(1998) 12 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 7869 of 1998 and W.M.P. No''s. 11959, 11960 and 23608 of 1998

Sun Pharmaceutical Industries Ltd. Staff Union — APPELLANT

Vs

The State of Tamil Nadu and Sun Pharmaceutical Industries Ltd. — RESPONDENT

Date of Decision : 23-12-1998

Acts Referred:

Companies Act, 1956 — Section 394
Constitution of India, 1950 — Article 12, 226
Industrial Disputes (Central) Rules, 1957 — Rule 28
Industrial Disputes Act, 1947 — Section 10(2), 10A, 12(3), 18(1), 25FF

Citation : (1998) 12 MAD CK 0014

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : S. Silambanan and Habibulla Basha in W.M.P. No. 23608/98, for the Appellant; K. Balasubramanian, for Respondents 1 and 2 and Meenakshisundaram, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

K. Sampath, J.—The General Secretary of Sun Pharmaceutical Industries Ltd. Staff Union has filed the Writ Petition for direction to the

second Respondent, viz. The Assistant Commissioner, of Labour (Conciliation-I), D.M.S. Compound, Teynampet, Chennai-6, to complete the

conciliation proceedings of the dispute raised by the Petitioner on 1.6.1998 u/s 10-A of the Industrial Disputes Act, 1947 at the earliest within a

time frame as may be fixed by this Court on the following allegations:

M/s Dadha Drugs and Pharmaceutical Ltd., Dadha Nagar, Chennai-74, and the Tamil Nadu Industrial Development Corporation entered into a

joint venture programme and M/s Dadha Drugs Company was converted into M/s

Tamil Nadu, Dadha Pharmaceutical Industries Ltd. From the

year 1973 Tamil Nadu Dadha Pharmaceutical Industries Ltd. (hereinafter referred to as TDPL) was manufacturing various drugs and there were

about 1200 employees in various departments in various categories in TDPL throughout Tamil Nadu. The turnover rose from Rs. One crore to Rs.

65 crores and the company had been giving good dividends to the shareholders till 1997. In 1997 the Tamil Nadu Industrial Development

Corporation (TIDCO for short) floated its 26% share in TDPL and it was purchased by Sun Pharmaceuticals Industries Ltd. The Managing

Director Thiru S. Mohanchand Dadha informed the employees that TDPL would be merged with. Sun Pharmaceuticals Industries Ltd. (hereinafter

referred to as SPIL), that SPIL being a multinational company after the merger, the Chennai factory of TDPL would have full-fledged production

and would have expansion programmes, which would fee beneficial to all the employees of TDPL at Chennai. The amalgamation was effected

from 1.4.1997 by the order of Ahmedabad High Court dated 19.11.1997.

However, after the amalgamation the third Respondent company, viz. SPIL ignored the promises and suddenly closed down the Biotech

Department, a unit in Research and Development, Finished Product Stores and the Export Division at Madras. The apparent intention of SPIL

was to close down the entire factory at Madras, to retrench all the employees and put up a similar factory at Gujarat State and to employ workers

from elsewhere. SPIL intended to achieve this unfair labour practice by adopting dilatory tactics and to circumvent the provisions of the Industrial

Dispute Act, 1947 (hereinafter referred to as the I.D. Act), SPIL started transferring employees to Bhiwandi, Bombay in Maharashtra State, and

Baroda in Gujarat State. Even there the employees, who went on transfer were shunted from place to place and put to grave hardship and were

indirectly forced to tender resignation. In respect of two employees, who were packers and who were illiterate, the Management took signatures

on blank papers, gave them Rs. 1000/- each and were sent home to Madras and even before they reached Madras, the letters of their alleged

resignation reached the Madras Office. The number of persons transferred was 28, and out of 28, 16 were forced to resign. SPIL also did not

accommodate the staff according to their qualification, technical knowledge, etc.

In February, 1998 SPIL initially removed some machinery along

with raw materials and packing materials to their other units at various locations in North India. In April, 1998 SPIL informed that all divisions in

the Formulation Department would be closed. The machinery and raw materials of the Formulation Department had been packed and made ready

for shifting. It orally informed the employees that the Formulation Department would be closed down and all the employees would be shifted to

other places outside Tamil Nadu. Though prior to amalgamation the factory of TDPL at Madras was enjoying good reputation and there was a

heavy turnover and a good market, immediately after the amalgamation SPIL had taken immediate steps to close down the Madras Unit and to

transfer or retrench its employees at Madras.

The Petitioner Union gave a representation to the Government of Tamil Nadu, first Respondent, and Labour Minister. It also filed an application on

1.6.1998 before the Assistant Commissioner of Labour, Madras, the second Respondent herein, u/s 10(2) of the Act. The prayer is to direct the

Management of SPIL to provide job assurance to the employees at Chennai and to prevent the Management from shifting of the product. The first

and the second Respondents are seized of the matter and in the meantime the third Respondent should not be permitted to remove the materials or

transfer the employees, which would defeat the case of the Petitioner and the efforts taken by the Petitioner would be futile. The Petitioner had

reserved its right to challenge the amalgamation at a later date, if so advised.

2. Notice of motion was ordered on 11.6.1998. On 2.7.1998 it was adjourned to 3.7.1998 and on 3.7.1998 Mr. Meenakshisundaram, learned

Counsel for the third Respondent, prayed for time till 17.7.1998 for filing counter and he undertook not to, precipitate matters till then. On

17.7.1998 this Court observed as follows:

Originally an undertaking was given by the learned Counsel for the Management that matters would not be precipitated. That undertaking is still on

record; the Management to honour the undertaking.

3. In the counter filed by the Management it is alleged as follows:

The Writ Petition is an abuse of process of law. Admittedly, the Petitioner Union had raised a dispute only on 1.6.1998 with the second

Respondent, but had sworn to the affidavit in support of the Writ Petition on 6.6.1998 and filed the Writ Petition on 10.6.1998. Under the Act, the

Conciliation Officer had to have adequate time to move in the matter and the Writ Petition had been filed even before the second Respondent had

issued a notice calling the parties for a discussion. The Writ Petition is premature. It is nowhere alleged that the second Respondent had not taken

any action on the dispute raised by the Petitioner or that he had refused to act. In the absence of any such specific averment, a Writ of Mandamus

would not lie. The third Respondent filed Company Petition No. 298/97 before the Gujarat High Court and TDPL filed Company Petition No.

241/97 before this Court, both for framing of a scheme of amalgamation of the two companies. On 19.11.1997, the Gujarat High Court and this

Court on 4.11.1997 approved the amalgamation scheme.

Under Clause 2 of the Scheme of Amalgamation, with effect from the appointed date (1.4.1997) and subject to the provisions of the scheme in

relation to the mode of transfer and vesting, the undertaking of the transfer of company would, without any further act or deed, be and the same

would stand transferred to and vested in the transferee-company pursuant to the provisions of Section 394 and other applicable provisions of the

Act.

