

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT APPEAL Nos.608, 625 and 1033 of 2017

02.08.2017

Between:

NMDC Ltd.,
a Government of India Enterprise,
having its registered office at Khanji Bhavan,
Hyderabad,
represented by its Chairman & Managing Director

..Appellant

and

Bandi Tippanna and others

..Respondents

Counsel for the appellant: Mr.J.Prabhakar for Mr.K.Raghava Charyulu

Counsel for respondent Nos.1 and 2
in W.A.No.608 of 2017/respondent No.1
in W.A.No.625 of 2017:

Mr.K.S.Murthy

Counsel for respondent Nos.1 and 2
in W.A.No.1033 of 2017:

Mr.A.Nagendra Rao

Counsel for respondent Nos.3 to 5
in W.A.No.608 of 2017/respondent Nos.2 to 4
in W.A.No.625 of 2017/
respondent No.3 in W.A.No.1033 of 2017:

Mr.B.Narayana Reddy,
Assistant Solicitor General

The Court delivered the following:

COMMON JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These writ appeals arise out of a common order as regards W.A.Nos.608 and 625 of 2017 and similar order as regards W.A.No.1033 of 2017 passed in the interlocutory applications filed in separate but identical writ petitions. The issue raised in the said writ petitions is whether the writ petitioners, who are arrayed as respondent Nos.1 and 2 in W.A.Nos.608 and 1033 of 2017 and respondent No.1 in W.A.No.625 of 2017, whose origin of appointment is traceable to Sponge Iron India Limited (SIIL), which has got merged with the National Mineral Development Corporation (NMDC) – the appellant, are entitled to fitment benefit of 30% instead of 18% given by the appellant. The writ petitioners sought for a *mandamus* declaring that they are entitled to be treated on par with the employees of the appellant after their merger and that fixation of fitment benefit at 18% instead of 30% is contrary to Sub-Clause (i) to Clause (2) of office memorandum, dated 26.11.2008, of the Union of India. The appellant filed counter-affidavit in W.P.No.37452 of 2015, whereby, in paragraph 2 thereof, it sought to justify giving fitment benefit of 18% to those who were originally SIIL employees, which reads as under:

"I respectfully submit that the office order No.1(24)/Rules/2011 dated 18.11.2013 issued by the Corporation regarding Extension of fitment benefit @ 18% to the JOs & Executives at par with workmen is absolutely in order and appropriate. I submit that the very reason for extension of such 18% of fitment benefit was due to various historical reasons which inter alia includes the non-affordability to meet the outlay for payment of arrears to its employees on account of pay revision as per the provisions as contained in the Office Memorandum No.2(70)/08-DPE(WC), dated 26.11.2008 since the financial position of the company was not conducive. I further submit that the fitment benefit of 18% has been extended to all JO's & Executives of SIIL w.e.f. 01.01.2007 in line with Office Memorandum No.2(70)/08-DPE(WC), dated 26.11.2008 due to its non-affordability for payment of Arrears arising out on

account of such pay revision. Further, all consequential benefits have been extended/paid to the JO's and the Executives of erstwhile SIIL including the Writ petitioners."

2. The learned Single Judge, by the orders under appeals, has disposed of the interlocutory applications by directing that the appellant shall extend 30% fitment benefit to the writ petitioners in view of office memorandum, dated 26.11.2008, of the Union of India.

3. Mr.J.Prabhakar, learned counsel representing Mr.K.Raghava Charyulu, learned counsel for the appellant, has submitted that as explained in the counter-affidavit of the appellant filed before the learned Single Judge, due to certain historical reasons such as extending the benefit of 18% fitment with effect from 2007 instead of from 2010 i.e., the effective date of merger and also taking into consideration the financial position of the appellant, a decision was taken for giving the fitment benefit of 18% to the employees who were originally appointed in SIIL. He has further submitted that all the employees have accepted the fitment as fixed under proceedings, dated 18.11.2013, and they have filed the writ petitions in the year 2017 after their retirement between 2013 and 2015, which itself is an afterthought and that therefore, the writ petitions suffer from laches.

