

(2001) 08 CAL CK 0042
In the Calcutta High Court
Case No : M.A.T. No. 1520 of 2001

Burn Standard Company Limited

APPELLANT

Vs

Burn Standard Officers" Association (Head Office) and Others

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 22(1)

Citation : (2002) 1 LLJ 359

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : R. Bhattacharjee and D.K. Ghosh, for the Appellant; K.K. Bandopadhyay, B. Bhattacharjee and Mintu Kumar Ghosal, for the Respondent

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, C.J.—This is an appeal directed against the order passed by the learned single Judge dated February 5, 2001 whereby the learned single Judge has allowed the writ petition and directed the respondent No. 6 to give effect to the revised scales of pay with effect from January 1 1992, in terms of office memorandum dated July 19, 1995 and with effect from January 1, 1997 in terms of office memorandum dated June 25, 1999. It was further directed that this fixation of pay scale shall be done within a period of 3 months from the date of communication of the order and if there is any arrear of payment the same shall be paid in instalments.

2. Aggrieved against this order the present appeal has been filed by the Management. The brief facts which are necessary for disposal of the appeal are that the present writ petition has been filed by the Burn Standard Officers" Association (Head Office), a society registered under the Societies Registration Act. The grievances of the members of the association are that despite being officers of the respondent No. 6 which is a subsidiary of the respondent No. 4 and which in turn is a Government of India Undertaking, their pay scale has not been revised in terms of office memorandum dated July 19, 1995 with effect

from January 1, 1992 and subsequently also in terms of the memorandum dated June 25, 1999. The respondent No. 6 became a sick company and a scheme was framed by the Board of Industrial Finance & Reconstruction (BIFR) and the same is being implemented. The other public sector undertakings have implemented the revision of pay scales but this sick unit has not revised the pay scales of its employees. Therefore, the petitioners have approached this Court by filing the present writ petition seeking a writ of mandamus against the respondent No. 6 to pay them the revised pay scales. The writ petition was opposed by the respondents and it was contended that the respondent has no objection to implement this revision of pay scale but because of the financial crisis the company is unable to pay the revised pay scales however as and when the condition improves and funds are available they will implement the revision of pay scale. It was also contended that the scheme was framed by the Board, therefore, by virtue of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, the Management cannot implement revision of pay ;as per memorandum dated June 25, 1999. The learned single Judge held that there is a discrimination that so far as the present association is concerned a plea has been taken of financial crisis but so far as the new (appointees are concerned, benefits have been given and it is alleged that this fact has not been denied in the affidavit in opposition filed by the respondents. It was also held by the learned single Judge that according to the Scheme framed by the BIFR there are provisions for meeting the demands on account of pay of wages of the employees including the officers in view of the inflationary trend in the market. Hence the learned single Judge allowed the writ petition and aggrieved against this order the present appeal has been filed by the management.

3. The learned counsel for the appellant has strenuously urged before us that the BIFR has sanctioned the revival scheme on April 16, 1999 and the office memorandum for giving effect to the revised pay scale with effect from January 1, 1997 was issued by the Government on June 25, 1999. It is submitted that the scheme was framed by the BIFR on April 16, 1999, prior to the issuance of this memorandum. Therefore, this revision of pay scale could not be included in the Scheme dated April 16, 1999 prepared by the BIFR. It is also contended that the respondent No. 6 has already implemented the memorandum of the Government of India on July 19, 1995 and revision of pay has been implemented w.e.f. January 1, 1992 for officers from January 1, 2000 and that the arrears on this score from January 1, 1992 to December 31, 1999 would be paid to the officers in instalments only when it would be in a position to generate requisite funds from within its own resources for such purpose. The learned counsel for the appellant submitted that since the revival scheme has been sanctioned by the BIFR, therefore, the respondent No.6 on its own cannot extend the benefits of revised pay scale unless the Scheme is modified by the BIFR.

4. As against this the learned counsel for the respondent/writ petitioners has strenuously urged before us that the wages of the employees cannot be denied and he has invited our attention to various decisions which we shall advert to

hereinafter. In this connection it is relevant to mention here that the BIFR has sanctioned a revival scheme as per Chapter HI of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the Act of 1985) which has been placed on record. As per the revival scheme detail has been worked out as to how funds would be generated and how it will manage the affairs of the company for reviving the sick unit and a special provision has been made for the workmen Item No. 9(1) under the heading of Workmen/Employee of BSCI which reads as under:

"9.1 Workmen/Employees of BSCI:

- a) To enter into an agreement with the Management for new productivity norms which will be worked out by a professional body like National Productivity Council.
- b) To agree for transfer from one unit to other depending on its manpower requirement.
- c) To agree with the Management on Make or Buy/Off loading of work depending on cost advantage in order to be competitive in the open market.
- d) To agree wherever applicable to reduce retirement age from 60 to 58 years.
- e) To agree to run workers' canteen and staff canteen on "no loss/no profit" basis, i.e. no subsidy on account of canteen would be available in future.
- f) To co-operate to implement Voluntary Retirement under VRS as envisaged in the projections.
- g) To accept arrear payments on account of salary in a phased manner over a period of 5 years.
- h) Not to raise any extra demand, go on for agitation, adopt go slow tactics for an agreed period of time say five years from the date of commencement of the BIFR package".

We are not concerned with other part of the revival scheme.

5. The Clauses (g) and (h) of the aforesaid scheme as reproduced above show that employees will accept arrears payment of salary in phased manner and will not raise any extra demand for a period of five years from the date of commencement of BIFR scheme.

6. It will be relevant to mention Section 22(1) of the Act of 1985 which clearly ordains that once a scheme is sanctioned, it is the law and it cannot be modified by anybody, except the BIFR. Section 22(1) of the Act of 1985 reads as under:

"22. Suspension of legal proceedings, contracts, etc.-(1) Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956,

or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

7. Section 22(1) clearly lays down that when a scheme is sanctioned and is under implementation then in that case notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or the Appellate Authority, as the case may be. Therefore, there is a mandate u/s 22(1) that once a scheme has been framed no change in the scheme can be undertaken under any law for the time being in force. The non-obstante clause "notwithstanding" clearly provides that no suit or any action under any provision of law will have an effect so long as the scheme remains in force. The present scheme has been framed and there is a provision which clearly mandates, as quoted above, that for a period of five years the employees will not raise any extra demand or resort to a strike for salary or arrears. Therefore, as far as revision of pay scale which has been brought about from January 1, 1997 in terms of memorandum issued by the Government of India on June 25, 1999 cannot be given effect to by the Management in view of the specific provision contained in the scheme i.e. Clauses 9(l)(g) and (h) quoted above that the employees shall not agitate for any enhancement of salary or pay scale and shall not resort to agitation. The Learned single Judge should not have directed against the sanctioned scheme of the BIFR which is in force. It may be clarified here that in the present case we are only concerned with the revision of pay scale with effect from January 1, 1997. As far as the pay revision with effect from January 1, 1992 is concerned that has already been implemented and arrears have been directed to be paid in instalments as and when the financial condition of the company improves. Therefore, this part of the order passed by the learned single Judge was perhaps in ignorance of the fact. Be that as it may what we are concerned with the present appeal is with regard to pay revision with effect from January 1, 1997 in terms of the memorandum issued on June 25, 1999. The Government of India issued the memorandum on June 25, 1999 whereas the scheme was sanctioned

by the BIFR on April 26, 1999. Therefore this revision of pay could not be incorporated in the scheme. Since the scheme is law and there is no provision for giving benefit of this revision of pay as per the memorandum by the Government of India dated June 25, 1999 therefore no direction can be given by the Court I to act against the law. It is true that the salaries are drawn by the incumbents for the work done by them and the incumbents are also entitled to the revision of pay scales as and when the revision is undertaken. This is the legitimate right of the petitioners for revision of pay scales and it cannot be denied. However, in order to redress the grievance of the petitioner, the Management ought to have moved the BIFR for modification of the scheme. In fact when the scheme was framed the revision of pay scales of 1992 was in force therefore that could be incorporated in the scheme but unfortunately the scheme for further revision of pay scales which was sanctioned by the Government of India on June 25, 1999 could not be incorporated in the scheme as the scheme was framed on April 26, 1999 by the Board. The appellant should have moved the BIFR for modification of the scheme for the benefit of the employees. So long as the scheme is in force with Clauses 9(1)(g) and (h) as reproduced above, the respondent/appellant could not have sanctioned this revision of pay scales to its employees. The only course left for them was that instead of driving their employees to file a writ petition they should have moved the BIFR for modification of the scheme as the scheme was the law and it could not have been altered by the company unilaterally. Therefore, it was in fitness of things" for the appellant to have 1 moved the BIFR and to amend the Clauses (g) and (h) of the scheme suitably to provide benefit to their employees of the revision of pay scales as sanctioned by the Government of India on June 25, 1999.

