

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 06.03.2018
Judgment Pronounced on: 22.03.2018

LPA 77/2018 & C.M. No. 7728/2018

FOOD CORPORATION OF INDIA HANDLING WORKER UNION

..... Appellant

Through: Mr. R.M. Sinha, Advocate along with
Mr. P.M. Sinha, Advocate.

versus

**THE CHAIRMAN CUM MANAGING DIRECTOR FOOD
CORPORATION OF INDIA**

..... Respondent

Through: Shri. Om Prakash, Advocate along
with Mr. Pradeep Kumar Tripathi and
Mr. Anil Kapoor, Advocates.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present Letter Patents Appeal under clause 10 of the Letter Patents Act assails an interim order dated 06.02.2018, rendered by a learned Single Judge of this Court in C.M. No.3868/2018 in Writ Petition (C) No.9260/2016 titled as “*Food Corporation of India Handling Worker Union v. The Chairman-cum-Managing Director Food Corporation of India*” (hereinafter referred to as the ‘subject writ petition’).

2. By way of the impugned order, the learned Single Judge considered it appropriate to allow the prayer made on behalf of the appellant in the said application, limited to the extent that the Food Corporation of India (hereinafter referred to as ‘FCI’) was restrained from making recoveries of incentives from their workmen in the *Delhi region* pursuant to their circular Nos.8/2016 and 01/2017 dated 17.08.2016 and 17.01.2017, respectively (hereinafter collectively referred to as the ‘subject circulars’).

3. The appellant’s grievance before us is limited to the extent that the learned Single Judge whilst staying the recovery of incentives by the FCI,

did not extend the operation of the said injunction to its members throughout the entire country.

4. In this behalf, it would firstly be relevant to note that in relation to the subject dispute before us, a Division Bench of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, by way of its judgment dated 20.11.2015 in P.I.L. No.84/2014 titled as '*Court on its own motion v. Union of India and ors.*', issued the following direction:

“(iv) We also clarify that the respondent/Corporation would be at liberty to implement its policy of change in the Scheme of incentives.”

5. The said judgment dated 20.11.2015 was challenged before the Hon'ble Supreme Court in Special Leave Petition (C) No.19218/2016 titled as "*Food Corporation of India Workers Union Regd. No.8219 through its organizing Secretary v. Union of India through its Secretary*", and the same came to be dismissed vide an order dated 31.07.2017, whilst observing as follows:

“1. We do not see any merit in these special leave petitions, which are hereby dismissed. We make it clear that this order shall not prevent the petitioners – Food Corporation of India Workers Union/Food Corporation of India Shramik Union/FCI Handling Workers Union, to challenge any order, passed in furtherance of the directions issued in the impugned order (dated 20.11.2015), in

appropriate proceedings before an appropriate Court.

2. In case, such a challenge is raised by the petitioner(s), in continuation of the liberty granted to the petitioner(s), the claim raised by the petitioner(s) shall be considered in accordance with law, uninfluenced by any observations made by the High Court in the impugned order (dated 20.11.2015).”

6. It would further be relevant to note that as recorded in the order of this Court dated 13.12.2017 passed in C.M. No.44791/2017 in W.P. (C) No.8495/2016 titled as '*Food Corporation of India Workers Union v. Food Corporation of India & Anr.*', it was submitted by counsel appearing on behalf of the workers union before the learned Single Judge that the operation of the said earlier circular dated 17.08.2016 has been stayed by the Hon'ble High Courts of Gujarat, Rajasthan, Calcutta and Gauhati. Further, a submission was made on behalf of the FCI, to the effect, that recoveries are being made not in the terms of the said earlier circular dated 17.08.2016 but in terms of the modified circular dated 17.01.2017. It was further submitted on behalf of the FCI that the modified circular dated 17.01.2017 was issued pursuant to the recommendations of a Committee, the report of which is also pending consideration.

7. In the pleadings before us, further reference has been made to an order dated 11.01.2018 of the High Court of Allahabad, and it has been stated that

the modified circular dated 17.01.2017 has been stayed by the said High Court.

