

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition Nos.6329/2017, 5908/2017, 5911/2017,
5931/2017, 6334/2017 and 6336/2017

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Writ Petition No.6329/2017

(Caparo Engineering India Ltd. Vs. Pradeep and Another)

Writ Petition No.5908/2017

(Caparo Engineering India Ltd. Vs. Zakir Khan and Another)

Writ Petition No.5911/2017

(Caparo Engineering India Ltd. Vs. Ramchandra Malviya and Another)

Writ Petition No.5931/2017

(Caparo Engineering India Ltd. Vs. Dashrath Singh and Another)

Writ Petition No.6334/2017

(Caparo Engineering India Ltd. Vs. Sumer Singh and Another)

Writ Petition No.6336/2017

(Caparo Engineering India Ltd. Vs. Govind Soni and Another)

Indore, dated 31/10/2018

Shri Brian D'silva, learned Senior Counsel with Shri Manuraj Singh and Shri Sarabvir Singh Oberoi, learned counsel for the petitioner.

Shri R. S. Gour, learned counsel for the respondent No.1.

Shri G. S. Patwardhan, learned counsel for the respondent No.2.

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No.6329/2017 are narrated hereunder.

02- The petitioner before this Court is a Company incorporated under the provisions of Companies Act, 1956 having its

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manufacturing plant at Dewas in the name and style of Caparo Engineering India Ltd. has preferred present being aggrieved by order dated 03/08/2017 passed in MCC (Review) No.20/MPIR/2017 as well as order dated 23/02/2017 passed in MCC No.101/MPIR/2009 by the President, Madhya Pradesh Industrial Court, Indore.

03- The facts of the case reveal that the respondent No.1 Pradeep was an employee of Steel Tubes India Limited, again a Company duly incorporated under the provisions of Companies Act, 1956 and the respondent No.2 Steel Tubes India Limited terminated 17 workers in the year 1988 i.e. on 28/12/1988 and 29/12/188. The workers through their representative Union of India preferred an application under Section 31 (3), 61 and 62 of the Madhya Pradesh Industrial Relations Act, 1960 and the matter was decided by the Labour Court, Dewas on 15/11/1991. The Labour Court directed reinstatement of 17 workers including the present respondent No.1 with full wages.

04- The respondent No.2 Steel Tubes India Limited preferred an appeal against the order of reinstatement passed by the Labour Court dated 15/11/1991 before the Industrial Court and the appeal was registered as Appeal No.1300/MPIR/1991.

05- During the pendency of the appeal preferred by Steel Tubes

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India Limited, some of the workmen out of 17 workers filed an affidavit in compliance of Section 65 (3) of the Madhya Pradesh Industrial Relations Act, 1960 for the payment of last wages from Steel Tubes India Limited and received interim payments. During the pendency of the appeal preferred by Steel Tubes India Limited, some of the workers entered into settlement and out of 17 workers 9 of them entered into settlement and each worker was paid a sum of Rs.40,000/-. The workers who entered into settlement preferred an application on 25/05/1996 during the pendency of the appeal before the Industrial Court stating that they have settled the dispute and therefore, their cases should be treated as infructuous.

06- The representative Union i.e. Engineering Mazdoor Sangh, which was representing 17 workers opposed the application dated 25/05/1993 and filed a reply on 27/05/1993 contending that since the dispute was raised by Engineering Mazdoor Sangh, the individual workers could not have file applications without filing the same through Engineering Mazdoor Sangh.

07- Later on, 9 out of 17 workers filed a joint application contending that they have not received the amount which was agreed between the Steel Tubes India Limited and the workers during settlement. The Steel Tubes India Limited denied the contention of the workers *vide* reply dated 13/02/1996 and filed

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resignation and confirmation stating that the workers have received the dues from Steel Tubes India Limited.

