

(2010) 07 AP CK 0102

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7372 of 2004

J.V. Sudhakar

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F, 25FF, 33(C)(2)
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 17(1)

Citation : (2010) 5 ALD 506 : (2010) 5 ALT 335 : (2010) 127 FLR 558 : (2011)
1 LLJ 540 : (2011) LLR 43

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : I. Mallikarjuna Sharma, for the Appellant; G.P. for Labour for R-1
and R-2, S. Ravindranath, for R-3 and R-4 and N.V. Anantha Kirishna, for R-5, for
the Respondent

Judgement

G. Chandraiah, J.—Heard the counsel for the respective parties.

2. The case of the petitioner as stated in the affidavit filed in support of the writ petition is that he was working as Paster in the Paste-up Department of Express Publications (Madurai) Ltd., working for Andhra Pradesh at Hyderabad Head Office and he has put in 26 years of service. He had gone on leave from 9.1.2003 to 3.2.2003 and that when he returned back to join duty, he was not permitted to join duty in the office of the 4th respondent - Express Publications (Madurai) Limited, Hyderabad, on the ground that Andhra Pradesh Daily, was transferred to 5th respondent - Vasavi Communications Ltd. The case of the petitioner is that he is not willing to join 5th respondent, therefore, he sought respondents 3 and 4 to extend him Voluntary Retirement Scheme (VRS) scheme or to terminate him by way of retrenchment u/s 25-FF of the Industrial Disputes Act, 1947 (for short "the Act") and pay the retrenchment compensation u/s 25-F of the Act. But the same is not paid. His grievance is that before transferring his services to 5th

respondent - undertaking, no consent was taken and that without his consent, his services cannot be transferred, as he is willing to work only under respondents 3 and 4 and not under respondent No. 5. In the writ affidavit he also stated that he was not paid the arrears of wages as per the Manisana Wage Board and that though he made representations to the Principal Secretary to Government, no action was taken. Therefore, his case is that as the respondents 3 and 4 violated statutory provisions u/s 25-FF of the Act, the official respondents 1 and 2 shall take action against them. As the respondents 3 and 4 are neither taking him into service, nor paying compensation u/s 25-FF of the Act, he filed the present writ petition.

3. The Additional Commissioner of Labour, Office of the Commissioner of Labour, A.P., Hyderabad, filed counter affidavit on behalf of official respondents 1 and 2. In the counter affidavit it is stated inter alia that A.P. Union of Working Journalists represented through letter dated 17.9.2002 that Indian Express Publications (Madhurai) Ltd., was transferred to Vasavi Communications and requested for intervention of the Labour Department. The Joint Commissioner of Labor, after elaborate discussions, advised both the managements, Express Publications (Madhurai) Ltd., and Vasavi Communications Ltd., that they should comply with Section 25FF of the Act while transferring the services of the employees and that the terms and conditions of service applicable to the employees of Andhra Prabha under the new management of Vasavi Communications Ltd, shall be the same that were applicable to them before transfer from the management of Express Publications (Madhurai) Ltd., and that in the event of future retrenchment, Vasavi Communications Ltd., is legally liable to pay compensation on the basis, that the service of the employees has been continuous and has not been interrupted by the transfer. It was further made clear that violation of Section 25FF of the Act, will attract penal provisions and that both managements should abide by the provisions of Section 25FF of the Act while transferring the services of employees of Andhra Prabha from Express Publications (Madhurai) Ltd., to Vasavi Communications Ltd., The minutes were recorded and communicated to the parties.

4. In view of the above position, the claim of the workman in the affidavit that Section 25FF of the Act was violated by the management, is not correct. The petitioner did not choose either to resign or to continue his service with the Vasavi Communications Ltd. The petitioner cannot demand the management that he should be retained with Express Publications or else he should be paid VRS benefits or he should be treated as if he is retrenched. The petitioner should choose either to join Vasavi Communications or resign with Express Publications (Madhurai) Ltd., and take terminal benefits. Thus it is very clear that Section 25-FF of the Act will come into picture when the new management i.e., 5th respondent fails to provide job to the employees.

