

(2007) 04 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No's. 4162 and 4163 of 2007

BPL Limited and Sanyo BPL Pvt. Ltd.

APPELLANT

Vs

Mr. M. Shashikumar and Others

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Companies Act, 1956 — Section 351, 354

Industrial Disputes Act, 1947 — Section 10 (4A), 25 FF

Citation : (2007) 04 KAR CK 0055

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Kasturi Associates in W.P. 4162/2007 and B.C. Prabhakar, in W.P. 4163/2007, for the Appellant; T.S. Anantharam, for C/R1, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—These two writ petitioners are directed against the award dated 8.9.2006 in I.D.Nos. 130 to 166/2005 passed by the II Additional Labour Court, Bangalore.

2. Petitioner in W.P.No. 4162/2007 is by the Management, party No. 2(a) before the Labour Court. Petitioner in W.P.No. 4163/2007 is another Management party No. 2(b) before the Labour Court. Petitioners will be referred to as BPL and Sanyo BPL for convenience.

3. BPL is the company incorporated under the provisions of the Companies Act, 1956 and was engaged in manufacturing of colour T.V. It had made an application before the Kerala High Court under Sections 351 to 354 of the Companies Act, inter alia seeking arrangement for restructuring of the company in application No. 84/2004. The Company Court allowed the said application by permitting the BPL to restructure its arrangement and in this regard the Kerala High Court by order dated 23.8.2005 approved a Scheme. In terms of the Scheme, BPL made negotiations with Sanyo BPL for transfer of the assets of the company. Accordingly transfer was effected on 15.12.2005 under Business

Transfer Agreement produced at Annexure B in W.P.No. 4163/2007.

4. It is the case of BPL that, on 9.12.2005 the company informed the workers that, the BPL has entered into business transfer agreement with Sanyo BPL with effect from 15th December 2005 and Sanyo BPL has agreed to offer employment to the employees of the BPL and were advised to accept the same. It is also stated that employee, who is not accepting the employment in the new company will be given service benefits as applicable, along with their gratuity etc., as on 14th December 2005. It is stated that thereafter compensation in terms of Section 25FF of the Industrial Disputes Act, 1948 (hereinafter referred to as "the Act") was sent to respective employees who had not accepted the offer of new employment in the transferee company.

5. It is stated that despite of the offer of employment and despite of payment of compensation same was not accepted by some of the employees. It is further stated that out of 496 employees, 459 employees have accepted the offer of new employment and have joined the Sanyo BPL. As far as 37 employees are concerned they did not either accept the new employment or accepted the compensation paid in terms of Section 25FF of the Act.

6. The employees who had not accepted compensation raised a dispute u/s 10(4-A) of the Act before the Labour Court, inter alia alleging that all of a sudden BPL has refused work to the employees from 15th December 2005 onwards without any valid and proper reasons. It is also alleged that BPL has obtained resignation letters from majority of employees on 14th December 2005 by using undue influence, coercion and duress tactics by giving reasons that the business of the BPL has been transferred to Sanyo BPL. The workers under the threat of losing their job, they were discontinued from their services and taken fresh employment in Sanyo BPL. However as far as 140 workers are concerned they protested and refused to tender resignation and to accept the new terms and conditions of employment, and alleged that the action of the management is not only a clear case of unfair labour practice, but amounts to refusal work by taking the advantage of their goodness and by using pressure. It is also stated that, BPL is still functioning and it has several units at various places and many of the workers working in colour T.V. unit were subjected to transfer to various other units. It is also stated that the workmen claimed reinstatement with continuity of service and full back wages and other consequential benefits on the ground that the termination is illegal and unjustifiable. It is also alleged that both BPL and Sanyo BPL are one and the same for the purpose of business transactions, and the BPL has no right to discontinue the services of the workmen. They also claimed that the BPL has not explained as to how the workmen are not entitled for continuity of their employment with Sanyo BPL even though business of colour T.V. is transferred to Sanyo BPL. With these allegations respondent workman challenged the alleged termination of their services by BPL and claimed that they are entitled for reinstatement into service with continuity of service and full back wages and other consequential benefits from both BPL and Sanyo BPL.

7. The said dispute was resisted by both the management by filing counter statement.

8. The BPL mainly contended that the dispute u/s 10(4-A) of the Act is not maintainable because of the transfer of undertaking and the transferee company has fight of manufacturing colour T.V. and the BPL is no longer manufacturing colour T.V. It is also stated that BPL had offered compensation in compliance of Section 25FF off the Act. Further stated that BPL ceased the manufacturing off colour T.V. and cannot give employment. It is stated that on 9.12.2005 all the employees were informed about the transfer of undertaking and also about the offer of employment to the employees by Sanyo BPL on their terms and conditions and those employees who had not accepted employment, were given the benefits applicable to them along with gratuity and their accounts were settled as on 14th December 2005. The workers who were interested in the employment were given employment. It is also stated that out of 496 employees 459 employees had joined the transferee company. It is also stated that BPL could not have given anything better than this offer and also compensation as required in law. It is stated further that, neither it has dismissed nor refused employment to the workmen.

9. Sanyo BPL has also filed a separate counter interalia stating that, it is not a necessary party, no claim be made against it as it is a registered company under the provisions of the Companies Act and further in terms of the business transfer, it was agreed that all the dues owed to the employees of BPL were required to be settled on the closing date and the employees shall not held that Sanyo BPL is liable for any due that remained unpaid which arose prior to the closing date. It is also stated that no grievance can be made against Sanyo BPL as it has nothing to do with the claim of the workmen. It also stated that, there is no relationship of employer and employee and there is no dispute between the employer and employee nor there is any dispute connected with the employment of Sanyo BPL. Apart from stating this, it also categorically denied the allegation made by the workmen in their claim petition. It also stated that majority of the workmen of BPL have joined Sanyo BPL since their services stood terminated on account of the transfer of colour T.V. business and they were engaged as fresh employees in Sanyo BPL. It is also stated that as far as Sanyo BPL is concerned no allegation of exploitation, unfair trade practice or taking advantage of goodness of the employees can be made, as there is no relationship of workmen and employer nor there is any dispute between Sanyo BPL and the workmen in connection with any employment. It is also stated that the workmen cannot make any claim whatsoever including reinstatement, back wages against Sanyo BPL as there being no relationship of employer and employees and farther stated that it is not obligatory on the part of Sanyo BPL to continue the employees of BPL on account of transfer and also stated that in strict compliance of Business Transfer Agreement Sanyo BPL has been functioning and it cannot be made liable for the alleged termination or claim of back wages or compensation.

10. Before the Labour Court on behalf of the workman WW1 namely A. Chandrasekhar was examined. In his statement, it was stated that, the management of BPL Company had displayed Ex. M1 on the notice board and on going through the contents of the notice, Ex. M1, employees were under the impression that their services will be continued, and no individual letters were addressed to any of the employee. It is further stated that they were informed that they will be given fresh appointment of in the new Sanyo BPL and in this contact those who have not given resignation, the management told that their services would be terminated. Some of the employees being afraid of their termination tendered resignation. On 15.12.2005, when as usual the workmen went to the job they were not given any work Except 37 employees, all other employees tendered resignation and joined the new employment. It is also stated that the management had sent letters to 37 employees under Ex M 5A which letters were received between 21.12.2005 and 24.12.2005, along with amount and separate calculation sheets. However these employees did not accept the same. It is also stated that Sanyo BPL had agreed to give job to these employees also but it had not agreed to give the continuity of service and as such they did not join Sanyo BPL. Further stated that these employees can work in all the unite of the BPL.

11. In the cross examination, witnesses admitted that, they had no knowledge that they are going to be retrenched, and admitted that, in Ex. M 1 it was mentioned that, those who have not accepted the employment in new Sanyo BPL they will be given service benefits and gratuity and other accounts up to 14.12.2005. However the employees had not understood the said notice, as Ex. M 1 did not mention continuity of service will be given. It is elicited in the cross examination that, if new employment offered by Sanyo BPL was with continuity of service, the same would have been accepted and further admitted that they did not want to join Sanyo BPL as fresh employees is not disputed in the cross examination. It is also admitted that these workmen did not approach Sanyo BPL with No Due Certificate of BPL Company, nor they had tendered resignation. It is also stated that they were not ready to join Sanyo BPL as fresh employees. Further the witnesses did not admit as to Sanyo BPL and BPL companies are two distinct companies. It is denied by the witnesses that, prior to 9.12.2005 BPL management had informed all the workmen that, the BPL company is going to transfer its transactions to Sanyo BPL and workers have to get their job in Sanyo BPL as fresh employees. This is the gist of the evidence of the workmen. The workmen had also examined two more witnesses, namely MS. Anuradha-WW3 and Shasikumar WW2, who also spoke in similar terms.

