

Dalmia Bharat Limited vs Ministry Of Corporate Affairs on 26 April, 2024

Author: Anita Sumanth

Bench: Anita Sumanth

W.P.Nos.4573, 4580, 4586

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.03.2024

Pronounced on : 26.04.2024

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

WP.Nos.4573, 4580, 4586 & 4589 of 2022
and WMP Nos.4716, 4717, 4710, 4712, 4724, 4721, 4722 and 4723 of 2022

Dalmia Bharat Limited
Represented by its authorised signatory R.Deepak
Dalmiapuram, Thiruchirapalli district,
Tamil Nadu – 621 651, India.
Also at
Fagun Mansion,
No.26, Ethiraj Salai,
Egmore, Chennai-600 008.

... Petitioner in all WPs

Vs.

Ministry of Corporate Affairs,
Office of the Registrar of Companies,
Represented by Assistant Registrar of Companies,
Shastri Bhavan, II Floor, 26, Haddows Road,
Chennai-6.

... Respondent in all WPs

PRAYER in WP.No.4573 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari/Mandamus calling for the records of the Respondent in the Impugned show cause notice dated 03.03.2021 issued in the matter of section 62 of the Companies Act, 2013 bearing number F.No.Roc/Chn/12346/p.10.1/supp.Inspn/2020 and Quash the

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same and direct the Respondent not to take any further action in furtherance of or pursuant to Impugned Show Cause Notice dated 03.03.2021 issued in the matter of section 62 of the companies Act, 2013 and bearing number F.No.Roc/Chn/12346/p.10.1/supp.Inspn/2020.

PRAYER in WP.No.4580 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records of the Respondent in the Impugned show cause notice dated 03.03.2021 issued in the matter of section 166 of the Companies Act, 2013 bearing number F.No.Roc/Chn/12346/p.7.1/supp.Inspn/2020 and Quash the same and direct the Respondent not to take any further action in furtherance of or pursuant to Impugned Show Cause Notice dated 03.03.2021 issued in the matter of section 166 of the companies Act, 2013 and bearing number F.No.Roc/Chn/12346/p.7.1/supp.Inspn/2020.

PRAYER in WP.No.4586 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the Respondent in the Impugned show cause notice dated 03.03.2021 issued in the matter of section 129 r/w schedule III of the Companies Act, 2013 bearing number F.No.Roc/Chn/12346/p.10.1/supp.Inspn/2020 and Quash the same and direct the Respondent not to take any further action in furtherance of or pursuant to Impugned Show Cause Notice dated 03.03.2021 issued in the matter of section 129 r/w schedule III of the Companies Act, 2013 and bearing number F.No.Roc/Chn/12346/p.10.1/supp.Inspn/2020.

PRAYER in WP.No.4589 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the Respondent in the Impugned show cause notice dated 03.03.2021 issued in the matter of section 134 of the Companies Act, 2013 and bearing number F.No.Roc/Chn/12346/p.10.1/supp.Inspn/2020.

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2013 bearing number F.No.Roc/Chn/12346/p.10.1/supp.Inspn/2020 and Quash the same and direct the Respondent not to take any further action in furtherance of or pursuant to Impugned Show Cause Notice dated 03.03.2021 issued in the matter of section 134 of the companies Act, 2013 and bearing number F.No.Roc/Chn/12346/p.10.1/supp.Inspn/2020.

In all W.P.'s

For Petitioner

For Respondent

: Mr.P.J.Rishikesh

: Mr.ARL.Sundaresan

Additional Solicitor General

Assisted by

Mr.K.Subbu Ranga Bharathi

Central Government Standing Counsel

and Mr.Sourab Mishra

A common order is passed in these Writ Petitions, as the issue that arises for determination in all matters is substantially one and same.

2. The petitioner has challenged show cause notices, all dated 03.03.2021 issued by the Registrar of Companies (in short 'respondent'). The impugned show cause notices called upon the petitioner to show cause as to why prosecution not be launched as provided under Section 450 of the Companies Act, 2013 (in short 'Act'), for various alleged offences.

