SUPREME COURT OF INDIA

State of U. P.

Vs.

Uptron Employees Union, CMD

C.A.No.6217 with 6171-6172 and 6176 of 1999

(B. P. Singh and Altamas Kabir, JJ.)

26.04.2006

JUDGEMENT

B. P. SINGH, J.:-

1. The State of Uttar Pradesh is the appellant in these appeals. Civil Appeal No. 6176/1999 has been preferred against the order of the Board of Industrial and Financial Reconstruction (hereinafter referred to as the "BIFR") dated 28-8-1998 whereby it directed the State of Uttar Pradesh to make on account payment to the workers towards their wages for the period June, 1998 onwards on humanitarian grounds. Civil Appeal Nos. 6171-6172/1999 has been preferred against the order of the High Court of Delhi whereby the writ petition preferred by the State of Uttar Pradesh against the order of BIFR dated 27-8-1997, as affirmed by the Appellate Authority vide its order dated 6-5-1998, was rejected. Civil Appeal No. 6217/1999 has been preferred against the interim order of the High Court of Judicature at Allahabad, Bench at Lucknow dated 23-12-1998 directing the State of Uttar Pradesh to pay salary to the workers of M/s. UPTRON, as directed by the BIFR till the State Government takes final decision in the matter relating to revival/rehabilitation proposal made by it.

2. A few facts which are relevant may be noticed at the threshold. M/s. UPTRON is a company incorporated under the Companies Act, 1956 and is a subsidiary of U.P. Electronics Corporation, a company wholly owned and controlled by the State of Uttar Pradesh. UPTRON became a sick industry since its net worth became negative and, therefore, a Reference was made under Section 15 of The Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA"). The Reference was made on 22-1-1994 and M/s. UPTRON was declared a sick industry on 19-8-1994. The Industrial Finance Corporation of India (IFCI) was appointed the Operating Agency. It appears from the record that advertisements were issued in normal course inviting proposals for take over and/or revival of the sick unit. From the order of the BIFR dated 27-8-1997 it appears that advertisement was issued pursuant to its order dated 29-1-1997 but no viable acceptable offer was received. The Company had proposed a one time settlement whereby it offered to pay off 100% of the principal amount and only 25% of the interest due. However, for whatever reasons this proposal made no progress in the absence of a confirmation by the State Government. M/s. UPTRON India Ltd. stated that it had made a fresh proposal which had been submitted to the Government and that the Government was likely to consider it on 1-9-1997. In these circumstances, the BIFR considered the matter and passed certain directions by its order of 27-8-1997. It directed the Operating Agency to make an indepth study of the proposal submitted by M/s. UPTRON to the State Govt. of Uttar Pradesh and to make its suggestions. It was directed to submit its report within 10 weeks after holding a joint meeting with the concerned parties. It also directed the Managing Director of M/s. UPTRON to discuss the matter further with the concerned banks with a view to obtain their consent as to the minimum acceptable quantum of one time settlement and quantum of sacrifices in terms of waiver of interest. M/s. UPTRON was also directed to have discussions with the Chief Secretary of the Govt. of Uttar Pradesh in regard to the quantum of funds proposed to be inducted by the Govt. of Uttar Pradesh for revival/rehabilitation of M/s. UPTRON. The last direction made by the BIFR was in the nature of a direction to the Govt. of Uttar Pradesh to make arrangements for payment of salaries/wages of the workers till the proposed package of revival/rehabilitation of M/s. UPTRON was finalised by the BIFR. This last direction for payment of salaries/wages to the workers of M/s. UPTRON was challenged by the U.P. Electronics Corporation before the Appellate authority under SICA which was dismissed. Thereafter, the State of Uttar Pradesh filed a writ petition before the High Court of Delhi which was dismissed by order dated 9-9-1998. As noticed earlier, C.A. Nos. 6171-6172/1999 have been preferred against the aforesaid order of the High Court of Delhi.

