

(2003) 04 MAD CK 0024

In the Madras High Court

Case No : W.A. No's. 761 of 1992 and 760 of 1997, Contempt Appeal No. 13 of 1992 and C.M.P. No. 17671 of 1992

The Management of Mettur Beardsell Ltd., presently known
as Beardsell Ltd.

APPELLANT

Vs

The Workmen of Mettur Beardsell Ltd., Mettur Textile
Industries Limited and The Presiding Officer, Industrial
Tribunal

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Constitution of India, 1950 — Article 215, 226

Industrial Disputes Act, 1947 — Section 10, 12(3), 25FF

Citation : (2004) 3 LLJ 811 : (2004) 3 MLJ 385

Hon'ble Judges : B. Subhashan Reddy, C.J.;C. Nagappan, J

Bench : Division Bench

Advocate : T.R. Rajagopalan for T.S. Gopalan in WA 761/92 and CA 13/92 and A.L. Somayahi for Aiyar and Dolia in WA 760/97, for the Appellant; T.R. Rajagopalan for T.S. Gopalan for 1st Respondent in WA 760/97 and A.L. Somayahi for Aiyar and Dolia in CA 13/92 and for 1st Respondent in WA 761/92, for the Respondent

Judgement

B. Subhashan Reddy, C.J.—While W.A. No.761 of 1992 is filed against the order dated 22.7.1991 rendered by the learned single Judge in

W.P. No.11956 of 1987, W.A. No.760 of 1997 has been filed against the order dated 24.2.1997 passed by another learned single Judge in

W.P. No.1063 of 1988. The Contempt Appeal is filed against the order dated 11.12.1992 passed in Contempt Application No.366 of 1992

arising out of the non-compliance of the order dated 22.7.1991 passed in W.P. No.11956 of 1987.

2. W.A. Nos.761 of 1992 and 760 of 1997

The applicability or otherwise of Section 25-FF of Industrial Disputes Act, 1947, is the question for consideration in these two Writ Appeals. In

fact, the result in W.A. No.760 of 1997 depends upon the adjudication in W.A. No.761 of 1992 as the subject matter is one and the same and so

also the parties. The only difference is that while the order in W.A. No.761 of 1992 is directed against I.D. No.8 of 1984 rendered by the

Industrial Tribunal, Madras, the order in W.A. No.760 of 1997 is directed against I.D. No.89 of 1984 on the file of the Industrial Tribunal,

Madras. The parties are referred to as the Management and the Workmen. The Management is Mettur Beardsell Limited, the appellant in W.A.

No.761 of 1992, while the workmen are represented through their union as the first respondent in the said Writ Appeal. In so far as W.A. No.760

of 1997 is concerned, the workmen association is the appellant while the Management is the first respondent. In I.D. No.8 of 1984, the reference

for adjudication was made in G.O. Ms.No.202, dated 19.1.1984 to the following effect.

Whether the demand of the following 27 workmen allotted to Textile, Thread Marketing Division and E.D.P., who are at present working at

No.49, Rajaji Salai, Madras, that they should be taken back by Mettur Beardsell Limited, and that their service conditions as on 31.12.1982 and

before entering into partnership between Mettur Beardsell Limited, with Mettur Textiles Private Limited and now known as Mettur Textile

Industries Limited should be continued, is justified, if so to give appropriate directions.

1. V.S. Rajaraman,
2. E.T. Kirubanandan
3. P.R. Kalyanasundaram,
4. K. Uma,
5. Padmini Bijur
6. G. Fernandez
7. Lakshmi Prasanna
8. V. Rajalakshmi
9. R. Eappan
10. Jennette Mascrenhas

11. R. Srinivasan
12. A. Sebastian
13. V. Nageswara Rao
14. P. Manohar Gupta
15. R. Krishnan
16. R. Venkataramani
17. V. Raghunathan
18. T. Srinivasan
19. T. Issac
20. B. Seetharamaraju
21. A.P. Johnson
22. D. Mohanasundaram
23. R. Anand
24. Philomena Thomas
25. Madhavi Kutty
26. V.N. Reddy
27. V. Sridharan

3. In I.D. No.89 of 1984, the reference was made vide G.O. Ms. No.2383 dated 14.11.1984 to the following effect.

Whether non employment of Thiruvallargal V.S. Rajaraman, E.T. Kirubanandan, A. Sebastian, P. Manohar, Gupta, B. Krishnan, N.

