(1997) 08 MP CK 0033

In the Madhya Pradesh High Court

Case No : L.P.A. No. 54 of 1997

J.C. Mills Ltd. and Others — APPELLANT

Vs

Payment of Wages Inspector and Another — RESPONDENT

Date of Decision : 30-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Factories Act, 1948 — Section 7(1)
Madhya Pradesh Industrial Relations Act, 1960 — Section 31
Payment of Wages Act, 1936 — Section 15, 17, 3

Citation : (1998) 2 JLJ 110 : (2000) 1 LLJ 47

Hon'ble Judges : Shacheendra Dwivedi, J;A.S. Tripathi, J

Bench : Division Bench

Advocate : P.R. Kumaramangalam and J.P. Gupta, for the Appellant; R.D. Jain and Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Tripathi, J.—These two appeals are interconnected and they can be disposed of by a common judgment. They are taken up together. L.P.A. No.54/97 shall be the leading case.

2. These are two appeals which have been presented against the judgment and order dated January 22, 1997 passed in writ petitions No. 619, 1066, 1074, 1093, 1058 and 1065 of 1994. All these petitions were dismissed by the learned single Judge holding therein that the petitioners have alternative statutory remedy u/s 17 of the Payment of Wages Act, and as such, the petitions under Article 227 of the Constitution of India were not maintainable.

3. A preliminary objection was raised by the learned counsel for the respondents that no L.P.A. lies against an order rejecting the petition under Article 227 of the Constitution of India by the learned single Judge. This preliminary point was taken up earlier and has been decided by us vide order dated March 31, 1997. We adopt the same order which is on record for the purpose of disposal of these

two appeals.

4. The petitioners-appellants had filed various writ petitions as referred above challenging the orders passed by the Payment of Wages Authority. The writ petitions were dismissed by the learned single Judge on the grounds that they were not entertainable under Article 227 of the Constitution of India. In these appeals, the appellants pray that the order of single Judge be set aside and the orders passed by the Payment of Wages Authority be quashed or in the alternative the matter be remanded back to the Payment of Wages Authority for redecision of the matter in accordance with law.

5. In brief the facts of the case are as put forward in the memo of appeals that the petitioners-appellants had filed various writ petitions against the orders passed by the Payment of Wages Authority, Gwalior in the cases referred in Annexure-P-1. The orders passed by the Payment of Wages Authority dated April 27, 1993 are Annexures P-2 and P-3. The applications were also presented by the Payment of Wages Inspector before the Magistrate First Class, Labour Court No. 1, Gwalior u/s 15 of the Payment of Wages Act. The Form 9 as prescribed was not properly presented by the Payment of Wages Inspector which is Annex P-4. It was mandatory for the Inspector to mention the names of the person for whose wages the petitions were filed. Here reference made in the proforma could not show that there was any violation of the mandatory provisions of the Act on the part of the appellants. Under the provisions of Payment of Wages Act, only those employees are covered by these provisions whose wages are not beyond Rs. 1600/- per month. The allegation of the Payment of Wages Inspector was that the application was being made on behalf of employees of J.C. Mills Ltd., which is a public limited company and a body corporate. In that application, J.C. Mills Ltd., was not made a party. The present appellants No. 2 to 9 were made parties as Directors of the J.C. Mills Limited Company. The return was filed as Annexure P-5. The various applications have been referred with their particulars in para 3 of the memo of appeal which need not be repeated. A number of petitions filed by the petitioners-appellants were also referred earlier in the memo of appeal which were said to have been 22 in number. It is alleged by the appellants that those petitions were heard by Hon''ble Shri T. S. BOABIA, J. sitting singly and were deciding on August 20, 1996. A copy of the said order is Annexure P-6. Hon''ble Shri DOABIA, J. had turned down objection that the petitions could not be maintainable in view of the fact that there was an alternative remedy u/s 17 of the Payment of Wages Act. The learned single Judge had remanded those cases before the Payment of Wages Authority for fresh consideration. These petitions are enumerated in para 4 of the memo of appeal which need not be repeated.

