



THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/01/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

WP(MD)No.19212 of 2020

A.Xavior

: Petitioner

Vs.

1.The Superintendent of Police,
Dindigul District.

2.The Inspector of Police,
Kodaikanal Police Station,
Kodaikanal,
Dindigul District.

3.District Crime Branch,
Dindigul District.
(R3 is *suo motu* impleaded,
vide order, dated 24/03/2021 in
WP(MD)No.19212 of 2020)

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents to take action against the office bearers of the Pond's Hindustan Liver Limited Ex-mercury Employees Welfare Association (PHLLEEWA), by considering the representation of the petitioner, dated 02/10/2019.

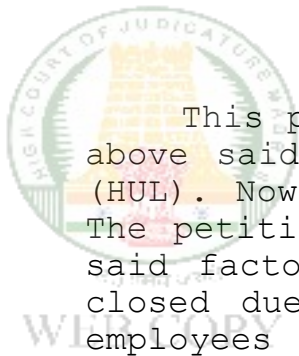
For Petitioner : Mr.S.Sridhar

For Respondents : Mr.S.Manikandan
Government Advocate (Crl. side)

O R D E R

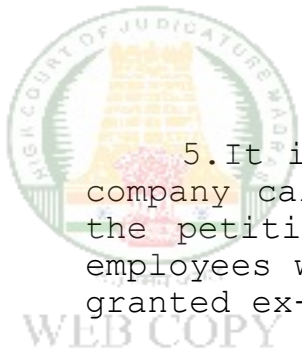
This petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to take action against the office-bearers of the Pond's Hindustan Liver Limited Ex-mercury Employees Welfare Association (PHLLEEWA), by considering the representation of the petitioner, dated 02/10/2019.

2.The case of the petitioner in brief:-



This petitioner is the ex-employee of Pond's India Limited. The above said company was amalgamated with Hindustan Unilever Limited (HUL). Now it has been called as 'Pond's Hindustan Lever Limited'. The petitioner along with other workers were employed in the above said factory at Kodaikanal till 2001 and later, that company was closed due to pollution issue. So it was shortly closed and 114 employees were terminated. The employees Union of the above mentioned company, filed Public Interest Litigation before this court in W.P(MD)No.8291 of 2006 and during the argument and hearing, a settlement was arrived on 04.03.2016. In terms of the settlement, the above writ petition was disposed of on 09/03/2016. As per the settlement, this petitioner and other employees are entitled to receive ex-gratia amount from the management. But the office-bearers of the above said Association failed to inform the terms of settlements to the members by conducting general body meeting.

3. In such circumstances, the management disbursed the ex-gratia only to the close friends and the relatives of the office-bearers of the above said Association. But they did not work in the Kodaikanal factory. The persons, who are not entitled to receive the amount have been shown as the beneficiaries. Those persons are numbering about 60. By the above said process, the office bearers of the above said Association misappropriated amount to the tune of Rs.50 Crores. To cover upon above said swindling, the office-bearers forced the employees to sign in the blank cheques and with the connivance of the bank manager, they withdrew the amount from the Bank account of the petitioner and others employees. They also obtained signature in the blank stamp papers. Even before the disbursement of the amount, when that was enquired, they were criminally intimidated and only after verification of the amount, the petitioner and other employees came to know about the misappropriation. Similarly, the affidavits which were fabricated have been filed before the concerned management. As mentioned above, this petitioner along with the other employees filed WP No.22342 of 2018 against the office-bearers of the Association and that was dismissed on 06/02/2019 by the Principal Bench. Against which, SLP [c] No.11786 of 2019 was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by order, dated 02/08/2019 liberty was granted to the petitioner to take appropriate action, SLP was also dismissed. By virtue of the above said order liberty granted to the petitioner, this petition came to be filed on 02/10/2019. The petitioner lodged a complaint before the 2nd respondent and due acknowledgement was also given. They were directed to appear for enquiry on 04/10/2019. No enquiry was conducted on that date. Later along with 113 complainants went to the first respondent office and even thereafter, there was no proper enquiry. So it is the duty of the 2nd respondent to take action based on the complaints. In spite of repeated representations and requests, no proper action has been taken. So this petition is filed seeking a writ of mandamus.



