

(2013) 07 MAD CK 0304

In the Madras High Court

Case No : W.P. No. 7222 of 1999 & 6724 of 2000 and W.P.M.P. Nos. 10370 & 10371 of 1999 and 15 of 2008 & Writ Petition No"s. 7222 of 1999 and 6724 of 2000 and W.P.M.P. No"s. 10370 and 10371 of 1999 and 15 of 2008

Workmen of UBL

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Citation : (2013) 07 MAD CK 0304

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The petitioner is a Trade Union known as "United Bleachers Thozhilalar Munnetra Sangam". A substantial number of workmen employed by the respondent management herein are the members of the petitioner's Trade Union. Some other workmen are the members of the 5th and 6th respondents Trade Unions. The respondent management is a company governed by "The Companies Act". According to the respondent management, due to the continued loss sustained by the Company, during the year 1997, it became sick. Therefore, the respondent management filed an application on 30.06.1997 u/s 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the SICA) to the Board for Industrial and Financial Reconstruction (hereinafter referred to as the BIFR) to declare the respondent management unit as a sick company in terms of the provisions of the SICA [vide Case No. 131 of 1997].

2. The BIFR, by an order, dated 18.11.1997, declared the respondent management as a sick industrial company in terms of Section 3(1)(o) of SICA. So far as rehabilitation of the respondent management company is concerned, the respondent management had requested the "South India Textile Research Association" [hereinafter referred to as "the SITRA"] to make a detailed study and submit a report making suggestions for the rehabilitation of the company. As

on 18.11.1997, a detailed technical report from the SITRA was awaited. The SITRA report was submitted only on 23.12.1997. In the said report, SIRTa had, among other things, recorded that as on 19.11.1997, there were a total number of 356 workmen under the respondent management. The SITRA suggested for labour complement of only 242, including 28 workmen in the printing section of the respondent management.

3. Based on the same, the respondent management submitted a revival scheme dated 20.01.1998 containing a detailed rehabilitation programme for the revival of the company. The BIFR, on considering the above revival scheme by an order dated 25.06.1998, recorded its opinion that the company cannot revive on its own and, therefore, it was necessary in public interest to take measures specified u/s 18 of the SICA. Accordingly, the Board appointed "Canara Bank" as an operating agency u/s 17(3) of the SICA to examine the viability of the company and frame a rehabilitation scheme for its revival, if it was found viable. The Board also set out measures and guidelines for the operating agency to take into account while formulating the rehabilitation scheme.

4. In the meanwhile, on 01.06.1998, the respondent management submitted Form-R to the Joint Commissioner of Labour, Coimbatore, under sub-section (1) of Section 25(N) of the Industrial Disputes Act seeking permission to retrench 156 workmen out of the total number of 355 workmen.

5. The writ petitioners and other Trade Unions submitted objections before the Joint Commissioner of Labour, Coimbatore against permission sought for by the respondent management for retrenchment. The respondent management, in turn, submitted a rejoinder dated 20.08.1998 justifying the need for retrenchment. Having considered the above, the Joint Commissioner of Labour, Coimbatore (Authority u/s 25-N of the ID Act) declined to grant permission to the respondent management to retrench the workmen as sought for. The said order of the Joint Commissioner of Labour was challenged by the respondent management by way of a writ petition in W.P. No. 12007 of 1998 and the said writ petition was withdrawn by the respondent management and accordingly it was dismissed by an order dated 15.02.1999.

6. In the meanwhile on 28.09.1998, the respondent management had submitted a petition to the Government requesting to refer the dispute relating to the proposed retrenchment to the Industrial Tribunal. The commissioner of Labour, Chennai, by his letter dated 30.11.1990 also submitted that there was an industrial dispute in respect of the proposed retrenchment. On considering the above, the Government issued a Government Order in G.O.(D). No. 177, Labour and Employment Department, dated 05.03.1999, referring the Industrial Dispute to the Industrial Tribunal, Chennai. The reference was to the following effect:

Whether the request of the respondent management for permission u/s 25(N) of the Industrial Disputes Act to retrench 156 workmen is justifiable?

If so, to what relief the workmen are entitled to?

Based on the said reference, the Industrial Tribunal, Chennai, took up the Industrial Dispute for disposal in I.D. No. 38 of 1999.

7. Challenging the Government Order in G.O.(D). No. 177, dated 05.03.1999, making reference to the Industrial Tribunal and I.D. No. 38 of 1999 on the file of the Industrial Tribunal, Chennai, the petitioner trade union has come up with the writ petition in W.P. No. 7222 of 1999.

8. During the pendency of the said writ petition, the Industrial Tribunal proceeded with the trial of the I.D. No. 38 of 1999. Before the Tribunal, on the side of the Management, one Mr. S. Gopal Krishnan was examined as M.W.1 and as many as 35 documents were exhibited. On the side of the workmen, no witness was examined and a lone document was marked as Ex.W1 series, which are all the settlements regarding workload, payments, duties of workmen, etc., reached u/s 12(3) of the ID Act.