4. Mr.K.S.Murthy and Mr.A.Nagendra Rao, learned counsel for the contesting respondents/writ petitioners, have submitted that the learned Single Judge has exercised sound discretion and that having found the *prima facie* case and the fair chances of their clients succeeding in the writ petitions, has passed an equitable order which is not liable to be interfered with in these writ appeals.

5. We have given our earnest consideration to the respective submissions of the learned counsel for the parties.

6. An application for granting interim relief is considered on the well-known parameters of *prima facie* case, balance of convenience, irreparable injury and public interest. Merely on the party making out a *prima facie* case, the court would not grant an interim order unless the other three elements are also satisfied. The predominant object of an interim order is to preserve the *status quo* till the matter is decided finally, to ensure that the matter does not become either infructuous or a *fait accompli* before final hearing, and also to protect the party against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty was resolved in his favour at the end (See *Anand Prasad Agarwalla v. Tarakeshwar Prasad*¹, and *State of Assam v. Barak Upatyaka DU Karamchari Sanstha*²).

7. In *Colgate Palmolive (India) Limited v. Hindustan Lever Limited*³, the Supreme Court has added the following parameters, in addition to the aforementioned four elements while considering an application for granting an injunction:

- (i) *"Extent of damages being an adequate remedy;*
- (ii) *Protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason thereof;*
- (iii) *The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;*
- (iv) *No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible;*

¹ AIR 2001 SC 2367

² (2009) 5 SCC 694

³ AIR 1999 SC 3105

- (v) *The issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;*
- (vi) *Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;*
- (vii) *Whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise?"*

8. In *Dalpat Kumar v. Prahlad Singh*⁴ the Supreme Court while explaining the scope of consideration for grant of interim order, observed as under:

"The phrases "prima facie case"; "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by men's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts are eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience.

9. In *Deoraj v. State of Maharashtra*⁵, the Supreme Court held that the Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice.

10. In *Bombay Dyeing & Manufacturing Co. Ltd. V. Bombay Environmental Action Group*⁶, the Supreme Court observed that the Courts, however, have to strike a balance between two extreme positions, viz., whether the writ petition would itself become infructuous if interim

⁴ AIR 1993 SC 276

⁵ AIR 2004 SC 1975

⁶ (2005) 5 SCC 61

order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event the losses sustained by the affected parties thereby may not be possible to be redeemed.

11. When we apply the ratio culled out from the aforementioned judgments to the present cases, while we find that the writ petitioners have established a *prima facie* case, we are not satisfied with the other two important elements of balance of convenience and irreparable injury. The writ petitioners were already allowed fitment of 18% and claimed the difference of 12%. Hence, it cannot be said that if interim order is not granted, the writ petitions would become *fait accompli*. The temporary injury the petitioners may suffer can be adequately compensated by awarding monetary compensation in the form of reasonable interest if they succeed in the writ petitions. Therefore, it cannot be said that the writ petitioners would suffer irreparable injury in the event of denial of an interim relief.

12. When we look from the point of view of the appellants, Mr. J. Prabhakar, learned counsel, submitted that all the writ petitioners retired from service and that as they are not pensioners, in the event of dismissal of the writ petitions, it is not possible for the appellants to recover the amounts paid by them from the writ petitioners. Moreover, grant of interim order would by implication amount to granting an interim mandamus for a part of the period and the Courts would be very slow in granting such interim orders which have the effect of granting main relief itself at the interlocutory stage. The Courts would be very slow in granting interim order which contains a positive direction to the other side

to act in a particular manner, unlike in a case where an interim order to prevent an imminent damage being caused to the litigant.

13. After giving our earnest consideration to the facts of the case in their entirety and the legal position as discussed above, we are of the considered opinion that the interim relief claimed by the petitioners and granted by the learned Single Judge do not satisfy the required legal parameters.

14. For the aforementioned reasons, the impugned orders of the learned Single Judge are set aside and the Writ Appeals are allowed, however, with the direction that in the event the writ petitioners succeed in the writ petitions, the appellants would be liable to pay reasonable interest which shall not be less than the bank rate of interest at the time of disposal of the writ petitions.

As a sequel to disposal of the writ appeals, W.A.M.P. Nos.1228, 1267 and 1998 of 2017 filed in the respective writ appeals shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

02-8-2017

ghn/bnr

Note: LR copies to be marked.
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