3. In W.P.No.4580 of 2022, the offences alleged are in terms of Section 166, punishable under Section 166(7) of the Act. In W.P.No.4586 of 2022, the <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022 offences alleged are under Section 129 read with Schedule III of the Act, punishable under Section 129(7) of the Act. In W.P.No.4589 of 2022, the allegation concerns offences alleged under Section 134 of the Act, punishable with penalty under Section 450 of the Act and in W.P.No.4573 of 2022, the offences alleged are under Section 62 of the Act, punishable with penalty under Section 450 of the Act.

4. At the outset, discussion in the course of the hearing has revealed that some of the Writ Petitions are not maintainable. All Writ Petitions have been filed by Dalmia Bharat Limited, a company incorporated under the provisions of the Companies Act. However, two of the show cause notices allege offences only as against the Directors of the company and no offence has been alleged as against the company.

5. In such circumstances, W.P.Nos.4580 and 4586 of 2022 are not maintainable as no cause of action is made out by the petitioner. Hence, these two Writ Petitions are dismissed as not maintainable.

6. In the show cause notices impugned in the remaining two Writ Petitions, the Directors are also named as noticees. Neither Section 134 nor Section 162 of the Act set out any punishment within the scheme of the provisions itself. Thus, we are taken to Section 450 of the Act, which stipulates <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022 punishment where no penalty or specific punishment has been provided under the main provision.

7. Section 450 reads thus:

450. Punishment where no specific penalty or punishment is provided: If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be 1 [liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a

further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person].

8. Mr.P.J.Rishikesh, learned counsel for the petitioner had, at the very outset, relied on the argument of bar of limitation. According to him, the point of commencement of limitation was from date of offence or knowledge of offence, in light of Sections 468 and 469 of the Code of Criminal Procedure, 1973.

9. This argument, however, has been rendered unnecessary in light of the recent decision of this Court in the case of B.Kannan V. The Deputy Registrar of Companies¹. That matter related to a Criminal Original Petition seeking <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022 quash of a private complaint for offences punishable under Section 165 read with Section 165(6) of the Act. The Court took note of the amendment to the Companies Act, 2013, vide Companies (Amendment) Act, 2020, which came into force on 21.12.2020.

10. A slew of amendments had come into force on that date reducing the rigour of punishments under various provisions of the Companies Act, 2013. By virtue of those amendments, the contraventions under those provisions attracted only penalty, liable to be adjudicated by an officer appointed under Section 454 of the Act. Thus, the violations under those provisions no longer attracted the rigour of prosecution necessitating trial, as they did not constitute offences, triable by a Magistrate.

11. The Court went into the objects and reasons of the amendments and having regard to the judgment of the Hon'ble Supreme Court in T.Barai V. Henry Ah Hoe², where amendments made to the provisions of the Prevention of Food Adulteration Act, 1954 had been considered and B.Manna V. State of West Bengal³, held that the Amendment Act was to apply to all pending prosecutions.

2 (1983) 1 SCC 177 3 AIR 1955 SC 84 <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022

12. The aforesaid decision has attained finality, having been accepted by the Deputy Registrar of Companies and the benefit of the same is thus available to the petitioner in the present matters as well.

13. The question of prosecution is out of the way and what remains is the levy of penalty under Section 450 alone. The argument of the petitioner now turns on the delay in the issuance of show cause notices, seeing as the period for which the show cause notices have been issued is year ending 31.03.2016. The impugned notices had been issued in 2021. Since the alleged offences arise from the audited financials filed, admittedly, within time, ie., on 28.11.2016, there is no justification for the elapse of 5 ½ years for the issuance of the impugned notices, the petitioner argues.

14. The petitioner relies, in this regard, on the decision in their own case, i.e., Dalmia Bharat Ltd. and another V. Assistant Registrar of Companies⁴ and on Shiva Sankar Baba V. State and another⁵. Reference to these decisions also becomes unnecessary in light of the non-criminalisation of the alleged offences.

