THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.223 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri S. Ramachandra Rao, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, Sri B. Narayana Reddy, learned Assistant Solicitor General appearing on behalf of respondents 1 and 2, the learned Advocate General for the State of Telangana appearing on behalf of the 3rd respondent, and Sri P. Venugopal, learned Senior Counsel appearing on behalf of the 4th respondent. The order of the AAIFR dated 17.11.2006 confirming the order passed by the BIFR dated 21.03.2006, and the consequential proceedings issued by the Cement Corporation of India (CCI) dated 01.02.2007 to take steps to close down its Adilabad unit, is questioned in this writ petition as being illegal and arbitrary.

While several contentions are put forth on the merits of the order of the BIFR as confirmed by the AAIFR, the fact remains that, in proceedings under Article 226 of the Constitution of India, this Court would neither sit in appeal over the decision of specialised Tribunals such as the BIFR and the AAIFR, nor would it take upon itself the task of determining whether or not the CCI should put its Adilabad Unit to sale.

Both Sri S. Ramachandra Rao, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, and the learned Advocate General appearing on behalf of the State of Telangana, would submit that Adilabad is the most backward area in the State of Telangana; the unit of the CCI located thereat is possibly one of the very few industries established there; the Government of Telangana is requesting the Government of India to take steps for revival of this unit; and if, in the interregnum, the Adilabad unit of the CCI is sold, then the efforts of the Government of Telangana to have the Adilabad unit, of the CCI, revived would be of no avail. Learned Advocate General would request this Court to direct maintenance of *status quo* for a period of three months to enable the Government of Telangana to persuade the Government of India to revive the CCI Unit at Adilabad.

Sri B. Narayana Reddy, learned Assistant Solicitor General appearing on behalf of respondents 1 and 2, would draw our attention to the letter dated 10.01.2017, addressed by the Ministry of Heavy Industries and Public Enterprises, Government of India, New Delhi to the Principal Secretary to the Government of Telangana, Industries and Commerce Department, informing him that the Cabinet Committee on Economic Affairs had taken a decision regarding the strategic sale of different PSUs in which CCI units have also been identified for strategic sale; the Department of Heavy Industry was supervising the strategic sale process of different units of the CCI; and, if the Government of Telangana was keen on revival of the CCI unit at Adilabad, they may also participate in the bid as and when the strategic sale process starts.

Sri B. Narayana Reddy, learned Assistant Solicitor General, would submit that the letter dated 10.01.2017 reflects the decision of the Government of India to take steps to sell all loss making units, including the CCI unit at Adilabad; and no useful purpose would therefore be served in the Government of Telangana now requesting the Government of India to revive the unit. Sri S.

Ramachandra Rao, learned Senior Counsel appearing on behalf of the appellant, would, however, contend that this letter was not part of the record, and was placed subsequently before the Learned Single Judge even without an affidavit being filed by the Union of India in this regard.

While we find no error in the order of the Learned Single Judge in upholding the orders of the BIFR and the AAIFR, we cannot ignore the fact that it is always open to the Government of India, if it so chooses, to revise its earlier decision and, if it considers it appropriate, to revive the CCI unit at Adilabad. While the questions, whether the unit of CCI at Adilabad should be revived or put to sale, are matters in the executive realm and would, ordinarily, not be subject to microscopic examination in proceedings, under Article 226 of the Constitution of India, all that the appellants and the Government of Telangana are seeking is for breathing time of around three months to enable the latter to persuade the Government of India to re-consider its decision of disinvestment, and to refrain from putting the CCI unit at Adilabad to sale.

Sri P. Venugopal, learned Senior Counsel appearing on behalf of the 4th respondent-CCI, would submit that tender notifications were issued on 18.02.2017 inviting bids from eligible bidders; the last date for submission of bids is 17.03.2017; the date of opening of the bids is 17.03.2017 at 15.30 hours; the validity of the bid is for a period of 120 days from the date of techno-commercial bid opening; and, any order, which this Court may pass, should not interdict the tender process. Learned Senior Counsel would further submit that, thought the Adilabad unit of the CCI was closed down more than two decades ago, in the year 1996, the CCI is being made to pay salaries of around Rs.3.00 crores per annum to 46 employees, though no work has been extracted from them for the past two decades. Sri S. Ramachandra Rao, learned Senior Counsel appearing for the appellant-writ petitioner, undertakes that none of the workmen or employees of the Adilabad unit of CCI, to whom CCI has been paying salaries, would claim any salary or other emoluments from CCI for a period of three months. In view of the undertaking of Sri S. Rama Chandra Rao, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, the apprehension of the CCI, that they would be required to continue to pay salaries to these 46 workmen/employees, is unfounded.

Even as per the tender notification, the entire process of finalisation of the tender would take more than three months. We see no reason, therefore, to prevent the Government of Telangana from making efforts to persuade the Government of India to re-consider its earlier decision of disinvestment, and to refrain from putting the Adilabad unit of the CCI to sale. The order now passed by us may not be understood as a direction to the Government of India to reconsider its earlier decision. As it is open to the Government of India, if it so chooses, to change its earlier policy decision of disinvestment, suffice it to make it clear that the order under appeal would not disable the Government of India, if it so chooses, to re-consider its earlier decision.

The interests of all the parties would be adequately safeguarded if the CCI is directed not to hand over the assets of the Adilabad unit, pursuant to the tender notification issued by them, for a period of three months from today. All other steps already taken, or those which are required to be taken, pursuant to the tender notification dated 18.02.2017 may go on. It is also made clear that, in case the Government of India does not re-consider its earlier decision of disinvestment and to sell the Adilabad Unit of CCI within the aforesaid period of three months, it is open to the CCI to hand over the unit to the eligible bidder in the auction.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

27th February, 2017
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

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Writ Appeal No.223 of 2017

Date: 27.02.2017

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