3. From the order of the BIFR dated 28-8-1998 it would appear that there was a proposal submitted by the State of U.P. for the revival of M/s. UPTRON. The Operating Agency was directed to examine the proposal and hold a joint meeting and submit its report by 17-7-1998. It also appears that the Operating Agency prepared a background note to be considered in the joint meeting wherein it was estimated that a sum of Rs. 171.04 crores was required for the revival of the sick industrial unit. The fund was to be provided by the Govt. of Uttar Pradesh. The joint meeting considered the proposals of the Govt. of Uttar Pradesh in the light of the background note prepared by the Operating Agency and though no final decision was taken, the financial institutions and the banks took time to consider the matter particularly by reference to the working capital loans after receiving the concrete proposal from M/s. UPTRON. Ultimately, the State Bank of India on behalf of the consortium of banks did not respond and it appears that no further development took place. The Operating Agency also found the proposal received from the State Government to be sketchy and not providing any details relating to the assumptions underlying the projections.

4. It appears from the said order that the special Secretary of the Govt. of Uttar Pradesh submitted before the BIFR that the revival package for the company has been discussed with the Chief Secretary and thereafter the Chief Minister. Although the same had been approved in principle by the Chief Minister, the matter had been sent to the Prime Minister's office who sought commitment from the State Government about its contribution. Some time was prayed for to enable the Government to take a decision in the matter and to convey its views. The order of the BIFR also notes the fact that the State Government had given a sum of Rs. 6.98 crores in addition to Rs. 2 crores for payment of salaries by way of loan carrying interest @22% per annum. The workers had received their wages for the period November, 1997 to May, 1998 but no payment had been made for the period subsequent thereto. The order of the BIFR thereafter directed the State Government to make on account payment to the workers towards their wages after May, 1998. This order of the BIFR is challenged before us in C.A. No. 6176/1999.

5. In the same order the BIFR noted that the case had been before the Board since August, 1994 and no rehabilitation scheme could be finalised primarily on account of the State Government not being able to take a decision regarding infusion of funds for rehabilitation of the company. It, therefore, directed the Government of Uttar Pradesh to convey their decision positively within eight weeks to the Operating Agency and the BIFR whether it could induct Rs. 171.04 crores as envisaged in the scheme submitted by the Government of Uttar Pradesh for the revival of M/s. UPTRON. The Board also indicated that in case the State Government was not agreeable to provide the amount as aforesaid, the Bench may pass further appropriate orders which may include issue of show cause notice for winding up of the company without holding any further hearing. If the Govt. of Uttar Pradesh was willing to provide the necessary funds the directions would be made accordingly. Some other directions were made which we do not consider necessary to notice at this stage.

6. While the position stood thus, the M/s. UPTRON Employees Union - respondent No. 1 herein and two other associations of the workers and officers of M/s. UPTRON filed a writ petition before the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow wherein it was stated that the Cabinet of Uttar Pradesh had taken a decision of closure of M/s. UPTRON on 1-12-1998 as appeared from the press reports. The press report showed that M/s. UPTRON had incurred a loss to the tune of Rs. 330 crores which was not the correct figure. Having regard to the fact that financial institutions were willing to waive a part of the liability, the loss if any was only Rs. 93 crores. Reliance was placed on a photocopy of news item published on 2-12-1998 in the Hindustan Times a local daily. In the writ petition it was prayed that a writ of mandamus be issued restraining the Govt. of U.P. from implementing the Cabinet decision of December 1, 1998. It was also prayed that a writ of mandamus be issued restraining the opposite parties from closing the Company without waiting for the decision of BIFR. It was also prayed that a suitable direction be issued to the opposite party to honour the order of BIFR dated 27-8-1997 for payment of salary to the employees of M/s. Uptron. It is not necessary to notice the other prayers in the writ petition. In this writ petition an interim order was passed by the High Court on 23-12-1998. From a perusal of the order of the High Court it appears that the Additional Advocate General for the State objected to the maintainability of the writ petition inasmuch as the matter was pending before the BIFR. He also informed the Court that the State Government had not passed any order regarding closure of M/s Uptron. This

