

(2000) 08 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 1646 of 2000

National Textile Corporation (NM) Ltd.

APPELLANT

Vs

Shivaji Gopal Gorule and Another

RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42(2)

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

Citation : (2001) 1 BomCR 753 : (2001) 88 FLR 602 : (2002) 4 LLJ 301 :
(2001) 2 MhLj 120

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Respondent No. 1 waives service. By consent, taken up for final hearing.

The First Respondent who was working as a substitute since 1978 in the Weaving Department of the Petitioner, has succeeded in his plea for the declaration of permanency both before the Labour Court and in appeal before the Industrial Court in the proceedings instituted under the Bombay Industrial Relations Act, 1946. The Labour Court and the Industrial Court held that upon completion of 240 days uninterrupted service in the preceding period of twelve months, the provisions of Standing Order 4(C) would mandate that the workman was entitled to permanency. In the present case, there is no dispute about the fact that the First Respondent had completed 240 days uninterrupted service in the preceding period of twelve months as stipulated in Standing Order 4(C). The evidence before the Courts below demonstrated that there were, in fact, vacancies in which the First Respondent could be regularised though, as will be discussed later, that is not a condition precedent to an order of regularisation where the provisions of Standing Order 4 (C) are attracted. The evidence which was adduced by the First Respondent has gone un rebutted, since no evidence

whatsoever was adduced on behalf of the Petitioner. By an order of the Labour Court dated January 5, 1998, the Petitioner was directed to make the First Respondent permanent with effect from October 31, 1994 and to grant to him all attendant benefits. That order was confirmed in Appeal by the impugned order dated March 21, 2000, of the Industrial Court. The order passed by the Industrial Court is sought to be impugned in these proceedings.

2. The learned counsel appearing on behalf of the Petitioner urged three submissions for consideration of this Court in these proceedings:

The first submission that was urged was in regard to the consequence of an order of regularisation under Standing Order 4 (C) where its consequence is to lead to a permanent or semi-permanent increase in the number of employees employed or to be employed in an occupation, process or department. The submission was that the consequence of granting regularisation would be to lead to an increase in the number of persons employed. Consequently, such an increase would be within the purview of Item 2 of Schedule II of the Bombay Industrial Relations Act, 1946. The submission was that in such a case the employee would be required to give a notice of change under Sub-section (2) of Section 42 of the Act. Learned counsel submitted that it is true that u/s 40 of the Act, the Standing Orders are regarded as determinative of the relations between the employer and his employee in regard to all industrial matters specified in Schedule I. Similarly u/s 40-A, the Model Standing Orders made by the State Government in respect of any additional matters included in the First Schedule, are to apply to the workmen unless they are less advantageous than the Standing Orders applicable to them. Counsel submitted that there would be a conflict between the application of the provisions of Sections 40 and 40-A in relation to the Standing Orders or Model Standing Orders, as the case may be, on one hand and the requirement of giving a notice of change u/s 42(2) where the impact of regularisation is to lead to a permanent or semi-permanent increase in the number of persons employed. A harmonious construction, according to the submission, must be made of the provisions of Sections 40 and 40-A on the one hand and Section 42(2) on the other. Hence, the interpretation which the Court was requested to adopt was that where as a result of the provisions of Standing Order 4(C) there is an increase in the number of employees, the requirement of giving a notice of change u/s 42(2) must be mandatory for the employee.

3. In order to appreciate the tenability of the submission which has been urged at the Bar in this case with a great deal of persuasion, reference may be made to the provisions of Sections 40 and 40-A of the Bombay Industrial Relations Act, 1946. Sections 40 and 40-A provide as follows:

"40. Standing Orders to be determinative.-(1) Standing Orders in respect of an employer and his employees settled under this Chapter and in operation, or where there are no such Standing Orders, Model Standing Orders, if any, applicable under the provisions of Sub-section (5) of Section 35 shall be determinative of the relations between the employer and his employees in regard

to all industrial matters specified in Schedule I.

