

(1992) 04 MAD CK 0043

In the Madras High Court

Case No : C.A. No's. 206 and 207 of 1992 in C.P. No. 11 of 1978

A. Shanmugham

APPELLANT

Vs

Official Liquidator and others

RESPONDENT

Date of Decision : 21-04-1992

Acts Referred:

Companies Act, 1956 — Section 445(3), 529, 529A, 530
Industrial Disputes Act, 1947 — Section 25

Citation : (1992) 75 CompCas 181 : (1992) 2 LLJ 221

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : K. Gopalan, for the Appellant; M.K. Kabhir and M.S. Sundararajan and R. Shree Krishnan, for the Respondent

Judgement

Lakshmanan J.

1. C.A. No. 206 of 1992 has been filed by the applicant, A. Shanmugham, to set aside the order of the learned official liquidator dated December

11, 1991, in Claim No. 194 in so far as it relates to the closure compensation and to direct the respondent, official liquidator, to award interest at

18 per cent. per annum on the admitted amount and to pass such other orders as may be deemed fit and proper.

2. C.A. No. 207 of 1992 has been filed by the said applicant, A. Shanmugham, to set aside the various orders made in various claims as set out in

the annexure to the application, in so far as it relates to the closure compensation.

3. C.A. No. 206 of 1992 was filed by Mr. A. Shanmugham in his personal capacity. C.A. No. 207 of 1992 was filed by him in his capacity as

vice-president of Madras Pen and Ink Factory Workers' Union and representing

the workmen of the company in liquidation. In the annexure to C.A. No. 207 of 1992, the names of the claimants and other particulars, viz., claim number, claim amount, amount granted and amount rejected, have been furnished with reference to the company in liquidation. Both the matters were heard together by consent of parties. Originally, the learned official liquidator alone was impleaded as respondent in these applications. In view of the importance of the questions of law raised by the applicant herein and also by the learned official liquidator assisting the court at the time of hearing, the legal heirs of the late Sanjeevi, viz., respondents Nos. 2 to 7, were ordered to be impleaded. The State Bank of Hyderabad was also ordered to be impleaded as the either respondent since the issue raised has to be decided in the presence of the State Bank of Hyderabad who is a secured creditor.

4. The brief facts of the case are as follows :

5. The company in liquidation was ordered to be wound up by an order dated October 27, 1978, in C.P. No. 11 of 1978 on the ground that the company was unable to pay its debts. Consequent on the passing of the said winding up order, the learned official liquidator has entered upon his duties as the liquidator of the above company in liquidation. In liquidation proceedings, it is the duty of the official liquidator to settle the list of creditors of the company in liquidation after adjudicating upon the claims of creditors lodged with him in accordance with the rules laid down in rules 149 to 163 of the Companies (Court) Rules, 1959.

6. Rules 164 and 165 of the Companies (Court) Rules, 1959, provide a procedure for an appeal against the order of the official liquidator. In the above liquidation, the official liquidator has been permitted to enquire and adjudicate upon the claims of creditors by this court. The claims received by the official liquidator include claims of the ex-workmen of the company in liquidation. The workmen have lodged their claims for the payment of workmen's dues. u/s 529 of the Companies Act, 1956, workmen's dues include the amount payable under the Industrial Disputes Act. One of the amounts payable under the Industrial Disputes Act is closure compensation u/s 25-FFF. The payment of compensation u/s 25-FFF of the Industrial Disputes Act arises due to the termination of the service of employees by operation of law u/s 445(3) of the Companies Act, 1956, with

effect from October 27, 1978 being the date of winding up. The industrial undertaking of the company has been closed down due to the passing of the winding up order.

7. Section 25-FFF of the Industrial Disputes Act states as under :

25-FFF. Compensation to workmen in case of closing down of undertakings. - (1) Where an undertaking is closed down for any reason

whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure

shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if

the workman had been retrenched :

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the

compensation to be paid to the workman under clause (b) of section 25-F shall not exceed his average pay for three months.

Explanation. - An undertaking which is closed down by reason merely of -

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on;

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the

proviso to this sub-section.