8. The learned counsel for the respondent/writ petitioners strenuously urged before us that the salary of the incumbent is their right and it cannot be denied because of the so called scheme of BIFR or by virtue of Section 22 of the Act of 1985. It is true that the employees could not be denied their right of salary, they are entitled to it but in accordance with law i.e. when the scheme is framed and a special provision has been made that the employees will not claim any extra demand and they will not agitate for a period of five years then in that case no direction can be given against the law. Since the scheme framed by the BIFR is the law, the authorities ought to have moved the BIFR for modification of the scheme so as to redress the grievance of the writ petitioners. Therefore, the learned single Judge instead of directing the appellant company to move the BIFR and get the scheme modified so as to incorporate the revision of pay scales as sanctioned by the Government of India on June 25, 1999 by providing higher pay scales directed appellant company to pay revised pay scales against the scheme which is law. That approach of the learned single Judge was not correct.

9. The learned counsel of the respondent has invited our attention to a decision of this Court in the case of *Burn Standard Co. Ltd., v. Mc. Dermott International Inc. and Ors.*, reported in 1997(11) CHN 148. In this case the Technical Collaboration Agreement was entered into by and between the petitioner

company and the respondent No. 1. It contained an arbitration clause. All the arbitration proceeding was pending with regard to certain disputes between them for deciding the claim of the respondent company. In the meanwhile the petitioner company i.e. Burn Standard Co. Ltd. became a sick industrial undertaking and the BIFR appointed a Special Director to the Board of the petitioner company and appointed IRBI as the operating agency to prepare a rehabilitation scheme and/or report which is still under process. Subsequently, the petitioner company moved an application before the Arbitrator appointed under the arbitration clause in the TCA for suspension of the arbitration proceeding pending u/s 22(1) of the Act till finalisation of the rehabilitation scheme by the BIFR. The Arbitrator declined to suspend the arbitration proceeding then the petitioner company filed an application under Sections 5, 11, 12, 33 and 41 of the Arbitration Act in the Original Side of this High Court against the order passed by the Arbitrator declining to suspend the arbitration proceeding. The matter came before the Learned single Judge and he held that the arbitration proceeding cannot be stayed u/s 22(1) and as such rejected the petitioner's aforesaid application. And in that context decision of another single Bench was cited wherein a contrary view was taken. Therefore, the matter was referred to the Larger Bench and the Division Bench after relying on the decision of the Apex Court held that according to Section 22(1) certain types of proceedings come within its purview namely, proceedings for winding up of the industrial company, proceedings, for distress against any of the properties of the industrial company, or the like. Their Lordships inferred that from the nature of the proceedings it would be quite clear that only proceedings of coercive nature would come within the fold of Section 22(1) and not other proceedings. Therefore, the Division Bench declined to stay the arbitration proceeding. This judgment of the Division Bench provides no assistance to the controversy involved before us.

10. In the case of *Swadeshi Cotton Mills v. Asst. Labour Commissioner (Central) & Controlling Authority under Payment of Gratuity Act*, reported in 2000-I-LLJ-1221 the question was with regard to release of gratuity. In that context the Learned single Judge of the Allahabad High Court held that the payment of gratuity is one of the beneficial measures introduced by the labour legislation. Therefore, the provisions of Section 22 of the 1985 Act does not prohibit the recovery of gratuity, which is related to wages to the workers for their hard labour and toil. There is no dispute that the payment of wages which is due to the workmen is not prohibited u/s 22 of the Act but in a case where a scheme has been framed and the question of wages is also covered by it then in that case if somebody asks more than what has already become a part of the scheme then Section 22 will certainly put a bar. There was no such stipulation in the scheme with regard to wages before the learned single Judge and therefore the learned single Judge of the Allahabad High Court directed that payment of wages is not barred u/s 22 of the Act of 1985. This case does not provide any useful assistance to the controversy involved in the present case.

11. Our attention was also invited to a decision of the Apex Court in the case of Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, . In this case the question was with regard to eviction of the company on a suit filed by the lessee. A plea of Section 22 of the Act of 1985 was taken that since it is a sick industrial company and the matter is pending with the BIFR, therefore, the proceedings should be stayed. In that context their Lordships held that the lease hold interest of the company in question is governed by tenancy law and it is covered under Karnataka Rent Control Act, therefore Section 22 is not attracted to eviction proceedings. Their Lordships have categorically held that proceedings for eviction instituted by landlord against a company, which happens to be a sick industrial company, cannot be regarded as a proceeding falling in the category mentioned in Section 22 of the Act of 1985. Therefore, this case does not provide us any assistance so far as the present case is concerned.

