Bombay High Court Baburao P. Tawade & Ors. vs Hes Ltd. Bombay & Ors. on 3 April, 1995 Equivalent citations: (1997) IIILLJ 265 Bom Author: B Srikrishna Bench: B Srikrishna JUDGMENT B.N. Srikrishna, J. 1. This is a writ petition under Article 226 and 227 of the Constitution of India directed against an order of the Industrial Court, Bombay, dated 26th September 1988, made in Application (IDA) No. 1245 of 1982 under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). 2. The petitioners are workmen employed in the first respondent company in its factory at Jogeshwari, where it manufactures timepieces and allied horological equipments. The workmen of the first respondent were formerly represented by a registered trade union, known as "Engineering Mazdoor Sabha", which has entered into a settlement dated 31st December 1973, with the first respondent on the conditions of service of the workmen. The settlement of 1973 expired on 30th June 1976. The Engineering Mazdoor Sabha gave a notice of termination of the said settlement and put forward a fresh charter of demands. In the meantime, another registered trade union, by name Association of Engineering Workers, came on the picture and claimed the support of the majority of the workmen in the establishment of the first respondent. The first respondent and Association of Engineering Workers entered into a Settlement dated 22nd September 1979 under which the pay scales and other conditions of service applicable to the workmen of the first respondent were prescribed. The petitioners continued to be loyal to the Engineering Mazdoor Sabha and, therefore, were given no benefits under the said settlement unless they accepted the terms of the settlement in toto. It is not in dispute that, under he said settlement of 22nd September 1979, the production norms stipulated in the settlement dated 31st December 1973 were reiterated an adopted. On 12th March 1981, the Association of Engineering Workers was recognised as the recognised union for the undertaking of the first respondent company, under the provision of Chapter III of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. After obtaining the status of a recognised union, the Association of Engineering Workers signed Settlement with the first respondent on 12th January 1982, on the subject of the bonus demand for the accounting year 1980. Vide Clause I of this settlement, the parties agreed that bonus for the accounting year 1980 would be paid at the minimum rate of 8.33% of the annual earnings, in accordance with the provision of the Payment of Bonus Act, 1965. Clause 2 of this settlement is relevant for out purpose and reads :- "(2) In consideration of the recognised Union and its members, the workmen employed in the factory having agreed to increase and maintain the production level stipulated in the settlement dated 22.9.1979, the Company agrees to make additional payment to them at the rate of Rs. 400/- each on condition that they continue to maintain the production level as mentioned in the settlement dated 22.9.1979 and thereby extend their co-operation to the Company to come out of the financial crisis. They further agrees to give an undertaking as per Annexure 'A' in support of their assurance that they will continue to maintain the production level in future". Tuesday, the 4th April 1995 3. It is not in dispute that the petitioner had initially refused to give the undertaking in the prescribed pro-

forma, though they contended that they had given the production as per the stipulation contained in the settlement dated 22nd September 1979, even if the said settlement was really not binding on them. Because of the petitioners not giving the undertakings in the proforma prescribed in Annexure 'A' to the settlement of 12th January 1982, the first respondent refused to given them the additional ex gratia amount of Rs. 400/- payable under clause (2) of the aid settlement. The petitioners moved Application (IDA) No. 1245 of 1982 under Section 33-C(2) of the Act before the Labour court, Bombay. It was their case in the application that they were entitled to the ex gratia amount of Rs. 400/- stipulated in clause (2) of the settlement dated 12th January 1982 as they had fulfiled the pre-request conditions under which the said ex gratia amount was granted under clause (2) of the said settlement. While the Application (IDA) No. 1452 of 1982 was pending before the Labour Court, the petitioners filed written undertaking in the proforma as per Annexure 'A' some time in the year 1987. They also relied on an order made by the Industrial Court, Maharashtra, Bombay, dated 7th December 1987 in Complaint (ULP) No. 68 of 1983 pertaining to the bonus for the accounting year 1981, claimed under the settlement dated 30th October 1982, also containing an identical clause. Oral evidence was also led by the petitioners to show that they had given the required production all along from the year 1980. The Labour Court, by the impugned order, dismissed the claim by holding that the petitioners had no right to get the benefit under the settlement dated 12th January 1982 and that the application itself was not maintainable. It is this order which is impugned in the present petition. 