(2) Notwithstanding anything contained in Sub-section (1) the State Government may refer, or an employee or a representative union may apply in respect of any dispute of the nature referred to in Clause (a) of paragraph A of Section 78, to a Labour Court.

40-A. Model Standing Orders, in respect of additional or altered matters to apply to certain workmen, if they are not less advantageous. -Notwithstanding anything contained in the foregoing provisions of this Chapter, any Model Standing Orders made and notified in the Official Gazette by the State Government from time to time, in respect of any additional matters included in Schedule I, or any alteration made in that Schedule, on or after the date of commencement of the Bombay Industrial Relations (Amendment) Act, 1977, shall unless such Model Standing Orders are held by the Commissioner of Labour, to be less advantageous to the employee than the corresponding Standing Orders applicable to them, also apply in relation to such employees in the undertaking in respect of which Standing Orders have already been settled u/s 35."

4. The consequence of Section 40 is thus that Standing Orders settled under the provisions of Chapter VII of the Act and, in their absence the Model Standing Orders are to be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I. Schedule I of the Act has two entries; entries 1 and 14 which are relevant for the purpose of the present proceedings. Entries 1 and 14 of Schedule I provide as follows:

"1. Classification of employees, e.g., permanent, temporary, apprentices, probationers, badlis, etc. and the manner of filling posts becoming vacant and determining seniority of badlis, and all matters connected with the purposes aforesaid.

14. Employment or re-employment of probationers or badlis or temporary or casual workmen, and their conditions of service."

Entries 1 and 14 of the First Schedule are specific entries dealing, inter alia, with the classification of employees including temporary employees and badlis, the manner of filling posts becoming vacant and the employment and re-employment of badlis, temporary or casual workmen and their conditions of service. Section 40-A of the Act similarly provides that the Model Standing Orders made by the State Government in respect of any additional matter included in the First Schedule on or after the Amending Act of 1977, shall apply in relation to the employees of the Undertaking unless they are held by the Commissioner of Labour to be less advantageous to the employees than the corresponding Standing Orders which are applicable to them.

5. Chapter VII of the Bombay Industrial Relations Act, 1946 contains statutory provisions relating to the Standing Orders. The fasciculus of Sections commences

with Section 35 under which Standing Orders are required to be settled by the Commissioner of Labour. The employer is required to submit Draft Standing Orders in respect of industrial matters specified in Schedule I to the Commissioner and the Commissioner after consulting with the representatives, inter alia, of employees and employers and such other interests concerned in the industry and making such enquiry as he deems fit, has to settle the Standing Orders. Until the Standing Orders in respect of an undertaking are thus settled by the Commissioner of Labour and come into force, the Model Standing Orders notified by the State Government in respect of the industry are to apply to the undertaking. The decision of the Commissioner of Labour is subject to an appeal u/s 36 to the Industrial Court and a review u/s 37. Section 38, inter alia, provides that no alteration in the Standing Orders shall be made for a period of one year. A provision for alteration of the Standing Orders after the aforesaid period is made in Sub-section (2) of Section 38 and in Section 39 of the Act. These are then the provisions for the settlement, a challenge to and the alteration of Standing Orders.

6. Section 42 of the Act provides for the issuance of a notice of change, Sub-section (2) of the said Section provides as follows:

"42. Notice of change.

(2) Any employee desiring a change in respect of an industrial matter not specified in Schedule I or II shall give a notice in the prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed."

Reliance was sought to be placed on the provisions of entry 2 of the Second Schedule to the Act which provides as follows:

"2. Permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or process or department or departments."