12. On behalf of BPL company, one M. Jeba Kumar stated to the head Corporate H.R. of BPL company, and claims that he is well acquainted with the facts of the case. In his evidence he admitted that there is business transfer agreement (BTA) on 14.12.2006 and as per Clause 5.1 of the said BTA that employees of BPL company become employees of the new Sanyo BPL, on terms and conditions set out in the employment contract to be executed by each of the employee with

the new Sanyo BPL. He stated that the BPL company which was incorporated in 1963 came down drastically over the years and suffered loss to the tune of Rs. 287.8 crores at the year ending with 30th September 2003 and the company's debt outstanding was to the tune of Rs. 1494.57 crores at the year ending with 31st March 2003 and more than 80 recovery suites and 3 winding up cases were against the BPL company. In these circumstances the company filed application u/s 391 of the Companies Act before the Kerala High Court seeking sanction of scheme of arrangement of restructuring of its outstanding debts to the secured creditors. In the said application it was clearly mentioned the financial restructuring of the debt was to renovate the colour T.V. company with Sanyo BPL and the Kerala High Court passed an order on 23rd August 2003 sanctioning the scheme holding that the scheme will be binding on the secured creditors. It is stated that the management addressed individual letters to all including the 37 employees informing them of the transfer of the BPL Company and those who had not accepted employment were paid the benefit of compensation in terms of Section 25FF of the Industrial Disputes Act as on 14.12.2005. It is stated that out of 496 employees 459 were tendered resignation and accepted the offer of employment made in Sanyo BPL and in so far as these employees are concerned they were sent with gratuity and other terminal benefits etc. Those who had not accepted new employment were given compensation in terms of Section 25FF of the I.D. Act.

13. Sri. Kasturi, learned Senior Counsel appearing for the petitioner submitted that the transfer in bonafide and it has taken place in pursuance of the direction issued by the Kerala High Court. He further submitted that in order to fulfill the scheme, a transfer was effected in terms of the Business Transfer Agreement (in short referred to as "the B.T.A.") dated 14.12.2005, which is produced as Annexure-B in W.P.No. 4163/2007. By referring to the BTA, he pointed out, Clause 5.1 and stated that, the parties agreed that, the employees as defined in Clause 1.1(g) of the B.T.A., the seller i.e., BPL Company whose details are set out in Annexure-2, annexed to the BTA shall become the employee of the purchaser i.e., Sanyo on and from the closing date on the terms and subject to condition set out in the employment contract to be executed by each employee. He also referred to Clause-8.1 and pointed out that the consummation of sale and purchase of the specified business contemplated, by the BTA, closing shall take place on or before 14.12.2005. By referring to said clause, learned Senior Counsel submitted that, the closing date was fixed in 14.12.2005. Under Clause 8.2.8, wherein the seller was required to deliver to the purchaser letters executed to the employees addressed to both the seller and the purchaser, specifically stating that, all dues owed to them by the seller have been settled as on the closing date and that they would not hold the purchaser liable for any dues that may remain unpaid which arose prior to the closing date. By referring to Clauses-5.1, 8.1 and 8.2.8, learned Senior Counsel submitted that before the closing date, i.e., on or before 14.12.2005, the employees were required to execute the employment contract and by that time, they were required to

produce the letter showing that no claim is due as on 14.12.2005. It is submitted by the learned Senior Counsel that, the employees were given option to join the new Company as fresh employees and in this regard, out of 496 employees, 499 employees have joined the Sanyo BPL Company as fresh employees. He referred to Annexure-B dated 9th December 2005 produced in W.P.No. 4162/2007 and stated that on 9.12.2005 itself the workmen were informed that those who are interested in accepting the employment in the new Company on existing terms, such employees are advised to accept the offer of employment from the new Company and it is also made clear that those who are not accepting the new employment, they would be entitled for payment of gratuity and their accounts would be settled as of 14.12.3005. He also referred to Annexure-C and submitted that, as of 14th December 2005 whatever dues the workmen were entitled has been paid by sending the cheque drawn in favour of the respective workmen. He also pointed out that on 15th December 2005, the workmen were informed that the Management has transferred the industry in favour of Sanyo BPL Private Limited w.e.f. 15th December 2005 and also informed that in view of the transfer, the workmen are no longer required by the BPL Limited and it is also informed that the workmen are relieved from the service of the Company w.e.f. 14th December 2005 and the compensation terms of Section 25-FF would be sent to respective workmen. By relying on these documents, learned Senior Counsel Submitted that workmen were made known that the industry is transferred in favour of Sanyo BPL and before it is transferred, they were made known by letter dated 9.12.2005 and also informed that those who are willing to accept the new employment, they may join the Sanyo BPL and those who are not accepting, they are entitled for collecting their compensation and in furtherance with the same on 15.12.2005, a letter was addressed informing that, in view of the closure, the employees are no more employees of BPL Limited. In furtherance of the same, another letter was issued to the workmen enclosing a cheque towards compensation u/s 25-FF of the Act. In this regard, learned Senior Counsel also relied on the evidence adduced on behalf of the BPL Limited of one M. Jeba Kumar, an authorised signatory on behalf of BPL Company. He also referred to the evidence adduced on behalf of the workmen namely, A. Chandrashekar, WW-1 and pointed out that workman has admitted that the BPL Company has displayed Ex.M1 on the notice board and they had gone through the contents of Ex.M1 and the witness has stated that they were under impression that their services will be continued. He also pointed out from the evidence of WW-1 that they were informed that they will be given fresh appointment in Sanyo BPL Pvt. Ltd. From the evidence of WW-1, he also pointed out that, the Management had sent letters to 37 workers is admitted by the witness and has stated that they had received the said letters between 21.12.2005 to 24.12.2005 and it is also admitted that the compensation was sent along with the letter. He further pointed out from the evidence of the said witness that the workmen had admitted that, the Sanyo BPL Pvt. Ltd. had offered employment, but they had not agreed to accept the same, it was not given with continuity of service and they did not join as the continuity of service was not

provide. He also pointed out that the said witness admits Ex.M1 and its contents and that the workmen had not understood Ex.M1 as there was no mention of giving continuity of service. He also pointed out that the said witness has admitted that even if they had joined the Sanyo BPL Pvt. Ltd., they would not have suffered monetary loss and the witness only emphasized on continuity of service. By relying on the evidence of MW-1 and WW-1, learned Senior Counsel submitted that the respondents - workmen have understood the transfer of its unit to Sanyo BPL Pvt. Ltd. They have also admitted Ex.M1 and have gone through the contents. In the light of the admission made by the workmen, of the transfer of the unit to Sanyo BPL Limited, the respondents - workmen would be entitled for compensation in terms of Section 25-FF or the continuity of service or any employment as a matter of right.

14. In this regard, he relied on the provisions of Section 25-FF of the Act and submitted that in the event of transfer of ownership or management of an undertaking by an agreement or by operation of law, the employer in relation to that undertaking to a new employer, is liable to pay compensation in accordance with the provisions of Section 25-F in respect of workmen who have worked for not less than one year in the undertaking immediately before such transfer, as if the workman had been retrenched. He also pointed out from the proviso, that, if the transfer is caused with the employment and employees also stood transferred to the transferee Company, then the employer of the transferee Company is legally liable to pay to the workmen in the event of retrenchment, compensation on the basis that his services has been continuous and has not been interrupted under the terms of transfer. By emphasizing on the provisions of Section 25-FF of the Act, learned Senior Counsel submitted that, all that the workman is entitled from the transferor Company is the compensation u/s 25-FF and in case, if the employee is continued by the new Company along with the transfer, such employee would be entitled for compensation in terms of Clause (c) of the proviso, as if such employee has been continued in service without any interruption. He further submitted that proviso would be applicable only when the services of the workmen is not interrupted by virtue of the transfer and not otherwise. By relying on the provisions of Section 25 and BTA and also the evidence on record, learned Senior Counsel submitted that it is made clear under the BTA that, there is no transfer of employment by the transferor Company to transferee Company. If the employee chooses to join the transferee Company, they join only as fresh employees and not as employees continuing from the transferee Company. The employees of the transferor Company would become employees of the transferee Company only on acceptance of the terms and conditions set out in the BTA and BTA clearly indicates that they will not be entitled for continuity of service. They will not be entitled for any compensation upto 14th December 2005 and they will be entitled to continue in the employment subject to the clearance of all dues by the transferor Company as of 14th December 2005. Relying on the evidence of workmen, who has admitted that the offer was made for fresh employment and they had not accepted,

learned Senior Counsel submitted that once an unit is transferred, the transferor is not liable either for payment of retrenchment compensation in terms of Section 25-F or for continuing the services of the workmen in the unit, which has already been transferred. He also submitted that even if the employment offered by the transferee Company, offer is only for fresh employment and no charge is created in respect of service conditions, which were applicable prior to the transfer.

