
(1995) 05 CAL CK 0033
In the Calcutta High Court
Case No : C.O. No. 4788 (W) of 1995

Subhajit Banerjee and others

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 17-05-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Industrial Disputes Act, 1947 — Section 2, 25(F), 25N, 25O

Citation : AIR 1995 Cal 365 : 99 CWN 1090

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : A.P. Chatterjee, for the Appellant; M/s. Aninda Mitra, S. Deb, J. Das Gupta, M/s. S.N. De and Mr. Sinha, for the Respondent

Judgement

1. The petitioners have moved this writ petition for stalling the proposed transfer of the factory/plant of the respondent No. 4, Pfizer Limited situate at Kalyani in favour of the respondent No 6. Torrent Pharmaceutical Limited. The Pfizer is stated to be a manufacturing multinational and Pfizer Limited having its head office at Bombay is incorporated under the Companies Act and is engaged in the business of manufacture of Pharmaceutical products. The company has four units at four places in India, namely. Thane in Maharashtra, Kalyani in West Bengal, Ankleswar in Gujarat and Chandigarh in Punjab. It is the petitioners' case that although the company has four units in India at four different places it is financially and functionally an integrated one. The factory of the Pfizer at Kalyani, it is the case of the petitioners, manufacture four items of pharmaceutical products including TINI and CCP. The three petitioners are technicians under the respondent No. 4, Pfizer Limited in its factory at Kalyani. The petitioners' contention is that of mala fide reasons the respondent No. 4 Pfizer Limited is going to sell and transfer their factory at Kalyani to the respondent No. 6. Torrent Pharmaceutical Limited. The petitioners pray for certain reliefs including leave to prosecute this writ application in representative capacity on behalf of the other employees. The main reliefs sought for by the petitioners in this writ petition are

prayers (b) and (d) which are reproduced below:--

"(b) Writ and/or order and/or direction in the nature of Mandamus directing the Government of India and the Government of West Bengal to refuse and/or deny permission to transfer or to sell or to dispose of or otherwise the factory/plant of the Pfizer Limited, Respondent No. 4, situate at Kalyani, District Nadia, West Bengal, to Torrent Pharmaceutical Limited, Respondent No. 6, or any other company or companies concern or concerns;

(c) *****

(d) Writ and/or order and/or direction in the nature of prohibition directing the respondents the Government of India and/or Government of West Bengal to refrain from abusing jurisdiction vested in them and from permitting Pfizer. Limited, Respondent. No. 4, transfer and/or sell and/or dispose of the factory/plant at Kalyani, District Nadia, West Bengal to Torrent Pharmaceutical Limited, respondent No. 6, or to any other person or concerns or any other company or companies."

The petitioners have also prayed for quashing the decision to transfer and/or sell and/or dispose of the said factory/plant situate at Kalyani.

2. The grievance of the petitioners is that the decision of Pfizer Limited to sell the factory at Kalyani to the Torrent Pharmaceutical Limited is a mala fide act for reasons stated in the writ petition. The question whether the act of sale of a factory by a company to another company is a mala fide one and if so whether the court should intervene in the matter obviously does not attract the writ jurisdiction of the High Court where none of the companies is State or Authority within the meaning of Art. 12 or Art. 226 of the Constitution. The learned Advocate for the petitioners has argued that in the circumstances of the case the move taken by Pfizer Limited to transfer its factory at Kalyani in favour of Torrent Pharmaceutical Limited, if allowed to come true, will amount to retrenchment of workmen as well as closure of the undertaking thereby attracting the provisions of Section 25N and Section 25-O respectively of the Industrial Disputes Act, 1947. It is argued further by the learned Advocate for the petitioners that the Pfizer Limited cannot therefore sell or transfer the Kalyani factory to the Torrent Pharmaceutical Limited without complying with the provisions of Section 25N and Section 25-O of the Industrial, Disputes Act, 1947. It has been argued by the learned Advocate for the petitioners in this; connection that by selling the factory the Pfizer Limited is virtually closing down the factory so far as the said company is concerned and therefore such sale amounts to closure of the factory thereby attracting Section 25-O of the Industrial Disputes Act. It is difficult, I must say to agree with this argument of the learned Advocate for the petitioner. "Closure" has been defined in Section 2(cc) of the Industrial Disputes Act as the "permanent closing down of a place of employment or part thereof". The definition therefore clearly refers to permanent closing down of the place of the employment or part thereof and it is not even by any remote implication

concerned with the question of change of employer. If the transfer of a factory from one owner to another does not involve closing down of the factory mere change of ownership will not amount to an act of closure of the factory. Where a factory is being transferred as a going concern there cannot be any question of the act of such transfer being an act of closure by dint of such transfer alone. Then again apart from the question whether the act of transfer amounts to retrenchment of workmen, or closure of the factory, the petitioners' relief, if any, for retrenchment or closure lies under the Industrial Disputes Act and not in the writ jurisdiction of the court because neither the Pfizer Limited nor the Torrent Pharmaceutical Limited is State or Authority within the meaning of Art. 12 or Art. 226 of the Constitution.

3. The learned Advocate for the respondents has also submitted that the Pfizer Employees Union has already filed a complaint in the matter before the Industrial Court at Bombay being the complaint (ULP) 96/1995, but they having failed to obtain any interim order in the Industrial Court at Bombay the petitioners have filed the present writ petition in this High Court in their individual capacity and also seeking permission to prosecute the matter in their representative capacity. As a matter of fact a copy of the complaint has also been placed before me at the time of hearing. Since the grievance of the petitioners is regarding the proposed transfer of the factory from one company to another company, none being State or Authority within the meaning of Art. 12 or Article 226, prima-facie the writ jurisdiction is not attracted in this matter. Then again even if the matter is considered to be a dispute between the employees and their employer company, the remedy of the employees lies, if at all, in appropriate proceeding the Industrial Disputes Act and not under the writ jurisdiction of the High Court. It is not that the petitioners are oblivious of this position and that is why in an attempt to bring the matter within the writ jurisdiction of the High Court they have included prayer for writ directing the Government of India and the Government of West Bengal to refuse permission to transfer, sell or dispose of the factory/plant of the Pfizer Limited situate at Kalyani to Torrent Pharmaceutical Limited or to any other company. Such prayer for a pre-emptive direction upon the state is wholly misconceived. If there is any question of permission in the matter from the Government of India or the Government of West Bengal it is for them at the first instance to consider and take their decision in the matter in accordance with law and the court cannot in advance pre-empt the consideration which is required to be made by the Government and direct the Government in advance not to accord such permission. The question whether permission should be accorded or not is a matter for consideration of the Government at the first instance and the court in its writ jurisdiction cannot oust the Government from the sphere of consideration and take upon itself the task of consideration which is required to be done by the Government. In the circumstances the writ petition for an advance direction upon the Government not to accord permission to the proposed sale, if such permission is at all required, is wholly premature and untenable. Consequently the writ petition is

found liable to be summarily dismissed and the same accordingly stands dismissed. No cost is however ordered.

4. Petition dismissed.