

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.5888 of 2011****Dillip Kumar Sahoo and others** ***Petitioners******-versus-******State of Orissa and others*** ***Opposite Parties*****Appeared in this case:*****For Petitioners*** : Mr. Bibekananda Nayak, Advocate***For Opposite Parties*** : Mr. P. K. Muduli, AGA for the
State and Ms. Pami Rath, Advocate
for IDCOL-Opposite Party No.4**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK****JUDGMENT
18.04.2022****Dr. S. Muralidhar, CJ.**

1. The present petition by Dillip Kumar Sahoo and 27 others is directed against an order dated 10th October, 2008 passed by the District Labour Officer (DLO), Dhenkanal declining to proceed further in the matter of the Petitioners' complaint petition regarding their illegal retrenchment from the service of M/s. S. N. Corporation Ltd., Dhenkanal (SNCL) and the subsequent order dated 8th November, 2010 of the DLO, Dhenkanal again stating that nothing can be done in the complaint since the said SNCL had been closed with effect from 23rd November, 1998 following the provisions of Industrial Dispute Act, 1947 (ID Act) and all the terminated employees had received their closure compensation.

2. The background facts are that SNCL is a subsidiary unit of Industrial Development Corporation of Orissa Limited (IDCOL) [Opposite Party No.4], which is stated to have direct and permissive control over SNCL.

3. When SNCL became sick, a reference was made to the Board for Industrial and Financial Reconstruction (BIFR) and case No.22 of 1990 was registered before it under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). On 16th July 1990, the BIFR declared SNCL sick. SNCL could not be revived despite the best efforts. On 6th April 1998, SNCL applied to the Government of Orissa in the Department of Labour and Employment under Section 25-O of the ID Act for closure since it was unable to meet the statutory dues and wages of the employees. On 4th June 1998, the Government granted permission for closure under Section 25-O (2) of the ID Act.

4. The above permission dated 4th June, 1998 was challenged by the Employees' Union before the Government itself by way of a review petition on 12th June, 1998. On 17th November 1998, the Government of Orissa rejected the review petition. By a Government Order dated 23rd November 1998, SNCL was closed. The closure notice stated that in due course the legal dues of the Workmen would be paid. According to the Opposite Parties, the Worker' dues in the sum of Rs.246.99 Lakhs were paid and this included Provident Fund (PF) and Employees' State Insurance (ESI) contribution.

5. Challenging the orders dated 4th June 1998, 17th November, 1998 and 23rd November 1998, the SNCL' Employees Union filed OJC No.16610 of 1998 on 30th November 1998 in this Court. According to the Opposite Parties, in 1998-1999 the entire closure compensation was disbursed.

6. On 3rd April 2003, the BIFR rendered its opinion that it was just and equitable for SNCL to be wound up and that the concerned High Court should be approached for winding up proceedings. On that basis, Company Petition i.e. COPET No.29 of 2003 was registered in this Court. The aforementioned COPET No.29 of 2003 was disposed of by this Court on 7th January, 2005 after noting that the major assets of the Company had been sold off to pay its creditors. IDCOL was shown as its major creditor holding equity share of up to 43%.

7. Misc. Case No.60 of 2004 had been filed by the Employees' Union in the above petition. The Court in the above order dated 7th January, 2005 observed that the closure compensation had been paid to the retrenched employees in accordance with the provisions of the ID Act. It was clarified that if a workman is able to demonstrate that he had not been paid his dues then subject to the availability of funds and on being satisfied that such dues were payable, a direction be issued for its payment. SNCL was, however, not wound up.

8. SNCL's assets were taken over by M/s. SCAW Industries Pvt. Ltd. ('SCAW'). However, the liability for paying the worker's dues was apparently not taken over.

9. Madhusudan Rout and other employees of SNCL filed W.P.(C) No.14492 of 2006 in this Court even while the earlier writ petition i.e. OJC No.16610 of 1998 was pending. It was prayed in this petition that apart from the retrenchment dues, the Petitioners were entitled to be rehabilitated. On 8th October 2007, the said writ petition came to be dismissed by this Court. It is stated that the order was not further challenged and attained finality. According to the Petitioners, a direction was issued while disposing of the said petition that the Petitioners could approach the Industrial Disputes forum.

10. Meanwhile on 7th July 2008, OJC No.16610 of 1998 filed by the Employees' Union was dismissed for non-prosecution. This order attained finality as it was not further challenged.