Under Clause 9 dealing with the. Scheme of Amalgamation, it has been clarified that the transferee-company would be eligible and entitled to effect

the transfer of the employees, of the transferor-company in ordinary and usual course of business and subject to business prudence the Board of

the transferee-company would be eligible to reassess and to reallocate any of the activities undertaken by the employees of the transferor-

company.

On a reassessment of the operations, the Board of the third Respondent company was of the opinion that business economics and prudence would

dictate that there should be no duplication of efforts or activity and that each of the units of the third Respondent must be able to concentrate on

certain of the products only. Pursuant to such decision the third Respondent initiated action for the transfer of production of some of the products

to its other units, while continuing the activities of the unit at Chennai in regard to the other items of production, it was also felt that the experience of the workmen of the Chennai Unit had gained over the years in their field of activity should be utilised at the place whereto the product had been

transferred. In consequence it had to transfer its certain employees to the other units of the third Respondent elsewhere in India. Those employees

who were so transferred informed that they were being transferred with a view to utilising their experience and potential and that they would be

paid a displacement allowance of Rs. 750/- per mensem as for others and where applicable a site allowance of Rs. 250/- per month and in

addition a 30% increase in their gross emoluments. Thus it would be clear that the transfers were genuine and the employees could have no

grievance as regards emoluments. The third Respondent did not close down the Biotech Department, Finished Product Stores and Export Division

at Chennai, but shifted them to other centres of operation in the interests of being effective after the amalgamation and on the basis of business

prudence. The allegation that this has been done with a view to retrench all the employees at Chennai and to put up a similar factory at Gujarat and

to employ workers from elsewhere, is not correct. It is a motive hunting with a motivated malignity. The stand of the workman is that they should

be provided with their job only at Chennai. The allegation regarding two workmen, that they were asked to sign blank papers and were given Rs.

1000/- each and that before they reached Madras, their resignation letters had reached their Chennai Office is also false. There is no attempt to

indulge in unfair labour practice. There is no dismissal and no victimisation can be pleaded as the Petitioner = Union had been formed on

28.5.1998 after the third Respondent had initiated action for transfer of products and employees. The transfers have been made not only in terms

of the Scheme of Amalgamation, but also under the enabling principles of the Certified Standing Orders of the transferor = company, by which the

staff were always governed. Standing Order No. 23 of the Standing Orders of TDPL modified and certified on 18.9.1987 on ""Transfer"" runs as

follows:

The Management will be at liberty to transfer workmen from department to department or Section to Section or to any or all other branches of

their establishment either existing now or which may be set up or established in future subject however that such transfer does not result in diminution of any benefit to the employees.

It has been held by the Supreme Court in The Management of Cipla Ltd. v. Shri Jayakumar and Anr. 1998 LLR 63 while interpreting the Standing

Orders of the establishment concerned that,

the Standing Orders did not in any way refer to or prohibit the transfer of a workman from one establishment of the Appellant to another, and that

there was no conflict between the said clauses.

In the present case the Standing Orders themselves provided for transfer to any location in India. It could not be said that the Standing Order of

TDPL would not be applicable to the third Respondent in view of the Scheme of Amalgamation. By its letter dated 30.5.1998, the Petitioner-

Union sought to dictate the manner of operation at the unit in Chennai. The apprehension regarding retrenchment had been belied as no staff had

been retrenched. In the Scheme of Amalgamation, the continuity of service had been agreed to and assured. No person could have a vested right

to be, posted at a particular location, when Standing Orders and Service Rules provide for transfers with no diminution in status or emoluments,

particularly so when the company'' went National with branches or units at various locations in India. Merely because some were not willing to go

on transfer, it could not render the action invalid, unjustified or illegal in the facts of the case. The second Respondent by his communication No.

B/1009/98 dated 8.6.1998 intimated the Petitioner-Union that having raised a dispute alleging that the erstwhile employees of Tamil Nadu Dadha

Pharmaceutical Ltd. were threatened of transfer consequent on the amalgamation, of the Unit with SPIL. He went oh to advice the third

Respondent to maintain status quo and desist from transferring the staff. On 12th June, 1998 the third Respondent wrote to the second

Respondent that the advice given ex parte without hearing them was not acceptable as being based on a misrepresentation of facts by the Union

and without having heard the Management and that the merger document had been approved by this Court by order dated 4.11.1997 in Company

Petition No. 241/97 and that the Unit at Chennai was one of the five factories of the third Respondent and that the employees and the staff had

been informed of this situation individually in writing by the letter welcoming them to SPIL after amalgamation. Closely following this, a letter dated

12.6.1998 was received from the Counsel on record for the Petitioner-Union about this Court having ordered notice of motion on 11.6.1998.

On 22.6.1998 since the staff members of the Petitioner-Union informed the Management that they had decided to blockade the movement of all

the drugs from the factory, a meeting was held by the Executives on 22.6.1998. At the meeting they were informed of the effects of their unwise

decision. They were also informed that the Management would be moving bulk drugs from the next day and if the staff resort to any blockade,

action should be instituted against the erring staff. The Union representatives agreed to reply at 9 a.m. next morning.

The Petitioner-Union by its letter dated 23.6.1998 agreed for the movement of bulk drugs, since it was only for third parties with whom contracts

had already been entered into for delivery. It also expressed the hope that the Management would not do anything as would precipitate the issues

pending in this Court and that raw materials, packing materials and machinery would not be removed. By another letter dated 23.6.1998, the

Petitioner-Union wrote staling that they agreed to the movement of bulk drugs against third party orders, but they would not allow transfer of bulk

drugs, raw materials, packing materials and machinery to other locations and associate companies as they would lose their employment in Chennai

Unit. They concluded the letter by saying that their earlier letter dated 23rd June, 1998 delivered in the morning be ignored. However, on

24.6.1998, a despatch of 6394 kgs. of drug on branch transfer through carriers was prevented by M/s Jeyachandra Jeeva and Manjunathan

resulting in the lorry having to be sent back without the material. On such report, the employees were by order dated 25.6.1998 placed under

suspension pending framing of charges.

Again, on 26.6.1998 such branch transfer was prevented by two other employees. They were also placed under suspension on 27.6.1998. On

29.6.1998, two other employees who indulged in the same activity were also placed under suspension on 30.6.1998. The staff members of the

Petitioner-Union had thus been indulging in physically preventing the legitimate movement of materials on the pretext that they had raised an

industrial dispute and filed a Writ Petition. The staff had been refusing access to the Management and its officers to any documents and records of the company also on the same pretext. The relationship between the Petitioner-Union and the third Respondent is only that of master and servant.

