IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.558 of 2021 (O&M)
Date of Decision:10.08.2021

Abhijit Mishra

......Petitioner

Versus

Securities and Exchange Board of India through Honourable Chairman Chandigarh and another

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Petitioner in person.

Mr. Manish Jain, Advocate
for respondent no.1.

Mr. M.S.Vinaik, Advocate
for respondent no.2.

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LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioner has filed this writ petition with the following prayers:-

> "A civil writ petition under Article 226 of the Constitution of India and for issuance of a writ in the nature of mandamus or any other appropriate writ, order or direction upon the respondent no.1 i.e., SEBI to initiate appropriate action against the respondent no.2 i.e., WIPRO limited under provision of Section 11b of the Securities and Exchange Board of India Act, 1992 and Regulation 98 of the Securities and Exchange Board of India (listing Obligations and disclosure requirements) Regulations, 2015 for the unconstitutional conduct and violations of statutory obligations under the AEGIS of Regulation No. 22 read with Regulation no.4 of the Securities and Exchange Board of India (Listing Obligations and

Disclosure Requirements) Regulations, 2015, against the petitioner.

AND

Issuance of a writ in the nature of mandamus or any other appropriate writ, order or direction upon the respondent no.1 i.e., SEBI to institute a commission under the AEGIS of Section 11 (3), Section 11B, Section 11C and Section 15HA Section of the Securities and Exchange Board of India Act 1992 to initiate investigation/ inquiry against the illegal arrangement between the respondent no.2 i.e., WIPRO limited and clients/ business associates for whom petitioner was victimized and issue appropriate directions including penalty as deemed fit after the investigation/ inquiry.

AND

Issuance of a writ in the nature of mandamus or any other appropriate writ, order or direction upon the respondent no.1 i.e., SEBI to initiate investigations upon the respondent no.2 i.e., WIPRO limited and clients/ business associates under the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003."

Petitioner, who appears in person submits that he was employed with respondent no.2 i.e., WIPRO Ltd., and he was working as Principal Consultant since March 2018. It is further submitted that petitioner is a law-abiding citizen who is committed to social and public interest causes that affect society at large and that he has filed a number of petitions in public interest before the High Court of Delhi. Petitioner claims being subjected to workplace victimization, unfair practices including illegal acts by deliberate use of force and arm-twisting techniques by his employer respondent no.2 for filing rejoinders/affidavits/ applications in the Public Interest Litigation in order to benefit certain institutions who are business associates and clients of respondent no.2. Petitioner states that he was placed under the

"Performance Improvement Plan" during the lockdown declared due to outbreak of the pandemic COVID-19 from 23.03.2020. Petitioner submits that his services were thereafter illegally terminated on 05.06.2020. Present writ petition has been filed on 05.01.2021, for grant of prayer as reproduced in the foregoing paras. CWP No. 7459 of 2020,yet pending, is stated to have been earlier filed by the petitioner with the following prayer :-

> 'Civil Writ petition under Article 226 of the Constitution of India for issuance of an appropriate writ, order or direction in the nature of 'Mandamus' directing the respondent no.1 i.e., Chief Labour Commissioner (Central), to initiate action against the respondent no.2 i.e., WIPRO Limited under provision of Section 25-T of the Industrial Disputes Act 1947 against unconstitutional and unfair labour practices against the petitioner"
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> AND
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> Issuance of an appropriate writ order or direction in the nature of 'Mandamus' directing the respondent no.2 i.e., WIPRO Limited to stop the unfair labour practices by the virtue of the said unconstitutional notice period termed as 'Performance Improvement Plan' against the petitioner.
>
> AND
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> Issuance of an appropriate writ, order of direction in the nature of 'Mandamus' directing the respondent no.2 to stop its unfair labour practices of Act of force against the petitioner to interfere in the public interest litigation in the best interest of justice.
>
> AND
>
> Grant of relief of injunction towards loss of employement due to the unconstitutional notice period called as performance improvement plan (PIP) as enforced by respondent no.2 i.e., WIPRO limited upon the petitioner in violation of principal of natural justice as enshrined under Article 14 and 21 of the Constitution of India till the disposal of the writ petition.
>
> AND

Grant of relief of interim injunction towards the sharing of the information/rejoinder of the public interest litigation as filed by the petitioner to the respondent no.2 i.e., WIPRO limited to prevent miscarriage of justice and to maintain independence, dignity of the petitioner under the provision of the Article 21 of the Constitution of India.