5.It is unfortunate case of termination of the employees of the company called as 'Ponds Hindustan Lever Limited. As mentioned in the petition, the above said company was amalgamated and all the employees were terminated. It is also seen that the management also granted ex-gratia amount to the ex-employees.

6.Now according to the petitioner, the employees were represented by Pond's Hindustan Lever Limited Ex-Mercury Employees Welfare Association (PHLLEEWA). So according to the petitioner, the office-bearers of the above said Association played a major portion of misappropriation and cheating etc., worth about Rs.50 Crores, which was due to be paid to the employees. The petitioner along with other employees also signed in the blank cheques, blank stamp papers etc. But whether the actual amount was paid in terms of the above said to all the employees become the matter for consideration, in WP(MD)No.22342 of 2018. The order copy is also enclosed. Since very limited scope is available in this petition, it may not be proper to this court to go into the above said order in detail. Since that petition was dismissed on the ground that it is not fair on the part of the petitioner to register a false allegation against the Association. So on that ground, it was dismissed. Against which, as mentioned earlier, SLP was preferred in SLP (C)No.11786 of 2019. Liberty was granted to the petitioner to withdraw the proceedings and also a right was given to the petitioner to file appropriate action praying for the reliefs that are being claimed in the present proceedings. It has also been observed that as and when such proceedings are initiated, the matter shall be considered purely on merits. No opinion was expressed by the Hon'ble Supreme Court as to the merits of the matter. So it was ordered to be gone into at the time of enquiry in accordance with law. So the verdict of the Hon'ble Supreme court is that fresh proceedings is permitted to be initiated. So the observation that has been made by the Division Bench of this court in WP(MD)No.22342 of 2018 is not going to have any bearing on the fresh proceedings.

7.Now the learned counsel appearing for the petitioner, submitted, based upon the liberty, a complaint has been lodged by the petitioner on 02/10/2019 and that was not properly enquired. During the course of hearing, the learned Government Advocate (Criminal side) would submit that due enquiry was undertaken, based on the complaint given by the petitioner. But however, on behalf of the petitioner one Thiru.S.Sridhar appeared and stated that in respect of the above said transaction, CC No.42 of 2016 is also pending and now the matter has been seized by this court and that will follow the order that will be passed by this court. On the basis of the above said undertaking, the further proceedings on the basis of the complaint came to be closed.

8.Now the correctness of the closure is also under attack. A <https://hccresidcours.gov.in/eservices/> was put to the learned counsel appearing for the



petitioner on the point that whether criminal proceedings were permitted to be initiated against the office bearers of the above said Association. For that point, the learned counsel appearing for the petitioner would submit that even the Supreme court has not restricted the nature of the proceedings to be initiated by the petitioner. So according to the petitioner, fresh proceedings includes the criminal and civil proceedings. Whatever it may be, now the stand of the petitioner is clear that enquiry was undertaken on the basis of the complaint, but however, it has been closed due to the pending of petition before this court. Now enquiry has been closed on the wrong assumption that the matter has been seized by this court. The scope of the writ petition is only to direct the 2nd respondent to take action on the basis of the complaint. It is settled that writ of mandamus will not lie against the police officials, for registering FIR, now it has been pointed by the Constitution Bench of this Hon'ble Supreme Court in the case of **Lalitha Kumari**, it is the duty of the police official to register the FIR if cognizable offence is made out, on the basis of the complaint.

9. Here, the petitioner made allegation against the office bearers of the Association that they have misappropriated more than Rs.50 Crores and also involving in forgery and cheating etc. In view of the earlier proceedings, it is the duty of the 2nd respondent to make a preliminary enquiry on the complaint. But however without going through the process of enquiry, it appears that it was closed on misconception.

10. In the facts and circumstances, this petition is disposed of directing the 2nd respondent to proceed in accordance with law in respect of the complaint given by the petitioner, dated 02/10/2019 an complete the same within a period of 3 months.

11. With the above direction, this petition stands **disposed of**.
No costs.

Sd/-
Deputy Registrar

// True Copy //

/ /2022
Sub Assistant Registrar (CS)

er

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To,

- 1.The Superintendent of Police,
Dindigul District.
- 2.The Inspector of Police,
Kodaikanal Police Station,
Kodaikanal,
Dindigul District.
- 3.District Crime Branch,
Dindigul District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**WP (MD) No.19212 of 2020
12/01/2022**

MK/24.02.2022/5P/5C