15. The main decision that is raided in support of his argument is Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, Learned Senior Counsel strongly relied on this decision to point out that the claim for re-employment should not be determined in the light of general principles of industrial adjudication, but by reference to the specific provisions of Section 25-FF of the Industrial Disputes Act. The first part of the section postulates that on a transfer of the ownership or management of an undertaking the employment of workmen engaged by the said undertaking comes to an end, and it provides for the payment of compensation to the said employees because of the termination of their services, provided, of course, they satisfied the test of the length of service prescribed by the section. The said part further provides the manner in which and the extent to which the said compensation has to be paid. Workmen shall be entitled to notice and compensation in accordance with the provisions of Section 25F, as if they had been retrenched. The Last clause clearly brings out the fact that, the termination of the services of the employees does not in law amount to retrenchment and he also pointed out that the words "as if" bring out the legal distinction between retrenchment defined in Section 2(oo) of the Act as interpreted in the decision reported in 1957 I LLJ 243 and termination of services consequent upon transfer with which it deals. In other words, the section provides that though termination of service on transfer may not be retrenchment, the workmen concerned are entitled, to compensation as if the said termination was retrenchment. The provision has been made for the purpose of calculating the amount of compensation payable to such workmen; rather than provide for the measure of compensation over again, Section 25-FF makes a reference to Section 25F for that limited purpose, and, therefore, in all cases to which Section 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern. He further submitted that, if three conditions specified in the proviso are satisfied, there is no termination of service either on fact or in law, and so, there to no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading Section 25-FF as a whole, it does appear that unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferee and they cannot make any claim for re-employment against the transferee of the undertaking.

16. Thus, the effect of the enactment of Section 25-FF is to restore the position which the legislature had apparently in mind when Section 25-FF was originally

enacted on 4th September 1956. By amending Section 25-FF, the legislature has made it clear that if industrial undertakings are transferred, the employees of such transferred undertaking should be entitled to compensation, unless, of course, the continuity in their service or employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso. Learned Senior Counsel relying on the said decision, submitted that the position before 1956 was altogether different and on insertion of Section 25-FF, the workmen on transfer would be entitled for compensation from the transferor and will not have any right to claim employment from the transferee. In case their services are continued under the transfer agreement and satisfies the three conditions of the proviso, then the question of payment of compensation u/s 25-FF does not arise. He also pointed out that in order to come under the proviso, all the three conditions specified therein are required to be satisfied, then only there is no termination of services either in fact or in law and there is no scope for payment of compensation and by reading of Section 25-FF as a whole, it does not appear that unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferee and they cannot make claim for re-employment against the transferee of the undertaking.

17. Relying on the said decision, learned Senior Counsel further submitted that, the fact that the workmen have admitted that they had received the notice dated 9th December 2006, the fact that they have admitted that there was an offer of employment without continuity of service, the fact that the workmen wanted continuity of service and on that ground, they did not join the employment in the transferee Company, clearly show that the employment offered by the transferee Company was a fresh employment and it is not continuity of service or transfer of employment under the BTA. He also submitted that none of the clauses of BTA provides for transfer of employment. Even assuming that the transferee Company agreed to accept the employees, it is only as a fresh employment and not by virtue of transfer. He also submitted that the decision of the Constitutional Bench in ANAKAPALLA'S case is followed in many of the subsequent decisions of the Apex Court and also various High Courts. In this regard, he further relied on a decision reported in 1971 LAB.I.C. 854 in the matter of Management of The Ambala Cantonment Electric Supply Corporation Limited v. Workmen of The Ambala Cantonment Electric Supply Corporation Ltd and Ors. and submitted that the scope of Section 25-FF of transfer of undertaking as a going concern does not necessarily oblige the transferee to take the employees into its employment. In this regard, it is pointed out from paragraph-20 wherein it has observed that, proposition of law that the transfer of an undertaking as a going concern not necessarily obliges the transferee to take the employees into its employment and has held that the employees have no right to claim re-employment under the successor and they are entitled to retrenchment compensation in accordance with Section 25-FF of the Act.

18. He also referred to another decision reported in Maruti Udyog Ltd. Vs. Ram

Lal and Others, and pointed out the distinction between Sections 25FF and 25FFF and submitted that; in case of transfer or closure of the undertaking, the workman concerned is entitled to receive compensation only. It does not postulate a situation where a workman despite having received the amount of compensation would again have to be offered a job by a person reviving the industry. He referred to paragraphs 21 and 23 and submitted that; once a valid transfer or a valid closure comes into effect, the relationship of employer and employee takes effect. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose. He also submitted that, the only claim which the employee of the transferred concern can legitimately make is a claim for compensation against their employers and no claim can be made against the transferee of the said concern. In case of transfer or closer of undertaking, the workman can make claim for compensation and nothing more than that.

19. Another recent Decision of the Apex Court reported in 2006(II) LLJ 889 in the matter of Management, Mettur Beardsell Ltd. v. Workmen of Mettur Beardsell Ltd. and Anr., wherein the Apex Court on imputation of Section 25-FF at paragraph 16 has observed that;

a proviso to this Section which excludes its operation in respect of cases falling under the proviso. In substance, the proviso lays down that the provision as to the payment of compensation on transfer will not be applicable where, in spite of the transfer the service of thus workmen has not been interrupted, the terms and conditions of service are not less favourable after transfer than they were before such transfer, and the transferee is bound under the terms of the transfer to pay to the workmen, in the event of their retrenchment compensation on the basis that their service had been continuous and had not been interrupted by the transfer. The proviso, therefore, shows that, where the transfer does not affect the terms and conditions of the employees, does not interrupt the length of their service and guarantees to them payment of compensation, if retrenchment were made, on the basis of their continuous employment, then Section 25-FF of the Act would not apply and the workmen concerned would not be entitled to claim compensation merely by reason of the transfer. It is common ground that the three conditions prescribed by Clauses (a), (b) and (c) of the proviso are satisfied in this case, and so, if Section 25-FF were to apply, there can be little doubt that the appellant would be justified in contenting that the transfer was valid and the 57 employees am make no grievance of the said transfer. The question, however, is: Does Section 25-FF apply at all?

20. The Supreme Court while considering the case of the workmen under the proviso has found that, if the service of the workmen are not interrupted by virtue of transfer, then such workmen will not be entitled for compensation in terms of Section 25-FF of the Act and if the provisions of Clauses (a), (b) and (c) of the proviso are not satisfied, then the case of workmen would fall u/s 25-FF of the Act for the purpose of calculating the compensation.

21. Learned Senior Counsel had also referred to several other decisions in relation to the effect of transfer u/s 25-FF of the Act. For the purpose of Section 25-FF whether the workman is entitled for continuous service under the Sanyo BPL is concerned, the learned senior counsel submitted that, even before the Labour Court, the contention of the workman is that, since the workmen were not given the continuity of service, by the transferee company, they had not accepted the compensation. He referred to paragraph 11 of the award and pointed out that, "the only dispute is that the first party workmen claim that, they would have been given, employment in the second party(b) with continuity of service" and in this regard learned senior counsel submitted that, referring to the tenure of the evidence of the workmen and their claim petition and also findings arrived by the Labour Court, it clearly shows that, what is alleged by the workmen is, of not providing of the continuity of service by the Sanyo BPL and not a case of claiming un interrupted continuity of service in terms of Clause (a), (b) and (c) of the proviso. In this regard, he also pointed out from the findings of the Labour Court at paragraph 36 that:

...As I have already stated above, the only dispute between the first party and the second party that, the first party contended that they will not resign to second party (a) and they are ready to accept the employment with second party (b) with continuity of service but not as a fresh employment.

Relying on this finding, the learned senior counsel submitted that, the case does not fall within the ambit of proviso to Section 25-FF of the Act, as it is clearly accepted and understood by the workmen that, their appointment by the Sanyo BPL is, as a fresh employment and not as a continuity of service by virtue of transfer. He also relied on the findings of the Labour Court that, the Labour Court having referred to Anakapalla's case at paragraph 43 has not considered the proposition of law laid down by the Apex Court, inasmuch as the Labour Court has only taken into account that the workmen have not received the compensation and they are only seeking employment with the Sanyo BPL. Even at paragraph 44, the Labour Court has tried to distinct the decision reported, in Management of R.S. Madharam and Sons Agencies (P) Ltd. Vs. Its Workmen, and has stated that, in this case the workman is claiming the employment with continuity of service from Sanyo BPL. The learned Senior Counsel pointed out (sic) in the entire award, the Labour Court has not found, as to how by virtue of transfer of an undertaking, the employees of the transferor Company would become entitled for employment in the transferee company particularly in view of the Law laid down by the Apex Court in various decision that, the employment comes to an end by virtue of transfer of undertaking or closure of undertaking and in view of the proposition of law laid down by the Apex court that transferee company is not under obligation to accept the employment of the transferor Company unless they are transferred under the agreement of transfer.

