
(2000) 09 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 31281 of 1996

Endeavour Estates Pvt. Ltd.	Vs	APPELLANT
Assistant Labour Commissioner and Others		RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 F, 25 FF

Citation : (2001) 1 LLJ 1059

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : S.N. Murthy, for the Appellant;

Final Decision : Allowed

Judgement

T.N. Vallinayagam, J.—The petitioner seeks to quash the orders passed by the Assistant Labour Commissioner and the Deputy Commissioner under the Payment of Gratuity Act, 1972 dated May 29, 1994 and August 17, 1996 respectively.

2. It is the case of the petitioner that it is a company incorporated under the Companies Act 1956. The petitioner purchased immovable property constituted of coffee plantation, fruit trees shade trees etc., in public auction conducted on March 27, 1991 in execution of decree passed in O.S.No. 300/87 on the file of Subordinate Judge, Irinjalakuda, Kerala. The sale was confirmed on May 27, 1991, followed by a certificate of sale issued by the Court. The petitioner started with its plantation activities after purchasing the immovable property in public auction. As there were already workmen working in the plantation when the property was purchased by the petitioner, the petitioner on the request of the workmen agreed to provide them employment in the petitioner company. On retirement of respondents-3 to 9, the petitioner paid them gratuity for the period during which these employees worked for the petitioner. Not satisfied with this, respondents 3 to 9 made an application to the first respondent, seeking payment of gratuity for the period during which they had worked for the previous owner of

the estate. The first respondent without considering these facts, in particular, the fact that the petitioner had purchased the property in public auction and not purchased the estate as a going concern, passed an order dated May 28, 1994 directing the petitioner to pay gratuity to these workmen even for the period prior to the petitioner employing them. However, the respondents had been paid with the later gratuity. It is contended that the petitioner was not responsible to pay gratuity for the period prior to providing work to the respondents in the company.

3. Mr. S.N. Murthy, appearing for the petitioner submitted that the order of the first respondent is against law and the purchase of the estate was not considered. But it was only a purchase in open Court auction and that only the property was purchased. The workmen in question cannot claim continuity of service as there was no transfer of ownership of estate and the workmen in question were appointed only after purchase of property and as such employer and employee relationship between respondents 3 to 9 came into being only after the date of purchase. In the absence employer and employee relationship the Payment of Gratuity Act does not contemplate for gratuity payment to any person. It is necessary to place on record that the Provident Fund Department approached the Civil Court for amount payable by the previous owner whose property was auctioned and out of the sale consideration received by the Court, the Department satisfied its dues. The petitioner is in no way liable or responsible to pay the gratuity amount for the period during which these employees had not worked for the petitioner i.e., prior to purchase of the property. The first respondent without considering the above facts has passed an order to the effect that the petitioner is responsible to pay gratuity for the entire service. The second respondent has confirmed the order of first respondent taking the view that as the workers who were working in the Belegeri Estate were not terminated from service, It should be construed that they were continued in service under the management of the petitioner which is totally opposed to facts. Merely because the petitioner agreed to provide work to the workmen who were working in the estate till then, it cannot be said, that they should be treated as employees even for the period during which they were not the owners of the estate and consequently, had no occasion to employ the workmen in question. The property was purchased in public auction which is without any liability whatsoever. There is no question of transfer of ownership or transfer of property within the meaning of Transfer of Property Act so as to fasten the liability to the property in view of the transfer. It is not voluntary transfer and the transfer effected under the orders of Court by sale under the provisions of law.

4. Service to respondents 3 to 9 were held sufficient and the Government advocate appears for R1 and R2, the authorities. As appearing for the authorities, the Government Pleader merely submitted that the order passed by the authorities are proper in law and need not be Interfered with. Having considered the submissions made by the counsel on both sides, I am of the view

that the impugned order is not sustainable for the following reasons.

5. It is not in dispute that the property was brought to sale in Court auction and sale certificate is produced along with the writ petition. The property was brought to sale In Execution Case No. 45/90 of the Civil Judge, Madikeri. The sale price of Rs. 8,65,000/- was paid by the petitioners and deposited in Court. If any liability is attached to the property so sold it is for the authorities to go against the said fact which the previous owner would normally receive. It is also submitted by the learned counsel for the petitioner in respect of Provident Fund dues, the authorities have approached the Civil Court and obtained payment of dues from and out of the sale proceeds. The respondents, if they are really entitled to any gratuity prior to their taking over by the petitioner, should have approached the Civil Court and get their share of gratuity , amount from and out of sale proceeds. This exercise has not been done.

