***HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.5487 OF 2007

%07.02.2017

Cement Corporation of India Employees Union, Adilabad Cement Factory, Adilabad, Andhra Pradesh (Now in Telangana State)

..... Petitioner.

And

The Union of India, Ministry of Labour, rep. by its Secretary, Sharama Shakthi Bhavan, New Delhi and 5 others.

.....Respondents

! Counsel for the petitioner: Sri K.R. Prabhakar

^ Counsel for respondents 1,2,5 & 6: Standing Counsel for Central Government

Counsel for the respondent No.3: G.P for Industries & Commerce.

Counsel for the respondent No.4: Ms. V. Uma Devi.

< Gist:

> Head Note:

? Cases referred:

1. 1997(5) ALT 696
2. (2005) 10 SCC 179
3. (2003) 6 SCC 675

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.5487 OF 2007

ORDER:

The petitioner is an employees union of the employees who were working with the 4th respondent (CCI) at its Adilabad Unit. The brief facts of the case are that the 4th respondent Cement Corporation of India is wholly owned by the Central Government Company with 12 units situated at (1) Bokajan, 2) Rajban, 3) Thandoor, 4) Nayagoan, 5) Adilabad, 6) Mandhar, 7) Kurkanta, 8) Akalthara, 9) Charkhi Dadri, 10) Delhi, 11) Bhatinda, 12) Yerraguntla. As the writ petition is concerned in relation to the Adilabad Unit, necessary facts to that extent are only being set out. As per the averments in the writ affidavit, the Adilabad Unit has commenced the operation in September, 1992 with installed capacity of 4.00 lakhs TPA. As on the date of filing of the writ petition, there were 98 workers in the said unit. However, as on the date of hearing of the writ petition as submitted by the learned senior counsel for the petitioners, there were about 54 employees consisting of 52 employees, one executive and one supervisor. The CCI was declared as a sick company within the meaning of Section 2(o) of the Sick Industrial Companies Act, 1985 (SICA) (for short "the Act") on 8.8.1996. The Industrial Financial Corporation of India (IFCI) was appointed as operating agency under Section 17(3) of the Act for preparation of revival scheme. From time to time various draft schemes were submitted before the Board for Industrial and Financial Reconstruction (BIFR) (for short, "the BIFR") for rehabilitating the sick company, the CCI. Finally by order dated 28.07.2000, BIFR approved the rehabilitation scheme under which eight non operating units' assets were identified to be sold and to rehabilitate 3 units viz., 1) unit at Bokajan in North East, 2) Rajban in Himachal Pradesh, 3) Thandur in Andhra Pradesh now in Telangana. The order dated 28.07.2000 of the BIFR was challenged before the

Appellate Authority for Industrial and Financial Reconstruction (AAIFR) (for short "the AAIFR") constituted under Section 3(1)(b) of the Act by the petitioners union, the Cement Sramic Sangh, ONGC and M/s. K.C.P Limited. The AAIFR by its order dated 17.11.2006 dismissed the appeals of the Cement Sramic Sangh and the petitioners while giving certain directions with respect to other appellants. Challenging the order of the BIFR dated 28.07.2000 as affirmed by the AAIFR by its order dated 17.11.2006, the present writ petition is filed.

Sri S. Ramachander Rao, learned Senior Counsel advanced the following propositions:

- The action of the respondents 1,2,4,5 and 6 in omitting Adilabad unit of CCI from revival is illegal and unconstitutional as it is vitiated by arbitrariness, lack of bona fides and tainted with collateral considerations and is utterly lacking in transparency apart from not being fair and just and is openly violative of Article 14 as being discriminatory action.

- The said action of respondents 1,2, and 4 i.e., in mechanically and irrationally accepting the draft rehabilitation scheme as revised at the instance of 4th respondent, without application of mind and without reasons, is utterly contrary to the doctrine of fairness, application of mind and suffers from discriminatory treatment and as such is utterly invalid in law apart from being unconstitutional.

