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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3153 OF 2021

Sitamraju Sree Ramakrishna
Versus

...Petitioner

Union of India & Ors

...Respondents

Mr Shyam Kapadia, *with Kalpesh Joshi, Nisha Shah, i/b Kalpesh Joshi Associates for the Petitioner.*

Mr Aditya Thakker, *with Ashish Mehta with Hauris Koradia i/b Ethos Legal Alliance for Respondent No 1.*

Mr Sharan Jagtiani, *with Mr Chirag Shah, Mr Rishab Jain and Ms Daksha Kasekar i/b Mansukhlal Hiralal & Co for Respondent No 2/SEBI*

Mr Birendra Saraf, *with Melvyn Fernandes, Kushal Amin, Supriya Majumdar and Saurabhsai Ganesan i/b Vaish Associates for Respondent No 4.*

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 14th March 2022

PC:-

1. The Petition is a gross abuse of the process of this Court.
2. The Petitioner claims to be a bona fide whistle-blower. He complains about certain environmental violations of his employer Glaxosmithkline Consumer Healthcare India Ltd, then known as

GSK and since amalgamated or taken over by the 4th Respondent, Hindustan Unilever Ltd or HUL. The Petitioner's complaint relates to what he claims were non-conforming environmental results for water effluents and the effluent treatment plants at GSK's unit at Rajamundhry. According to the Petitioner, the Chemical Oxygen Demand or COD, Biological Oxygen Demand or BOD and other parameters did not meet prescribed environmental norms.

3. The Petitioner says his repeated complaints went unheeded. Even worse, the Petitioner says, he was victimized and false data was submitted.

4. In three lines, paragraph 30 of the Petition puts this in perspective. Here the Petitioner says that —

“purposefully no new assignments were given to him so as showcase his performance in poor light”.

This is an allegation of mala fides. It postulates a cause of action in tort. The whole of the Petition raises seriously disputed questions of fact. Prayer clause (c) of the Petitioner is in fact a prayer for damages.

5. The other prayers which seek ostensible compliance with the provisions of Companies Act and the SEBI (Listing Obligation and Disclosure Requirement) Regulation, 2015 have no bearing in a situation such as this. SEBI's role is to prescribe what public limited and listed companies must have in place towards a whistle blowing or vigil mechanism. SEBI is a watchdog for these purposes. It is by

no means a bloodhound. An assessment of alleged violations of the Companies Act is necessarily fact-dependent. Such an assessment turns on the Petitioner being able to establish that his allegations are entirely non-contentious. This requirement is not met by simply saying “who has denied them ?” It is for the Petitioner to establish that there are documents on record to substantiate his case, by way of admissions or otherwise, that show the correctness of what the Petitioner alleges. If the Writ Court believes that what the Petitioner alleges demands proof, then the Writ Court will not intervene.

6. That proof is necessary is apparent inter alia from the contents of paragraph 8 to 11 and 14 of the Petition. Paragraphs 8 to 11 and 14 read thus:

“8. The Petitioner initially made many attempts to bring the violations to the knowledge of Rajahmundry plant leadership including then Site Director, Mr Sarat R Rao, Mr Metlapati Srinivas, Environment Health and Safety Lead Rajahmundry and Venkata Medapati, Deputy Manager vide emails dated 15.07.2016, 20.07.2016, 08.08.2016, 10.08.2016, 11.08.2016 and 20.08.2016 but his concern was blatantly ignored and glossed over. It is relevant to state that on various occasions, the Petitioner was misled by them by forwarding incorrect and fabricated facts and figure. GSK even put information on the daily display board at the Plant which was contrary to the SGS Lab analysis reports.

9. The personnel of GSK who were in charge of the Rajahmundry plant were aware of the violation of the environmental norms taking place at the said Plant and

were wilfully neglecting the duties since quite long. In fact, in response to the query of the Petitioner with respect to the three months data regarding Effluent Treatment Plant (“ETP”) outlet water parameters [BOD (Biological Oxygen Demand) and COD (Chemical Oxygen Demand)] Mr Venkata Medapati, Deputy Manager responded as under :

“We don’t have daily parameters for outlet and as per SOP also it is done once in a week for COD and BOD and once in a month for TDS and TSS”

(Note: TDS is Total Dissolved Solid and TSS in Total Suspended Solid) which was absolutely impractical in order always maintain the BOD level of less than 30 throughout the day for the whole year as per the water consent order 5022/APPCB/Zo-VSP-Tch./2013-916, dated 01.01.2014 and 5022-Peb-Zo-Vsp-Tech./2014-/60, dated 11.04.2014.

10. Furthermore, Mr Sarat Rao also tried to mislead the Petitioner when the Petitioner asked for the sample to be sent outside lab for checking the ETP levels vide email 20.08.2016 responding as follows:

“Collection of sample is done over a period of 8 hours one sample every two hours”

Whereas, it is to be noted that the pollution control board person can collect the sample at any given point of time. Copy of the emails dated 15.07.2016, 20.07.2016, 08.08.2016, 10.08.2016, 11.08.2016, 20.08.2016 addressed by the Petitioner are collectively annexed together as Exhibit D to D-5.

11. The Petitioner, having observed indifferent attitude of the responsible officers of GSK management at Rajahmundry plant, as an diligent citizen and dedicated employee, to safeguard the integrity and interest of GSK, escalated the issue and communicated vide a hand-written note dated 20 August 2016 addressing Mehnaz Qureshi, who was then posted as Head Compliance Indian Sub-Continent.

14. That acting on the complaint of the Petitioner, the then compliance head (Mehnaz Qureshi) made sure that a water sample of ETP water outlet from Rajahmundry plant was collected I the week starting 22 August 2016.”

7. On any reasonable reading of these paragraphs, there is no doubt that evidence will be required.

8. It also needs to be seen whether the Petitioner is indeed a “whistle-blower”, as he claims, viz., one who has no personal interest in the subject, or is actually a disgruntled employee seeking to ventilate employer/employee differences via the Writ Petition.

9. Dr Saraf is correct that the entire Petition is not maintainable because the reliefs that its seeks are directly against HUL, not an instrumentality of the State and not amenable to the writ jurisdiction of this Court. This increasingly fashionable trend of seeking writ orders against private entities by roping in some statutory body, authority or Government although without

establishing that authority owes any legal duty to the Petitioner must be repelled at every turn.

10. The Petition is entirely without any substance. It is rejected. It is only at the request of Mr Kapadia that we do not make an order of costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)