8. In order to effectively adjudicate the subject dispute before us, reference may be made to the principles of comity of courts. The Hon'ble Supreme Court in *Narendra Kumar Maheshwari v. Union of India (UOI) and Ors.* reported as AIR 1989 SC 2138, observed in relation to the aspect of comity of courts and how the courts in different parts of the country should grant injunction or entertain applications affecting an all-India issue or having ramifications all over the country, as follows:

“106. Before we conclude, we must note that good deal of argument was adduced that these applications in different High Courts in civil suits were not genuine and properly motivated, but were mala fide. Even though these might not have been to feed fat an innocent object, it was apparent that it was to feed fat a grudge in respect of a competitive project by a competitor. Anyway, in the view we have taken, it is not necessary to decide the bona fides or mala fides of the applicants. Shri Nariman, when he moved the application initially, had suggested that we should lay down certain norms as to how the courts in different parts of the country should grant injunction or entertain applications affecting an all-India issue or having ramifications all over the country. **Except that before the courts grant any injunction, they should have regard to the principles of comity of courts in a federal structure and have regard to self-restraint and circumspection, we do not at this stage lay down any more definite norms. We may also perhaps add that it**

may be impossible to lay down hard and fast rules of general application because of the diverse situations which give rise to problems of this nature. Each case has its own special facts and complications and it will be a disadvantage, rather than an advantage, to attempt and apply any stereotyped formula to all cases. Perhaps in this sphere, the High Courts themselves might be able to introduce a certain amount of discipline having regard to the principles of comity of courts administering the same general laws applicable all over the country in respect of granting interim orders which will have repercussion or effect beyond the jurisdiction of the particular courts. Such an exercise will be useful contribution in evolving good conventions in the federal judicial system.”

(Emphasis supplied)

9. It is evident from a simple reading of the above-extracted decision that no definite norms were laid down by the Hon’ble Supreme Court. However, it was observed that the courts before granting injunction or entertaining applications affecting an all-India issue or having ramifications throughout the country, should have regard to the principles of comity of courts in a federal structure, as well as, self-restraint and circumspection. No further definite forms were laid down, since it was observed that each case has its own facts and circumstances and diverse situations can give rise to problems of this nature. The Hon’ble Supreme Court left it to the High Courts to introduce a certain amount of discipline, having regard to the principles of

comity of courts administering the same general laws applicable all over the country, whilst granting interim orders which will have repercussion or effect beyond the jurisdiction of the particular courts.

10. A learned Single Judge of this Court in its order dated 31.05.2007, passed in CM No.7602/2007 in W.P. (C) No.4037/2007 titled as “***CFA Institute and anr. v. All India Institute of Technical Education***”, referred to certain decisions of the United States Supreme Court relating to principles of comity of courts. The relevant paragraphs of the said decision in this behalf are reproduced hereinbelow:

“... In Hartford Fire Ins. Co. v. Cal. 509 U.S. 764, it was observed that the comity of courts refers to a situation where judges decline to exercise jurisdiction over matters more appropriately adjudged elsewhere.

In Parsi v. Davidson 405 U.S. 34, it was observed that under accepted principles of comity, a court should stay its hand only if the relief the petitioner seeks would also be available to him with reasonable promptness and certainty through the alternative machinery...”

11. At the outset, it must be observed that arguments in the subject writ petition have been concluded and the judgment has been reserved by the learned Single Judge on 23.05.2017. The relief granted by the learned Single Judge is effective only till the date of pronouncement of the judgment in the subject writ petition.

12. The order sought herein before us by the appellant against the subject circulars is going to have ramifications across India.

13. Before us, the Appellant has not filed a copy of the subject writ petition. Even copies of the orders passed by the Hon'ble High Courts of Gujarat, Rajasthan, Calcutta and Gauhati, in relation to the said earlier circular dated 17.08.2016, have not been placed on record; let alone a copy of the pleadings resulting in passing of those orders. Furthermore, copies of the order of the High Court of Allahabad in relation to the modified circular dated 17.01.2017, as well as, that of the pleadings resulting in passing thereof; have not been placed on record. Copy of the said judgment dated 20.11.2015 of the High Court of Judicature at Bombay, Nagpur Bench, as well as, that of the said order dated 31.07.2017 of the Hon'ble Supreme Court, were handed over in Court and not filed on record.