22. Sri B.C. Prabhakar, learned senior counsel appearing for the Sanyo BPL submitted that, the BTA is a Transfer Agreement of an undertaking of a colour TV

unit from the BPL and under the BTA itself it is made clear that, only such employees who have settled their claims of the Transfer would be taken employment. He also submitted that, clause under the BTA do not provide for transfer of employment. But, what is provided is, for giving option to the employees of the BPL company to have an employment in the Sanyo BPL Company as a fresh employment and not as a transfer of employment. In this regard, he emphasized the definition of employees and submitted that, "the employees shall mean and include certain employees/workmen of the Seller sought to be transferred to the Purchaser together with their personnel records and post retirement benefit plans, along with the Specified Business and more particularly described in Annexure-2 annexed to the BTA." By referring to this clause, he submitted that, only such employees who are sought to be transferred to the purchaser together with their personnel records and post retirement benefit, along with the specified business as stated in Annexure-2. He also referred to the employees referred in Clause 1.1(g) and submitted that, "employees and all personnel records (including, without limitation all personnel, human resources and other records and each Employee's current position and base annual compensation) of the seller relating to the employees". He relied on the Clause 3.2 and pointed out at Clause 3.2(b) that, "any wages, salary, severance, bonuses, commissions, vacation or holiday pay, post retirement medical benefits, fringe benefits, long-terms disability benefits, life insurance benefits, any duties, obligations or liabilities arising under any employee benefit plan or applicable labour laws, policy or practice, relating to the employees of the specified business as specified in Annexure - 2 or other amounts due to any such employees or former employees of the specified business which accrued on or prior to the closing date are excluded from the liability of the transferee company". By referring to this clause, he submitted that, for the purposes of clarity, the parties agree that, the purchaser shall not have any liability whatsoever in respect of any employees of the seller, whether accruing before or after the closing date. By referring to this clause, he submitted that, payment of wages and salaries etc. till the closure date is the liability of the seller company and not the liability of the purchaser company. He also submitted that, this clause clearly states that, the payment of wages and salaries etc, till the closure day, is the liability of the seller company and not liability of the purchaser company. He also submitted that, this clause clearly states that, what is understood under the BTA is, to accept the employees as fresh employees and not with continuity of service and this is also made clear in Clause 5.1 wherein, parties are agreed that, the employees of the seller company whose details are set out in Annexure-2 shall become employees of the purchaser on and from the closing date, on the terms and subject to the conditions set out in an employment contract to be executed among each employee and the purchaser. He farther submitted that, the seller shall deliver to the purchaser, letters executed by all the employees addressed to both the seller and the purchaser specifically stating that, all dues owed to them by the seller have been settled as of the closing date and that they would not hold the purchaser liable for any dues

that may remain unpaid which arose prior to the closing date. By referring to this clause, he submitted that, it has been made more clear that, the purchasing company was interested only to give employment to the employees of the transferor company on conditions and subject to fulfillment of the requirement under Clause 8.2.8 and he further submitted that, those who have joined the transferee company by accepting the terms and conditions of the BTA, have been given employment as a fresh employment and in this regard he also pointed out that, out of 496 employees, 459 employees have taken the employment as fresh employment and not with continuity of service continuing them as employees of the transferee Company. He further submitted that, it is well settled law that the transferee company has no obligation to accept the employees of the transferor company as a consequence of transfer unless the employment itself is transferred and in this regard, he also relied on various decisions including Anakapalla's case and the M/s. Maruti Udyog limited and also 1971 LAB. I.C. 854 referred to above and pointed out that, there is no obligation on the part of the transferee company to take the employees of the transferor company. He also relied on The Board of Directors of the South Arcot Electricity Distribution Co., Ltd. Vs. N.K. Mohammed Khan etc., , the judgment of this Court Indian Oxygen Employees Union and V. Srinivasan Vs. Union of India (UOI), BOC India Limited and DATEX Ohmeda India (P) Ltd., and Maruti Udyog Ltd. Vs. Ram Lal and Others, By relying on these decision learned senior counsel Sri. Prabhakar submitted that, as far as transferee company is concerned, it has made it clear in the counter filed before the Labour Court and also in the evidence, wherein, the Sanyo BPL has categorically stated that, the claim petition as against the Sanyo BPL is liable to be rejected as the Sanyo BPL is not a necessary party, as there is no obligation on the part of the transferee company to provide employment. In this regard, specific contentions were raised by the said Sanyo BPL. Company inter alia, stating that, there is no relationship of employer and employee and there is no dispute or difference between the employer of the workman. By elaborating arguments, he submitted that, it is a company, which is incorporated under the Companies Act and purchased the undertaking of the BPL Company and on transfer, the employees of the transferor company will not become the employees of the transferee company. If there is no relationship of employer and employee, the dispute as against the said company is not maintainable. In this connection, he also pointed out that, the evidence to this effect has been led before the Labour Court reiterating the stand taken by the Sanyo BPL Company and in this regard Sri J. Srinivasan Company Secretary has been examined.

23. He further emphasised that, once the transfer takes effect, the relationship of employer and employee of the transferor company comes to an end. As there is no relationship of employer and employee, the dispute does not arise and it will not become the industrial dispute. He also relied on the evidence of workman. The case of the workman is highlighted both in the claim petition as well as in the evidence, that the only dispute between the parties is, of the continuity of service in respect of fresh appointment. The fact that, workman

though admitted that, it is a fresh appointment, there was no agreement of transfer of the employment by the transferor company, and transferee company has accepted the same. He also submitted that, the workmen has no right to state any condition in the transfer nor the workmen have any right to claim that, they should be given an employment in the case of transfer or closure. The transferor company or transferee company can enter into an agreement, if a transfer is bona fide and nothing is pointed out to show that, the transfer is a fraud or is not bona fide, the transfer comes into effect and in view of the transfer of an undertaking there is no reason for making the Sanyo BPL as a party to the dispute. Admittedly, what is alleged in the claim petition is, the termination of the services of the workmen by the BPL Company. If that is so, the question of making any claim against the transferee company is wholly misconceived and without any justification.

24. Sri T.S. Ananthram, learned Counsel for the respondents - workmen submitted that, the transaction is not a transfer. Before the transfer is effected, the company forced the workmen to tender resignation by inducing the workmen, forcibly got tendered resignation, which clearly amounts to illegal termination of the service of the workmen. He submitted that, though the M.1 is dated 9.12.2005, but it has neither served on the individual workman nor there is any proof of service of said notice. He further submitted that, the letters informing the transfer is dated 15.12.2005, is received only on 21.12.2005. If these letters are taken into account, the BPL has terminated the services of the workmen after alleged transfer alleged to have been taken place on 14.12.2005 and further submitted that, such termination is made, if is illegal termination and clearly attracts the provisions of Section 25F of the Industrial Disputes Act. He submitted that, the BPL is a company, which is running various units including the unit in question and the employees are transferred from one unit to another unit and in this regard, he further submitted that, there are instances of transfer from one unit to another unit and in view of that, if the alleged transfer of one unit to made, it will not effect the service conditions of the workmen, as they are not the employees of a unit and they are the employees of the BPL Company and in case of any transfer of a unit or a branch will not amount to transfer of entire industry itself. He further submitted that, even if there is alleged transfer of a unit of the BPL, it had not effected the service conditions of the workmen and they cannot be terminated the services. The second contention that is raised by Sri Ananthram is that, even the transfer is not a transfer in effect, but what is done is, the BPL itself holding share of the transferee company. The BPL still is having control over the said Company and it does not amount to transfer within the meaning of Section 25-FF of the Act. He further submitted that, the ownership and control of BPL is still in existence. He also submitted that, in view of BPL company holding share of the Sanyo BPL, the alleged transfer is not a transfer and the workman has right to continue in service and there can be no termination of service of the workmen.