was controverted by the writ petitioners who asserted that such a decision had been taken by the Cabinet and in fact the Principal Secretary (Electronics) of the State of U.P. had passed an order on 9-12-1998 for the rehabilitation of the workers. The High Court noticed the submission urged on behalf of the State Government that it had not yet taken a final decision to close M/s. Uptron and the matter was being considered by the BIFR, and the State Government had been asked to indicate as to whether it was in a financial position to revive the unit. The High Court passed an interim order in view of the aforesaid circumstances directing the State Government to pay salary to the workers pursuant to the order passed by the BIFR till the State Government took a final decision in that regard. C.A. No. 6216-6217 /1999 have been preferred against the said interim order of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow.

7. In all the appeals before us the submission urged on behalf of the State of Uttar Pradesh is that the BIFR had no jurisdiction in a proceeding under SICA to make a direction to the State Government to pay the wages due to the workers of a sick company. It has also been the stand of State of Uttar Pradesh that M/s. Uptron India Ltd. is a subsidiary of U.P. Electronics Corporation Limited, which is a company wholly owned and controlled by the State of Uttar Pradesh. In any event, it was submitted that there was no provision in the SICA which authorises the BIFR to pass an order directing the State of Uttar Pradesh to pay the salaries /wages of the employees of a sick company in regard to which an inquiry is pending before the BIFR.

8. One fact which may be noticed is that the Government of Uttar Pradesh has since informed the BIFR by its letter of 12-1-1999 that it is not willing to induct any further funds for the revival/rehabilitation of M/s. Uptron. It is suggested that in the circumstances the BIFR may, if so advised wind up M/s. Uptron since the State Government is not in a position to provide the requisite funds for its revival.

9. In view of the submissions urged before us it is necessary to notice the relevant provisions of the SICA. There is no dispute about the fact that M/s. Uptron is a sick company within the meaning of that term in SICA. A "sick industrial company" has been defined under Section 3(o) of the Act to mean, an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth. There is no dispute that the net worth of M/s. Uptron is negative. Under Section 15 of SICA if an industrial company has become sick an obligation is cast upon its Board of Directors to make a Reference to the BIFR for determination of the measures which shall be adopted with respect to the company. This has to be done in the manner and within the period prescribed by Section 15. On receiving such a Reference, the BIFR is required by Section 16 of the Act to make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company. If after making inquiry under Section 16, the BIFR is satisfied that the company has become a sick industrial company, it is required to decide as soon as may be by order in writing whether it is practicable for the company to make its networth exceed the accumulated losses within a reasonable time. This is provided in Setion 17 of SICA. Sub-section (2) of Section 17 is applicable if it is found practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time. In such a situation the BIFR may give to such a company directions so as to

enable it to make its networth exceed the accumulated losses. However, if that is not possible, the BIFR must proceed under sub-section (3) of Section 17. If the Board comes to the conclusion that it is necessary or expedient in the public interest to adopt all or any of the measures specified in Section 18 in relation to the said company, it may as soon as may be, by order in writing, direct the operating agency specified in the order to prepare a scheme providing for such measures in relation to the company. Under Section 18 the Operating Agency is required to prepare such a scheme with respect to such a company providing for any one or more of the measures enumerated in sub-clauses (a) to (f) of sub-section (1) of Section 18. The scheme prepared by the Operating Agency is then examined by the BIFR and necessary steps taken in accordance with the remaining provisions of Section 18. Section 19 deals with Schemes which relate to preventive, ameliorative, remedial and other measures with respect of any sick industrial company. In such a scheme provision is made for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority etc.

10. Section 20 of the Act mandates that where the BIFR after making inquiry under Section 16 after consideration of the relevant facts and circumstances, and after giving an opportunity of being heard to all the parties, is of the view that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations, and that the company as a result thereof is not likely to become viable in future, and that it is just and equitable that the company should be wound up, shall forward its opinion to the concerned High Court, which on the basis of the opinion of the Board, may order winding up of the sick industrial company in accordance with the provisions of the Companies Act.