- Respondents 5 and 6 did not even consider the Andhra Pradesh Government's support, tax waiver and other concessions for revival of Adilabad unit and totally ignored the same and as such the impugned orders are liable to be set aside as they are not only violative of principles of natural justice, suffers from total non-application of mind but also based on irrelevant material while ignoring the relevant material and based on perverse findings.

- Bokajan plant was declared by CCI itself as not viable for revival but strangely it was included for revival and expansion at a heavy cost for collateral considerations and as such the same is partisan and invalid.

- The action of the CCI, FIFR & AAIFR in not acting as per the viability study reports submitted by the experts in that field, such as Holtec, IFCI and Development Consultancy, is not only illegal and discriminatory but also contrary to settled principle of law with regard to sanctity of expert's opinion.

- The BIFR grievously erred in law in failing to implement its own repeated findings and observations regarding viability for revival of Adilabad unit and BIFR irrationally and without application of mind accepted and acted on the revised Draft Rehabilitation Scheme, which deliberately deleted Adilabad unit for revival, at the instance of CCI, the litigant, without even considering the valid Expert Opinion on the same.

- Even in 2000, Government of India wanted revival of Adilabad Unit and the action of failing to revive the same is devoid of transparency and fairness in action.

- The present action of 4th respondent in going for a bigger plant in Andhra Pradesh without revival of Adilabad Unit is arbitrary, irrational and is utterly devoid of bona fides apart from illegal and discriminatory.

- The Appellant Authority has neither applied its mind nor has given any reasons in confirming the BIFR orders and its order is a mere mechanical approval of original authority's order and hence the same is unsustainable in law.

It is the submissions of the learned senior counsel that the expert body reports of Development Consultants Limited (for short, "the DCL") in 1997 and IFCI had identified the Adilabad unit as viable unit while making adverse remarks in relation to Bokjan unit. Even the Ministry of Heavy Industry on 4.8.2000 directed a detailed report for revival of the Adilabad unit while opining the other six units to be sold. On 27.03.2001, Mr. F.A. Khan, Assistant General Manager, CCI reported that Bokjan and other three units are not viable units. In August, 2005 in the Techno Economic Feasibility Report (TCFR) submitted by the consultant appointed by the CCI, M/s.Holetec Consulting Private Limited found Adilabad unit as viable unit for revival. The Government of

Andhra Pradesh had also committed to extend the concessions to the tune of Rs.30.00 crores for revival of the Adilabad unit and the then Central Minister himself designed to continue the Adilabad unit. This Court while admitting the writ petition granted the status quo order and thereafter taking note of the above factors modified the status quo order while allowing the Central Government to proceed with the proceedings under the I.D Act restrained giving effect to the same. In violation of the orders of this Court, the respondents have proceeded with further. The draft rehabilitation scheme submitted by the operating agency on 5.12.2015 while noting in paras 1.9 to 1.17 of the scheme about the earlier rehabilitation plans of Adilabad unit erroneously ignoring the advantageous of reviving the Adilabad unit circulated the draft scheme with a proposal to close the Adilabad unit while providing for revival of Bokjan unit. The same has been done on account of the pressure exerted by the Union Minister hailing from North East at relevant point of time. In approving the draft rehabilitation scheme, the BIFR miserably failed to advert to and deal with the various aspects of the advantageous in rehabilitating the Adilabad unit as recommended by the consultants viz., DCL, IFCI, Holetec and Government of Andhra Pradesh apart from the assurances from the Government of Andhra Pradesh now Government of Telangana. Like wise, the AAIFR also failed to consider and advert to the same. Thus the orders suffer from non consideration of the material on record violating the principles of natural justice which vitiating the very decision making process affecting the fundamental rights of the petitioners. The orders also are vitiated for not recording the reasons for not considering the recommendations of the expert bodies.

