(1992) 04 MAD CK 0038

In the Madras High Court

Case No : C.A. No''s. 206 and 207 of 1992

A. Shanmugham APPELLANT

Vs

Official Liquidator, High Court, Madras and others RESPONDENT

Date of Decision : 21-04-1992

Acts Referred:

COMPANIES ACT, 1956 — Section 445, 529, 529A, 530
Industrial Disputes Act, 1947 — Section 25F, 25FF, 25FFF
Mines and Minerals (Development and Regulation) Act, 1957 — Section 3

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

Hon'ble Judges : Lakshmanan, J

Bench : Single Bench

Judgement

1. C.A. No. 206 of the 1992 has 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% p.a. on the admitted amount and to pass such other orders as may be deemed fit and proper.

2. C.A. No. 27 of 1991 has been filed by the said applicant A. Shanmugham to set aside the various orders made in various claims as set out in

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 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. The

respondents 2 to 7 were ordered to be impleaded. The State Bank of Hyderabad was also ordered to be impleaded as the 8th respondent since

the issue raised has to the 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 :- 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 passage 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 the 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 the creditors lodged

with him in accordance with the rules laid down in Rules 149 to 163 of the Companies (Court) Rules, 1959.

5. Rules 164 to 165 of Companies (Court) Rules, 1959 provides 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 Ex-workmen of the Company in liquidation. The workmen have lodged their claims for the payment of

workmen dues. u/s 529 of the Companies Act, 1956 workmen dues include the amount payable under the Industrial Disputes Act. One of the

amounts payable under Industrial Disputes Act is closure compensation under Sec. 25FFF. The payment of compensation under Sec. 25FFF of

Industrial Disputes Act arises due to the termination of the services of employees by operation of law under Sec. 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 passage of winding up order.

6. Section 25 FFF of Industrial Disputes Act states as under :

25-FFF. Compensation to workmen in case of closing down of undertaking :-

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 the Section 25F, 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 25F 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 stocks; or

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

(iv) 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 close 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 workmen referred to in that sub-section shall be entitled to any

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

(a) the employer provides the workmen 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 workmen 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 workmen, 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 purpose of sub-sections (1) and (1-A), the expressions ""minerals"" and ""mining operations"" shall have the meaning respectively assigned

to them in clauses (a) and (d) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 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 under-taking had been set up, no workmen employed therein

shall be entitled to any compensation under clause (b) of Section 25F, 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"".

7. Under proviso to Sec. 25FFF(1) of Industrial Disputes Act, if the undertaking is closed on account of unavoidable circumstances beyond the

control of the employer, the compensation payable to the workman shall not exceed his average pay of three months. The applicant herein was a

worker of the company in liquidation as on the date of winding-up order and hence he is entitled to claim closure compensation under Sec. 25FFF

of Industrial Disputes Act.

8. In adjudication proceedings before Official Liquidator in respect of applicant''s claim and claims from other workers a question that arose for

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

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

consequent on the passage of winding-up order. The learned Official Liquidator, in view of the judicial pronouncement in (1965) Comp LJ 110 by

a Division Bench of Kerala High Court, came to the conclusion that the passage of winding-up order resulted in 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 proviso to

Sec. 25FFF(1) of the Industrial Disputes Act not only to the

applicant herein but also to other claimants/workers who were in the employment of the company in liquidation on the date of passage of 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

wind-up order is a closure on account of unavoidable circumstances beyond the control of the employer. Following the Division Bench of Kerala

High Court, the learned Official Liquidator came to the conclusion as stated above.

9. With regard to claim for interest at 18% p.a. 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 for a payment of interest at the rate of 4% p.a. 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 the resolution as the case may be, upto 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.

Under Rule 179, unsecured creditors of the company in liquidation whether preferential or ordinary are entitled for a payment of interest at the rate

of 4% p.a. 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 Section 529 and 529A of the Companies Act, 1956 workmen of the company become secured creditor by the operation

of law to the extent of the amount due under the head ""Workmen''s dues"" provided there exists a secured creditors 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 under Sec. 529A of the Companies Act, 1956.

10. 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% p.a. The securities said to be offered by the company in respect of this suit is

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%

p.a. The securities said to be offered by the company in respect of this suit is company''s factory and land measuring about 12.17 acres with

superstructure thereon located at G.N.T. Road, Puzhal, Kathirvedu village, 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 the interest from the date of 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 Sec. 529 or

529A of the Companies Act, 1956 or under Companies (Court) Rules, 1959.