5. It is further stated that the petitioner represented to the Government through letter dated 24.1.2004 to do justice u/s 25FF of the Act. The petitioner was

advised to prefer claim u/s 33(C)(2) of the Act before the Labour Court, through letter No. E2/3316/2004 dated 26.3.2004 of the Commissioner of Labour, since authority u/s 17(1) of Working Journalist (Conditions of Services) and Miscellaneous Provisions Act, 1955, cannot decide disputed amounts.

6. In the counter it is further stated that the Express Publication (Madhurai) Ltd., Hyderabad and its employees reached a memorandum of settlement, taking gross revenue of Hyderabad center for the accounting years 1995-96, 1996-97 and 1997-98, wherein it was agreed that the establishment falls under class III classification and accordingly to implement Manisana Wage Board award with effect from 1.1.2002. An agreement was entered into between the management and the recognized union, which represented all the employees, and after duly considering all the circumstances, including financial position of the company with respect to classification and implementation of Manisana Wage Board award, is made binding on the parties. With these averments the writ petition was sought to be dismissed.

7. Counter affidavit is filed on behalf of the respondents 3 and 4 and it is stated that the writ petition is not maintainable as the respondents are not the State or the instrumentalities of the Act and this Court in W.P. No. 5128/2001 dated 19.04.2001 held that the writ petition is not maintainable and further the petitioner has got an alternative efficacious remedy under the Working Journalists Act. It is stated that the petitioner joined in the year 1.5.1977 and worked for Andhra Prabha daily till his services were taken over by 5th respondent i.e., on 9.1.2003. The tenor of the further counter affidavit is that the Andhra Prabha of respondents 3 and 4, was sold to the 5th respondent and that they have issued letters dated 6.1.2003 and 7.1.2003 respectively to the employees who are working for the said publications, informing that their services were taken over by the 5th respondent with effect from 9.1.2003, including the petitioner. On the date of issuing of notices, the petitioner was on leave and the selling of the Telugu publications to 5th respondent was brought to the notice in a joint meeting held on 6.1.2003. Apart from issuing letters, the management has put up notice dated 10.1.2003 that the services of A.P. employees (110) persons had been taken over by the 5th respondent as per the list enclosed to the notice, which included the name of the petitioner and the said copy was also sent to the Commissioner of Labour and Inspector of Factories. The Union had approached JCL, Hyderabad and in a joint meeting convened by JCL, Hyderabad on 12.3.2003, 5th respondent informed before the JCL that they had offered individual letters including to the petitioner also. The petitioner claimed that he was not given any offer letter, which is false and not true. The petitioner had intentionally evaded to take these letters. Hence the same were sent by RPAD to his last known address along with Wage Board arrears DD, which cover was returned with postal endorsement "no such person in the address". The service files and service particulars of all 110 Hyderabad centre Andhra Prabha employees, including the petitioner, were taken over by 5th respondent duly giving the acknowledgement. Therefore, consequent upon the

transfer of the publications, those employees working for the said publications in the respective publication centers are in no way concerned and connected with EPML as their services were taken over by the new employer and the petitioner is one among them. When there is no change in terms and conditions of the employment in view of the transfer of the publications, the petitioner alone, instead of joining with the new management, has filed the present writ petition only to harass the respondent. It is stated that the provisions of Section 25-F of the Act for payment of compensation are not applicable. The issue with regard to taking over of Telugu Publications by 5th respondent, the matter has already been dealt with by the appropriate Government authorities and the same was also explained in W.P. No. 22060/2002 filed in this matter and the same was disposed of. In another writ petition in this matter in W.P. No. 756/2003 filed by the Union, this Court by order dated 10.1.2003 taking note of the transfer and the material on record, observed that the interests of the members of the petitioner-union is very much protected. The provisions u/s 25FF comes into play for the future retrenchment, if any, by the new employer - 5th respondent. With these averments inter alia, the writ petition was sought to be dismissed.