(1-A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely

of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any

notice or compensation in accordance with the provisions of section 25-F, if -

(a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was

entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b) the service of the workman has not been interrupted by such alternative

employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his

retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1-B) For the purposes of sub-sections (1) and (1-A), the expressions "minerals" and "mining operations" shall have the meanings respectively

assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).

(2) Where any undertaking set up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on

account of the completion of the work within two years from the date on which the undertaking had been set up, no workman employed therein

shall be entitled to any compensation under clause (b) of section 25-F, but if the construction work is not so completed within two years, he shall

be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six

months.

8. Under the proviso to section 25-FFF(1) of the Industrial Disputes Act, if the undertaking is closed down on account of unavoidable

circumstances beyond the control of the employer, the compensation payable to the workman shall not exceed his average pay for three months.

The applicant herein was a worker of the company in liquidation as on the date of the winding up order and hence he is entitled to claim closure

compensation u/s 25-FFF of the Industrial Disputes Act, 1947.

9. In adjudication proceedings before the official liquidator in respect of the applicant's claim and claims of other workers, a question that arose for

consideration was whether the undertaking of the company in liquidation was closed down on account of unavoidable circumstances beyond the

control of the employer. In the instant case, the undertaking of the company in liquidation was closed down with effect from October 27, 1978,

consequent on the passing of the winding up order. The learned official liquidator, in view of the judicial pronouncement in *Palai Central Bank*

Employees' Union v. Official Liquidator, Palai Central Bank Ltd. [1965] 35 Comp Cas 279; [1965] II Comp LJ 110, by a Division Bench of the

Kerala High court, came to the conclusion that the passing of a winding up order resulted in the closing down of the undertaking and hence the

closure is due to unavoidable circumstances beyond the control of the company in liquidation and consequently restricted the claim of the workmen

for closure compensation to the extent provided in the proviso to section 25-FFF(1) of the Industrial Disputes Act not only to the applicant herein

but also to the other claimants/workers who were in the employment of the company in liquidation on the date of passing of the winding up order.

In this connection, it is relevant to refer to the judgment of the Kerala High Court (Division Bench), which held that a closure under a winding up

order is closure on account of unavoidable circumstances beyond the control of the employer. Following the Division Bench of the Kerala High

court, the learned official liquidator came to the conclusion as stated above.

10. With regard to the claim for interest at 18 per cent. per annum, the official liquidator submits that, under rule 179 of the Companies (Court)

Rules, 1959, unsecured creditors of the company in liquidation, whether preferential or ordinary; are entitled to payment of interest at the rate of 4

per cent. per annum from the date of winding up till the date of dividend. Rule 179 of the Companies (Court) Rules, 1959, states as under :

179. Payment of subsequent interest. - In the event of there being a surplus after payment in full of all the claims admitted to proof, creditors

whose proofs have been admitted shall be paid interest from the date of the winding-up order or of the resolution, as the case may be, up to the

date of the declaration of the final dividend, at a rate not exceeding 4 per cent. per annum, on the admitted amount of the claim, after adjusting

against the said amount the dividends declared as on the date of the declaration of each dividend.

11. Under rule 179, unsecured creditors of the company in liquidation, whether preferential or ordinary, are entitled for payment of interest at the

rate of 4 per cent. per annum from the date of winding up till the date of dividend. The above rule 179 does not apply to secured creditors who

have elected to rely on the security in view of the provisions contained in the Presidency Towns Insolvency Act read with section 529 of the

Companies Act, 1956. Under the provisions of sections 529 and 529-A of the Companies Act, 1956, workmen of the company become secured

creditors by operation of law to the extent of the amount due under the head ""Workment's dues"" provided there exists a secured creditor by

contract. If there is no secured creditor then the workmen of the company for the amount due to them under the head ""Workmen's dues"" become

unsecured preferential creditors only u/s 529-A of the Companies Act, 1956.

12. In this liquidation, the State Bank of Hyderabad claiming to be a secured creditor has filed a suit in C.S. No. 52 of 1978 claiming Rs.