9. Having considered the rival contentions and the materials placed, the Industrial Tribunal by Award dated 22.07.1999, u/s 25-N of the ID Act, granted permission to retrench only 94 workmen though the request was to retrench 156 workmen. Challenging the said Award, the petitioner trade union has come up with the writ petition in W.P. No. 6724 of 2000.

10. Since both the writ petitions arise out of the same issue between the same parties, I have heard them together and I dispose of the same by means of this common order.

11. I have heard Mr. N.G.R. Prasad, the learned counsel appearing for the petitioner Trade Union, Mr. S. Sanjay Mohan, the learned counsel appearing for the respondent Management and Mr. R. Rajeswaran, the learned Special Government Pleader appearing for the State and also perused the records carefully.

12. It is brought to the notice of this Court that subsequent to the Award of the Industrial Tribunal in I.D. No. 38 of 1999, the respondent management has, in fact, retrenched 92 workmen w.e.f. 27.07.1999. In response to the said order of retrenchment the workmen sent individual letters on 30.07.1999, raising objections for the same.

13. Turning to the proceedings before the BIFR, in the hearing held on 25.10.1999, the respondent management submitted to the BIFR that 92 workmen had already been retrenched in terms of the award in I.D. No. 38 of 1999 and out of whom, for 43 workmen their dues were already settled and only 49 had challenged the Award before this Court by way of the present writ petition in W.P. No. 6724 of 2000. It was also submitted to the BIFR that no order of stay had been granted against the Award of the Industrial Tribunal. Before the BIFR, the petitioner-Trade Union was represented by a counsel and he submitted to the Board that it was true that the petitioner trade union had challenged the verdict of the Industrial Tribunal in I.D. No. 38 of 1999 before this

Court in W.P. No. 6724 of 2000 in respect of 49 workmen and requested the management to reinstate the said 49 workmen. It was also submitted to the Board that the petition union was prepared to negotiate with the management for which it required time. Having considered the above, the BIFR by an order dated 25.10.1999, issued the following direction:-

United Bleachers Tozhilalar Munnetra Sangam would discuss and negotiate the issue relating to the retrenchment of workers with the management within 30 days and advise BIFR/OA accordingly. The company/promoters would make sincere efforts in this direction and would try to finalise the agreement with the workers within the specified time.

14. But, unfortunately, no agreement could be arrived at between the respondent management and the petitioner trade union. Subsequently, the petitioner trade union by its letter dated 08.03.2001, requested the management of the Canara Bank to extend all possible help to the respondent management for the revival of the company, which would help to protect the job opportunities of the existing work force. Finally the BIFR, by order dated 30.08.2001, sanctioned the draft scheme and ordered circulation of the same to all concerned for giving their consent.

15. With the above factual background, let us now consider the rival contentions in these two writ petitions.

16. The foremost contention of the petitioner is that while the rehabilitation scheme was under consideration after the respondent management was declared sick in terms of SICA by the BIFR, it was not legal for the Government to refer the industrial dispute relating to retrenchment u/s 25-N of the Industrial Disputes Act without an order of the BIFR giving consent to the management for retrenchment.

17. It is the further contention that SICA is a special enactment pertaining to rehabilitation and revival of the sick industrial companies whereas, the ID Act is a special enactment in respect of the disputes relating to the workmen. According to the petitioner trade union, since the object of the SICA is not only to revive and rehabilitate the company, but also to afford a maximum protection of employment to the workmen, the provisions of the SICA will have over riding effect over the ID Act, more particularly, Section 25(N) of the ID Act. Therefore, without getting permission from the BIFR to retrench the workmen, the management ought not to have approached the Government for the reference of the industrial dispute and the Government, in turn, ought not to have referred the same to the Industrial Tribunal for adjudication. The said contention is based on Sections 22(1) and 22(3) of the SICA.

18. The learned counsel Mr. N.G.R. Prasad appearing for the trade union would contend that as per Section 32 of the SICA, the provisions of the SICA and the rules framed thereunder and also the schemes made thereunder will have over riding effect over any other law which includes the ID Act as well and, therefore,

in the case on hand, the request of the respondent management to the Government for reference of the industrial dispute u/s 25-N of the ID Act was not legal in view of Section 22 of the SICA.

19. But, the learned counsel Mr. Sanjay Mohan, appearing for the respondent management would submit that so far as Section 32 of the SICA is concerned, there can be no controversy that the SICA, the rules and the schemes made thereunder shall have over riding effect over any other law which includes the ID Act, but, the expression "schemes made thereunder" would mean only a scheme finally sanctioned by the BIFR u/s 18(4) of the SICA. It is his further contention that in the case on hand, the scheme was finally sanctioned u/s 18(4) of the SICA by the BIFR only on 30.05.2001. Until then, the scheme was only under consideration of the BIFR. Thus, according to him, the scheme which was only under consideration will not over ride Section 25-N of the ID Act.