AND

Further to grant exemption u/s 80 of the Code of Civil Procedure 1908, filing the original/certified copies, legible/typed copies/ small font with margin of the documents in the interst of justice.

AND

Issuance of any other appropriate writ, order of direction which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the case.'

Petitioner argues that respondent no.2 is indulging in arm-twisting methods in order to sanitize the pleadings filed by the petitioner in public interest litigation initiated by him. It is submitted that in "Performance Improvement Plan", clause of conflict of interest check was inserted in a mala fide manner to ensure that the petitioner should compulsorily share all the pleadings in his public interest litigation matters in order to enable respondent no. 2 to manipulate the said proceedings in a manner which would be favourable to its clients. Petitioner states that in case he had agreed to the said conditions, he would be guilty of committing a criminal offence as he has made a statement on oath that he has no personal interest in the litigation.

It is stated that the petitioner submitted a complaint/representation dated 25.05.2020, Annexure P-17, before respondent no.1-SEBI, but to no avail. Respondent no.1-SEBI, it is argued has failed in its duty to take cognizance of the complaint submitted by the petitioner against the illegal conduct of respondent no.2. It is reiterated that the act of fraudulent activities, manipulation, concealment, omission and illegal actions of respondent no.2 in forcing the petitioner to submit to their demand of sharing all the documents, filed or to be filed, by him in various public interest litigation initiated by him, should have been investigated by respondent no.1. Respondent no.2, is alleged to have committed the crime of threatening the petitioner to give false evidence to benefit its clients against whom the petitioner has filed the public interest litigation.

Petitioner claims violation of Regulation 22 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (for short 'LODR') as well as Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (for short 'PFUT Regulation 2003). Respondent no.2, it is further stated failed to comply with the provisions of its own ombudsman policies. Petitioner's complaint dated 11.04.2020, was not even considered by respondent no.2.

Petitioner also refers to order dated 22.05.2020, passed in CWP No. 7459 of 2020, titled as Abhijit Mishra Vs. Union of India and another', wherein notice of motion has been issued. Legal notice dated 28.05.2020 in CWP No. 7459 of 2020, was issued to various executive officers and directors of respondent no.2 comprising all the allegations. Company however proceeded to terminate the petitioner's services, which proves the truth of allegations raised by the petitioner. He relies upon judgement of the Hon'ble Supreme Court of **United Kingdon in Gilham Vs. Ministry of Justice, 2019, UKSC 44** and Hon'ble Supreme Court of **United States of America in Digital Realty Trust, Inc. Vs. Paul Somers, 583 U.S (2018)** and judgement of Hon'ble Supreme Court of India in **Justice**

K.S.Puttaswamy Vs. Union of India, (2017) 10 SCC 1. It is thus prayed that the present writ petition be allowed.

Learned counsel for respondent no.1 while vehemently opposing this petition argues that the present writ petition itself is not maintainable. He refers to the aims and object of the SEBI Act to submit that provisions of the Act and Regulations solely deal with the securities market and not to individual disputes between an employer and employee. Moreover, the petitioner, it is stated has suppressed material facts inasmuch as he has not even revealed that reply dated 30.06.2020, was duly issued to the petitioner clearly stating therein that the allegations in the complaint are *prima facie* in the nature of a dispute between him and his employer. Thus, it is wrongly stated in the writ petition that no action has been taken on the petitioner's complaint. This petition, it is submitted deserves to be dismissed on this sole ground. Mr. Jain, learned counsel for respondent no.1, further states that definition of fraud referred to by the petitioner, necessarily refers to fraud which may be committed in relations to the securities market. He relied upon judgment of Calcutta High Court in **Gujarat NRE Coke Ltd. Vs. SEBI, 2007, Comp. Cas. 772.**

Learned counsel for respondent no.2 while supporting the arguments raised by learned counsel for respondent no.1, vehemently denies all allegations raised against respondent no.2 of any arm-twisting, fraudulent practices etc., on the part of the respondent-company or any of its officials. It is submitted that petitioner has never been compelled to incorporate or delete anything in his pleadings in the public interest litigation initiated by him. It is contended that the petitioner in-fact has wrongly initiated several proceedings against respondent no.2, which are detailed in para no.3 of the counter affidavit filed on behalf of respondent no.2. Learned counsel for the respondents, thus prayed that this writ petition being devoid of any merits, be dismissed.