11. None of the provisions noticed above provide that while considering a scheme for revival, the BIFR has authority to direct payment of wages to the workers of the sick industrial company. It is quite apparent that though the matter has remained under consideration of the BIFR since the year 1994 no viable acceptable proposal has so far been received. At one time the State of Uttar Pradesh had shown some interest in reviving the sick unit but now by its letter dated 12-1-1999 it has made its position clear that it is not in a position to induct the necessary funds. In fact, it had suggested that the unit may be wound up.

12. Learned counsel appearing on behalf of the State of Uttar Pradesh has referred to the decisions of this Court in the case of A.K. Bindal and another v. Union of India and others, (2003) 5 SCC 163 and Officer and Supervisors of I.D.P.L. v. Chairman and M.D., I.D.P.L. and others, (2003) 6 SCC 490 and submitted that in a similar circumstances this Court held in A. K. Bindal's case (supra) that if a sick industrial company sustaining losses continuously over a period, failed to pay salaries and dues to its employees, the workmen and employees cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of payscales. We notice that the aforesaid decision was rendered in a case where the company concerned had been declared to be a sick industrial company under SICA and the matter was under consideration of the BIFR. This Court observed: 2003 AIR SCW 2625

2003 AIR SCW 3578

"17. The legal position is that identity of the government company remains distinct from the Government. The Government company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma v. Managing Director). Since employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales." AIR 1989 SC 1854

13. This Court specifically held that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves.

14. The same legal position has been reiterated by this Court in the case of Officer and Supervisors of I.D.P.L. v. Chairman and M.D., I.D.P.L. and others (supra), this Court observed 2003 AIR SCW 3578 in paras 7 and 8 as under:-

"7. In the above background, the question which arises for consideration is whether the employees of public sector enterprises have any legal right to claim revision of wages that though the industrial undertakings or the companies in which they are working did not have the financial capacity to grant revision in pay scale, yet the Government should give financial support to meet the additional expenditure incurred in that regard.

8. We have carefully gone through the pleadings, the annexures filed by both sides and the orders passed by the BIFR and the judgments cited by the counsel appearing on either side. Learned counsel for the contesting respondent drew our attention to a recent judgment of this Court in A. K. Bindal v. Union of India in support of her contention. We have perused the said judgment. In our opinion, since the employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scales should met by the Government.

Being employees of the companies, it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have financial capacity to revise or enhance the pay scale, the petitioners, in our view, cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. We are unable to countenance the submission made by Mr. Sanghi that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay scales of the employees: 2003 AIR SCW 2625

15. We may observe that in both these cases the earlier decision of this Court in Heavy Engineering Mazdoor Union v. State of Bihar and others, (1969) 1 SCC 765 was noticed and applied. AIR 1970 SC 82

16. Counsel for the respondents have placed reliance on Workmen of Rohtas Industries v. Rohtas Industries and others, (1995) Supp (4) SCC 5. In that case this Court passed an order directing the State Government and the Central Government to contribute a sum of Rs. 30 crores each with a view to work the industry which has closed down, having regard to its potential. However, as noticed by the Court, the experiment did not yield any result and this Court noted that the unprecedented course adopted by this Court of assuming direct control over the functioning of the undertaking with a view to secure its revival and rehabilitation had failed, and it was therefore constrained to put an end to the proceedings and permit resumption of the winding up proceedings before the High Court. It would, thus, appear that the order passed in the matter of Rohtas Industries (supra) was passed in the peculiar facts of the case and no principle had been laid down that in such a case it is the duty or obligation of the State Government or the Central Government to provide funds for payment of dues of workers. Reliance was also placed on the decision of this Court in the case of Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1. The order passed therein was passed in the peculiar facts and circumstances, where a large number of employees employed in a large number of government corporations and undertakings were not paid their dues for years together. Invoking the principles enshrined in Articles 21 and 23 of the Constitution, this Court directed the State of Bihar to deposit a sum of Rs. 50 crores before the High Court for disbursement of the salaries to the employees of the corporations. It also vested a discretion in the High Court to direct disbursement of some funds to the needy employees on ad hoc basis so as to enable them to sustain themselves for the time being. There was also a clear direction that the rights of the workmen shall be considered in terms of Section 529A of the Companies Act. There are observations in the judgment of this Court to the effect that the Government companies/public sector undertakings being "State" would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution. They, therefore, must do so in cases of their own employees. The Government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability towards the debtors of the company may be confined to the shares held by it, but having regard to the deep and pervasive control 1995 AIR SCW 4332 it exercises over the government companies in the matter of enforcement of human rights and/ or rights of the citizen to life and liberty, the State has also an additional duty to see that the rights of the employees of such corporations are not infringed. Having said so, the Court in para 74 of the judgment said,