The Writ Petition is not maintainable. It has been held in W.P. No. 6926/98 that a Writ Petition under Article 226 of the Constitution would not lie

against the third Respondent. The second Respondent is seized of the matter and the action of the third Respondent having been in pursuance of

the Scheme of Amalgamation, the Writ Petition must be dismissed as devoid of merits.

4. Pending the Writ Petition, the Petitioner filed an application for an interim injunction in W.M.P. No. 11959/98 restraining the third Respondent

from shifting the machinery and raw materials from Chennai Factory or godown of SPIL to any other location and transferring any employees of

the member of the Petitioner = Union from their present place of work at Chennai, pending disposal of the Writ Petition. The apprehension

expressed in the affidavit in support of the Writ Miscellaneous Petition is that the third Respondent is likely to shift the machinery, raw materials,

staff and the employees pending the proceedings u/s 10(2) of the Act before the second Respondent. There is also an application in W.M.P. No.

11960/98 filed by the Petitioner-Union for a direction to the first and the second Respondents to take steps to prevent the third Respondent from

shifting the machinery and raw materials from Chennai Factory or godown of SPIL to any other location and transferring any employee/member of

the Petitioner = Union from his/her present place of work at Chennai pending disposal of the Writ Petition.

5. Additional affidavits have been filed on behalf of the Petitioner. The additional affidavit filed by the General Secretary of the Petitioner - Union

alleges as follows:

The third Respondent had issued a letter dated 28.5.1998 to about 9 of its staff stating that they would be transferring them as they had been

identified as potential persons. This letter was received by the concerned staff on 4.6.1998. Another letter dated 4.6.1998 was received by about

12 staff members on 5.6.1998 transferring them to various places thereby altering the conditions of service of the members of the Petitioner =

Association even without a notice thereby contravening the provisions of Section 9-A of the Act. The second Respondent had also advised the third Respondent to desist from transferring the staff. The same General Secretary has filed yet another additional affidavit on 3.8.1998 alleging as

follows:

As feared by the Petitioner--Union, the third Respondent in order to precipitate the matter and after being fully aware of the pendency of the Writ

Petition before this Court and the conciliation proceedings before the second Respondent, started issuing orders transferring many staff and also to

remove the machinery and other materials. Even at the time the Writ Petition came up for admission before this Court many transfer orders on bits

of paper without signature or seal, had come into existence. Thereafter, the third Respondent-Management tried to pressurise the staff into

accepting the transfer and by issuing letters stating that this was in appreciation of their work. The staff refused to accept the same. The

Management had packed the machinery.

The Petitioner was able to get a copy of the inter office memo dated 7.5.1998 from the Mumbai Office of the third Respondent to the Chennai

plant. As feared by the Petitioner, the inter office memo (fax) exposed the Management and justified the apprehension of the Petitioner. Again by

fax message to Chennai dated 27.6.1998, the Management had requested the Technology Transfer from Chennai of various products. The

management with a view to precipitate the matter before it is taken up for further hearing, proceeded in haste to issue suspension orders to the

President, General Secretary and Committee Members of the Petitioner - Association on the 25th and the 26th of June, 1998. Again about 7

persons were issued with transfer orders on 29.6.1998 and 15 persons were issued with transfer orders on 30.6.1998. When 13 staff members

received the transfer orders under protest, the Management refused to allow them to make such an endorsement. All of them were not allowed to

report for duty at Chennai. The Management had also managed to shift certain quantity of raw materials under some pretext or the other. The

Petitioner had also issued a letter dated 23.6.1998 regarding the same. The apprehension of the Petitioner that the Management would close down

that Unit at Chennai and also ultimately see to it that the staff are not able to continue in the third Respondent-Management had been established.

The Management has resorted to issuing suspension orders to hamper the functioning of the Petitioner-Association and this is an unfair labour

practice.

6. One Mohanasundaram has sworn to an affidavit on 3.8.1998 stating that on 21.3.1998, he was transferred and posted at Bhiwandi, State of

Maharashtra against his wishes, that due to compulsion by the third Respondent = Management, he joined at Bhiwandi on 20.4.1998, that

thereafter he was transferred to Bombay, that no attendance register was maintained, that he was directed to perform the job of Despatch Clerk,

though he was working as Senior Assistant in the third Respondent - Industry at Chennai from 15.3.1975, that the working conditions in Bombay

were not conducive, that he was not paid any salary, that he was informed that it was the discretion of the Management when to pay the salary,

that without any money and finance, he could not afford to live in Bombay, that when he complained, he did not get any proper response, that he

came back to Madras on 26.5.1998, that after the order of this Court, the Management offered to give some advance and that he had insisted the

Management to pay his due salary and not any advance and that till date he had not been paid his salary.

7. The Management has taken out an application in W.M.P. No. 23608/98 to record the proposal set out in the affidavit and to relieve the

Management of the undertaking already given and records by this Court on the following allegations:

This Court heard arguments in the week beginning 3.8.1998 and reserved orders and orders had not been passed till the date of the filing of the

Writ Miscellaneous Petition on 24.9.1998. The undertaking not to precipitate matters was given by the third Respondent, notwithstanding the

financial implications and losses thereby, in the hope that the matter would be disposed of in a few weeks. In consequence of the undertaking given

by it, the employees transferred to other locations bad not reported at the place of their postings and the Management had not forced them to go

on transfer. However, the posts at the other locations remain unmanned as it is not possible to recruit manpower for those posts when the

employees already there are on transfer and they have not gone. In the result, there is a work force at Chennai plant with no work, since the

products are not allowed to be shifted to the other locations where those products are required for further operations. The pharmaceutical

preparations or drugs have a specified shelf life and have to be used or put to further use within a specified time or their potency will expire and

become a loss. The very organisational programme of the merger rendering the operations at Chennai has come to a grinding halt with its effect at

the other locations. The proposals made are:

1. The manufacturing operations at the Chennai be suspended till the decision of this Court,

2. The employees who have been transferred will not be forced to go on transfer to their new place of posting, and

3. The employees who are not transferred be asked not to report for the work at the Chennai Plant but that they will be paid full wages due for

such period as the operations stand suspended.