Venkataramani, V. Ragunathan, T. Srinivasan, V.M. Reddy, B. Seetharamaraju, A.P. Johnson and Thirumathi Lakshmi Prasanna, Renna Eappen,

Philomena Thomas, Madhavi Kutty and Selvi Padmini Bijur is justified. If not, to what relief, they are entitled. To compute the relief, in terms of money, if it could be so computed.

4. We now state few relevant facts leading to the above reference u/s 10 of the Industrial Disputes Act.

The workmen were initially employed by the Management in different capacities as Stenographers, Assistants, Typists, Punch Operators, Office

Attenders etc. during the year 1960 and they continued in service. The Management formed Integrated Textiles Division on 9.2.1982 and the

Integrated Thread Division on 27.9.1982. Later on, the Electronic Data Processing Division formed part of Integrated Textile Division. The

workmen were allotted to the abovesaid integrated divisions. Their place of work was shifted to 49, Rajaji Salai, Madras - 1, on 1.11.1982.

There were no individual orders passed by the Management but the above allocation was made by a general order. The workmen expressed their

apprehension regarding their continued temporary status but the Management assured them of their permanent status and continued employment

without any alteration of conditions of their service. On 15.1.1983, a circular was issued by the Management stating that it had entered into a

partnership arrangement with the Mettur Textiles Pvt. Ltd., with effect from 1.1.1983 and that the Textile and Thread Divisions, which were

formed, have merged with the said partnership firm with effect from 1.1.1983 and that every workman and the staff employed by the Management,

in respect of its Textile and Thread Divisions, would be taken over on the terms and conditions no less favourable than those in force as on

31.12.1982 and on that basis, the services of each one of them could be continued. The union, of which the workmen belong to, raised protest but

it was assured that no harm would be caused to its members/workmen. But contrary to the assurance given, the appellant had retired from the

partnership firm. Consequently, Mettur Textiles Private Limited was stated to have acquired all the rights of the Management and was renamed as

Mettur Textile Industries Limited. 27 workmen were laid off and, as already stated above, that led to the dispute being raised and the Industrial

Tribunal embarking upon the enquiry into the said disputes. The Industrial Tribunal had accepted the plea of the Management that on its retirement

from the firm, it ceased to be the employer of the workmen as retirement operated as "transfer" within the meaning of Section 25-FF of the

Industrial Disputes Act, that there was a proper compliance of the said provisions and the workmen are only entitled to compensation and not for

reinstatement and in no event, the Management can be made liable to reinstate as there was no employer - employee relationship. The workmen's

contention was that the transfer was not to their knowledge and their consent was not obtained and that the said transfer was only benami and not

a bona fide one and formation and retirement of partnership was only colourable and that they still continued to be the employees of the

Management and that in fact, till their laying off, their wages were paid only by the Management. But the Industrial Tribunal has accepted the plea

of the Management, aggrieved by which, W.P. No.11956 of 1987 has been filed and by judgment dated 22.7.1991, the learned single Judge had

reversed the Award of the Industrial Tribunal. While the same was under appeal, strangely, another learned single Judge had dismissed W.P.

No.1063 of 1988, which was filed against the Award in I.D. No.89 of 1984. In fact, the learned single Judge ought to have followed the judgment

dated 22.7.1991 in W.P. No.11956 of 1987 and leave the Management to challenge the same in Writ Appeal.

