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

+ **WP (C) Nos. 7202/2002**

% Judgment delivered on: 31.03.2009

The Management of the Marine
Products Export Development
Authority ..... Petitioner
Through: Mr. Avnish Pandey, Advocate
Mr. Kavin Gulati, Advocate

versus

Sh. Ram pal Singh .... Respondent
Through: Mr. R.K. Saini, Advocate
Mr. R.K. Tiwari, Advocate.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

KAILASH GAMBHIR, J. (Oral)
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1 . By way of this petition filed under Article 226 of the Constitution of India the petitioner seeks to challenge the impugned award dated 15.4.2002 passed by the Labour Court.

2 . Brief summary of the facts to deal with the contentions of both the parties are as under:-

The Respondent was working in Trade Promotion Office under the Marine Products Export Development Authority (MPEDA in short) from 2.6.1986 to 20.5.1987 as contingent driver with Jeep No. DID-8178. He was transferred to the office of Project Director, Orissa Shriap Seed Production Supply and Research Centre (OSSPSARC in short), at Orissa, in the trade promotion office vide letter dated 13.4.1987. After being relieved from MPEDA, the respondent had joined the office of Director OSSPSARC and worked there from 21.3.1987 to 8.9.1989. The workman was again transferred to New Delhi office from Orissa and he worked there from 11.9.1989 to 10.12.1991. While working at New Delhi Trade Promotion office he had fallen sick and had taken leave from verbal order. He remained on leave from 17.12.1991 to 28.8.1992. He had recovered from illness and reported for duty on 2.9.1992 but was not allowed to join the duty. On the failure of conciliation proceedings the matter was sent to the Labour Court and the award was passed against the management. Aggrieved with the said award the petitioner/management preferred the present petition.

3 . Counsel for the petitioner submits that the Lower Court did not appreciate the fact that the petitioner management is not an industry as defined under Section 2 (j) of the Industrial Disputes Act, therefore, the dispute referred did not fall within the purview of the Industrial Disputes Act. Counsel submits that the Labour Court did not consider the ratio of the decision of the Hon'ble Supreme Court reported in **1997 (4) SCC 391 Himanshu Kumar Vidyarthi and others Vs. The State of Bihar and Ors** wherein the Supreme Court took a view that every department of the Government cannot be treated as an industry. Counsel for the petitioner further submits that the Labour Court has also not considered the decision of the Supreme Court in **State of Haryana Vs. Om Prakash and another 1996 (6) SCC 733** wherein the Supreme Court held that if termination of the employee is under Section 2 (oo) of the I.D. Act then such termination cannot be treated as retrenchment and the employee is not entitled for any protection as envisaged under Section 25-F of the I.D. Act. Counsel for the petitioner further submits that an ex-parte award was passed by the Tribunal and therefore the petitioner could not assist the Labour Court in arriving at the just and correct decision. Counsel for the petitioner also submits that the

written statement was filed by the petitioner but the contentions raised therein were not taken into consideration by the Labour Court. Counsel for the petitioner also submits that the respondent was employed as contingent driver for temporary periods and he was never appointed against any sanctioned or regular post and his services were terminable on the expiry of the contract period under Section 2 (oo) of the I.D. Act.

4 . Opposing the present petition Mr. R.K. Saini, counsel for the respondent submits that an ex-parte award was passed against the petitioner by the Labour Court and no steps were taken by the petitioner to seek setting aside of the ex-parte award for a period of more than six years. Counsel for the respondent also submits that the petitioner has not given any explanation as to what prevented the petitioner to contest the case before the Labour Court when already written statement was filed by the petitioner. Counsel further submits that the petitioner itself opted to remain unrepresented for a period of more than six years till the time an ex-parte award was passed. Even no steps were taken by the petitioner to seek setting aside of the ex-parte award after the same was published by the appropriate government. Counsel also submits that even in the present petition

the petitioner has not given any explanation as to why it did not appear before the Labour Court for such a long period. Counsel further submits that even with the written statement no documentary evidence was placed for consideration of the labour court to give a finding about the misconduct of the respondent.

5 . I have heard counsel for the parties at considerable length and gone through the record.

6 . In the award dated 15.4.2002 the labour court in unequivocal terms mentioned that since the management failed to appear before it, they were proceeded exparte vide order dated 9.3.1999. The reference to the labour court was made on 14.3.1995 and upon management's failure to remain diligent by not putting up appearance before the court and due to its dilly dally tactics to delay the proceedings, it was proceded exparte on 9.3.1999. Since, 9.3.1999, when it was proceeded ex-parte no steps were taken by it to move an application for setting aside an ex-parte order nor did it give any explanation for the delay caused by it and reason for non-appearance or non-representation of the management. The demeanour of the management has clearly been inapt, unworthy and untoward. Clearly the management was given fair opportunity but

due to its own callousness it could not bring any evidence on record to turn the decision in its favour. Before, this court as well, it has not come with clean hands. It did not disclose that the award was passed against the management due to its own reckless conduct and negligence. It is a fundamental principle of law that a person invoking extraordinary jurisdiction of the High Court under Art. 226 of the Constitution of India must come with clean hands and must make a full and complete disclosure of facts to the court. The parties are not entitled to choose their own fats to put forward before the court. In this regard, the Hon'ble Apex Court in **Prestige Lights Ltd. Vs. SBI – (2007) 8 SCC 449** observed as under:-

> 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.
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> 34**.** The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R.* v. *Kensington Income Tax Commrs.*[4], in the following words:
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> "[I]t has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the

material facts—facts, not law. He must not misstate the law if he can help it—*the court is supposed to know the law. But it knows nothing about the facts*, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement." (emphasis supplied)

35**.** It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

In view of the above discussion, it would be apparent that the present petition is bad on account of unexplained delay and latches and therefore the same cannot be entertained. Dismissed.

March 31, 2009 **KAILASH GAMBHIR, J.**

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