8. A counter has been filed to this application to the following effect:

From the relief sought for by the Management in this Writ Miscellaneous Petition, it would be clear that the real intention of the Management as

feared by the Writ Petitioner has been spelt out. In effect the Management is finding fault with this Court. It is not correct to say that it is not

possible to recruit manpower in other locations. Transfer was effected only to diversify the entire production to other locations. The persons

transferred could be retained at Chennai and work could be continued in the Chennai Plant if the Management so desired. Products are being

transported and sales are effected from June, 1998 till date and the sale value works out to approximately Rs. 9 Crores which is the normal

turnover of the Chennai Plant. There is no substance in saying that the drugs could lose, their potency. The Management itself in its affidavit in para

9 admitted that the operations at Chennai has come to a grinding halt. When the Court had asked the Management not to precipitate matters by

transferring or suspending, they had acted against the order of the Court. When the Labour force and the staff are available at Chennai and willing

to work, the operations cannot come to a grinding halt, unless the Management desired that. It is only because of the unfair labour practice by the

Management, the morale of the employees has been greatly affected. The Management has all along been wanting to suspend operations at

Chennai Plant and to remove the employees. The very offer of the Management in the Writ Miscellaneous Petition saying that it is willing to

continue the undertaking, but the manufacturing operations at Chennai Plant be suspended and the employees whether transferred or not, should

not report for duty, but would be paid full wages as the operations had been suspended, makes the attitude and intention of the'' Management

crystal clear. In the counter before the second Respondent herein Assistant Commissioner of Labour, the Management has stated that it initiated

the action for transfer of production of some of the products to its other units while continuing the activities at the Chennai Plant in regard to other

items of production. It had also conceded before the second Respondent that machinery not required at Chennai alone were moved to other

locations. However, facts contrary to the undertaking are stated in the present affidavit. The application has been filed solely for the purpose of

getting its operations suspended under the auspices of this Court and thereafter to continue its unfair labour practice and effect the employees

transfer and ultimately see to it that they are not able to continue their services. The Management having given an undertaking before this Court that

they would not precipitate matters, had acted contrary to the same and pressurised one of the Union Members Ms. Usha Abraham to join in her

transfered place in North India and when she did not join, the Management terminated her from service unceremoniously. This would amount to

contempt of the orders of this Court. The Management wants to by pass the provisions of the Act. It is an open secret that the third Respondent

had left, its employees in the lurch. By granting the prayer in the Writ Miscellaneous Petition, the employees would be denied justice. The

inconsistent stand of the Management proves its intention to play fraud on the Petitioners. The petition is liable to be dismissed.

9. Mr. Silambanan, learned Counsel for the Writ Petitioner, submitted that the Management had resorted to unfair. labour practice and their

intention was to shift the entire operations out of Madras and if this was allowed to fructify, the entire work-force would be seriously affected and

would practically be in the street. The learned Counsel pleaded that till such time the second Respondent disposed of the application for

conciliation, the Management should be prevented from shifting the operations from Chennai to other places.

10. Mr. Meenakshisundaram on the contrary submitted that they were acting only as per the terms of the amalgamation and there was no shifting

of operations, that shifting the place of business by employer would not amount to alteration of the condition of service and that the employer had

an inherent right to choose its place of business. The learned Counsel further submitted that unless the shifting the place of business had adversely

affected the workers, it could not be brought under item 11 of Section 9-A. The learned Counsel also submitted that the Management had every

right to reorganize its work.

11. The, learned Counsel also relied on the following decisions in support of his contentions:

(1) Shalimar Paints Ltd. Vs. The Third Industrial Tribunal of West Bengal and Others, .

(2) Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, .

(3) Workmen of Deccan Sugars v. Nava Bharat Ferro Alloys Ltd. and Ors. 1993 II LLN 173 and

(4) Workmen v. India Forge and Drop Stampings Ltd. and Anr. 1996 II LLN 813.

12. Let us first deal with the preliminary objection regarding the maintainability of the Writ Petition. It is the contention on behalf of the third

Respondent that the actual relief is sought for only against the third Respondent, who is not a public authority or a State under Article 12 of the

Constitution of India and no mandamus could be issued against the third Respondent. In paragraphs 61 to 63 of the counter, it is stated as follows:

61. Divorced of the main prayer seeking a mandamus to the second Respondent, the instant Writ Petition would virtually be in the nature of a Writ

Petition for the relief prayed for against this Respondent, which is a company registered under the Companies Act and the relationship between

which and the members of the Petitioner - Union is only that of master and servant. The first Respondent has nothing to do with this Respondent.

62. It is respectfully submitted that such a Writ Petition will not lie against this Respondent, which is a company not amenable to the Writ

jurisdiction under Article 226 of the Constitution of India, as recently held by His Lordship Subramani, J. on 2.5.1998 in W.P. No. 6926/98 that a

Writ Petition under Article 226 of the Constitution of India will not lie against this Respondent.

63. The indecent haste with which the Petitioner - Union had come before this Hon''ble Court with this Writ Petition, ostensibly for a direction to

the 2nd Respondent to expeditiously complete the conciliation, which the second Respondent had not even had the time even to initiate, shows that

it was in fact only for seeking interim orders of this Hon''ble Court in the Miscellaneous Petition filed.

13. Let us immediately refer to the decision of S.S. Subramani, J. in W.P. No. 6926/98 referred to in paragraph 62 of the counter. That Writ

Petition was filed by one Usha Abraham (who will figure in the course of this discussion again) for a mandamus restraining the first Respondent

therein, who is the third Respondent in the present Writ Petition, from implementing the proceedings issued by letter dated April 11, 1998 read

with its subsequent letter dated April 23, 1998 seeking to transfer her from Chennai to Patna ostensibly promoting her as Manager, Sales

Promotion, of Respondent No. 1. The Writ Petition was resisted on the ground that the third Respondent herein was not discharging any public

function. The learned Judge, after referring to a number of decisions touching the point in paragraph 12 of his order, observed as follows:

The sum and substance of all these decisions is that there must be a primary duty on the part of the 1st Respondent to do service to the public. As

was held in ATR 1989 SC 1607 (cited supra) relied on by the Counsel for the Petitioner, it is purely a private body with no public duty, and

therefore, there is no question of issuance of Writ of Mandamus as against it.

In the course of his order, the learned Judge referred to the decision of the Supreme Court in The Praga Tools Corporation Vs. Shri C.A. Imanual

and Others, and extracted paragraphs 6 and 7 of the said judgment. However, for the purpose of this case, it is enough if a portion of paragraph 6

of the said judgment is adverted to:

No doubt, Article 226 provides that every High Court shall have power to issue to any person or authority orders and writ including writs in the

nature of habeas corpus, mandamus, etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for

any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of

which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an

office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a

company towards its workmen or to resolve any private dispute.... A mandamus would also lie against a company constituted by a statute for the

purposes of fulfilling public responsibilities.

14. In Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others,

Praga Tools case was considered and the learned Judges of the Supreme Court observed as follows:

If the rights are purely of a private character, no mandamus can issue. If the management of the college is purely a private body with no public

duty, mandamus will not lie. These are two exceptions to mandamus.

The statute is phrased in flexible terms. It gives scope for development. It uses the words ""having regard to"". Those words are very indefinite. The

result is that the Courts are not bound to ""Have regard to"" it. So the previous law as to who are - and who are not - public authorities, is not

absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the Judges can develop the

public law as they think best. That they have done and are doing.