5. Mr. T.R. Rajagopalan, learned senior counsel appearing for the appellant Management strenuously contends that (i) in view of the transfer

effected in favour of Mettur Textile Industries Limited, the second respondent in W.A. No.761 of 1992, the Management is not at all liable in view

of Section 25-FF of Industrial Disputes Act as there was no employer-employee relationship and that (ii) in any event, the Award of the Industrial

Tribunal being a well considered one and there being no error in decision making process, the learned single Judge ought not to have sat in appeal

and reversed the Award of the Industrial Tribunal and the same is in excess of the powers of judicial review. He has also submitted that contempt

jurisdiction ought not to have been invoked by the learned single Judge as statutory remedies were available to the workmen, even assuming that

the order of the learned single Judge was in operation.

6. Countering the said arguments, Mr. A.L. Somayaji, learned senior counsel appearing for the workmen, submits that Section 25-FF has got no

application in the instant case as the purported transfer is only benami and has been invented for the purpose of retrenching the workmen by

unlawful means and that still there subsists the relationship of employer - employee between the Management and the workmen and that the

Industrial Tribunal had not adverted to the material facts and the evidence on record and misdirected itself in rendering the Award and as such,

such perverse Award was fit to be set aside and that there is no error in the order of the learned single Judge.

7. Both the learned counsel have cited some judicial precedents in support of their respective arguments.

8. Section 25-FF was inserted in the Industrial Disputes Act pursuant to the judgment of the Supreme Court in HARIPRASAD v. A.D.

DIVELKAR AIR 1957 S.C. 121. Section 25-FF reads as follows:

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

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(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.

9. A mere reading of the above provision makes it clear that every employer is entitled to manage his business according to his plans and viability

and no employee can put forth any obstacles relating to the transfer of the unit. On such transfer, the statutory safeguards as provided in Section

25-FF of Industrial Disputes Act come into play and either the employee is entitled for compensation in lieu of retrenchment or to continue as the

employee of the new employer. But the question is whether an employer can adopt dubious methods to show the apparent transfer of business

which acts as a device to divest the employee of his due rights under Industrial Disputes Act. If there is absolute right in the employer to transfer his

unit, even benami, regardless of legal consequences, then the workmen have got no case.

10. In Parry and Co. Ltd. Vs. P.C. Pal and Others, , the Supreme Court held that

reorganisation of business is within the managerial discretion of

the employer but such reorganisation should be bona fide and if such bona fide reorganisation results in retrenchment of the labour, propriety of

such reorganisation of business and consequent discharge of surplus labour cannot be interfered with as profitability, economy or convenience of

the business reorganisation are within the realm of the employer and not the Tribunal or Courts.

11. A Constitution Bench of the Supreme Court in *Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen*, held that if

a transfer of a business Unit is fictitious or benami, then Section 25-FF of the Industrial Disputes Act will have no application at all and in such

cases, there cannot be any change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real

employer and there has to be continuity of service under the terms and conditions of service as before and there can be no question of

compensation.

12. The said proposition of law was followed by a Division Bench of this Court in *Spencer Group Aerated Water Factory Employees' Union and*

Another Vs. The Presiding Officer, Industrial Tribunal and Others,

13. From the above discussion, the law is crystallised to the effect that mere apparent transfer of business has got no legal effect unless there is a

real transfer by which the link between the predecessor employer and the transferee employer gets snapped.

14. There cannot be any doubt about the proposition that in exercise of the powers of judicial review under Article 226 of the Constitution of

India, the High Court does not sit as the Appellate Court but has to see the correctness of only the decision making process and not the decision

itself. But if the Tribunal has not adverted to material evidence and had acted perversely and misdirected itself, resulting in an erroneous decision,

then it is for the High Court under Article 226 of the Constitution of India to set right the said error by pointing out the said defects in the decision

making process, as otherwise, the High Court will be failing in its duty to exercise the jurisdiction where it is warranted thus resulting in miscarriage

of justice.

