PETITIONER:
MAYURAKSHI COTTON MILLS & ORS.

Vs.

RESPONDENT:
PANCHRA MAYURAKSHI COTTON MILLS EMPLOYEES' UNION & ORS.

DATE OF JUDGMENT: 08/03/2000

BENCH:
S.N.Phukan, S.R.Babu

JUDGMENT:

RAJENDRA BABU, J. :

The appellant-mills was purchased by the State of West Bengal in the year 1990 in the course of liquidation proceedings initiated pursuant to orders made by the BIFR. It is the case of the respondents that on the reopening of the mills, most of the workmen who were working previously in the erstwhile company were provided employment. As the mills had been newly set up, the management was not in a position to revise the pay scales on account of certain financial difficulties. On August 5, 1992, a notice of lock out was issued by the then Manager of the mills on account of certain reasons, with which we are not concerned in these proceedings. The validity of the lock out was challenged in a writ petition. During the pendency of the writ petition, the order declaring lock out was withdrawn pursuant to a memorandum of settlement arrived at between the workmen and the management on February 27, 1993. This fact was brought to the notice of the High Court. Therefore, the parties concerned sought for moulding the prayers appropriately and the validity of the settlement arrived at between the workmen and the management as aforesaid was also challenged and it was brought to the notice of the High Court that several workmen who were already working in the mills after reopening have been kept out of employment. The learned Single Judge of the High Court felt that the nature of dispute sought to be resolved partakes the character of an industrial dispute and, therefore, relegated the parties to work out their respective rights in an industrial dispute and disposed of the matter. On appeal, the Division Bench went on to examine the provisions of Sections 25F and 25G of the Industrial Disputes Act, 1947 [hereinafter referred to as 'the Act'] and held that it is well settled that the service condition of a workman in any industry who has been in continuous service for one year under an employer could not be retrenched unless notice of retrenchment is served in accordance with the provision of Section 25F of the Act and paid the retrenchment compensation after following the procedure laid down in Section 25G of the Act and that termination of service of a workman who had been in service for more than one year in contravention of provisions of Sections 25F and 25G of the Act would be illegal. The High Court thereafter took the view that it is not a case to enforce private rights or purely contractual rights or

obligation or to avoid it. It was a case to enforce statutory rights conferred under Sections 25F and 25G of the Act. On that basis, the High Court proceeded to hold that the livelihood of the workmen was involved which is part of Article 21 of the Constitution and hence workmen could not have been compelled to voluntarily enter into the said settlement for termination of service and accept the temporary service for a period of 59 days which was clearly arbitrary and unlawful and in clear contravention of the provision of Sections 25F and 25G of the Act. Thus the appeal was allowed with a direction as follows :-

"We direct the respondents-company and/or authorities concerned not to compel the appellants to voluntarily enter into the said agreement in contravention of the law and not to terminate the service of the workmen on that ground and we direct to treat the workmen concerned as employee under employment of the company."

This order of the Division Bench is under attack in this appeal.

The learned counsel did not so much dwell upon the question whether the appellant-mills is a 'State' for the purpose of Article 12 of the Constitution or not and even if the appellant is held to be an instrumentality of the State, is bound by the provisions of Part III of the Constitution and is amenable to the writ jurisdiction of the High Court, it was not a fit case where the various contentions raised between the parties could have been thrashed out in a summary proceeding. The learned counsel further submitted that the fact that the company was in financial straits could not be seriously disputed inasmuch as in the course of the liquidation proceedings the Government had purchased the same and thereafter because certain problems had arisen the management declared a lock out and pursuant to the settlement entered into between the workmen and the management, the lock out was lifted subject to certain terms and conditions mentioned in the settlement. The learned counsel further submitted that whether the terms of the settlement amount to unfair labour practice or results in victimisation of any workmen and whether any of the workmen who are members of the respondent-union was a workman after reopening of the mills after purchase by the Government and whether continued to be so, are all questions of fact to be determined in an appropriate proceeding and in the present case, reference to an industrial Tribunal would be the most proper course. Shri Dipankar Gupta, learned senior counsel appearing for the State of West Bengal, supported the stand taken by the appellants and submitted that the Government would refer the dispute in relation to the validity of the settlement or employment of the other workmen along with all other allied issues to an industrial Tribunal.

Shri Dholakia, learned senior Advocate appearing for the contesting respondents, submitted that the identity of the workmen in question was not in serious dispute and a bare perusal of the memorandum of settlement arrived at between the workmen and the management itself would clearly indicate that it was oppressive resulting in victimisation of workmen or amounting to unfair labour practice on the part of the management resulting in unemployment of a large number of workmen. He further submitted that it was in those circumstances that the High Court made the order under

appeal and that it is only in cases where the facts are in dispute that an adjudication by any other Tribunal or a civil court would arise but not in cases where the facts are not in dispute. He submitted that it was not at all difficult for the management to find out as to who were the workmen on the reopening of the mills and provide employment to all of them and the management cannot alter their conditions of service to their disadvantage. He emphasised that it is in that context the High Court had given a direction based on Sections 25F and 25G of the Act read with Article 21 of the Constitution and such an order which is very progressive in nature should not be interfered by this Court.

We have given our anxious consideration to the rival submissions made by the learned counsel on either side. Whether a settlement is fair or unfair or valid cannot be examined in the absence of factual background in which the same was entered into. If really the mills was in financial doldrums and retrenchment had to take place in some form or the other and if a method was to be worked out by the management and the workmen, which is fair, it cannot easily be said that the mills should not work with lesser number of workmen and provide a scheme for retrenchment or otherwise. It may not be easy to state that such settlement is unfair or amounts to victimisation. The option was between closure of the mills itself or opening of the mills with lesser number of workmen. Sometimes hard choices have to be made and sacrifices are expected to be made by either side. These aspects have to be borne in mind in deciding such questions. Therefore, we cannot in the abstract, in the absence of material before the Court, state that the High Court could have come to the conclusion one way or the other and particularly based on the theoretical approach to Sections 25F and 25G of the Act or Article 21 of the Constitution. We are of the view that the order made by the Division Bench deserves to be set aside and that of the learned Single Judge be restored, however, with the modification that a reference shall be made, as stated by Shri Dipankar Gupta, in respect of all matters arising in this case as to the employment, non- employment, the validity of the settlement and all other allied issues and the reliefs to be granted to the parties, to an appropriate industrial Tribunal within a period of six weeks from today and such Tribunal shall enter upon the reference for adjudication as early as possible and decide the same within a period of six months from the date of reference to it.

This appeal shall stand disposed of accordingly. In the facts and circumstances of the case, there shall be no orders as to costs.