20. He would further submit that section 22 of the SICA has got no application to the facts of the present case. According to him, Section 22(1) of the SICA is of course a bar for either initiating any proceeding or to continue with the existing proceeding against a company in respect which either there is an enquiry pending u/s 16 of the SICA or any scheme referred to u/s 17 is under preparation or consideration or sanctioned scheme is under implementation or where an appeal u/s 25 is pending. Here, in the instant case, according to the learned counsel, indisputably, it is true, that the scheme submitted by the management was under consideration of the BIFR till 30.05.2001.

21. Referring to the above factual back ground, the learned counsel Mr. Sanjay Mohan would submit that as provided in Section 22(1) of the SICA, since the scheme in respect of the respondent management was under consideration of the BIFR, no proceeding would lie or be proceeded with further against the respondent management except with the consent of the Board in respect of the matters enumerated therein. He would further submit that so far as Section 22(1) of the SICA is concerned, nothing is found therein indicating that no proceeding at the instance of the company for retrenchment will lie or be proceeded with.

22. Referring to Section 22(3) of the SICA, the learned counsel would submit that of course this provision is also applicable during the period when the scheme is under consideration. But, under this provision, all or any of the contracts, assurances of property agreements, settlements, awards, standing orders or other instruments in force shall remain suspended provided there is an order made by the BIFR u/s 21(3) of the SICA. Even in this provision, according to the learned counsel, there is no prohibition for the management to make an application for retrenchment of the workmen. Thus, according to the learned counsel, there is no bar in Section 22 of the SICA, for the sick industrial company to invoke Section 25-N of the ID Act.

23. I have considered the above submissions.

24. As it is seen from the statement of objects and reasons of SICA, 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 were taken note of by the Central Government with serious concern. Therefore, with a view to fully utilise the productive industrial assets; afford maximum protection of employment and optimise the use of the funds of the banks and financial institutions, it was felt by the Central Government to enact a law with a view to revive and rehabilitate the potentially viable sick industrial companies as quickly as possible. It was because of these reasons and with these laudable objects the Sick Industrial Companies [Special Provisions] Act, 1985 [in short, the SICA] was brought into force. From the statement of objects and reasons of the SICA and from the very scheme of the Act, it could be understood that the SICA is undoubtedly, a special law governing the affairs of the Sick Industrial Companies. Similarly, the Industrial Disputes Act, 1947 was brought by the law makers to make provision for the investigation and settlement of disputes and for certain other purposes relating to the workmen and the industries. So far the rights and the protection of the workmen are concerned, the Industrial Disputes Act, 1947 is a special law. In case of inconsistency between any of the provisions of these enactments, as envisaged in Section 32 of the SICA, the said Act and of any rules or schemes made thereunder shall have over riding effect except the provisions of The Foreign Exchange Regulation Act, 1973 and The Urban Land Ceiling Regulation Act, 1976. There is no such analogous provision found in the ID Act.

25. In the instant case, let us first examine as to whether there is any inconsistency between the sanctioned scheme u/s 18 of the SICA and Section 25-N of the ID Act. Admittedly, the scheme was sanctioned by the BIFR only on 30.08.2001. Until then, the scheme was only under consideration of the BIFR. Assuming that there is some inconsistency between the scheme under consideration and the provisions of the ID Act, the scheme under consideration will not have over riding effect over the ID Act inasmuch as u/s 32(1) of the SICA, it is only a sanctioned scheme which will have over riding effect over any other law including the ID Act.

26. If one makes a cursory comparison of Section 32 of the SICA with sub-sections (1) and (2) of Section 22 of the SICA, it will be crystal clear that so far as sub-sections (1) and (2) of Section 22 are concerned, they cover not only a sanctioned scheme under implementation, but also a scheme which is either under preparation or under consideration of the BIFR, but, in Section 32 of the SICA Act, the Parliament has consciously omitted from its ambit a scheme either under preparation or under consideration of the BIFR. The plain language of Section 32(1) of the SICA would keep things beyond any doubt that it covers only a scheme which has already been sanctioned by the BIFR. Therefore, in instant cases, since the impugned G.O.Ms. 177 cited supra was issued and eventually the Award of the Industrial Tribunal itself came into being while the

scheme was still under consideration of the BIFR, the provisions of the scheme under consideration of the BIFR shall not have over riding effect over Section 25-N of the ID Act.

27. Now, let us examine as to whether there is any inconsistency between Section 25-N of the ID Act and sub-sections 1 and 3 of Section 22 of the SICA. Section 22(1) of the SICA Act, bars initiation of any proceeding or continuation of any proceeding in respect of the matters enumerated in Section 22(1) of the SICA, only against the sick industrial company. Section 22(1) of the SICA reads as follows:--

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

This provision does not bar the sick industrial company from proceeding against any other company or authority, or individual in respect of the matters enumerated in Section 22(1) of the SICA. This provision gives adequate protection only to the sick industrial company. The object of the said provision appears to be to protect the sick industrial company so as to enable it to revive and to get rehabilitated by the measures taken under the provisions of the SICA.