6. The appellants further alleged that Hon''ble Shri DOABIA, J. has clearly held that merely on the ground that there may be an alternative remedy, the present petitions filed under Article 227 of the Constitution of India could not be thrown-out. The order passed by the learned single Judge was upheld in L.P.A. No. 36/94

by the Division Bench and the judgment of the Division Bench is marked as Annexure P-7.

7. Therefore, it is also contended that the orders passed by the learned Single Judge refusing to entertain the petitions was against the judgment of the Division Bench in L.P.A. No. 36/94 and deserves to be aside. The appellants after making out various submissions in the memo of appeal made the prayer as mentioned earlier.

8. The respondents on the other hand contended that the appeals were not maintainable. The learned single Judge had directly dismissed the writ petitions upholding the award given by the Payment of Wages Authority. The respondents further alleged that the appellant J.C. Mills Limited was a Company and about 10 petitions were filed earlier which were remanded by the learned single Judge to the Payment of Wages Authority for fresh decision. The order was challenged in the Letters Patent Appeal as referred above and the same was upheld that the order of remand was justified but a direction was given to reconsider the matter in the background of the case of J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others, . Thereafter, in compliance of the said order, the Payment of Wages Authority recorded the statement of Shri Satyanarayan Sharma, Vice President, Finance, J.C. Mills Limited, Birla Nagar. No Director was examined and no other witness was produced. The Payment of Wages Authority has again passed an order on February 17, 1997 holding Director and the Factory Manager jointly responsible vide Annex. R-1 except the respondents No. 7 S.L.N. Sinha and No. 8 O.P. Gupta. The documents filed by the respondents were taken on record.

9. We have heard learned counsel for the parties and thoroughly examined the record. The following questions arise for determination in these appeals:

(i) Whether the writ petitions were not maintainable in view of the statutory alternative remedy of appeal available u/s 17 of the Payment of Wages Act?

(ii) Whether the award given and orders passed by the Payment of Wages Authority were without jurisdiction?

(iii) Whether there can be any personal liability of the Directors of the Company under the provisions of Section 3 as amended by Madhya Pradesh of the Payment of Wages Act?

Question No. 1;

So far as this question is concerned, the learned single Judge found that since there was an alternative remedy available to the petitioners u/s 17 of the Payment of Wages Act, the writ petitions filed only under Article 227 of the Constitution were not maintainable. The petitions were filed under Article 226 as well as Article 227 of the Constitution and in view of the preliminary objections raised by the respondents, we had already considered this aspect of the matter and decided vide our order dated March 31, 1997 which shall be the part of the judgment on this point. We had already held that the petitions were filed both under Articles 226 and 227 of the Constitution, the same could not be thrown out merely on the ground that there was an alternative remedy available.

10. In this view of the matter, we proceed to consider the other questions on merits.

Question No. 2:

So far as the award given and orders passed by the Payment of Wages Authority is concerned u/s 15 of the Act, the learned single Judge has considered this matter and found that the Payment of Wages Authority had jurisdiction to consider the matter and pass an appropriate order.

11. The petitioners-appellants have contended that they had prayed for an issuance of a writ in the nature of certiorari questioning the order passed by the Payment of Wages Authority. Reference was made to the case of State of U.P. v. Mohd. Nooh AIR 1958 SC 86 . In that case, the Apex Court had held that when the lower Court had committed an error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or Tribunal of first instance is so patent and loudly obstructive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revisions, the writ Court can interfere and necessary direction could be given. The petitioners had contended that the liability to pay wages itself was disputed and the same dispute relating to wages could not be calculated. The Payment of Wages Authority had no jurisdiction to entertain the dispute. Their contention was that the remedy lay under the Industrial Disputes Act. Reliance was placed on the case of A.V. D''costa Vs. B.C. Patel and Another, and Payment of Wages Inspector Vs. Surajmal Mehta and Another, . Learned counsel for the appellants further submitted that the Payment of Wages Authority had a limited jurisdiction and could not decide the potential wages and the right to determine compensation was not vested in the Authority. They have further contended that when cases for winding up of the Company are pending under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 before the Board of Industrial and Financial Reconstruction (for short B.I.F.R.) in that view of the matter, the Payment of Wages Authority had exceeded in its jurisdiction by holding that the Directors are equally liable for Payment of Wages. After the winding up of the Company, the liability of the Company, for making payment shall be in accordance with Section 529A of the Indian Companies Act. To that extent, the order of the Payment of Wages Authority is without jurisdiction and could very well be questioned under Article 226 of the Constitution.