The submission which is noticed earlier was that if the regularisation of temporary employees or badlis leads to an increase in the number of persons employed, this being an industrial matter specified in Schedule II and, therefore, not within Schedule I or in of the Act, the furnishing of a notice of change by the employee under Sub-section (2) of Section 42 is mandatory. In order to complete the narrative of the relevant provisions, reference may now be made to the provisions of Standing Order 4 (C) which is applicable in the present case. Standing Order 4 (C) provides as follows:

"4(C) A badli or temporary operative who has put in 240 days uninterrupted service in the aggregate in any other undertaking during the period of preceding twelve months, shall be made permanent in that undertaking by an order in writing signed by the Manager or any person authorised in that behalf by the

Manager, irrespective of whether or not his name is on the muster roll of the undertaking throughout the period of the said twelve calendar months."

In determining the correctness of the submission which has been urged on behalf of the Petitioners, regard must be had to the fact that u/s 40 of the Act, Standing Orders made in regard to industrial matters specified in the first Schedule are to be determinative of the relations between the employer and his employees. u/s 40-A of the Act Model Standing Orders made by the State Government shall unless they are held by the Commissioner of Labour to be less advantageous to the employees than the corresponding Standing Orders applicable to them, also apply in relation to the employees in the undertakings in respect of whom Standing Orders have been settled u/s 35. Standing Orders constitute operative provisions which are regarded by statute as being part of the terms and conditions of service of the workmen of the undertaking. Item 1 of the First Schedule and Item 14 are specific provisions which are made for dealing with the classification of employees including temporary employees and badlis, the manner of filling posts which become vacant and the employment and re-employment of badlis and temporary workmen as well as their conditions of service. The impact of Standing Order 4(C) which has already been extracted earlier is that a badli or temporary operative who has put in 240 days uninterrupted service in the aggregate in any other undertaking during the preceding period of twelve months shall be made permanent in that undertaking by an order in writing signed by the Manager.

7. Standing Order 4(C) is a special provision which has been incorporated in the Standing Orders in order to protect the interests of employees who have been engaged as temporaries or badlis. These employees, it is well known, are subject to grave forms of exploitation. As this case itself would demonstrate the First Respondent was employed as a substitute operative since 1978. Work is extracted from such employees for long years without giving them either a security of tenure or the benefit of service conditions which apply to the permanent workmen of the undertaking. The provisions of Standing Order 4(C) are thus a salutary attempt to protect the interests of temporary or badli employees. The interpretation of Sections 40 and 40-A and the Standing Orders such as Standing Order 4(C) must hence be purposive so as to advance the object and purpose underlying these provisions. Consequently, it would not be permissible to read into the provisions of Standing Order 4(C) an additional requirement that there must be a vacant post available before an employee can be given the benefit of the operation of Standing Order 4(C). It is true that Item I of the First Schedule to the Act, inter alia, provides for "the manner of filling posts becoming vacant". However, Standing Order 4(C) which deals with the industrial matters enunciated in Items (1) and (14) of the First Schedule does not incorporate the requirement or condition that there be a vacant post before the benefit of the completion of 240 days uninterrupted service be given to the employee. In my view, reading any additional conditions into the provisions of Standing Order 4 (C) would defeat the object and purpose of such a provision.

8. Sub-section (2) of Section 42 which requires the furnishing of a notice of change applies where an employee "desires" a change in respect of industrial matters not specified in Schedules I and III. The effect of a Standing Order or a Model Standing Order, as the case may be, which requires that an employee be made permanent upon the completion of 240 days of uninterrupted service in the preceding period of 12 months, is that a burden and obligation is cast upon the employer to make the employee who satisfies the conditions stipulated in the Standing Order permanent. Therefore, as a result of the operation of law, the employee is entitled to receive the benefit of permanency. The Standing Orders are determinative of the relations of the employer and his employees u/s 40 and the Model Standing Orders if they are not less advantageous to the employees apply under the provisions of Section 40-A. Consequently, under the provisions of the Standing Orders-either those that are settled u/s 35 or, as the case may be, the Model Standing Orders - the grant of permanency operates by virtue of a mandate of law. In such a case, when as a result of the operation the benefit of permanency in service is conferred upon the employee, there is really no occasion for the employee to give a notice of change under Sub-section (2) of Section 42 before he receives the benefit of permanency under the Standing Order. The expression "any employee desiring a change" in Sub-section (2) of Section 42 is essentially not attracted to such a situation where a duty is cast on the employer upon completion of 240 days of uninterrupted service in the preceding 12 months to grant the benefit of permanency to the employee,