In other words, if any proceeding is initiated against the sick industrial company in respect of the matters enumerated in Section 22(1) of the SICA notwithstanding the scheme under preparation or under consideration or under implementation, such action may frustrate the implementation of the scheme. That is the reason why, Section 22(1) of the SICA was made as a shield in the hands of the sick industrial company. Thus, it does not prevent the company to initiate any proceeding against any third party or workmen. But, at the same time, the action of the sick industrial company should not have the tendency to frustrate the scheme, under preparation or consideration or implementation. Thus, in my considered opinion, there is no inconsistency between Section 22(1) of SICA and Section 25-N of the ID Act.

28. Next comes Section 22(3) of the SICA. This provision is again a safeguard only in favour of the sick industrial company. For better understanding, let us

have a look into the said provision which reads as follows:--

22. Suspension of Legal Proceedings, contracts, etc.,

(1)

(2)

(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 there under, 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, 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 there under 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 shall not be made for a period exceeding, two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

A careful perusal of the above provision would go to show that the said provision is applicable when a scheme is either under preparation or under consideration or when there is a sanctioned scheme. The said provision further envisages that it is for the BIFR to pass an order declaring that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force to which the sick industrial company is a party shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising there under before the said date, shall remain suspended or shall be enforceable with such adaptations.

29. As we have already seen, sub-section (1) of Section 22 of the SICA bars initiation or continuance of any proceeding whereas sub-section (3) deals with suspension of concluded proceedings like a contract, award, settlement, etc. Under sub-section (1) of Section 22, no order is required to be passed by the BIFR or any other authority either prohibiting initiation of any proceeding or continuing the same against the sick industrial company. The moment a company is declared sick, by operation of section 22(1) of the SICA, there shall be an automatic stay of all further proceedings. However, such proceedings can be initiated or continued only with the consent of the BIFR or AAIFR as the case may be. To put it otherwise, there is no order required from the board or appellate authority to stay the proceedings. But, sub-section (3) of Section 22 of the SICA which deals with a concluded proceedings, settlements or awards, requires an order of suspension. In the absence of any such order from the BIFR

u/s 22(3) of the SICA, there is no automatic suspension of the award, settlement, etc. At any rate, sub-section (1) of section 22 of the SICA does not bar the sick industrial company from initiating or proceeding with any matter enumerated in the said sub section against a third party or workmen, whereas, sub-section (3) of section 22 of the SICA is a bar even for the sick industrial company to execute any settlement, award, agreement, etc. in the event there is an order from the BIFR to the said effect. In the instant case, admittedly, there was no order at all passed u/s 22(3) of the SICA by the BIFR suspending the obligations and liabilities, rights and privileges of the respondent management. Admittedly, in the instant case, there was no order of suspension passed by the BIFR. Thus, in my considered opinion, so far as the case on hand is concerned, the action of the Government in referring the Industrial Dispute, at the instance of the respondent management does not offend sub-sections (1) and (3) of Section 22 of SICA at all.

30. The learned counsel Mr. Prasad would contend, since in the instant case, the scheme was under consideration of the BIFR no proceeding should have been initiated u/s 25(N) of the I.D. Act without obtaining permission from the BIFR. This argument does not persuade me at all for the simple reason that there is no provision in the SICA which mandates such permission to be obtained by the management from the BIFR. As I have already pointed out, u/s 22(1) of the SICA, permission is required to be obtained only by third parties for initiating or continuing a proceeding against the sick industrial company. Under sub-section (3) of section 22 of the SICA, if only there is an order of suspension passed by the BIFR, then, such permission would be required from the BIFR under sub section (4) of Section 22 of the SICA. Therefore, I hold that in the instant case, before approaching the Government seeking a reference of the industrial dispute or to continue the industrial dispute before the industrial tribunal, there was no need for the respondent management to obtain permission from the BIFR.

31. The learned counsel for the petitioner trade union would make much reliance on a judgement of the Hon''ble Supreme Court in Raheja Universal Limited Vs. NRC Limited and Others, . That was a case where an order passed by the BIFR u/s 22(3) of the SICA came to be considered by the Hon''ble Supreme Court. In that case, the AAIFR had permitted the sale of the land belonging to the sick industrial company. The company in pursuance of the said permission entered into an agreement. It was contended before the AAIFR that the agreement between the parties was not sustainable as it was not part of the scheme. But, AAIFR permitted the sale of the property in terms of the agreement for sale, however, subject to the final order of the BIFR. The correctness of the order of the AAIFR was put under challenge by way of writ petition before the High Court and the High Court took the view that the order of AAIFR permitting the sale of the land in terms of the agreement was well within the scope of section 22(3) of the SICA. That judgement of the High Court was taken to Supreme Court. In that case, in paragraph 45 of the judgement, the Hon''ble Supreme Court has held as follows:--

45. A bare reading of the above provision shows that Section 22 of the Act of 1985 is concerned with the suspension of legal proceedings, execution and distress sale etc. against the assets of a sick company while Section 22A deals with power of the Board to issue directions restraining the disposal of assets of such companies. These two provisions primarily ensure that the scheme prepared by the BIFR does not get frustrated because of certain other legal proceedings and to prevent untimely and unwarranted disposal of the assets of the sick industrial company. These sections clearly state certain restrictions which will impact upon the implementation of the scheme as well as on the assets of the company. These sections operate at different stages and in different fields.