Sri M. Surendera Rao, learned senior counsel appearing on behalf of Ms. V. Uma Devi, learned counsel for the 4th respondent- CCI submits that the Adilabad unit had stopped production in the year 1996 and on 27.3.2001 Government of India had decided to sell all units individually or collectively. However, efforts were made from time to time to explore the possibility of rehabilitating some of the units of the company and finally the draft scheme was circulated in terms of the statutory provisions and after taking into consideration of the feasibility of rehabilitating of the company, the BIFR had approved the drafts scheme on 21.03.2006. Learned counsel refutes the allegation that the then Union Minister from North East was involved in rehabilitating originally identified unit in Bokjan unit from closure by drawing the specific attention to para No.1.13 of the scheme that such decision was taken in the year 2003 itself whereas the union elections were held in 2004. He also refutes the allegations that the letter dated 28.9.2004 of the department of heavy industry is not reason for rehabilitating Bokjan unit as set out in para 7.2.3 of the scheme. By drawing attention of this Court to para 44 of the writ affidavit wherein a reference was made to W.P.No.1322 of 2006 (mistakenly mentioned as W.P.No.13221 of 2006) pending before the Delhi High Court, this Court granted initial status quo order and now the said W.P was dismissed on 11.1.2008 along with two other writ petitions bearing W.P.No.4461 of 2007, 8295 of 2007. The Special Leave Petition challenging the orders of the Delhi High Court were dismissed by the Supreme court vide its order dated 28.04.2008 in S.L.P(C) No.10294 -10295 of 2008 as having no merits and thus the orders of the Delhi High Court attained finality. As the present writ petition is based on the Delhi High court writ petition as pleaded by the petitioners themselves in para 44 of the writ affidavit, the present writ petition is liable to be dismissed. **The plea of the petitioners itself before this Court based on the orders of the writ petition pending before the Delhi High court and in fact the orders passed by this Court are only based on the initial interim orders passed by the Delhi High Court and on account of the dismissal of the writ petition by the Delhi High Court, the present W.P to be dismissed.** He further submits that pursuant to the modification of the order dated

27.2.2008 Ministry of Labour and Employment, Government of India by proceedings dated 14.07.2008 granted permission under Section 25(o) of I.D. Act for closure of 7 units of the CCI viz., 1) Mandhar, 2) Kurkunta, 3) Akaltara,. 4) Cherki Dadri, 5) Adilabad, 6) Nayagam and 7) Delhi/Bhatinda Cement Grinding Unit. The order of the G.O.I was upheld in Civil W.P.No.9108 of 2008 by the Punjab and Haryana High Court vide its order dated 23.10.2008 and by the Indoor Bench of Madhya Pradesh High Court in W.P.No.6582 of 2008 vide its order dated 1.12.2008. It is only in relation to Adilabad unit the CCI is unable to proceed incurring idle expenditure of about Rs.3.00 crores per annum. Though as on 25.8.2008, there were 102 employees pending disposal of the writ petition many of the employees have accepted the VSS scheme and as on date only 54 employees are required to be settled. Finally he prays for dismissal of the writ petition submitting that the BIFR has passed final orders after prolonged deliberations by following the procedure as prescribed under the Act.

At the outset, it may be noted that notwithstanding the pains taking elaborately and persuasive argument of the learned senior counsel in detail the sum and substance of the argument of the learned senior counsel boils down to the effect that leaving out Adilabad plant for rehabilitation and notwithstanding the considerable concession which was extended by the State Government and the agreed sacrifices from various quarters is an arbitrary decision and further even there was no consideration of the said aspect by both the BIFR and Appellate Board; that the decision to rehabilitate Bokjan Plant in preference to the Adilabad Plant is only for extraneous considerations and inasmuch as there was no consideration of these aspects by the respective authorities, the matter requires reconsideration and it is a case for remanding the case for reconsideration by the Primary Authority itself. At the outset it may be noted that it is not in dispute that the order of the appellate authority was subject matter of challenge before a Division Bench of