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

12. 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 Sec. 529 of the

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

2) If the cut off date is the date of sale, whether the workmen creditor to the extent of workmen 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 contrast will be sharing the security

with the workmen under Sec. 529 of the Companies Act, 1956 and that the secured creditor by contract will be eligible for payment of interest at

contracted rate upto the date of realisation of security.

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

provisions contained in Section 529 and 529A 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 in a secured creditor, at

the request of the Official Liquidator the State Bank of Hyderabad was also impleaded as a party viz. the 8th respondent in this case and Mr. Sree

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

14. 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, P.F. 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 as in table on p. 226 :

15. 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 10 years and that he ought to have fixed the closure compensation only for a period of 10 years because the

company went into liquidation only on a creditor 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% p.a. 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% p.a. on the admitted amount.

|---|

| Nature of | Amount | Amount | Amount |

| the claim. | claimed. | admitted | rejected.|

| | | u/s 529A | |

|----------------|-----------|-----------|----------|

| 1. Notice Pay | 465-00 | 465-00 | - |

|----------------|-----------|-----------|----------|

| 2. Closure | 5812.50 | 1396-00 | 4417-50 |

| Compensation | | | |

|----------------|-----------|-----------|----------|

| 3. Gratuity | 5812.50 | 5812.50 | - |

|----------------|-----------|-----------|----------|

| 4. Bonus | 465.00 | 465.50 | - |

|----------------|-----------|-----------|----------|

| 5. Leave | 387-50 | 387-50 | - |

| Salary | | | |

|----------------|-----------|-----------|----------|

| 6. Salary | 5618-00 | 5115-00 | 503-00 |

| Dues | | | |

| | | | |

|----------------|-----------|-----------|----------|

| 7. P.F. Dues | 3523-00 | - | 3523-00 |

|----------------|-----------|-----------|----------|

| | 22083.50 | 13640.00 | 8443.50 |

|----------------|-----------|-----------|----------|

| * Less Khadi | | (-) | (+) |

| Dues | | 416.75 | 416.75 |

|----------------|-----------|-----------|----------|

| TOTAL | 22083.50 | 13223.25 | 8860.25 |

|---|

* This amount is payable to Tamilnadu Khadi and Village

Industries Board towards purchase of clothes by you from the Board vide Bill Nos. 316212 & 50100.

16. Mr. S. Antony Raj, one of the legal heirs of the 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 7, 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 otherwise than 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 the payment at the rate of

not exceeding 4% p.a. on the admitted amount of claims would arise only in the event there being a surplus after payment in full and all claims

admitted to proof and all the creditor have been paid not earlier as stipulated under Rule 179 of the Company (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, he can pay interest not exceeding 4% on the admitted claims. The application is not entitled to the

claim now made, as the company was closed 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.

17. Mr. M. S. Sundararajan, learned counsel appearing for the respondents 4 to 7, submits that the claim made for the 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.

18. The State Bank of Hyderabad, through its Branch Manager has filed an affidavit disputing the claims raised by the applicant herein. Mr. Sree

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 land and machinery in Puzhal and Kathirvedu 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

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 or secured credit or 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 the calculated as on the date security is

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

order.

19. 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 member of the Union. Counter affidavit has also been filed by the legal field by the legal heirs of late Sanjeevi on the same lines

as in the other company application.

20. As regards the question relating 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 workman 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 Sec. 25FFF of the Industrial Disputes Act at the rate of 15 days salary for every year of continuous service.

21. In the instant case, the closure of the company was due to the order of winding-up passed by the Court in Winding-Up petition filed at the

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

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

22. A Division Bench of the Kerala High Court, in the decision reported in 1965 (2) Company Law Journal, page 110, has held as under :-

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 it control. The question that it was misconduct or mis-management that brought about the winding-up is not relevant to the

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

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

winding up must necessarily come within the proviso to the sub-section (1) of Section 25FF 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 fats, 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

(Central Bank Emp. Union v. Offl. Liquidator)

23. 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 the Sec. 25FFF(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 reported in the matter of In Re: Shree Madhav Mills Ltd., has held as follows :-

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 employer. 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 due course of business. In almost all cases, such failure would necessarily result into winding up orders. The winding-up

orders in such cases must be considered 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 winding up

orders, 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, appropriate finding would be that the financial difficulties were in fact 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 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 winding

up order cannot and does not justify the conclusion that the undertaking of the company was closed on account of unavoidable circumstances

beyond the control of the employer.