8. Counter affidavit is filed on behalf of the 5th respondent. While denying the averment that the right of petitioner is deprived, it is stated that the 3rd and 4th respondents transferred the Andhra Prabha Telugu Daily newspaper and weekly edition to them on 9.1.2003 and they have received all services of employees who were working for the said publications and that they have informed to the employees regarding the transfer. The petitioner was on leave from 9.1.2003, on which date both the managements issued individual letters to the employees who were working for Andhra Prabha and whose services have been taken over by them. Andhra Prabha is one of the establishments of the 3rd respondent company purchased by them and the said fact was within the knowledge of the employees working in Andhra Prabha. All of them accepted and they did not raise any objection to this extent and since the commencement of publication by the 5th respondent of Andhra Prabha daily and weekly, most of the employees joined without raising any objection or dispute. In terms of the agreement between the 3rd and 5th respondent, the services of all employees who have worked in Andhra Prabha are to be protected with the same pay and allowances and accordingly provisions of Section 25FF have been complied with.

9. It is further stated that the petitioner never approached this respondent nor made any representation regarding the Section 25FF of the Act and it was clearly mentioned by the petitioner that he is not willing to work before this respondent and he want to continue with the 4th respondent for the purpose of extending VRS scheme or to terminate his services treating as retrenchment u/s 25FF of the Act. The same cannot be extended, since there is no violation of Section 25FF. In the counter affidavit, the averments made in the counter affidavit filed by respondents 3 and 4 is reiterated and with these averments, the writ petition was sought to be dismissed.

10. The learned Counsel appearing for the petitioner made elaborate arguments and vehemently contended that the petitioner has put in 26 years of service and that without his express consent, his services cannot be transferred to 5th respondent. In support of this contention, he relied on the judgment of the Madras High Court reported in *Spencer Consumer Products and Service Ltd. Vs. Presiding Officer, Industrial Tribunal and Others*, He contended that contract of service is incapable of transfer unilaterally and such a transfer has to be done only by tripartite agreement and hence he contended that the transfer of services of the petitioner without his consent, is arbitrary and illegal. In support of this contention, he relied on the judgment of the Apex Court reported in *Manager, Pyarchand Kesarimal Ponwal Bidi Factory Vs. Omkar Laxman Thange and Others*, He also relied on the judgments of the Apex Court reported in *Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others*, The learned Counsel further relying on the judgments of the Apex Court reported in *Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, and Management of R.S. Madharam and Sons Agencies (P) Ltd. Vs. Its Workmen*, contended that the transfer itself is bad.

11. With regard to maintainability of the writ petition against a private bodies, the learned Counsel relying on the judgment of a learned single Judge of this Court in *Gattaiah v. Commr. of Labour Hyderabad 1981(1) Andhra Law Time Reports 394* contended that even against the private bodies writ is maintainable, when there is statutory violations. He contended that the respondents 3 and 4 in violation of the statutory provisions u/s 25-FF of the Act, denied the employment to the petitioner and therefore, this Court under Article 226 of the Constitution can direct the parties to comply with the statutory obligations under the Act. For the same proposition, he relied on the judgment of the Apex Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*,

12. He further contended that in the present case there are no disputed facts and as there is statutory violation, the writ petition is maintainable and the petitioner need not be relegated to avail the alternative remedy. In support of this contention, he relied on the judgment of the Apex Court reported in *BCPP Mazdoor Sangh and Another Vs. N.T.P.C. and Others*,

13. With the above contentions, the learned Counsel submitted that as the consent of the petitioner was not obtained before transferring his services and as the petitioner is not willing to serve in the transferee - company, his services may be treated as retrenched and the compensation as provided u/s 25FF of the Act may be directed to be paid to him.

14. On the other hand the learned Counsel appearing for the respondents vehemently contended that the consent of the petitioner before transferring his services to the new undertaking is not required and as the conditions under the proviso to Section 25FF have been complied with and as there is no complaint from the petitioner that by virtue of transfer, his service conditions are affected,

no notice of transfer or any consent is required. In support of the contention that no consent of the employee is required, the learned Counsel for the respondents relied on the judgment of the Apex Court in *Management, Mattur Beardsell Ltd. Vs. Workmen of Mattur Beardsell Ltd. and Another*, With this contention and reiterating the averments made in the counter affidavit, the writ petition was sought to be dismissed.