15. In *M/s. PARRY AND CO. LTD. v. P.C. PAL* (supra), the Supreme Court held

that High Court could interfere in cases of lack of, or excess of, jurisdiction, or where the Tribunal has disabled itself from reaching a fair decision by basing its conclusions on considerations, extraneous to the evidence and merits of the case, which no reasonable person could arrive at. In the said case, in the process of bona fide reorganisation of business by the employer, some workmen were retrenched and the said retrenchment was set at naught by the Industrial Tribunal and on a writ petition having been filed before this Court, a learned single Judge of this Court has set aside the Award and remanded the matter to the Industrial Tribunal but the same was reversed by the Division Bench on the ground that the scope of judicial review would not allow the High Court to substitute the findings of the Tribunal. The matter was ultimately carried to the Supreme Court. The Supreme Court, finding that the Tribunal's order was perverse and not based on legally acceptable evidence, has set aside the order of the Division Bench and restored the order of the learned single Judge.

16. In POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH, CHANDIGARH v. RAJ KUMAR (Vol. 98

Factories Journal Reports 180), it was held by the Supreme Court that the High Court is entitled to interfere with the Award of the Labour Court

only where there is mis-appreciation of evidence leading to perversity of the decision. But while doing so, the High Court should record its reasons.

17. The above-referred judicial precedents of the Supreme Court are authorities to hold that the High Court is not lacking in its power of judicial

exercise to interfere with the Awards of the lower Courts/Tribunals, if such decisions are not based upon the material on record and by pointing

out such defects by clear reasons. The decisions cited by Mr. T.R. Rajagopalan, learned senior counsel, in Indian Overseas Bank Vs. I.O.B. Staff

Canteen Workers' Union and Another, and UNITED LABOUR FEDERATION, CHENNAI v. UNION OF INDIA & ORS 2002 I L.L.J. 799

are based upon the facts stated therein keeping in view the broad principles of the powers of judicial review. On the touchstone of the above legal

principles of the extent of the judicial review available under Article 226 of Constitution of India, we are in complete agreement with the reasons

stated by the learned single Judge in order dated 22.7.1991 W.P. No.11956 of

1987 to the effect that the Award of the Industrial Tribunal is
perverse.

18. The workmen were employed on permanent basis. They had put in considerable years of service ranging from 3 to 21 years as on the date of raising of dispute. The management had devised a clever way of dispensing with the services of the workmen. Firstly, it had formed the Integrated Textile and Thread Divisions and allotted the workmen to the said Divisions and then shifted their working place to premises No.49, Rajaji Salai, Madras. Then, in quick succession, on 15.1.1983, Mettur Textiles Private Limited was taken as a partner and a circular to that effect was issued on 15.1.1983 stating that such partnership had come into existence even from 1.1.1983. On 16.3.1983, the management purports to have retired from the partnership leaving Mettur Textiles as the sole owner and the Mettur Textiles, later on, retrenches the workmen as being surplus. These actions amply prove the hastiness with which the management proceeded with the sole view of retrenching the workmen by unlawful means. There is no clinching evidence of transfer of assets and it is rightly held by the learned single Judge that there is no transfer of the workmen within the meaning of Section 25-FF of Industrial Disputes Act. The Industrial Tribunal has only harped upon the implied consent of the workmen and dismissed their Industrial Dispute on the ground of the workmen having acquiesced in the transfer. But evidence is contra.

19. On 9.2.1982, the Management issued a proceeding Ex. M-8 forming the integrated Textile Division. It reads as follows:

FORMATION OF THE INTEGRATED TEXTILE DIVISION

In order to improve the Company's operational efficiency, it has been decided to take certain reorganisation measures. As an immediate step, an

integrated Textile Division is formed consisting of Manufacturing and Marketing operations with the necessary supporting staff services. The new

Division will function under Mr. R. Subba Rao as its Chief Executive with the requisite personnel allotted to the Division.

Company employees working in the Division/ Departments directly related to Textile operations and also the employees allotted to the new

Division from those presently working in the Common Services at H.O. and Branches will be the members of the integrated Textile Division.

The allotment of Company employees to the integrated Textile Division will be implemented in a phased manner and they will be stationed at

location(s) as decided by the Company.

