

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9806 of 2023

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1. ITC Limited having its Registered Office at 37 Jawaharlal Nehru Road, Kolkata 700071 Through its authorised representative Mr. Satya Prasad, (Male) aged about 37 years, Son of Shri P M Rao, R/o 97, Main Road Gudari, Gudari, PS-Gudari, District- Rayagada, Odisha-765026.
2. Arnab Deb S/o Himadri Sekhar Deb, Manager, ITC Limited, Cigarette PS-Kotwall, Factory, PO- Basdeopur, District Munger. ... Petitioners
- Versus
1. The State of Bihar Through the Principal Secretary, Labour Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna-800021.
2. The Principal Secretary, Labour Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna-800021.
3. The Chief Inspector of Factories, Bihar, Patna, Niyojan Bhawan, Bailey Road, Patna-800021.
4. Inspector of Factories, Munger Zone, Munger. ... Respondents
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Appearance :

For the Petitioners : Mr. Jaideep Gupta, Sr. Adv. with
M/s Shoeb Alam, Rauzia Shakil & Ram Parvesh
Nath Tiwari, Ads.

For the Respondents : Mr. Anuj Kumar, AC to GP IV

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

4 25-09-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s) :

1.1. For issuance of an appropriate writ, order or direction in the nature of certiorari for setting aside the Order dated 20-06-2023 passed by the Respondent No.2 (ANNEXURE-6) vide which the statutory appeal filed by the Petitioner No. 1 has been dismissed; AND

1.2. For issuance of an appropriate writ, order or direction in the nature of certiorari for setting aside the report of the Chief Inspector of Factories dated 30-07-2022 and Order of the Chief Inspector of Factories bearing no. 445 dated 30-07-2022 (ANNEXURE-2) AND



1.3. For grant of any other relief/reliefs to the Petitioners as admissible in accordance with law.

3. Learned counsel for the petitioners has stated that an accident took place in the premises of the petitioners' industry on 07.06.2022 and, thereafter, as per the provisions of the Factories Act, 1948, (hereinafter referred to as, 'the Act') the Inspector of Factories has visited the premises and after making a thorough enquiry a report was submitted on 12.07.2022 vide Ref. No. 79. In the report submitted by the Inspector of Factories it was clearly stated that the petitioners' factory is not at fault and the accident happened due to lapses of the workers. Learned counsel has stated that the Chief Inspector without setting aside the enquiry report submitted by the Inspector of Factories or without giving any finding that the said report has not been properly prepared has again inspected the premises on 28.07.2022. Learned counsel has stated that once the report is submitted by the Inspector of Factories, the Chief Inspector of the Factories does not have any power or jurisdiction to make a second inspection. The action of the Chief Inspector of the Factories (Respondent No. 3) is contrary to the provisions of the Act and the same is an arbitrary exercise of power and without jurisdiction. That the Chief Inspector of the Factories is neither an Appellate Authority nor the Revisional Authority under the



provisions of the Act and once a report prepared by a competent person is on record, the Chief Inspector of the Factories cannot make a second inspection. That the 3rd Respondent without any authority of law has conducted the inspection on 28.07.2022 and submitted a report contrary to the earlier report submitted by the Inspector of Factories. That the Chief Inspector of the Factories without conducting a proper enquiry, examining any witness or taking into consideration the submissions made by the petitioners' factory has submitted a second report on 30.07.2022. That aggrieved by the report of the 3rd Respondent, the petitioners filed an appeal under Section 107 of the Act r/w Rule 98 of the Bihar Factories Rules, 1950, however, the Appellate Authority without considering the grounds of appeal has rejected the appeal in a mechanical manner. That the Appellate Authority has dismissed the appeal in an arbitrary manner without adverting to the grounds raised by the petitioner. Learned counsel has stated that the Chief Inspector of the Factories does not have the authority or jurisdiction to submit a second report giving without a finding that the first report, dated 12.07.2022 submitted by the 4th Respondent herein is flawed or not in accordance with law, therefore, learned counsel has prayed for allowing the present CWJC and setting aside the impugned order. Learned counsel for the petitioner has relied on the following judgments to buttress his case.