[Emphasis supplied]

Again in paragraph 48 of the judgement, the Hon''ble Supreme Court has held that SICA is a complete code in itself and in paragraph 50, the Hon''ble Supreme Court has held as follows:--

48. All these provisions which fall under Chapter III of the Act of 1985 have to be read conjointly and that too, along with other relevant provisions and the scheme of the Act of 1985. It is a settled canon of interpretation of statutes that the statute should not be construed in its entirety and a sub-section or a section therein should not be read and construed in isolation. Chapter III, in fact, is the soul and essence of the Act of 1985 and it provides for the methodology that is to be adopted for the purposes of detecting, reviving or even winding up a sick industrial company. Provisions under the Act of 1985 also provide for an appeal against the orders of the BIFR before another specialised body, i.e., the AAIFR. To put it simply, this is a self-contained code and because of the non obstinate provisions, contained therein, it has an overriding effect over the other laws. As per Section 32 of the Act of 1985, the Act is required to be enforced with all its vigour and in precedence to other laws.

[Emphasis supplied]

In paragraph 56 and 58 of the said judgement, the Hon''ble Supreme Court has held as follows:--

56. The BIFR, being a specialised body which is required to act as per the legislative intent indicated above, has jurisdiction to examine the matter and grant or refuse its consent for institution, continuation and recovery of dues payable to a particular creditor, whatever the nature of such dues may be. If such an interpretation is not given, the very purpose of the Act of 1985 may stand defeated. For instance, a scheme is sanctioned by the BIFR and is at the stage of successful completion, where demand from the Revenue with regard to the sick industrial company is allowed, this can render the scheme ineffective and impossible to be executed, if permitted to be enforced against such company without approval/consent of the specialised body like the BIFR.

57.

58. Section 22 is the reservoir of the statutory powers empowering the BIFR to determine a scheme, right from its presentation till its complete implementation in accordance with law, free of interjections and interference from other judicial processes. Section 22(1) deals with the execution, distress or the like proceedings against the company's properties, including appointment of a Receiver. It also specifically provides that even a winding up petition would not be instituted and no other proceedings shall lie or proceed further, except with the consent of the BIFR.

32. Referring to the above judgement, more particularly, the extracted passages herein above, the learned counsel for the trade union would submit that the scheme should not be allowed to be frustrated at any cost at the instance of any party including the respondent management. It is his further contention that if the company is given free hand to retrench any number of workmen by invoking the provisions of the ID Act, then, for want of sufficient manpower, the company will naturally lose its productivity and viability and thus, eventually, the scheme will be defeated. I find force in this argument. When the scheme is under consideration or implementation, the sick industrial company, to be true to itself as well as to the board, is expected to inform the Board about its proposed action. For example, when the scheme is under consideration, if the sick industrial company wants to retrench some of its workmen, the company is expected to inform the BIFR about the said proposal. This is done mainly for the purpose of BIFR to include the said proposal in the scheme by making necessary modification in the scheme. At any time after an award is passed by the Industrial Tribunal, if either the sick industrial company or the workmen or the trade union feels that the implementation of such award will frustrate the implementation of the scheme, such party may approach the BIFR seeking an order of suspension u/s 22(3) of the SICA.

33. In the case on hand, it is not as though the BIFR was not aware of the proposal for retrenchment of 156 workmen. The SITRA report suggested that the company shall retain only 242 workmen out of 356 workmen on the role. It suggested for introduction of voluntary retirement scheme so that the remaining workmen could be sent out on voluntary retirement. Based on the same, in the scheme submitted by the respondent management, it was reiterated.

34. The Canara Bank which was appointed as the operating agency as per the order of the BIFR dated 25.06.1998, submitted a report to the BIFR in which the operating agency took note of the manpower and it recommended as follows:

The workers shall enter into an agreement with the management of UBL for

(a) Implementing VRS to bring down the labour strength from 356 to 242.

(b) Implementing productivity norms and other measures that may improve the working of the company.

(c) Maintaining cordial relationship with the management. This report was submitted to the BIFR in the month of March, 1999.

35. By a letter dated 15.04.1999, the Management informed the operating agency viz., the Canara Bank that the application filed by the management before the Authority u/s 25N of the Industrial Disputes Act seeking permission to retrench 156 workmen, who had been found surplus, was dismissed by the Authority by an order dated 28.07.1998. They have also informed the operating agency that the management had requested the Government to refer the dispute for adjudication and accordingly the Government had referred the matter to the Industrial Tribunal, Chennai, in I.D. No. 38 of 1999.