12. Learned single Judge has considered the question of jurisdiction and found that the language of Section 15 of the Act is specific and clear. When wages are not paid, party or Labour Inspector has right to invoke the jurisdiction u/s 15 for payment of wages to the workman. The learned single Judge further observed that the contention of the learned counsel for the petitioners that the application

before the Authority was so vague that exact amount of wages could not be determined, cannot be accepted, as the employer had full knowledge about the exact amount of wages to be paid to its different employees. The application was filed by the competent Payment of Wages Inspector under Sub-section (2) of Section 15 of the Payment of Wages Act.

13. The learned single Judge also considered the objection in respect of pending review application against the order rejecting the application u/s 25O of the Industrial Disputes Act. The learned single Judge found that this petition was misconceived as any order passed u/s 25O Sub-section (5) of the Industrial Disputes Act is final and binding upon the party. This order is valid for a period of one year as provided under Sub-section (6) of Section 25O of the Industrial Disputes Act. The original order had come to an end and the review had become infructuous. The third objection was also repelled by the learned single Judge that when an application u/s 31 of the M.P. Industrial Relations Act was filed by the representative union, then in that view of the matter the dispute could not be adjudicated. It was again not acceptable. The provisions of Section 31 of the M.P. Industrial Relations Act had no application to the instant case as this point was already determined in the cases of Sheo Narayan Choudhari and Anr. v. A. W. Kanwadikar, Member Judge, Industrial Court, M.P. and Ors. 1966 MPLJ 1091 and Deendayal v. Factory Manager, Gwalior Rayon 1983 MPLJ SN 46.

14. Learned single Judge further held that the proceedings pending before the B.I.F.R. was not a bar for the Payment of Wages Authority to proceed in the matter. This Act does not provide for withholding wages of the employees.

15. We have heard the parties counsel on these points which have been repelled by the learned single Judge and have given careful consideration to these aspects of the matter.

16. It has been brought to our notice that the Payment of Wages Inspector had filed an application u/s 15 of the Payment of Wages Act before the authority i.e. Labour Court in respect of the payment of wages/salary to the workmen for the period from September 1992 to October 1993. The workmen were not being paid wages. The application was filed against the factory manager and eight directors of the J.C. Mills, Gwalior. No written statement was filed by the directors. Only one reply was said to have been filed before the Labour Court on behalf of the company. Nobody was produced as a witness, neither the factory manager nor the directors. After considering the facts and circumstances, the Payment of Wages Authority had directed for payment of wages for the period in question.

17. We find on record that there is no dispute in respect of the fact that the workmen were employees of J.C. Mills, Limited, Gwalior. A plea was taken before Payment of Wages Authority that the workmen were not actually working in the relevant period. This question was considered and was decided in favour of the workmen that they have been regularly attending the factory, but no work was being entrusted to them as electricity connection was disconnected. No fault of

the workmen was found. They attended the factory premises every day but the work could not be assigned to them for the reasons beyond control. The Payment of Wages Authority, in that view of the matter had jurisdiction to hold that the workmen could not be disentitled for the wages. The relationship of master and servant had existed between the workmen and the company as was held in the case of J.K. Industries Ltd. v. Chief Inspector of Factories (supra).

18. The Factory Manager was also found by the Labour Court to have financial powers and was responsible for discharging the statutory duties in respect of payment of wages to the workmen, and the factory manager was working in accordance with the directions given by the Board of Directors.