11. On 10th October 2008, an order was passed by the DLO declining to act further on the complaint of the employees against their illegal retrenchment. The DLO mentioned that OJC No.16610 of 1998 was still pending and, therefore, the matter was *sub-judice*. After coming to know that OJC No.16610 of 1998 had been dismissed for non-prosecution on 7th July, 2008 itself, the Employees' Union filed another complaint before the DLO, Dhenkanal. By the second impugned order dated 8th November 2010, DLO, Dhenkanal rejected the complaint on the ground that

SNCL had already been closed and the retrenchment compensation had also been paid. Thereafter, the present writ petition i.e. W.P.(C) No.5888 of 2011 was filed by the former employees of SNCL i.e. Madhusudan Rout and 51 others seeking quashing of the orders dated 10th October, 2008 and 8th November, 2010 of the DLO, Dhenkanal and praying that the Petitioners be rehabilitated according to their seniority along with all financial benefits.

12. On 11th October 2010, SNCL was dissolved and its name was struck off from the Register of Companies. The present petition was disposed of on 15th April, 2011 directing the DLO, Dhenkanal to hold conciliation meetings and if the matter was not settled, to submit a failure report to the State Government to enable it to exercise power under Section 10 of the ID Act and make a reference either to the Industrial Tribunal or to the Labour Court for adjudication. The conciliation proceedings failed and on 16th December 2011, a reference was made under Section 10 of the ID Act by the State Government to the Tribunal, which was registered as ID Case No.58 of 2011.

13. While the former employees filed a statement of claim, no written statement was submitted by the IDCOL. Instead, it filed SLP (Civil) No.13521 of 2012 in the Supreme Court of India challenging the order dated 15th April, 2011 of this Court. The said SLP came to be registered as Civil Appeal No.10029 of 2014, which was disposed of by the Supreme Court on 3rd November, 2014 setting aside the said order dated 15th April, 2011 and

remanding the petition to the High Court for a fresh adjudication.

It was observed in the said order of the Supreme Court as under:

"To appreciate the rival submissions raised at the Bar, we have carefully scrutinized the order passed by the High Court and we find that the High Court has not really addressed to these aspects. In our considered opinion, the question of delay, acceptance of compensation, the real impact of earlier orders and the applicability of the scheme, as submitted by the learned counsel for the respondents, should have been appositely dealt with by the High Court. Therefore, we are compelled to set aside the order impugned in the appeal.

Mr. Rao has submitted that the scheme at no point of time is formed by the appellant. Be that as it may, all the aspects are kept open to be adjudicated by the High Court.

In the result, the appeal is allowed, the order passed by the High Court is set aside and the matter is remanded to the High Court for fresh adjudication, keeping in view the observations made herein-above."

14. On 23rd March 2015, fresh notices were issued to the Petitioners. A reply has been filed to the petition on 26th March, 2015 by IDCOL bringing the above facts on record. It was mentioned that a loan amount of Rs.20 Crores and above was advanced by IDCOL to SNCL, which could not be realized in full because of inadequacy of the assets of the SNCL. A major part of the loan was written off by IDCOL along with the shares, which could not be realized. It was mentioned categorically that "therefore, IDC of Orissa Limited has nothing to do with S. N Corporation Limited, which in fact does not exist in the eye of law." It is pointed out that the present Petitioners were former employees of SNCL and not of IDCOL at any point in time. They had therefore no *locus standi* to demand closure compensation in

excess of what the ID Act provided for and also were not entitled to the demand rehabilitation since the undertaking itself had been closed.

15. A point has been urged by the Petitioners referring to the correspondence between SNCL and SCAW that the former employees of the SNCL should be rehabilitated in SCAW. It is mentioned in the affidavit of IDCOL that SCAW is a private company and a request was indeed made to them to consider rehabilitating some of the employees. It is stated that IDCOL had no role to play in regard to the rehabilitation of employees under SCAW. It is further submitted that "assuming but not admitting for the sake of argument there was any understanding between S.N. Corporation Limited and SCAW, that cannot be enforced against any other party to the writ application."

16. In the rejoinder filed on 20th March 2017, the Petitioners contended that "though initially IDCOL was having 43.3% share in SN Corporation, when the SN Corporation became sick after one time settlement IDCOL became the parent Company." It is pointed out that COPET Case No. 29 of 2003 and Misc. Case No. 76 of 2004, a submission was made on behalf of SN Corporation, along with IDCOL, but "substantial funds generated by sale of such assets are now lying in deposit with the Company for paying the dues of all creditors including the employees. Further, land and factory building of the company remaining unsold are still available with the Company." It was further stated : "As such, the SN Corporation Shramik Sangha needs not be under any

apprehension particularly when the Company is being kept alive without being wound up. It is accordingly contended by the Petitioners that “it is obligation of the Purchasing Company to re-employ the erstwhile retrenched workers as per the provisions u/s. 25-H of the I.D. Act. But, the Purchasing Company escaped from the liability because of the malafide attitude of the Parent Company who remained silent after absorbing a few who are kith and kin of the higher ups of the Parent Company.”