36. Thus, the BIFR was aware of the reference made by the Government and the proceedings pending before the Industrial Tribunal, Chennai, in I.D. No. 38 of 1999. After the Award was passed permitting retrenchment of 94 workmen, the matter was reported to the BIFR. In the interim order dated 25.10.1999, the BIFR, among other things, considered the same and in paragraph 3 of the order, it has stated as follows:

As regards the dispute with the labour, Shri Vittle submitted that out of total of 310 workers, 92 workers had been retrenched as per verdict of the Tribunal. Out of this 49 workers had appealed to the High Court after receiving their compensation whereas 43 workers had already settled their dues. However, the Hon'ble High Court had not granted any stay order in the matter. Here, Mr. Vittle was the counsel for the respondent management. After considering the above submissions, among other things, in respect of retrenchment of workmen, the BIFR passed the following order:

United Bleachers Tozhilalar Munnetra Sangam would discuss and negotiate the issue relating to the retrenchment of workers with the management within 30 days and advise BIFR/OA accordingly. The company/promoters would make sincere efforts in this direction and would try to finalise the agreement with the workers within the specified time.

37. In pursuance of the said direction issued by the BIFR, though efforts were taken to settle the above industrial dispute, no settlement could be arrived at. This was brought to the notice of the BIFR by the respondent management on 30.05.2001. Having considered the same, the BIFR has observed as follows:

On going through the reply of company vide its letter dated 2.3.2000, it reveals that company even after lapse of 4 months could not be able to resolve the labour issues and term loan of Rs. 240 lakhs is also yet to be tied up.

38. On the same day (30.05.2001), the BIFR ordered circulation of the draft rehabilitation scheme in terms of Section 19(2) and 19(1) of SICA. The draft rehabilitation scheme took note of the fact that printing unit was closed in the meanwhile. In paragraph 4.1.4 of the draft rehabilitation scheme, it is stated as follows:

4.1.4. Retrenchment of Workers:--The labour strength as on 19.11.1997 was 356. During 2000-01, the company has brought down the labour strength to 201 as per industry norms for the processing of 12.5 lakh meters of cloth per month. The surplus labour arising from discontinuance of printing activity is included under the reduction effected in manpower strength. In paragraph 4.3, it is stated as follows:

The provision for retrenchment compensation has been made at Rs. 51.70 lakhs. This measure will reduce wage bill of the company by Rs. 5.32 lakhs per month. Company has already spent Rs. 46 lakhs towards settlement of labour dues. Finally, by order dated 30.08.2001, the BIFR sanctioned the scheme in terms of Section 19(3) read with Section 18(4) of the Act. In paragraph 4 of the said scheme sanctioned by BIFR as stated as follows:

4. Regarding Para 4.1.4 concerning retrenchment of workers, Shri K. Subramanian for UBTMS submitted that the company had settled the dues of all the retrenched workers, except 16 of them, and the matter with regard to the latter was pending in the Court. He filed written submissions for the perusal of the Bench regarding his stand and also produced a certificate issued by Registrar of Trade Unions (RTU) and submitted that since the disputing 16 workers had also been retrenched, they no longer had any locus standi to appear in the present case. He along with the representatives of other two Trade Unions claimed to be the recognized Trade Unions of the company and produced copies of their respective registration letters and expressed support for the provisions of the DRS. Shri. R. Sevvilam Paritih, Advocate, representing the 16 retrenched workers, however, submitted that they were disputing the terms of retrenchment and seeking remedy in a Court of law. The Bench clarified that BIFR had no objection to the concerned parties agitating their disputes in this behalf at the concerned Labour Courts/higher Courts. No need was, therefore, felt to effect any changes in the provisions of the DRS on account of the objections.

Subsequently, the Board considered the progress made in the implementation of the sanctioned scheme and passed the following order dated 24.03.2003, in which the Board has stated in paragraph 4.3.(b) as follows:

4.3.(b). Retrenchment of Workers:--The provision for retrenchment compensation has been made at Rs. 51.70 lakhs. This measure will reduce wage bill of the company by Rs. 5.32 lakhs per month. Company has already spent Rs. 46 lakhs towards settlement of labour dues.

The dues of 16 workers, whose writ petition is pending in Chennai High Court (CHC), are treated as contingent liability and will be paid by the promoters after mobilizing the funds from outside sources, in case the liability arises.

39. From these orders passed by the BIFR on various occasions, it is crystal clear that BIFR was informed then and there by the respondent management about the industrial dispute right from the application made to the competent authority seeking retrenchment of 156 workmen. The BIFR was fully aware of the

reference made by the Government; the proceedings pending before the Industrial Tribunal in I.D. No. 38 of 1999; the award passed; the consequential retrenchment made; settlement of retrenchment compensation etc.,

40. As we have already noticed, u/s 22(3) of the SICA the BIFR has got power to suspend the Award of the Industrial Tribunal. Had it been satisfied that the retrenchment of these workmen would frustrate the successful implementation of the scheme, certainly the BIFR would not have omitted to pass an order of suspension u/s 22(3) of the Act. Instead, the BIFR accepted the retrenchment of the workmen in pursuance of the award of the Industrial Tribunal and also the settlement of retrenchment compensation to the workmen. Thus, though the BIFR was fully conscious of the award passed by the Industrial Tribunal for retrenchment of the workmen numbering 94, the BIFR did not chose to pass any order u/s 22(3) of SICA which means, the BIFR itself considered that such retrenchment was necessary for successful implementation of the rehabilitation scheme.

