
(2025) 12 MAD CK 1838

In the Madras High Court

Case No : Writ Appeal No. 2594 Of 2018, 41 Of 2019, Civil Miscellaneous
Petition No. 21098 Of 2018

Management of EID Parry India Ltd And Others

APPELLANT

Vs

Presiding Officer And Others

RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(c), 2(j), 2(s), 25B, 25F, 25FF, 25FFF, 25N

Citation : (2025) 12 MAD CK 1838

Hon'ble Judges : M.S.Ramesh, J;R.Sakthivel, J

Bench : Division Bench

Advocate : Anand Gopalan, Agam, V.P.Rajendran

Final Decision : Allowed/ Dismissed// Disposed Of

Judgement

M.S.Ramesh, J

1. For the sake of convenience, the transferee Management is referred to as EID Parry, while the transferor is referred to as NBF Alloys. All the seven Trade Unions, who are parties hereto, are referred to as the workmen.

2.1. While EID Parry India Limited (EID Parry) is a Company engaged in manufacture of Sugar, etc., Nava Bharath Ferro Alloys Limited (NBF Alloys) is a Company, owning two sugar mills at Andhra Pradesh and another at Pugalur, Tiruchirapalli, Tamil Nadu.

2.2. On 13.11.1992, NBF Alloys had sold their Pugalur sugar mill to EID Parry with an agreement, and the terms therein, inter alia, provided that EID Parry would not take over the employees of NBF Alloys and that the services of the employees would be terminated by settling their dues, in terms of the statutory regulations.

2.3. Accordingly, the workers of NBF Alloys were given the required notice pay and compensation, as provided for under Section 25FF of the Industrial Disputes

Act, 1947 (ID Act) and consequently, all statutory dues were settled to the workmen. EID Parry then had recruited its own employees, apart from offering fresh employment to some of the erstwhile workmen of NBF Alloys.

2.4. Aggrieved against the transfer of ownership and the resultant non-employment, the workers of NBF Alloys raised an Industrial Dispute before the Government of Tamil Nadu, pursuant to which the Dispute was referred to the Industrial Tribunal, Chennai, for adjudication. The terms of reference reads as follows:-

“Whether the transfer of the ownership of the Sugar Undertaking at Pugalur (Deccan Sugars) to the Management of EID Parry (India) Limited by the Management of Nava Bharat Ferro Alloys Limited with effect from 13.11.1992 and the resultant non employment of the workmen are justified and to what relief the workmen are entitled?”

2.5. 651 workmen were shown to have been affected under the order of the reference. The challenge to the reference by both EID Parry and NBF Alloys was unsuccessful up to the Hon'ble Supreme Court of India. In the meantime, the reference was taken up on file by the Tribunal in I.D.No.45 of 1993. After all the interim litigations, the Tribunal had ultimately passed an Award on 24.09.2008. In the said Award, it was recorded that the sale transaction of the Pugalur sugar mill by NBF Alloys to EID Parry, claiming it to be sham and nominal, was not proved. However, it was held that the denial of work to the workers was not bona fide and therefore, they were entitled for re-employment from 01.12.2008 onwards. It was further held that the re-employed workers would be entitled for the monetary benefits and for all other administrative purpose, notionally with effect from 01.12.1992.

2.6. Both EID Parry and the workmen had challenged the Award before the Writ Court in W.P.Nos.28373 of 2008 and 19007 of 2012 respectively. The learned Single Judge had elaborately dealt with the factual and legal aspects of the dispute and by a common order dated 09.02.2018, both the Writ Petitions were dismissed.

2.7. While EID Parry had challenged the order of the learned Single Judge in W.A.No.2594 of 2018, the workmen of NBF Alloys have preferred W.A.No.41 of 2019. Since the Award impugned before the Writ Court was a common Award and the present appeals also arise from the common orders passed in both the Writ Petitions, these Writ Appeals are disposed of through a common judgment.