4. Mr. Ganguli, learned advocate appearing for the first respondent, contends that the writ petition is liable to be dismissed as not maintainable, by reason of the bar in Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA"). The contention is that section 22 of SICA provides that no proceedings for winding up or execution, distress or the like against the properties of an industrial company or for appointment of a revive in respect thereof and no suit for the recovery of monies or for the enforcement of any claim against any industrial company or of any guarantee in respect of any loan or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") or the Appellate Authority under SICA. Since no consent has been obtained from the BIFR, these proceedings would not lie. 5. Mr. Ganguli referred to the judgment of the Supreme Court in Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of Maharashtra Ltd. & Anr. (1993) 78 Comp. Cas, 803, and submitted that in this judgment the Supreme Court has interpreted the word "proceeding" used in Section 22 in a wide manner so as to cover all manner of proceedings akin to the proceedings specifically enumerated in Sub-section (1) of Section 22 of SICA. Since it is admitted that no consent of the BIFR has been obtained, he contends that this writ petition is liable to be dismissed. 6. Before I take up for consideration the contention urged, it is necessary to recapitulate some of the facts with regard to which there is not dispute. The Application (IDA) No. 1245 of 1982 under Section 33-C(2) was filed some time in September

1982. The impugned order of the Labour Court was made on 26th September 1988. A reference was made to the BIFR under Section 15 of SICA some time in June 1989, which resulted in long drawn proceedings before the BIFR and culminated in a scheme for revival of the first respondent company being sanctioned by BIFR on 17th March 1994. Under the scheme sanction by the BIFR, a co-operative society consisting of the workmen of the first respondent by name "HES Ltd. Kamgar Oudyogik Utpadka Sahakari Society Ltd." was entrusted with the management under the scheme, subject to the detailed provision made in the sanctioned scheme. It is also admitted on both sides that the scheme is still operating and continues to operate as of today. On these admitted facts, the issue which arises is - Whether the present writ petition under Articles 226 and 227 of the Constitution of India, which impugns the order of the Labour Court made on 26th September 1988 in an Application Under Section 33-C(2) of the Industrial Disputes Act, 1947, is liable to the dismissed for want of consent of the BIFR ? After having given may anxious consideration to the issue canvassed before me at the bar, I am of the view that this writ petition is not liable to be dismissed for reasons which follow :- 7. The SICA was brought on the statute book for achieving the objects enumerated in the preamble to the Act as : "An Act to make in public interest, special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto". With a view to achieving these objectives, the act has made several provisions to ensure that the attempts at revival of a sick industrial company are not rendered nugatory by predatory creditors nibbling away at the capital and other assets of the industrial company which is being revived. With this end in view, Section 22 of SICA provides as under :- "22. Suspension of legal proceedings, contracts, etc. :- (I) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof an no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans, or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or as the case may be, the Appellate authority. (2) Where the management of the sick industrial company is taken over or changed in pursuance of any scheme sanctioned under Section 18, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or in the memorandum and

articles of association of such company or any instrument having effect under the said Act or other law - (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company; (b) no resolution passed at any meeting of the shareholders of such company shall be given effect or unless approved by the Board; (3) Where an inquiry under Section 16 is pending or any scheme referred to in Section 17 is under preparation or during the period of consideration of any scheme under Section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a part or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adeptness and in such manner as may be specified by the Board : Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate. (4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law, the memorandum and articles of association of the company or any interment having effect under the said Act or other law or any agreement or any decree to order of a Court, Tribunal, Officer or other Authority or of any submission, settlement or standing order and accordingly; (a) any remedy for the enforcement of any right, privilege,, obligation and liability suspended or modified by such declaration, and all proceedings relation thereto pending before any Court, Tribunal, Officer or other Authority shall remain stayed or be continued subject to such declaration; and (b) on the delectation ceasing to have effect - (i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revised and enforceable as if the declaration had never been