41. As we have already noticed, the scheme itself provides for such reduction of labour strength. Though originally the draft scheme provided for reduction of the labour strength by introducing Voluntary Retirement Scheme, since it proved futile, the respondent management had to approach the competent Authority under the Industrial Disputes Act seeking permission for retrenchment of workmen and since it was dismissed and since the writ petition filed by the respondent management was withdrawn, the respondent management made request to the Government for referring the dispute, which was rightly done and the same resulted in the Award. Thus, the award of the Industrial Tribunal is not to the detriment of the successful implementation of the scheme.

42. In conclusion, I hold that the Government Order impugned and the Award made by the Industrial Tribunal do not offend either sub-section (1) of Section 22 or sub-section (3) of Section 22 of SICA and therefore the relief sought for in W.P. No. 7222 of 1999 cannot be granted. Thus, I am inclined to dismiss the writ petition in W.P. No. 7222 of 1999.

43. In W.P. No. 6724 of 2000, the petitioner had challenged the Award made in I.D. No. 38 of 1999 by the Industrial Tribunal. Though the petitioner Trade Union filed this writ petition challenging the retrenchment of 49 workmen, the learned counsel for the petitioner would submit that baring 16, the others have settled the dispute with the management and therefore nothing survives regarding them.

44. In this regard, the main grievance of the petitioner union is that the Industrial Tribunal had placed undue reliance on the report of SITRA. It is further stated that a casual reading of the SIRTAR report would go to show that nothing has been mentioned that the workload could be increased from the present level and the prevailing workload is far lesser than any other unit. It is also contended that the Industrial Tribunal was not right in accepting the case of the management that the cost of production of one meter was Rs. 7.67/-, whereas

the cost of sale of one meter was Rs. 6.67/- and thus, resulting in a loss of Rs. 1/- to every meter processed and sold, in the absence of any legal and acceptable evidence to substantiate the same.

45. It is also contended that the Tribunal ought not to have accepted the closure of printing unit by accepting the case of the management that printing is low yielding and high value process. It is further contended that the management had not shown as to how the workmen had become surplus in each and every category. Though few more grounds have been raised in the present writ petition, the learned counsel appearing for the trade union did not advance any argument on those grounds.

46. The learned counsel for the trade union would take me through the award to substantiate the above contentions. His main contention is that in each category of workmen, the junior most workmen should be identified so as to be retrenched according to the needs. But in this case, according to the learned counsel, the retrenchment was not made category wise. The learned counsel for the petitioner would rely on a judgment of the Hon"ble Supreme Court in Swadesamitran Limited, Madras Vs. Their Workmen, in support of the above contention.

47. The learned counsel appearing for the respondent management would however vehemently oppose the above pleas. According to him, SITRA is an expert body, which had scientifically analyzed the working of the industry and made suggestions for reduction of the workmen as it found the existing strength of workmen as surplus. According to him, the operating agency nominated by the BIFR also accepted the said suggestion and that is how it included the proposal for reduction of labour strength in its report. The learned counsel would further submit that the BIFR also took note of the same and that is how it passed several orders approving the retrenchment. Thus, the expert body as well as the BIFR, which was monitoring the implementation of the rehabilitation scheme of the company, had found the strength of the workmen as surplus. The learned counsel would further submit that closure of the printing unit was also approved by the BIFR, as the unit was not contributing anything towards the income of the company. The learned counsel would further submit that 28 workmen in the printing unit was thus found surplus and were retrenched. The learned counsel would further submit that though the request for retrenchment was for 156 workmen, the Industrial Tribunal, after having scientifically analyzed the issue had come to the conclusion that only 94 workmen should be retrenched. The learned counsel would further point out that of course, the Industrial Tribunal had not mentioned in the Award as to how many number of workmen to be retrenched in each category. The 16 workmen for whom the litigation is now fought are all junior most in their respective categories. Thus, according to the learned counsel the retrenchment of those 16 workmen cannot be in any manner interfered with.

48. I have considered the above submissions.

49. It cannot be disputed that the company was running at loss. The company had become sick in terms of SICA. The BIFR was satisfied that the company was sick in terms of the Act and that is the reason why it declared the same as a sick industrial company. Then came the question of a scheme for rehabilitation. In order to suggest measures for rehabilitating the company, an expert body viz., SITRA was asked to submit a report after making a scientific survey of the entire affairs of the company.