08- The Industrial Court *vide* order dated 26/03/1997 framed an issue i.e. *“Whether, to each and every one out of 13 labourers making compromise there was fixed to be given Rs.51,000/- by management or they have to be given Rs.40,000/- and whether, till now they had been given Rs.17,000/- or Rs.40,000/-?”*

09- On the aforesaid issue, the matter was remitted back to the Labour Court to record the evidence and the Labour Court recorded the evidence and the matter was remitted back to the Industrial Court. The Industrial Court finally *vide* order dated 24/07/2001 dismissed the appeal as well as interim application and the decision of the Labour Court dated 15/11/1991 was confirmed. The Industrial Court has dismissed the appeal *vide* order dated 24/07/2001.

10- Thereafter, a review petition was preferred by Steel Tubes India Limited on 24/07/2001, which was again dismissed by order dated 04/12/2001 by the Industrial Court. The Steel Tubes India Limited being aggrieved by the order passed by the Labour Court dated 15/11/1991 and the order passed by Industrial Court dismissed the appeal on 24/07/2001 preferred a writ petition before this Court i.e. Writ Petition No.415/2002 and this Court has dismissed the writ petition *vide* judgment dated 25/09/2003.

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11- A Letter Patents Appeal was preferred i.e. LPA No.264/2014 and it was dismissed as not maintainable *vide* order dated 08/09/2005. The Steel Tubes India Limited, thereafter, preferred a SLP i.e. SLP No.5216/2006 and it was dismissed as withdrawn *vide* order dated 15/11/2017 as the LPA was not maintainable. The Steel Tubes India Limited thereafter, preferred a Writ Appeal against the judgment of the High Court dated 25/09/2003 and the Writ Appeal was also dismissed *vide* order dated 06/01/2016, meaning thereby, the order of the Labour Court dated 15/11/1991 directing the reinstatement of the workers along with wages was affirmed.

12- The respondent No.1 Pradeep, who is workman on 07/02/2002 preferred an application for execution of the order of the Labour Court dated 15/11/1991 against Steel Tubes India Limited and the Labour Court has dismissed the application preferred by respondent No.1 on 25/09/2009. The order by which the execution application was dismissed was challenged under Section 67 of the Madhya Pradesh Industrial Relations Act, 1961 before the Industrial Court and the Industrial Court *vide* order dated 23/03/2010 has declared the petitioner as successor-in-interest of respondent No.2 Steel Tubes India Limited and has directed to pay wages to the workmen. At this point of time, the petitioner Caparo Engineering India Limited came in existence in respect of litigation between the

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workmen and Steel Tubes India Limited.

13- The most important aspect of the case is that the petitioner Caparo Engineering India Limited was not a party either before the Labour Court or before the Industrial Court and only in execution proceedings, the Industrial Court *vide* order dated 23/03/2010 for the first time directed the present petitioner to pay wages by treating the petitioner as successor-in-interest.

14- The present petitioner thereafter, preferred a Writ Petition before this Court i.e. Writ Petition No.10081/2012 challenging order of Industrial Court dated 23/03/2010 and this Court has set aside the order passed by the Industrial Court dated 30/11/2013 and remitted back the matter to the Industrial Court.

15- The other important aspect of the case is that the Industrial Court while passing the order dated 23/03/2010 has not heard the present petitioner and in those circumstances while remanding the matter back, the High Court has observed as under:-

“Learned counsels appearing for the respondents No.1 and 2 have fairly stated before this Court, to remand the matter back to the Industrial Court for hearing it a fresh after granting an opportunity of hearing to the petitioner Company.

Resultantly, the impugned order dated 23/03/2010 and the consequential order dated 19/07/2012 are hereby set aside. The Industrial Court is directed to grant an opportunity of hearing to the petitioner and after hearing the petitioner as well as the respondents No.1 and 2, the Industrial Court shall be free to pass a fresh order, in accordance with law.

With the aforesaid and with the consent of the parties, the writ petition stands disposed of.”

