SUPREME COURT OF INDIA

Cement Workers Karamchari Sangh

Vs.

Jaipur Udyog Limited.

C.A.No.2076 of 2008

(C.K.Thakker and Aftab Alam,JJ.)

24.03.2008

JUDGMENT

Aftab Alam, J.

1. Leave granted.

2. This appeal was filed against the order, dated August 2, 2004 by which a learned Single Judge of the Rajasthan High Court set aside both the interim and final orders, dated August 3 and September 6, 2001 passed by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi (AAIFR) and remitted the matter to it for passing fresh order after giving an opportunity of hearing to all the concerned parties. The AAIFR order (that was set aside by the High Court) had dismissed the appeal filed by M/s.Jaipur Udyog Ltd., respondent No.1, and affirmed the order of its winding up passed by the Board for Industrial and Financial Reconstruction Bench-II (BIFR) on November 24, 2000 in Case No.17 of 1987. The High Court took the view that the AAIFR had dismissed the appeal of respondent No.1 without giving it a reasonable opportunity of hearing and, accordingly, gave direction for fresh hearing of the matter. The order passed by the High Court was brought before this Court in appeal by a workers' union, namely, Cement Workers Karamchari Sangh. The appeal was based on the plea that the remand to the AAIFR would not serve any useful purpose but would lead to an unnecessary and unreasonable prolongation of the matter causing great prejudice and distress to the workers who had already suffered much due to non-payment of their dues for a very long time. Thus the appeal at its inception appeared to present for consideration the simple and limited issue as to whether the High Court was justified in taking the view that the order passed by the AAIFR was in breach of the principles of natural justice and for that reason remitting the proceeding to it.

3. However, during the pendency of the proceeding before this Court certain developments took place that tend to somewhat shift the focus from the limited issue as indicated above. On August 26, 2006, while the Special Leave Petition giving rise to the appeal was pending before the Court, the appellant-workers' union entered into a bipartite agreement with respondent No.1, M/s.Jaipur Udyog Limited (JUL) in purported settlement of the dues of the

workers/employees at Sawai Madhopur, Phallodi Quarries, Jaipur, Delhi and Chandigarh offices represented by the Sangh. A copy of the agreement was brought on record as Annexure 'A' to I.A.No.8 of 2006 filed in the Special Leave Petition on August 31, 2006. The settlement between the appellant-union and JUL gave rise to a chorus of protests by other sections of workers who alleged that the settlement was fraudulent, collusive and a sell out to the management of JUL. A number of impleadment applications were filed (vide I.A.Nos.9 & 10 of 2006, 12 of 2007) on behalf of different Unions claiming to represent the workmen of JUL at Jaipur and at Kanpur.

4. On December 4, 2006 when the Special Leave Petition was taken up the settlement was brought to the notice of the Court and a joint prayer was made by the appellant and JUL that the dispute between the employees and the employer may be permitted to be settled in terms of the agreement and the AAFIR be directed to monitor the implementation of this settlement in letter and spirit. The other Unions seeking impleadment in the proceedings before this Court raised strong objections to the settlement. The Court, however, permitted the agreement to be implemented in terms of prayer (b) in the application (I.A.No.8 of 2006) subject, of course, to the rights of those Unions who had filed applications for impleadment and/or had approached the Labour Commissioner (against the settlement in question). On April 10, 2007, it was represented before the Court that a large number of employees had received payments in terms of the settlement. The claim made on behalf of the appellant and respondent No.1 was disputed by others. Hence, the Court felt the need for some investigation on certain issues of facts and as agreed by the counsel for the parties, appointed Mr. Justice N.N.Mathur, a former Judge of the Rajasthan High Court, to make an enquiry on points indicated in the order as follows:

> "(a) How many of the employees have opted for settlement with respondent No.1 Company and/or respondent No.7.
>
> "(b) It is stated by Mr.Mukul Rohtagi, learned senior counsel that about 1700 employees have already accepted the settlement. In case, necessary materials and records are produced to justify the claim, Mr.Justice N.N.Mathur need not ascertain the views of those who have opted for settlement. So far as others are concerned, the views of individual workers shall be ascertained."

As requested by the Court, Mr.Justice Mathur made the enquiry and submitted his report dated August 9, 2007. It is a detailed report and it considerably helped the Court to appreciate the main features of the controversy.

5. These developments taking place after the filing of the Special Leave Petition compel us to take note of certain facts and circumstances antecedent to the immediate cause that brought this matter to this Court.

6. All the controversies in the case, as may be gathered from the above, revolve around the attempts at the rehabilitation/revival, or conversely the winding up of M/s.Jaipur Udyog Limited (JUL). JUL was incorporated in May 1948 as a private limited company. It set up a cement factory at Sawai Madhopur for which the supply of raw material, i.e., limestone came

from Phallodi Quarry at a distance of about 25 kms. In the year 1955, it was converted into a public limited company. In 1967, it acquired a jute mill in Kanpur with a view to manufacture cement bags for captive consumption in the cement unit at Sawai Madhopur. After going through many ups and downs over a period of about forty years the cement factory of the company came to be closed down in the year 1987. And finally JUL was declared a sick company by the order, dated August 26, 1987 passed by the BIFR that came to find and hold that the company was not in a position to make its net worth positive on its own within a reasonable time. At that time the company had on its hands, apart from a number of very onerous financial liabilities, large bodies of workmen both at Sawai Madopur and at Kanpur.

7. After some initial attempts at the revival/rehabilitation of JUL failed, another company M/s.Gannon Dunkerley Company Ltd. (GDCL) came on the scene. In 1991 a proposal for the revival of JUL came up before the BIFR. GDCL was the main party to the revival plan. The BIFR sanctioned the revival scheme by order, dated July 21, 1992 and it was called 'SS-92'. Under the sanctioned scheme GDCL was to take over JUL, for its revival, along with all assets and liabilities. The cut off date for the restructuring of capital and liabilities was fixed as March 31, 1992. The IRBI was appointed as the monitoring agency. The scheme stipulated that GDCL would take over of the management of JUL from its erstwhile promoters. The cost of the scheme (SS 92) was Rs.38.41 crores, out of which Rs.18.12 was to come from the promoters (GDCL) as contribution/unsecured loans, Rs.10 crores by sale of assets and the remaining Rs.10.29 crores by sales tax deferment. The liability of JUL was restructured and after substantial wavers the restructured liabilities of Rs.53.86 crores were rescheduled for payment. In order to meet the pressing liabilities, an amount of Rs.2.54 crores was marked for immediate disbursement. In the scheme (SS 92) it was stated that the strength of workers at the time of the closure of the unit was 3515, including 1030 workers employed in the quarry. The company (JUL) had also employed, on an average, 150 workers on casual basis and 200 workers on contract basis.

8. At that time (as we shall see later) JUL had many creditors, including government departments, statutory bodies, banks and private parties but the dues of the employees need to be specially mentioned. In the sanctioned revival scheme in regard to the employees it was provided as follows:

> "Employees:
>
> (i) Shall accept settlement of arrear wages/salaries/bonus (including the same during the period operation of JUL was under suspension) (amounting to Rs.1241 lacs approximately) for Rs.300 lacs payable on deferred basis in 3 equal annual installments.
>
> (ii) Shall agree for labour rationalization programme as would be implemented, with higher productivity norms."

Later on, in the proceedings both the BIFR and the AAIFR had the occasion to comment that in order to make the revival of JUL possible under SS-92 the employees had made great sacrifices and had settled for the much smaller amount of only Rs.3 crores (payable in three installments) in place of Rs.12.41 crores being their lawful dues. The workmen had given up three- fourth of their dues in the hope and trust that the new promoter (GDCL) would start the unit and they would be able to keep their jobs. Their hope was, however, completely belied and the workmen were left 'in a very pathetic situation.'

9. On January 9, 1996, GDCL commissioned the unit only to declare lock out seven months later on August 12, 1996. It was alleged that the commissioning was an eye wash and the promoters had no intent to run the unit on a sustained basis. No repairs were made in the plant lying idle for a long time; no raw materials were brought and no supervising, managerial or technical staffs were engaged. The lock out declared by the management was prohibited by the state government by order, dated May 25, 1999, issued under section 10(3) of the Industrial Disputes Act. On August 11, 1997 the management of GUL entered into a revised tripartite settlement with the representatives of the workers. But the revival of JUL remained as illusive as ever before.

10. When no head way was made towards the rehabilitation of the company even after eight years of the passing of the revival scheme (and passing of thirteen years since it lay sick!) the BIFR held the review hearing on July 12, 2000 and found that GDCL not only did not carry out the directions given to it but had also failed to keep its own commitments under the sanctioned scheme for rehabilitation. The BIFR, accordingly, gave directions inter alia, to (i) issue a notice to the company and other interested parties under Section 20(1) of The Sick Industrial Companies (Special Provisions) Act (SICA) to show cause why it should not be wound up, (ii) a separate notice to the promoters (GDCL) under Section 33 of SICA to show because why they should not be prosecuted for non-payment of labour dues and failure to comply with other provisions of SS-92. At the same time, it allowed the workers to file suits in Labour Courts to enforce payment of their dues. It also directed the Rajasthan Finance Corporation to take over possession of the assets of the company under section 29 of the State Financial Corporation Act and the State Bank of India to insure the company's assets.

11. In pursuance of the directions, the show cause notice under Section 33 of the SICA was issued to GDCL and JUL on November1, 2000. 12. Finally, the BIFR passed the order, dated November 24, 2000, giving direction for the winding up of JUL with a number of ancillary directions. Here, it would useful to extract paragraph 29 of the order that sums up the facts and circumstances that finally led the BIFR to pass the order of winding up of JUL:

> "After hearing various submissions made and on the basis of the material on record, the Bench noted that all concerned secured creditors, unsecured creditors, the representatives of all concerned State Governments Department of GOI, Chandigarh Housing Board, etc., were for winding up of the company; except from the representatives of the company and its promoters, to the proposed winding up of the company. As regards the company's objections, the Bench further noted that the company had failed to submit their audited/provisional balance-sheet as on June 30,

2000, which would have enabled the Bench to appreciate the correct picture of the accounts at the time of the hearing. The company's representative had also not given any specific answer to the query regarding treatment of the liability on account of various decrees obtained by secured-unsecured creditors. The Consultant for the company was also asked to submit their modified proposal, but no updated proposal was forthcoming, and he only indicated that their modified proposal submitted in May 1998 was still pending with IIBI (MA). It was also stated that an OTS proposal was pending with SBI. However, the representative of SBI present during the hearing categorically stated that the proposals submitted by the company for OTS of the bank's dues were found unacceptable to the bank and as on date, no proposal was pending with the bank. The Bench further noted that such an OTS proposal, if any, could have been considered by the Bench only if the company had obtained prior consent of all concerned parties, as required under Section 19 of SICA; however, no such consents were obtained by the company. Further, the company had not renewed their MOU with the workers. After consideration of all these facts and circumstances, the Bench came to the conclusion that no acceptable and viable proposal had been submitted by the company under which the company could be revived within a reasonable period of time, while meeting all its financial obligations. The company has been with the BIFR for over 13 years as to now and the company had not submitted any modified revival scheme even after issue of the Show Cause Notice for winding up. The Bench, therefore, confirmed its prima facie-opinion that it is just, equitable and in public interest that the company viz. Jaipur Udyog Ltd. is wound up as the company was unlikely to revive and make its net worth positive within a reasonable period of time while discharging its due financial obligations and directed that this opinion be forwarded to the concerned High Court along with the proceedings of this hearing and all the previous proceedings of Bench hearings/orders, for further necessary action by the honorable High Court, in accordance with the provisions of the Companies Act."

The BIFR left it open to the many creditors of JUL to file suits before the appropriate courts/DRT for recovery of their dues and to take further steps in that connection as it had confirmed its opinion for winding up the company JUL.

13. Against the winding up order passed by the BIFR, JUL filed Appeal No.22 of 2001 before the AAIFR. On August 3, 2001, the AAIFR directed the appellant-JUL to deposit an amount of Rs.10 crores as the condition precedent for admission of the appeal. It would be useful to reproduce the order in full:

"Arguments heard. The appellant/promoter (Cannon Dunkerley & Co.Ltd.) shall negotiate OTS terms with SBI and also come to an understanding with Cement Works Karamchari Union (CWKS) about the settlement of the dues of the workers and make a deposit of Rs.10 crores (Rs.5 cr in two weeks from today and Rs.5 crores in another two weeks) in a no-lien account with SBI. No adjustment or payment shall be made from this amount except with prior orders of this Authority. The appellant company and the CWKS shall immediately prepare a statement of the retired workers showing

the terminal dues of each of them. An amount of Rs.3 crores out of the no-lien deposit of Rs.10 crores shall be utilized for part payment of the terminal benefits to the retired workers. Failure to deposit the amount of Rs.10 crores, as stated above, will result in dismissal of this appeal. To come on 6.9.2001."JUL challenged the interim order passed by the AAIFR before the Rajasthan High Court and from this stage the matter becomes somewhat confused and murky."

14. In S.B.Civil Writ Petition No.4380/2001 filed by JUL the prayers were made in the following manner:

"a) pass a writ, order or direction in the nature of mandamus, to quash the impugned order of the AAIFR dated 3.8.2001 in Appeal No.22 of 2001;

b) Pass a writ, order or direction to call for a summon the records of the case from the AAIFR/BIFR of Reference No.17, 1987;

c) xxx xxx xxx xxx

d) xxx xxx xxx xxx"

The writ petition was taken up before the High Court on September 4, 2001 and the order of the High Court was recorded in the follows terms:

"Heard. Admit. Issue Notice. Rule is made returnable within six weeks. Notice be given Dasti apart from usual service.Notice of stay application be also issued, returnable within six weeks and be given Dasti apart from usual service.Pending service of notice on the Respondents, there shall be stay of ex-parte (sic) impugned order dated 3.8.2001.(Annexure-5) passed by AAIFR in Appeal 22/2001.List thereafter along with compliance report."

15. Two days later on November 6, 2001, the appeal was fixed for hearing before the AAIFR. On that date, on behalf of JUL a prayer was made for adjournment on the plea that further proceedings in the appeal were stayed by the High Court. The prayer was strongly opposed by the counsel representing the State Bank of India and the other parties. The AAIFR observed that from the copy of the High Court order, it was evident that what was stayed was not the proceedings in the appeal but the operation of the order dated August 3, 2001 and commented that even that order was passed with the consent of the parties. The AAIFR proceeded to hear the counsel for the State Bank of India and then adjourned the hearing to be taken up after lunch when submissions might be made on behalf of JUL. In the post lunch session, a lawyer's certificate was produced stating that apart from staying operation of the order dated August 3, 2001, the High Court had in fact stayed further proceedings before the AAIFR. The AAIFR did not accept the certificate and asked the counsel to make submissions. The counsel declined. And in those circumstances the AAIFR proceeded to dispose of the appeal on merits. It took into consideration the material facts and circumstances and came to hold as follows:

> "The workers and the secured creditors had expressed their loss of confidence in the management. The dues of the workers had not been paid. BIFR also took note of the fact that the cement plant of JUL was based on old wet process technology which was no longer economically viable. Moreover, according to the modified scheme, even 50% of the dues of SBI would not have been serviced by 2002, which was the terminal year in SS92 and the net worth would have continued to remain less than the accumulated losses."

The AAIFR further observed as follows:

> "We have particularly concerned about the non-payment of even the amount of Rs.3 cr to the workers which was part of the restructured liabilities in 1992. We had therefore given time to JUL/promoters for OTS negotiations with SBI afresh and for arriving at understanding with workers' union and asked them to deposit Rs.10 cr in no-lien account in two installments out of which Rs.3 cr was to be utilized for part payment of terminal dues to retired workers. A large number of workers have retired and have died and their families are in indigent circumstances. However, every person who is aggrieved by orders of this Authority has a right to seek redress from superior courts. The appellants have chosen to approach the Hon'ble High Court of Rajasthan at Jaipur and obtained stay of the order dated 3.8.2001. This shows that they are not prepared to make the deposit of Rs.10 cr and make payment of Rs.3 cr out of that to the workers."

16. Having made the observations and come to the findings, as noted above, the AAIFR dismissed the appeal and granted permission to the creditors for initiating proceedings for recovery of their dues and for execution of the decrees already obtained by them.

17. JUL then filed an application in the pending writ petition (No.7380/2001) bringing to the notice of the High Court the development taking place before the AAIFR. The court observed that while admitting the writ petition on September 4, 2001 "it was directed that there would be stay of ex-parte impugned order dated August 3, 2000 passed by the AAIFR". It then expressed its displeasure rather strongly over the fact that the AAIFR had proceeded with the hearing of the appeal and had finally disposed it of on merits and by order, dated September 12, 2001 stayed the operation of the final order passed by the AAIFR on September 6, 2001.

18. It may be noted here that the High Court did not say that it had actually stayed further proceedings in the appeal before the AAIFR but that part of the order was by mistake omitted to be recorded. It seems to have taken the view that the AAIFR should have refrained from proceeding with the appeal in view of its direction staying the operation of the interim order of the AAIFR, more so, as the counsel for the petitioner/appellant personally intimated it that further proceeding before it was stayed by the High Court.

19. Be that as it may, the writ petition was finally disposed of by the High Court by order, dated August 2, 2004. The order began with the observation that the writ petition was filed against the interim order dated, August 3, 2001 passed by the AAIFR in Appeal No.22/2001; it then spoke eloquently about the great value and importance of the rule of audi alteram partem; it proceeded to extract a passage from the final order of the AAIFR to note that the petitioner's appeal was dismissed even without giving it an opportunity of hearing and it finally observed as follows:

> "Since fair opportunity of hearing was not provided to the petitioners the order dated September 4 (sic 6) 2001 of AAIFR dismissing the appeal is vitiated being opposed to the principles of natural justice. Although, the order dated September 4 (sic 6) of 2001 has been passed during the pendency of the writ petition and it has not been impugned in the writ petition but this court can take notice of subsequent events. Article 226 covers a much wider ground of jurisdiction. The High Court while hearing a petition under Article 226 should keep in mind the interest of justice as paramount and appropriate relief may be granted even if the petitioner has not asked for it or has asked for a wrong relief. Petition under Article 226 will not be thrown out on the ground that no proper writ or direction has been prayed for." (Emphasis added)

The High Court accordingly set aside both the interim and final orders passed by the AAIFR dated August 3, 2001 and September 6, 2001 and remitted the matter for a fresh decision on merits after providing an opportunity of hearing to all the parties who were impleaded in appeal and who had sought impleadment in the writ petition.

20. The Cement Workers Karamchari Sangh, a workers' union, sought to challenge the order passed by the High Court by filing this special leave petition before this Court. But as noted above, during the pendency of the SLP the petitioner-Sangh entered into an agreement with JUL/GDCL.

21. As result of the intervening development, at the time of hearing of the case for its final disposal, the petitioner was content to take a seat on the sidelines and the space left by it was sought to be occupied by some of the respondents (creditors of the company) and some workers groups/unions seeking to intervene in the matter either to oppose the settlement or to press for the winding up of JUL in terms of the order of AAIFR.

22. Among the company's creditors who took the stand that the orders of its winding up passed by the BIFR and AAIFR may not be interfered with by his court were respondent No.12 (Chandigarh Housing Board), respondent No.15 (Ghaziabad Development Authority), respondent No.21 (Deputy Commissioner Income Tax), respondent No.26 (Jaipur Vidyut Vitran Nigam Ltd.), respondent No.30 (The Employees' State Insurance Corporation) and respondent No.31 (The Provident Commissioner). According to the respective counsel the aforesaid respondents had their dues against the company as follows:

"I. The Chandigarh Housing Board had a decree against JUL for a sum of Rs.49,60,569/- which with the accrual of interest has swelled up to Rs.2, 06, 81,009/-.

II. The Ghaziabad Development Authority had a decree against the company for a sum of Rs.60, 83,600/- and it was pending for execution before the Civil Judge, Ghaziabad.

III. The IT department has (unquantified) dues against the company.

IV. The Jaipur Vidyut Vitran Nigam Ltd. has dues against the company amounting to Rs.4549.28 lakh.

V. The ESI Corporation has dues against the company amounting to Rs.37, 78,881/-

VI.The PF department has dues against the company amounting to Rs.81 lakhs. (approx.).

23. Among the interveners, Bhartiya Cement Mazdoor Sangh (I.A.No.9) and Kanpur Jute Workers (I.A.No.12) assailed the settlement arrived at between the petitioner Cement Workers Karamchari Sangh and JUL/GDCL. Learned counsel appearing for the two proposed interveners submitted that the settlement was collusive and fraudulent; it was made in breach of a number of statutory provisions and it was unenforceable as finally determining the lawful dues of the workmen. Counsel appearing for Kanpur Jute Workers referred to passages from the report of Mathur. and submitted that a number of workers of Kanpur Jute Mill had not accepted any payment in terms of the agreement and, therefore, the agreement was, in any event, not binding on them.

24. Ms. Rachna Joshi Issar, learned counsel appearing for The Chandigarh Housing Board, strongly supported the winding up order passed by the BIFR and confirmed in appeal by the AAIFR. Learned counsel submitted that the High Court had completely misdirected itself in setting aside the final order dated September 6, 2001passed by the AAIFR on the ground that it was passed in violation of the principles of natural justice. Learned counsel submitted that in the facts and circumstances of the case, the refusal to grant adjournment could not be viewed as a violation of the principles of natural justice. From the copy of the High Court order that was produced before the AAIFR, it was evident that the High Court had stayed the operation of the interim order but not the proceedings in the pending appeal. The AAIFR was, therefore, justified in refusing to grant adjournment in view of the strong opposition by the other parties. At that stage the counsel for the company declined to make submissions on the merits of the appeal even though repeatedly asked by the Chairman. Hence, there was no question of any violation of the principles of natural justice and the very premise of the High Court order was, therefore, unfounded. She further submitted that, as a matter of fact, it was the order of the High Court that was completely without jurisdiction inasmuch as it purported to set aside an order that was not even brought to it under challenge. She submitted the High Court was conscious that the writ petition was filed against the interim order passed by the AAIFR asking the company to deposit Rs.10 crores as pre-condition for the admission of the

appeal. Nonetheless, it proceeded to set aside the final order of the AAIFR. The High Court was thus plainly in error in going beyond the scope of the writ petition and granting relief that was not even prayed for by the writ petitioner-company.

25. Mr.Manish Singhvi, counsel appearing for the proposed intervener Sarvadaliya Shramik Sangarsh Samiti (I.A.No.10) was equally vehement in opposing both the settlement and the order of the High Court remanding the matter to the AAIFR. Learned counsel submitted that any remand to the AAIFR would be an exercise in futility because the AAIFR would be legally bound to reaffirm the order of winding up of JUL. Mr. Singhvi submitted that the revival scheme SS 92 was sanctioned over a decade and half ago in the year 1992. From the conduct of GDCL during the past more than fifteen years it was evident that it had no interest in the revival of JUL but it simply intended to appropriate the vast assets of the company. Learned counsel stated that the company was already facing prosecution launched by the BIFR under section 33 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) for making false statements before it and was also issued a notice for prosecution under section 34 of the Industrial Disputes Act for indulging in unfair labour practice

26. Mr.M.Singhvi further submitted that in view of Section 22(3) proviso and Section 22(4)(b)(i) of the SICA and the circular of the Reserve Bank of India any revival scheme was dead and inoperative after the expiry of seven years. At present, therefore, there was no revival scheme. The company had lost the statutory immunity it enjoyed while SS 92 was alive and the only course open was the winding up of the Company as provided under Section 20(1) and (2) of the SICA. Learned counsel submitted the BIFR had passed the winding up order of the company (on Nov.24, 2000) after expiry of eight years from the date of sanctioning the scheme precisely under the aforesaid provisions. He further submitted that now after more than fifteen years the dues against the company had further mounted up and there was no scheme or a revised scheme in existence for its revival. In these facts and circumstances the AAIFR would be legally bound to reiterate the order of winding up of the company. Any remand to the AAIFR would, therefore, be quite futile and it would only delay the inevitable. The delay, however, would greatly benefit JUL/GDCL by giving it the opportunity for further tiers of litigation. At the same time the inherent delay in remand would cause great prejudice to the workmen and it may even break their fragile capacity to sustain. In support of his submissions, Mr. M.Singhvi relied upon the decisions of this Court in *Meghal Homes Pvt.Ltd. vs. Shree Niwas Girni K.K.Samiti*[1] and *International Finance Corporation & Anr. Vs. Bihar State Industrial Development Corporation & Ors*[2].

27. In regard to the settlement arrived at between the petitioner, Cement Workers Karamchari Sangh and the JUL/GDCL Mr. M.Singhvi submitted that it was collusive and illegal and unjust and unfair to the workmen. He referred to Rule 58 of the Industrial Disputes Rules and submitted that the so-called settlement was not drawn up in Form-H and a copy of it was not sent to the appropriate government and the authorities as provided under sub-rule (4) of Rule 58. The so-called settlement was thus in breach of the statutory provisions and it was clearly unenforceable. It could not be held to determine the rights of even those workmen who had received any payments under it and it would certainly not affect the rights of the workmen who had not received any payment under it.

28. On the other hand Dr. A.M.Singhvi, learned senior counsel appearing for respondent No.1 (JUL) and Mr. Mukul Rohatgi, learned senior counsel appearing for respondent No.7 (GDCL) contended that after entering into the settlement with the company the petitioner-Sangh no longer wished to press the special leave petition. This court should, therefore, dismiss it and leave the order of the High Court undisturbed.

29. In reply to the submissions made by Ms.Issar, Mr.Rohatgi submitted that the AAIFR was not right in disallowing the prayer for adjournment and dismissing the appeal without giving an opportunity of hearing to the appellant. Learned counsel stated that, as a matter of fact, the High Court in its interim order passed on September 4, 2001 had also stayed further proceedings in the appeal before the AAIFR but that part of the order was, by mistake, omitted to be recorded. Counsel for the appellant intimated the fact to the AAIFR but the AAIFR disregarded the lawyer's certificate and unjustly proceeded with the hearing of the appeal. He further submitted that on September 11, 2001 the company filed a petition in the High Court stating all this and prayed for clarification of its order passed on September 4, 2001. On the same day it filed another petition bringing on the High Court's record the final order passed by the AAIFR and sought to amend the writ petition and prayed for leave to challenge the final order of the AAIFR as well. He submitted that unfortunately the High Court's orders did not refer to those petitions. In support of the statement, copies of those petitions were filed as additional documents after the hearing of the case was concluded on February 7, 2008.

30. In response to the submissions made by Mr. Manish Singhvi, Mr.Rohatgi submitted that Sarvdaliya Shramik Sangharsh Samiti was not a party to the proceeding before this court and, in any event, the submissions made by Mr. Singhvi were completely at variance with the prayers made in I.A.No.10 filed on behalf of the proposed intervener.

31. Further, Mr.Rohatgi stoutly defended the settlement entered into between the petitioner-Sangh and JUL/GDCL. He stated that Justice Mathur had noted in his report that 1384 employees of the cement factory at Sawai Madhopur and 578 workmen at Phallodi Quarry had accepted the settlement and the company had paid to them the sums of Rs.8.67 crores and Rs.3.44 crores respectively. Similarly, at Kanpur 1198 workmen had accepted the settlement and the company had paid to them the aggregate sum of Rs.3.74 crores. Thus, altogether 3160 employees had accepted the settlement and the company had paid to them the total sum of Rs.15.18 crores. The report further noted that according to the list furnished by the company 1173 workmen of the cement factory, 457 at Phallodi Quarry and 136 at Kanpur had not accepted the settlement and the total amount due to them under the settlement was Rs.10.23 crores. (Here it may be stated that before Justice Mathur one of the workmen's union claimed that the lawful dues of the workers amounted to Rs.86 crores but the settlement was made for only 20-25 crores).

32. Mr.Rohatgi strongly contended that all the workmen who had received payment had done so in full and final settlement of their claims and they could no longer question the agreement. Those who had not accepted payments under the settlement were free to raise

their claims in accordance with law but they too could not object to the settlement between the company and the other workmen who had accepted payments.

33. Interestingly, after the hearing of the case was closed yet another petition (I.A.No.15) was filed on behalf of GDCL on February 21, 2008 which was listed before the Court on February 29, 2008. In this petition, the company, making a complete departure from its earlier stand in regard to the settlement, stated as follows:

> "The applicant submits that while the judgment has been reserved in the captioned matter, the applicant wants to put the controversy at rest and submits that, the applicant is ready and willing to get the dues of the workers, including those who have singed the settlement with the Respondent No.1 Jaipur Udyog Ltd., to be adjudicated upon by any statutory authority appointed by this Hon'ble Court. The applicant is filing the present application without prejudice to the arguments made before this Hon'ble Court on 07.02.2008. The applicant submits that the present application is being made bona fide and in the interest of justice and in the interest of workers".

Following the above statement, the prayer is made as follows:

> "(a) Direct any statutory authority to adjudicate on the dues of the said workers, including those who have signed the settlement with the Respondent No.1 Jaipur Udyog Ltd. within a period of two months; and
>
> (b) Pass an order as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the present case."

By filing this petition JUL/GDCL, of its own accord, opens up the claims of all the workmen and makes a positive gesture in an attempt to satisfy the court that it has no intent to run away with the lawful claims of the workmen.

34. On hearing counsel for the parties and on a careful consideration of the materials on record, including the affidavits and documents filed by the different parties, we are of the opinion that the AAIFR can hardly be blamed for proceeding with the hearing of the appeal on September 6, 2001. If there was a communication gap between the High Court and the AAIFR it was due to the omission to correctly record the interim order of the High Court. The order that was produced before the AAIFR did not indicate that the proceeding of the appeal before it was stayed. The parties (creditors of the company) were strongly opposed to any adjournment. Under the circumstances, the AAIFR was within its rights to disallow the prayer for adjournment on behalf of JUL and to ask its counsel to make submissions on merits. We, therefore, feel that the strong displeasure against the AAIFR expressed by the High Court in its order of September 12, 2001 was quite uncalled for. We are further of the view that since the counsel for the appellant GUL declined to make submissions in support of the appeal even though repeatedly asked by the AAIFR, after the request for adjournment was turned down; there was no breach of the principles of natural justice. Having regard to

the communication gap resulting from the mistake in recording its interim order, the High Court might have been justified in asking the AAIFR to pass a fresh order after giving the appellant JUL an opportunity of hearing. But the High Court was clearly in error in setting aside the final order passed by the AAFIR on the ground that it was passed in breach of the Audi alter am partum rule.

35. We find much substance in the grievance raised by the respondent creditors and the workmen in regard to the delay in the final disposal of the matter. It is quite true that the delay only benefits JUL/GDCL and causes great prejudice to the creditors and deep distress to the workmen. We are also conscious that seven years have passed by while the matter lay pending, first before the High Court and then before this court. Had the appeal not come to this court, the matter in all probability would have been concluded by now.

36. But for all this we are unable to overlook that JUL/GDCL were practically denied the remedy of appeal against the winding up order passed by the BIFR. We recall here the hackneyed but very useful maxim: justice should not only be done but it should also appear to have been done. We are, therefore, of the view that at least one chance should be afforded to JUL/GDCL to place their case before the AAIFR.

37. We are further of the view that central to the issue of rehabilitation or winding of the company is the question of the workmen's dues. The dues of all other creditors are ascertainable without difficulty. But in case of the workmen's dues there is great divergence between the claim of the workmen and what is accepted by the company's management. It is, therefore necessary to get the workmen's dues authoritatively determined. Once the workmen's dues too are known precisely that can be factored into a realistic revival scheme or accounted for in the winding up process, in case the eventuality arises.

38. We accordingly make the following directions which we consider, in the totality of the facts and circumstances of the case, would meet the ends of justice:

> "A. Re. The proceedings before the BIFR/AAIFR.
>
> I. The matter is remitted to the AAIFR and it is directed to restore Appeal No.22/2001 filed by JUL against the winding up order, dated November 24, 2000 passed by the BIFR, provided the deposit of Rs.10 crores, as directed by the AAIFR by its order dated August 3, 2001 is made within two months from today.
>
> II. In case the appellant JUL fails to make the deposit within the specified time, the appeal shall stand dismissed and the earlier order passed by the AAIFR on September 6, 2001 shall stand restored.
>
> III. In case, however, the deposit is made within the specified time, the AAIFR will proceed to dispose of the appeal after hearing the appellant and any of the parties to this appeal before this court (including the proposed interveners) or the parties to the appeal before the AAIFR who may appear before it. The judgment of this court is

deemed sufficient notice to all concerned and the AAIFR need not issue any further notices to any of the parties.

IV. In case the appellant makes the deposit within the specified time it will be open to it to file before the AAIFR a revised rehabilitation scheme. It will also be open to any other parties, including the workmen to file before the AAIFR a rehabilitation scheme for the sick company. In case a revised scheme is filed the AAIFR will consider it and pass appropriate orders in accordance with law.

V. Most importantly, the AAIFR shall make all endeavors to dispose of the matter as early as possible as and in any event not later than four months from the date of deposit of Rs.10 crores by the appellant.

B. Re. Determination of the lawful dues of the Workmen:

I. Mr. Justice N.N.Mathur (a retired judge of the Rajasthan High Court) is appointed Arbitrator under Section 10-B (Rajasthan Amendment) of the Industrial Disputes Act, 1947.

II. Justice Mathur shall hear representatives of the management and the workmen and determine the arrears of wages and other lawful dues payable to the different categories of workmen of JUL employed in the cement factory, Sawai Madhopur, at Phallodi Quarries and in Kanpur Jute Mill (U.P.). Justice Mathur will take into account, apart from the legal provisions, the various settlements, arrived at between the management and the workmen and consider to what extent and upon whom those settlements are binding. He will then work out a principle on the basis of which the dues of every individual workman may be fixed and the total dues of all the workmen may thus be reckoned.

III. Justice Mathur shall make his award and sign it as provided under Section 10-F within four months from the date of receipt/production of a copy of this order. He shall forward a copy of the award made by him to the parties, the Commissioner of Labour, the Registrar and the State Government as provided under Section 10-I. The Registrar shall enter it in the register kept for the purpose and the State Government shall publish the award under Section 17 of the Act without any delay.

IV. JUL/GDCL shall pay to Mr. Justice N.N.Mathur within one month from to day a sum of Rs.2 lakhs as his honorarium and an additional sum of Rs.1.5 lakhs to meet the salary of the staff and other incidental expenses, including traveling expenses. The Commissioner-cum-Secretary Industries (GR-I) Department, the Labour Commissioner, Government of Rajasthan, the Labour Commissioner Government of U.P. and the Collector(s) of the district(s) where the cement factory and Phallodi Quarry are situate and the Collector, Kanpur shall extend all help and assistance to Mr. Justice Mathur as may be required by him in connection with the proceedings. "

39. The appeal is disposed of with the above observations and directions. No Costs.

Judgment Referred.

1(2007) 7 SCC 0753
2(2005) 10 SCC 0179