5,34,183.07 plus interest from July 20, 1978, at the rate of 15 per cent. per annum. The securities said to be offered by the company in respect of

this suit are the company's land and buildings located at No. 271, Anna Salai, Madras-18, measuring about 18.83 grounds better known as

Vanavil Buildings"". The State Bank of Hyderabad has filed another suit in C.S. No. 1052 of 1987 claiming Rs. 15,56,463.42 plus interest from

July 11, 1978, at 15 per cent. per annum. The securities said to be offered by the company in respect of this suit are the company's factory and

land measuring about 12.17 acres with superstructure thereon located at G.N.T. Road, Puzhal and Kathivedu Villages, Madras. The State Bank

of Hyderabad have elected to remain outside the liquidation and they are relying on the securities offered by the company in liquidation. The State

Bank of Hyderabad can claim interest at the rates specified in the above suit till the date of realisation of the security. But the right of workmen for

interest from the date of the winding up order till the date of payment of dividend to them or till the date of realisation of security, whichever is

earlier, has not been specified either in section 529 or 529-A of the Companies Act, 1956, or under the Companies (Court) Rules, 1959.

13. In view of the importance of the questions of law that arise for consideration in this case, the learned official liquidator was also requested by

this court to assist the court on the legal issues. Likewise, this court also heard the arguments of Mr. M. K. Kabhir, Mr. M. S. Sundararajan and

Mr. Shree Krishnan, learned counsel appearing for the legal heirs of the founder of the company and the State Bank of Hyderabad, respectively.

14. The learned official liquidator, at the time of hearing, has raised the following two questions of law for my consideration :

(1) Whether the cut off date for arriving at the ratio at which the sale proceeds should be divided on a pari passu basis as per section 529 of the

Companies Act, 1956, should be the date of the winding up order.

(2) If the cut off date is the date of sale, whether the workmen-creditors to the extent of the workmen's dues can claim interest from the date of

winding up till the date of payment of dividend or till the date of realisation of security, whichever is earlier and if so the rate of interest payable is a

question at large which has to be decided by this court particularly in the light of the fact that the secured creditor by contract will be sharing the

security with the workmen u/s 529 of the Companies Act, 1956, and that the secured creditor by contract will be eligible for payment of interest at

the contracted rate up to the date of realisation of security.

15. Since the questions as to law, practice and procedure are involved in the above claims for interest made by the applicant, in view of the

provisions contained in sections 529 and 529-A of the Companies Act, 1956, the official liquidator requests this court to give a ruling for adoption

not only in the present case, but also in similar cases that may arise in future. Since the State Bank of Hyderabad is a secured creditor, at the

request of the official liquidator, the State Bank of Hyderabad was also impleaded as a party, viz., the eighth respondent in this case, and Mr. Sree

Krishnan, counsel for the bank, was also heard on this matter.

16. Mr. Shanmugham, the applicant in C.A. No. 206 of 1992, states that he preferred his claim for a total sum of Rs. 22,083.50 under various

heads, viz., notice pay, closure compensation, gratuity, leave salary, bonus, provident fund dues, etc. His claim has been allowed for a total sum of

Rs. 13,223.25 by the learned official liquidator. The details are set out hereunder :

Nature of Amount Amount Amount

the claim claimed admitted rejected

under

section 529-A

1. Notice pay 465.00 465.00 -

2. Closure compensation 5,812.50 1,396.00 4,417.50

3. Gratuity 5,812.50 5,812.50 -
 4. Bonus 465.00 465.00 -
 5. Leave salary 387.50 387.50 -
 6. Salary dues 5,618.00 5,115.00 503.00
 7. P.F. dues 3,523.00 - 3,523.00

 22,083.50 13,640.00 8,443.50

*Less : Khadi dues (-) 416.75 (+)416.75

 Total 22,083.50 13,223.25 8,860.25

*This amount is payable to Tamilnadu Khadi and Village Industries Board towards purchase of clothes by you from the Board, vide Bill Nos. 316212 and 50100.

17. According to the applicant, the learned official liquidator, while considering the claim, has taken into consideration only a period of three years for closure compensation instead of ten years and that he ought to have fixed the closure compensation only for a period of ten years because the company went into liquidation only on a creditor's petition and not by an act of God or for reasons beyond the control of the directors. It is further contended by the applicant through his counsel, Mr. K. Gopal, that the learned official liquidator ought to have awarded interest at 18 per cent. per annum on the amounts admitted because the claims were long pending. Hence, the applicant has prayed that the order dated December 11, 1991, made in Claim No. 194 may be set aside in so far as it relates to the closure compensation and the learned official liquidator may be directed to award interest at 18 per cent. per annum on the admitted amount.