15. Reliance is then placed on the judgment of the Hon'ble Supreme Court in the case of Postmaster General and others V. Living Media India Limited and another⁶, where the Court considered the ambit of the phrase 6 (2012) 3 SCC 563 <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022 'sufficient cause'. The delay in that matter was of a period of 427 days by the postal department in approaching the Supreme Court by way of Special Leave Petition. At paragraph 20 of the judgment, the Court has chronicled the reasons for which the delay had been occasioned. The Department had, in that case, explained the reasons almost on a month-on-month basis between 11.09.2009 and 10.02.2011.

16. Considering the decisions in the cases of CWT V. Amateur Riders Club⁷ (264 days delay in filing SLP by the Commissioner of Wealth Tax, Bombay) and Pundlik Jalam Patil V. Jalgaon Medium Project⁸ (1724 days delay in filing appeals before the High Court by the Jalgaon Medium Project), the Court at paragraph 28 holds that even when there was no gross negligence, deliberate inaction or lack of bonafides where a liberal concession on delay may be adopted to advance the substantial cause of justice, the Postmaster General had cited only bureaucratic delays, which cannot be accepted. They state 'the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government'.

7 1994 Supp (2) SCC 603 8 (2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907)
<https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022

17. The petitioner has also relied on the following judgments to buttress its argument that there has been more than reasonable delay in the issuance of the impugned show cause notices.

1.Assistant Registrar of Companies v. H.C. Kothari and others⁹

2.S.C.Sharda v. Assistant Registrar of Companies¹⁰

3.J.Sheik Parith v. Commissioner of Customs and Another¹¹

4.Parle International Limited v. Union of India and Others¹²

5.ATA Freight Line (I) Pvt. Ltd. v. Union of India, represented by the Secretary and Others¹³

6.Union of India and Another v. Vicco Laboratories¹⁴

7.Noharlal Verma v. District Cooperative Central Bank Limited, Jagdalpur¹⁵

8. Brajesh Sharma and others v. M.O. Roy¹⁶

9. N. Kumar v. M.O. Roy, Assistant Director, Serious Fraud Investigation Office, Ministry of Company Affairs, Government of India, Having address at 2nd Floor, Paryavarna Bhawan, CGO Complex, Lodhi Road, New Delhi-110 003¹⁷

10. Magadh Sugar & Energy Ltd. v. State of Bihar and Others¹⁸ 9 1991 SC OnLine Mad 532 10 MANU/TN/1734/2020 11 2020 SCC OnLine Mad 1565 12 2020 SCC OnLine Bom 8678 13 2022 SCC OnLine Bom 648 14 (2007) 13 SCC 270 15 (2008) 14 SCC 445 16 2014 SCC OnLine Mad 10637 17 2007 SCC OnLine Mad 406 18 2021 SCC OnLine SC 801 <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022

18. In all, the petitioner argues that if the authorities are permitted to continue with the action under the impugned notices, it would cause great legal prejudice to the petitioner. It would be called upon to answer for offences to have been committed in respect of financial years, eight years ago, in respect of which records would be unavailable today. Such an interpretation would be bad in law and contrary to all canons of fair play.

19. Per contra, Mr. AR. L. Sundaresan, learned Additional Solicitor General appearing for the respondent would urge that there is nothing unreasonable in the issuance of notices in 2021. No prejudice would be caused to the petitioner, if they were directed to reply now and the authorities directed to conclude the proceedings within a fixed time frame.

20. The argument of unreasonable delay must be seen in the context of whether legal prejudice would be caused to the petitioner. Section 450 imposes a very mild penalty of only Rs.10,000/- and in the case of continuing contravention, a further penalty of Rs.1,000/- for each day subject to a maximum of two lakhs in the case of a company and Rs.50,000/- in the case of an officer in default.

