**(2007) 12 KAR CK 0040**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 11969 of 2007

BPL Limited APPELLANT

Vs

Workmen of BPL Limited RESPONDENT

**Date of Decision :** 14-12-2007

**Acts Referred:**
Industrial Disputes Act, 1947 — Section 10 (1C), 25 F, 25 FF

**Citation :** (2008) ILR (Kar) 447 : (2008) 1 KCCR 7 SN

**Hon'ble Judges :** H.N. Naga Mohan Das, J

**Bench :** Single Bench

**Advocate :** Kasturi Associates, for the Appellant; T.S. Anantharam, for the Respondent

**Final Decision :** Dismissed

## Judgement

H.N. Naga Mohan Das, J.—In this Writ Petition the petitioner has prayed for a writ in the nature of certiorari to quash the award dated 4-1-2007 in Ref. No. 39/2006 passed by the Labour Court at Bangalore directing reinstatement of 15 workmen of the respondent-Union with continuity of service, consequential benefits and 50% backwages.

2. Petitioner is a unit of BPL Limited. The petitioner''s unit was engaged in manufacture of plastic injection mould and plastic components. There were 66 employees working in the petitioner''s unit. On 23-1-2001 the petitioner introduced voluntary retirement scheme. Out of 66 employees 12 staff and 22 operators have accepted the voluntary retirement scheme. Further 6 executives and 11 staff have resigned from the job. 15 workmen of the respondent union did not accept the voluntary retirement scheme. Thereafter the petitioner terminated the service of 15 workmen by issuing notice on 2-4-2001 on the ground that they have transferred the undertaking of the manufacturing unit to one M/s Bangalore Plastics Private Limited and paid 15 days wages for every completed year of service together with all other payments as per law. Respondent wrote a protest letter dated 10-4-2001 protesting the action of

petitioner - management and refused to accept the termination order and requested to continue their services with all consequential benefits. But the petitioner refused to continue the services of the workmen. The respondent workmen being aggrieved by this illegal termination raised a dispute before the Labour Court by way reference u/s 10(1-C) of ID Act (for short the ''Act).

3. Before the Labour Court petitioner examined one witness as MW. 1 and produced Ex.M1 to M17. The respondents examined two witness as WW.1 and WW. 2 and produced Ex.W1 to W25. The Labour Court after hearing both the parties and on appreciation of the pleadings, oral and documentary evidence on record concludes that the termination of the workmen by the petitioner as illegal and directed reinstatement with continuity of service, consequential benefits and 50% backwages. Hence the Writ Petition by the management.

4. Heard arguments on both the side and perused the entire writ papers.

It is necessary to examine the object and the scope of Section 25FF of the Act and the same reads as under:

25FF. Compensation to workman in case of transfer of undertaking.- Where the ownership of management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to or that undertaking to a new employer, every workman who as 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 25F, 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.

5. A reading of Section 25FF of the Act makes it clear that the following conditions must be specified for its application:

(i) There should be a transfer of ownership of management of the undertaking from one employer to another by agreement or operation of law;

ii) The undertaking should be an industry within the meaning of Section 2(J) ;

iii) The workman claiming compensation should be a workman within the meaning of Section 2(S) ; and

 

iv) The workman should have put in minimum one year of continuous service within the meaning of Section 25(B) immediately before the transfer of the ownership or management of the undertaking.

6. The first and foremost condition for application of Section 25FF is transfer of ownership or management of an undertaking from one employer to another either by agreement or by operation of law. The transfer by agreement would include, sale, mortgage, lease etc., but does not include fictitious or benami transaction. The transfer by operation of law would include, sale by action under order of Court, liquidation, appointment of controller and taking over the management under any Act. Thus wherever an undertaking is transferred to an employer, such a transfer in law, is regarded as amounting to retrenchment of workman serving in that undertaking and they are entitled to claim retrenchment compensation. The purpose of Section 25FF of the Act is a protective measure to safeguard the genuine cause of workman in case of transfer of undertaking. Therefore, the provisions of this Section will apply only to a case of bonafide, genuine and real transfer. The transfer would mean that the ownership or the management of entire undertaking should be transferred.