Ex.M-9, the notice dated 22.9.1982 allotting the employees to 49, Rajaji Road, Chennai, reads as follows:

NOTICE

We refer to our notice dated 9th February, 1982, wherein we announced the formation of the Integrated Textile Division. In terms of the above

circular, the EDP Department will be treated as part of the Integrated Textile Division with immediate effect and all employees working in the EDP

Department will be, therefore, attached to the Integrated Textile Division. The EDP Department will continue to operate from 49, Rajaji Road,

Madras - 600 001.

Again on 23.9.1982, another proceeding Ex.M-10 was issued forming Integrated Thread Division. It reads as follows:

FORMATION OF THE INTEGRATED THREAD DIVISION

As contained in our earlier communication dated 9.2.1982, it had been decided to take certain re-organisational measures with a view to improve

the Company's operational efficiency and action was already initiated towards this objective.

Similar to the formation of the Integrated Textile Division, it is now decided to form with immediate effect an integrated Thread Division consisting

of the Manufacturing operations at Mettur and the Marketing Operations at Madras and other locations with the necessary supporting staff

services. The new integrated Division will function under Mr.S.L. Rao. The Company employees presently working in the Divisions/ Departments

directly related to Thread operations and also the employees to be allotted to the new Division from those presently in the Common Services at

H.O. and Branches will form the integrated Thread Division.

The allotment of Company employees to the integrated Thread Division will be implemented in a phased manner and they will be stationed at

location(s) as decided by the Company.

- Sd/ -

P.M. MATHEW

PERSONNEL DIRECTOR

Ex.M-12 is another proceeding issued by the Management to all the branches and that is dated 23.11.1982. It reads as follows:

CONFIDENTIAL

I refer to the circular on formation of the Integrated Textile Division dated 9th February 1982 and a subsequent circular on formation of the

Integrated Thread Division dated 23.9.1982. I hope you have already displayed these circulars on the Notice Board for the information of the

employees. If this has not been done, please do it immediately. Copies of the circulars are attached.

As mentioned in the above circulars, we have now decided to allot employees of the Common Services groups at Head Office and Branches to

these two Divisions. According to our estimate, it is necessary to allot at least the following number of your Branch to the new Divisions :

Management Staff ..

Assistants (Junior/Senior Clerks) ..

Stenographers ..

Bearers/Attenders/Peons ..

In respect of Non-Management staff, please ensure that you assign the junior most staff members to the newly formed Divisions. This is to

establish a basis for selecting employees for the allotment, in case a Union/employee subsequently raised an objection. If, in your opinion, a

deviation from this basis is called for, you need to establish the reasons for retaining a particular junior employee in preference to a senior who is to

be transferred. Please let me know by telephone the names of the employees to be assigned to the two Divisions. On hearing from you, we will

send them individual letters and we hope to do this latest by 26th of this month.

If, in your view, more number of employees than indicated above can be transferred to the two Divisions, please let me know immediately.

PMM:PD (P.M. MATHEW)

The changes were effected following the above circular dated 29.11.1982 under Ex. M-14. Ex. M-15 is crucial which is a partnership deed dated

14.12.1982. The stamps used are three in number with denominations of Rs.40, Rs.20 and Rs.10 respectively bearing Nos.2583, 2584 and 2585

respectively. The seals on the stamps show that they have been sold by the stamp vendor on 31.12.1981. The date of execution is mentioned as

14.12.1982, which itself casts a doubt with regard to formation of the partnership firm. In this regard, it is significant to mention the date of

formation of the Mettur Textile Division on 9.12.1981. No date of commencement of partnership is mentioned excepting in Clause 4 to the effect

that the Management will bring into common stock of the partnership, all assets and liabilities of its Textile and Thread Divisions with effect from