18. Mr. S. Anthony Raj, one of the legal heirs of late Sanjeevi, who was the founder of the Pilot Pen Company (India) Limited, states that the company was wound up by this court on October 27, 1978, and that the workmen would be entitled to an average pay of three months only and that the application now filed by the workmen claiming closure compensation of a sum otherwise that what has been ordered by the learned official

liquidator is not maintainable and is liable to be dismissed. In so far as payment of interest is concerned, he states that payment at the rate not

exceeding 4 per cent. per annum on the admitted amount of claims would arise only in the event of there being a surplus after payment in full of all

claims admitted to proof and all the creditors have been paid and not earlier as stipulated under rule 179 of the Companies (Court) Rules;

consequently, the payment of interest at this juncture does not arise for consideration. The official liquidator has to admit the claims of all the

creditors and only if there be any excess after satisfying all the claims, can he pay interest not exceeding four per cent. on the admitted claims. The

applicant is not entitled to the claim now made, as the company was dosed beyond its control and the payment of interest would arise only after

the claims of the entire creditors are satisfied and there remains a surplus.

19. Mr. M. S. Sundararajan, learned counsel appearing for respondents Nos. 4 to 7, submits that the claim made for closure compensation is

exorbitant and not in accordance with law as laid down under the Companies Act or the Industrial Disputes Act which governs the same. The

amount of interest claimed is based on the adjudication of the claims being delayed. The shareholders cannot be penalised on that account. It is for

the official liquidator to decide if interest is payable at all. The workers cannot claim the same as if interest as claimed is payable as a matter of

right.

20. The State Bank of Hyderabad, through its branch manager, has filed an affidavit disputing the claims raised by the applicant herein. Mr. Shree

Krishnan, learned counsel appearing for the bank, argued the case on behalf of the bank. According to the bank, they are the secured creditors of

the company in liquidation and stand outside the liquidation. The counter-affidavit also refers to two suits filed by them. The properties under

mortgage the sale of which has been claimed in the two suits, viz., a property in Anna Salai, Madras, called Vanavil and the factory lands and

building and plant and machinery in Puzhal and Kathivedu Villages and certain hypothecated goods, machines. According to the bank, the claim

now made in the two suits will exceed Rs. 70,00,000. It is useful to reproduce paragraphs 5 to 7 of the counter-affidavit hereunder :

5. I state that the closure of the business and working of the company was due

to unavoidable reasons beyond the control of the company, that the claim for payment of closure compensation exceeding 3 months' wages is untenable and that it cannot be allowed.

6. I further state that the claim for payment of any interest on the sums due and payable to the ex employees is without any legal basis.

7. As regards the question as to the basis on which the pari passu formula determining the amounts due to the secured creditor and to the

workmen has to be worked out, I state that so far as the secured creditor is concerned, the amount due has to be calculated as on the date the

security is actually realised and payment made to the secured creditor and that so far as the employees are concerned, it is the date of the winding-

up order.

21. Similar allegations have also been raised in the affidavit filed in support of C.A. No. 207 of 1992 by Mr. Shanmugham, representing 139

claimants who are members of the union. A counter-affidavit has also been filed by the legal heirs of the late Sanjeevi on the same lines as in the

other company application.

22. As regards the question relating to the quantum of closure compensation payable to the workmen, the main issue to be decided would be

whether the closure of the undertaking was due to unavoidable circumstances beyond the control of the employer or not. If it is found that the

closure was due to reasons beyond the control of the employer, the workmen would be entitled to a maximum of three months' average salary,

whereas if it was not due to reasons beyond the control of the employer then the workmen would be entitled to closure compensation under the

provisions of section 25-FFF of the Industrial Disputes Act at the rate of 15 days' salary for every year of continuous service.