21. Thus, even financially, assuming that the proceedings are concluded adverse to the petitioner, it could complain of no great prejudice or hardship. <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022 He would also specifically bring to the notice of the Court that there were a significant number of companies coming under the jurisdiction of the respondent and hence a lenient view of the matter must be taken even on this score.

22. The respondent relies on the judgments in Secretary, Ministry of Defence and others V. Prabhash Chandra Mirdha¹⁹, Hindustan Times Ltd. V. Union of India and others²⁰ and V.V. Renewable Energy Private Limited V. Registrar of Companies²¹. In fine, the respondent would pray that the Writ Petitions be dismissed, the petitioner directed to file objections and the respondent directed to conclude the proceedings in accordance with law, within a time frame to be fixed by the Court.

23. I have heard both parties, perused the material records and studied the case law cited carefully.

24. The issue that arises for decision is as to whether the notices issued in 2021 relating to year ending 31.03.2016 are to be quashed on the ground that they are beyond a reasonable period of time. Admittedly, there is no statutory limitation that binds the authorities. However, the authorities are expected to 19 (2012) 11 SCC 565 20 (1998) 2 SCC 242 21 W.P.Nos.1338, 1340, 1341 and 1345 of 2021 dated 30.03.2021 <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022 initiate proceedings, particularly when it concerns levy of penalty, within a reasonable time frame.

25. The question as to what constitutes 'reasonable' time frame varies depending on the facts and circumstances of a case. Both parties have relied on case law where the Courts have either condoned or rejected pleas for condonation in delay in the initiation of proceedings. Thus, each case would have to be seen from the prism of the applicable facts and circumstances.

26. In the present case, the petitioner's objections stem from the fact that the notices have been issued after six years from the relevant period. It has also argued that it would be called upon to produce records that might not be available, emphasising that the subject proceedings are penal in nature.

27. Per contra, the respondent's arguments are that prejudice, if any, can only be legal prejudice which does not exist in this case. For this purpose, reference has been to the judgement in Hindustan Times Ltd.²², where the Court considered the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

28. In that case, an order had been passed by the Regional Provident Fund Commissioner levying damages for the months of July 1965, October 1965, December 1965, January 1966 to March 1966, August 1966, July 1967, 22 Supra Foot Note 20 <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022 August 1967, May 1968 and July 1968 to November 1968. Proceedings were initiated vide notice dated 23.02.1971 and ultimately show cause notice dated 24.03.1979 had been issued.

29. One of the objections to the notice was the delay in issuance of show cause notice. In that case as well, there was no statutory limitation prescribing a period within which proceedings must be initiated for assessment or recovery of damages.

30. The Court noted that despite several amendments to the Provident Funds and Miscellaneous Provisions Act, 1952 spanning a period of 30 years, Legislature had not thought it fit to make any provision prescribing a period of limitation. They thus conclude that some weightage must be accorded to this fact indicating conscious legislative intention not to prescribe any limitation for computation and recovery of arrears. The Court also made a categorical distinction between prejudice and irretrievable prejudice.

31. The Court was especially conscious of the fact that the Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficial piece of legislation and that even if notices were issued belatedly, such delay (even to the extent of negligence on the part of the department) must be tolerated in the

interests of the employees who are innocent third parties. <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022

32. It is, in this context, that they say that, where there is no period of limitation prescribed statutorily for initiation of action, and prejudice is pleaded by the noticee, mere delay in issuing notice under Section 14-B cannot amount to prejudice. This is all the more for the reason that the employer had had the benefit of the money sought to be recovered during the intervening period. Moreover, Section 140B does not have any provision for interest and even on that ground the employer cannot plead prejudice.

33. In my considered view, these arguments are unavailable to the respondent before me, since they are distinguishable on comparison of the two enactments.