Delhi High Court in W.P.(C) Nos.1322 of 2007, 4461 and 8295 of 2007 and the Delhi High Court had dismissed the writ petition by order dated 11.01.2008 and further the challenge to the same was also unsuccessful before the Supreme Court on account of the dismissal of the S.L.P Nos. 10294-10295 of 2008 on 28.04.2008. In para 4 of the Delhi High Court judgment, it was recorded that "the two unions of Nayagaon Cement Factory and Adilabad Cement Factory have filed their separate writ petitions assailing the order dated 17.11.2006, passed by the AAIFR. Third writ petition is filed by the Employees Union of Delhi Grinding Unit. This is how all the three writ petitions assailing the same order were heard together and we proposed to decide the same by this common judgment". From the above, it appears that the cause of the Adilabad Unit as espoused in the present writ petition was also argued before the Delhi High Court. The Division Bench of the Delhi High Court after elaborately referring to the scheme of the SICA in para 17 had held:

> "It was because of the aforesaid circumstances that a conscious decision was taken by the Government of India to close down these unviable units. The purpose, therefore, sought to be achieved, is two-fold. Not only to get rid of the unviable units which are adding to mounting losses, at the same time utilise the funds generated from the sale of those units to make running units viable. With this process at least three units, which are operational, have good chance to become profitable and because of this reason, the company will revive and shall not be forced to wind up. thus, even though it may appear to be harsh to seven units, the move is the only possible solution to save at least other three units as the other alternative was to close all units and wind up the company, which was a tentative opinion formed by the BIFR on an earlier occasion. If that happens, in so far as the petitioners herein, viz., unions of three units are concerned, they will face closure in either case."

Notwithstanding the decision of the Division Bench of the Delhi High Court, even if the present case is considered independently, at the outset it may be noted that as on date there are only 52 workers, one Executive and one Supervisor on the rolls of the company as against the 102 as on 25.2.2008. The challenge is to the scheme is at the instance of the workers. When the draft scheme is circulated in terms of Section 18 of the Act except submitting their objections, there is no alternative workable scheme that was proposed either by the petitioners or by the State Government. It may also be noted that what is required to be considered by the BIFR is the possibility of revival and rehabilitation of the Sick Industrial Company as defined under Section 2(o) of the Act, but not a Unit of the Sick company. In other words, what is required to be considered by the Board is not the individual revival and rehabilitation of individual units but the company as a whole. In those circumstances, the mere extension of certain concessions by the State Government with respect to an individual unit and sacrifices that are made by the workers with respect to their wages etc, though may be relevant cannot be the sole basis to come to a conclusion that a particular sick company must and should revive one of its units.

It may also be noted that the Adilabad unit which was started some time in 1982 became a sick unit in the year 1996 and the Government of India's principal share holder had initially decided to close and sell all the units and thereafter considering the various aspects had come to a conscious decision to resurrect and rehabilitate three units and as one of the means of financing had decided to sell the other units in the absence of valid reasons, cannot be found fault. This Court can also take judicial note of the fact that there are large technological developments which are taken place in the Cement Industry and at any rate if a new unit is to be established it would also be open for the Government of India/Government of Talangana to proceed to do so. But the same need not be at the instance of and for the sake of 52 workers. In the sanctioned scheme dated 3.5.2006, the BIFR had elaborately considered at para 1.13 as to why the Bokjan unit was required to be rehabilitated and the BIFR had also considered the report of M/s.Holetec Consulting Private Limited in para 7.2. Aspects relating to the Bokjan had specifically dealt in paras 7.2.3 and 10.3. It is not necessary for this Court once again to repeat what was in detail considered by the Division Bench of the Delhi High Court with respect to the statutory scheme and scope of Sections 15 to 19 of the Act. Further, there is no dispute with respect to the specific contention that the permission granted by the Government of India, Ministry of Labour and Employment under Section 25(o) of the Industrial Disputes Act, 1947 and the failure of the challenge to the same before the High Court of Punjab and Haryana and High Court of Madhya Pradesh, Indoor Bench. It may also be noted that there is no challenge to the permission granted by the Government of India, Ministry of Labour and Employment under Section 25(o) of the Act by order dated 25/27.3.2008.