15. In view of the above rival contentions, the following issues would arise for my consideration:

1. Whether the consent of the petitioner is required for transferring his services into the transferee company?
2. Whether the petitioner can seek for payment of compensation u/s 25-FF consequent on the transfer of the undertaking in which he is working, particularly when there is no specific complaint with regard to interruption of service or non-compliance of the provisions under the proviso to Section 25FF?
3. Whether the writ petition is maintainable?

16. First I shall consider the issue No. 3 with regard to maintainability. The grievance of the petitioner is that the statutory provisions u/s 25-FF of the Act have been violated by respondents 3 and 4. Therefore, in order to examine whether there any statutory violations, the writ petition, in my considered view, is maintainable even against the respondents 3 and 4, which are private bodies. This Court has already entertained writ petitions filed in connection with the present undertaking, in W.P. Nos. 22060/2002 and 756/2003. A learned single Judge of this Court in *Gattaiah v. Commr. of Labour Hyd.* (6 supra) while considering the maintainability of a writ petition in relation to violation of statutory provisions under the Act, by private bodies, held that writs can be issued against a company for violating the statutory duties under the Act. The Apex Court in the decision reported in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, held as under:

It is well understood that a Mandamus lies to secure the performance of public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest...it is, however, not necessary that the person or the authority on which the statutory duty is imposed need be a public official or an official body. A Mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings.

17. In view of the above, the contention of the respondents that writ petition is not maintainable, cannot be countenanced and it is held that the writ petition is maintainable, since the petitioner complained the violation of the statutory provisions u/s 25-FF of the Act. The issue is accordingly answered in the affirmative.

18. With regard to relegating the petitioner to avail alternative remedy is concerned, it is be noticed that the writ petition was filed in the year 2004 and the same was admitted by this Court on 19.4.2001 and thereafter, the matter was pending all these years and interim orders were also passed for posting the matter for final hearing. At this length of time, I am of the considered view that in the interest of justice, it is just and necessary to decide the writ petition in accordance with law, as no disputed questions of fact are involved and only the violation of the statutory provision is complained.

19. In order to consider the other issued framed above, it is necessary to first note Section 25-FF of the Act. The same is extracted 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 reasons 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 the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and not been interrupted by the transfer.

20. From the above provision u/s 25FF it is clear that if there is transfer of ownership or management of an undertaking, by way of agreement or by operation of law, the employee of the transferor undertaking who is in continuous service for not less than one year immediately before such transfer, is entitled to notice and compensation in accordance with Section 25-F, as if the workman had been retrenched. But as per the proviso, it is clear that the above procedure of issuing notice and payment of compensation u/s 25-F of the Act, will not apply if such transfer of undertaking does not affect the continuance of service and that the terms and conditions of service are not less favourable in the transferee undertaking and that the new employer under the terms of such transfer or otherwise, is made legally liable to pay the workmen in the event of his retrenchment, compensation on the basis of his continuous service.

21. It is to be noticed under common law that an employee cannot be transferred without his consent, applies where there is master-servant

relationship and it will not apply to statutory transfers. Further, from a reading of the above extracted provision, it nowhere suggests that the consent of an employee is required to be taken before transferring his services to the transferee undertaking.

22. The question of payment of compensation to an employee on transfer of an undertaking u/s 25-FF would arise only if there is violation of the proviso to the said provision i.e., the services of the workman has been interrupted by transfer of undertaking; that there the terms and conditions of service in the transferee undertaking are less favourable than those applicable to him immediately before the transfer and that the new employer is not made legally liable to pay compensation in case of retrenchment. In other words, if there is no violation of the proviso to Section 25FF of the Act, the employer cannot claim compensation as envisaged in the main section.