I have heard the petitioner as well as learned counsel for the respondents, at length, and have gone through the file with their assistance.

This writ petition was admitted for regular hearing by a Coordinate Bench on 12.01.2021. Petitioner preferred SLP No. (C) 1415 of 2021, which was disposed of on 19.02.2021, while requesting the High Court to take up the matter and dispose of the same within a period of six months. The matter was put up for hearing on 05.07.2021 by the Registry along with miscellaneous application filed by the petitioner.

It is a matter of record that petitioner was employed as a principal consultant with respondent no.2. It is alleged that respondent no.2, issued a 'Performance Improvement Plan', wherein the petitioner was compulsorily pressurized to share his pleadings in the multifarious public interest litigations initiated by him.

The entire gravamen of petitioner's arguments is that action of the respondents in forcing and pressurizing him to share the documents, pleadings to be filed by him in the public interest litigation, is a violation of Article 14 and 21 of the Constitution of India, amounts to unfair labour practice and apart from it being a criminal act, is sufficient for SEBI to take action against the said company on the complaint filed by him.

At this stage, it is gainful to refer to the relevant applicable provisions of laws.

The SEBI Act, is stated to be "An Act to provide for the establishment of a Board to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto."

Section 11 of the SEBI Act dealing with the powers and functions of the board read as under:-

Regulation 4(2) (d) of LODR reads as under:-

“(d) **Role of Stakeholders in corporate governance**:

The listed entity shall recognize the rights of its stakeholders and encourage co-operation between listed entity and the stakeholders, in the following manner:
(i) The listed entity shall respect the rights of stakeholders that are established by law or through mutual agreements;
(ii) Stakeholders shall have the opportunity to obtain effective redress for violation of their rights;
(iii) Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process.
(iv) The listed entity shall devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representatives bodies, to freely communicate their concerns about illegal or unethical practices.”

Regulation 22 of LODR reads as under:-

(1) The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns;
(2) The vigil mechanism shall provide for adequate safeguards against victimization of director(s) of employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

Regulation 4 of the PFUTP Regulations 2003, deals with prohibition of manipulative, fraudulent and unfair trade practice in securities markets and reads as under:-

“4. Prohibition of manipulative, fraudulent and unfair trade practices:

“(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a [3][manipulative,] fraudulent or an unfair trade practice in securities [4] [markets].
[5] [*Explanation*–For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

(2) Dealing in securities shall be deemed to be a [6] [manipulative] fraudulent or an unfair trade practice if it involves [7] [any of the following]:—

(a) [8] [knowingly] indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial Ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

[9] (c) inducing any person to subscribe to an issue of the securities for fraudulently securing the minimum subscription to such issue of securities, by advancing or agreeing to advance any money to any other person or through any other means;]

[10] (d) inducing any person for dealing in any securities for artificially inflating, depressing, maintaining or causing fluctuation in the price of securities through any means including by paying, offering or agreeing to pay or offer any money or money's worth, directly or indirectly, to any person;]

(e) any act or omission amounting to manipulation of the price of a security [11] [including, influencing or manipulating the reference price or bench mark price of an y securities];

(f) [12][knowingly] publishing or causing to publish or reporting or causing to report by a person dealing in securities any information [13] [relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals,] which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

[14][(h) selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities whether in physical or dematerialized form:

Provided that if:-

(i) the person selling, dealing in or pledging stolen, counterfeit or fraudulently issued securities was a holder in due course; or

(ii)the stolen, counterfeit or fraudulently issued securities were previously traded on the market through a bonafide transaction,

(iii)such selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities shall not be considered as a manipulative, fraudulent, or unfair trade practice;]

(i) ***]

(j) ***]

(k) [17] ["disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;]

(l) ***];

[19] (m) [a market participant entering into transactions on behalf of client without the knowledge of or instructions from client or misutilizing or diverting the funds or securities of the client held in fiduciary capacity"];

(n) circular transactions in respect of a security entered into between [20] [persons including intermediaries to artificially] provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;

[21] (o) [fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;]

