

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No.D -5450 of 2021

Date	Order with Signature of Judge
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Direction

1. For order on Nazir Report dated 19.04.2022
2. For order on Misc No.10826/22 (151)
3. For order on Misc No.12943/22 (151)
4. For order as to non-prosecution on Misc No.5171/22 (151)

26.05.2022

Mr. Asim Iqbal, advocate, assisted by Mr. Farmanullah, advocate for the petitioner

Mr. Muhammad Nishat Warsi, DAG

Mr. Ali Safdar Debar, AAG

Mr. Faisal, advocate for SESSI

Ms. Fozia Muneer, advocate for respondent No.12

Sarfraz Ahmed Awan, Regional Director Labour Karachi, Reejhumal S. Sajrani, Law Officer, Labour Department and Safdar Samejo, Labour Department Karachi.

Tasdeeq Waris, DSP/SDPO, Mangho Pir, Raza Mian DSP Legal CPO and SI Noor Ahmed PS Mangho Pir Karachi

At the outset, Mr. Asim Iqbal, learned counsel for the petitioner factory, while referring an application (Misc No.12943/22) submits that apropos to order dated 12.01.2022 passed by this Court, the Government of Sindh (Cabinet) has approved the Statutory Closure of the Petitioner's factory under section 15 of the Sindh Terms of Employment (Standing Order) Act, 2015 after undertaking all the pre-requisites as required under the law and in compliance with the earlier order of this Court, almost 60% of the raw material, moveable assets as well as finished products lying at the petitioner's factory till date and the proceeds thereof were deposited in this court for paying the 50% legitimate dues amounting to Rs.25,769,914/- to ex-employees of petitioner factory under the law. Per counsel, now the petitioner company has to pay the remaining 50% dues to the ex-employees, bank loan payments, Government dues, and utility companies dues which dues fall in secured liabilities to be paid to secured creditors under the law and the amount of Rs.1.165604 billion is also unpaid till date, therefore, it is prayed that the petitioner may be allowed to sale/dispose of the steel/iron scrap as well as the machinery lying in the petitioner's factory which has become unusable due to closure of factory since last several years and consequently the same has become rusty and impaired and the value of the same is also depreciating day by day. Learned counsel prayed for allowing the listed application as prayed.

Respondent No.12 filed a counter-affidavit stating therein that the petitioner has admitted the legitimate dues of ex-employees, bank loan payment, and government as well as utility dues. The listed application is moved with malice; in violation of the earlier order of this court as earlier the petitioner submitted that it does not want to sell the machinery, therefore, until and unless all dues are cleared, the permission to dispose of the machinery, may not kindly be allowed; that the order dated 12.01.2022 was a limited order and the petitioner cannot circumvent the same; that the certificate of closure was issued on 16.03.2022 meaning thereby the company has been closed down on or after the said date, but the workers have been retrenched or removed a years ago, therefore, they are entitled to the entire dues up to the date of closure; those entire dues up to date of closure, gratuity, provident fund, leave encashment, bonuses for the unpaid period as described in the statement dated 19.03.2022.

In compliance with the orders dated 05.04.2021 and 10.03.2022 passed by this Court, Nazir has submitted the following report which is taken on record subject to all just exceptions:

"1. With profound respect, I have the honor to submit that complying with the above orders, notices were issued to the parties with direction to appear before the undersigned for the purpose of attachment of subject premises, in case of failure of deposition of dues/salaries and gratuity amounts by the petitioner, in respect of the workers/employees, this Hon'ble Court pass appropriate orders including contempt of court proceedings

2. It is respectfully submitted that matter was fixed on various dates i.e. 11-04-2022 and 16-04-2022 before the undersigned and on such dates, Mr.Asim Iqbal, Advocate for Plaintiff, and Mr.Ali Muhammad Jamali, General Secretary of Union appeared while in compliance of order dated 12-01-2022 and 10-03-2022, an amount of Rs.2,57,69,914/-has been deposited by the Petitioner in this office in respect of earlier Delivery Orders with effect from 29-01-2022 to 02-03-2022 in the light of Inventory List and the same amount has been invested in govt scheme i.e. TDR of NBP, High Court Branch, Karachi. It is further respectfully submitted that the petitioner has further removed various moveable articles/items as mentioned in Fresh Delivery Orders with effect from 03-03-2022 to 18-04-2022 (lying in this office) and further removing of Raw Material Assets as well as, the finished product, as per Inventory List is being prepared in the factory on daily basis.