19. It was also brought to our notice that the company had filed Form No. 4-A designating one Shri P.K. Kaul as factory manager on January 15, 1988. Returns were submitted every year. Since then, no information has been given for any change in the matter.

20. Reference was also made to the cases reported as Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, , Payment of Wages Inspector Vs. Surajmal Mehta and Another, and Modi Industries Ltd. Vs. State of Uttar Pradesh and others, in respect of scope and jurisdiction of Payment of Wages Authority to decide incidental matters along with wages.

21. Learned counsel for the appellants brought to our notice certain events which will clarify the position further. It has been urged that J.C. Mills Limited was incorporated sometime in the year 1921. It had four factories. The company has been suffering continuously financial losses since 1990. The appellants claimed that despite best efforts made, the losses could not be recovered and some wages of the workmen could not be paid in time. There were huge liabilities upon the company as well. The turnover had declined, The production had stopped and the company had to reduce its work force and number of employees.

22. The company had made an application u/s 25O of the Industrial Disputes Act, 1947 before the competent authority seeking closure of the industry involving cotton section of the company. The competent authority had refused the permission sought by the company. On September 4, 1991 the company moved an application for reviewing the order dated August 18, 1991 refusing permission as provided in Sub-section (6) of Section 25O of the Industrial Disputes Act, as substituted by MP Act No. 32 of 1983. That review application was pending. It was also brought to our notice that Letters Patent Appeal No. 36/94 was filed before this Court, in which it was directed that the competent authority should consider the review application by March 21, 1997. The matter was taken up by the Labour Court No. 1 on the representation made by the Trade Union and an interim order was passed. On the application made by the company u/s 67 read with Section 64-A of the MPIR Act, 1960 the Industrial Court modified the order of the Labour Court and directed that the company may not take work from the workmen, but till the finalisation of the dispute, it would be

obliged to pay full wages to the workmen. In writ petition No. 748/92 a direction was given by this Court for payment of fifty percent of wages to the workmen.

23. Further it has been brought to our notice that the company had made a reference u/s 157 of the Sick Industrial Companies (Special Provisions) Act, 1985 on August 28, 1992. Between the period October, 1992 to April, 1993 Directors namely S/Shri SLS Sinha, O.P. Gupta, C.K. Birla, K.K. Maheshwari, C.S. Pande, S.K. Birla, S.V. Majumdar and Ram Babu Vaishya said to have resigned from the directorship of the company.

24. In November 1992 the Mazdoor Congress had filed an application before the Labour Court. Then on January 1, 1993 the Board of Industrial and Financial Reconstruction (BIFR) passed an order in case No. 93/92 regarding J.C. Mills Ltd. and declared the company to be ''sick industrial company'' u/s 3(1)(c) of the Act of 1985. It was recorded that it was not possible to rehabilitate the company and recommended for its winding up and the winding up proceedings are pending before the Company Judge of this Court in Petition No. 1/96.

25. On April 12, 1993 the Payment of Wages Inspector had issued a notice and passed necessary orders. The Payment of Wages Inspector had also filed an application u/s 15 of the Act before the Magistrate First Class and Labour Court No. 1 on April 27, 1993 against the factory manager. The factory manager contested the application on different grounds. Later on the Directors also adopted the same reply filed by the factory manager. The competent Authority under the Payment of Wages Act and the Labour Court No. 1, Gwalior passed an order rejecting the contentions raised on behalf of the factory manager and the directors, who are present appellants and directed that payment of Rs. 40,10,000/- be made to the workmen for the month of March, 1993 and that the said amount be deposited in Court together with record etc. Similar orders were passed on another application as well for different period.

26. It is brought to our notice also that in writ petition No. 869/94 the learned single Judge of this Court had quashed the orders as pointed out earlier and remanded the matter to the competent authority for reconsideration. Our attention was also drawn to writ petition No. 109/95 in which a Division Bench of this Court on a public interest petition passed interim orders issuing certain directions. A SLP was filed against that order dated February 7, 1995 being SLP (C) 6528/1995, which was filed by the State Bank of India before Hon. the Supreme Court and in that case, Hon. the Apex Court by its order dated July 28, 1995 observed that the claim of the workmen is to be kept in view while making direction for utilization of assets in the light of statutory provisions. But for that the workmen must resort to such other remedy as may be available under the statute.