25. As regards 459 workmen joining the Sanyo BPL, learned Counsel submitted

that, the BPL has threatened the workmen to tender resignation, otherwise they would have terminated the services of the workmen. Under such circumstances, the said workmen have tendered resignation and had joined the services of the Sanyo BPL. He further submitted that, if there is transfer of undertaking or a unit, question of tendering resignation does not arise. Fact that, the BPL was inducing the workmen to tender resignation itself shows that, the BPL forcibly terminated the services of the workmen and not by virtue of transfer. They were asked to collect the compensation u/s 25-FF of the Act. He referred to the BTA and pointed out that, even in BTA also the "employees" means including certain employees/workmen of the seller sought to be transferred to the purchaser together with their personal records and post retirement benefit plans, along with the specified business. Agreement between the BPL and Sanyo BPL clearly shows that, employment is also transferred and employees of the seller company shall become the employees of the purchaser company from the closing date itself. It means that, those employees, who had worked in the transferor company on or before the closure date, would automatically become the employees of the transferee company. He also submitted that, on the terms and conditions of the BTA, Sanyo BPL is made a party as a consequence of the alleged transfer. He further submitted that, even assuming that there are certain clauses which indicate that, certain conditions were required to be fulfilled, the rights of workmen could not be taken away by virtue of certain conditions, which are not in consonance with the true spirit of industrial resolution and further submitted that, the BPL has not paid the compensation before the alleged transfer is effected and which is evident from the letters sent at Annexures-"B" and "C" annexed to Writ Petition No. 4162/2007. He also referred to those Annexures and pointed out that, in the said letters itself, it is shown that, they were sent only on 24.12.2005 and 21.12.2005. If retrenchment or termination to be effected subsequent to the alleged transfer, it does not amount to retrenchment by virtue of transfer, but it is a retrenchment of workmen without any justification and amounts to illegal retrenchment and the workmen would be entitled for the relief in terms of Section 25-FF of the Act.

26. He mainly contended that, if the transfer is effected as a consequence of scheme formulated by the Court and accepted by both the parties under the scheme, the High Court of Kerala has indicated, in the scheme which is annexed to W.P.No. 4163/2007 at Annexure- "D1" page 68, which clearly stipulates that, "the company as a going concern or otherwise together with all the assets (moveable and immovable) interalia comprising the manufacturing facilities at Old Madras Road (Bangalore) and Noida (UP), sales, distribution, marketing, service, administrative and information technology, infrastructure, associated employees and intangible property including but not limited to the brand name, licenses and permits is to be transferred to the JV Company". He further submitted that, in consonance with the said scheme, the BTA has been entered into between the parties. It is only because of the scheme, the clauses are referral to the transfer of employees and it also makes it clear from the definition

of employees referred in the BTA itself.

27. Learned Counsel for the workmen submitted that, if there is a transfer, then the transfer would be along with the employment. If the transfer is not a transfer, then the respondents- workmen will continue to be an employee of Sanyo BPL. In this regard, he also relied on various decisions regarding the effect of transfer and also relied on decision in connection with "the transfer of one unit or a branch will not effect the service conditions of the employee".

28. In support of his contention, he referred to the evidence of MW-1 and pointed out, from the cross-examination that the BPL Company has not transferred the documents to Sanyo BPL Pvt. Ltd. in terms of Clause 8.1.1 of the BTA and the witness has stated that it is not possible to transfer the documents to Sanyo BPL Pvt. Ltd., in future as the closing date is over. He also submitted that, this admission clearly shows that, in terms of the BTA, the BPL Company was required to send the documents, but has not sent the documents. He also pointed out that the said witness has also admitted that BPL Company is having control over the Sanyo BPL Pvt. Ltd. in terms of BTA. The website address of the BPL Company is mentioned in the BTA. Further he also pointed out that, the said witness has admitted that one H.R. Savitha Rani was transferred from Sanyo BPL Pvt. Ltd. to BPL Limited as per Ex.W14 and further, the BPL workers were transferred from one unit to another unit. Even the said witness has admitted that, out of 37 employees, 15 employees were transferred to BPL Limited from various other units. Relying on these admissions, learned Counsel for the respondents submitted that BPL Company is having control over the Sanyo BPL Pvt. Ltd. The employees transferable from one unit to another unit with the records pertaining to BPL Company, who were required to be transferred, have not been transferred.

29. He relied on a decision reported in 1997(III) LLJ 1224 in the matter of Hindustan Steel Works Construction Limited and Ors. v. Hindustan Steel Works Construction Limited Employees Union and Ors. and submitted that nature and character of undertaking have to be looked into, mere unity of ownership, management and control not of much significance. In this regard, he submitted that there is a functional integrality between several units of BPL and closure of one unit does not lead to closure of other units and there are about 6 units of BPL is situated in Bangalore. He further submitted that, in the light of the evidence of MW-1, there has been transfer from one unit to another unit and there is a functional integrality between the units, the transfer does not amount to closure of industry and the termination is nothing but illegal retrenchment of the workmen. He further relied on another decision reported in Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another, and submitted that, if the units are controlled by the same employer and the fact that the business carried on in the two units was identical, and it does not leave any doubt that the two units were really integral and were known separately only because of business in two units. He further relied on another

decision reported in S.G. Chemicals and Dyes Trading Employees' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, to submit that if the workman is interchangeable between the units, both the units for the purpose of industry has to be treated as one.

30. He also relied on the evidence of the workman one A. Chandrashekar, wherein the said witness has deposed that the workmen are subjected to transfer from one unit to other unit, BPL Limited is controlling the Sanyo BPL Pvt. Ltd. and the Sanyo BPL Pvt. Ltd. is required to accommodate the workmen with continuity of service. He also pointed out that no notice or letter written to the workmen before the transfer. In this regard, he also referred to decision reported in 1974 SC 421 in the matter of Central Inland Water Transport Corporation Limited v. The Workmen and Anr.

31. He further submitted that even though in the claim petition the Union has sought for relief of setting aside the termination against the BPL Limited and Sanyo BPL, nevertheless, the Labour Court is having vast power much more than the Civil Court and can grant effective reliefs and also mould the reliefs in order to provide substantial relief under the industrial adjudication. In this regard, he relied on a judgment reported in Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. and Another, He also referred to decision reported in 1992 II LLJ 672 in the matter of Sheshrao Bhaduji Hatwar v. P.O., First Labour Court and Ors. inter alia to submit on the question of reference of point for adjudication. Further, in connection with the transfer of a branch or a unit would not amount to transfer of the entire industry, he referred to another decision reported in 1964(I) LLJ 366 in the matter of R.S. Madho Ram & Sons (Agencies)(Private) Ltd. and Anr. v. Its Workmen and submitted that Section 25-FF of the Act provides where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who satisfies the test prescribed in that section shall be entitled to notice and compensation in accordance with the provisions of Section 25-FF as if the workmen had been retrenched. This provision shows that workmen falling under the category contemplated by it, are entitled to claim, retrenchment compensation in case the undertaking which they were serving and by which they were employed is transferred. Such a transfer in law, is regarded as amounting to retrenchment of the said workmen and on that basis Section 25-FF gives the workman the right to claim compensation. He further submitted that under the proviso of Section 25-FF of the Act, a case is falling under the said proviso, the payment of compensation of transfer will not be applicable where in spite of transfer, the service of the workman has not been interrupted by such transfer, the terms and conditions of service are not less favourable after such transfer than they were before such transfer. He strongly relied on a decision reported in Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another, and submitted that acceptance of retrenchment compensation by the concerned workman in the circumstances of the instant case, it was held, did not

operate as a bar to prevent them to challenge their retrenchment is concerned. Further the employer after the transfer retrenched the workmen in the said case on 15th July 1959. The Tea Estate was in possession and the Management of the vendee as an owner and that the conduct of the party clearly shows that the vendee was the employer and the workmen working in the garden including the eight retrenched workmen were the vendee's employees. In such circumstances, whether or not the transfer of management took place on 17.2.1959, the vendee once accepted the employees as its workmen and becomes answerable to them in the said character. In the said background, the Supreme Court set aside the retrenchment order holding that after having taken by the Management, the employees became the vendee's employees and cannot be retrenched on the ground that there is no transfer yet. This judgment was relied by the learned Counsel to show that the termination of the respondents is done after the transfer is effected. Further submitted that even in case of any interpretation required, a doubt arises whether benefit of such doubt should go in favour of weaker section and the workmen. In this regard, he relied on several decisions.

32. He also relied on unreported decision of this Court in W.P.No. 563/1987 decided on 14.1.1987 and submitted that in the matter of construing or interpreting statute, instrument or agreement, the Court must follow the Rules of interpretation which sub-serve the objects and purpose of the statute, instrument or agreement. The agreement is intended to benefit a class of employees and therefore, that interpretation which favours that class of employees is the one which should be adopted as the Golden Rule and not any other interpretation even if it is possible. By relying on this decision, learned Counsel for the respondents submitted that by interpreting the clauses of the B.T.A., even if there is any doubt, the benefit of that doubt should go in favour of the workmen and not in favour of the Management.