9. The view which I have taken on the interpretation of the relevant provisions of the Bombay Industrial Relations Act, 1946 and the Standing Orders, finds support in a judgment of a learned single Judge of this Court, Mr. Justice A.P. Shah in *Rashtriya Mill Mazdoor Sangh Vs. S.L. Mehendale and Another*, . The learned Judge rejected a similar contention which was urged before him and agreed with the view which had earlier been taken by another learned single Judge of this Court Mr. Justice F.I. REBELLO. In paras 8 and 9 of his judgment, Mr. Justice A.P. Shah held as follows:

"8. The above Standing Order provides in clear terms that a badli or temporary, employee who has put in 240 days uninterrupted service in the aggregate in any undertaking, during the period of preceding twelve months shall be made permanent in that undertaking by the employer. The, argument of Mr. Naphade is that the confirmation of the workman after 240 days amounts to a change and therefore unless a Change Notice is given and the procedure prescribed is followed, no automatic permanency can be granted to the employee. Consequently unless there are vacancies, the workers are not entitled for deemed permanency inasmuch as granting permanency in the event of above posts would tantamount creation of new posts" which cannot be done without issuing a Notice u/s 42(2) of the Act, Justice REBELLO rejected this contention by observing as follows:

"Reading of the said Standing Order would thus show that on completing 240

days of service, a workman has to be made permanent. The right to create a post no doubt, is that of an employer. However, by virtue of the Model Standing Order, a statutory condition of service has been introduced whereby the employer has agreed that the worker would be made permanent. Implicit in this is that posts will be created as a workman cannot be made permanent unless a post exists. Therefore, reading Model Standing Order 4(C) by itself will indicate that the employer (sic) permanent on the workman completing 240 days of service."

9. I am in respectful agreement with brother REBELLO, J. when he says that by virtue of Model Standing Orders a statutory condition of service has been introduced whereby the employer has agreed that the worker would be made permanent. Consequently the question of issuing change notice u/s 42 would not arise. In my opinion, if the interpretation suggested by Mr. Naphade is accepted, it would mean that Model Standing Order 4(C) would become totally redundant and the very purpose of introducing the said Model Standing Order would be defeated. The said Standing Order was introduced in order to stop the exploitation of the workmen in the textile mills who were kept temporary for number of years without conferring any status of permanency and benefits of permanent workmen. Therefore, the argument of Mr. Naphade that there is a conflict between Model Standing Order and Section 42 must be rejected."

10. The second submission which was urged at the Bar was that the Petitioner is a sick textile undertaking within the meaning of the Sick Industrial Companies (Special Provisions) Act, 1985. The Board for Industrial and Financial Reconstruction (B.I.F.R.) had passed an order dated May 27, 1993 by which the B.I.F.R. had considered it necessary to take measures u/s 18 of the Act in relation to the Company. The I.D.B.I. was appointed as an operating agency and was directed by the B.I.F.R. to prepare a rehabilitation scheme for the Petitioner in exercise of powers u/s 17(3) of the Act. The B.I.F.R. in its order directed the I.D.B.I. to prepare a scheme after considering certain measures and guidelines which were set out in the order. Clause (d) of the guidelines, inter alia, provides as follows:

"The Company should enter into a Labour Agreement with the Workmen Unions for I next 3 to 5 years agreeing for the proposed rationalisation of labour, future wages, productivity, etc. to ensure harmonious industrial relations during the rehabilitation. period."