23. In the instant case, the closure of the company was due to the order of winding up passed by the court in a winding up petition filed at the

instance of a creditor of the company. There is divergence of judicial opinion among High Courts on the question whether the closure of a

company on an order of winding up passed by court could be considered to be due to reasons beyond the control of the employer.

24. A Division Bench of the Kerala High Court, in the decision in Palai Central Bank Employees' Union v. Official Liquidator, Palai Central Bank

Ltd. [1965] 35 Comp Cas 279; [1965] 2 Comp LJ 110, has held as under (at page 280) :

The closing down of the bank was something imposed on it by the order of the High Court and was, therefore, on account of unavoidable

circumstances beyond its control. The question that it was misconduct or mismanagement that brought about the winding up is not relevant to the

consideration whether the closing down was imposed on it by the court.

Unless the order of the court was obtained by collusion or fraud, every case of closure following an adjudication in insolvency or a compulsory

winding up must necessarily come within the proviso to sub-section (1) of section 25-FFF of the Industrial Disputes Act, 1947.

The carrying on of the business of the company in so far as it is necessary for the beneficial winding up of the company is not continuing the

business of the company. Therefore, it is clear that the winding up work by the liquidator is not a continuation of the business of the bank.

Held, on facts, there is no evidence to show that there was any subsequent agreement whatever between the official liquidator and the employees

that they should go on under a new contract similar in terms to the old one. In the absence of such evidence, the winding up order operated as

discharge of the employees as contemplated by section 445(3) of the Companies Act, 1956.

25. The Kerala High Court held that the closure of a company under an order of winding up would be on account of unavoidable circumstances

beyond the control of the employer and would fall within the proviso to section 25-FFF(1) of the Industrial Disputes Act and, consequently, the

workman would be entitled to closure compensation on the basis of his average pay for a maximum period of three months. However, a learned

single judge of the Bombay High Court in the decision In Re: Shree Madhav Mills Ltd., , has held as follows (headnote) :

In all cases of claims for compensation, the only important issue which arises for decision having regard to the provisions in section 25-FFF would

be whether the undertakings were closed down on account of unavoidable circumstances beyond the control of the employers. The answer to that

question would depend upon diverse circumstances. Petitions for winding up in most cases would be based upon the failure of the companies to

discharge their debts in the due course of business. In almost all cases, such failure would necessarily result in winding up orders. The winding up orders in such cases must be considered the result of financial difficulties of the companies and/or inability of the companies to discharge all their debts in due course of business. In most cases, it would be impossible to make a finding that, because the court has intervened and passed a winding up order, the closure of the undertaking is due to or on account of unavoidable circumstances beyond the control of the employers. On the contrary, in those circumstances, the appropriate finding would be that the financial difficulties were in fact the result of the companies' usual trading activities and were not on account of unavoidable circumstances beyond the control of the companies. It is clear that diverse and different facts would have to be examined if the companies raise the question that their undertakings were closed down on account of "unavoidable circumstances beyond the control of the employer". The mere fact that, u/s 445(3) of the Companies Act, employment of employees stands terminated as a result of a winding up order cannot and does not justify the conclusion that the undertaking of the company was closed down on account of unavoidable circumstances beyond the control of the employer.

26. The above is a case filed by Shree Madhav Mills Ltd. against the official liquidator, which is an appeal against the decision of the official liquidator of the said mills dated August 19, 1963, whereby the official liquidator dismissed large parts of claims made by several ex-employees of the company. The ex-employees claimed retrenchment bonus on the footing that the provisions of section 25FFF of the Industrial Disputes Act were applicable to the facts of their case. The company carried on the business of textile mills. Gill and Co. Private Ltd. applied to the court for a winding up order against the company. The company failed to pay to the sellers a huge amount on sale transactions, whereas particulars were mentioned in the petition to show that the company was in huge financial difficulties and unable to pay its debts. By order dated August 5, 1959, the company was ordered to be wound up. The ex-employees' claim for retrenchment compensation was based on the provisions in section 25-FFF and section 25-F of the Industrial Disputes Act. The case of the employees/claimants before the liquidator and in the appeal before the High

