

**Alpine Industries Ltd. Vs. M.P. State Industrial Development Corporation Ltd.
and ors.**

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Court : Madhya Pradesh

Decided On : Jul-28-2004

Reported in : III(2005)BC284

Judge : A.M. Sapre, J.

Appeal No. : W.P. No. 475 of 2004

Appellant : Alpine Industries Ltd.

Respondent : M.P. State Industrial Development Corporation Ltd. and ors.

Advocate for Def. : S. Bhargava, Sr. Adv. and ;P. Pal, Adv.

Advocate for Pet/Ap. : G.M. Chaphekar, Sr. Adv. and ;Assudani, Adv.

Judgement :

ORDER

A.M. Sapre, J.

1. Heard on various interim applications/petitions, made by the parties viz. M(W) P. 334/04, I.A. 1982/04, I.A. 2822/04, M(W)P. 465/05 and M(W)P. 469/04.

2. On 12.5.2004, this Court while deciding the issue of grant of ad interim writ prayed for by the petitioner inter alia passed some directions. These directions are essentially meant for observance by the Hon'ble Members of AAIFR who are presently seized of an appeal filed, by the petitioner being appeal No. 236/2003 arising out of a case No. 458/2001, decided by the BIFR on 7.3.2003. It was not disputed that disposal of this appeal on merits by the AAIFR one way or the other has undoubtedly a material bearing over the controversy sought to be raised in this petition by the petitioner. Indeed this position was conceded to by the parties at the threshold of the hearing of this petition. It was essentially for this reason, the directions were required to be issued by this Court in the larger interest of the parties. The directions contained in order dated 12.5.2004 are as follows:

'The Hon'ble members of the AAIFR would make sincere endeavour to ensure expeditious disposal of appeal filed by the petitioner in the larger interest of the revenue and secured creditors and keeping in view the background of the case preferably within a period of three months as an outer limit. The petitioner will cooperate in expeditious disposal of the appeal filed by them before the AAIFR and would not unnecessarily indulge in delaying tactics to keep the matter pending thereby enjoy the benefit of Section 22 to the detriment of secured creditors.'

3. It may be mentioned that on the last date of hearing it was brought to the notice of the Court by the respondents that the hearing of the aforementioned appeal which was originally fixed by the AAIFR for 4.6.2004 was got adjourned by the petitioner ex parte and prior to even date of hearing i.e. 4.6.2004. The appeal was got adjourned for hearing on 1.9.2004. Respondents having come to know of this ex parte adjournment obtained by the petitioner behind their back, brought this fact to the knowledge of the Hon'ble members of AAIFR by way of an application. In this application the respondents prayed for preponing the date of hearing keeping in view the directions of this Court to fix any other date prior to 10th September, 2004 so that orders of this Court are complied with in right earnest.

4. It appears that the Hon'ble members took up the case on 17.6.2004 and fix it for passing orders for fixing a date of hearing on 25th June, 2004. This is clear from the order sheet dated 17.6.2004 which is placed on record by the parties for

perusal. It is not stated that no date is fixed so far by the Hon'ble members of the AAIFR either on 25.6.2004 or thereafter and hence the original date already got fixed by the petitioner (appellant before the AAIFR) remains as it is i.e. 10.9.2004.

5. At the out-set this Court wish to recall the subtle as also far reaching observations made by Their Lordships of the Supreme Court in two leading pronouncement reported in the case of Barada Kanta Mishra v. Bhimsen Dixit, 1973(2) SCR 495 and reaffirmed in BPL Ltd. v. R. Sudhakar, II (2004) SLT 871=AIR 2004 SCW 3507 and Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar, III (2004) SLT 574=AIR 2004 SC 2351. Indeed, the observations made in these two cases are more meant for their observance by subordinate Courts/Tribunals including the High Court when they act as subordinate Court of the Supreme Court.

6. In substance, the law laid down by the Supreme Court in these cases is that whenever any superior Court in hierarchy issues any order/direction to the Courts/Tribunals subordinate to that Court (i.e. Court which had passed the order) then it is the duty of the subordinate Court/Tribunal to ensure its compliance in its right earnest and perspective. Their Lordships have held that not obeying the directions/orders tantamounts to contempt and exhibit a case of disrespect to the higher Court which has issued the directions/orders. It must appear to the higher Court that after passing the orders and issuing necessary directions, sincere efforts are made by the concerned Court/tribunal to ensure compliance of the order within the timeframe. If it is not possible for any reasons beyond their control then parties can be asked to seek extension of time for ensuring proper compliance. This process if followed indicate respect for both the institutions and generate confidence amongst the parties while vindicating their rights in the judicial system,

7. This Court was compelled to take note of the aforesaid law laid down by the Supreme Court (which is slightly outside the factual controversy involved in this case) because it was noticed that the appellant (petitioner herein) made attempt to avoid the implementation of the order dated 12.5.2004 and unfortunately the appellate authority AAIFR also in casual way postponed the hearing much beyond

the period fixed by the Court and in flagrant breach of the writ issued. It was as if that the writ issued by this Court by way of even observation was not attempted to be complied with in its right earnest much less perspective.

8. This Court does not wish to go any further on this issue except what is observed supra as it is hoped that Hon'ble members of AAIFR would ensure compliance of the order/writ issued by the High Court referred supra in its right earnest and perspective to maintain the highest tradition prevalent in judicial system. Indeed this rule of caution was sounded by Their Lordships of the Supreme Court in Tirupati Balaji's case (supra) while speaking through Hon. Mr. Justice R.C. Lahoti (as His Lordship then was and now the Chief Justice of India) for observance to uphold the majesty of law.

9. Coming to the facts of this case, both learned Senior Counsel appearing for the parties very fairly conceded that this Court may fix any date for the appearance of the parties before the AAIFR in appeal to enable the Hon'ble Members to fix the date of hearing as per their convenience and availability. It being a redeeming feature on Part I accordingly fix 5th August, 2004 for appearance of the parties before the AAIFR in appeal No. 236/2003 filed by the petitioner. The Hon'ble Members of the AAIFR will accordingly fix the date of hearing of the appeal filed by the petitioner referred supra according to their convenience as also the convenience of the Counsel for the parties but keeping in view the order passed by this Court on 12.5.2004.

10. List the case on 16.8.2003 for passing appropriate orders on the various M(W) Ps and I.As. made by the parties.

C.C. within three days.

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