This Court is conscious of the scope of the interference under Article 226 of the Constitution of India, with respect to the scheme formulated and approved by the BIFR, which was held to be statutory in nature. A reference may be made to para 13 of the judgment of the Full Bench of this Court in a case reported in **V.S.R Murthy and others vs. Engineer In-Chief (Irrigation)[1].** It may not be out of place to refer to the caution expressed by the Supreme Court in the judgment referred in **International Finance Corporation and another vs. Bihar State Industrial Development Corporation and others[2]** with regard to interference of the proceedings before the BIFR though in different context, which reads as under:

> Para 12 .... "It must be kept in mind that BIFR has been statutorily conferred with special powers to adjudicate upon the question of the revival of a company and it has the necessary expertise at its command for doing so. If the Board has taken steps in accordance with commercially advisable and legally

[1] 1997(5) ALT 696
[2] (2005) 10 SCC 179

sustainable principles after considering the view of the parties likely to be affected and in a manner which may not be said to be irrational or perverse, the Court should not interfere in the process".

In Bombay Dyeing and Manufacturing Company Limited Vs. Bombay Environmental Action Group[3], the Apex Court observed at paras 2, 314, 325 as under: "2. Whether any synthesis between environmental aspects and building regulations vis-à-vis the scheme floated by the Board of Industrial and Financial Reconstruction (for short "BIFR") in terms of the provision of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "SICA" herein is possible is the core question involved in these appeals. '314. BIFR exercises its jurisdiction under a statute; the objects where of are distinct and different from a town planning scheme. BIFR is not a town planner. It is not a development authority. It has nothing to do with the town planning or development scheme or maintenance of ecological balance. BIFR was concerned only with the manner in which sick industrial undertaking should be made to revive. Before passing the said order, it was required to hear all concerned, namely, the management, the workmen, the financial institutions, banks, etc., as also the operating agencies. It did so. '325. It is not in dispute that NTC was a sick company. As a sick company, it might not have in a position to reopen any close mill at all. Reference to BIFR in terms of Section 16 of the Act evidently was made for the aforementioned purpose. If the schemes sanctioned by BIFR are given effect to, at least some of the NTC mills indisputably would be revived. SICA, we have noticed hereinbefore, is a special statute. It was enacted by the Parliament only with a view to meet the contingencies contemplated therein. The validity or otherwise of the reference made by NTC to BIFR is not in question. The writ petitioners did not question the validity of the statutory schemes. No material has been brought before us to show even the workmen were in any way aggrieved thereby. Had they been so, they could have preferred an appeal before the BIFR. Even there does not exist any material to show that at any point of time they had approached the High Court in judicial review. The workmen were parties in the proceedings before BIFR. Presumably BIFR made the said schemes after hearing of parties concerned including the workmen".

On 22.12.2016, when the matter came up under the caption 'for pronouncement of judgment', learned Advocate General for the State of Telangana appeared before this Court and made a request to defer pronouncement on the ground that the State of Telangana was not made as a party respondent to the Writ Petition. This Court sensitised the

[3] (2003) 6 SCC 675

learned Advocate General that though in the cause title, the State of Andhra Pradesh was arrayed as a respondent, in view of the State Reorganization Act, since the petitioner falls in the territorial jurisdiction of the State of Telangana, it is to be construed automatically that the State of Telangana is a party. At the request of the learned Advocate General, the matter was adjourned beyond Sankranti Vacation, 2017.

