

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.6.2019

PRONOUNCED ON: 05.7.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Writ Appeal No.1012 of 2017

1. Madras Labour Union
Regd. No.722
Rep. by its Vice-President
No.176, Strahans Road
Chennai 600 012.
2. B & C Mills Staff Union
Regd. No.2399
Rep. by its General Secretary
No.60, Krishnadoss Street
Chennai 600 012. Appellants

Vs.

1. The Board for Industrial and Financial Reconstruction
Rep. by its Secretary
Jawahar Vyapar Bhavan
No.1, Tolstoy Marg
Janpath, New Delhi 110 001.
2. National Company Law Tribunal
Chennai Bench
No.29, Corporate Bhawan
UTI Building, III Floor
Rajaji Salai, Chennai 600 001.
3. The Management of Binny Ltd.
No.106, Armenian Street
Chennai 600 001. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 17.7.2017 made in W.P.No.10701 of 2017.

Prayer in W.P.No.10701 of 2017:

Writ Petition is filed under Article 226 of the Constitution of India seeking for the issuance of a Writ of Mandamus directing

the 1st respondent Board to transfer the petition dated 14.5.2014 in Case No.48 of 1993 and all connected records to the 2nd respondent Tribunal forthwith and to direct the said Tribunal to dispose of the above petition along with all other connected petitions after giving sufficient opportunity to the petitioners.

For Appellants : Mr.N.G.R.Prasad
For M/s. Row & Reddy

For Respondent-1 : Not ready in notice

For Respondent-2 : Notice served

For Respondent-3 : Mr.P.S.Raman, S.C.
For Mr.Ananda Gopalan
M/s.T.S.Gopalan & Co.,

J U D G M E N T

Dr.Vineet Kothari,J

The appellants, Madras Labour Union and B & C Mills Staff Union, Chennai, have filed the present intra Court appeals, aggrieved by the order of the learned Single Judge dated 17.7.2017, whereby the learned Single Judge dismissed their Writ Petition W.P.No.10701 of 2017.

2. The facts in a nutshell leading to the filing of the present writ appeals are as under.

The company, known as Binny Mills, had set up its Textile unit within the State of Tamil Nadu (Binny Limited) and unfortunately, it was declared as a sick company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, (hereinafter referred to as the "SICA Act") on 15.10.1993. Under the provisions of the said Act, in Case No.48 of 1993, a Scheme for rehabilitation, SS-03, was framed by BIFR vide order dated 22.10.2003, which envisaged, inter alia, the demerger of M/s. Binny Limited (BL) into two companies with M/s. BL and Binny Karnataka Limited (BKL) with effect from 01.4.2003. It also envisaged the settlement of the dues of secured creditors by raising funds through sale/development of real estate properties, etc. One Clause of the said Scheme also envisaged that Binny Limited would shift its textile mill at Chennai to a new location at Kancheepuram District and to commence its operations in the month of March 2005. It is this last part of the said Scheme which is the bone of contention in the present writ appeal.

3. The appellant Trade Unions want the implementation and execution of the said part of the Rehabilitation Scheme SS-03, even though the said Scheme was declared to have failed by the

order of the BIFR itself under the SICA Act vide its order dated 04.8.2005. During the course of time, after the said Scheme was framed, the said companies entered into a settlement with the workmen, including the Members of the appellant Trade Unions and on the basis of the said Memorandum of Understanding dated 28th May 2008, it was agreed by the appellant Trade Unions also that the aforesaid Case No.48 of 1993 shall be deemed to have been withdrawn and shall stand withdrawn and the Trade Unions will not raise their claim for rehabilitation of Mills in consideration of the benefits, obligations and commitments made by company made under this Memorandum of Understanding. The said settlement between the parties inter alia also envisaged allotment of plot of land of 500 sq.ft. to each of the 244 workers in Venkatesan village and Belverda village at a token sale consideration of Rs.1,000/- and gratuity and VRS compensation were also paid to the workers.

4. On the basis of the said Memorandum of Understanding, the learned Single Judge of this Court, in the earlier writ petitions in W.P.Nos.18117 and 18304 of 2008 filed by the Management of Binny Limited, closed the proceedings before BIFR by passing the following order on 30.7.2008:

"Learned counsel for the petitioners as well as the respective contesting respondents filed joint memo signed by the parties as well as their counsel dated 29.07.2008. The terms of which read as follows:

"1. The management & the Unions hereby undertake to implement the terms & conditions of the MOU dated 28.05.2008.