33. In the light of the rival contentions, the questions that arise for consideration in these writ petitions are:

1. Whether there is transfer of a unit of BPL Limited in favour of Sanyo BPL Pvt. Ltd. in terms of Section 25-FF of the Act?
2. Whether the services of the respondents - workmen are not interrupted and they continued to be employees of the transferee Company?
3. Whether the action of BPL Company amounts to retrenchment of this services of the respondents - workmen u/s 25-F of the Act?
4. Whether the respondents are entitled for the relief, that they have sought in their claim petition?
5. Whether the award is just and proper?

REGARDING POINT NO. 1:

34. As regards to the transfer of unit, what is required to be noticed is, the

history of the legislation of Section 25-FF of the Act providing for transfer of an industry. It is useful to extract the provisions of Section 25-FF of the Act, which reads as under:

25-FF. Compensation to workmen in case of transfer of undertakings.- Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer if.

- (a) the service of the workman has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
- (c) the new employer is, under the terms of such transfer 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 the transfer.

Section 25-FF of the Act was substituted by Act 18 of 1957, which came into effect from 28.11.1956. The effect of the enactment of Section 25-FF is to restore the position which the Legislature had apparently in mind, but Section 25-FF was originally enacted on 4th September 1956. By amending Section 25-FF, the legislature has made it clear, that, if industrial undertakings are transferred, the employees of such transferred undertaking would be entitled to compensation.

35. In order to appreciate the effect of Section 25-FF, what is required to be considered, is as to the question whether the purchaser of an industrial concern can be held to be a successor-in-interest of the vendor. Whether the purchaser purchased the whole of the business, whether the business purchased as a going concern at the time of sale transaction, whether the business carried on at the same place as before, whether business carried on without a substantial break in time, whether the business carried on by the purchaser is the same or similar to the business in the hands of the vendor, whether there is a break in the continuity of the business, nature of break, length of the break, whether goodwill has been purchased, whether the purchase is only of some parts, whether purchased some other new parts and started a business of his own, which, is not the same as the old business, are the questions which require to be considered in order to know whether there has been a transfer of a unit.

36. In this regard, it is useful to refer to a leading case on the question of

transfer reported in *Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen*, which is followed in a subsequent decision. Factors referred to above are the factors, which were required to be considered for the purpose of knowing the transfer. The Apex Court in the said decision after referring to the history of the substitution of Section 25-FF of the Act has held that, before Section 25-FF was introduced in the Act in 1956, the question was considered by the industrial adjudication on general considerations of fairplay and social justice. In all the cases where the employees of the transferor concern claimed re-employment at the hands of the transferee concern, industrial adjudication, first enquired into the question as to whether the transferee concern could be said to be a successor-in-interest of the transferor concern. If the answer was that the transferee was a successor-in-interest in business, then industrial adjudication considered the question of re-employment in the light of broad principles. With an enquiry, whether the refusal of the successor to give re-employment to the employees of his predecessor was capricious and unjustified, or whether it was based on some reasonable and bonafide grounds. In this regard, the Apex Court held that it was in this spirit, that industrial adjudication approached this problem until 1956 when Section 25-FF was introduced in the Act. Sometimes, the claim for re-employment was allowed, and sometimes the claim for compensation was considered. But significant change was brought after 1956. As Section 25-FF makes a reference to Section 25-F for a limited purpose, and therefore, in all cases to which Section 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern. The scheme under the proviso to Section 25-FF was also considered by the Apex Court inter alia, if the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law and so, there is no scope for payment of any compensation.

37. Reading of Section 25-FF as a whole, it does not appear that unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferee, they cannot make any claim for re-employment against the transferee of the undertaking. Further, by amending Section 25-FF, the Legislature has made it clear that, if industrial undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation, unless the continuity in their service or employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso. In the light of the principles enunciated by the Apex Court in the matter of interpretation of Section 25-FF as inserted in 1956, the facts, which are not in dispute, are:

The B.P.L. Limited had filed an application under Sections 391 and 394 of the Companies Act, for approval of the scheme is not in dispute. The scheme is approved is also not in dispute. The scheme provided for transfer of the unit is also not in dispute. Further, before the Company Court, the Sanyo BPL Pvt. Ltd. was not a party is also not in dispute. The scheme refers to transfer of colour T.V.

business as a going concern together with assets, etc., including the association of the employees. However, if the Business Transfer Agreement dated 14th December 2005 is perused, the said B.T.A. does not refer to the scheme nor even it states that, the B.T.A. is entered in furtherance of the scheme. The clauses relating to the employment or the employees are referred to at page-116, which reads as under:

"Employees" shall mean and include certain employees/workmen of the Seller sought to be transferred to the Purchaser together with their personnel records and post retirement benefit plans, along with the Specified Business and more particularity described in Annex-2 hereto.

The definition Clause 1.1(g) states, employees and all personnel records (including, without limitation, all personnel, human resources and other records and each Employee's current position and base annual compensation) of the Seller relating to the Employees were included in the transfer. Clause 3.2 excludes the liability of payment of wages, salary, severance, bonus, commission, etc., in respect of employees mentioned in Annexure-2 till the closing date i.e., upto 14th December 2005. Clause 5.1 relates to employee matters, which reads as under:

5.1 Employee Matters

The Parties agree that the Employees (as defined in Article 1.1(g) of the Seller whose details are set out in Annex-2 hereto shall become employees of the Purchaser on and from the Closing Date, on the, terms and subject to the conditions set out in an employment contract to be executed among each employee and the Purchaser.

By reading of this clause, it indicates that the employees mentioned in Annexure-2 shall become employees, subject to the condition set out in the employment contract to be executed among each employee and the purchaser. Closing date is mentioned in Clause 8.1 as 14.12.2005, Clause 8.2.8 again relates to employees, which reads that, the Seller shall deliver to the Purchaser letters executed by all the Employees addressed to both the Seller and the Purchaser specifically stating that all dues owed to them by the Seller have been settled as of the Closing date and that they would not hold the Purchaser liable for any dues that may remain unpaid which arose prior to the Closing date. By reading this Clause, what emerges is that, the Sanyo BPL has not taken the responsibility of the payment of wages, liability, if any, prior to 14.12.2005. It had accepted the employees free of all the liabilities upto 14.12.2005. Clause 5.1 of the B.T.A. indicates that the employment is subject to the condition set out in the employment contract. From these clauses, it is clear that, as far as Sanyo BPL is concerned, all that it wanted, is to continue the employees of the BPL subject to their entering into contract with the Sanyo BPL and subject to they producing the letter showing that there is no liability of payment of wages, bonus, etc., as on 14.12.2005.

38. In this regard, it is useful to refer the evidence of the workman namely, A. Chandrashekar. In the examination-in-chief itself the workman has stated that, the Management of 2nd party (a) has displayed the Ex.M1 on the notice board. On going through the contents of notice at Ex.M1, they were under the impression that, their services will be continued. Except Ex.M1, no other notice was displayed on the notice, board. The said witness has further stated that, one Sundar Rao, Bharadan had informed that, if they tender the resignation to BPL, then only their services will be continued by Sanyo BPL, as a fresh appointment. It is admitted that they were informed that, they will be given fresh appointment in Sanyo BPL and that they wanted that the management should not insist on resignation. In the course of the examination-in-chief itself, it is again admitted that, the Management has sent letters to 37 workers as Ex.M5(a), which were received by them between 21.12.2005 to 24.12.2005 along with D.D. Further, the workman has admitted in the course of the examination-in-chief that, Sanyo BPL has agreed to give job to them but they did not agree to give continuity of service. Hence, they did not join Sanyo BPL. In the cross-examination, again it is re-iterated that, it is true that in Ex.M1 it was mentioned that those who are not willing to accept the employment in new Company will be given the benefits i.e., gratuity and their accounts will be settled upto 14.12.2005. Witness volunteers, that they have not understood the Ex.M1, he further admits that in Ex.M1, it is not mentioned that continuity of service will be given. Further, it is also admitted by the workmen that, they were ready to work in any Company, if their services are continued and further admitted that if they had joined Sanyo BPL Company, no monetary loss would have caused to them. Now looking at the evidence of the workman and the claim petition that as filed by the workmen, what emerges from, the claim petition and the evidence of the workman is that, these respondents - workmen were interested to continue their employment in the Sanyo BPL Company, if they were given continuity of service. This fact its again stated in the claim petition that at para-6, interalia stating that the II party management (a) has not substantiated its claim as to how the 1 party, i.e., respondents are not entitled for continuation of their employment in the II Party (b) Management even though business of colour T.V. is transferred to II party (b). In this regard, a prayer sought is for direction to both BPL Limited as well as Sanyo BPL Pvt. Ltd., to reinstate the services of the first party - workers with continuity of service, full back wages and all other consequential benefits. This coupled with the award of the labour Court where the Labour Court also proceeds on the premise that, the only dispute is as to whether, I Party workmen claim that they would have been given employment in the II Party (b) with continuity of service. From the evidence and the issue that is focused by the Labour Court, the respondents stated that they were interested in the employment, but the employment should have been with continuity of service with the Sanyo BPL Pvt. Limited.