In the Writ Petition before the learned Judge what was challenged was the order of transfer of the Writ Petitioner Usha Abraham. There was no

public duty involved in the matter of transfer of an individual worker and having regard to the facts and circumstances obtaining in that case, the

learned Judge held that a Writ of Mandamus would not lie. The learned Judge also adverted to the fact that mere impleading of the State of Tamil

Nadu represented by Commissioner and Secretary, Department of Industries, as a party Respondent (without any relief being asked for against it)

would not make the position any different. The learned Judge referred to the judgment of the Delhi High Court in P.B. Ghayalod Vs. M/s. Maruti

Udyog Ltd. and others, wherein it was held that,

Maruti Udayog Ltd. is also a company, not amenable to writ jurisdiction. Merely because once upon a time the State had some shares, which had

also subsequently been taken back by it, that would not make the company a public utility company amenable to writ jurisdiction of the Court.

The position with regard to the first Respondent herein is also, no doubt, identical. But the essential difference between the case decided by the

learned Judge and the present case is that relief sought for here is against the first and the second Respondents, who would both satisfy the

definition of State of other authority under Article 12 of the Constitution of India.

15. In P. Madhavan v. Binny Ltd. represented by its General Manager, Personnel and Administration, Madras 1992 I LLN 574 in paragraph 11

of the judgment the law regarding mandamus has been set out as under:

The basic Rule has been settled without any ambiguity that the condition precedent for the issue of a mandamus is that there is in one claiming it, a

legal right to the performance of a legal duty by one against whom it is sought. The rights, privileges and the significance of the post are those

discernible from the statutory provisions and the Petitioner, the incumbent in the post of a Welfare Officer is certainly entitled to those statutory

rights, privileges and significance; and correspondingly there is a duty cast upon the Respondent, the management to preserve them without

abrogating them except in the manner known to law. When there is a breach of them, certainly this Court can issue the Writ of Mandamus to

restore those rights and privileges and repair the damages done to them. The Petitioner can be said to be aggrieved when he has been denuded of

the statutory rights and privileges by the Respondent, who has a legal duty to preserve them or to abstain from doing away with them. In this

behalf, the principles noted by the Bench of the High Court of Allahabad in Synthetics and Chemicals v. C.C. Kumar 1972 (25) F.L.R. 146

regarding issue of a Writ of Mandamus which we have extracted as above, do form a succulent guide. On the question of issuance of mandamus,

the concept is getting very much enlarged....

The Bench thereafter referred to the judgment of the Supreme Court in Anadi Mukta Sadguru Shree Muktajee already adverted to. It will be

worthwhile to reproduce the principles summed up in the Allahabad case referred to by the Bench in this connection in Synthetics and Chemicals

Ltd.

(1) Mandamus may issue to a trading corporation to compel it to do its duty which is of a public nature.

(2) A duty is of a public nature if it is imposed by charter, common law or statute.

(3) Mandamus may issue to restore a person to a corporate office if the office is of a public nature.

(4) The office is of a public nature if it is created by a statute and the duties of the office affect the general public or a Section thereof.

(5) Article 226 empowers the High Court to issue a writ in the nature of mandamus. The power may be exercised, keeping in regard the broad

and fundamental principles which guide the issue of mandamus.

16. In Mettur Chemicals and Industrial Anna Workers Union v. Chemicals and Plastics India Ltd. 1995 I LLN 258 Kanakaraj, J. (as the learned

Judge then was) had occasion to consider the maintainability of a Writ of Mandamus for injuncting the management from closing down its limestone

mine without obtaining permission from the prescribed authority under Sections 25-N, 25-O and 25-M of the Act. The learned Judge, though

dealing with a Writ Miscellaneous Petition, held that the writ was maintainable. The learned Judge in the course of his judgment referred to the

judgment of the Supreme Court in Anadi Mukta Sadguru Shree Muktajee etc.

17. The complaint of the third Respondent - Management that under the cloak of seeking reliefs against Respondents 1 and 2, the Petitioner-Union

is trying to seek interim orders against the third Respondent and therefore, the Writ Petition is not maintainable, is answered by the judgment of

Kanakaraj, J. (as the learned Judge then was). In my view, the judgment of Kanakaraj, J. (as the learned Judge then was) is a complete answer to

the objection raised by the third Respondent against the maintainability of both the Writ Miscellaneous Petitions and the Writ Petition.

18. In V. Sadasivan and Ors. v. Binny Ltd. and Anr. 1998 I LLN 235 the First Bench of this Court after an exhaustive reference to the case law

on the point extracted the analysis by an earlier Bench in Madras Labour Union v. Binny Ltd. and Ors. 1995 I LLN 687 and the same is set out as

under:

On an analysis of the above rulings, the following propositions emerge:

(1) A private body which is not a ''State'' within the meaning of Article 12 of the Constitution of India is not generally amenable to Article 226 of

the Constitution.

(2) A writ will issue against a private body to protect the fundamental rights declared under Part III of the Constitution of India.

(3) A writ will issue in extra ordinary circumstances if the monstrosity of the situation warrants it.

(4) A mandamus will be issued against a private body, if there is no equally convenient remedy and if there is a public duty.

(5) The implementation of a settlement u/s 12(3) of the Industrial Disputes Act is not a public duty and no writ will lie against a private body.

(6) If the features are patent and they establish gross violation of the mandates of law, the jurisdiction under Article 226 of the Constitution could

be exercised to quash a settlement u/s 18(1) or Section 12(3) of the Industrial Disputes Act.

19. I have, therefore, no doubt that the writ petition is maintainable as also the writ miscellaneous petitions for interim reliefs, if a case is made out

satisfying the requirements.

20. Let us now go in to the merits of the case. The contention of the Writ Petitioner as set out in the affidavit in support of the Writ Petition is three

- fold.

(a) The third Respondent - company is adopting unfair labour practice and is trying to close down the factory or unit at Madras by circumventing

the provisions of the Act and in particular, certain provisions under Chapter V-A and V-B of the Act relating to retrenchment and closure. To

prevent the third Respondent from getting away with such an unfair labour practice, the first and the second Respondents have to pass orders

preventing the third Respondent from shifting the materials and staff from Madras as any such action of the third Respondent would defeat the

cause for which the Petitioner is fighting and all the efforts would become futile.

(b) The steps taken by the third Respondent in the last few months after amalgamation had brought out the intention of the third Respondent to

close down the Unit and retrench or remove the staff. If only the Petitioner - Union had seen through the intention of the third Respondent earlier,

they would have opposed the amalgamation. The first and the third Respondents before whom the matter is pending, cannot remain a silent

spectator to the grievance of the Petitioner when lives of hundreds of staff and employees are involved.

(c) The Petitioner had sent a letter to the Government of Tamil Nadu and Chief Minister and Labour Minister to intervene in the matter. The dispute u/s 10(2) of the Act is pending before the Assistant Commissioner of Labour, the second Respondent herein, who will take some time to

resolve the dispute as the third Respondent - company had decided not to participate in the conciliation proceedings without causing delay. If in the

meantime the third Respondent is allowed to shift the machinery and transfer the staff and employees, it would defeat the ends of justice.

