

MC 2500/2008

BEFORE

HON'BLE THE MR. JUSTICE AMITAVA ROY

The applicants, State respondents in the accompanying writ petition hereby seek vacation, alteration and/or modification of the interim order dated 8/8/2008 restraining the respondent No. 6 from joining as the Managing Director of the Assam Government Marketing Corporation (hereafter referred to as the Corporation) pursuant to the impugned order dated 5/8/2008 permitting him to take charge of the said office.

I have heard Mr. K.N. Choudhury, Additional Advocate General, Assam for the applicants and Mr. M. Bhuyan, learned Counsel for the writ petitioner.

Apart from it would be to be acquainted with the thumbnail facts constituting the rival cases for the limited purpose in hand. The writ petitioner has introduced itself to be an employees Union of the Corporation imbued with the objective of protecting, promoting and safeguarding the interest and rights of its members and for pursuing all other things necessary for their betterment and best welfare as well as that of the Corporation. According to the Union, its concern for the Corporation stems out from the dismal performance of the State Level Public Enterprises of the State rendering those to be an ultimate burden on the said exchequer. This the Union has attributed principally to the incompetence and mismanagement of such enterprises by their top level functionaries exposing the employees to a threatened risk of being denuded of their only means of livelihood. The Union has maintained that in terms of the office memorandum No. AAP 10 2/86/01 dated 13/5/96 of the Department of Personnel, Government of Assam, appointment amongst others to the post of Chairman/Managing Director of any Public Sector undertaking under the administrative control of the Department has to be made only with the prior approval of the Chief Minister and that too after complying with all the necessary formalities as prescribed. Referring to an official communication No. P.E. 51/96/18 dated 12/8/1997 of the Department of Public Enterprise, it has also been asserted that the selection and appointment of Managing Director/Chief Executive Officer of State Government Public Enterprises has to be essentially through a Public Enterprise Selection Board. The Union has complained that since 1959, the Government has appointed a number of persons as Managing Director of the Corporation sometimes on deputation and on others as in-charge caretakers of the office. In absence of a full time Managing Director of the Corporation the indifference and apathy of the incumbent precipitated adverse impacts on its well being drifting it at times in the past to imminent closure thereof. According to the petitioner Union, under the stewardship of the present Managing Director, Smt. N.C. Mipun who also is in charge of the office, the Corporation has exuded signs of resuscitation so much so that it has earned a profit of Rs. 2.92 Lakhs during 2006-07. The petitioner Union has alleged that the revival of the Corporation not having gone down well with some vested interest of late, conscious efforts are afoot to malign its image as well as that of the present Managing Director in-Charge. Though the petitioner Union in the meantime had submitted a memorandum dated 2/4/2008 before the Government seeking its intervention, by the impugned order, the present Managing Director in-charge has been relieved of her responsibility and in place the respondent No. 6 has been installed on the same arrangement.

Being stalked by an apprehension that the change would be detrimental to the overall well being of the Corporation, the petitioner Union is before this Court contending that the impugned decision is neither in public interest nor in the interest of the Corporation. The petitioner Union has insisted upon a regular Managing Director possessed of requisite skill, qualification and experience to properly administer its affairs for its all round betterment.

The State respondents in their counter has questioned the maintainability of the petition on the ground that the petitioner Union is not the person aggrieved. While emphasizing that the State Government is seriously concerned with the proper functioning of the Corporation, the answering respondents have pleaded that the arrangement effected by the impugned notification is purely a temporary one pe

ending the posting of a regular Managing Director for which necessary steps have been directed to be initiated. While admitting that the Corporation had made a profit of Rs. 2.92 Lakhs during the year 2006-07, respondents have refuted the claim that the same had been due to initiatives taken by the present Managing Director but have insisted it to be for the sincere and continuous efforts on the part of the State Government. It has been maintained that the present incumbent Smt. N.C. Mipun had been allowed to hold the charge of the office of the Managing Director of the Corporation in addition to her own duties and that thereby she has not acquired any indefeasible right to continue therein. While asserting the dominion of the State authorities to transfer and/or relieve any officer from any post in the exigencies of the administration, the respondents have indicated that the impugned order had to be passed on an assessment of the attendant facts and circumstances suggesting the desirability of the change occasioned thereby. The present incumbent amongst others has been alleged to have ignored Government directives by taking actions against senior employees of the Corporation without taking the approval of the Board of Directors and its Chairman. Apart from contending that the Corporation being an organization directly under the administrative control of the Handloom, Textile and Sericulture Department which as the Administrative Department is competent to make necessary internal arrangements by posting its officers on adhoc basis, the State respondents have insisted that the impugned order is in the best interest of public service and/or the Corporation.

The affidavit in reply of the petitioner is principally in reiteration of the averments made in the writ petition highlighting the fillip in the performance of the Corporation during the incumbency of the present Managing Director.