34. The Companies Act has a clear stipulation in Section 128 coming under Chapter IX, as to how long books of accounts are to be retained by a company. Section 128 deals with books of accounts to be kept by a company and sub-section (5) states that books of accounts relating to period of not less than eight financial years, immediately preceding the financial year, shall be kept in good order. Where an investigation has been ordered in respect of a company under Chapter IV, then the Central Government may extend the period and direct that the books of accounts must be retained for such longer/extended period.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022

35. In the instant case, the notices relating to the year ending 31.03.2016, and eight financial years from the end of that date, expire on 31.03.2024. Thus, even as on the date when the matter was being argued, which is 28.03.2024, the statutory period for retention of books is due to expire.

36. In this context, it is relevant to note that there was no interim protection that was granted to the petitioner pending Writ Petition. The petitioner has specifically filed WMP Nos.4712 and 4724 of 2024 praying for interim stay of all further proceedings pursuant to the show cause notices dated 03.03.2021 until disposal of the Writ Petitions.

37. However, the Court had not thought it fit to grant interim stay and in such circumstances, there was nothing that prevented the respondent from acting upon the show cause notices and taking the matters forward as proposed therein. Needless to say, mere pendency of Writ Petitions would not have stood in the way of the respondent processing the notices, particularly in view of the statutory stipulation under Section 128(5) for retention of books of accounts. This is one significant distinguishing feature between the present case and the matter dealt with by the Hon'ble Supreme Court in the case of Hindustan Times Ltd.²³.

²³ Supra Foot Note 20 <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022

38. The second distinguishing feature is that the Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficial legislation, unlike the Companies Act, 2013. The provisions of the latter are to be

interpreted strictly.

39. What had weighed with the Court in Hindustan Times Ltd.²⁴ was the fact that delay on the part of the employer in effecting contributions must not enure to the detriment of the employees. There is no such equivalent situation in the context of the offences alleged under the Companies Act. For these reasons also, the judgment in Hindustan Times Ltd.²⁵ would not come to the aid of the respondent.

40. Much emphasis has been laid by the respondent on the fact that the authority is hard pressed to deal with the volume of companies in its charge. This submission is misconceived and does not behove a statutory authority such as the Registrar of Companies, who is expected to ensure adherence to the law in all matters including initiation of proceedings.

41. The observations in the case of Postmaster General²⁶ would be apposite in the present circumstances. The observations and conclusions at paragraph 29 are on point, and read as follows:

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that ²⁴ Supra Foot Note 20 ²⁵ Supra Foot Note 20 ²⁶ Supra Foot Note 6 <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022 unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

42. That judgment was rendered in 2012 and 12 years have gone by. The Court has referred to technological advancements and the fact that authorities cannot be seen to rely on fossilized methods of functioning. More so today, when the situation is far more advanced and the authorities have access to cutting-edge technology and aids to ensure prompt and timely action.

43. The annual reports in this case had admittedly been filed on 28.11.2016. In matters where the Statute does not stipulate a date of limitation, it cannot be that the authorities take their own sweet time to issue show cause notices and they are fully responsible in ensuring that proceedings should be taken within a fair and reasonable length of time. At any rate they cannot be seen to state that they are too busy to perform their official duties in time.

44. In light of the discussion as above, the show cause notices impugned in W.P.Nos.4589 and 4573 of 2022 are quashed. Accordingly, W.P.Nos.4589 and 4573 of 2022 are allowed and W.P.Nos.4580 and 4586 of 2022 are <https://www.mhc.tn.gov.in/judis> W.P.Nos.4573, 4580, 4586 & 4589 of 2022 dismissed as not maintainable. Connected Miscellaneous Petitions are closed. No costs.

26.04.2024 Index : Yes / No Speaking Order/Non-speaking order Neutral citation:Yes/No. sl To Ministry of Corporate Affairs, Office of the Registrar of Companies, Represented by Assistant Registrar of Companies, Shastri Bhavan, II Floor, 26, Haddows Road, Chennai-6.

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sl WP.Nos.4573, 4580, 4586 & 4589 of 2022 and WMP Nos.4716, 4717, 4710, 4712, 4724, 4721, 4722 and 4723 of 2022 26.04.2024 <https://www.mhc.tn.gov.in/judis>