21. In the counter filed on behalf of the third Respondent these averments are met as follows in paragraph 59:

Also the averments and allegations made in the grounds to the Writ Petition would require factual enquiry, which is well within the scope of the

conciliation before the second Respondent and not under Article 226 of the Constitution.

Paragraph 60 of the counter is also relevant and it is as follows:

If the submission that the Writ Petition is premature is accepted, then the interim directions and orders prayed for, which in any even do not arise

from or are related to the main prayer, are incapable of being countenanced by this Hon''ble Court under Article 226 of the Constitution.

It cannot be contended that the interim directions and orders prayed for do not arise from or are not related to the main prayer. They are indeed

interlinked and not dissociated in any way. If during the pendency of the conciliation proceedings, the third Respondent removes the machinery,

transfers the staff and shifts the area of operation from Chennai, the very purpose of conciliation would be defeated and it cannot therefore be

contended that the main prayer and the interim prayers are unrelated. If only the third Respondent would keep his hands off till such time the

conciliation proceedings get over, the interim prayers would be redundant or unnecessary. But the third Respondent is not willing to such a course

as would be evident from its filing a Writ Miscellaneous Petition for relieving the company of the undertaking not to precipitate matters, after

recording the proposals set out in the affidavit in support of the said Miscellaneous Petition. At the risk of repetition the proposals are set out once

again:

1. The manufacturing operations at Chennai be suspended till the decision of this Hon''ble Court;

2. The employees who have been transferred will not be forced to go on transfer

to their new place of posting; and

3. The employees who are not transferred be asked not to report for the work at the Chennai Plant, but that they will be paid full wages due for

such period as the operations stand suspended.

22. In my view, it suits them fine if the manufacturing operations at Chennai are suspended because the very complaint of the Petitioner-Union is

that the Management is taking serious steps to wind up the department at Chennai and shift elsewhere jeopardizing the livelihood of many a

workman. I seriously suspect lack of bona fides in the proposals on behalf of the third Respondent-company.

23. Let us have a look at the materials available in the case to find out whether there is justification for the Petitioner-Union to complain against the

Management of unfair labour practice in utter disregard of the provisions of the Act. On 28th of March, 1998 a letter was addressed by a Director

of the third Respondent-company to one Mohanasundaram. The relevant portion of the said letter runs as follows:

Dear Sir,

You are aware that before Sun Pharma taking over, TDPL had a separate Stores for distribution of finished goods. Unfortunately, due to the

changes brought out by the merger and also the decision to centralise the Warehousing at Bhiwandi, Mumbai, Maharashtra, the department now

has become redundant, with no work. You are also aware of this reality.

This reality necessitates our having to close down the department. However, on the basis of asssurances, we have given to the Statutory

Authorities about safe-guarding your interests, we are making special effort to relocate you in the Central Warehouse at Bhiwandi where we will

be able to utilise your qualitative services.

24. On 7.5.1998 an office memo from Sunil Mehta, SPIL, Mumbai to Mr. D''Souza, SPIL, Chennai, was issued and it is to the following effect:

You have received the statement of WIP/RM/&PM sent by you to Shri Hiren Desai. Please send the following details/confirmation along with Mr.

Dadha who is coming tomorrow.

(1) WIP will be converted into finished goods by next week, i.e. you have enough packing materials, so that the factories to which products are

transferred can plan production accordingly.

(2) The details of raw materials and packing material that will be left after completing production of formulation planned there. Kindly send the

statement of excess RM & PM against each product so that the detail for transferring the same can be worked out properly.

25. On 28.5.1998, a letter from the Petitioner to the third Respondent was sent calling upon the third Respondent to recognize the Petitioner-

Union as the sole representative of SPIL. On 30.5.1998 to a very detailed letter was written to the Management setting out the apprehensions. It

would be relevant to quote certain portions of the said letter.

After merger with SPIL production at Dadha Nagar of both bulk drugs and formulations have been systematically transferred to Baroda. This has

been done mainly to revive one of the sick units at Baroda not only the productivity transferred but most of the machinery have also been removed

and shifted to Baroda factory....

The equipments, instruments and machinery with all accessories removed from Dadha Nagar and shifted to Baroda are as follows:... Tidigesie

injection which gave employment to about 60 TDPL employees has been shifted to MJPL, Baroda, only to revive the sick unit.

Sodium valproate, the bulk drug, which gave employment to about 15 TDPL employees has been shifted to Pradeep Drug Co., another sick unit

owned by one of the Directors.

The Director of the Company Mr. Mohanchand Dadha has informed the employees the intention to shift the formulation production and close

down at Dadha Nagar Factory.

As a preparation to this move, the Management has started packing and shifting more TDPL machinery to Baroda.

The Director also informed that the R & D at Dadha Nagar will be closed down.

The Biotechnology Division at Dadha Nagar has been already closed down and the employees were transferred to Baroda. Their fate is critical.

Some of our Stores'' people were transferred to Bhiwandi and subsequently asked to report to Mumbai without any proper information. They are

facing unusual treatment at the destinations.

On 15.5.1998 and 16.5.1998, all the Chemists working at Formulation

Departments at Dadha Nagar were asked to attend the interview at

Branch Office. The Director Mr. Mohanchand Dadha and one more official from Baroda interviewed them. Only a few have given consent for

transfer. In this situation, retrenchment is anticipated.....

The Management is bent upon depriving livelihood of about 500 employees and their dependants.

26. On 1.6.1998, the Petitioner filed a statement under Rule 28 of the Rules raising a dispute regarding the shifting of products and transfer of

employees. The necessary application u/s 10(2) of the Act was also filed. Necessary objection regarding the shifting of the machinery, products

and transfer of employees and staff was also raised.

27. On 4.6.1998, Mr. Senthil Kumar of Chennai received a communication from the third Respondent from Mumbai stating that it had been

decided to post Senthil Kumar at Baroda, Gujarat. On 8.6.1998, the Conciliation Officer, viz. the second Respondent herein, addressed a letter to

the Director of the third Respondent company stating that the Union had raised a dispute u/s 2-K of the Act alleging that the erstwhile employees

of Tamil Nadu Dadha Pharm. Ltd. were threatened with transfer consequent on the amalgamation of the Unit with SPIL and the matter had been

taken up for discussion and it was posted on 22.6.1998 at 12 noon. The letter further advised the third Respondent to maintain status quo and

desist from transferring the staff.

