



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 7th August, 2023**

+ W.P.(C) 6408/2008 and CM APPL. Nos. 16353/2012, 16355/2012, 16358/2012 and 16359/2012

DGU CEMENT FACTORY EMPLOYEES UNION (REGD)

..... Petitioner

Through: Mr. B.S. Rana, Advocate.
Mr. Brijesh Kumar Tamber, Mr. Vinay Singh Bist and Mr. Yashu Rustagi, Advocates.

versus

UOI & ORS

....Respondents

Through: Mr. Ravi Sikri, Sr. Advocate with Mr. Prakash Gautam, Mr. Deepank Yadav, Mr. Abhishek Sandilya and Ms. Kanak Grover, Advocates for CCI.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

- “1. Quashing/Settling aside Impugned order of closure dated 14th July, 2008 passed by Respondent No.3;*
- 2. Directing the respondents to reconsider the entire matter in accordance with law or in alternate refer the matter to the Tribunal;*



3. Award costs of this litigation to the petitioner
4. Pass such other orders as this Hon'ble Court may deem fit and proper in the interest of justice."

2. Due to the existence of various parties in the instant case, it becomes imperative to establish the role attributed to each party before delving into the facts of the petition.

a) The petitioner (hereinafter 'petitioner union') is a registered trade union representing the cause of workmen employed with an undertaking of respondent no.4.

b) Respondent no.1 is the Secretary of the Ministry of Labour and Employment.

c) Respondent no.2 is the Additional Secretary of the Ministry of Labour and Employment.

d) Respondent no.3 is the Director of the Ministry of Labour and Employment.

e) Respondent no.4 is M/s Cement Corporation of India Ltd having multiple undertakings, including the one where the petitioner union is employed.

3. On 8th October, 1996 respondent no.4 was declared 'sick' under Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 by Board of Industrial and Financial Reconstruction (hereinafter referred to as "BIFR"). In a meeting held by BIFR on 28th July, 2000 it was established that the viability of most units remained doubtful and would eventually have to be sold off as per the revival scheme.



4. On 3rd May, 2006 the BIFR approved the sanctioned scheme proposing to close down seven units/undertakings of respondent no.4, including the undertaking where the employees forming the petitioner union was employed. The same was communicated *vide* notice issued by respondent no.2 (hereinafter referred to as 'respondent ministry') under Section 25(O) of the Industrial Disputes Act, 1947 (hereinafter 'Act').

5. Subsequently, the petitioner filed objections to the abovesaid notice issued under Section 25(O) of the Act before the Secretary of respondent no.1. Respondent no.1 denied permission for closure of the units of respondent no. 4 *vide* order dated 29th March, 2007.

6. Thereafter, the Director of respondent no.3 applied for review of order dated 29th March, 2007. The matter was decided *vide* order dated 27th March, 2008. Aggrieved by the abovementioned order, the petitioner union filed W.P. (C) no. 3448/2008 before this Court, which was disposed of, while issuing directions to respondents no. 1 to 3 to provide an opportunity to the petitioner union to present their case.

7. Subsequent thereto, the respondents no.1 to 3 granted permission to respondent no.4 to close down the 7 undertakings under Section 25(O) of the Act *vide* order dated 14th July, 2008.

8. Being aggrieved by the impugned order dated 14th July, 2008, the present petition has been filed praying for the said order to be set aside.

9. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is in violation of the principles of natural justice as the arguments on the representation by the petitioner was heard by the



respondent ministry but the matter was adjudicated upon and the order thereto was passed by respondent no.3, despite the fact that the petitioner did not present its case before respondent no.3. Learned counsel relied upon the judgment passed in ***Gullapalli Nagreshwar vs APSRTC, 1959 Supp (1) SCR 319***, to support the above mentioned argument.

10. It is submitted that the respondent no. 1 to 3 have acted illegally and arbitrarily by not disposing of various applications filed by the petitioner union seeking referral of the matter to the industrial tribunal, not summoning records pertaining to transfer of employees belonging to the petitioner union to functioning units of respondent no.4, and by failing to permit the petitioner union to have legal representation.

11. It is further submitted that the respondents no. 1 to 3 were acting in excess of their jurisdiction by passing the impugned order as per Section 25 (O)(4) of the Act wherein the limitation period stands to be one year. Therefore, in effect, respondents no.1 to 3 have reviewed an order that did not exist. It is also submitted that passing an order for closure is a *quasi-judicial* function which is beyond the powers of respondent no. 3.

12. It is, therefore, submitted that the impugned order dated 14th July, 2008 passed by the respondent no. 3 is liable to be set aside, being illegal and against the principles of natural justice and equity.

13. *Per contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the present petition, submitting to the effect that the order passed by BIFR had taken into consideration all aspects while providing sufficient opportunities to all the stakeholders, including the



workers' union of the undertaking. Moreover, against the order passed by the BIFR, the petitioner had approached the Appellate Authority for Industrial & Financial Reconstruction (hereinafter 'AAIFR'), which had also upheld the said order after going into the merits *vide* order dated 17th November, 2006.