17. This Court has heard the submissions of Mr. Bibekananda Nayak, learned counsel for the Petitioners, Ms. Pami Rath, learned counsel for the IDCOL and Mr. P. K. Muduli, learned Additional Government Advocate for the State. The written notes of arguments have also been filed by the parties.

18. Mr. Nayak submitted that the first impugned order dated 10th October, 2008 of the DLO was clearly erroneous. It proceeded on the basis that OJC No.16610 of 1998 was pending when in fact it had been dismissed for non-prosecution on 7th July, 2008. On the second complaint of the employees, again a wrong order was passed by the DLO on 8th November, 2010 on the basis that SNCL had already been closed up and the workers' dues had already been paid. It is submitted that it was incumbent on the DLO to have examined if the retrenchment of the Petitioners from SNCL was illegal as it was as a result of unfair labour practice. It is further submitted that the order dated 8th November, 2010 is not sustainable in law because the ground on which the petition dated 13th September, 2010 was filed, was not taken into consideration.

The order dated 8th November, 2010 was based on no evidence and was vitiated due to non application of mind. Reliance is placed on the decisions of the Supreme Court of India in ***Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd., AIR 1999 (SCW) 1051*** to urge that the plea of limitation cannot be raised by an employer to defeat the legitimate claims of the Workmen.

19. Next, Mr. Nayak placed reliance on the decision in ***Mackinon Mackenzie & Company Ltd. v. Mackinon Employees' Union, AIR 2015 SCW 1607*** to urge that the closure was illegal as the conditions precedent were not complied with. Regarding delay in payment of compensation, reliance is placed on the decision in ***Pramod Jha v. State of Bihar AIR 2003 (SCW) 1340***. It is submitted that such delay in payment of compensation is in violation of Section 25-F of the ID Act and vitiates the entire retrenchment of the Petitioners-Workmen. The decision in ***Nar Singh Pal v. Union of India AIR 2000 (SCW) 1141*** was cited for the proposition that mere acceptance of retrenchment compensation would not stand in the way of employees challenging the retrenchment. Finally, the decision in ***Kapila Hingorani v. State of Bihar AIR 2005 (SCW) 926*** was relied upon to urge that the State should pay compensation even if the companies are no longer in existence.

20. Ms. Pami Rath, learned counsel appearing for the IDCOL, on the other hand, submitted that the question of rehabilitation of the Petitioners in IDCOL simply did not arise as it had nothing to do

any longer with SNCL. She submitted that the present claim was wholly untenable as all the dues of the Workmen had already been settled upon closure of the Unit.

21. The above submissions have been considered. Certain facts, which are not in dispute, are that the challenge to the closure by these very Petitioners by filing OJC No.16610 of 1998 failed with the dismissal of the said petition on 7th July, 2008 for non-prosecution. No attempt was made to have the said petition restored. The said order therefore attained finality. The second fact is that the Petitioners have been unable to dispute the contention of IDCOL that upon closure of the SNCL on 23rd November 1998, the entire compensation amount in the sum of Rs.246.99 Lakhs was paid and this included PF and ESI dues. The entire closure compensation was also disbursed. The third factor is that there is a separate arrangement of SCAW taking over the assets of SNCL, but did not take over any liabilities. The plea of the Petitioners that they should be rehabilitated in IDCOL is, therefore, not tenable at all since there is no obligation of IDCOL in law in that regard. For that matter, there is no obligation of SCAW either.

22. The fourth factor, which is undeniable is that the present petition challenging the order dated 10th October, 2008 of the DLO, Dhenkanal declining to take further action on the Petitioners' complaint against the illegal retrenchment, was filed nearly three years thereafter. As has been directed by the Supreme Court in its order dated 3rd November, 2014, the question of delay cannot be ignored. Also, the acceptance of compensation by the

employees of SNCL at the time of its closure and allowing OJC No.16610 of 1998 to be dismissed for non-prosecution without seeking its restoration are fatal to the case of the Petitioners. There was no scheme in existence at any point in time for rehabilitation of the Workmen. Consequently, there were no means by which the present Petitioners could have been rehabilitated in SCAW, which was the entity that took over the SNCL's assets. At no point in time, did IDCOL step into the picture as far as the undertaking to rehabilitate the Petitioners is concerned. Consequently, the reliefs claimed by the Petitioners in the present case are untenable in law.

23. The question here is not so much about the plea being defeated by limitation, but by the previous proceedings involving these very Petitioners, which have attained finality. Consequently, none of the decisions cited by the Petitioners has any application in the facts and circumstances of the present case.

24. The writ petition is entirely without merit and, therefore, dismissed, but in the circumstance, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda.