

Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and Others

Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and Others

SooperKanoon Citation : sooperkanoon.com/781369

Court : Chennai

Decided On : Aug-26-1994

Reported in : [1996]87CompCas438(Mad); 1995(1)CTC73; (1995)ILLJ588Mad

Judge : M. Srinivasan and ;Thangamani, JJ.

Acts : Securities Contracts (Regulation) Act, 1956 - Sections 3(1); Sick Industrial Companies Act, 1985 - Sections 12(3), 15(1), 16(1) and 17(3)

Appeal No. : Writ Petitions Nos. 5117 and 5118 of 1994

Appellant : Madras Labour Union

Respondent : Binny Ltd. (Buckingham and Carnatic Mills) and Others

Advocate for Def. : R. Gandhi and ;P. Chidambaram, ;Senior Counsel for G. Narendran, ;Adv., P. Rajamanickam, Government Adv., ;A.L. Somayaji, ;Senior Counsel for M/s. Aiyar, ;Dolia and ;Ms. B. Srividya, ;Advs., Mohan Pa

Advocate for Pet/Ap. : R. Vaigai for Row and ;Reddy, Advs.

Judgement :

Srinivasan J.

1. The facts which are not in dispute can be briefly stated as follows :

The Buckingham and Carnatic Mills is more than a century old and it has been working at Perambur in the city of Madras for the last 119 years. Till recently, it has been one of the biggest textiles mills in the whole of Asia, having an installed spindle capacity of 88,208 spindles, of which 79,072 were utilised. It had an installed loom capacity of 2,074 looms out of which 1,816 looms were utilised. It has a 'dye house' or 'processing house' and a central power station. It forms part of a company by name Binny Ltd. incorporated under the Companies Act in 1969 by amalgamation of the Binny group of companies comprising Buckingham and Carnatic Co. Ltd., Bangalore Woollen, Cotton and Silk Mills Company (BWM), Binny and Co. Ltd. and Binny Engineering Works Limited together with two associate companies, viz., Madura Co. P. Ltd. and the Ganges Transport and Trading Co. Ltd. Their activities are broadly organised under four divisions, viz., the textile division comprising B and C Mills at Madras and BW Mills (BWM) at Bangalore and a silk mill at Bangalore, the engineering division at Madras mainly engaged in manufacture of sugar mill and rice mill machinery and heavy structures, the service division which is an amalgam of the erstwhile Madura Co. Pvt. Ltd. and Binny and Co. Ltd. dealing with procurement and marketing of engineering and textile products, shipping clearing/forwarding agents and the real estate division at Madras engaged in development of real estate properties owned by the company. The management filed in December, 1990, an application under section 25-O of the Industrial Disputes Act, 1947, hereinafter referred to as 'the I.D. Act'. seeking permission of the competent authority to close down the mills. The reasons stated by the management were low productivity, excessive work force and non-co-operation of the workers. A reference was also made to a scheme furnished by the Industrial Development Bank of India, hereinafter referred to as 'the IDBI', for rehabilitation which suggested shifting of the process house to Bhuvanagiri in South Arcot district. The application was opposed by the Madras Labour Union, the petitioner herein. After hearing the parties, the Commissioner of Labour, who was the authority under section 25-O of the Industrial Disputes Act, passed an order on February 8, 1991, finding that the reasons adduced by the management were genuine and adequate, but holding that there was no justification for imminent closure. The Labour Commissioner observed that it was not beyond the control of the management to convince

workers and enter into an amicable settlement for shifting of the process house to Bhuvanagiri, within a reasonable time frame and with the whole hearted support of the workers the process could be carried out.

2. Aggrieved by the said order, the management filed W.P. No. 5102 of 1991 in this court challenging the correctness of the same. The mill was also closed with effect from April 1, 1991. On April 23, 1991, this court appointed a former Chief Justice of this court as Commissioner to decide the questions whether for a proper and viable working of the mills, the proposal to shift the processing house was justified and any measure to protect the interest of the workmen will be required to be taken by the management and whether shifting of the processing house to Bhuvanagiri will cause prejudice to the Workmen. The commission submitted its report stating that in the absence of certain documents called for from the IDBI, which were not placed before it, it was difficult to hold that the shifting of the process house from Perambur to Bhuvanagiri was the only viable proposal. The commission, however, expressed that it did not draw any adverse inference and it left the matter to the opinion of the court as to whether an adverse inference should be drawn by the non-production of the documents by the IDBI. On the second part of the first question, the commission referred to the stand taken by the management that no permanent worker would be retrenched or compelled to go to Bhuvanagiri and said that the management as well as the representatives of the IDBI and SBI must be equally bound by the said assurance. The commission also recorded the assurance given by the management's counsel that the permanent employees will not be retrenched or asked to go to Bhuvanagiri in the event of shifting to Bhuvanagiri and the same will apply to trainees who had been working for about eight years. The commission said that the undertaking and commitment made by the management in the case of permanent workers would apply to the trainees who had completed three years or who will be completing three years as mentioned therein. The commission expressed its opinion that difficulty of water, difficulty in obtaining requisite quantity and quality of coal and electricity and flash flood and disposal of effluents could be solved and sorted out. On the second question, the commission said that the shifting of the processing house to Bhuvanagiri would cause prejudice to the interests of the workmen and there was a risk of their losing hearth and home in Madras.

3. After the receipt of the report of the Commissioner, there was an attempt by the court to bring about an amicable settlement between the management and the union, but in vain. The court proceeded to pass its final order in the writ petition on the merits on September 27, 1991. The court recorded in the judgment that the IDBI had agreed to reconsider its earlier proposal and submit a fresh scheme for rehabilitation. It was also recorded that the management agreed unconditionally to accept any revised proposal which may be made by the IDBI; but the union was not willing to do so and it expressed some reservations. The court found on the merits that the order of the Labour Commissioner was not in accordance with the law as he had failed to take into account certain essential factors and some relevant materials. In that view the court allowed the writ petition and directed the Labour Commissioner to reconsider the application filed by the management for closure and pass fresh orders. The court directed the IDBI to submit its report to the Labour Commissioner as early as possible and fixed the outer time limit therefor.

4. But, even when the aforesaid writ petition was pending in this court, the Board for Industrial and Financial Reconstruction, hereinafter referred to as 'the BIFR', initiated proceedings suo motu on June 26, 1991, under section 16(1)(b) of the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as 'the SIC Act', to determine whether the company has become a sick industrial company within the meaning of section 3(1)(o) of the SIC Act. The board heard the management, financial institutions and the labour unions and reserved orders in the matter after directing production of certain materials by July 10, 1991. The representative of the petitioner-union brought to the notice of the board the pendency of the writ petition in this court. By order dated November 11, 1991, the board stayed its proceedings indefinitely stating that it could be revived, if necessary and appropriate, after the conclusion of the litigation relating to the closure of the mills. The board took note of the orders passed by this court and expressed that there was a likelihood of conflict of consideration and jurisdiction with the proceedings before the Labour Commissioner, if the Board pursued its suo motu proceedings.

5. On November 22, 1991, the Commissioner of Labour passed an order rejecting the application for closure but permitting the management to shift the process house to Bhuvanagiri, subject to the conditions set out in his order. It was also observed that it may take a year or two to erect and commission the process house at Bhuvanagiri and till then, the process house will continue to function at Madras. He directed the management to reopen the mills within thirty days from the date of receipt of his order and provide employment to the employees in a phased manner. The reason for rejecting the application for closure was that it was detrimental to the interests of the general public and that the reasons given by the management for closure were not genuine and adequate.

6. Both parties filed applications for review before the Government under section 25-O(5) of the Industrial Disputes Act.

7. In the meantime, the Chief Minister of Tamil Nadu, with a view to reopen the mills, had convened a meeting on February 4, 1992, with the representatives of the management, trade unions and political parties. In the meeting it was decided that the mills should be reopened on April 13, 1992, (Tamil New Year's day) and a tripartite committee was constituted to formulate a scheme to run the mills in a viable and profitable manner. Accordingly, the Government in G.O. (D) No. 144, Labour and Employment Department, Madras, dated February 13, 1992, issued orders constituting a tripartite committee consisting of Mr. T.K. Venkataraman as representative of the management, Mr. W.R. Varada Rajan as representative of the trade union and Thiru N. Athimoolam, I.A.S., Commissioner of Labour, as representative of the Government. One of the terms of reference was to call upon the management to prepare a viable scheme with reference to the view of the IDBI and to its satisfaction, and the committee to consider and take a view on such scheme on viability and other matters which will be relevant in order to get the acceptance of the IDBI. As per the said terms, the management filed a scheme for the consideration of the committee. The scheme envisaged shifting of the process house of Bhuvanagiri based on the uncertain availability of required quality and quantity of water and fuel. It also contemplated shifting of the process house at Bangalore to Bhuvanagiri, so that the company will have a centralised process house for both the units at Bhuvanagiri to achieve optimum utilisation of

machinery, men and materials. The committee considered the scheme and all the other relevant materials and submitted its report on February 29, 1992. Thiru Varada Rajan, representing the workmen has signed the report of the committee and also gave a separate report as a member of the committee and requested that the recommendations contained in his report be deemed to be his recommendations to the Government on the terms of reference. The committee reported that it could not succeed in its attempt to bring about a settlement under section 12(3) of the Industrial Disputes Act with regard to the various issues as no consensus was reached on all issues, though considerable progress was attained during the course of bilateral conciliation proceedings on certain issues.

8. On March 12, 1992, the Government issued G.O. (2D) No. 27, Labour and Employment Department, allowing the application for review filed by the management and holding that the closure was fully justified as the reasons given by the management were genuine, adequate and in the public interest. The last two paragraphs of the order read thus :

'38. Unless a viable scheme is presented to and approved by the Industrial Development Bank of India, no funds would be forthcoming to enable the management to reopen and run the mills viably. The present revised scheme is considered prima facie viable on financial, technical and commercial aspects and protects the interests of workers also. The Government agree that the shifting of the process house to Bhuvanagiri cannot be avoided because of the difficulties in getting adequate water, coal and rail wagons at Madras and also because of the assured supply of required quantity of water and gas at Bhuvanagiri.

39. After a careful consideration of all the issues and in the light of the above, the Government hold that the closure in this case is fully justified and the reasons given by the management are genuine, adequate and are in the public interest. Hence, the orders of the Commissioner of Labour are set aside. In view of this finding, the request to stay that portion of the orders of the Commissioner of Labour directing the management to reopen the mills within 30 days from the date of the Commissioner of Labour's order is not considered necessary and so it is not granted. The review petitions are disposed of accordingly.'

9. In the course of the order, the Government made a reference in paragraph 28 to the separate report given by Thiru Varada Rajan, representative of the union, who was a member of the tripartite committee and extracted the following portion in his report :

'In the event of the Industrial Development Bank of India clearing a scheme with the process house at Bhuvanagiri, the tripartite committee may recommend the following safeguards are provided...'

10. Referring to the said portion in the report, the Government points out that during the deliberations of the tripartite committee, the unions seem to have reconciled to the proposal of the management to shift the process house to Bhuvanagiri. The Government also referred to the report that the executive committee of the trade unions at its meeting held on February 29, 1992, decided to accept the management's proposal for shifting the process house to Bhuvanagiri, though subject to certain conditions. In another paragraph, the Government, referred to the fact that the unions could not suggest an alternatively viable scheme. That order of the Government was not challenged by the unions and it became final.

11. But, on the same day, viz., March 12, 1992, the Government issued another G.O., viz., G.O. (2D) No. 28, Labour and Employment Department, directing the management to reopen the mills by April 13, 1992, and at the same time accepting the revised scheme formulated by the management subject to the conditions specified in the annexure to the order to ensure protection of interests of workers, so that the management could approach the IDBI for release of funds for reopening the mills by April 13, 1992. The Government advised the management to approach the IDBI for approval of the revised scheme incorporating the said conditions for release of funds. The Government also advised the trade unions to co-operate with the management in its efforts to reopen the mills on April 13, 1992. It was made clear that the workers will not be entitled for any wages for the period of closure. However, the Government advised the management to pay one month's salary ex gratia to all the workers, as a gesture of goodwill, on the date of reopening of the mills. In the annexure to the order, one of the conditions was that

there should be no retrenchment of permanent workmen/employees of the process house and the trainees who had completed three years of service, consequent to the shifting of the process house to Bhuvanagiri and they should not be forced to go to Bhuvanagiri and those who are willing only be shifted to Bhuvanagiri and those who were not willing to go to Bhuvanagiri should be provided with employment in Madras itself. Another condition was that the management should obtain prior permission of the Government of Tamil Nadu before disposing of the immovable properties of the mills at Madras.

12. Thereafter, conciliation proceedings were held and the parties arrived at a memorandum of understanding on March 18, 1992, before the Special Deputy Commissioner of Labour and further conciliation proceedings were held before the Commissioner of Labour and parties reached an agreement on certain terms and conditions. A memorandum of settlement was drawn up under section 12(3) of the Industrial Disputes Act and rule 25(1) of the Tamil Nadu Industrial Disputes Rules, 1958, on March 26, 1992. It was agreed that the process house would be set up at Bhuvanagiri and the work relating to 'dye house', finished warehouse and related engineering services and sales and invoice section will be transferred to Bhuvanagiri. The said process house would be deemed to be part and parcel of B and C Mills. Another term of the agreement was that there shall be no retrenchment consequent on the shifting the process house to Bhuvanagiri. The said process house would be deemed to be part and parcel of B and C Mills. Another term of the agreement was that there shall be no retrenchment consequent on the shifting of the process house to Bhuvanagiri and the workmen not willing to go to Bhuvanagiri shall be provided with alternative employment in the Madras Mills itself. It was further agreed to implement the provisions of the Varadan award in I.D. Nos. 1 and 2 of 1985 as applicable to other textile mills in Tamil Nadu and that scientific work norms will be determined and implemented and the study therefor will be conducted by a three member expert team comprising one member from SITRA, one nominated by the management and one nominated by the unions. The unanimous recommendation of the three member expert study team will be implemented and difficulties, if any, will be jointly referred by the management and the unions to BTRA/ATIRA, whose decision shall be final and binding on the parties. The final date for implementation of the Varadan award

was agreed to be April 1, 1993. The settlement was to be in force till March 31, 1996, and even thereafter until the agreement is terminated by either party under section 19(2) of the Industrial Disputes Act.

13. The three member expert committee considered and discussed the study report submitted by SITRA during March/April, 1983, and finalised its recommendations. The revised final report submitted by the expert committee in June, 1993, incorporated the corrections on the SITRA report and the amended/modified recommendation based on the decisions taken during the committee meetings. A copy of the minutes of the report, the work force of 5,314 required rationalisation involving about 600 workers.

14. On July 7, 1993, the management made a reference to the BIFR under section 15(1) of the SIC Act. The Board fixed the first hearing for October 15, 1993. But, on August 12, 1993, the petitioner-union wrote a letter to BIFR seeking information about the suo motu enquiry, which was earlier postponed indefinitely. The Board sent a reply on September 23, 1993, informing the union that the suo motu proceeding was dropped and the enquiry was closed as the company position for the year 1992-93 (sic) under section 15(1) of the SIC Act. The petitioner-union sent a letter on October 9, 1993, to the Board requesting for a copy of the reference filed by the company and also for intimation as to the date of commencement of the proceedings on the said reference. On October 15, 1993, the Board passed an order declaring the company to be a sick industrial company under the provisions of the SIC Act and appointed the IDBI as the operating agency under section 17(3) of the SIC Act. The operating agency was directed to have a comprehensive techno-economic viability study of the various units of the company done through technical consultants and a scientific study of the manpower including officers/manager of the company. It was also directed to examine whether restructuring of various units of the company was necessary. Further, consequential directions were also given and the cut-off date was fixed to be March 31, 1994. The operating agency was directed to prepare the report in consultation with all concerned. Ultimately, the board directed the representative of the company to furnish their rehabilitation proposal for revival of the company establishing long-term viability of the unit, the audited accounts for the year ending

March 31, 1993, the provisional accounts up to October 31, 1993, and all other relevant information to the operating agency by December 15, 1993. The agency was directed to furnish its comprehensive report along with the minutes of the joint meeting by February 28, 1994. The Board made it clear that no extension of date for submission of the report shall be allowed and that the agency should simultaneously explore all possible alternatives for revival of the company.

15. On October 19, 1993, the petitioner-union wrote to the BIFR that they had learnt about the proceedings held on October 15, 1993, and requested copies of the proceedings and the order, if any, passed by the Board.

16. But, even on October 18, 1993, itself, the petitioner-union put up a notice informing its members that there were negotiations on that day between the management and the workers and that the management disclosed the order of the BIFR dated October 15, 1993, declaring the company to be a sick company and the appointment of the IDBI as operating agency. On November 15, 1993, the petitioner-union put another notice in the notice board informing its members that as per the advice of the Commissioner of Labour, a voluntary separation scheme has been announced by the management on the basis of a similar scheme at Bangalore giving 15 days' wages by way of compensation per year. The notice said that such of those workers who wanted to apply under that scheme could do so before November 30, 1993. It was added that the union would continue to insist upon its demands. The management announced the scheme only on November 17, 1993. A form was also prescribed for applying under the scheme. The notice of the management said that applications should be given before 4.30 p.m. on November 30, 1993, to the Labour Relations Manager.

17. The SITRA submitted a report to the operating agency of the IDBI on December 4, 1993, without consulting the petitioner-union suggesting restructure of Binny Limited into subsidiaries and reduction of work force, besides scrapping of machinery and shrinking of closing units. The petitioner wrote a letter to the BIFR on December 23, 1993, but there was no response. The petitioner-union made representations to the State Government in January, 1994, and there were proceedings before the Labour Minister on January 27, 1994. On January 29,

1994, an agreement was entered into between the management and Anna Thozhilalar Sangam, the fifth respondent in these petitions under section 18(1) of the Industrial Disputes Act. Basing on the said agreement, the management issued notice on January 31, 1994. The BIFR issued notice on January 21, 1994, fixing the date of hearing on March 30, 1994, to consider the scheme submitted by the operating agency of the IDBI.

18. At that stage, these two writ petitions have been filed by the Madras Labour Union on March 22, 1994. The prayer in W.P. No. 5117 of 1994 is for the issue of writ of declaration that the settlement dated January 29, 1994, between the first respondent (management) and the fifth respondent is illegal and void and all actions of the first respondent pursuant thereto are invalid and that all actions of the first respondent for removal of machinery, sale of assets and reduction of activity of the mills including voluntary separations pursuant to the notice dated November 17, 1993, and thereafter, are violative of sections 25-N and 25-O of the Industrial Disputes Act and G.O. No. (2D) 28, dated March 12, 1992, consequently direct the first respondent to restore the position in the mills as in 1990 and to reinstate all the workers whose services were illegally terminated with all consequential benefits. The prayer in W.P. No. 5118 of 1994 is to issue a certiorarified mandamus to quash the order dated October 15, 1993, read with the notice dated February 21, 1994, issued by the BIFR, the fourth respondent, in Case Registration No. 48 of 1993 (Binny Limited, In re) and all further proceedings pursuant thereto after calling for the concerned records from it and consequently direct the fourth respondent to hold fresh proceedings in Case Registration No. 48 of 1993, after prior notice to the petitioner-union and hearing it and pass such other orders or directions as are necessary or proper to meet the ends of justice.

19. It is not necessary to set out the contents of the affidavit filed in support of the writ petitions. Apart from the above facts, it contains some allegations of mala fides against the management, the IDBI and the SITRA in addition to the contentions of law. The State Government is also not spared and while referring to G.O. No. 27, dated March 12, 1992, the affidavit not only brands it as perverse and erroneous but also alleges that the two G.Os. Nos. 27 and 28 were part of the process by which the Government had already predetermined the issue in the

review application to justify the closure effected by the management and the whole thing was a device to make workers accept the same under extreme hardship. It is also not necessary to refer to the contents of the counter-affidavits filed by the respondents at this stage as we will be noticing them to the extent necessary when we consider the respective contentions of the parties.

20. The Management, the State Government, IDBI, BIFR and B and C Mills Anna Thozhilalar sangam are respondents Nos. 1 to 5 in both the writ petitions. The Binny Employees' Union representing the staff was impleaded on April 15, 1994, as the sixth respondent in W.P. No. 5117 and the seventh respondent in W.P. No. 5118 by orders in W.M.P. Nos. 8774 and 8777 of 1994. The Binny Beach Engineering Anna Thozhilalar Sangam was impleaded as the sixth respondent in W.P. No. 5118 of 1994 on April 15, 1994, by an order in W.M.P. No. 8628 of 1994. The Binny Mills Labour Association representing the workers in the Bangalore unit filed W.M.P. No. 8649 of 1994 to implead itself as a party to W.P. No. 5118 of 1994 and the same was ordered on June 29, 1994. It is the eighth respondent in that writ petition.

21. Along with the writ petitions, the petitioner filed W.M.P. No. 8075 of 1994 in W.P. No. 5117 of 1994 and W.M.P. No. 8077 in W.P. No. 5118 of 1994. The former is for an injunction restraining the management from taking any action pursuant to the settlement dated January 29, 1994, and doing the other acts mentioned in the prayer of the writ petition. The latter is for stay of further proceedings before the BIFR in Case Registration No. 48 of 1993. The learned judge who admitted the writ petitions ordered notice in the former petition and granted interim stay in the latter while ordering notice. The management filed W.M.P. No. 8576 of 1994 for vacating the stay granted in W.M.P. No. 8077 of 1994. All the three miscellaneous petitions were heard by Raju J. on March 29, 1994, who modified the order of interim stay and permitted the BIFR to proceed further in the matter except formulating the final scheme as such until further orders of this court. The learned judge said that any proceeding taken would be without prejudice to the rights of the parties and subject to the result of the W.M.Ps. On March 30, 1994, the BIFR heard all the parties on the report submitted by the operating agency. The State Bank of India wanted time to consider the same

and the petitioner objected to the acceptance of the report. All the other parties before the BIFR accepted the scheme contained in the report. The BIFR treated the scheme as a draft scheme and directed publication thereof in local newspapers and posted the matter to June 13, 1994, to consider objections and suggestions. On April 15, 1994, the W.M. Ps. came up for hearing and the court recorded the undertaking given by learned senior counsel for the management that no worker would be retrenched and issued a direction that no worker shall be retrenched until further orders. The learned judge added, however, that the order will be without prejudice to all the workers who want to avail of the voluntary separation scheme purely on voluntary basis. The order also directed maintenance of status quo in respect of machinery till April 22, 1994, to which date the miscellaneous petitions were adjourned.

22. In the meanwhile, the management filed petitions for special leave to appeal to the Supreme Court against the order dated March 29, 1994 passed by Raju J. The Supreme Court passed the following order on May 13, 1994 :

'Heard learned counsel for the petitioner and for respondent No. 1 the only modification that is needed in the order of the High Court dated March 29, 1994, is that the BIFR may finalise the scheme after hearing the workmen. However, the scheme so finalised will not become operative till the High Court either by final or interim order approves of the said scheme. The BIFR will hear the objections of the workmen and also furnish the relevant material to them that may be necessary to file their objections. The BIFR will act on this order.

The parties should approach the High Court for expeditious disposal of the writ petitions. The special leave petitions are disposed of.'

23. The management filed W.M.P. No. 15401 of 1994 to fix an early date for the hearing of the writ petitions. The Hon'ble Chief Justice directed posting of the writ petitions and the miscellaneous petitions before us. When the matter came before us on June 20, 1994, counsel for the petitioner represented that the BIFR had passed orders on June 13, 1994, and they required time to get copies and prepare arguments. Ultimately, the hearing began on July 7, 1994, and concluded on July 28, 1994. It will be convenient to refer to the contentions in each writ petition

separately and consider the same.

W.P. No. 5117 of 1994 :

The petitioner's contentions are as follows :

The petitioner is the only recognised union of workers and it is the oldest union in the country. It has on its rolls more than 5,000 members and they can be represented only by the petitioner. The fifth respondent union is one sponsored by the management and it has no recognition. It enjoys the patronage of the political party in power in this State. Almost all the workers in the mills are members of the petitioner union and the fifth respondent cannot represent them. The settlement under section 18(1) of the Industrial Disputes Act between the management and the fifth respondent is a fraud on the workers. It is null and void as there was no industrial dispute to be settled thereby. It is an unfair labour practice as defined by the Industrial Disputes Act. The requirements of the rules are also not fulfilled. Under the guise of acting under the said settlement, the management has forced workers to adopt 'voluntary separation' which is nothing but retrenchment contrary to section 25-N of the Industrial Disputes Act. The management has reduced the activity in the mill contrary to the terms of G.O. No. 28. The management is only planning to wind up the operations of the mills and sell away the lands occupied by the mills by real estate deals. The action of the management contravenes section 25-O of the Industrial Disputes Act. Even if there is an alternative remedy, the monstrosity of the situation warrants exercise of jurisdiction by this court under article 226 of the Constitution of India.

24. Per contra, learned counsel for the company challenges the maintainability of the writ petition not only on the ground that the first respondent is a private company but also because the matter in dispute can be agitated only before the statutory forum created under the Industrial Disputes Act. It is also urged that a settlement under section 18(1) of the Industrial Disputes Act binds only the parties thereto and it cannot be challenged by a third party who is not affected by it. It is pointed out that none of the parties to the said settlement has approached the court making a grievance and there is no cause of action for the writ petition. Factually, it is submitted that the fifth respondent-union enjoys the support of the majority of

the workers and the claim of the petitioner-union is false. It is also argued that G.O. 28 is an administrative order purely advisory in nature and does not confer or create any rights or benefits.

25. Learned counsel for the fifth respondent-union has submitted that the said union represents the majority of workers. According to him, when the mill stood closed from April 1, 1991, to April 13, 1992, many a worker found that the stand taken by the petitioner-union in the earlier proceedings was not helpful in bringing to an end the stalemate. The majority of workers formed on April 3, 1992, the fifth respondent-union and got it registered on May 21, 1992. He points out that as on May 27, 1992, when a general body meeting was held there were 1,184 members. It is also pointed out by him that the union has been recognised by the management as well as the authorities. He refers to the notices to the union from the Special Deputy Commissioner, Labour, and the Commissioner of Labour inviting it to take part in the conciliation proceedings and negotiations ranging from May 31, 1993, to January 24, 1994. It is his contention that the settlement dated January 29, 1994, is binding on the parties thereto and the petitioner-union who is not a party thereto cannot make a grievance of the same. It is submitted that as many as 3,342 workers accepted the same and 3,176 of them had already received the benefits thereunder. The union of staff members (seventh respondent) and the Bangalore union (eighth respondent) have also accepted the same. It is further argued that the terms of the said settlement do not in any way run counter to the terms of the section 12(3) settlement of March 26, 1992, and even if it is so, there is no law preventing a section 18(1) settlement between the workers and the management in the fifth respondent-union. It is further argued that even before that settlement 1,222 workers opted to retire under the 'voluntary separation Scheme', hereinafter referred to as 'the VSS'. Thereafter, another 404 workers opted to retire under the scheme. It is submitted that the petitioner has made some false statements and deliberately suppressed some of the facts in the affidavit filed in support of the writ petition and the issue of a writ under article 226 of the Constitution of India being discretionary and not *ex debito justitiae*, it should be dismissed. It is also said that in this case if the prayers of the petitioner are granted that will lead to a catastrophe from which the workers can never recover.

26. The Government advocate appearing for the second respondent produced the relevant records to show that all the formalities prescribed by the Industrial Disputes Act and the rules framed thereunder for bringing about a settlement under section 18(1) have been duly complied with. Hence, the objection raised by the petitioner that the requirements of rule 25 of the Tamil Nadu Industrial Disputes Rules are not fulfilled has to fail and the rulings in *Jhagrakhan Collieries (P.) Ltd. v. Labour Court* : (1975)ILLJ163SC , *Tata Chemicals Ltd. v. Workmen of Tata Chemicals Ltd.*, : (1978)ILLJ22SC and *Brooke Bond India Ltd. v. Their Workmen*, : (1981)ILLJ184SC , have no application in this case.

27. At this stage itself, we would like to dispose of the contention faintly urged before us by the petitioner that the fifth respondent-union is not a recognised one and it cannot represent the workers and enter into a settlement under the Industrial Disputes Act. Admittedly, there is no statutory provision in this State regarding recognition of trade unions as in the State of Maharashtra. Our attention is drawn to the judgment in *Balmer Lawrie Workers' Union v. Balmer Lawrie and Co. Ltd.* [1985] 66 FJR 273; AIR 1985 SC 322, wherein section 20(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (1 of 1971) was challenged on the ground that it violated articles 19(1)(a) and (c) and 14 of the Constitution of India. By that sub-section an exclusive right was conferred on the recognised union to represent workmen in any proceeding under the Industrial Disputes Act and at the same time the right of an individual workman to represent other workmen was also denied. However, the section accepted the situation contemplated by section 2A of the Industrial Disputes Act. While upholding the validity of the sub-section, the Supreme Court traced the history of the development of trade unions and the necessity for such a provision. The ruling does not help the petitioner in the present case as there is no similar statutory provision in this State.

28. Learned counsel for the petitioner referred to the judgment in *General Secretary, Rourkela Sramik Sangh v. Rourkela Mazdoor Sabha*, : (1991)ILLJ257SC , in which it was held that the Labour Commissioner in the State of Orissa was the implementation unit/implementation officer entrusted with the task of granting recognition to the unions in that State and an application made to

him by the appellant Sangh for recognition was proper. The Supreme Court considered the meaning of 'implementation machinery' under the code of discipline ratified by all Central Employers' and Workers' Organisations at the 16th session of the Indian Labour Conference held in May, 1958, and which came into force from June 1, 1958. Our attention is also drawn to the Code of Discipline published by the Government of India, Ministry of Labour and Employment, Implementation and Evaluation Division, and the provisions contained therein for recognition of unions. Admittedly, the code of discipline is non-statutory and no material has been placed before us to identify the implementation machinery, if any, in this State. On the other hand, learned counsel for the fifth respondent has produced the notices issued to it by the Deputy Commissioner, Labour, and the Commissioner of Labour between May 31, 1993, and January 24, 1994, inviting it to take part in the conciliation proceedings. It is also the claim of the fifth respondent that a majority of the workers are members of that union even if they had not given up their membership in the petitioner-union. It is pointed out that there is no law prohibiting a worker from being a member of more than one union at the same time. Of course, it is not possible for us to come to any factual conclusion as to whether the fifth respondent has a larger membership than the petitioner. It appears, however, that there has been some horse-trading as is prevalent among political circles. But, on the materials placed before us, we are unable to accept the contention that the fifth respondent-union is a non-entity and it is not entitled to represent its members and enter into a settlement under section 18(1) of the Industrial Disputes Act.

29. Maintainability of the writ petition :

Both sides have referred to several rulings as to whether a writ can be issued to a private company and, if so, the circumstances under which such a writ can issue. We shall advert to them chronologically and cull out the principles.

30. In *Sree Meenakshi Mills Ltd. v. State of Madras* : (1951)IILLJ194Mad , the management filed an application for the issue of writ of certiorari to call for the records in I.D. No. 28 of 1949 before the Industrial Tribunal, Madurai, and to quash the award made therein and also for issue of a writ of prohibition prohibiting the

State of Madras from enforcing the award. This judgment is referred to by learned counsel for the petitioner in support of a contention that a dispute between an employer and employee in industrial concerns is not founded on contractual rights and obligations but on considerations outside strict legal rights and obligations. According to learned counsel, it is a matter of social concern and the present writ petition cannot be thrown out on the ground that the petitioner is a stranger to the settlement dated January 28, 1994, between the management and the fifth respondent-union. The above ruling had nothing to do with such a question and the Division Bench was only considering the validity of the Industrial Disputes Act itself.

31. The decision in *Praga Tools Corporation v. C.V. Imanuel* [1969] 39 Comp Cas 889 ; [1969] 36 FJR 191 ; AIR 1969 SC 1309 has been referred to by both sides. The appellant before the Supreme Court was a company incorporated under the Companies Act. The Union of India held 56 per cent. of the shares of the company and the Government of Andhra Pradesh held 32 per cent. The balance of 12 per cent. was held by private individuals. The Union of India had power to nominate the company's directors. The company entered into two settlements with the workmen's union. They were arrived at and recorded in the presence of the Commissioner of Labour. Subsequently, the company entered into another agreement with the union, which enabled retrenchment of 92 of its workmen notwithstanding the two earlier settlements. The agreement provided that in order to mitigate the consequences of the proposed retrenchment, the company had evolved a scheme of voluntary retirement with terminal benefits superior to those provided under the Industrial Disputes Act; but the scheme would be available to the workmen only for a period of ten days from the date of the agreement. It also provided that the company and the union agreed to make an attempt to rehabilitate the retrenched persons by helping them to obtain alternative employment and for that purpose, the company had contacted public sector and other industries for absorption as far as possible of the retrenched personnel. Challenging the validity of the said agreement, some of the affected workmen filed a writ petition in the High Court of Andhra Pradesh and prayed for issue of a mandamus restraining the respondents from implementing or enforcing the said agreement. The writ petition was dismissed on the merits by a single judge. On

appeal a Division Bench held that the company being one registered under the Companies Act and not having any statutory duty or function to perform, was not amenable to the writ jurisdiction. However, the Division Bench granted a declaration in favour of the writ petitioners that the impugned agreement was illegal and void. On appeal, the Supreme Court held that the company had neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus. With respect to the declaration granted by the High Court, the court held that no such declaration should have been given as the High Court had held the writ petition to be misconceived. The court said that the High Court ought to have left the workmen to resort to the remedy available to them under the Industrial Disputes Act by raising an industrial dispute therein. Referring to the scope of mandamus, the court said :

'Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. (Cf. Halsbury's Laws of England, third edition, volume II, page 52 and onwards).

The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was

right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company.'

32. While setting aside the declaration granted by the High Court, the Supreme Court said (see [1969] 39 Comp Cas 889 ; [1969] 36 FJR 191 ; AIR 1969 SC 1310 :

'No such declaration against a company registered under the Companies Act and not set up under any statute or having any public duties and responsibilities to perform under such a statute could be issued in writ proceedings in respect of an agreement which was essentially of a private character between it and its workmen.'

33. Learned counsel for the petitioner refers to *Sukhdev Singh v. Bhagat Ram Sardar Singh Raghuvanshi* : (1975)ILLJ399SC , wherein the Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation were held to be 'authorities' within the meaning of article 12 of the Constitution. The ruling will not help the petitioner in the present case. Nor does the judgment in *Ramana Dayaram Shetty v. International Airport Authority of India*, : (1979)ILLJ217SC . Our attention is drawn to that part of the judgment in which the decision in *Praga Tools Corporation v. C.V. Imanual* : (1969)ILLJ479SC , is distinguished. After referring to the said judgment, the court pointed out that the only question in *Praga Tools Corporation's* case, : (1969)ILLJ479SC , was whether a writ of mandamus could lie and it was held that since there was no duty imposed on the corporation by statute, no writ of mandamus could issue against it.

34. In *I.T.C. Employees' Association v. State of Karnataka* : (1981)ILLJ431Kant , it is held that a petition under article 226 of the Constitution is maintainable to challenge the validity of a settlement arrived at during the course of conciliation proceedings and a High Court can in an appropriate case grant declaratory relief. The ground on which the validity of the settlement under section 12(3) of the Industrial Disputes Act was attacked in that case was that the Joint Labour Commissioner and Conciliation Officer, who was respondent No. 3 in the writ petition, did not examine whether the terms of the settlement are beneficial to the workmen or not and did not apply her mind to fairness and reasonableness of the

terms. The subject-matter of attack was really the action of the conciliation officer in approving the settlement. After referring to some of the earlier rulings, the court held that a fortiori the conduct and action of the conciliation officer in impressing the settlement with the stamp of a settlement in the course of a conciliation proceedings is open to scrutiny in a petition under article 226 of the Constitution of India; but the relief in such a petition would be of a declaratory nature, which may in appropriate cases necessitate the granting of consequential reliefs. The ruling does not help the petitioner in this case. It must be noted that the court held the impugned settlement to be valid and referred to the fact that the petitioner association had effectively participated in the conciliation proceedings. Incidentally, it must be pointed out that the said association was not a recognised one.

35. The High Court of Andhra Pradesh held in *T. Gattaiah v. Commissioner of Labour* : (1981)IILLJ54AP , that a writ can issue against a private body for enforcement of its statutory duties under Chapter V of the Industrial Disputes Act. On the facts, there was no dispute in that case that the concerned workmen were retrenched. The question was whether the workmen was entitled to the benefits of section 25N of the Industrial Disputes Act. In the present case, the factum of retrenchment is in dispute. According to the respondents, there is only voluntary retirement and no retrenchment of workmen. Hence, the ruling will not help the petitioner.

36. In *Workmen of Buckingham and Carnatic Mills v. State of Tamil Nadu* : (1982)IILLJ90Mad , a Division Bench of this court held that the implementation of a settlement entered into by the management with its workmen under section 12(3) of the Industrial Disputes Act cannot be called a duty, which is in the nature of a public duty and that the obligation under the settlement is purely contractual and a writ of mandamus cannot issue for the enforcement of a contractual right. The Division Bench referred to the earlier rulings including that of *Praga Tools Corporation's case* : (1969)IILLJ479SC , and said :

'From the above, the principle that emerges is that the scope and amplitude of article 226 need not fall under the category of 'other authority' within the meaning

of article 12 of the Constitution. The person referred to in article 226 must be a person to whom a writ will lie according to the well-established principles depending upon the nature of the writ sought for. As pointed out by Rajamannar C.J. in *Indian Tobacco Corporation v. State of Madras*, : AIR1954 Mad549 , and by Ismail C.J. in *A.A. Nathan's case* : (1980)ILLJ369Mad to hold that 'person', referred in article 226 of the Constitution, would include company, irrespective of the question whether any one of the writs referred to in article 226 would lie against them according to the established principles would mean that section 9 of the Civil Procedure Code would be supplanted by article 226 and it would be open to every citizen to approach the High Court under article 226 of the Constitution for the redressal of his grievance.

Learned counsel for the petitioners heavily leaned on the decision of Chowdhary J. of the Andhra Pradesh High Court in *T. Gattiah v. Commissioner of Labour* : (1981)ILLJ54AP . The judgment of the learned judge cannot be understood in the sense that the learned judge has held that in all cases a writ would lie against a private individual or an incorporated company. On the other hand, the learned judge has observed in paragraph 20 that in appropriate cases a writ under article 226 of the Constitution would issue even against a private person. A perusal of the entire judgment would show that mandamus would issue against a private individual or an incorporated company provided the private individual or the company is enjoined by law to perform a duty of a public nature. If the learned judge has meant that a writ could be issued against a private person or an incorporated company even for the purpose of enforcing a contractual right or any other private right without reference to the question whether the writ that is sought for would lie against that private individual or company under the established principles, then we must confess, with great respect to the learned judge, that we are unable to subscribe to that view and we see no justification for holding that 'person' referred to in article 226 would take in every private individual with respect to every private act or a mission of his.'

37. In *Britannia Biscuit Co. Ltd. Employees' Union v. Assistant Commissioner of Labour* : (1983)ILLJ181Mad , it is held that if the court can come to the conclusion on the basis of the materials available that a settlement was arrived at without the

assistance and concurrence of the conciliation proceedings, there should be no difficulty in the court granting a declaration that the settlement is not one within the meaning of section 12(3) of the Industrial Disputes Act and it does not have the effect contemplated under section 18(3) of the said Act. The court held that a writ petition praying for such a declaration is maintainable. It is to be noticed that the learned judge who decided that case was a member of the Division Bench which decided *Workmen of Buckingham and Carnatic Mills' case* : (1982)ILLJ90Mad , and delivered the judgment on behalf of the Bench. On the merits, the learned judge held that the settlement was fair and reasonable and accepted by the majority of workers and dismissed the writ petition. That judgment was affirmed by a Division Bench of this court. Vide *Britannia Biscuit Co. Ltd. Employees' Union v. Assistant Commissioner of Labour* [1984] I LLJ 349.

38. In *Tekraj Vasandi v. Union of India* : (1988)ILLJ341SC , the Supreme Court held that the Institute of Constitutional and Parliamentary Studies, registered under the Societies Registration Act, 1860, is not 'State' within the meaning of article 12 of the Constitution. There, the employee challenged the order of dismissal made by the employer by filing a writ petition. A single judge of the Delhi High Court dismissed the same and a Division Bench on appeal affirmed it. The view taken by the High Court was upheld by the Supreme Court, after discussing the relevant principles on which a society could be held to be 'State' within the meaning of article 12 of the Constitution of India. The court also pointed out that even if some institutions become 'State' within the meaning of article 12 of the Constitution, their employees do not become holders of civil posts so as to cover article 311 of the Constitution of India, though they would be entitled to the benefits of Part III of the Constitution. The ruling is relied on by the respondents in support of their contention that the company is not a 'State', and being a private body, a writ cannot be issued against the same.

39. In *All India Sainik Schools Employees Association v. Defence Minister-cum-Chairman, Board of Governors, Sainik School Society, New Delhi*, AIR 1989 SC 88, it is held that the Sainik School Society is 'State' as the entire funding is by the State Government and the Central Government and the overall control vests in the governmental authority and, therefore, the society is amenable to the writ

jurisdiction of the court.

40. Learned counsel for the petitioner places reliance on *Shri Anadi Mukta Sadguru Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, : (1989)11LLJ324SC . It is held in that case that if the rights are of a private character, no mandamus can issue and if the institution is purely a private body with no public duty mandamus will not lie. The court said that they are the only two exceptions to mandamus and once they are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. On the facts, the court found that the appellant trust was managing the affiliated college to which public money was paid as Government aid and it played a major role in the control, maintenance and working of the educational institution. The court held that aided institutions like Government institution discharge public functions by way of imparting education to students and they are subject to the rules and regulations of the affiliating university. Pointing out the distinction between the law in England and the Indian law under article 226 of the Constitution, the court observed (at page 1611) :

'The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission 'to review the existing remedies for the judicial control of administrative acts and commissions with a view to evolving a simpler and more effective procedure'. The Law Commission made their report in March, 1976 (Law Com No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called judicial review. Lord Denning explains the scope of this 'judicial review' :

'At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a

writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

41. The statute is phrased in flexible terms. It gives scope for development. It uses the words 'having regard to'. Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to 'have regard to' it. So the previous law as to who are - and who are not - public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing.' (See The Closing Chapter-by Rt. Hon Lord Denning, p. 122).

42. There, however, the prerogative writ of mandamus is confined only to public authorities as to compel performance of public duty. The 'public authority' for them means every body which is created by statute-and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under article 226, writs can be issued to 'any person or authority'. It can be issued 'for the enforcement of any of the fundamental rights and for any other purpose'...

43. The term 'authority' used in article 226, in the context, must receive a liberal meaning unlike the term in article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No

matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

44. In *Praga Tools Corporation v. Shri C.A. Imanual* : (1969)11LLJ479SC , this court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed :

'It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (cf. Halsbury's Laws of England, third edition, volume II, page 52 and onwards).'

Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states : 'To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.' (Judicial Review of Administrative Action, fourth edition, page 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartments. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.'

45. Considerable reliance is placed on this judgment by learned counsel for the petitioner. No doubt the scope of mandamus is stated to be very wide. But, the court has taken care to mention at the beginning of the discussion that mandamus cannot be denied when the party has no other equally convenient remedy.

46. Learned counsel for the petitioner has referred to the judgment of one of us in *C. Marianandam v. Govt. of Tamil Nadu* : (1989)ILLJ269Mad . On the facts it was found that the monstrosity of the situation warranted the issue of a writ even if the institution was a private one. The court relied mainly on the judgment of the Supreme Court in *Rohtas Industries v. Rohtas Industries Staff Union* : (1976)ILLJ274SC which held that article 226 of the Constitution was wide enough to affect even a private individual. The ruling turned on the facts of the case and it does not help the petitioner herein.

47. A Division Bench of this court held in *Pudukottai Textiles Ltd. v. Labour Officer* [1989] II LLJ 693 that a writ will issue if the conciliation officer fails to perform his statutory duty to investigate into the claims of all the parties and induce them to come to a settlement, fair, equitable and reasonable to all concerned. The petitioner in that case was excluded from the conciliation proceedings after recording a statement from the secretary of the petitioner-union. The court found no justification therefor and held that the conciliation officer had abdicated the functions and duties cast upon him by the statute. The ruling does not help the petitioner herein, as the ruling turned on the facts of that case.

48. In *Raj Soni v. Air Officer in Charge Administration*, : [1990]2SCR412 , the court held that recognised private schools in Delhi, whether aided or otherwise, are governed by the provisions of the Delhi Education Act and the Rules framed thereunder and the management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. The court said that when an authority is required to act in a particular manner under a statute, it has no option but to follow the statute and the authority cannot defy the statute on the pretext that it is neither a State nor an authority under article 12 of the Constitution of India. Learned counsel for the petitioner has not pointed out any failure on the part of the respondents to follow the procedure prescribed in any Act. The petitioner's case that there is unlawful retrenchment of workers and there is violation of sections 25-N and 25-O of the Industrial Disputes Act depends on the disputed question whether there is any retrenchment at all. Hence, the ruling will not help the petitioner in the present case.

49. The Calcutta High Court held in *Guest Keen Williams Ltd. v. Guest Keen Williams Junior Management Staff Association* : (1990)IILLJ522Cal , that merely because a company incorporated under the Companies Act is running a business in any of the industries appearing in the First Schedule to the Industries (Development and Regulation) Act, 1951, and for running its business it has obtained loans from financial institution for which such institution has placed a director in the board of management does not make such company an instrumentality or agency of the Government and widening the scope of article 12 of the Constitution to such an extent would be unwise and unjustified. This judgment answers the contention of the petitioner that the company in the present case has borrowed heavily from public finance institutions and consequently it is having the aid of public funds, which would result in the company being considered to be State or authority within the meaning of article 12 of the Constitution. We agree with the view expressed by the Division Bench of th

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com