23. The Apex Court in the decision reported in *Management, Mettur Beardsell Ltd. v. Workmen of Mettur Beardsell Ltd.* (9 supra) held that the common law rule that an employee cannot be transferred without consent, applies in master-servant relationship and not to statutory transfers, that there is nothing in the wording of Section 25FF even remotely to suggest that consent is a pre-requisite for transfer of undertaking; that the underlying purpose of Section 25FF, is to establish a continuity of service and to secure benefits otherwise not available to a workman if a break in service to another employer was accepted and, that therefore the letter of consent of the individual employee cannot be a ground to invalidate the action. The relevant portion at paragraph Nos. 10, 15, 16 and 17 is extracted as under for better appreciation:

10. ...The common law rule that an employee cannot be transferred without consent, applies in master - servant relationship and not to statutory transfers. Though great emphasis was laid by learned Counsel for the respondent on *Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others*, a close reading of the judgment makes it clear that the common law rule was applied. But there is no any specific reference to Section 25FF or its implication. There is nothing in the wording of Section 25FF even remotely to suggest that consent is a pre-requisite for transfer. The underlying purpose of Section 25FF is to establish a continuity of service and to secure benefits otherwise not available to a workman if a break in service to another employer was accepted. Therefore, the letter of consent of the individual employee cannot be a ground to invalidate the action.

15. Section 25-FF of the Act provides, inter alia, 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 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 in transferred. Such a transfer, in law, is regarding as amounting to retrenchment of the said workman and on that basis Section 25-FF gives the workmen the right to claim compensation.

16. There is, however, 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 the workmen has not been interrupted, the terms and conditions 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 employee, 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 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 there appellant would be justified in contending that the transfer was valid and the 57 employees can make no grievance of the said transfer. The question, however is: Does Section 25-FF apply to all?

17. It would be noticed that the first and foremost condition for the application of Section 25-FF is that the ownership or management of an undertaking is transferred from the employer in relation to that undertaking to a new employer. What the section contemplates it that either the ownership or the management of an undertaking should be transferred; normally this would mean that the ownership or the management of the entire undertaking should be transferred before Section 25FF comes into operation. If an undertaking conducts one business, it would normally be difficult to imagine that its ownership or management can be partially transferred to invoke the application of Section 25-FF. A business conducted by an industries undertaking would ordinarily be an integrated business and though it may consist of different branches or departments they would generally be interrelated with each other so as to constitute one whole business. In such a case, Section 25-FF would not apply if a transfer is made in regard to a department or branch of the business run by the undertaking and the workmen would be entitled to contend that such a partial transfer is outside the scope of Section 25-FF of the Act.

24. Coming to the facts of the present case, the petitioner is seeking to pay compensation, treating his services as retrenched, u/s 25-FF of the Act. From a reading of the entire writ affidavit, it could be seen that there is no specific complaint that there is any violation of the proviso to Section 25-FF of the Act.

There is no provision under the Act, which enables the petitioner to seek to terminate his services by way of retrenchment. In case if he is not willing to serve the undertaking, he is always at liberty to tender his resignation, but he cannot invoke the provisions u/s 25-FF, more so, when there is no violation of the proviso to the said section. The other grievance of the petitioner is that before transferring his services, his consent is not taken. The present transfer of the undertaking is a transfer under the Industrial Disputes Act i.e., a statutory transfer and as per the law laid down by the Apex Court in the above extracted portion of the judgment, it is clear that the common law rule will not apply and hence no consent is required and the Section 25-FF also does not remotely suggest that before transfer, consent of an employee is necessary.

25. Further as per the counter affidavit filed on behalf of the official respondents it is clear that a settlement was arrived at and based on the representation of the A.P. Union of Working Journalists dated 17.9.2002 that the Indian Express Publications (Madurai) Ltd., was transferred to Vasavi Communications Ltd., through a memorandum of understanding, the Joint Commissioner of Labour Advised both the managements i.e., the Express Publications (Madurai) Ltd., and Vasavi Communications Ltd., that they should comply with Section 25-FF of the Act while transferring the services of the employees and that there shall be no interruption in service. It was made clear that violation of Section 25FF of the Act, would attract penal provisions.

26. The issue of the present transfer of the undertaking to the 5th respondent, had fallen for consideration before this Court in W.P. No. 22060/2002, wherein this Court by order dated 18.11.2002 held as under:

It is needless to mention that Section 25-FF of the Act protects the interests of the working journalists in case of transfer of the 4th respondent organization, inasmuch as when the ownership or Management of the 4th respondent is transferred whether by agreement or by operation of Law to the 5th respondent, every workmen who has been in continuous service for not less than one year in the 4th respondent immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workmen had been retrenched. In view of the joint meetings held by the 2nd respondent in pursuance of the representations received from the office bearers of A.P. Union of Working Journalists, the operation of Section 25-FF of the Act at this stage does not come into play.