28. On 12.6.1998 after notice of motion was ordered in the Writ Petition by this Court, the Petitioner''s lawyer communicated to the Respondents

in the Writ Petition about the filing of the Writ Petition and the ordering of notice of motion returnable in two weeks. On 12.6.1998 the third

Respondent addressed a letter to the second Respondent stating that the advice to maintain status quo had been given without hearing them and

the same was not acceptable as being based on a misrepresentation of facts by the Union and without having heard the Management. The letter

further states as follows:

Our company took on merger by amalgamation M/s Tamil Nadu Dadha Pharmaceuticals Ltd., while such merger was agreed between us, it was

agreed that the services and emoluments of the employees of Tamil Nadu Dadha Pharmaceuticals Ltd. will be protected and it was also agreed that relocation if need be will be resorted to as approved by the Hon''ble High Court in its order dated 4.11.1997 in Company Petition No.

241/97.

Our Company having its Head Office at Musmbai has in all 4 factory units in addition to the Chennai Unit (TOPL) which was recently taken over.

Thus this unit at Chennai constitutes a Unit of our Company as a whole and employees and staff are fully aware of this situation having been

individually informed in writing by our letter welcoming them to SPIL after amalgation.

Relocation by way of posting at one of the Units of the Company by reason of need and necessity will not amount to ""Transfer"" as alleged.

Whenever to submit that any disturbance to or interference with the functioning of the Management to efficiently run the establishment will not be in

the best interests of the employees. We will be attending the next hearing of the dispute on the 22ndd instant.

29. On 23.6.1998, the President of the Petitioner-Union wrote a letter to the Management referring to the discussion held on the previous evening

regarding the movement of bulk drugs and that they had agreed for such movement as it was promised by the Management that such movement

was meant for sales to third parties in respect of which agreements had already been entered into. The letter also expressed a hope that the

Management would not do anything against the order of the second Respondent and against the undertaking given to the Court that it would not

precipitate the matter. This letter is followed by another letter on the same day saying that they would not allow the packing materials and

machinery to be removed as the members of the Petitioner-Union would lose their employment in Chennai Unit if the same is allowed. A further

request is made to continue the production of bulk drugs and formulations in Chennai Unit. The earlier letter on the same day is to be ignored.

30. On 25.6.1998, one Purushothaman from Distribution reported to the Director as follows:

Yesterday (24.6.1998) we had prepared despatch document for the branch transfer for 6.394 kgs. of Buspirone Hcl for SPIL VAPI. The Gati

Courier van arrived at 4 p.m. At the time of loading, Mr. Jeeva and Mr. Manjunathan came to stores and told us not to branch transfer any bulk drug. Hence we could not despatch the goods and we cancelled the documents already prepared. This is for your information.

On the basis of this report of Purushothaman, suspension orders were issued on 25.6.1998 to Jayachandra Jeeva and Manjunathan. Again, on

26.6.1998, Purushothaman reports to the Director that Sundaram and Sivaprakasam, two Committee Members, came to the store and informed

that they were allowing third party sales of bulk drugs and export sales, but would not allow branch transfers and because of that goods could not

be sent as planned. On the basis of this report of Purushothaman, Sundaram and Sivaprakasam were suspended on 27.6.1998. There were further

reports by Purushothaman on 30.6.1998 and 1.7.1998 about the members of the staff Union preventing branch transfers.

31. While matters pending thus, transfer orders were issued to Meenakshi on 29.6.1998, to K. Kumar on 30.6.1998 and T.B. Kumar on the

same date. Meenakshi was sought to be transfered to Silvassa, K. Kumar to Halol and T.B. Kumar to Baroda. Both the Kumars had received the

transfer orders under protest and without prejudice. So far as Meenakshi is concerned, she also received the transfer order but had not stated that

she received it under protest.

32. On 4.7.1998, a letter was written by the General Secretary of the Petitioner-Union to the Management requesting the Management to keep

the orders of suspension in abeyance until further orders by the Court. A further request was also made in that letter to allow the staff who had

been transferred and suspended to continue to work in Chennai pending finalization of the matter. A reply is sent by the Management on 6.7.1998

stating that orders issued prior to 3rd July, 1998 would stay as the undertaking not to precipitate matters, was only on 3rd July and the

Management would not precipitate matters by enforcing the transfer orders. The request for keeping the suspension orders in abeyance did not

arise as especially it had already been assured that matters would not be precipitated. However, to permit the transferred staff to continue to work

in Chennai would be going beyond the assurance and that request would not be acceded to.

33. On July 21, 1998 Usha Abraham, the Writ Petitioner in the earlier Writ Petition decided by S.S. Subramani, J. W.P. No. 6926/98 received a

letter terminating her services with immediate effect. However, the letter said that in case she decided to join duty at Patna, she could do so within

fifteen days of receipt of the said letter. On 31.7.1998 and 3.8.1998 this Court heard the matter and reserved orders on 3.8.1998. On August 14,

1998, Usha Abraham received another letter from the Management stating that in spite of several opportunities having been given to her, she had

not joined duty at Patna and that they had no alternative other than to treat that she was not interested in joining duty at Patna and in view of that

her services were being terminated. A cheque which included three months salary was enclosed to the notice.

34. On 23rd September, 1998, a news item in the Economic Times appeared as follows:

Sun leads race for American Remedies.

In the writeup it is stated as follows:

Sun Pharmaceuticals and RPG group appear to be the only two suitors remaining in the race to take over the Chennai based American Remedies

Ltd. Two others, Ranbaxy Laboratories and Nicholas Piramal, who were earlier believed to be interested, categorically denied on Wednesday that

they are not in contention.

It would be relevant to refer to a further portion of the said news items.

Sun took over Tamil Nadu Dadha last year, and moves to get staff to shift out of Dadha''s units in the State to other Sun locations in Gujarat have

gone down very badly.

In fact, an ARL director has been quoted as saying that staff ""would not be left in the lurch as was done in a similar takeover of a pharma firm"", a

reference to Sun''s takeover of Dadha.

35. Mr. Habibulla Basha, learned Senior Counsel for Mr. Dwarakanathan, learned Counsel for the third Respondent, submitted that the

apprehension of retrenchment was misconceived. There was no closing down of the units at Madras, that there was only rationalization outside the

purview of Section 9-A and Schedule IV of the Act and that the Scheme of Amalgamation only implemented the provisions of Section 25FF of the

Act. It was further submitted that the workmen obstructed the movement of material and the suspension orders were issued only thereafter and that in any event larger relief could be had by going before the authorities under the Act. The decisions relied on by the learned Counsel have

already been listed.

36. In Shalimar Paints Ltd. Vs. The Third Industrial Tribunal of West Bengal and Others, Calcutta dealing with Section 9-A of the Act, the

Calcutta High Court held that shifting the place of business by employer did not empower the employees to contend that it would amount to

alterations of the consideration of service requiring notice u/s 9-A and that the employees were not entitled to claim extra travelling1 allowance. In

that case, the Petitioner = company shifted its entire undertaking from 6, Lyons Range, Calcutta, and moved its head office to Goabaria, Howrah,

where it had been having its factory for a long time past. The shifting was due to the fact that the managing agency agreement was terminated. The

workmen claimed extra travelling allowance and the dispute relating to it was referred to the Industrial Tribunal, which passed an award directing

payment of extra travelling allowance. This award was challenged in the Writ Petition, it was held that,

the employer had an inherent right to choose his place of business. The fact that some of the employees may have to incur additional expenses by

way of travelling as a result of employer''s business or undertaking does not entitle the employee to make a claim for extra benefit or compensation.

