para VIII Pg.16/Para IX Pg.17)

(5) Upon furnishing the documents and affidavit mentioned above, the Cheques shall be handed over to the beneficiaries.

(6) Any Cheque that could not be handed over to the beneficiaries shall be collected by the Advocate Commissioner from Hindustan Unilever Limited and submitted to the Hon'ble Court.

(7) The Advocate Commissioner shall submit the second original affidavit received from each of the beneficiaries at the time of handing over of Cheques to this Hon'ble Madras High Court.

(8) The Advocate Commissioner, if he deems necessary, shall be at liberty to seek police protection from the Jurisdictional Police. The Jurisdictional Police shall provide the required protection, if so requested by the Advocate Commissioner.

(9) Report shall be filed by the Advocate Commissioner along with the affidavits from beneficiaries and undisbursed Cheques, if any, by 28.03.2016."

8. The affidavits filed by the workmen are thus taken on record apart from the Memo of Settlement dated 04.03.2016, with a direction that the Memorandum of Settlement dated 04.03.2016 be kept confidential and retained in a sealed cover in the Registry.

9. We are, in fact, impressed with the constructive and positive approach of the learned counsels to work out the settlement and we must express our appreciation for the said constructive approach.

10. The writ petitions are, thus, disposed of in terms of the settlement. No costs. Consequently, WMP.Nos.9228, 9236 of 2006; 40 of 2013 are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

bbr

To

1.The Secretary to Government,
Department of Labour,
Fort St. George, Chennai-600 009.

2.The Chief Inspector of Factories,
Chennai.

3.The Deputy Inspector of Factories,
Sivakasi, Tamil Nadu.

4.The Certifying Surgeon,
Officer of the Deputy Inspector of Factories,
Sivakasi, Tamil Nadu.

5.The Chairperson,
Tamil Nadu Pollution Control Board,
100, Anna Salai,
Chennai.

6.The Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhawan,
New Delhi-110 001.

7.Suhith Parthasarathy,
Advocate Commissioner,
(Mobile No.8939717592)
No.39, Law Chambers,
High Court, Chennai 600 104.
+(warrant)

Copy to:

The Section Officer,
Writ Section,
High Court, Madras,
to be posted on 28.03.2015 for compliance
(with directions)

+1 cc to Mr.V.Venkatesan, Government standing Counsel, sr.15070
+3 ccs to M/s.Satish Parasaran, Advocate, sr.15233
+10 ccs to M/s.R.Vaigai, Advocate, sr.15245

W.P.Nos.8291 of 2006, 23748
& 23749 of 2011

ug co
kra 15.03.2016