1.1.1983 as its initial contribution and in particular, the goodwill and all fixed assets amounting to Rs.335 Lakhs, the full benefit and obligation of all

licences, contracts, engagements and orders in connection with the said business, all cash in hand and at the bank and all deposits, advances and

bills in connection with the said business as also the registered trade mark "SAXON" used in the hosiery business at a value of Rs.16 Lakhs

without the assets or liabilities of that business. It is also mentioned that the partnership shall take over every workman and staff employed by MBL

in respect of the Textile and Thread Divisions on the terms and conditions including in particular the terms and conditions as to salary, wages,

holidays, sickness, retrenchment/retirement benefits, not less favourable to each such person as those in force on 31.12.1982 and on the basis that

the services of each one of them have been continuing and had not been interrupted by the constitution of the partnership. The contribution of

Mettur Textiles Limited is only the investment of Rs.50 Lakhs initially and arrangement of funds from time to time, which are required for running

the business. But Clause 7 says that Mettur Textiles Limited shall be responsible for the day to day running of the business but shall not act without

concurrence of the Managing Director of MBL on major policy matters. There is no termination of partnership excepting that on retirement, a

partner shall be entitled only to the amount standing to the credit of his account at the time of his retirement adjusted to profit or loss as on that date

without any value for goodwill. This partnership was informed only on 15.1.1983 vide Ex. M-16 to all the staff. It states that shareholders have

passed Resolutions to vest Textile and Thread Divisions of the Management in Mettur Textiles Private Limited and that Rukmini Investments

Private Limited and their nominees have become shareholders with Mettur Textiles Private Limited and will participate as such in the Textile and

Thread operations. Ex. M-17 dated 15.1.1983 states that every workman and staff employed by the Management in respect of its Textile and

Thread Divisions have been taken over by the partnership on the terms and conditions not less favourable than those in force on 31.12.1982 and

on the basis that the services of each one of them have been continuing and had not been interrupted by the constitution of the partnership. The

terms and conditions cover salaries and wages, benefits and retrenchment/retirement benefits. A supplemental deed of partnership, Ex. M-19, was

executed on 3.3.1983 between the Management, Mettur Textiles Private Limited and Rukmani Investments stating that the partnership was at will

and that Rukmani, who had invested large amounts, wants to come in as partner and the MBL has agreed to retire from the partnership and the

firm was being reconstituted. The date of the entry of Rukmani was mentioned as 1.3.1983 and the retirement of MBL as 28.2.1983.

Management was held to be entitled to Rs.175 Lakhs and Rukmani's bankers have undertaken to pay the said amount in three equal instalments.

Henceforth, the business was to be carried on in partnership between Mettur Textiles Limited and Rukmani under the name and style of Mettur

Textiles. The partnership was to be at will. The assets and liabilities were to be shared at 50% each. There was nothing mentioned with regard to

workmen excepting that other rights of the parties will be governed by Indian Partnership Act. Ex. M-20 is the Memorandum of Settlement u/s

12(3) of Industrial Disputes Act. Under the said settlement, it was agreed that Mettur Textiles Private Limited will continue the services of all the

employees and will discharge all accrued and statutory liabilities including gratuity, bonus, provident fund, DLI, LIC, ESI, etc. In view of the above

settlement, the dispute preferred by the Union/Unions in respect of transfers of undertakings before any forum covered by the settlement, was

agreed to be withdrawn. Ex. M-22 is the notice dated 24.3.1983 informing about the formation of a new firm on 1.1.1983, the retirement of MBL

from the partnership with effect from 28.2.1983 and informing that the terms and conditions of service applicable to all employees will be no less

favourable than in force on 31.12.1982.