11. Learned counsel appearing on behalf of the Petitioner stated that on May 20, 2000 an agreement u/s 44(1) of the Bombay Industrial Relations Act, 1946 was entered into between the Petitioner and the Rashtriya Mill Mazdoor Sangh, R.M.M.S. By Clause 7 of the agreement it was agreed that 192 surplus posts from the Weaving and Weaving Preparatory Department would be abolished from the Muster Roll and surplus workers will either be relieved under a Voluntary Retirement Scheme or will be redeployed suitably in any other working department. Clause (6) of the settlement provides that badli workers will be

provided work for a minimum of 20 days per month in any department and Clause (10) provides that badli workers will be offered proportionate compensation under the Voluntary Retirement Scheme for a year during which they have put in less than 240 days of attendance. In all fairness, learned counsel appearing on behalf of the Petitioner conceded that the settlement which has been entered into cannot possibly override the Standing Orders and it was not indeed his submission that the settlement would have precedence over them. The learned counsel submitted that the B.I.F.R. is vested with a wide power and discretion to frame a suitable scheme for the rehabilitation of the Petitioner which is a Sick Company. Reliance was sought to be placed on the provisions of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and upon Sub-section (1) of Section 32 which gives overriding effect to the Act as well as to a scheme made thereunder over anything inconsistent contained in any other law for the time being in force except the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1970. The submission which was urged was that the operation of Standing Order 4(C), in a case such as the present, would lead to a situation where the discretion of the B.I.F.R. in framing an appropriate scheme of rehabilitation would be curtailed. It was sought to be urged that if a scheme is ultimately framed, even the scheme would have overriding effect over the provisions of any other law for the time being in force. Consequently, what was argued is that the operation of provisions such as the Standing Orders in the present case would obstruct the due implementation of the scheme once it is framed by the B.I.F.R. for the rehabilitation of the Company.

12. In considering the tenability of the submission which has been urged by the learned counsel for the Petitioner, reference may be made to the salient provisions of the Act of 1985. Section 15 of the Act contemplates a reference to the B.I.F.R., inter alia, by the Board of Directors of a Company which has become a Sick Industrial Company as defined in Section 2(o) of the Act. Section 16 contemplates an enquiry by the B.I.F.R. for the purpose of determining whether an Industrial Company has become a Sick Industrial Company. Under Sub-section (3) of Section 17 on the completion of an enquiry u/s 16, the Board may direct the Operating Agency to prepare a scheme. The preparation and sanction of a scheme is provided for in Section 18 of the Act. Under Sub-section (1) of Section 18, the Operating Agency is required to prepare a scheme upon a direction issued by the Board under Sub-section (3) of Section 17.

13. The measures which are to be incorporated in the scheme are specified in Clauses (a) to (m) of Sub-section (1) of Section 18. Clause (da) of Sub-section (1) of Section 18 specifies that the measures to be incorporated in the scheme include "the rationalisation of management Personnel, supervisory staff and workmen in accordance with law." Thus, though the scheme which is to be formulated by the operating agency may include measures for the rationalisation of staff including the workmen, this rationalisation must be in accordance with law.

14. This provision, it must be noted, is in accordance with the statement of objects and reasons underlying the enactment of the law. The very first paragraph of the Statement of Objects and Reasons emphasises that one of the deleterious effects of industrial sickness is the loss of employment and one of the objects underlying the rehabilitation of Sick Industrial Companies is, inter alia, to afford protection of employment. The Statement of Objects and Reasons thus provides as follows:

"The ill effects of sickness in Industrial Companies such as loss of production, loss of employment, loss of revenue to the Central and State Governments and locking up of investible funds of banks and financial institutions are of serious concern to the Government and the society at large. The concern of the Government is accentuated by the alarming increase in the incidence of sickness in Industrial Companies. It has been recognised that in order to fully utilise the productive industrial assets; afford maximum protection of employment and optimize the use of the funds of the banks and financial institutions, it would be imperative to revive and rehabilitate the potentially viable Sick Industrial Companies as quickly as possible. It would also be equally imperative to salvage the productive assets and realise the amounts due to the banks and financial institutions, to the extent possible, from the non-viable Sick Industrial Companies through liquidation of those Companies.