The expression ""transfer"" connotes that an employer has more than one place of business and the employee is called upon to work in a different

place of business from the one in which he worked previously.

Having regard to the facts of the case, it was held that there had been no transfer of the employees in that case and that the reference which

proceeded on the footings that there had been such a transfer must be held to be incompetent. There is no doubt that the employer has an inherent

right to choose his place of business. In that case the business was shifted from a place in Calcutta to Goabaria in Howrah. The ratio has no

application to the facts of the present case.

37. In Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, a three Judges Bench of the Supreme Court held thus,

Section 9-A requires notice to be given to the workmen likely to be affected and unless it is shown that the abolition of any department has adversely affected the workers, it cannot be brought under item 11 of Schedule IV relating to Section 9-A of the Act.

It was held by the Supreme Court that,

the management has got the right to reorganise its work in the manner it pleases.

It was held that,

it was rationalisation and standardisation indulged in by the management and Section 9-A of the Act was not required to be complied with.

Rationalisation or standardisation by itself would not fall under item 10 of Schedule IV unless it is likely to lead to retrenchment of workmen.

In my view, this decision does not in any way advance the case of the management at this stage of the proceedings.

38. Prima facie I am satisfied that this is a case of total obliteration and extinction of the identity of the company and a cessation of all activities at

Chennai. The transfer concept advocated is only a camouflage for closure lacking in bona fides with a view to avoiding the provisions of the Act

relating to closure, like giving of notice, payment of closure compensation and obtaining the prior approval of the Government, which is a

mandatory requirement. In paragraph 30 of the counter, the Standing Order of the quondam company DPIL is sought to be relied on. Even

assuming that the said Standing Order is applicable, it is not as if DPIL is transferring its workmen from department to department or Section to

Section or branch to branch. It is a case of a transplantation of workmen from one company to an entirely different organisation situate in the

distant States of Maharashtra, Gujarat and Bihar. In my view, the Standing Orders relied on by the third Respondent cannot in terms apply to the

case on hand. The threat does not appear to be imaginary. It is not a false alarm either.

39. In Workmen of Deccan Sugars v. Nava Bharat Ferro Alloys Ltd. and Ors. 1993 II LLN 173 Srinivasan, J. (as the learned Judge then was)

held that, transfer having regard to the facts and circumstances of that case was not closure and that there were separate sections for transfer and

closure. The transfer of undertaking would not tantamount to closure of the undertaking within the meaning of Section 25-O of the Act. The

learned Judge held that in case of transfer of undertaking, the employer was not bound to comply with the requirements of Sections 25-N and 25-

O of the Act, which are found in Chapter V-B. The learned Judge further held that,

it is futile to contend that Section 25-N would apply to termination of employment on transfer of undertaking also even though the Section does not

refer to it and on the other hand it refers only to retrenchment. Termination of employment or closure of undertaking is not retrenchment.

The decision has no application to the facts of the present case.

40. In Workmen v. India Forge and Drop Stampings Ltd. and Anr. 1996 (2) LLN 813 the test for closure and lock out were laid down and it was

held by the Bench that,

closure was not merely closing down the place of business, but the business itself must be relinquished clearly and unmistakably. The lock out is

closure of place and not closure of business itself. If the employer closes one place of business only and continue business through other units

through another agency, it is not closure.

In that case, the Tribunal held that stoppage of work at Ambattur Unit was not a closure in law, but only a lock out and consequently directed

reinstatement of workmen with 50% backwages. This was held to be proper by the Bench. This is not applicable for the present to the facts of the

present case. It was after adjudication of the respective rights. In paragraph 19 of the said judgment, the Bench dealing with the scope of powers

under Article 226 of the Constitution observed as follows:

It is by now well settled that though the jurisdiction under Article 226 of the Constitution of India is truly wide, but for that very reason it has to be

exercised with great circumspection and it is not for the High Court to constitute itself into an Appellate Court over the Tribunals constituted under

special legislations to resolve the disputes of a kind qualitatively different from ordinary civil disputes and to read judicate upon questions of fact

decided by those Tribunals. Be it that such questions decided pertain to jurisdictional facts since that by itself does not entitle the High Court to

interfere with the findings on jurisdictional facts, which the Tribunal is well competent to decide in the same manner as an Appellate Court can

interfere with any finding of fact. We are very much alive to the position that there are no limits as such on the scope, extent and content of the powers under Article 226 of the Constitution of India. There are, at any rate, certain and well-settled self-imposed restrictions, which the Courts,

except under extraordinary cases of monstrous circumstances of the situation or in order to answer the extreme calls of distress, would not

normally undertake to interfere.

I am satisfied that this is a case of extreme call of distress requiring interference under Article 226 of the Constitution.

41. In Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], dealing with the scope of Article 226 of the

Constitution the Supreme Court observed as follows:

The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein, but also any order or

direction to enforce any of the fundamental rights and ""far any other purpose"".... For a public law remedy enforceable under Article 226 of the

Constitution, the action of the authority need to fall in the realm of public law be it a legislative act, executive act of the State or an instrumentality or

a person or authority imbued with public law element. The question is to be determined in each case.

42. In Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, the Supreme Court observed as follows:

The scope of the power under Article 226 is very wide and ex facie confers a wide power on the High Courts to reach injustice wherever it is

found. The High Courts can mould the reliefs to meet the peculiar and complicated requirements of this country.

43. In Union of India (UOI) and Others Vs. R. Reddappa and Another, it is stated as follows:

When once the Court is satisfied of injustice or arbitrariness, then the restriction as imposed or statutory stands removed and no Rule or

technicality on the exercise of power can stand in way of rendering justice.

44. If as contended by the third Respondent, they are not acting contrary to the provisions of the Act, nothing prevents them from demonstrating

the same before the second Respondent. Pending a decision by the second Respondent if matters are precipitated, the very exercise before the

authorities would become futile and otiose.

45. In these circumstances, the Writ Petitioner is entitled to succeed and the

following order is passed:

The second Respondent is to take up the application submitted by the Writ Petitioner and decide the same and submit his report as enjoined by the

Act and the Rules.

46. Till such time, the report is submitted by the second Respondent interests of justice would require that the management should not precipitate

matters by going ahead with the plan of shifting the machinery, transferring the drugs and the employees to Mumbai, Baroda or Patna. The Writ

Petition will stand allowed on the above terms. There will be no order as to costs.