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16- The Industrial Court after the remand has again by an order dated 23/02/2017 has held the petitioner to be successor-in-interest of Steel Tubes India Limited and has directed reinstatement of respondent No.1 and to pay him back wages from the date of termination till date of reinstatement in service or till he attains the age of superannuation.

17- Shri Brian D'silva, learned Senior Counsel appearing in the matter has vehemently argued before this Court that by no stretch of imagination, the order passed by the Labour Court against Steel Tubes India Limited can be enforced against the present petitioner as the present petitioner is not the successor-in-interest of respondent No.2

18- The most important aspect of the case is that Steel Tubes India Limited while all the aforesaid litigation was going on was not able to pay its dues and the Stressed Assets Stabilization Fund served a statutory notice under Section 13 of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 upon the Steel Tubes India Limited on 23/08/2005. The Stressed Assets Stabilization Fund took possession of the assets on behalf of the creditors and issued possession notice on 28/04/2006, which was also published in the news paper on 30/04/2006 as required under Section 8 (2) of the

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Enforcement Rules under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

19- The assets of the Steel Tubes India Limited included parcels of freehold land situated in Village Kalukhedi, Tehsil and District Dewas together with all buildings and structures constructed, fixed plan and machinery attached to the earth or permanently fastened to anything attached to the earth, fixtures and fittings erected / installed and every part thereof.

20- Thus, the Stressed Assets Stabilization Fund took possession of land, building, plant and machinery and the same was sold to the petitioner Caparo Engineering India Limited. The petitioner Company made proposal to purchase assets of Steel Tubes India Limited *vide* letter dated 03/08/2006 for Rs.30 Crores, which was agreed by Stressed Assets Stabilization Fund and an agreement was executed in respect of sale of facility on 10/08/2006. Clause-4 of the agreement specifically provides that land, building and machinery was free from all encumbrances.

21- As per Clause-3.1.2 (c) of the tripartite agreement to which the Stressed Assets Stabilization Fund and the petitioner Steel Tubes India Limited were party, the petitioner agreed to pay lump sum to Stressed Assets Stabilization Fund, which was to be distributed as under:-

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1)	Secured Creditors full and final settlement	1827.74
2)	Workmen and employees of STIL	829.74
3)	Various statutory authorities towards settlement of final due	342.34

22- In the agreement executed between the parties, there was no mention of the litigation in respect of respondent No.1. The tripartite agreement also reflects that the amount paid by the petitioner for the purpose of land, building and machinery was to be used to pay workmen dues. The full consideration was paid on 08/08/2006 and the sale deed was also executed by Stressed Assets Stabilization Fund in favour of the petitioner and the sale certificate dated 10/12/2006 clearly mention that it is the sale of land, building and machinery.

23- On 20/07/2017, the present petitioner filed a MCC (Review) before the Industrial Court under Section 71 of the Madhya Pradesh Industrial Relations Act, 1960 bringing the aforesaid fact relating to sale of assets to the notice of Industrial Court and an application for condonation of delay was also filed and all the applications have been dismissed by the Industrial Court and the Industrial Court has held that review is not maintainable *vide* order dated 03/08/2017.

24- The another important aspect of the case is that pursuant to the order of Industrial Court dated 23/02/2017, the Labour Court has passed an order dated 03/08/2017 holding that the respondent No.2

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is not entitled for Rs.1,82,463/- as back wages for the period w.e.f. 01/10/2011 to 30/06/2014. It has also been held by the Labour Court by passing an order dated 05/07/2017 that the respondent No.2 is entitled for a sum of Rs.1,23,875/- as back wages for the period w.e.f. 26/05/2009 to 30/09/2011 and the Labour Court has passed another order directing payment of back wages for the period w.e.f. 03/05/2017 to 05/07/2017.

25- Undisputed facts of the case thus, makes it very clear that the petitioner Company has purchased plant, building and machinery and there is no document on record to establish that the liability of Steel Tubes India Limited arising on account of retrenchment of the workmen and on account of the Labour Court's order dated 15/11/1991 has been fasten upon petitioner Company.