20. While there is no express consent given by the workers for even entering into the partnership, the Industrial Tribunal has recorded a finding that

there is an implied consent. But since the beginning, the workmen had been protesting against their transfer. A reading of the Resolution passed by the Employees' Association in the Meeting held on 15.6.1983 is evident of the same. It is recited there that since the other workmen were not taking care of the rights of the 27 workmen, a notice was issued by the representative of the said workmen on 13.5.1983 to Mr. P.M. Mathew, Personnel Director of the Management that all the acts of the Management had been unilateral, that the Management cleverly palmed off the employees of the Integrated Thread and Textiles Division to a partnership concern without their knowledge and consent and they have expressed their apprehensions regarding the motive behind the withdrawal of the management from the partnership, making it clear that such move is a pre-meditated one to dislodge the workmen in the hands of the company formed with outside partnership which was subsequently dissolved resulting in the withdrawal of the management from the partnership and that this is a trick played by the Management on its allotted workmen and that there subsists a relationship of employer and employee between the Management and the workmen. It was also mentioned that after transferring men in the garb of allotment to integrated Textiles and Thread Divisions, the Management has gone for recruitment in its establishments in Bombay and Madras. Hence, they sought that they should be given option for retention on the rolls of the Management in the same service conditions. A copy of the letter was also addressed to the Labour Commissioner, Tamil Nadu. When nothing came through, the members met on the above dated i.e. 15.6.1983 and passed a resolution to raise a dispute and authorised the representatives to attend the conciliation proceedings. The same was verified and endorsed by the Labour Officer - I, Madras, on 29.7.1983. The entire book containing the Minutes of the Meeting is marked as Ex.W-2. The conciliation having failed, the Government of Tamil Nadu issued a notification No.202, dated 19.1.1984 referring the dispute to the Industrial Tribunal. From the above facts and events narrated, there is no scope or basis to say that there was implied consent on the part of the workmen. As such, the finding of the Tribunal is baseless and perverse.

21. The above discussion makes it clear that the Management, i.e. Mettur Beardsell had been systematically planning to eliminate some of their

workmen and worked on it meticulously. It is not a financial planning of sort so as to take shelter within the legal principles stated by the Supreme

Court in M/S. PARRY AND CO. LTD v. P.C. PAL (supra) and on the other hand, the facts and circumstances fall squarely within the legal

principles stated by the Supreme Court in ANAKAPALLA CO-OP. AGRICULTURAL AND INDUSTRIAL SOCIETY v. ITS WORKMEN

(supra). Ex.W-22 stares in the face, which is a record to show that the salaries by Mettur Beardsell Limited has been paid to the workmen even

on 28.7.1983. Thus, all facts and circumstances conclusively speak of the existence of relationship of the Management and Workmen between the

appellant and the contesting workmen.

22. Accordingly, we affirm the judgment of the learned single Judge dated 27.2.1991 in W.P. No.11956 of 1987 and dismiss W.A. No.761 of

1992 and W.A. No.760 of 1997 is allowed setting aside the judgment dated 24.2.1997 passed by the learned single Judge in W.P. No.1063 of

1998 by allowing the writ petition. The contesting workmen, basing upon this judgment, shall be entitled for all the consequential benefits like

reinstatement, backwages etc. In so far as Contempt Appeal No. 13 of 1992 is concerned, we do not find any substance that even after deliberate

violation of order particularly writ jurisdiction, contempt action should not be resorted to. High Court has got plenary powers under Article 215 of

the Constitution of India and Contempt of Courts Act, 1971, is only in addition to the plenary power of contempt under Article 215 of Indian

Constitution. Even if the contempt power has to be sparingly exercised, this is a case where the contempt action is justified as the poor workmen

had been fighting the cause under adverse circumstances and it will be unjustifiable to deny the fruits of the long drawn litigation to them and the

Management cannot be permitted to be arrogant that even if it deliberately violates the orders of this Court, contempt action should not be initiated.

If this Court passes an order and there is no stay of operation of the same or if it becomes final, the rule of law warrants the invocation of the

powers of contempt so as to see that the orders are enforced apart from punishing the guilty. However, taking the lenient view, we affirm the

imposition of fine but keep the sentence of imprisonment in abeyance by 15 days from the date of receipt of a copy of this order, for implementing

the decision of the learned single Judge as otherwise, the sentence of imprisonment would come into force. The Contempt Appeal is disposed of accordingly. Consequently, C.M.P. No.17671 of 1992 is closed.