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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8870 OF 2017

Loyal Tigers Welfare Association …Petitioner
Versus
Union of India & Ors …Respondents

Ms Reshma Nair, *with Devmani Shukla, for the Petitioner.*
Mr YR Mishra, *for Respondent No.1-UOI.*
Mr Raj P, *with C Nageshwaran, Shilpa Sengar and Harsh S, i/b Khaitan & Co, for Respondents Nos. 6 & 10.*
Harshika Makwana, *with Ashish Mehta, i/b Ethos Legal Alliance, for the ED.*

CORAM **G.S. Patel & Madhav J. Jamdar, JJ.**
DATED: **4th April 2022**

PC:-

1. Heard. The Petition is an old one of 2017.

2. By a praecipe dated 25th March 2022, the Petitioners sought a priority listing saying that the Petition had not been heard even once for admission and interim relief and that in the meantime many members of the Petitioner association have passed away. We accordingly granted priority listing today, 4th April 2022.

3. When the Petition was called an adjournment was immediately sought by the Petitioners on the ground of their Counsel. In these facts, we declined that adjournment. We have heard Ms Nair, learned Advocate for the Petitioner, and in our view she has conducted her case with complete accuracy and confidence. The Petitioners have lost nothing by not having their Counsel of choice present in Court today.

4. Unfortunately, it seems to us the Petition is not one that admits of any relief either interim or final. We leave aside the question of whether or not this is a Public Interest Litigation. We only note that paragraph 2 of the Petition at page 4 says this:

> " 2. The present Petition has been filed by the Petitioner to espouse the cause of its members, who are the retired workers / employees of the Respondent No.6 and also to espouse the cause of the public at large, who have lost substantial amounts of money due to the wrongful and illegal facts of the Respondent Nos. 6 to 10 due to inaction on the part of the Respondent No.5 to act for almost 3 years as per the directives issued by the Respondent Nos.2 to 4 in the year 2014. The Petitioner in the present petition seeking legal action upon the directives of the Respondent Nos.2 to 4 viz., Respondent No. 2 dated 28.3.2014, Respondent No.3 dated 3.4.2014 and Respondent No.4 dated 16.4.2014. Hereto annexed and marked as Exhibit "A" is a copy of directive of Respondent No. 2 dated 28.3.2014, Exhibit "B" is a copy of directive of Respondent No.3 dated 3.4.2014 and Exhibit "C" is a copy of directive of Respondent No.4 dated 16.4.2014. hereto annexed and marked as Exhibit "D" is the RTI reply dated 30.01.2017 disclosing inaction on the part of the Respondent for almost 3 years."

5. The supporting Affidavit also says that the Petitioners have no personal interest gain, private motive or public reason in filing "the present Public Interest Litigation". It appears that it was first filed as Public Interest Litigation but this has for some reason been re-registered as a regular Writ Petition. The necessary averments have not been changed.

6. The consequence of this is that the Petitioners must show what interest they have in the reliefs that are sought. Prayers clause (a), (b) and (c) at page 12 reads thus:

> (a) Rule be issued;
>
> (b) for a writ or an order in the nature of a writ, directing the Respondent Nos.1 to 5 to immediately and forthwith take action against the Respondent Nos.6 to 10 under Section 206 of the Companies Act, 2013, as per its earlier directives dated 3.4.2014 and 16.4.2014 and place the action taken report before this Hon'ble Court within a fixed time frame for further appropriate directions as this Hon'ble Court may deem fit and proper;
>
> (c) for a writ or an order in the nature of a writ, directing a time bound detailed and thorough investigation and legal action by any appropriate investigating agency, this Hon'ble Court may deem fit and proper upon the confidential report dated 28.3.2014 received by the Secretary, Department of Financial Services, Ministry of Finance, Government of India."