"74. We, however, hasten to add that we do not intend to lay down a law, as at present advised, that the State is directly or vicariously liable to pay salaries / remunerations of the employees of the public sector undertakings or the government companies in all situations. We, as explained hereinbefore, only say that the State cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/ or suicide by the employees has taken place by reason of non-payment of salary to the employees of public sector undertakings for such a long time."

17. It would, thus, appear that this Court did not lay down any principle of law of universal application and passed appropriate orders only in the compelling circumstances noticed by it. We are, therefore, satisfied that in respect of a sick industrial company, even if it be a subsidiary of a Government company, there is no legal obligation cast upon the State Government to pay the wages due to the workmen. The rights of workmen are governed by the relevant provisions of the Companies Act where their claim has been accorded priority. Moreover, in any view of the matter we find nothing in SICA which authorises the BIFR to pass an interim order directing the State Government in such circumstances to pay the wages due to the employees of the sick industrial company. We, therefore, allow all these appeals and set aside the impugned orders.

18. These appeals are, accordingly allowed with no order as to costs.

19. Before parting with this case, we must notice that the proceedings under SICA in the instant case are pending before the BIFR since August, 1994. We are told that in view of the pendency of the appeals before this Court the BIFR as well as the High Court did not proceed further in the matters. This is rather unfortunate, because in the absence of any order of stay passed by this Court in these proceedings, the High Court as well as the BIFR should have proceeded with the matters before them and concluded the proceedings. It is most unfortunate that a sick industrial company which needs immediate attention and treatment has to wait for 12 years with no result in sight. The BIFR must be conscious of the fact that in the sick industrial companies the liabilities accumulate as time passes and, therefore, the condition of the sick unit becomes worse day after day. If a proceeding before the BIFR is not concluded within a reasonable time, it becomes counter productive because rather than reviving the sick industrial unit it makes it more sick and, therefore, it becomes even more difficult to revive such an undertaking. One can well imagine what may be the dues now payable to the workmen and employees of the sick industrial company in this case. If no one was willing to submit a viable proposal in the year 1994, it will be even more difficult today to secure a proposal for the revival of the company. The pendency of the proceedings before the BIFR for almost 12 years has made the situation worse. The networth of the sick unit was negative to begin with and as of date the dues to the workmen and the interest etc. payable to other creditors may have to be added to the liabilities of the company. We only wish to impress upon the BIFR that proceedings under SICA must not be kept pending for so long and having regard to the fact that every day's delay adversely affects the financial condition of the undertaking a final decision one way or the other must be taken within a reasonable time. We also cannot lose sight of the fact that the protective provisions of SICA places the creditors of the sick industrial company in a rather precarious position, since they are not able to realize their dues from the sick industrial company in

view of the provisions of Section 22 of SICA. It is only desirable that the formulation of the scheme and its execution must be done within a reasonable time.

20. We do hope and trust that the BIFR will now take up the matter and dispose of the proceedings within a short period, say, within a period of six months from the date of receipt of a copy of this order or its production by any of the parties before it. Similarly, the writ petition pending in the High Court should also be disposed of as early as possible and preferably within a period of six months from today.

Appeals allowed.