made; and (ii) any proceeding so remaining stayed shall be proceeded with, subject to the provision of any law which may then be in force, from the stage which had been reached when the proceedings became stayed. (5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy of the enforcement thereof remains suspended under this section shall be excluded". It may be mentioned here that, prior to 1993, the bar in Section 22(1) was only in respect of winding-up proceedings and "proceedings for execution, distress or the like". By reason of an amendment made in 1993 by Sick Industrial Companies (Special Provisions) Amendment Act, 1993, which introduced the words, "and no suit for the recovery of money of for the company or of any guarantee in respect of any loans, or advance granted to the industrial company", Parliament has ensured that, without the consent of the BIFR, even a suit for recovery of money or for enforcement of securities and guarantees in respect of advances granted to the

industrial company are barred. It is of interest to notice that this section provides that no such proceedings "shall lie or be proceeded with further", except with the consent of the BIFR or the Appellant Authority, as the case may be. 8. In the Gram Panchayat & Anr. v. Shree Vallabh Glass Works Ltd. & Ors. , the Supreme Court had occasion to consider whether the bar in Section 22 would affect proceedings to recover property tax under Section 129 of the Bombay Village Panchayat Act, unless they were taken out with the consent of the BIFR. The facts before the Supreme Court were that the respondent company owed some money to the Village Panchayat and proceedings in respect of the Company were pending before the BIFR. In the meantime, the Panchayat sought to exercise its powers under Section 129 of the Bombay Village Panchayat Act by taking coercive proceedings for recovering of monies due to it. The Company successfully challenged the said action of the Village Panchayat before this High Court. On appeal to the Supreme Court, the Supreme Court was of the view that, in view of the fact that the Village Panchayat was attempting to exercise its power under Section 129 of the Bombay Village Panchayat Act, without the consent of the BIFR, the bar in Section 22 of the SICA would clearly apply. The Supreme Court observed (Paragraphs 10, 11) :- "10. In the light of the steps taken by the Board under Ss. 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board. Indeed, there would be automatic suspension of such proceedings against the Company's properties. As soon as the inquiry under S. 16 is ordered by the Board, the various proceedings set out under Sub-section (1) of S. 22 would be deemed to have been suspended. 11. It may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board for permission to proceed against the company for the recovery of their dues/outstanding/overdues or arrests by whatever name it is called. The Board at its discretion may accord its approval for preceding-against the company. If the approval is not granted, the remedy is not extinguished. It is only postponed. Sub-section (5) of S. 22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for recovering the dues." 9. Section 22 of SICA came to be again considered by the Supreme Court in Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of Maharashtra Ltd. & Anr. (1993) 78 Comp. Cas. 803. This was a case where a Finance Corporation had resorted to the remedies under section 29 and 31 of the State Financial Corporations Act, 1951, though proceedings were pending before the BIFR, without consent of the BIFR. It was contended before the Supreme court that the power under section 29 and/or 31 of the State Financial Corporations Act was an overriding power; notwithstanding the pendency of proceedings before the BIFR. The Supreme Court, interpreting Section 22, pointed out. "The underlying idea is that every such action should be frozen unless expressly permitted by the specified authority until the investigation for the revival of the industrial undertaking is determined." It is thus clear that the main thrust of the said legislation is on revival or rehabilitation of the sick industrial undertaking and it is only after it

is realised that it is not feasible, that the action of the winding-up of the unit fan be resorted to. The Supreme Court held in this case that the words "or the like", which follow the words "execution" and "distress" were clearly intended to convey that the properties of the sick industrial company shall not be made the subject-matter of any coercive action of similar quality and characteristics, till the BIFR finally disposes of the reference made under Section 15 of SICA. The Supreme Court was also of the view that the word "proceedings" used in section 22(1)(b) was to be interpreted liberally, not being limited to "legal proceedings" as under stood in the narrow sense, notwithstanding the use of that expression in the marginal note to Section 22. The Supreme Court was of the opinion that where an inquiry is pending under sections 16 or 17 or an appeal is pending under Section 25 of SICA, there should be cessation of coercive activity of the type mentioned in section 22(1) to permit the BIFR to consider what remedial measures it should take in respect of sick industrial company