The above is a case filed by Sree Madhav Mills Ltd. against the decision of 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 have claimed retrenchment compensation 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 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

particulars whereof 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 25FFF and Section 25F of the Industrial Disputes Act. The case of the employee/claimants before the Liquidator was and in

the appeal before the High Court was that there 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 day''s 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 act of the employer. He, therefore, held that

the termination of the services was for reasons beyond the control of the employer and 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

25F 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 of sub-section (1) of Section 25FFF.

24. The finding of the Official Liquidator was challenged by the appellant before the High Court. On behalf of the interveners, who represented

certain creditors and the counsel appearing of the Official Liquidator had argued that the claimants were not entitled to compensation on the footing

mentioned in Section 25F because the mill''s undertaking was closed down on account of unavoidable circumstances beyond the control of the

employer. Justice K. K. Dasai, on a consideration of the relevant provisions, held as extracted above.

25. There appers to be no verdict of the apex court on this point. Two other decisions in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim

Mahmmed Issak, and Kalinga Tubes Ltd. Vs. Their Workmen, were referred to by Mr. K. Kabhir, learned counsel of 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 25FFF. 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 as to whether the closure of a company under a winding-up order of court

could be considered to be due to unavoidable circumstances beyond the control of the company.

26. Of the two decisions of the High Courts referred to above, one in 1965 (2) Comp LJ 110 (Division Bench) (supra), and In Re: Shree Madhav

Mills Ltd., , I am inclined to accept the view of the leaned single Judge of the Bombay High Court in preference to that of the Division Bench of the

Kerala High Court.

27. The Company in the instant case was ordered to be wound up pursuant to a petition for winding up filed 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 to sub-section (1) of Section 25FFF of the Industrial Dispute 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 instinct 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.

28. I am inclined to take the view that the proviso to Section 25FFF 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 25FFF. Merely because the said financial circumstances lead to filing of a 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 Sec. 25FFF. It is also to be borne in mind that the Industrial Disputes Act is a beneficial legislation and in

particular Sec. 25FFF which provides for closure compensation to the workman to tide over the difficulties faced due to the sudden closure of the

undertaking and to mitigate the hardship caused to the workman due to such closure. Hence, I am of the view that there is no force in the argument

of the 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 Sect. 25FFF 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 to the right of the workman to claim compensation under the

proviso to Section 25FFF 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 the debts does not take away the right of the workman to claim full compensation u/s 25FFF and the proviso would not

be attracted to such cases.

29. 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.

30. By Amendment Act No. 35 of 1985 the Parliament had brought about very important and significant changes in the provisions of the

Companies Act. By virtue of Sects. 529, 529A and 530, substantial rights and benefits were conferred on the workmen of the closed undertaking,

the workmen get the right 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 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 Sec. 529 and 529A, the workmen of the company have to be treated on part with secured creditors. The status of the secured

creditors is conferred on the workmen by operation of law.

31. In State of Kerala and Others Vs. M. Padmanabhan Nair, the Supreme Court has held as follows while granting interest at 15% per annum

(pp 530-531)

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights 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.

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 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 of delayed payment on the ground that he had not produced the requisite Last Pay

Certificate from the Treasury Officer under R. 185 of the Treasury Code. But the High Court held that a duty was cast on the Treasury Officer 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 respondent''s favour.

32. 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 6

per cent 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 though that it would not be proper

to enhance the rate to 12 per cent per annum which they were otherwise inclined to grant.

33. The State Bank of Hyderabad which is a secured creditor has claimed interest at 15% per annum. Hence, in my opinion, the workers at

entitled to interest at 12% per annum in view of the Judgment of the Apex Court cited above.

34. The next question that arises for the 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 of 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, when 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 workman lime 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

winding up order till the date of realisation of security.

35. Thus, I hold that (i) the workmen become secured creditors by operation of law from the date of 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 winding-up order

and not the date of sale. The workmen are entitled to claim interest from the date of winding up order till the date of realisation of security.

36. 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.