7. Keeping in view the object of Section 25FF of the Act, it is necessary to examine the fact situation in this case. It is not in dispute that in July 1998, the respondent workers union submitted a list of charter of demands to improve the service condition of the workman. Since the petitioners failed to consider the charter of demands of respondent workers union, they raised a dispute before the industrial tribunal in ID No. 19/1999. Similarly the workers union in other units of BPL management also raised dispute before the Tribunal. When the matter stood at that stage, the petitioners introduced voluntary retirement scheme by resolution dated 23-1-2001. Except 15 workmen of the respondent union all other employees either accepted the voluntary retirement scheme or resigned from job. Thereafter, the petitioners terminated the service of 15 workmen by their notice dated 2-4-2001 on the ground that they have transferred the undertaking of the manufacturing unit to one M/s Bangalore Plastics Private Limited. The respondent union contends that the alleged transfer by the petitioners is not bonafide, genuine and real. It is further contended that the alleged transfer is fictitious and made only with an intention to terminate 15 workmen from service. The petitioners in support of the alleged transfer produced an agreement of lease cum sale dated 22-2-201 and conditional sale agreement dated 24-8-2002. Admittedly, the agreement of lease cum sale dated 22-2-2001 is not a sale and it is only an agreement to sell. Therefore, there is not transfer of manufacturing unit from the petitioners to M/s Bangalore Plastics Private Limited under this lease cum sale agreement. The second document is conditional sale agreement dated 24-8-2002. The relevant clauses under the conditional sale agreement are as under:

i) The vendor shall have the first right or option to purchase 65% of the components manufactured in three shifts per day by the Purchaser with the

 

Schedule Machinery as mutually agreed by and between the vendor and the Purchaser during the period commencing with the Lease cum Sale Agreement and ending on 31st March, 2004

b) The vendor through its representative shall have free ingress and egress to the Purchaser''s factory premises in Avalahalli, Old Madras Road, Virgo Nagar Post, Bangalore 560 049, to view the manufacturing process and satisfy itself of the periodic maintenance of the Schedule Machinery.

c) The purchase shall not dismantle or shift the Schedule Machinery to any other premises.

d) The purchaser shall ensure that only competent and trained personnel operate the Schedule Machinery.

e) The Purchaser shall not cause any loss or damage to the Schedule Machinery either by negligence or willful acts or omissions of its employees.

f) The purchaser shall at its cost insure the Schedule Machinery by a comprehensive insurance policy against risk arising due to fire, accident, theft, riot and civil commotion.

8. A reading of the above conditions in the conditional sale agreement dated 24-8-2002 manifestly makes it clear that there is no transfer of manufacturing unit in its real sense from the petitioner to M/s Bangalore Plastics Limited. Under this conditional sale agreement, the petitioners have retained the full control over the machinaries. The purchasers shall not dismantle or shift the machineries to any other premises. The purchasers shall not cause any loss or damage to the machinery. The petitioners have right to visit the factory premises and satisfy themselves about the periodic maintenance. There is no physical or constructive transfer of machinaries to the purchaser. The petitioners have not closed their business by selling the machinaries under this conditional sale agreement. Therefore, under the alleged conditional sale agreement the real transfer of ownership of machineries had not taken place. Thus the petitioners have failed to satisfy the first condition for application of provisions of Section 25FF of the Act. Consequently the termination of 15 workmen by the petitioners is illegal.

9. Sri Kasturi, learned senior counsel for the petitioners contend that under the impugned award the Labour Court directed to reinstate the 15 workmen in any other units under the management of BPL group of companies. In the absence of the said units in the proceedings before the Labour Court such a direction cannot be issued. MW. 1 admits in his evidence that petitioner is a unit of BPL company limited. He further admits that they are having units at Mysore Road, Doddaballapur, Maddur, Bangalore and Kerala. MW.1 further admits the workman in the petitioner''s unit are transferred to other units and similarly the workman in the other units are transferred to the petitioner''s unit. He further admits that all the six units of BPL limited situated in and around Bangalore are all functioning. This evidence on record manifestly makes it clear that under the

 

management of BPL limited all the six units in and around Bangalore are functioning and the workman from these units are liable for transfer. Therefore the presence of units of BPL Limited is not necessary to adjudicate the controversy between the parties.

10. For the reasons state above, I find no justifiable grounds to interfere with the impugned award. Accordingly the Writ Petition is hereby rejected.

 