2. The company namely Binny Ltd, with effect from 30.09.2005 will cease to be a Sick Industrial Undertaking within the meaning of clause (o) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 since its net worth from that date is positive.

3. In view of the above, the order dated 05.06.2008 of AAIFR in Appeal No.72 of 2008 is not necessary insofar as the remand back to BIFR for deregistration from its purview is concerned and the matter will stand disposed off by this memo and orders thereon.

4. All proceedings before BIFR (Case No.48 of 1993) shall stand closed in view of his memo and orders there upon since the unions

are not pressing their petitions before BIFR as agreed in the MOU dated 28.5.2008."

2. Learned counsel appearing for the parties submits that these writ petitions may be disposed of recording the above joint memo filed by the parties.

3. Recording the joint memo filed by the parties, these writ petitions are ordered as per the terms of the joint memo dated 29.07.2008. Further it is made clear that the petitioner company is ceased to be a Sick Industrial undertaking with effect from 30.9.2005. No costs. Consequently, connected M.Ps. are closed."

5. Thus, the said company ceased to be a sick industrial undertaking with effect from 30.9.2005 and the proceedings before BIFR in Case No.48 of 1993 stood closed.

6. It is in this Case No.48/93 only, the initial Scheme for Rehabilitation SS-03 was framed, which, inter alia, envisaged the setting up of a Textile Mill at Kancheepuram and for which, the appellants, Madras Labour Union and the other Union B & C Mills are even now pressing for.

7. The learned Single Judge, by the impugned order dated 17.7.2017, however rejected the said prayers of the appellant Trade Unions with the following observations:

"22. Now let us consider whether the petition filed on 14.5.2014 in Case No.48 of 1993 can be adjudicated by the second respondent-Tribunal, when the disputed issues between the respective parties were negotiated and settled by way of Memorandum of Understanding and accordingly Case No.48 of 1993 was also closed, certainly it is not open to either of the parties to reopen or file any applications in Case No.48 of 1993. Further, Case No.48 of 1993 was agreed to be closed in Memorandum of Understanding dated 28.5.2008 and, the same was also recorded by this Hon'ble Court in WP No.18117 of 2008 and WP No.18304 of 2008 on 30.7.2008. After a lapse of six years, the writ petitioners have filed application before the first respondent-Board in Case No.48 of 1993 - Binny Limited. The maintainability of such a petition is also an issue and further transferring of the application

along with Case No.48 of 1993 is also to be considered. If at all any new grievances are to be redressed for the writ petitioners, they have to initiate afresh proceedings unconnected with the settlement arrived between the parties in Memorandum of Understanding dated 28.5.2008 and Case No.48 of 1993. The Case No.48 of 1993 already closed based on the Memorandum of Understanding, cannot be revived or restored by the parties.

23. The learned Senior Counsel Mr.N.G.R.Prasad, appearing for the writ petitioners, urged that when commissioning of a new Unit in Kancheepuram District is also a part of the Scheme, which is statutory in nature, the writ petitioners can file application in the same case for implementation of the same. This Court is of the same view even a statutory right, if it is waived by the writ petitioners, which was reduced in writing and accepted between the parties, it cannot be reopened. The legal principle in this regard is that the legal right waived by the parties consciously and the same was reduced in writing and submitted before this Court and the entire case was closed, thereafter, the parties cannot be allowed to reopen the same after a lapse of six years from the date of closure of the case.

24. In the case on hand, Case No.48 of 1993 was closed on 28.5.2008 and on 30.7.2008. Hence, it is not open to the parties to file any application in this regard. If any new grievances are to be redressed, it is left open to the writ petitioners to file necessary applications before the Competent Authorities. Accordingly, the question of transferring this petition cannot be considered and the writ petition stands dismissed, however, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed."

8. Aggrieved by the said order of the learned Single Judge, the appellant Trade Unions are before this Court.

9. Mr.N.G.R.Prasad, learned counsel, with his impressive flair and emphasis, sought to urge that once the Scheme was framed by BIFR under the provisions of the SICA Act, 1985,

notwithstanding its later on repeal and substitution of National Company Law Tribunal in the place of BIFR, the said part of the Scheme for setting up a Textile Mill at Kancheepuram for providing re-employment to the workers of the appellant Trade Unions would stand died down with the later Memorandum of Understanding with the Management and the Management should be directed by way of Mandamus to undertake that exercise since now admittedly the company is not a sick company and can easily implement that direction in the Scheme.