14. It is submitted that the issue pertaining to the closure of the seven units of the respondent no.4 had also been adjudicated upon by this Court, the High Courts of Punjab and Haryana and Madhya Pradesh as well as the Hon'ble Supreme Court in SLP no.10118 - 10119 of 2008 preferred by the petitioner, which stood dismissed. Hence, the decision of the AAIFR attained finality and as such there remains no remedy with the petitioner to re-agitate the same issue by filing multiple litigations.

15. In view of the above arguments, it is prayed that the instant petition be dismissed being devoid of any merit.

16. Heard the learned counsel for the parties and perused the material on record.

17. Before delving into the relevant issue arising in this petition, it is necessary to set out the relevant facts here.

18. The notice of closure was issued by the respondent no.2 in the light of the order of BIFR, directing closure of seven undertakings of the respondent no. 4. The AAIFR after conducting a detailed scrutiny, *vide* order dated 17th November, 2006, upheld the order for closure of seven non-operating units of the respondent no. 4. The said order was challenged by the petitioner before this Court whereby, the Division Bench *vide* order dated 11th January,



2008, had dismissed the petition and upheld the order of the AAIFR, directing the closure of respondent no. 4's undertakings. This Court while passing the order, considered all the relevant factors and therefore, did not find any reason to interfere with the order of the AAIFR. The Court observed that the AAIFR while passing the order, conducted detailed scrutiny keeping in mind the financial position and the possibility of revival of the company. This Court also observed that further delay in the implementation of the scheme may defeat its very purpose and may cause incalculable harm not benefitting any party.

19. The issue of closure of the seven units of the respondent no.4 attained finality after the Hon'ble Supreme Court dismissed the SLP bearing no. 10118 - 10119 of 2008 *vide* order dated 28th April, 2008, thereby, upholding the order of this Court.

20. At this juncture, it is imperative to discuss the position of law. It has been contended by the respondent that the impugned order dated 14th July, 2008, has already been upheld by this Court, the Punjab & Haryana High Court *vide* order dated 23rd October, 2008 and the Madhya Pradesh High Court *vide* order dated 1st December, 2008 respectively. It is also contended that the petitioner is abusing the process of law by taking recourse to legal proceedings repeatedly while concealing the previous proceedings.

21. The Hon'ble Supreme Court in the matter of ***Udyami Evam Khadi Gramodyog Welfare Sanstha and Another v. State of Uttar Pradesh and Others (2008) 1 SCC 560***, analysed the issue concerning the misuse of the remedies by an aggrieved party including repeatedly approaching judicial



forums while concealing facts and issues which have already attained finality. It was further observed, that a person approaching any Court must come with clean hands and not suppress any material facts.

22. The Hon'ble Supreme Court in the matter of ***Prestige Lights Ltd. V. State Bank of India*** (2007) 8 SCC 449, held that the jurisdiction exercised by the High Courts under Article 226 of the Constitution of India is extraordinary, equitable and discretionary, and it is imperative that the aggrieved party approaching the writ Court must disclose all facts before the Court without any concealment. All facts pertinent to the dispute must be stated by the litigant. In case facts are suppressed to gain advantage, the individual would be guilty of misleading the Court, which cannot be countenanced. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. The relevant paragraph of the above said judgment has been reproduced herein:

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”



23. The position hence stands settled, that the party approaching a writ court must disclose all relevant and pertinent facts without any reservation, even if the said facts are not in favour of the party. In the instant case, it is found that the petitioner blatantly and conveniently concealed the material facts pertaining to the legal recourse already preferred by it against the impugned order. The petitioners in the present petition cannot be allowed to disclose or suppress facts as per their convenience *qua* the proceedings sought before the various forums, including the Hon'ble Supreme Court. In complete abuse of legal rights, the petitioner kept seeking recourse against the same order.

24. In view of the current facts and scenarios, it is evident that the petitioner did indeed abuse the process of law by not disclosing the orders of other High Courts passed prior to the filing of the present petition and by taking recourse to the legal proceedings repeatedly, when the issue had attained finality as settled by various other judicial forums.

25. Moreover, there is no doubt to this effect that the original order passed by the concerned authority closing down the sick units of respondent no. 4 was upheld, first, by the appellate authority, i.e. AAIFR, then by the Division Bench of this Court, and finally, by the Hon'ble Supreme Court. At this juncture, it is apparent that the petitioner is merely hunting forums in an attempt to get a favourable outcome from at least one of them.

26. This Court is of the view that there remains no legal right in favour of the petitioner to challenge the impugned order dated 14th July, 2008, as the issue of closure of undertakings of respondent no.4 already stands settled by



various judicial forums including the Division Bench of this Court and the Hon'ble Supreme Court.

27. The Court is of view that the respondent no. 3 has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity in passing the impugned order, which has now attained finality after several orders by different judicial and appellate forums.

28. In view of the above discussion on facts, circumstances and the law laid down, this Court finds no cogent reason to interfere with the impugned order dated 14th July 2008 by allowing the instant petition and reliefs sought therein.

29. Based on the aforementioned observations, the instant writ petition is, accordingly, dismissed along with the pending applications, if any.

30. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 7, 2023
SV/AV

Click here to check corrigendum, if any