and that the expression "proceedings" in Section 22(1), therefore, cannot be confined to legal proceedings as understood in the narrow sense of proceedings in a Court of law or a legal Tribunal for attachment and sale of the debtor's property. It may be mentioned here that this was a case which considered Section 22(1) prior to its amendment by the 1993 amending Act. The impact of the 1993 amending Act is that, apart from proceedings for execution, distress or the like, even a substantive suit for recovery of money or for appointment of receiver or for the enforcement of any guarantee is now barred, unless the previous consent of the BIFR is obtained. But the question that remains to be considered is, notwithstanding the wide interpretation given to the bar in Section 22(1) of the Act, whether there is a bar as regards recovery of earned dues by the workmen challenging an advise order under the Industrial Disputes Act, 1947, by a writ petition under Article 226 and 227 of the Constitution of India. 10. In M/s. Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras , the Supreme Court had to consider whether Section 22 bars eviction proceedings under the Karnataka Rent Control Act. The facts were that the industrial company was a tenant of a landlord. The tenancy of the industrial company had been terminated by an appropriate notice and a suit was filed under the Karnataka Rent Control Act for eviction of the statutory tenant. The Company took up a defence that, inasmuch as the consent of the BIFR had not been obtained for the filing or the continuation of the proceedings before the appropriate and the suit was liable to be dismissed. Interpreting section 22(1), the Supreme Court pointed out that the words "or the like" have to be construed with reference to the proceedings words 'for execution distress", which meant that the proceedings contemplated by the section were proceedings whereby recovery of dues is sought to be made by way of execution, distress or similar process against the property of the industrial company. The Court also pointed out that the proceedings for eviction instituted by a landlord against the tenant which happens to be a sick industrial company, could not be regarded as falling in this category. After considering the preamble of the Act, the Supreme Court pointed out :"It could not be the intention of Parliament in enacting the said provision to aggravate the financial difficulties of a

sick industrial company while the said matters were pending before the Board of the Appellate Authority by enabling a sick industrial company to continue to incur further liabilities during this period. This would be the consequence if sub-see. (1) of S. 22 is construed to bring about suspension of proceedings for eviction instituted by landlord against an sick industrial company which has ceased to enjoy the protection of the relevant rent law on account or default in payment of rent. It would also mean that the landlord of such a company much continue to suffer a loss by permitting the tenant (sick industrial company) to occupy the premises even though it is not in a position to pay the rent. Such an intention cannot be imputed to Parliament. We are, therefore, of the view that Section 22(1) does not cover a preceding instituted by a landlord of a sick industrial company for the eviction of the company premises let out to it. It would, therefore, be apparent from the judgment of the Supreme Court in Shri Chamundi Mopeds' case (supra) that the intention of Parliament is not to bar all and every kind of proceedings. 11. An interesting case decided by a learned Single Judge of the Allahabad High Court in Modi Industries Ltd. v. Additional Labour Commissioner, Ghaziabad & Ors. 1993 II CLR 963 was also brought to my notice by Shri Bukhari, learned advocate appearing for the petitioner. In this case, a sum exceeding Rs. 50,000/- was due and payable to the workmen towards their wages which were not paid by an industrial company in respect of which proceedings had started before the BIFR. The Additional Labour Commissioner, Ghaziabad, was moved for exercising his power under Section 3 of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978. After hearing parties, the Additional Labour Commissioner, Ghaziabad, issued a certificate for recover of Rs. 13 lacs as arrears of land revenue in respect of wages of the workmen of the industrial company for a particular month. This certificate was challenged before the Allahabad High Court, inter alia, on the ground that the proceedings before the Additional Labour Commissioner were barred by section 22(1) of SICA. The learned Judge, after considering several provision of law, which were brought to his notice, observed in paragraph 14 : "14. In my opinion, the purpose and object of Section 22 cannot be to cover those proceedings or actions which are necessary for running the industry irrespective of the fact whether it is sick or non-sick. If the industry cannot run without workers the workers also cannot be expected to work without payment of their wages. The timely payment of the wages for which the provisions of the Act of 1978 have been enacted would has be as step heading rehabilitation and it cannot be said that it creates and obstacles in fulfilling the object for which the Act of 1985 has been enacted. Both the Act are thus complimentary to each other. Section 22 cannot thus affect the proceedings taken under section 3 of the Act of 1978 for compelling petitioner to make payment of the wages already accord to the workers ....." The learned Judge relied on the observations of the Supreme Court in Shri Chamundi Moped's case for coming to this conclusion, and further observed in paragraph 15) : "..... The Parliament while putting Section 22 of the Act, 1985 could never have intends that the industrial unit under the grab of sickness or for any like difficulty maybe allowed to shirk its liability to pay the wages to its workers for the work they have done." It was