14. In view of the direction sought before us, it is presumed that the Hon'ble High Courts of Gujarat, Rajasthan, Calcutta and Gauhati have stayed the operation of the said earlier circular dated 17.08.2016 within their respective territorial jurisdiction only, and the Hon'ble High Court of Allahabad of the said modified circular dated 17.01.2017 within its

jurisdiction; and that the operation of their orders does not extend to the entire country.

15. Further, as per the case of the appellant itself, the Hon'ble High Courts of Gujarat, Rajasthan, Calcutta and Gauhati have not stayed the operation of the modified circular dated 17.01.2017, and the Hon'ble High Court of Allahabad of the said earlier circular dated 17.08.2016.

16. In view of the facts and circumstances of the present case and in light of the principles of comity of courts, we are of the considered view that, it would not be prudent for us to extend the application of the impugned order across India and restrain the FCI from making recoveries pursuant to the said earlier circular dated 17.08.2016, as well as, modified circular dated 17.01.2017, since:

- a) The nature and scope of the proceedings before the Hon'ble High Courts of Gujarat, Rajasthan, Calcutta and Gauhati or Hon'ble High Court of Allahabad, leading to passing of said orders against the subject circulars, purportedly similar to the order impugned herein; have not been brought to our notice. Even the complete scope and reasoning of the orders passed by the Hon'ble High Courts of Gujarat, Rajasthan, Calcutta,

Gauhati and Allahabad against the subject circulars, is unknown to us.

- b) Since a copy of the subject writ petition has not been filed on record along with the present appeal, the scope thereof is also not known, preventing us from fully appreciating the prayer sought herein.
- c) The Hon'ble High Courts of Gujarat, Rajasthan, Calcutta and Gauhati, have restrained the FCI from making recoveries only in pursuance to said earlier circular dated 17.08.2016, and not the modified circular dated 17.01.2017. Conversely, the Hon'ble High Court of Allahabad has restrained the FCI from making recoveries only in pursuance to modified circular dated 17.01.2017, and not the said earlier circular dated 17.08.2016. If this High Court were to extend the stay against both the subject circulars across India, when the Hon'ble High Courts of Gujarat, Rajasthan, Calcutta and Gauhati have not stayed the operation of the subsequent modified circular dated 17.01.2017, and the Hon'ble High Court of Allahabad has not stayed the operation of the said earlier circular dated 17.08.2016; it would

be subsuming jurisdiction of the said High Courts, which may lead to conflicting orders on the same subject matter.

d) Even otherwise, in our view, discretion has not been exercised by the learned Single Judge arbitrarily, or capriciously or perversely or in ignorance with the settled principles of law regulating grant or refusal of interlocutory injunctions. Therefore, we do not think that we must interfere with the exercise of discretion of the court of first instance and substitute it with our own discretion. [Ref: ***Wander Ltd. and Anr. vs. Antox India P. Ltd.***, reported as 1990 (Supp) SCC 727]

17. It would also be relevant to note that comity *albeit* a tool for co-operation can also be a tool for exclusion. It is trite that *forum non conveniens* (Latin for "inconvenient forum" or "inappropriate forum") is a discretionary power of common law courts to refuse to hear a case that has been brought before it. The Courts may refuse to take jurisdiction over matters where there is a more appropriate forum available to the parties. [Ref: ***Max India Limited v. General Binding Corporation*** reported as 2009 (3) ArbLR 162 (Delhi)]

18. Therefore, for the foregoing reasons and since the relief prayed for by the appellant would, in our view, be more appropriately adjudged elsewhere and, that too, with certainty, as well as, reasonable promptness, we shall exercise self-restraint in the instant case.

19. The present appeal is dismissed accordingly.

20. Pending application also stands disposed of.

21. No order as to costs.

SIDDHARTH MRIDUL, J.

DEEPA SHARMA, J.

MARCH 22, 2018

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