(p) an intermediary predating or otherwise falsifying records [22] [including contract notes, client instructions, balance of securities statement, client account statements];
(q) [23] [any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;]
(r) [24][knowingly] planting false or misleading news which may induce sale or purchase of securities.
[25] [(s) [26]{mis-selling of securities or services relating to securities market;
Explanation-For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—
(i) knowingly making a false or misleading statement, or
(ii) knowingly concealing or omitting material facts, or
(iii) knowingly concealing the associated risk, or
(iv)not taking reasonable care to ensure suitability of the securities or service to the buyer}];
[26][(t) illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person.]
[28] [*Explanation* [29] {–1}For the purposes of this sub-regulation, for the removal of doubts, it is clarified that the acts or omissions listed in this sub-regulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3, notwithstanding that it is not included in this sub-regulation or is described as being committed only by a certain category of persons in this sub-regulation.]
[30][*Explanation–2* Market Participant shall include any person or entity registered under Section 12 of the Act and its employees and agents.]

A bare reading of the objectives sought to be achieved and Section 11 of the SEBI Act clearly reveals that the same deals with matters related to regulation of the securities market. It is a matter of record that petitioner has filed CWP No. 7459 of 2020, which is pending adjudication. Petitioner in the said writ petition has alleged manipulation and arm-twisting by respondent no.2 and has sought action against respondent no.2 under Section 25 T of the Industrial Disputes Act and to restrain respondent no.2 from sharing of information or pleadings etc., filed by him in the public interest litigation. Therein he has also claimed relief towards loss of employment due to performance improvement plan being enforced by respondent no.2, allegedly in violation of principles of natural justice and rights guaranteed to him under Article 14 and 18 of the Constitution of India.

Petitioner has filed CRM-M-24041 of 2020 under Section 340 read with Section 195 Cr.P.C., against respondent no.2 besides COCP No. 168 of 2021 as well as suit for defamation and damages before the Delhi High Court against respondent no.2.

It can further not be disputed that respondent no.1 had duly communicated reply dated 30.06.2020 to the notice, Annexure P-17, sent by the petitioner. There is admittedly no reference, much less challenge to the same in the writ petition.

Be that as it may, the petitioner is unable to point out as to how the complaint submitted by him to respondent no.1 can be brought within the ambit and purview of the SEBI Act and Regulations, at this stage, in the given factual matrix.

I find merit in the argument raised by learned counsel for respondent no.1 that the whistle blower mechanism as mentioned in the act/regulations as well as definition of fraud necessarily has to be read in conjunction and in harmony with the object sought to be achieved by the act. Reference to order dated 22.05.2020 in CWP no. 7459 of 2020, cannot be of any avail to the petitioner for the purpose of present writ petition. Clearly, the said writ petition is pending adjudication and the petitioner is at liberty to canvas and agitate all the pleas available to him therein. Recording of contentions of the petitioner in interim order dated 22.05.2020 in CWP No. 7459 of 2020, that respondent no.2 was resorting to arm-twisting techniques and resorting to unfair trade practices is of no avail to the petitioner in this writ petition. It cannot in any manner be interpreted to mean that there is a final adjudication or an observation by the Court in this regard.

It is relevant to note at this stage that petitioner himself has referred to an e-mail dated 27.05.2020, Annexure P-13 by Shri Dhar

(Financial Services) stating that the petitioner was free to file any PIL as he deemed fit, provided that it is in his personal capacity without claiming it to be on behalf of WIPRO and provided it does not affect his working capabilities with the company.

It is pertinent to mention, at this stage, that during the course of arguments, petitioner in response to a pointed query of the Court, as to whether he was ever pressurized or directed to file a particular affidavit or document in pending PIL petitions filed by him, simply asserted that he had been asked to handover all the pleadings, affidavits etc., which he sought to file in the existing PIL's in order to sanitize them.

In the given facts and circumstances of the case, I do not find any ground whatsoever to interfere, at this stage, for directing respondent no.1, to take action as has been prayed for, as it has been correctly observed in communication dated 30.06.2020 that allegations in the petitioner's complaint, *prima facie,* are in the nature of a dispute between him and his employer. Petitioner is further unable to point out anything on record subsequent to communication dated 30.06.2020, which may indicate irregularities touching upon the securities market thereby sufficient to invoke action by respondent no.1.

Writ petition is accordingly dismissed with no order as to cost.

[LISA GILL]
Judge

10.08.2021
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.