pointed out that, it such position were allowed to prevail, then sick industrial company, in respect of which proceedings were pending before the BIFR, could easily defeat the legitimate claims of the workmen for their wages and other dues by not paying them in the first instance, forcing the workers to resort to their remedies under any of the applicable labour statutes and then pleading the bar in section 22(1). In other words, the workmen would be compelled to work as bonded labour or "Beggar" during the period when the proceedings before the BIFR or the implementation of the Scheme sanctioned by the BIFR continues. Surely, this was bonded labour, repugnant to Article 23 of the Constitutions, as pointed out by the learned single Judge in Modi Industries' case (supra). I am in respectful agreement with the views expressed by the learned single Judge Modi Industries; case (supra). No construction can be put upon the provisions of Section 22, which could result in a situation of exploitation of human beings, contrary to the provisions of our constitutional directives. I am, therefore, unable to accept the contention that the payment of earned wages to the workmen (it cannot be disputed that payment under settlement would be 'wages' within the meaning of Section 2(rr) or the Industrial Disputes Act) was intended to be defeated by invoking the bar under Section 22(1) to the drive the workmen to runt of New Delhi for seeking the consent of the BIFR, every time their monthly wages were required to be paid. That, surely, was not the Parliament's intention, in my view. The reconciliation suggested by the learned Judge in Modi Industries case (supra) appeals to me and, therefore, the bar in Section 22(1) of the SICA must be held to apply only to such proceedings which are not required for the day-to-day running of the sick industrial company, even under a sanctioned schemed or otherwise. Any other interpretation would lead to a ludicrous and unattended result. 12. Mr. Ganguli placed reliance on the judgment of a learned singly Judge of our High Court in Association of Engineering Workers v. Automobile Products of India & Ors. 1993 II CLR 865. Upon a perusal of this judgment, with respect, I do not see any proposition of law laid down in this judgment. All that happened was that the learned Judge justified his refusal of an interim order on the Writ Petition by referring to the observations in Maharashtra Tunes Ltd. (supra). 13. In this connection, it would be necessary to notice the judgment of the Supreme Court in Workers of M/s. Rohtas Industries Ltd. v. M/s Rohtas Industries Ltd. 1987 I CLR 420. In this case, finished products lying in stock, were pledged with financial institutions which had advanced loans to the sick company. The company was declared as a "sick industry" under the relevant provisions of SICA. The financial institution claimed priority over the stocks on the ground that they were plugged to them and such pledged goods could not be sold to pay the wages and emoluments of workers. The Supreme Court negative the contention of the financial institution and held that the stocks which were pledged to the bank were the products of the industry before its difficulties arose and therefore, the workers had also contributed there labour and the stocks were the result of their hard work. Hence, the Supreme Court was of the view that the wages and emoluments of the workmen after the period of closure would have priority against the claims of the financial institution. Though this judgment is not directly on

the point, it surely is a straw in the wind on judicial thinking on the subject. 14. Having considered the position in law as canvassed at the bar, on the strength of the judgments referred to by me. I am of the view that, even if the application had been made by the workmen under Section 33-C(2) of the Industrial Disputes act for recovery of the monies due to them, after the reference under SICA made tote BIFR, such application could not have attracted the bar under section 22(1) of SICA; mush less can the Writ Petition under Articles 226 and 227 of the Constitution of India pending before this Court to challenge the adverse order in the application under Section 33-A(2) of the Industrial Disputes Act, be held to attract the bar under section 22(1) of SICA. In my view, the bar under Section 22(1) of SICA would not apply to the present Writ Petition, which cannot be dismissed on the ground that no consent had been obtained from the BIFR for the continuation of the present proceedings. 