

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

Interim Application No.160 of 2024

In

Writ Petition No. 317 of 2007

GKW Limited

... Applicant
(Orig. Respondent No.2)

In the matter between

Shramik Mahasangh
V/s.

... Petitioner

Board for Industrial & Financial
Reconstruction (BIFR) and others

... Respondents.

Mr. Ashish Kamat, Senior Advocate a/w. Mr. Zacarias Joseph,
Kanika Sharma and Lokesh Rajoria i/b. Khaitan & Co. for the
Applicant.

Ms. P.H.Kantharia, Government Pleader a/w. Ms. Jaymala Ostwal,
Additional Government Pleader for Respondent Nos.3 and 6.
Mr. Arshad Shaikh, Senior Advocate a/w. Visha Acharya i/b.
Namrata Agashe and Devansh Malhotra for the original Petitioner.

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**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 18 July 2024.

P.C. :

Heard learned Senior Advocates for the parties and learned
Assistant Government Pleader appearing for the State.

2. In the petition, the Petitioners-workmen through the Union

have sought to challenge the notices dated 30 December 2006 and 5 January 2007. The challenge is also to the scheme of revival of the AAIFR. Rule has been issued in this petition on 7 August 2007 and an ad-interim order was granted which is in the form of a statement of the Applicant–Respondent No.2 which is recorded in the order dated 8 February 2007 as under:

“Heard. Learned Counsel appearing for respondent no.2 states that the Unit in which the members of the petitioner Union were working is not to be sold or alienated as per the scheme of resettlement approved by BIFR. This sufficiently protects the interest of the Petitioner at this stage. We therefore direct the respondents to file their respective affidavit-in-reply within a period of four weeks. Mr. Shaikh assures that copy of the Affidavit-in-reply will be furnished to the Learned Counsel for the petitioner within a period of two weeks so that if he so chooses, he can file his rejoinder. Parties to complete their pleadings so that we may dispose off the petition at the stage of admission itself. S.O. 4 weeks.”

3. This application is now taken out for relieving Respondent No.2 of the statement.

4. The learned counsel for the Applicant submitted that the petition has become infructuous as 31 workmen have already crossed the age of superannuation and one of them would do so on 11 March 2026. It is also stated that Sick Industrial Companies Act has now been repealed from 1 December 2016 with the enactment of the Insolvency and Bankruptcy Code, 2016 and the Appellate

Authority has been dissolved and, therefore, this challenge also would not survive, more particularly, since Respondent No.2 stand de-registered from Board for Industrial and Financial Reconstruction. The learned counsel for the Petitioner submitted that Petition has not become infructuous and will have to be heard.

5. The Petition is filed by the Union to espouse the cause of their members who were erstwhile workmen of Respondent No.2. The main relief sought, for which litigation is instituted, is for the services of the workmen and their backwages, salary etc. Having crossed the age of superannuation, the relief now is in terms of money. The statement of Respondent No.2 made in WP(l) No.202/2007 still binds them because of which they cannot transfer the property. Since the relief is now in monetary terms, an equitable order can be passed, keeping the petition pending, to protect the interest of both the parties.

6. On a query as to amount the Petitioner would receive, if it is held that the Petitioner-workmen were wrongly retrenched and are entitled to the rightful wages upto the date of superannuation, we have varying figures before us. The Petitioner states that figure would be around 10 to 11 Crores without the provident fund. As far as Respondent No.2–Applicant, the amount would be around 3.51 Crores.

7. If the amount which the Petitioner would receive upon succeeding in their claim of wrongful retrenchment is secured, we find that Respondent No.2 need not be still bound by their statement of not to transfer the property. However, for arriving at the figure, calculations will have to be carried out. Calculations can be approximate, as we propose to keep the petition pending and it is only an interim arrangement subject to rights and contentions of the parties. According to us this task can be entrusted to a Senior Government Officer, who can take benefit of the services of the Chartered Accountant or a departmental Accountant.

8. Accordingly, we direct the Deputy Secretary of Labour Department of the State to call the representative of the Petitioner and Respondent No.2 to submit their calculations. Both parties will submit their calculations to the Deputy Secretary within five working days. The Deputy Secretary will be entitled to avail of the services of the Chartered Accountant or a departmental Accountant. Thereafter, the figure arrived by the Deputy Secretary be placed on record by way of Report.

9. We make it clear that we have entrusted the task to the Deputy Secretary, a Senior Officer, to arrive at a approximate figure for equitable arrangement for the purpose of interim order and the Court will go by the figure suggested by the Deputy Secretary unless we find that it is entirely objectionable.

10. To carry out this exercise and to place the report on record, stand over to **30 July 2024**.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)