3. Mr.Anand Gopalan, learned counsel appearing on behalf of EID Parry, contended that the Tribunal, having found the transfer of undertaking not to be sham and nominal, but bona fide and genuine, did not have the authority to order for notional re-employment of the workers, in the absence of any statutory provisions. According to him, after inclusion of Section 25FF in the ID Act, such decision is not bestowed upon the Tribunal. In order to substantiate that the transfer of undertaking was genuine, he relied upon the agreement of transfer,

whereby both the lands and the machineries were bona fide taken over by the transferee company and the requirement of Section 25FF of the ID Act, with regard to notice pay and compensation, was also duly complied with. The workmen, having received the notice pay and compensation, are estopped from challenging the transfer of undertaking. It is also his contention that the learned Single Judge had failed to appreciate that there was no scope for the Tribunal to order for notional re-employment, when a specific finding has been rendered by holding that the transfer was not a sham and nominal one.

4. On the side of the workmen, Mr.V.P.Rajendran, learned counsel, vehemently contended that the agreement of sale and the sale deed was only with regard to the lands of NBF Alloys and not the plant and machinery. According to him, this is a case of retrenchment of the workers from an establishment, which is governed under Chapter V-B of the Act and failure to comply with the requirements of Section 25N, renders the transfer illegal. He pointed out to the various discrepancies in the sale transactions and suggested the sale itself to be fictitious. He further submitted that re-hiring of the erstwhile workers as new entrants, at lower wages, would amount to victimisation and hence, denial of reinstatement by the Tribunal, as well as the Writ Court, is per se illegal.

5. Both the counsels, in support of their contentions, had placed reliance on various precedings, which we shall deal in the succeeding portion of our judgment.

6. While answering the reference for adjudication as to whether the transfer of ownership of the sugar mills of NBF Alloys to EID Parry and the resultant non-employment of the workmen, was justified or not, the Industrial Tribunal, through its award passed in I.D.No.45 of 1993 dated 24.09.2008, on the strength of the oral and documentary evidences, had held that the transfer of ownership of the sugar undertaking of NBF Alloys to EID Parry was valid, but the resultant non-employment of the workmen as not justified.

7. Before we delve with the legal sanctity of the findings in the award, as well as the orders of the Writ Court, the legal aspects touching upon the case before us, are recapitulated, for the sake of convenience.

8. Section 25F of the ID Act lays down the conditions precedent to retrenchment of workmen, under which the person claiming its protection, must be having the relationship of employer with the employee; he must be a workman within the meaning of Section 2(s) of the ID Act; the establishment in which he is employed must be an industry within the meaning of Section 2(j) of the ID Act; and he must have put in not less than one year of continuous service under an employer, as defined under Section 25B. These conditions are cumulative and in the breach of any one of these conditions, Section 25F will not be attracted. The preconditions under Section 25F for retrenchment is that the workman must be given one month's notice in writing, indicating the reasons for retrenchment; the workman has been paid retrenchment compensation; and the notice is served on

the appropriate Government in the prescribed manner.

9. Since there was ambiguity in Section 25F as to whether transfer, reconsideration and amalgamation of Companies would be allowed for claim of retrenchment compensation, even if the service of the workman is continued without interruption and the terms and conditions of his service remain unaltered, Section 25F was substituted by Section 25FF, along with Section 25FFF by the Industrial Disputes (Amendment) Act, 1957, which amendment was predominantly owing to the decision of the Hon'ble Supreme Court in the case of Hariprasad Shivshanker Shukla and Another Vs. A.D.Divelkar and Others reported in AIR 1957 Supreme Court 121.

10. The compensation envisaged under Section 25FF was subject to the cumulative satisfaction of the conditions, namely, (a) there should be a transfer of ownership or management of the undertaking from one employer to another by agreement or operation of law; (b) the undertaking should be an industry within the meaning of Section 2(j); (c) the workman claiming compensation should be a workman within the meaning of Section 2(s); and the workman should have put in a minimum of one year of continuous service within the meaning of Section 25B of the ID Act. Before Section 25FF is put to operation, the ownership or management of an undertaking should have already been transferred. However, the provisions of this Section will apply only to a case of bona fide and genuine transfer and will not be attracted to fictitious or benami transfer. This aspect has been well established ratio decidendi through the decisions of several Constitutional Courts and since this legal proposition is not under dispute, we refrain from making a reference to the decisions in this regard.