Court was that was nothing to show and no one had contended on the record that the undertaking of the mill's company was closed down on account of unavoidable circumstances beyond the control of the company. In the result, all workmen who were employed in the service of the company continuously for not less than one year prior to the closure and retrenchment are entitled to payment of retrenchment compensation equivalent to 15 days' average pay for every completed year of service. The learned official liquidator held that, having regard to the provisions in section 445(3) of the Companies Act, the winding up order must be deemed to be notice of discharge to the employees. According to him, the termination of services of the employees was statutory and was not an act of the employer. He, therefore, held that the termination of the services was for reasons beyond the control of the employer and the result of the supervening liquidation proceedings instituted at the instance of a creditor. He further held that when the services of the employees had not been terminated in the manner prescribed by section 25-F of the Industrial Disputes Act and were terminated as a result of the liquidation proceedings which were beyond the control of the employer, the compensation must be limited to three months' average pay under the above proviso to sub-section (1) of section 25-FFF.

27. The finding of the official liquidator was challenged by the appellant before the High Court. Counsel on behalf of the interveners who represented certain creditors and counsel appearing for the official liquidator had argued that the claimants were not entitled to compensation on the footing mentioned in section 25-F because the mill's undertaking was closed down on account of unavoidable circumstances beyond the control of the employer. Justice K. K. Desai, on a consideration of the relevant provisions, held as extracted above.

28. There appears to be no verdict of the apex court on this point. Two other decisions in Tatanagar Foundry Co. Ltd. Vs. Their Workmen, and Kalinga Tubes Ltd. Vs. Their Workmen, , were referred to by Mr. K. Gopal, learned counsel for the applicant. The Supreme Court, in these two decisions, only states that, if the closure is due to reasons which are not beyond the control of the employer, then the compensation would not be paid under the first part of section 25-FFF. The said proposition is well-settled and there is no quarrel about it. The Supreme Court, in these

decisions, has not touched upon the question whether the closure of a company under a winding up order of the court could be considered to be due to unavoidable circumstances beyond the control of the company.

29. Of the two decisions of the High Courts referred to above, one in *Palai Central Bank Employees' Union v. Official Liquidator, Palai Central Bank Ltd.* [1965] 35 Comp Cas 279; [1965] 2 Comp LJ 110 (Ker) and the other in *In Re: Shree Madhav Mills Ltd.*, , I am inclined to accept the view of the learned single judge of the Bombay High Court in preference to that of the Division Bench of the Kerala High Court.

30. The company in the instant case was ordered to be wound up pursuant to a petition for winding up failed by a creditor of the company. Hence,

the root cause for the closure was the undischarged debts of the company which is due to the financial difficulties of the company. The Explanation

to the proviso the sub-section (1) of section 25-FFF of the Industrial Disputes Act specifically provides that the closure of an undertaking due to

financial strain, etc., shall not be deemed to be due to unavoidable circumstances beyond the control of the employer. Hence, I am of the opinion

that, in the instant case, though the closure of the company was pursuant to an order of winding up of court, it cannot be held to be due to

unavoidable circumstances beyond the control of the employer. The closure was due to the inability of the company to pay its debts. This cannot

be considered to be an unavoidable circumstance. The situation could have well been averted had the company acted prudently.

31. I am inclined to take the view that the proviso to section 25-FFF of the Industrial Disputes Act should be strictly construed bearing in mind the

Explanation which clearly sets out the circumstances which shall not be deemed to be ""unavoidable circumstances beyond the control of the

employer"". Further, if the company in question had closed down its undertaking due to financial reasons, the rights of the workmen to claim

compensation would squarely fall in the main part of section 25-FFF. Merely because the said financial circumstances lead to the filing of the

winding up petition by a creditor on the ground that the company is unable to pay its debts would not deprive the rights of the workmen to claim

full compensation under the main part of section 25-FFF. It is also to be borne in mind that the Industrial Disputes Act is a beneficial legislation and

in particular section 25-FFF which provides for closure compensation to the workmen to tide over the difficulties faced due to the sudden closure of the undertaking and to mitigate the hardship caused to the workmen due to such closure. Hence, I am of the view that there is no force in the argument of learned counsel appearing for the legal heirs of the founder of the company in liquidation that the workmen are entitled to the maximum compensation of three months under the proviso to section 25-FFF of the Industrial Disputes Act. Perhaps, there may be a case where there is a closure of an undertaking on account of a winding up order which may confine itself to the right of the workmen to claim compensation under the proviso to section 25-FFF of the Act. However, closure of an undertaking as a result of an order of winding up at the instance of a creditor on the ground of inability to pay its debts does not take away the right of the workman to claim full compensation u/s 25-FFF and the proviso would not be attracted to such cases.