Section 22 of the Act, inter alia, provides for the suspension of legal proceedings and contracts in regard to a Sick Industrial Company. Section 22 provides as follows:

"22. Suspension of legal proceedings, contracts, etc. -(1) Where in respect of an Industrial Company, an inquiry under Section 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 (1 of 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.

(2) Where the management of the Sick Industrial Company is taken over or changed in pursuance of any scheme sanctioned u/s 18 notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such Company or any instrument having effect under the said Act or other law-

(a) it shall not be lawful for the shareholders of such Company or any other person to nominate or appoint any person to be a Director of the Company;

(b) no resolution passed at any meeting of the shareholders of such Company shall be given effect to unless approved by the Board.

(3) Where an inquiry u/s 16 is pending or any scheme referred to in Section 17 is under preparation or during the period of consideration of any scheme u/s 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the Sick Industrial Company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, or awards, Standing Orders, or other instruments in force, to which such Sick Industrial Company is a party or which may be applicable to such Sick Industrial Company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board:

Provided that such declaration made under Sub-section (3) with respect to a Sick Industrial Company shall have effect not with standing anything contained in the Companies Act, 1956 (1 of 1956), or any other law, the memorandum and articles of association of the Company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a Court, Tribunal, officer or other authority or of any submission, settlement or Standing Order and accordingly.

(a) any remedy for the enforcement of any right, privilege, obligation, and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any Court, Tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect-

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceedings so remaining stayed shall be proceeded with subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this Section shall be excluded."

The provisions contained in Sub-section (1) of Section 22 are attracted in either of the following situations : (i) where an enquiry u/s 16 is pending, (ii) where any scheme referred to u/s 17 is under preparation or consideration, (iii) where a

sanctioned scheme is under implementation, or (iv) where an appeal u/s 25 is pending before the A.A.I.F.R.. If the matter relating to the Industrial Company is at any one of the aforesaid four stages, Section 22 provides that notwithstanding anything contained in the Companies Act, 1956 or in any other law, or the Memorandum or the Articles of Association, no proceedings for the winding up of the Company or for execution, distress or the like against any of the properties of the Industrial Companies or for the appointment of a Receiver shall lie or be proceeded with except with the permission of the B.I.F.R. By Act No. 12 of 1994, Sub-section (1) of Section 22 was amended to bring within its purview a 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 any Industrial Company. This requirement of taking the consent of the B.I.F.R, or the A.A.I.F.R. is clearly not attracted in the facts and circumstances of the present case. About this, there is no dispute. There is no proceeding here of the kind referred to in Sub-section (1) of Section 22.

15. Sub-section (3) of Section 22 provides that in the circumstances which are set out therein, the B.I.F.R. may, by order, declare that the operation inter alia, of settlements, awards, Standing Orders, or other instruments to which the Sick Industrial Company is a party shall remain suspended or that any of the rights, privileges, obligations and liabilities accruing or arising thereunder shall remain suspended or shall be enforceable with such modification as may be specified by the Board. The period during which such a declaration could be made is specified in the proviso to Sub-section (3). The impact of a declaration under Sub-section (3) is that it shall have effect notwithstanding anything contained in the Companies Act or in any other law for the time being in force.

16. In the present case, an order came to be passed on February 17, 1998 by the B.I.F.R. By and under the said order, it was provided as follows:

"Enforcement by Central Excise, Customs, BMC, Collector of Bombay, B.E.S.T., Government Bodies-- M.A.R.K.F.E.D., H.A.F.E.D., N.A.F.E.D., C.C.I., Hindustan Petroleum Corporation Ltd., Nationalised/Scheduled Banks against the aforesaid Company of contracts, assurances of property, agreements, settlements, awards, Standing Orders or other instruments into which the Sick Company in question is a party shall remain suspended and that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder shall remain suspended for a period of one year with effect from the date of this order."