11. The reference made by the appropriate Government was answered by the Tribunal in two folds. Firstly, based on the evidences before it, the Tribunal held the transfer of undertaking to be valid. While coming to such a conclusion, the Tribunal had taken into account Ex.M.8, which is the Deed of Sale and Transfer of the sugar mill of NBF Alloys to EID Parry and Ex.M.23, which is the Sale Deed in favour of EID Parry by NBF Alloys. The Tribunal also found that though these sale deeds limited itself to the immovable properties, without machinery, the Tribunal had recorded that the workmen had not proved the transaction as sham and nominal and therefore had come to the conclusion that the transaction was genuine.

12. When this finding was challenged before the learned Single Judge by the workmen, the Writ Court had inter alia framed the issue as to whether the very transfer of ownership of NBF Alloys, without the transfer of services of the workmen, is valid, legal and vitiated by fraud and whether such findings of the Tribunal are liable to be re-appreciated on the basis that they are legally unacceptable and perverse. After addressing the arguments of both the Management, as well as the workmen, the Writ Court had come to the conclusion that the findings of the Tribunal premised on acceptable reasons on the basis of relevant materials made available before it and such finding of fact cannot be

discountenanced for the purpose of substituting the same by the Writ Court. The objections of the workmen that the transfer of undertaking was collusive in order to victimize the workmen and that it was not a genuine transaction, were rejected by holding that, except for the oral arguments advanced by the Counsels for the Union, no worthwhile materials were placed before the Writ Court in order to render a favourable finding to overwrite the conclusion of the Tribunal.

13. In this background, the Writ Court had come to the conclusion that the transfer of ownership of the sugar mill under NBF Alloys to EID Parry was genuine and the plea of it being sham and nominal was raised only for the purpose of this case and in the absence of any other evidences before the Tribunal to support the plea of the workmen, there was no perversity in the findings.

14. Even before us, the learned counsel appearing for the workmen attempted to establish the transfer of undertaking to be sham and nominal. We do not endorse this submission. Admittedly, the services of the workmen were interrupted due to the transfer of undertaking, as per the Deed of Transfer. In other words, the non-employment of the workmen, owing to such transfer, would not amount to termination of employment. Under Section 25FF of the ID Act, unless it is established that the transfer of undertaking falls under any of the proviso therein, the workmen of the undertaking concerned would be entitled to claim compensation against the transferor and cannot claim for re-employment under the transferee establishment. Thus, when the transfer falls under the said proviso, it does not result in termination of the contract of employment, as held in the case of N.T.C. (South Maharashtra) Limited vs. Rashtriya Mill Mazdoor Sangh and Others reported in (1993) 1 SCC 217. In the case of Mettur Beardsell Limited Vs. Workmen of Mettur Beardsell Limited and Another reported in (2006) 9 SCC 488, the Hon'ble Supreme Court had held that, when there were no evidences before the Labour Court to establish fraud in the transfer of undertaking, the workmen cannot claim to be continuing as workmen of the transferor establishment.

15. The claim of the workmen before us is also not based on any of the evidences let in before the Tribunal and as such, there is no perversity or other illegality in the findings. Accordingly, we endorse the views in this regard.

16. In the light of these findings, the order passed in W.P.No.19007 of 2012 against the workmen finds our approval and consequently, W.A.No.41 of 2019 filed by the workmen is liable to be dismissed.

17. The second answer to the reference before the Tribunal was that the resultant non-employment of the workmen, pursuant to the valid transfer, is not justified is concerned, the Tribunal had recorded that though EID Parry had purchased the sugar mill without the workers, they had re-employed 197 of the erstwhile workmen. By taking into consideration that the workers were employed

in the sugar mill for a very long period and that it was not the case of EID Parry that they are not qualified or fit enough to work in the new machineries or that it was not the case of the management that they had changed the entire machinery, the resultant conclusion of denial of work to these workers was held as unjustified. A sympathetic approach was also extended to the workmen by the Tribunal, in view of their long lis in the Courts with expectation of orders of re-employment, vis-a-vis the Management running the mill through contractual workers, had ordered for re-employment with effect from 01.12.2008, without any monetary benefits.