Today, when the matter has been listed under the same caption, learned Special Government Pleader places before this Court an affidavit sworn to by the Principal Secretary to Government, Information & Technology Department holding Full Additional Charge of Principal Secretary to Government and Commissioner of Industries Promotion, Industries and Commerce Department, Government of Telangana and requests that the same be taken on record. No arguments as such have been advanced on behalf of the State of Telangana today. However, acceding to the said request, the affidavit is taken on record. In the said affidavit, it has been stated as under:

> " It is submitted that the THEN State Government closed down the Cement Corporation of India Limited, Adilabad District in the year 1996 due to want of working capital. Thereafter, a number of representations were received from the local public as well as the employees of the Cement Corporation of India Limited, Adilabad and keeping in view of the same and after formation of State of Telangana, the Telangana State Government intends to represent the Union of India for the revival of the Cement Corporation of India Limited, Adilabad District. In the aforesaid circumstances, some more time is required to persuade the matter with the Central Government."

The above-quoted paragraph merely records that the State of Telangana intends to represent to the Union of India seeking revival of the Cement Corporation of India Limited, Adilabad District, considering the number of representations received from the local public as well as employees of the Cement Corporation of India Limited, Adilabad District. Inasmuch as the learned Special Government Pleader requests this Court to deal with this aspect as well, it may be observed that the above-quoted paragraph refers to revival of the Cement Corporation of India Limited, Adilabad District. The Cement Corporation of India Limited having a number of units is different from the Cement Corporation of India Limited, Adilabad District as there is no Company existing like Cement Corporation of India Limited, Adilabad District in strict legal sense. Probably, what the Principal Secretary means is Adilabad unit of Cement Corporation of India Limited.

Inasmuch as the issue before the BIFR as well as the Appellate Authority was the revival of the Cement Corporation of India Limited the Sick Industrial Company with multiple units, the question of revival of Adilabad Unit on stand alone basis does not arises. However, it may not be construed that if the State of Telangana or any other party interested to rehabilitate or revive the Adilabad Unit, the same would have to be strictly done in accordance with the scheme as approved by the BIFR which aspect has already been dealt with in the preceding paragraphs.

In this context, it may also be noted that the letter dated 10.01.2017 addressed to Principal Secretary to Government, Commissioner for Industrial Promotion & Mines, Industries & Commerce Department, Government of Telangana is placed on record by the learned Standing Counsel for the CCI. The learned counsel for the petitioner objects for the said document to be brought on record. The objection is not sustainable as this letter, in fact, has no bearing on the facts or law as considered by this Court in the preceding paragraphs. The sum and substance of the said letter is that Union of India as of now is not interested in rehabilitating the Adilabad Unit by itself, however, it gave liberty to the State of Telangana or anybody interested to participate in the tender process and purchase the assets and do whatever they desire to do with respect to the unit. In the facts and circumstances the letter has no bearing on the decision arrived both on facts and law.

In the light of the above authoritative pronouncements referred to supra and considering that the matter having been dealt with by the Division Bench of the Delhi High Court and respectfully agreeing with the same, this Court finds no merits in the writ petition and accordingly, the writ petition is dismissed making it clear that the respondent-authorities shall implement the scheme formulated with respect to the workers in letter and sprit expeditiously. No order as to costs.

It may also be noted that by virtue of the SICA repeal Act, now there is neither BIFR nor separate Forum is existing and all the pending proceedings stand updated and now the aspect covered under earlier SICA are required to be dealt with under the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (1 of 2004) notified on 28th November, 2016 with effect from 01.12.2016 all things stand abated. In terms of the Repeal Act, the matters relating to any scheme under implementation under Sub Section 12 of Section 18 of the Repealed Enactment shall be deemed to be a sanctioned scheme are under implementation under Section 24D of the Companies Act, 1956 and shall be dealt with in accordance with the provisions contained in Part-VIA of the Companies Act, 1956 (1 of 1956).

Miscellaneous Petitions, if any, pending in this writ petition, shall stand closed.

CHALLA KODANDA RAM,J

Date:07.02.2017,
<u>Note:</u>
1) L.R copy to be marked.
2) Issue C.C forthwith.
B/o.
Gk.

THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM

WRIT PETITION No.5487 OF 2007

Date:07.02.2017.

Gk.