27. Now we proceed to examine the necessary provisions under the Payment of Wages Act in which the competent authority had passed the impugned orders, in view of the fact that the proceedings pending before the BIFR will not amount to

a bar to the Payment of Wages Authority to proceed with the matter.

28. Reverting back to the provisions of Section 15 of the Payment of Wages Act, we find that the authority under this section has been provided with ample powers as amended by the State of M. P. to deal with such a situation and to call upon the persons concerned whose responsibility is to pay the wages due and to make necessary orders in this respect.

29. In the case of Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, and Payment of Wages Inspector, Ujjain v. Surajmal Mehta (supra), the question of jurisdiction of the authority u/s 15 of the Payment of Wages Act has been elaborately dealt with. In the case of Payment of Wages Inspector, Ujjain, (supra) referred above, it was laid down by the Apex Court that:

"It is explicit from the terms of Section 15(2) that the Authority appointed under Sub-section (1) has jurisdiction to entertain applications only in two classes of cases, namely, of deductions and fines not authorised under Sections 7 to 13 and of delay in payment of wages beyond the wage periods fixed u/s 4 and the time of payment laid down in Section 5. This is clear from the opening words of Sub-section (2) of Section 15, namely, ''where contrary to the provisions of this Act'' any deduction has been made or any payment of wages has been delayed. These being the governing words in the sub-section the only applications which the Authority can entertain are those where deductions unauthorised under the Act are made from wages or there has been delay in payment beyond the wage period and the time of payment of wages fixed or prescribed under Sections 4 and 5 of the Act. Section 15(2) postulates that the wages payable by the person responsible for payment u/s 3 are certain and such that they cannot be disputed."

30. When the Payment of Wages Authority directs for payment of back wages which were certain, there can be no doubt regarding its jurisdiction to direct payment of wages u/s 15 of the Act. The point was further elaborated in paragraphs 10 and 11 of the judgment in the case of Payment of Wages Inspector, Ujjain, (supra) referred above, holding therein that in directing payment of certain back wages the jurisdiction of the Authority u/s 15 of the Act could not be questioned.

31. As such, we hold that the Payment of Wages Authority had jurisdiction to proceed with the matter and pass impugned orders as indicated above and the same could not be interfered within the writ petitions.

32. Question No. 3:

This important question has been raised by the appellants that the directors of the company had no individual liability and the Payment of Wages Authority could not call upon anyone of mem in respect of payment of wages to the employees and as such, the impugned order was against the provisions of established law and the same is liable to be quashed. They have further argued that the proceedings were pending before the BIFR and no proceedings could be taken individually or personally against the directors for payment of wages to the employees.

33. The learned single Judge had considered this point and held that the directors also could not escape the liability in respect of payment of back wages and the Authority under the Payment of Wages Act had ample powers -to proceed against them.

34. We find that Section 3 of the Payment of Wages Act fixes responsibility, as amended in the State of M.P., in case of a factory, against the manager/occupier. In clause (f) of Sub-section (1) of Section 7 of the Factories Act, 1948, in case a person is so named as manager or occupier, then the person so named and the employer jointly and severally are responsible for payment of wages. It has been brought to our notice that the ''employer'' is defined which includes the legal representatives of the deceased employer u/s 2(i-a). The definition of the word ''employer'' is however not provided in the Factories Act. Sub-section (5) of Section 7 of the Factories Act provides that during any period for which any person has been designated as manager of the factory, or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself shall be deemed to be the manager of the factory for the purposes of this Act. ''Occupier'' is defined u/s 2(n) of the Factories Act, which means a person who has ultimate control over the affairs of the factory.