39. In this regard, their case was that, the BPL Company is holding 50% of the shares in the Sanyo BPL Pvt. Ltd., and it is in full control of the said Company

and it is not the transfer.

40. As regards to the right of the respondents to claim an employment against the Sanyo BPL Pvt. Ltd., if it is an independent Company and coming into existence of transferee Company from the BPL transferor Company, whether a direction could be issued to such a transferee Company for continuity of the employment of the respondents in the said Company? How, on this ground, law is very well settled on interpretation of Section 25-FF and proviso of Section 25FF. The provisions of Section 25-FF have two parts. First part is Section 25-FF itself and the second part is the proviso. Proviso is an exception in nature, 25-FF is a Section which comes into play as a consequence of transfer. Section 25-FF as attracted above, in case of transfer of ownership or management of an undertaking by agreement or by operation of law, employer in relation to that, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F as if the workman had been retrenched. By reading of the main section, it clearly indicates that, in case of transfer of an undertaking, the employer is liable to pay the compensation in accordance with the provision of Section 25-F as if the workman had been retrenched. However, if all the clauses of the proviso are satisfied, there is no need to grant compensation to the workman, inasmuch as the main section is not applicable to the workmen, where the services of the workmen are not interrupted by such transfer, and where the terms and conditions of service applicable to the workman after such transfer are not, in any way less favourable to the workman than those applicable to him immediately before the transfer; and the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, the compensation on the basis, that his service has been continuous and has not been interrupted by the transfer.

41. What emerges from the proviso to Section 25-FF is that, it will come into operation only when there is no interruption of the service of the workman by virtue of transfer. In this case, there is admission by the workman, that there is a transfer and the B.T.A. also indicates that the transferee Company has not taken the responsibility of continuing the services of the workmen, all that the transferee Company has accepted is, to accept the employees as fresh employment on such terms and conditions as per the contract of employment. It is also made clear in the B.T.A. that the transferee Company is not at all liable to any wages, bonus or any service benefits upto 14th December 2005 i.e., the date on which the transfer has been effected. These terms are clear and prove that there is no contract of transfer of employment by the transferor Company or there is no acceptance by the transferee Company of the employment of the employees of the transferor Company. If that be so, it is now well-settled law that, transferee Company is not under obligation to re-employ the workmen. In this regard, in ANAKAPALLA'S case, which is followed thereafter by the Apex Court in the case of Maruti Udyog Ltd. Vs. Ram Lal and Others, where the Apex

Court, on interpretation of Section 25-FF and also by following the decision of the Anakapalla's case has held that, Section 25-FF has been made for the purpose of calculating the amount of compensation payable to such workmen rather than provide for the measure of compensation over again, Section 25-FF makes a reference to Section 25F for that limited purpose, and, therefore, in all cases to which Section 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern. Once valid transfer or valid closure comes into effect, the relationship of employer and employee comes to an end. The compensation is required to be paid to the workmen as the consequence thereof and for no other purpose and it is also held that in case of transfer or closure of an undertaking, the workman concerned is entitled to receive compensation only and it does not postulate a situation where a workman despite having received the amount of compensation would again have to be offered a job by a person reviving the industry. The Anakapalla's case is also followed by the Supreme Court subsequently in a recently delivered judgment reported in *Management, Mattur Beardsell Ltd. Vs. Workmen of Mattur Beardsell Ltd. and Another*, and at paras-18 and 19, the Apex Court has referred to the transfer of one distinct and separate business may involve the application of Section 25-FF. The fact that one undertaking runs these businesses could not necessarily exclude the application of Section 25-FF solely on the ground that all the businesses or industries run by the said undertaking have not been transferred. By following Anakapalla's case, the Apex Court had negated the contention of sham transaction and has held that the workmen falling under the category of Section 25-FF of the Act are entitled to claim retrenchment compensation in case the undertaking in which they were serving and by which they were employed is transferred. Such a transfer, in law, is regarded as amounting to retrenchment of the said workmen and on that basis, Section 25-FF gives the workmen thus right to claim compensation. It also held that every workman, who satisfies the test prescribed u/s 25-FF would be entitled for compensation. This view is also re-iterated even to a decision reported in *Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another*, and further, even in a decision reported in 1971 LAB.I.C. 854 in the matter of *MANAGEMENT OF THE AMBALA (supra)*, it is held that transferee Company is not obliged to take the employees as an incident of the transfer. Learned Single Judge of this Court in a judgment reported in 1992 I LLJ 712 in the matter of *Workmen of Karnataka Agro Proteins Limited v. Karnataka Agro Proteins Limited and Ors.*, by referring to the Full Bench decision has held that, on a transfer of ownership or management of an undertaking, the employment of the workman engaged by the said undertaking comes to an end and compensation becomes payable. The only claim, which the employees can make, is for compensation against their employers. No claim can be made against the transferee concern. This Court has referred to the Anakapalla's case and also the *The Central Inland Water Transport Corporation Ltd. Vs. Their Workmen*, and has held that, on a transfer of ownership or management of an

undertaking, the employment of workmen engaged by the said undertaking comes to an end and the compensation is made payable because of such termination. In all cases to which Section 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers and no claim can be made against the transferee of the said concern.

42. By these decisions and the reading of the provisions of Section 25-FF of the Act, it is clear that, by virtue of B.T.A., the unit of BPL Limited was transferred to Sanyo BPL Private Limited. Sanyo BPL Pvt. Ltd. has accepted the transfer with certain terms and conditions and insofar as the employment is concerned, the terms and conditions of the B.T.A. has abundantly made it clear that, there is no transfer of employment and the employment would be by fresh employment. This is not even disputed by the workmen, not only in their claim petition, but also in the evidence, they admit that they did not join the Sanyo BPL Pvt. Ltd., as they were not given continuity of service. Even the Labour Court also proceeds on the premise, as to whether the respondents - workmen are entitled to the employment in Sanyo BPL Pvt. Ltd. with continuity of service. However, it is stated by the learned Counsel for the respondents that it was in the context that the BPL Limited itself is controlling Sanyo BPL Pvt. Ltd. and it is holding 50% share in the said Company and this fact its admitted by MW-1, who has been examined on behalf of the BPL Limited. In these circumstances, a contention was raised that, even the transfer is admitted and claim is made for continuity of employment, same is made on the ground, that there is no transfer. As far as employment is concerned, BPL Limited still continues to be the employer of the respondents - workmen and they are entitled for continuity of service. However, for the purpose deciding, whether the Sanyo BPL Pvt. Ltd. by virtue of transfer is liable to accept the workmen as their employees, in my view, the Sanyo BPL cannot treat the respondents - workmen as their employees. Those who have joined as fresh employees in terms of the contract, they would become fresh employees. Hence, I have no hesitation to hold that, the Sanyo BPL Pvt. Ltd. is not the employer of the respondents. Accordingly, point No. 2 is also answered.

43. As regards point Nos. 1 and 2, I have held that there is a transfer of the BPL Unit in favour of Sanyo BPL in terms of Section 25-FF of the Act and I have also found that the services of the respondents were not contained under the proviso to Section 25-FF of the Act.

44. Now the next question is, as to whether the transfer of BPL is transfer of unit and not transfer of the undertaking or industry, in this regard, learned Counsel for the respondents - workmen has pointed out from the evidence of MW-1 that, there are six units owned by BPL Company and employees are interchanged and out of 37 employees nearly 15 employees were transferred to BPL Limited from various units.

45. It is the case of the Management that the Colour TV unit itself is a separate entity and engaged in manufacturing of colour TV and there is no other unit,

which has engaged in the manufacture of colour TV. As regards to the transfer of the employees from one unit to another, learned Senior Counsel for the BPL Company submitted that it was only in 2004-05 and not thereafter and there is no instance of transfer of any employees thereafter. He also stated that the nature of work and functional integrality is concerned, they are two different industries and there cannot be any functional integrality between them. In this regard, he relied on a judgment reported in 1995 LAB.I.C. 1599 in the matter of Hindustan Steel Works Construction Limited, etc., v. Hindustan Steel Works Construction Limited Employees' Union, Hyderabad and Anr., etc., wherein a construction company undertaking construction works wherever awarded, appointing number of local persons, Company on completion of work at one place winding up work there, unity of ownership and management, reserving right of transfer of employee. The Apex Court held that workers cannot demand absorption in the other units. At para-16 of the judgment the Apex Court has observed thus:

16. It has been held repeatedly that all the tests evolved in that several decisions of this Court need not all be satisfied in every case. One has also to look to the nature and character of the undertaking while deciding the question. The tests evolved are merely to serve as guidelines....