26- A categoric question was asked to learned counsel for the Steel Tubes India Limited to establish before this Court from any document that there was an agreement between Steel Tubes India Limited, Caparo Engineering India Limited or Stressed Assets Stabilization Fund fastening the liability upon the petitioner Company.

27- Learned counsel appearing on behalf of the Steel Tubes India Limited nor the learned counsel appearing on behalf of the workmen have been able to point out from any document to establish that the

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petitioner Company, Caparo Engineering India Limited has purchased plant, building and machinery along with liabilities of the Steel Tubes India Limited, especially in respect of retrenched workmen in whose favour there was an order dated 15/11/1991 directing reinstatement with full back wages.

28- Not only this, learned counsel appearing for the workman has also failed to demonstrate that liability of Steel Tubes India Limited to satisfy the order dated 15/11/1991 passed by the Labour Court, which was affirmed by the Industrial Court *vide* order dated 24/07/2001, can be fasten upon the petitioner Company.

29- The analogy and reasoning assigned by the Industrial Court treating the petitioner Company as successor-in-interest is not at all supported by the documents on record and it was a case of sale of plant, building and machinery only by the Stressed Assets Stabilization Fund to petitioner Company Caparo Engineering India Limited. Thus, in short, the petitioner Company can not be saddled with the liability in respect of enforcement of Labour Court's order dated 15/11/1991 by which reinstatement of workmen was directed with full back wages.

30- The petitioner Company was not a party before the Labour Court, before the Industrial Court and before the High Court nor the petitioner Company was party before the Hon'ble Supreme Court,

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so far as finalization of Labour Court's order dated 15/11/1991 is concerned. The liability arising out of order dated 15/11/1991 has to be satisfied by Steel Tubes India Limited in accordance with law.

31- In the case of **Inland Steam Navigation Workers Union Vs. Union of India** reported in **2001 (3) SCC 47**, **New Horizon Vs. Ariyur Sugar Ltd.** reported in **2009 (17) SCC 487**, **State of Karnataka Vs. Shreyas Papers Ltd.** reported in **2006 (1) SCC 615**, **Rana Girders Ltd. Vs. Union of India** reported in **2013 (10) SCC 746**, **Hindustan Urban Infrastructure Ltd. Vs. Assistant Commissioner** reported in **2015 (3) SCC 766**, **Al Champdany Ltd. Vs. Official Liquidator & Ors.** reported in **2009 (4) SCC 486** and **Anakapalle Cooperative** reported in **AIR 1963 SC 1489** a similar view has been taken from time to time.

32- In light of the aforesaid judgments delivered by the apex Court, as the petitioner Company has purchased only plant, building and machinery, the workmen who were terminated prior to such purchase in the year 1991, cannot claim reinstatement and back wages from the petitioner Company. Their claim is confined to respondent No.2 Steel Tubes India Limited and therefore, they shall be free to execute the order against the Steel Tubes India Limited. Resultantly, the impugned order dated 03/08/2017 and 23/02/2017 to the extent liability has been fasten upon the petitioner Company,

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are hereby quashed.

33- On account of interim order passed in the present writ petition, the petitioner Company was forced to pay some amount to the workmen and the matter has even gone to the apex Court as the petitioner has preferred a SLP. The apex Court has directed this Court to decide the writ petition within three months. As this Court is deciding the writ petition finally, the entire amount paid by the petitioner Company on account of interim orders during the pendency of the litigation either before the Industrial Court or before this Court, be paid to the petitioner Company by Steel Tubes India Limited within a period of 90 days from the date of receipt of certified copy of this order.

34- The workmen shall also be free to file an appropriate application for execution of order dated 15/11/1991 against the respondent No.2 Steel Tubes India Limited. With the aforesaid, all the writ petitions stand allowed.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

(VIRENDER SINGH)
J U D G E

Tej

Digitally signed by
Tej Prakash Vyas
Date: 2018.11.14
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