

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 06.04.2017

CWP No.3537 of 2017 (O&M)

Hindustan Dowiat (Everest) Majdoor Union ...Petitioner

Vs.

State of Haryana & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Rashmi Dhillon and Mr. Amit Aggarwal, Advocates,
for the petitioner.

RAJIV NARAIN RAINA, J.

The following prayers have been made in this petition:

- “(i) Issue a writ in the nature of Mandamus directing the respondents-authorities [Respondents 1 to 3] to restrain the employer management of Respondent No.4 from selling their property without settling workmen’s dues; OR
- (ii) Issue a writ in the nature of mandamus directing the respondents-authorities [Respondents 1 to 3] to decide the sixty days’ legal notice [Annexure P-6] served on them by the petitioner union under Section 80 of CPC in view of law laid down by Hon’ble Supreme Court of India in Salem Advocates Bar Association v. Union of India, (2005) 6 SCC 344;
- (iii) Issue any other appropriate writ, order or direction for taking appropriate action against the erring officials, including imposition of costs, as may be deemed fit and proper on the facts and in circumstances of the case in view of observations of the Hon’ble Supreme Court in para 39 of Salem Advocates case cited above;”

The prayers have arisen against the backdrop that the Management has closed down the factory by informing the Haryana Government on 13.10.2016 of its decision to shut it down by applying under Section 25-FFA of the Industrial Disputes Act, 1947 read with Rule 76-B of the Rules for permission. The petitioning-Union consisting of a large body of workers on the management represented to the Labour Commissioner, Haryana not to close down the factory without hearing the Union.

On the first date of hearing, when learned counsel for the petitioner submitted that a legal notice was served under Section 80 of the Code of Civil Procedure on the State with copy to the respondent – Management, I asked the learned counsel to produce the photocopy of the original legal notice to determine; whether it was issued under Section 80 CPC as professed in the List of Events/Synopsis and in the Prayer Clause (ii) reproduced above and adjourned the case to 09.03.2017.

In the interregnum, an application bearing CM No.3563 of 2017 under Section 151 CPC was moved by the petitioner in which the learned counsel admitted that the mistake was indeed typographical, but escaped from counsel's notice and truly the notice did not meet requirements of Section 80 CPC as it was just a legal notice.

On 09.03.2017 i.e. when CM No.3563 of 2017 and the main writ petition were listed, learned counsel for the petitioner prayed for time as she wanted to amend the petition and the case was adjourned for today i.e. 06.04.2017. Today, an amended petition has been produced with CM No.4959 of 2017. The documents annexed with the amended writ petition do not contain any notice under Section 80 CPC. This was because the notice dated 28.11.2016 (Annex P-6) in the original petition was a justice demand notice on behalf of the Union served on the official respondents. The notice

was not addressed to the private respondent- company. The Union was disputing alone with (1) the Additional Chief Secretary -cum- Secretary, Labour Department, Haryana; (2) the Labour Commissioner, Haryana, and (3) the Deputy Commissioner/Collector/District Magistrate, Sonapat and would not even constitute an industrial dispute raised with the Management to which neither addressed nor endorsed.

The position is much the same in the amended petition. There is no notice under Section 80 CPC and apparently a wrong stand has been taken in the original petition and in its prayer clause by referring to Section 80 CPC to try and bring the case within the fold of the directions of the Supreme Court regarding Section 80 notice, in Salem Advocates' Bar Association Vs. Union of India, (2005) 6 SCC 344 which has been made the main plank to obtain directions to the official respondents to decide the notice in a time bound manner, and was urged at the preliminary hearing when the query came. Mentioning of Section 80 CPC has been carefully weeded out of the proposed amended petition and from the prayer clause. Too much innocence cannot be attached to the mistake in typing the petition when it occurs more than once in the most material parts of the petition on which relief could have rested. The altered prayers read as follows:

- “(i) Issue a writ in the nature of Mandamus directing the respondents-authorities [Respondents 1 to 3] to restrain the employer management of Respondent No.4 from selling their property without first payment of workmen's wages and settlement of workmen's dues;
OR
- (ii) Issue a writ in the nature of mandamus directing the respondents-authorities [Respondents 1 to 3] to decide the legal notice, followed by reminder [Annexure P-6] served on them by the petitioner union;
- (iii) Issue any other appropriate writ, order or direction for taking appropriate action against the erring officials, as

may be deemed fit and proper on the facts and in circumstances of the case;”

The mess created in this case can be cured only by sage advice. This Court is not an advisor as to how litigation is to be carried to its logical end. This is for the counsel to contend with on sage advice.

Nevertheless, I find that the question; whether closure was justified or not, cannot be gone into in writ jurisdiction, as it would invariably involve seriously disputed questions of fact, which are incapable of settlement except upon evidence which is not conceivable in writ jurisdiction. Such a dispute as to closure may constitute an ‘industrial dispute’ and if that is so the remedy would be before the Labour Court or Tribunal or before the Authorities in the State of Haryana. Thus, a mandamus cannot be issued to a private body, the private respondent, not to sell their property without settling the workmen dues when that claim is capable of being settled in alternative remedies. I would, therefore, not interfere in this petition or even to permit the amended petition being taken on record and to issue notice upon it to the respondents.

If the notices as stated in the CM No.3563 of 2017 issued to the Government in September, October, November and December, 2016 have not found answers, the Union is free to avail its legal remedies outside the writ jurisdiction and before the appropriate authorities. No such directions as are prayed for in the original petition and in the proposed amended petition can be issued by this Court in either of the two forms of pleadings presented successively. Mismanaged litigation brought to this Court ends up wasting time, not only of the Court but of the anxious party which seeks relief and is led astray.

Before signing off, I may remind the petitioning union that right of hearing is not part of the statutory apparatus in Section 25-FFA of the Act when an undertaking serves sixty days' notice on the appropriate Government of its intention to close down the undertaking. Therefore, the appropriate Government does not owe a statutory duty in Section 25-FFA to attend to and decide a representation/legal notice etc. filed by the workers or their Union employed in the applicant-undertaking and, therefore, a mandamus will not issue directing them to offer opportunity of hearing to the petitioner or settle their dues before closure, when closure, if permitted, would by itself constitute an industrial dispute for which the labour Court can always be approached to answer on evidence; whether it was justified. This prayer is also beyond the field of the writ Court to enter upon, as the structure of the dispute as it presently stands is bound to be evidence based, both oral and documentary, which cannot be received in extraordinary jurisdiction provided by Articles 226 and the supervisory jurisdiction conferred by Article 227 of the Constitution.

Accordingly, CM No.3563 of 2017; CM No.4959 of 2017 and main petition stand dismissed with liberty to the petitioning-Union to approach the appropriate authorities and forum for ventilating its grievances, as projected in this petition in accordance with law.

06.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>