4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the present Writ Petition. Learned counsel has stated that the Chief Inspector of the Factories has got ample power under the Act and he has exercised the same strictly in accordance with the said provisions. Learned counsel has stated that there is no embargo under the Act for submitting a second report and has taken this Court to the various provisions of the Act. Learned counsel has prayed this Hon'ble Court to dismiss the present CWJC. Admittedly, in the present case an accident took place in the premises of the petitioners' factory on 07.06.2022, thereafter, the 4th Respondent has visited the factory and duly taking into account the statements made by the other co-workers has submitted a report, dated 28.07.2022, exonerating the petitioners' factory. Thereafter, the Chief Inspector of the Factories on his own without there being any order from any superior authority has inspected the premises of the petitioners' factory and came to the conclusion that the factory was at fault and responsible for the health of the workers. Basing on the said second report a complaint has been lodged against the petitioners' factory.

5. A perusal of the report submitted by the Chief Inspector of the Factories reveals that the said report is not



based on any evidence at all. The Chief Inspector of the Factories has not given any reasons for coming to the conclusion as to how the respondents are liable for prosecution. The report does not reveal that the Chief Inspector of the Factories has examined any co-workers to substantiate the conclusion reached by the said Chief Inspector of the Factories. There are absolutely no reasons in the said report for coming to the conclusion reached by the Chief Inspector of the Factories except stating that the mishap occurred due to the mistake of the petitioners' factory as they have not kept the work place safe. There is no other reason in the said report. The said report does not advert to the first report submitted by the Inspector of Factories and is bereft of any reasons.

6. This Court as well as the Apex Court, on number of occasions, have held that any authority/Court/quasi judicial authority have to necessarily give reasoning in the order passed by them. Unless reasoning is given in the order, neither the party nor Courts before whom the order is challenged will be in a position to appreciate as to what has weighed with the said authority. The report does not reveal as to why the Chief Inspector of Factories has disbelieved the 1st report submitted by the Inspector of Factories. The minimum that was expected from the Chief Inspector of Factories was to give reasons for



making a second inspection and submitting a 2nd report contrary to the 1st report.

7. Learned counsel for the petitioner has relied on Hon'ble Supreme Court judgment passed in the case of **Bhavnagar University Vrs. Palitana Sugar (P) Ltd.** reported in **(2003) 2 SCC 111** where it has been held as under :

“40 : The statutory interdict of use and enjoyment of the property must be strictly construed. It is well-settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four-corners thereof.

42 : We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequence for inaction on the part of the Statutory authorities within such specified time is expressly provided, it must be held to be imperative.”

In the judgment passed in the case of **Arcot Textile Mills Limited Vrs. Regional Provident Fund Commissioner & Ors**, reported in **(2013) 16 SCC 1** it has been held as under :

“ 20 : On a scrutiny of [Section 7-I](#), we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under Section 7-Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision



providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute.”

In another judgment passed in the case of **Dhulabhai Etc. Vrs. State of Madhya Pradesh & Anr.**, reported in **(1968)3 SCR 662**, it has been held as under :

“9 : At the very start we may observe that the jurisdiction of the Civil Courts is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law.”

8. As rightly pointed out by the learned counsel appearing for the petitioners that once a report has been submitted by the concerned authority, the very same competent or any person superior to him cannot submit a second report contrary to the first report without indicating as to what is wrong in the first report or without the first report being set aside by a superior authority. There is no provisions under the



Act or the Rules for either reviewing a report already submitted by the Inspector of Factories. Once a report is submitted by the Inspector of Factories the Chief Inspector of Factories does not have the authority or the jurisdiction to submit a second report unless and until a superior forum or authority has set aside the first report and directed for a second report.

9. Having regard to the fact that the law laid down by the Hon'ble Supreme Court in judgments above cited this Court has to necessarily allow the present Writ Petition and the same is allowed, consequently the impugned order, dated 20.06.2023, passed by the Appellate Authority is set aside, the report, dated 12.07.2022, submitted by the Chief Inspector of Factories and the complaint filed by the Respondent No. 4 basing on the second report of the Chief Inspector of the Factories, dated 12.07.2022, are set aside.

10. The Writ Petition is **allowed**, however, without costs.

(A. Abhishek Reddy , J)

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