In the application under consideration emphasis has been laid on the disagreeable manner of functioning of the present Managing Director in-charge of the Corporation. The facts stated reveal that the State Government had issued certain instructions to her in connection with steps to be taken against senior employees of the Corporation with a direction to provide the necessary feed back on the action taken. According to the State respondents, the initiatives resorted to by her were without reference to the Board of Directors or the Chairman of the Corporation which have been viewed to be disregarding of the Government directives. The applicants have asserted that the conduct of the present Managing Director, on an assessment of the existing state of affairs has been construed to be arbitrary and indisciplined necessitating the impugned arrangement.

Mr. Choudhury has urged that as the petitioner Union is not the person aggrieved, it is not legally competent to maintain the instant writ petition and on that score alone, the impugned order is liable to be vacated. Pointing out that Smt. N.C. Mupin, the present incumbent has by her letter dated 11/8/2008 addressed to the Commissioner and Secretary, Government of Assam, Department of Personnel, volunteered to opt out of the issue raised before this Court he has maintained that the petitioner Union has no locus to pursue the proceedings. The learned Additional Advocate General in addition has argued that even otherwise having regard to the reasons disclosed, the concerned administrative authorities having decided not to retain her in the said office, on relevant considerations, she has no right to hold on thereto having been permitted to be in-charge thereof on temporary basis. Mr. Choudhury has in endorsement of his argument also produced the official file No. HTS.42/2008. He has also placed reliance on the decisions of the Apex Court in S.P. Gupta versus Union of India and another, 1981 Supp. SCC 87, Vinoy Kumar and State of U.P. and others, (2001) 4 SCC 734 and Mr. Dattaraj Nathuji Thaware versus State of Maharashtra and others, (2005) 1 SCC 590.

Mr. Bhuyan as against this has pleaded that the Union being a registered body espousing a collective cause, it has the essential locus to maintain the petition. Apart from being critical on the persistent adhocism in the matter of appointment to the office of the Managing Director of the Corporation, the learned Counsel has contended that as the organization has only started breathing life, the impugned order, if sustained would be fatal for its existence thereby jeopardizing all prospects of its employees. Mr. Bhuyan assiduously urged th

at having regard to the composition of the Union, it is not a busy body interloper, the employees of the Corporation being part and parcel thereof. Referring to the records, Mr. Bhuyan has sought to impress upon this Court that the impugned decision is a move to oust the present incumbent on impertinent considerations she having adopted a hard line against some erring high ranking officials of the Corporation. He, therefore, implored against vacation and/or modification of the interim restraint. The decisions of the Apex Court in Dr. Satyanarayana Sinha versus M/s S. Lal and Co. (P) Ltd., AIR 1973 SC 2720 and Ghulam Qadir versus Special Tribunal and others, (2002) 1 SCC 33 were pressed into service.

The pleadings of the parties and the emulous arguments of both the sides have received the due consideration of this Court. Admittedly the present Managing Director of the Corporation Smt. N.C. Mupin has abstained from assailing the impugned order though she is directly affected thereby. Instead by the letter dated 11/8/2008, referred to hereinabove, she has elected to extricate herself from the controversy. The petitioner Union for reason best known to it has also not impleaded her in the instant proceeding.

The principal relief sought for in the writ petition is the annulment of the order dated 5/8/2008 whereby the present incumbent has been replaced by one Shri Gajen Bora, A.C.S., Deputy Secretary, Handloom Textiles and Sericulture Department, on in charge basis. By the said order Smt. N. C. Mipun has been relieved of the charge of the office of the Managing Director of the Corporation and the officer above named has been inducted in her place in addition to his own duties temporarily and/or until a regular Managing Director is appointed. The tone and tenor of the averments made in the writ petition accentuate the concern of the petitioner union on the subsistence of adhocism in the office involved and the protracted failure on the part of the State authorities in making a regular appointment by adhering to the prescribed parameters. According to it, the continual failings of the State administration in this regard has time and again dwindled the foundation of the Corporation endangering its existence and the only means of sustenance of its employees. Noticeably, however, the instant lis is not in the form of a public interest litigation though spurred by a haunting apprehension that the impugned action is a visible precursor of ominous consequences.

The official records reveal that on 13/6/2008, the Principal Secretary of the Administrative Department proposed some administrative measures against two officers being cognizant of the imputations of lapses and financial mismanagement by them, which eventually received the approval of the Chief Minister of the State. In this regard as the note dated 4/8/2008 of the Principal Secretary of the Administrative Department reveals Smt. N.C. Mupin, Managing Director of the Corporation took steps opposed to the letter and spirit of the above decision and that too without the approval of the Board of Directors and the Chairman of the Corporation. Allegedly she also failed to explain her action though called for. The said note indicates that her commissions and omissions have been viewed to be in disregard of the Government directives fostering administrative indiscipline and unworkability. Her continuance in the office of the Managing Director of the Corporation was thus considered undesirable which paved the way for the impugned order.