18. When and if such claims made by the workmen are weighed and found to be approximately equal, the Tribunal would be justified in tilting the scales in favour of the workmen. But, when the foundation of the claim itself is flawed resulting in the dis-entitlement of the workmen to claim for reinstatement or compensation, such application of sympathy would be misplaced. In order to avail the benefit of compensation under Section 25FF of the Act, it requires to be established that the transfer of undertaking falls under any of the provisos thereunder.

19. In the instant case, the Tribunal had not only found that there was a valid transfer of undertaking, but also declared it as not being sham and nominal. Such findings were based on the materials available before the Tribunal and no perversity could be attributed to these findings. Thus, when it is found that the ownership or management of the undertaking is transferred by agreement, the workman, who satisfied the conditions under Section 25FF of the Act, shall be entitled to notice of compensation, in accordance with the provisions of Section 25F of the ID Act, as if he had been retrenched. Admittedly, this dual requirement of notice and retrenchment compensation has been paid to the concerned workmen under Section 25F of the Act. Ignoring these factual and legal aspects and extending sympathy for the purpose of ordering re-employment, would be impermissible.

20. The learned Single Judge also appears to have taken a sympathetic approach, owing to the long pendency of the dispute, frustrating the claims of the workmen and accordingly was of the view that granting re-employment to the workmen from 01.12.2008 would be an equitable solution. While ordering so, the learned Single Judge had also taken into consideration that many of the workers had either died or reached the age of superannuation and therefore sought to strike a balance between the legal principles and social justice. In our view, the concerned men were paid the mandated retrenchment compensation, apart from the notice pay to which they were eligible. When the Tribunal specifically renders a finding of valid transfer of undertaking, a further direction for re-employment is not based on any intelligible differentia. Consequently, we do not approve these findings by the Writ Court, endorsing the views of the Tribunal for re-employment.

21. The learned counsel appearing for the workmen placed reliance on the decision of the Hon'ble Supreme Court in the case of Workmen of

Subong Tea Estate vs. Outgoing Management of Subong Tea Estate and Another reported in (1964) 1 LLJ 333, for the proposition that the termination of service, without complying with Section 25F of the ID Act, would render the order of termination void ab initio entitling the workmen of continuation in service with full back wages.

22. In the light of our above findings on the facts, when the transfer of undertaking was held to be valid, the workmen would not be entitled to claim reinstatement as a matter of right and hence, ratio in Subong Tea Estate would be of no help.

23. Reliance was also placed on the decisions of the Hon'ble Supreme Court in Management of E.I.D. Parry India Limited and Others vs. State of Tamil Nadu and Others reported in 1985 SCC OnLine SC 309; Gurmail Singh and Others vs. State of Punjab and Others reported in (1991) 1 SCC 189; and State of Maharashtra and Another vs. Sarva Sharmik Sangh and Others reported in (2013) 16 SCC 16 to substantiate that, when the transfer of undertaking is fictitious and fraudulent, the workmen would be entitled for reinstatement with back wages.

24. When the workmen had failed to establish the transfer to be fictitious before the Tribunal, which finding was also upheld by the Writ Court, we fail to understand as to how we can, at this stage, declare the transfer to be fictitious, in the absence of any materials before the Tribunal and thus, this decision, approving reinstatement of workmen against fictitious transfer, would be of no avail.

25. In light of the above findings and observations, we are of the affirmed view that the second finding of the Tribunal, ordering for reinstatement with effect from 01.12.2008, cannot be legally sustained.

So also the decision of the learned Single Judge in this regard in W.P.No.28373 of 2008 filed by the Management. Accordingly, W.A.No.2594 of 2018 filed by the Management is liable to be allowed.

26. In fine, W.A.No.2594 of 2018 stands allowed and W.A.No.41 of 2019 stands dismissed. No costs. Connected miscellaneous petition is closed.