10. On the other hand, the learned counsel appearing for the Management Mr.P.S.Raman, learned senior counsel, submitted that the said Rehabilitation Scheme SS-03 stood closed and buried with the company being declared no longer sick in the year 2005 and the workers and Members of the Trade Unions stood satisfied with the terms of the Memorandum of Understanding and they were given large benefits under the said Memorandum of Understanding and therefore, they are estopped from raking up the dead issues and revive the said proceedings before BIFR, of which, as of now a transfer of proceedings is sought to the National Company Law Tribunal in the present writ petition. He submitted that the writ of this Court cannot be issued for such purposes and not only the proceedings under SICA Act stood closed for all purposes, the company being no longer a sick company is neither subject to jurisdiction of BIFR nor National Company Law Tribunal now. He submitted that the appellant Trade Unions have no cause to approach this Court and therefore, the learned Single Judge has rightly dismissed the writ petition filed by them.

11. Having heard the learned counsel for the parties and perused the records, we are of the considered opinion that no such directions as prayed for by the appellant Trade Unions can be granted by this Court and we are of the considered opinion that the learned Single Judge was perfectly justified in refusing to do so.

12. The Scheme framed under the SICA Act, as it then stood and which now admittedly stands repealed, could have the force of law only so long as the proceedings before BIFR continued in this case. With the lapse of time and subsequent developments, more significantly the settlement of disputes with the workers and labours themselves under the Memorandum of Understanding dated 28.5.2008, under which they got huge benefits, the appellant Trade Unions now cannot be allowed to flog a dead horse for establishing a new textile mill at Kancheepuram, which was only one part of the Scheme framed in a comprehensive plan

of revival and rehabilitation of the sick unit of the respondent company at that time.

13. With the long lapse of time, the company seems to have come out of red by settling the dues of the workman and labours as well as the secured creditors and its sickness character ended by the declaration of the learned Single Judge in the writ petition filed by the Management of the Company on 30th July 2005, wherein recording the terms of Memorandum of Understanding as quoted above, the company was held to have ceased to be a sick industrial undertaking with effect from 30th September 2005. Thereafter, the said company has undertaken its further own course of its business, with which this Court is not concerned. There is no subsisting legal right with the Labour Union, appellants herein, to seek any such Mandamus / directions from the Court. If the Company itself wants to set up any such project on its own volition as a part of its ongoing business and even employ workman who may be a Member of these appellant Trade Unions, there is no restriction on them.

14. The Rehabilitation Scheme SS-03 was declared to have failed and declared dead letter by BIFR itself. The Labour Union themselves has agreed before the Appellate Authority of BIFR that the Case No.48 of 1993 shall be deemed to have been withdrawn and the Trade Unions will not raise their claim for rehabilitation of Mills in consideration of the benefits received by them under the Memorandum of Understanding dated 28th May 2008.

15. In view of this clear admission and acquiescence, the workmen, represented by the appellant Trade Unions, are estopped in law from raising the issue again before the Court of law, by way of present writ petition, which has been rightly dismissed by the learned Single Judge of this Court. This Court cannot permit the dead issues to be raised again and again. The issue sought to be raised before this Court was not only dead long ago, but even in the Scheme itself also, it was only a proposal. Had the said Scheme been carried out and implemented in full in its letter and spirit, that part of the Scheme also could be implemented by the concerned Agencies, including BIFR, at that point of time. That not having been done, after 14 years, now there is no occasion for this Court to go into those issues once again at the instance of the Labour Unions and to issue any such Mandamus / direction or even revive the case before BIFR or NCLT as prayed for.

16. In view of this, this Court finds no merit in the present writ appeals and the same are liable to be dismissed. Accordingly, they are dismissed. No costs. Consequently, CMP No.14246 of 2017 is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
Board for Industrial and Financial Reconstruction
Jawahar Vyapar Bhavan
No.1, Tolstoy Marg
Janpath, New Delhi 110 001.
2. National Company Law Tribunal
Chennai Bench
No.29, Corporate Bhawan
UTI Building, III Floor
Rajaji Salai, Chennai 600 001.

+1cc to M/s.Row & Reddy, Advocate Sr.56331

+1cc to M/s.T.S.Gopalan & Co., Advocate Sr.56226

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WA No.1012 of 2017.

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