35. This controversy was finally settled in the case of J.K. Industries Ltd. and Ors. v. Chief Inspector of Factories & Boilers and Ors. (supra). The Apex Court dealt with this matter in detail and observed in para 26 as below: -

"Thus, we find that after the 1987 amendment, the true import of proviso (ii) to Section 2(n) would be that in the case of a company, which owns the factory, the company cannot nominate any one of its employees or officers, except a director of the company, as the occupier of the factory.

In other words, an occupier of the factory in the case of a company must necessarily be any one of its directors who shall be so notified for the purposes of the Factories Act, Such an occupier cannot be any other employee of the company or the factory. This interpretation of an ''occupier'' would apply to all provisions of the Act, wherever the expression occupier is used and not merely for the purposes of Section 7 or 7A of the Act."

It was further observed in para 44 that:

"As already noticed, where the company owns a factory it is the company which is the occupier, but, since company is a legal abstraction without a real mind of its own, it is those who in fact control and determine the management of the company, who are held vicariously liable for commission of statutory offences. The directors of the company, are therefore, rightly called upon to answer the charge being the directing mind of the company."

Ultimately in para 62, the Apex Court laid down the law on the subject in the following terms:

(1) in the case of a company, which owns a factory, it is only one of the directors of the company who can be notified as the occupier of the factory for the purposes of the Act and the company cannot nominate any other employee to be the occupier of the factory;

(2) where the company fails to nominate one of its directors as the occupier of the factory, the Inspector of Factories shall be at liberty to proceed against any one of the directors of the company treating him as deemed occupier of the factory, for prosecution and punishment in case of any breach or contravention of the provisions of the Act for offences committed under the Act.

(3) Proviso (ii) to Section 2(n) of the Act is intra vires the substantive provision of Section 2(n) of the Act.

(4) Proviso (ii) to Section 2(n) is constitutionally valid and is not ultra vires Articles 14, 19(1)(g) and 21 of the Constitution of India.

(5) The law laid down by the High Courts of Bombay, Orissa, Karnataka, Calcutta, Guwahati, and Madras is not the correct law and the contrary view expressed by the High Courts of Allahabad, Madhya Pradesh, Rajasthan and Patna is the correct enunciation of law in regard to the ambit and scope of proviso (ii) to Section 2(n) of the Act."

36. As against this, learned counsel for the appellants referred to the case of E.S.I. Corpn. Vs. Kailashchandra and Others, in which it was held that the director, agent or servant who is an occupier cannot be made personally liable in respect of personal property and the same could not be attached for the payment of wages of the employees. It was held that in case of payment of contribution towards funds etc. personal liability could not be fastened upon the directors. When the contribution has not been paid even by the occupier, the same can be recovered from the assets of the company and not from the personal assets of the director, managing director or occupier by making them personally liable, and their personal property cannot be attached or sold for realisation of the contribution, except any property of the company in the hands of the director, or managing director or occupier which certainly can be attached and the amount can be realised from the same. While dealing with the matter, the Indore Bench had not considered the payment of wages and it was a case only for recovery of contributory funds.

37. Learned counsel for the appellants also relied on the case of AIR 1949 111 (Federal Court) . In that case, the term ''employer'' as defined was considered in relation to the Industrial Disputes Act and it was ultimately found that the definition of the term ''employer'' was neither exhaustive , as no attempt was made to define the term ''employer'' generally or in relation to other persons carrying on industries or running undertakings.

38. On the point of personel liability of the occupier/directors reference was also made to the case of Employees'' State Insurance Corporation Chandigarh Vs. Gurdial Singh and Others, .

39. After examining the facts of this particular case and the law laid down in the case of J.K. Industries (supra), referred above, we find that the Apex Court in so many words had clarified the law that in case of payment of wages, the Payment of Wages Authority u/s 15 of the Payment of Wages Act could call upon directors any one of the directors or occupier of the factory to make the payment of back wages to the employees. In this view of the matter, it could not be argued that the directors could not be called upon by the Payment of Wages Authority in this matter.