There was some doubt as to whether the directions issued by the B.I.F.R. operated to suspend the Standing Orders applying to the relationship of an employer and his employees in respect of the sick textile undertaking of the Petitioner herein. An Appeal was filed by the R.M.M.S. before the Appellate Authority for Industrial and Financial Reconstruction. By an order dated September 9, 1998, the A.A.I.F.R. held that the enforcement of the instruments by the organisation listed in the order of the B.I.F.R. had only been suspended. The R.M.M.S. was not one of those organisations and was, therefore, held not to

be aggrieved by the order dated February 17, 1998 passed by the B.I.F.R.

17. In view of the orders dated February 12, 1998 and September 9, 1998 of the B.I.F.R. and A.A.I.F.R., it is now abundantly clear that the power to suspend settlements and Standing Orders which is vested in the B.I.F.R. by Sub-section 3 of Section 22 has, in fact, not been exercised by the Board. In fact, the Appellate Authority has expressly clarified that what was suspended was the enforcement of instruments only by the organisation listed in the order dated February 17, 1998. This factual position has again not been disputed by the learned counsel appearing on behalf of the Petitioner. The operation of the Standing Orders governing the employees of the Petitioner has not been suspended either by the B.I.F.R. or by the A.A.I.F.R. That being the position, in my view, the Standing Orders continue to hold the field. The Standing Orders have not been suspended and the remedy for the enforcement of the Standing Orders has continued to subsist notwithstanding the pendency of the proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985.

18. The provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 came up for consideration before the Supreme Court in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, . The issue before the Supreme Court was as regards the application of the provisions of the State Financial Corporation Act, 1951 and specifically Sections 29 and 31 thereof in relation to an Industrial Company which had been declared as sick under the Act of 1985. In para 6 of its judgment the Supreme Court set out the objects and underlying purpose of the 1985 Act in the following words:

"6. On the other hand, the 1985 Act was enacted, as its preamble manifests, with a view to timely detection of sick or potentially Sick Companies owning industrial undertakings, the identification of the nature of sickness through experts in relevant fields with a view to devising suitable remedial measures through appropriate schemes and their expeditious implementation. Here the emphasis is to prevent sickness and in cases of sick undertakings to prepare schemes for their rehabilitation by providing financial assistance by way of loans, advances or guarantees or by providing reliefs, concessions or sacrifices from Central or State Government, Scheduled Banks, etc. The basic idea is to review sick units, if necessary, by extending further financial assistance after a thorough examination of the units by experts and only when the unit is found to be no more capable of rehabilitation, that the option of winding up may be resorted to. It is for that reason that Section 22(1) provides that during the pendency of (i) an inquiry u/s 16, or (ii) preparation or consideration of a scheme u/s 17, or (iii) an appeal u/s 25, no proceedings for winding-up of the concerned Industrial Company or for execution, distress or the like shall lie or be proceeded with in relation to the properties of that concern unless B.I.F.R./Appellate Authority has consented thereto. The underlying idea is that every such action should be frozen unless expressly permitted by the Specified Authority until the investigation for

the revival of the industrial undertaking is finally determined. It is thus crystal clear that the main thrust of this special legislation is at revival or rehabilitation of the sick industrial undertaking and it is only when it is realised that the same is not feasible that the option of winding up of the unit can be I resorted to."

19. Having considered the provisions of the State Financial Corporation Act, 1951 and the Sick Industrial Companies (Special Provisions) Act, 1985 the Supreme Court held that both these Acts were Special Acts, the 1951 Act being enacted with a view to extending financial assistance to industrial concerns to provide a boost for industrialisation and the 1985 Act, to identify and rehabilitate Sick Industrial Companies. Both the Acts contained non obstante provisions. The Supreme Court held that the 1951 Act dealt with a pre-sickness situation and the 1985 Act dealt with the post-sickness situation. Both the statutes being special statutes, the Court held that in the case of sick industrial undertakings, the provisions contained in the 1985 Act would ordinarily prevail and govern. The Supreme Court also held that the words "any other proceedings in Section 22(1)" could not be given a narrow or restricted meaning to limit them merely to legal proceedings. Moreover, the words "or the like" which follow the words "execution" and distress" were intended to convey that the properties of the Sick Industrial Company shall not be made the subject matter of a coercive action of similar quality and characteristic till the B.I.F.R. finally disposes of the reference made u/s 15 of the 1985 Act.