Though the case relates to the Construction Company, but what is observed by the Apex Court is, that, in order to decide whether there is a functional integrality, one has to look to the nature and character of an undertaking in deciding the question. In this regard, Sri. Anantharam, learned Counsel for the respondents has relied on a judgment reported in 1964 I LLJ 366 in the matter of R.S. Madho Ram (supra) wherein the Apex Court in terms of transfer, the continuity of service and the existing service conditions secured for the concerned workmen, in the retail business department, in the circumstances of that case, held, not a distinct or separate undertaking or establishment and held such a transfer is of only one line of business handled by the employer and further held that the case is not covered under the provisions of Section 25-FF of the Act. It is useful to refer to the decision reported in 1967 I LLJ 427 in the matter of ISHA STEEL TREATMENT, BOMBAY (supra) wherein the Apex Court has considered the functional integrality between the two units and found that, the two units are situated within a distance of 200 meters, the fact that both the units are controlled by the same employer and the fact that the business of heat treatment process carried on in the two units was identical, under the facts and circumstances, it is held that though there are two units, but they are not independent. In this case, each of the company is independently licenced. It has not come in the evidence that there is any other unit, which is engaged in manufacturing of the colour T.V. Just because the Company owns 6 units, unless evidence is led to show that there is a functional integrality between the units, it may not be possible to hold that the workman working in one industry can be permitted to work in the other unit. In this case, except showing that some of the workmen were transferred at earlier point of time, without disclosing as to

the nature of work, it is very difficult to accept the said contention.

46. It is not the issue, which was raised before the Labour Court. The issue that was raised before the Labour Court, was regarding the termination of the respondents by the BPL Company. The Labour Court mainly has proceeded on the ground that the employees were not permitted to join the Sanyo BPL Pvt. Limited with continuity of service. The Labour Court has proceeded to hold that the workman falls under the proviso to Section 25-FF of the Act and proceeds to hold that the termination is bad. As I have already held, that the object of Section 25-FF is in two parts, one is, in case of transfer, the workman would be entitled for the compensation u/s 25-FF, if the services of workmen is continued in the transferee establishment, then the transferee establishment is liable to pay compensation to the workman. Both the main Section and proviso cannot operate together, either main provision is applicable or the proviso is applicable. If the main provision applies, then certainly proviso is not applicable. When it is held that there is a transfer and the services are not continued under the transfer, then the provision of Section 25-FF are attracted and the compensation is required to be paid by the employer. The findings of the Labour Court on the issue is mutually conflicting. If the Labour Court, is of the opinion that there is a transfer, the question of application of the main provision or issuing a direction or order to the BPL Company for reinstatement or holding that the termination is illegal, is without any basis. If there is no transfer, the question of impleading the transferee Company does not arise. However, the findings of the Labour Court are that, the respondents were ready to accept the employment in the Sanyo BPL Pvt. Ltd. with continuity of service, but not as fresh employees. The fact that the fresh employment is offered, it indicates that there is no continuity of service and the services are interrupted by virtue of transfer. The Labour Court has also held that Section 25 proviso is applicable without giving any finding as to how the continuity of service is given under the proviso even after referring the clauses of B.T.A. It is also understandable as to how the BPL Limited as well as the Sanyo BPL Pvt. Ltd. were required to prove the terms and conditions of the B.T.A. or the terms and conditions incorporated or set out in the employment contract. The employment contract being a fresh contract between the Sanyo BPL said the interested employees, and is a matter between the said Company and the employees. It is only when the employee chooses to accept the employment, the contract would come into existence. Not setting out the terms of the contract does not mean that there is continuity of service of the workmen. Just because the terms and conditions are not set out in the B.T.A. regarding fresh appointment, it is not a ground to hold that there is no transfer at all or, not a ground to hold that the services are continued by virtue of agreement. The word "shall" referred to in Clause 5.1 of the B.T.A. is subject to clarification of certain fulfilment. It is not that, all the employees of the BPL Company shall automatically stand transferred to the Sanyo BPL Pvt .Ltd. It is clearly mentioned in B.T.A., that no liability would be fastened on Sanyo BPL in respect of employees till. 14.12.2005. That makes abundantly clear that, the appointment,

if any, would commence only after 14.12.2005 and not earlier to that.

47. The Labour Court, on the other hand, proceeds to pass the award on the ground that the BPL is holding 50% of the shares in the subsequent Company and is controlling the said Company. Assuming that BPL Company is also holding the shares in the said Company, can it be said that there is no transfer or BPL still continues, if it is independent Company formed by the BPL or other person, that becomes an independent entity by virtue of its registration under the provisions of the Companies Act. Whether it holds 50% shares, or not, the ownership once transferred and it is the said entity that would be the owner of the Company and not the transferor Company. In such circumstances, the labour Court ought not to have relied on the holding of share for the purpose of determining the ownership of the transferee Company. Even whether the BPL is there or not, the Company is a Company registered under the provisions of the Companies Act and it is the jurisdictional person in the eye of law.

48. The object of Section 25-FF of the Act is, in fact, is a safety wall and protective measure to safeguard the genuine case of the workmen in case of transfer of the undertaking. Law does not want to interfere with or to obstruct transfer of undertaking, which is the fundamental right of an employer of the undertaking and therefore, to safeguard the interest of the workmen, the legislature has thought it fit to introduce Section 25-FF of the Act whereunder every workman who has been in continuous service for not less than one year in that undertaking immediately before the transfer, would be entitled for the compensation. The provisions of Section 25-FF of the Act will not be applicable and the employees will not be entitled to receive the compensation, if the service are not interrupted. This is the object of the law, which is envisaged in Section 25-FF of the Act. All that is required to consider in these matters is, whether the termination as alleged by the workmen in their claim petition is a termination simplicitor or the termination by virtue of a transfer of the industry. As already held, if it is a termination by virtue of the transfer, the workmen would be entitled for the compensation u/s 25-FF of the Act and not for any other purpose. As far as rights of the employer for transfer is concerned, there is no evidence to show that, the transfer is not bonafide, in turn, it is also admitted in the evidence that, there is a transfer and claim is made by the workmen for the employment with continuity of service in the Sanyo BPL Pvt. Limited, this itself shows that there is a transfer. It is also admitted that out of 496 employees, 459 employees have accepted the fresh employment in terms of the B.T.A. If that is so, I do not find any justification in the contention of the learned Counsel for the respondents that, there is no transfer. Hence, the award of the Labour Court holding that the workmen fall under the proviso to Section 25-FF of the Act and they are entitled for continuity of service with the BPL Limited on the alternative to Sanyo BPL Pvt. Limited dated of merit.

49. In the light of the discussion made above and the reasons assigned above, both the writ petitions deserve to be allowed and accordingly, the Writ Petitions

are allowed. The award dated 8.9.2006 passed in I.D.No. 166/2005 by the 2nd Additional Labour Court, Bangalore is set aside. However, it is also to be noticed that the only one reason, which is assigned by the Sanyo BPL for not accepting these respondents as its employees is that, they had not come forward to join the employment as fresh employees and in this regard, even a suggestion was made by this Court to the learned Senior Counsel appearing for the Sanyo BPL, looking into the circumstances, if 459 employees have already been given employment and the only mistake these respondents have committed in this case is that, they sought for continuous service, I feel that, the Sanyo BPL could consider the case of these respondents, who also fall on par, with the other employees, who have already joined as fresh employees and this would serve the ends of justice and would to provide an employment to these respondents. In view of similarly placed employees" have been fresh employment, I feel a direction if given to consider the case of these respondents, no harm would be caused and would give opportunity to these respondents to earn their livelihood. Accordingly, I feel it appropriate to direct the Sanyo BPL to consider the case of these respondents, if they come voluntarily to join as fresh employees on par with the other 459 employees and if such representation or request is made by the respondents to the Sanyo BPL Pvt. Ltd., the Sanyo BPL Pvt. Ltd. to consider the same at the earliest and not later than three months from the date of making the representation by the respondents. With these observations, and for the reasons assigned above, I pass the following order:

i) W.P.Nos. 4162/2007 and 4163/2007 are allowed. The award dated 8.9.2006 in I.D.Nos. 130 to 166/2005 on the file of the II Additional Labour Court, Bangalore is hereby quashed.

ii) Sanyo BPL is directed to consider the representation, if any, given by the respondents for fresh employment within three months from the date of the representation.