The minutes of the joint meeting held on 10.10.2002, the Regional Manager of the Express Publications, Mr. R.K. Jhunjhunwala has given assurance before the 2nd respondent that the interest of the petitioners and journalist who are working in Andhra Prabha, both daily and weekly shall be protected.

27. In another writ petition, with regard to the transfer involved in the present writ petition, this Court in W.P. No. 756/2003 by order dated 10.1.2003 held as under:

After detailed discussions of the issue of transfer, the Joint Commissioner of Labour, Hyderabad II stated that both Managements of Express Publications (Madurai) Limited and M/S Vasavi Communications Limited should comply with Section 25-FF of the I.D. Act, 1947, while transferring the services of the employees and there shall be no interruption in service of the employees because of the transfer and that the terms and conditions of service applicable to the employees of Andhra Prabha under the new management of M/s Vasavi Communications Limited shall be the same as that were applicable to them before transfer from the management of M/s Express Publications (Madurai) Limited and that in the event of future retrenchment, M/s Vasavi Communications Limited is legally liable to pay compensation on the basis that the service of the employees has been continuous and had not been interrupted by the transfer. It is further made clear that violation of Section 25-FF of the I.D. Act, 1947 will attract penal provisions and that both the managements should abide by the provisions of Section 25-FF of the I.D. Act, 1947 while transferring the services of the employees of Andhra Prabha from M/s Express Publications (Madurai) Limited to M/s Vasavi Communications Limited. In view of the order passed by the 1st respondent, the interest of the members of the petitioner-union is very much protected and therefore I am of the considered view that the relief claimed is very much satisfied by the said proceedings of the 1st respondent.

Accordingly, expecting that the respondents will safeguard the interest of the members of the petitioner - union and in view of the above mentioned proceedings, the Writ Petition is disposed of. No costs.

28. Therefore, from the above judgments of this Court, it is clear the violation of Section 25FF of the Act has been taken care of by this Court and the concept of "consent" which is urged by the petitioner, is alien to the provisions of the Act. Hence, the judgment of the Madras High Court that express consent of an employee is required before transferring his services to the new employer, is not applicable to the facts of the present case, in view of the above judgment of the Apex Court.

29. Further in the counter affidavit filed by the 5th respondent it is categorically stated the 3rd and 4th respondents have transferred the Andhra Prabha Telugu daily newspaper and weekly editions to them on 9.1.2003 and they have received all services of employees who are working for the said publication. The 4th respondent and 5th respondent have informed to the employees regarding the transfer and they are taking over the services with effect from 9.1.2003 including the petitioner. It is further stated that the petitioner never approached 5th respondent nor made any representation regarding violation of Section 25-FF of the Act and the petitioner mentioned that he is not willing to do the work before this respondent and he want to continue with the 4th respondent only or he want to be given voluntary retirement scheme or to terminate his services by way of retrenchment u/s 25-FF of the Act. The claim of the petitioner cannot be

sustained.

30. In view of the above facts and circumstances, as the 5th respondent has taken over the services of the petitioner by virtue of the transfer, and as held above that "consent" of the petitioner is not required for transferring his services to the 5th respondent and as the petitioner has also failed to establish violation of the proviso to Section 25-FF of the Act and as it is stated that the petitioner has not approached the 5th respondent for continuing in service, and also taking into consideration the judgments of this Court in the above writ petitions in W.P. Nos. 22060/2002 and 756/2003 and also the minutes recorded before the Joint Commissioner dated 6.1.2003, the writ petition is disposed of with the following direction:

The petitioner shall approach the 5th respondent within a period of two weeks from the date of receipt of a copy of this order and thereupon the 5th respondent, taking into consideration the length of service and the facts and circumstances, take appropriate decision in accordance with law, within a period of two weeks thereafter and communicate the same to the petitioner.

31. No order as to costs.