20. The question as to position of the dues of employees of a sick industrial undertaking has come up for consideration in decisions of learned single Judges of this Court. In Baburao P. Tawade and Others Vs. Hes Ltd. Bombay and Others, Mr. Justice B.N. sriKRISHNA held that a proceeding u/s 33-C(2) of the Industrial Disputes Act, 1947 for the recovery of money due to an employee under a settlement would not attract the bar of Section 22 of the 1985 Act. Similarly, the writ jurisdiction of this Court under Articles 226 and 227 would not stand barred so as to prohibit the recovery of the earned wages of the workmen. The learned Judge relied upon a judgment of the Allahabad High Court in Modi Industries Ltd. Vs. Additional Labour Commissioner and Others, in which it was held that proceedings before the B.I.F.R. would not bar a recourse to the remedies under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 in respect of the wages of the workmen of the Industrial Company. The learned single Judge of this Court, after referring to the judgment of the Allahabad High Court, placed the Principle in the following words in Baburao P. Tawade and Others Vs. Hes Ltd. Bombay and Others, :

"11. No construction can be put upon the provisions of Section 22, which could result in a situation of exploitation of human beings, contrary to the provisions of our constitutional directives. I am, therefore, unable to accept the contention that the payment of earned wages to the workmen (it cannot be disputed that payment under settlement would be "wages" within the meaning of Section 2(rr) of the Industrial Disputes Act) was intended to be defeated by

invoking the bar u/s 22(1) or to drive the workmen to run to New Delhi for seeking the consent of the B.I.F.R. every time their monthly wages were required to be paid. That, surely, was not the Parliament's intention in my view. The reconciliation suggested by the learned Judge in Modi Industries case (supra) appeals to me and, therefore, the bar in Section 22(1) of S.I.C.A. must be held to apply only to such proceedings which are not required for the day-to-day running of the Sick Industrial Company, even under a sanctioned scheme or otherwise. Any other interpretation would lead to a ludicrous and unintended result."

A similar view has been taken by the learned single Judge of this Court Mr. Justice A.P. shAH in Modistone Ltd. and Others Vs. Deputy Commissioner of Labour and Others, in which it was held that the recovery of dues of the workmen under the Payment of Gratuity Act would not attract the provisions of Section 22 of the Act in the case of a Sick Industrial Company.

21. Insofar as the existence of vacancies is concerned, learned counsel appearing on behalf of the First Respondent submitted that in any event, the evidence shows that there were, in fact, 13 vacancies which did exist. In view of the evidence on the record both the Labour Court as well as the Industrial Court came to the conclusion that there were indeed vacancies and the Petitioner had not chosen to lead any evidence to rebut what had been stated on behalf of the workman. Apart from the aforesaid, the learned counsel for the First Respondent stated that no nexus has been established by the Petitioner between the abolition of posts as set out in Clause 7 of the settlement dated May 20, 2000 and the department wherein the First Respondent was working. I find substance in the submission particularly in the light of the fact that the Petitioner has not adduced any evidence at all before the Labour Court in regard to its case in regard to the non-existence of vacancies. The finding of the Courts below that there were thus existing vacancies, does not call for any interference. In any event, in view of the interpretation which I have placed on the provisions of Standing Order 4(11), the existence or otherwise of vacancies, would not disturb the entitlement of the First Respondent who is entitled to regularisation upon the completion of 240 days uninterrupted service in the preceding period of twelve months.

22. In the premises aforesaid, the petition is liable to be rejected. The Petition is accordingly dismissed. In the circumstances, there will be no order as to costs.

23. Certified copy of this order is expedited.

24. An ordinary copy of this order may be made available to the parties.