40. Directors of the company could not escape their liability for payment of wages to the employees as held above. However, the Payment of Wages Authority could proceed against the assets of the company in the hands of the directors, or the assets acquired from the income of the company by the directors. The personal property of the directors, however, could not be proceeded against which were acquired from the other sources than the income from the company.

41. Our attention was drawn that in writ petition No. 210/94 the matter was remanded to the Labour Court and the order was confirmed in letters patent appeal by the Division Bench, But at the same time, it was held that the statutory remedy could be availed of by the employees.

42. In the earlier writ petition the learned Single Judge rightly pointed out that the case of J.K. Industries (supra), was not brought to the notice of the Court. Since the Apex Court had laid down the final law on the subject and the matter being simply remanded it had no bearing on the points in issue before us.

43. We, therefore, hold that there can be personal liability of the directors of the company under the provisions of Section 3 as amended by M.P. in Payment of Wages Act, for payment of back wages to the employees to the extent of any assets in their hands, which have been acquired from the income of the company and the Payment of Wages Authority could call upon the individual director to ensure payment of back wages to the employees. However, it is clarified that if any assets were acquired from other sources than the income from the company in the hands of the directors, the same could not be proceeded with for recovery of payment of back wages, by Payment of Wages Authority u/s 15 of the Payment of Wages Act.

44. After dealing with the three questions formulated above, learned counsel for the appellants lastly argued that liquidation proceedings of the company were going on. In case of State Bank of India v. Vastra Udhyog Sharmik Sangh and Ors., SLP (C) 6528 of 1995, it was held by Hon. the Supreme Court that writ petition could not lie when the proceedings for liquidation had started. But the Supreme Court also directed that the workmen could resort to other remedies

available under the statute. It was clarified in that very judgment dated July 28, 1995 in the following terms:

"There can be no doubt that the claim of the workmen has to be kept in view while making any direction for utilisation of the assets of the Company and the relevant statutory provisions enacted for this purpose for the benefit of the workmen have to be borne in mind. For this purpose, the workmen have to resort to such other remedy which may be available under statute and a writ petition under Article 226 of the Constitution as public interest litigation is inappropriate."

45. Therefore, in our view the proceedings going on before the BIFR were not hurdles before the Payment of Wages Authority to proceed with the recovery of back wages, the learned Single Judge was fully justified in holding that the BIFR proceedings have no bearing on the impugned orders.

46. Another question was raised in respect of the application u/s 31 of the Madhya Pradesh Industrial Relations Act which was filed by the representative union and in that view of the matter, the dispute could not be adjudicated by the Payment of Wages Authority. The learned Single Judge, rightly repelled this contention in view of the case of Sheo Narayan Choudhari v. A.W. Kanawadikar, Member Judge, Industrial Court, M.P. (supra) and Dindayal v. Factory Manager, Gwalior Rayon (supra). Keeping the provisions of Section 110 of the MPIR Act in view, the proceedings before the Payment of Wages Authority were not affected.

47. An application u/s 25O filed by the representative union was rejected and in that view of the matter, the closure was held to be illegal under the provisions of Section 25O(7) of the Industrial Disputes Act. The application for review pending could not provide any right to the petitioners-appellants. The review application so filed had already been rendered infructuous as held in the case of Vazir Glass Works Ltd. Vs. Maharashtra General Kamgar Union and another, .

48. In the end, we also equally agree with the findings of the learned single Judge that alternative statutory remedy was available to the appellants u/s 17 of the Payment of Wages Act, and in that view of the matter, the petitions which were presented under Article 227 of the Constitution of India could not be entertained for supervisory purpose.

49. On other grounds, as we recorded our findings above, there is no merit in the contentions raised by the appellants to call for any interference even under Article 226 of the Constitution of India. The petitions were rightly dismissed.

50. In view of the findings recorded above, we find no merit in these two letters patent appeals, and they are dismissed as such. However, we do not make any order as to costs.

51. A copy of this judgment shall be placed on the record of the letters patent appeal No. 55/97, which shall govern that appeal as well.