15. Then, we turn to the merits of the case which do not present much difficult. The application made under Section 3-C(2) of the Act was of the footing that the two conditions stipulated under clause 2 of the settlement dated 12th January 1982 had been fulfilled, and yet, the payment of Rs. 400/- per workman had not been paid to the petitioners. The conditions as to the giving of a written undertaking in the proforma has already been satisfied during the pendency of the proceedings, some time in the year 1987. The only question, which required consideration by the Labour Court was whether the other condition with regard to the petitioners continuing to maintain the production level at the rate stipulated in the Settlement dated 22nd September 1979, had been fulfilled. The petitioners attempted to persuade the learned Judge of the Labour Court by referring to the detailed order of the Industrial court, Maharashtra dated 23rd November, 1987 made in Complaint (ULP) No. 68 of 1983 and also by the oral evidence led by the petitioners. The Oral evidence of the petitioners also does show that the condition as to production had been fulfilled by the petitioners. There was no evidence worth the name to contradict the evidence led by the petitioners and, yet, the learned Judge has summarily brushed aside the evidence led by the petitioners on this issue. 16. Another important factor, which the learned Judge failed to take notice is the detailed decision of the Industrial Court in Complaint (ULP) No. 68 of 1983. By a settlement dated 30th October 1982 between the Association of Engineering Workers and the First Respondent, the bonus demand for the accounting year 1981 had been settled. It was provided therein that, in addition to the minimum bonus of 8.33% of annual earnings, the workmen would be paid an additional 3% of their annual earnings plus Rs. 400/- per workman. It is not dispute that the Settlement of 30th October 1982 also contained a conditional grant, which is identical in terms as clause 2 of the Settlement dated 12th January 1982. Some of the workers who are the petitioners before me, moved a Complained under Section 28 read with items 2, 3 and 4 of Schedule II and Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Practices Act, 1971 before the Industrial Court. It was the case of the petitioners before the industrial Court that, despite their having given the requisite production and having fulfilled the pre-condition for the grant of the ex gratia amount of Rs. 400/- per head under settlement dated 30th October 1982,

they had not be granted such amount by the First Respondent. The defence of the First Respondent was also identical, namely, that the workmen had not fulfilled the conditions of the grant, particularly with regard the achievement of the production levels stipulated by the 1979 settlement and the giving of the written undertaking. After recording detailed evidence, the learned Judge of the industrial Court came to the conclusion that the defence taken by the First Respondent was not tenable. In terms, the learned Judge held that not only had the petitioners given the production as required by the settlement of 1979, but that they had, in fact, given more production than what was required. He also came to the conclusion that the workmen who had actually given written undertakings had filed to maintain production at the leaves stipulated by the 1979 settlement. It is no doubt true that much of the finding recorded by the Industrial Court on the issue was because of the adverse inference drawn by the learned Judge against the First Respondent for failure to place on record the material documents, which would have clinched the issue. Nonetheless, a finding made even on adverse inference is also a finding of fact binding on the parties. The only reason given by the learned Labour Court Judge for not following this decision of the Industrial Court is that those proceedings were under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act and the present proceedings were made under Section 33-C(2) of the Act. In my view, the reason for the distinction drawn was wholly immaterial and would not make any difference. It cannot be gainsaid that, while deciding the claim of bonus for the accounting year 1981 (the immediately succeeding accounting year) when a defence had been taken up that the petitioners had not fulfilled the production norms stipulated by the 1979 settlement, the Industrial Court, upon careful appraisal of the evidence before it recorded a clear finding that throughout the petitioners had completed with the production norms stipulated in the year 1979. In my view, this conclusion was equally binding on the parties, notwithstanding the fact that the proceedings before the Labour Court were under section 33-C(2) of the Act. The impugned order of the Labour Court is, therefore, erroneous and liable to be interfered with, in exercise of Writ Jurisdiction. 17. In the result, the Writ Petition is allowed. It is held that each of the petitioners is entitled to the amount of Rs. 400/- payable under clause 2 of the Settlement dated 12th January 1982. The amount payable to the petitioners shall be paid within a period of 8 weeks from to-day, failing which the amount due shall attract simple interest at the rate of 12% per annum. Rule made absolute accordingly. However, there shall be no order as to costs.