12. In the case of Deputy Commercial Tax Officer and Others Vs. Corromandal Pharmaceuticals and Others, , the question was with regard to recovery of Sales Tax due to Andhra Pradesh Government under Andhra Pradesh Sales Tax Act. In that context their Lordships observed:

"Section 22 - Embargo or bar placed u/s 22 against any step for execution, distress or any other similar proceeding against the Board for Industrial and Financial Reconstruction, Company without the consent of the Board Held though Section 22 language is of wide import it will be reasonable to hold that bar or embargo can apply only to such of those dues reckoned or included in the sanctioned scheme-Section 22 will not cover such amounts like sales tax etc. which sick industrial company is unable to collect after the date of sanctioned scheme legitimately belonging to the Revenue - Any construction putting a bar on payment to Revenue of such sales tax collected after date of scheme is unfair, unreasonable and against spirit of statute in a business sense and should be avoided - Held on facts that where scheme was sanctioned under Sections 18(4) and 19(3) from November 19, 1990 and the sales tax dues under order passed on January 3, 1994 and in 1995 long after sanction of scheme, the collected sales tax is payable to Revenue without permission of Board for Industrial and Financial Reconstruction Government advised to bring in changes in Board for Industrial and Financial Reconstruction especially in Section like Section 22."

13. In this case their Lordships categorically held that the language of Section 22 is very wide and it puts an embargo to those dues which are reckoned or included in the sanctioned scheme. Therefore, in the present case there is an embargo as contained in clause 9 (1)(g) and (h) which clearly stipulates that workers will accept arrear payments on account of salary in a phased manner over a period of 5 years and not to raise any extra demand, go on for agitation, adopt go slow tactics for an agreed period of time say five years from the date of commencement of the BIFR package. Therefore, there is a bar/embargo with regard to extra demand for the wages. Therefore, the ratio laid down by their

Lordships in the case of Deputy Commercial Tax Officer v. Coromandal Pharmaceutical (supra) equally applies to the present case.

14. In the case of Crescent Iron and Steel Corporation Ltd. Vs. Union of India (UOI) and Another, , a scheme was framed by the Board under the Act of 1985 and was approved by the Appellate Authority. The unit was closed in 1985 and liabilities of all secured and unsecured creditors were settled by new management. All workers subsequently accepted the retrenchment compensation and the management took the decision to shift the unit to a new location. The share holders objected to the order passed by the BIFR for winding up of the company which was upheld by the Appellate Authority and the matter was taken up to the Apex Court. The Apex Court after considering the matter observed that after the order being passed by the BIFR and the order of the State Government has come into existence after the order passed by the Appellate Authority, the BIFR and the Appellate Authority are authorised to take into consideration the facts and circumstances of each case and then to decide whether any reference u/s 15(1) of the Act of 1985 was at all necessary or not and to pass any other appropriate order meeting the ends of justice in each case. Therefore, the ratio of the aforesaid case is that whenever such situation arise and the BIFR is seized of the matter then the appropriate course is to refer all these matters to such Board for appropriate orders instead of directing or passing any order. The idea behind this kind of approach, as adopted by the Apex Court in the aforesaid case, is that when Parliament has passed the Act of 1985 with the intent that whenever industrial units are declared sick then the whole job of reconstruction or for framing necessary scheme should be entrusted to a specialised body who can give direction that how the scheme should be framed to revive the sick industrial unit and if it is found that the sick industrial unit is incapable of being revived then winding up order is passed by the BIFR. Therefore, in the present case when the matter is already seized with the BIFR then Courts normally do not exercise its discretion and leave it to the BIFR to take the decision on the matter. Therefore, for that purpose their Lordships in the case of Crescent Iron & Steel Corporation Ltd. v. Union of India (supra) held that when new facts emerge Courts should not interfere and remand the matter back to the BIFR for passing appropriate order in accordance with law.

15. As a result of the above discussion we are of the opinion that the direction given by the learned single Judge cannot be sustained and therefore they are set aside and it is directed that since the revision of pay scale has already been sanctioned by the Government of India by the memorandum dated June 25, 1999 the employees are entitled to the benefits, for that the management shall approach the BIFR for modification of the scheme so as to facilitate the employees the benefit of wages and pay scales. We direct the appellant to apply before the BIFR for revision of pay scale as issued by the Government of India by memorandum dated June 25, 1999 within two months from the date of receipt of this order and the BIFR is also directed to dispose of the request made by the appellant within two months by necessary modification in the scheme or in any

manner they think appropriate in accordance with law. The appeal of the appellant is allowed in part as directed above and the direction given by the learned single Judge is set aside.

Girish Chandra Gupta, J.

16. I agree.