32. Hence, in view of my finding that the closure of the company was not due to unavoidable circumstances beyond the control of the company, the petitioner/workman would be entitled to closure compensation at the rate of 15 days' pay for every year's continuous service, as prescribed under the first part of section 25FFF(1) of the Industrial Disputes Act. This question is answered accordingly.

33. By Amendment Act No. 35 of 1985, Parliament had brought about very important and significant changes in the provisions of the Companies Act. By virtue of sections 529, 529A and 530, conferring substantial rights and benefits on the workmen of the closed undertaking, the workmen get rights pari passu with those of the secured creditors over the assets of the company in liquidation. Rule 179 of the Companies (Court) Rules, 1959, applies to unsecured creditors in the matter of payment of interest from the date of the winding up order till the date of dividend. The said rule cannot be applied to workers who, under the amended provisions of the Act, are treated on par with secured creditors. By virtue of the provisions of sections 529 and 529A, the workmen of the company have to be treated on par with secured creditors. The status of secured creditors is conferred on the workmen by operation of law.

34. In *State of Kerala and Others Vs. M. Padmanabhan Nair*, , the Supreme Court

has held as follows while granting interest at 15 per cent. per annum (headnote) :

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable right and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. The liability to pay penal interest on these dues at the current market rate commences at the expiry of two months from the date of retirement.

35. The above case is a glaring instance of culpable delay in the settlement of pension and gratuity claims due to the respondent/worker who retired in the year 1973. His pension and gratuity were ultimately paid to him on August 14, 1975, i.e., more than two years and three months after his retirement and hence, after serving a lawyer's notice, he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The State of Kerala put the blame on the respondent/workman for delayed payment on the ground that he had not produced the requisite last pay certificate from the treasury officer under rule 185 of the Treasury Code. But the High Court held that a duty was cast on the treasury office to grant to every retiring Government servant the last pay certificate which, in that case, had been delayed by the concerned officer for which neither any justification nor explanation had been given. The claim for interest was, therefore, rightly decreed in the respondent's favour.

36. However, the claim for interest was allowed in favour of the respondent by the District Court and confirmed by the High Court at the rate of six per cent. per annum though interest at 12 per cent. had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent. by not preferring any cross-objections in the High Court, the Supreme Court thought that it would not be proper to enhance the rate to 12 per cent. per annum which they were otherwise inclined to grant.

37. The State Bank of Hyderabad which is a secured creditor has claimed interest at 15 per cent. per annum. Hence, in my opinion, the workers are entitled to interest at 12 per cent. per annum in view of the judgment of the apex court cited above.

38. The next question that arises for consideration is with regard to the date from which interest has to be granted to the workman. u/s 445(3) of the Companies Act, an order to winding up shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued. Therefore, once the company is wound up, there is an automatic discharge of officers and employees of the company. If this statutory provision is borne in mind then the employees of the company should be deemed to be on par with secured creditors from the date of winding up. Then naturally it follows that the amounts due to the workmen like closure compensation, notice pay, etc., become payable from the date of winding up order. Hence, in my opinion, the workmen are entitled to claim interest from the date of the winding up order till the date of realisation of security.

39. Thus, I hold that (i) the workmen become secured creditors by operation of law from the date of the winding up order, (ii) the workmen have a pari passu charge over the security which is held by the secured creditor under the contract, and (iii) the cut off date for arriving at the ratio at which the sale proceeds should be divided on a pari passu basis as per section 529 of the Companies Act, 1956, should be the date of the winding up order and not the date of sale. The workmen are entitled to claim interest from the date of the winding up order till the date of realisation of security.

40. In the result, the order of the learned official liquidator dated December 11, 1991, in claim No. 194 is set aside in so far as it relates to the closure compensation and in regard to the payment of interest on the admitted amount. No costs.