50. As on 19.11.1997, SITRA found that there were 356 workmen including 40 workmen in the printing unit. It suggested for reducing the labour strength to 242 including 28 workmen in the printing unit. Thus, according to SITRA report, 114 workmen were to be retrenched. After the closure of the printing unit, 28 workmen equivalent to the number of workmen in the printing unit were also to be retrenched. Thus, the total tally swelled into 142. But the management requested for permission to retrench 156 workmen. Subsequently, the management had filed a memo before the Tribunal on 13.07.1999 making a plea for retrenchment of only 108 workmen. This is because of the reason that during the year 1998-99, four workmen resigned and one died and 30 workmen left the service. Thus the number of workmen to be retrenched got reduced to 121 ($156-35=121$).

51. The company subsequently decided to retain the workmen in the essential services in the light of the security concerns and statutory requirements as per the Factories Act and Boilers Explosives Act. Thus the company decided to retain four workmen who are electrical certificate holders, two workmen with boiler certificates and seven in security service. Thus, as per the memo-dated 13.07.1999, the company insisted for permission to retrench only 108 workmen ($121-13=108$).

52. But, the Tribunal rightly found that as per SIRTAR report, reduction in workforce could be done only in respect of 142 workmen. Now as per the memo dated 13.07.1999, one workman died, four workmen resigned and 30 workmen left the service. Thus, the Tribunal held that the requirement for retrenchment was only 107 ($142-35=107$). In the memo the company decided to retain 13 workmen as indicated above. If that is so, then the actual number of workmen to be retrenched was only 94 ($107-13=94$). Thus, I do not find any infirmity in the order passed by the Tribunal permitting retrenchment of 94 workmen, though the request was for 108 workmen.

53. So far as the seniority of the 16 workmen among the 94 workmen, who had been retrenched, it cannot be stated that they were in any manner senior and that their juniors have been retained. As pointed out by the learned counsel for the respondent management, in the Finishing Department there were 59 workmen and one Mr. P.B. Rangarajan (53rd rank) and Mr. K.S. Palaniswamy (54th rank) were retrenched. In Mechanical Department, there were a total number of 48 workmen and one Mr. S. Chandran was the last one viz., in the 48th rank and he was retrenched. In R.S.P. Department, there were totally 40

workmen and one S. Manoharan, (26th rank), Mr. R. Duraiswamy, (28th rank), Mr. P. Sivanandam, (31st rank), Mr. R. Selvaraj, (34th rank) and Mr. S. Sivakumar, (39 rank) were retrenched. In Stitching Department, there were totally 10 workmen and one Mr. N. Rajendran in the 6th rank and Mr. N. Rajendran in the 7th rank were retrenched. In Watch and Ward Department there were totally 12 workmen and one Mr. B. Nakeeran was in the 12 rank who was retrenched. In Dyeing Department, there were totally 55 workmen and one Mr. D. Doraiswamy (44th rank), Mr. V.S. Gunasekaran (45th rank), Mr. Ravanappaperumalsamy (47th rank), Mr. V. Subramaniam (49th rank) and Mr. P. Marimuthu (50th rank) were retrenched.

54. Demonstrably, in each department mentioned above, the 16 workmen stated above were juniors respectively. Therefore, though in the Award the number of employees to be retrenched from each department was not specifically stated, it was clear that the petitioner union could not have any grievance because the 16 workmen for whom the legal battle is now fought before this Court were admittedly juniors in their respective department and therefore they were liable to be retrenched.

55. In the judgment in *Swadesamitran Limited, Madras Vs. Their Workmen*, , the Hon"ble Supreme Court has held that:

There can be no doubt that the ordinary industrial rule of retrenchment is last come, first go, and where other things are equal, this rule has to be followed by the employer in effecting retrenchment. The Hon"ble Supreme Court has further held as follows:

The position under the industrial law seems to us to be fairly clear. The management has the right to retrench the workmen provided retrenchment is justified. In effecting retrenchment the management normally has to adopt and give effect to the industrial rule of retrenchment. For valid reasons it may depart from the said rule. If the departure from the said rule does not appear to the industrial tribunal as valid or satisfactory, then the action of the management in so departing from the rule can be treated by the tribunal as being mala fide or as amounting to unfair labour practice; in other words, departure from the ordinary industrial rule of retrenchment without any justification may itself, in a proper case, lead to the inference that the impugned retrenchment is the result of ulterior considerations and as such it is mala fide and amounts to unfair labour practice and victimisation.

Applying the principles stated in the judgment, if we look into the facts of this case, as I have already pointed out, the management has not deviated from the above industrial rule at all.

56. The learned counsel for the petitioner management would submit that the Tribunal had not considered the materials placed before it in their proper perspective. But I find no force in the said argument at all. As I have already summarized, the Tribunal has considered all the relevant facts, such as the fact

that the company was running in loss, the expert body-SITRA recommended for reduction in the strength of the workmen, BIFR also approved the same and that there was no mala fide. Thus, in my considered opinion, the Award of the Industrial Tribunal does not require any interference at the hands of this Court. Thus, the writ petition in W.P. No. 6724 of 2000 fails and the same deserves to be dismissed. In the result, both the writ petitions fail and the same are accordingly dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.