3. It is further respectfully submitted that earlier a Claim's List dated 12-01-2022 of 152 workers/employees have also been deposited by Secretary-General of Unions, in respect of their dues/salaries/gratuity, which comes total amounting to Rs.79,92,64,190/-. It is further submitted that on 11-04-2022, the General Secretary of Union has filed a Statement along with another List of Daily Workers as Annexed "B", wherein he has stated that 100 un-registered workers were working in the factory i.e. Dadex Ternit Ltd at that time and only 54 workers deposited their claims total amount to Rs.2,41,47,636/- before him, out of 100 employees. He has requested that claims of 54 employees as per List may be handed over to them. Now matter is fixed on 30-04-2022 before Learned Nazir for further proceedings.

4. Since the matter is fixed on 20-04-2022 before the Hon'ble Court, therefore, the interim report is submitted for the favor of kind perusal and request for

distribution of amount so far received in Nazir Office to the Factory worker as may be ordered by the Hon'ble Court."

Learned counsel for the petitioner submits that in terms of settlement arrived by and between the parties, the petitioner company undertakes to deposit the remaining balance amount of remaining workers of the company to the Nazir of this Court in terms of order dated 12.01.2022, subject to the allowing the petitioner factory to sale/dispose of the steel/iron scrap as well as the machinery lying in the petitioner's factory.

Learned counsel for respondent No.12 has vehemently opposed this suggestion of the petitioner on the premise that firstly the petitioner-factory has to adjust workers either at the Hyderabad factory or at the Lahore. Learned counsel further states that the petitioner factory is required to deposit the balance amount with the Nazir of this court in terms of the final disposal order, which cannot be modified through the listed application.

Heard the learned counsel for the parties on the listed applications. This petition was disposed of in terms of a joint statement dated 12.01.2022, which is reproduced as under:

"It is respectfully submitted on behalf of the Petitioner, that this Hon'ble Court may be pleased to allow the Petitioner to remove the raw materials, moveable assets, as well as, the finished products lying at the factory located at Messrs. Dadex Eternit Limited, Deh 22, Mangopir, Karachi, in order to sell the same, and the proceeds thereof shall be utilized for paying the legitimate dues of the workers under/through Nazir of this Court, including without limitation, the banks/financial institutions, etc. as the factory is non-operational and has been closed for the last several years.

It is also submitted that the Petitioner will not remove the machinery affixed on the land, nor sell the land of the factory till the time, the matter is settled between the Petitioner and their workers, by this Hon'ble Court.

It is further submitted that the factory is not in a position to be operated and it shall remain closed/non-operational and nobody or person shall be employed in order to run/operate the same. If by any means, the operation needs to be restarted then, the Petitioner is bound to appoint the retrenched workers, in accordance with law.

In view of the afore-stated, it is most humbly prayed that the Police/Law Enforcement Agencies, impleaded herein as the Respondent Nos.3,4,5,6,7,8,9,10 be directed to provide adequate security for due compliance and enforcement of the orders passed by this Hon'ble Court under the supervision of Nazir of this Court for the, inter alia, removal of raw materials, movable assets, as well as, the finished products lying at the factory located at Messrs. Dadex Eternit Limited, Deh 22, Mangopir, Karachi."

We have noticed that the Nazir of this Court was directed to allow the petitioner company to remove raw materials, and moveable assets, as well as the finished products, if any, lying at the factory located at M/S Dadex Eternit Limited, Deh 22, Mangopir, Karachi strictly in terms of settlement arrived by and between the parties as discussed supra without prejudice the rights of the factory workers

whose entire dues are yet to be cleared by the petitioner company in terms of the undertaking.

We have been informed that the Sindh Cabinet vide its meeting held on 18.01.2022 has accorded necessary approval for the closure of the petitioner factory and termination of employees under section 15 of Sindh Terms of Employment (Standing Order) Act, 2015, subject to the clearance of all dues/benefits in terms of wages, gratuity and provident fund of all the retrenched / dismissal employees before closure / termination of the employment.

Primarily, after the closure of the petitioner factory, in terms of the decision of the Provincial Cabinet dated 18.01.2022; and, under section 15 of Sindh Terms of Employment (Standing Order) Act, 2015, the petitioner company has to clear the remaining dues of the workers.

In our view, no order can be passed on the application (Misc No.12943/22) filed under Section 151 CPC by the petitioner for the reasons discussed in the preceding paragraphs, therefore, the petitioner factory has to take resort to an alternate remedy as provided under the law as the prayer sought through the listed application (Misc. No.12943/22) cannot be granted after disposal of the petition vide order dated 12.01.2022

In view of the above facts and circumstances of the case, the petitioner company is directed to comply with the directions contained in the order dated 12.01.2022 passed by this Court in letter and spirit.

The listed application i.e. Misc. No.12943/22 is dismissed in the above terms, leaving the petitioner to avail the remedy.

Relist just after summer vacations.

JUDGE

JUDGE

Nadir*