7. The Petitioners claim to be an association of retired employees or workmen of 6th Respondent, Larsen and Toubro Limited ("**L&T**") a public limited company but is admittedly not an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

8. Respondents Nos. 7 and 8 are various welfare foundations of L&T and 10th Respondent was the then chairman and managing director of L&T.

9. The allegations in the Petition are that from 2003 to 2008 L&T deducted certain amounts from the wages and salaries of its workers and employees and transferred these to another entity called the L&T Employees Welfare Foundation. The Petitioners says this was without the consent of the workers and employees. That is a disputed question of fact and will require evidence in an appropriate civil proceeding. Then there is an allegation in paragraph 3(a) that this deduction was obtained "coercion, duress, undue influence, etc which were definitely not out of free will and volition." This immediately puts the Petitioners out of the Writ Court.

10. But then the Petition says that in 2006 the L&T Employees Welfare Foundation Limited issued a certificate that the company held on behalf of these employees 5% redeemable preferential shares of Rs.10 each fully paid up of L&T Welfare Company Limited (yet another entity). About 4 crores preferential shares of Rs.10 each were said to have been issued by L&T Welfare Company Ltd to L&T Employees Welfare Foundation. At this stage we do not see the prejudice to the Petitioners.

11. Then it is alleged that in 2009, the L&T Employees Welfare Foundation "cancelled the beneficial interest arising out of these redeemable preferential shares issued in 2006". On the face of it this statement is inaccurate because Exhibit "F", which is referenced in this context, is addressed to one person. It says that the cancellation of the beneficial interest is because payments *have already been made to the individuals on 28th February 2009*. A revised statement of account is therefore enclosed (Exhibit "F" at page 27). The suggestion in the Petition that the redeemable preferential shares were 'cancelled' by the holder of the preference shares does not stand to reason. A holder of shares (a shareholder) can never cancel shares. Only the issuer of a share can cancel the shares. This is not even the case pleaded. It is on this basis that the Petitioners allege across the Bar that they have been caused 'wrongful loss'.

12. From this the Petition then moves to a facts of a confidential report of 28th March 2014 making complaints against L&T. This is said to have been forwarded by the Ministry of Corporate Affairs to the Department of Financial Services, Ministry of Finance. A copy of this confidential document is annexed twice to the Petition. We will take the copy that appears from pages 16 to 20. Its authorship is unknown. There is no date. It is unsigned. There seem to be personal allegations against the 10th Respondent, Mr Naik. It seems that the Petitioners filed an RTI query (not annexed) of 1st March 2016 and it is pursuant to that the Petitioners received a copy of this confidential report on 5th April 2016. Then, on 28th December 2016, the Petitioners wrote to various Secretaries in the Ministry of Finance and Corporate Affairs to take action against L&T saying that an attempt has been made to keep wrongs and illegalities outside the domain of the public 'to help miscreants'.

13. The Petition therefore says in the grounds below paragraph 4 that our Writ jurisdiction must be exercised to issue an appropriate Writs to the Respondents, to hold that the Ministry of Corporate Affairs was trying to cover up the wrongs and illegalities of L&T Limited and its welfare entities and that action should be taken under Section 206 of the Companies Act.

14. Section 206 of the Companies Act deals with power to call for information, inspect books and conduct enquiries.

15. We are quite unable to see how the Petitioners have any locus whatsoever on the basis of this unsigned, anonymous, undated attack on an individual then at the helm of the L&T Limited to conduct any such enquiry. It is entirely unclear what nexus there is between the Petitioners, their financial interests, the so-called welfare scheme or the preference shares and this disclosure.

16. In our view, the Petition is thoroughly misconceived. The Petitioners have no locus to sustain such a Petition. There is no relief that can be granted to the Petitioners.

17. However, we give the Petitioners the liberty, if they are so advised to file an appropriate civil proceeding in regard to the alleged loss they claim they have suffered. Undoubtedly that will require the taking of evidence. That proceeding if filed will be decided on its own merits uninfluenced by this order.

18. The Petition is dismissed with these observations. There will be no order as to costs.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**