6. The first respondent referred to the Provident Fund recovery orders in its order but has not pursued anything as to how the money was recovered from the Provident Fund Authorities. The first respondent also distinguished and rejected the view of this Court wherein the principle was laid down by Mr. Justice RAMAKRISHNA, as he then was. The approach itself is wrong by the authorities and the authorities are definitely to follow precedent set up by the High Court. The finding that the employer employee relationship existed with the respondents and petitioner on March 26, 1993 is a finding which is not based upon facts. In the public auction that took place on July 20, 1994 the property alone was brought to sale and was purchased. It cannot be construed that liability of gratuity is charged on the property; so far the petitioners are concerned they have taken the whole workmen out of sympathy and human consideration and it is fresh appointment in the eye of law and it cannot be said that it was continuous appointment for any purpose whatsoever. The view of the first respondent is therefore not correct. The second respondent sitting as appellate authority has merely found that the opportunity asked for by the petitioners were given and therefore the complaint that no opportunity was given before the first respondent is not proper. The second respondent did not apply his mind and passed wrong order prima facie in the following lines:

"This is evident from the fact that the appellant has paid Provident Fund contribution in respect of the respondents along with other workers of Belegeri Estate from 1982".

This finding is against the facts. It is the specific case of the petitioners herein that the provident fund was recovered from out and out sale proceeds, from the Court and not from the petitioner. The approach of the second respondent is therefore factually incorrect and illegal. Thus the finding of the second respondent is also not sustainable.

7. The matter is set at rest by the ruling of this Court in Workmen of Karnataka Agro Proteins Ltd. Vs. Karnataka Agro Proteins Ltd. and others, under which this

Court has held a transferee cannot be burdened with conditions detrimental to his interest. In fact the learned Judge has followed the ruling in *Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen*, wherein it has been held to the following effect 1962-II-LLJ-621 at 629:

"The Solicitor-General contends that the question in the present appeal has now to be determined not in the light of general principles of Industrial adjudication, but by reference to the specific provisions of Section 25-FF itself. He, argues, and we think rightly, 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 said 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 event 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, says the Section, 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 that is consistent with the decision of this Court in *Hariprasad's case* AIR 1957 SC 121. The Legislature, however, wanted to provide that though such termination may not be retrenchment technically so-called, as decided by this Court, nevertheless, the employees in question whose services are terminated by the transfer of the undertaking should be entitled to compensation, and so, Section 25FF provides that on such termination compensation would be paid to them as if the said termination was retrenchment. The words "as if" bring out the legal distinction between retrenchment defined by Section 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer with which it deals. In other words, the section provides that though termination of services on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the said termination was retrenchment. This 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 25FF 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.

(17) The scheme of the proviso to Section 25-FF emphasises the same policy. 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 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 transferor and they cannot make any claim for reemployment against the transferee of the undertaking. 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 September 4, 1956. 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, 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".

The learned Civil Judge has also followed Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, which is on the following lines:

"In Central Inland Water Transport Corporation Ltd. v. The workmen and Anr., it is reiterated that on a transfer of ownership it is management of an undertaking, the employment workmen engaged by the said undertaking comes to an end, and compensation is made payable because of such termination. In all cases to which Section 25 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."

Ultimately, it has been held that the question of direction to be given to the purchaser to continue service of the workmen working with the estate company is not proper. This is what the learned Judge has observed on the facts.

"Section 25-FF of the Industrial Disputes Act provides that where the ownership or 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 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 25F as if the workman had been retrenched. Section 25-F of the Industrial Disputes Act prescribes the conditions precedent to retrenchment of workmen such as giving one month's notice in writing intimating the reasons for retrenchment and payment of compensation in accordance with the said sectionIn 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".

Though the learned Judge was considering the application u/s 25-F, Section 25-FF, the principle is same (sic). Following the above ruling, I am of the opinion that the order passed by the Authorities is not sustainable and the liability to pay gratuity prior to the period under which respondents were employed in the estate cannot be foisted on the petitioners.

8. In this view, the writ petition is allowed and the impugned orders are quashed.