The above revelations from the record prima facie support the pleaded stand of the applicants justifying the impugned order. The documents contained in the records do not per se suggest any extraneous consideration leading to the same. The power of the State authorities to pass the impugned order is not in question. The allegation of shielding the officers guilty of administrative lapses and gross financial mismanagement as advanced in course of the arguments on behalf of the petitioner also is not borne out by the records. The same demonstrate preparatory steps for eventual disciplinary action and no apparent slackness or indifference in the matter is as such discernible. As observed hereinabove, the proposed course of action against the officers involved has received the approval of the Chief Minister of the State. The State respondents are the best evaluators of the organizational affairs and unless the considerations leading to the action or decision impugned are influenced by irrelevant or collateral fac

tors or if the resultant conclusion is wholly illogical and/or absurd suggesting oblique motives, interference in exercise of the power of judicial review ought to be eschewed. The factual backdrop of the impugned order as disclosed by the official records does not impel this Court to make an irresistible deduction justifying intervention so much so to stall the new arrangement proposed.

The impugned order whereby the Commissioner and Secretary to the Government of Assam, Personnel (A) Department, has been requested to take steps to appoint a regular Managing Director of the Corporation at the earliest also evinces the concern and alertness of the State authorities to induct a regular incumbent in that office. Continuance of the interim order would post an impediment to that process as well.

The Apex Court in *Dr. Satyanarayana Sinha, supra*, while highlighting that existence of a right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution of India, ruled that in respect of persons who are strangers but seek to invoke the same, there is no clear enunciation of principles to ascertain the nature and extent of the right or interest which is said to have been infringed and whether such infringement in some way affects such persons. Their Lordships, however, approved the rendering in *R. versus Thames Magistrates' Court* 55 L.G.R. 129 that when an application is made by a party or by a person aggrieved, the Court would intervene *ex debito justitiae* and when made by a stranger it would consider whether the public interest demands its intervention. It was, however, underlined that in either case, it would ultimately rest in the discretion of the Court.

Their Lordships of the Apex Court in *Vinoy Kumar, supra*, while elaborating on the concept of *locus standi* held that the same would not be available to a person if he is not personally affected by an impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated. It was reiterated that relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction the exception to the general rule being only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. Their Lordships underlined that prudence requires the court to confine the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated and not to entertain cases of individual wrong or injury at the instance of a third party where there is an effective legal aid organization which can take care of such cases. Their Lordships held the view that even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief.

The Apex Court in *Ghulam Qadir, supra*, while reiterating the above fundamental legal propositions observed that the orthodox rule of interpretation regarding the *locus standi* of a person has undergone a sea change with the development of constitutional law of the country permitting a liberal approach in dealing with the cases rather than dislodging the claim of a litigant merely on hyper technical grounds. Their Lordships enounced that if a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right, which is shown to have its source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the *locus standi*. It was held that if the person is found to be not a mere stranger but having some right to whatsoever to any post or property, he cannot be non-suited on the ground of his not having *locus standi*.

In *S.P. Gupta, supra*, the Apex Court on this aspect ruled that in cases where there is public injury by the act or omission of the State or a public authority but the same also causes a specific legal injury to an individual or to a specific class or group of individuals, a member of the public having sufficient interest can maintain an action challenging the legality of such act or omission but

if the person or specific class or group of person who are primarily injured do not wish to claim any relief and accept such act or omission willingly, the member of the public who complains of a secondary injury cannot maintain the action as the effect thereof would be to foist the relief on the person or specific class or group of persons primarily injured which they do not want.

The decision in Mr. Dattaraj Nathuji Thaware, supra, has been cited to drive home the point that public interest litigation cannot be maintained in service matters.

The employees of the Corporation ipso facto cannot be branded as stark strangers vis- -vis its activities and the management in particular. The materials on record however do not as such demonstrate any infringement of their right or interest or any imminent possibility thereof as an inevitable fall out of the order impugned. That the Corporation would suffer a set back unleashing a cascading effect on its employees in general as anticipated in the perspective of past experience appears to be premature and to a substantial extent speculative and hypothetical as well. In absence of any cogent and tangible rationale demonstrating the infraction of any right or interest of the members of the petitioner Union, judged by the judicial opinion noticed hereinabove, the objection of lack of locus has to be sustained vis- -vis the challenge to the order impugned. This is more so as the person primarily affected has chosen to abide thereby. The orders of this Court in WP(C) 483/2008 are founded on a different set of facts, which inter alia proclaimed unwarranted intervention of the departmental Minister in subversion of the relevant memorandum otherwise required to be adhered to.

On a totality of the considerations scripted hereinabove, I am therefore, not inclined in favour of continuing with the interim order. The order of restraint dated 8/8/2008 is hereby vacated.

List the petition for admission hearing on 10/11/2008.

Misc. case stands allowed.