

(1997) 09 MAD CK 0137
In the Madras High Court

The Management of William Goodacre and Sons Ltd. and
Another

APPELLANT

Vs

K. Neelakandan and Others

RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(d), 25FF

Citation : (1998) 1 MLJ 242

Hon'ble Judges : AR. Lakshmanan, J;A.R. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—The respondents/workmen in both the writ appeals filed W.P. No. 7508 of 1985 to quash the award of the Industrial Tribunal, Madras in I.D. No. 38 of 1983 as published in G.O. Ms. No. 1295, Labour Employment Department, dated 26.9.1984 and direct the Management of Tac Floor Company and the Management of William Goodacre and Sons Limited to reinstate the workmen with backwages and continuity of service.

2. Tac Floor Company is doing business in manufacturing mat floors and mats. The said company and the Management of William Goodacre and Sons Limited. Alleppey are closely interconnected. On 4th September, 1982 Tac Floor Company gave a notice u/s 25-FF of the Industrial Disputes Act holding that it had transferred the Tac Floor Company Unit with its appurtenances and other facilities excluding with mat looms to the 2nd respondent Company (William Goodacre and Sons Limited) under an agreement of lease. The services of all the work-men are terminated and one month's notice pay in lieu of backwages was offered. The workmen sent a letter protesting against the alleged transfer of ownership of the company. It has been alleged that there is only a lease in favour of M/s. William Goodacre and Sons Limited and there is no transfer of owner-ship of the management and that both the companies are acting in collusion to put an end to the services of the workmen. Since there was a dispute between the workers represented by their Union and the management, the

matter was referred for adjudication.

3. The Tribunal by its order dated 10th August, 1984 in I.D. No. 38 of 1983 held that the denial of employment to the workmen listed in the annexure to the Government Order under which the dispute had been referred to by the Government of Tamil Nadu to the Industrial Tribunal is in accordance with law and is therefore, justified and barring the right to get the compensation in terms of Section 25-FF and Section 25 of the Industrial Disputes Act, 1947. The workmen are not entitled to any other relief. The Government of Tamil Nadu by G.O. Ms. No. 1295, Labour and Employment Department, dated 2nd June, 1983 had referred the following dispute u/s 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication by the said tribunal. The dispute is as follows;

Whether the denial of employment to the 149 workmen listed in the annexure on the plea of leasing the factory is justified? If not, the relief to which the workmen are entitled?

4. Both the companies have filed their counter affidavits, denying the objections made by the workmen. M. Ws. 1 and 2 were examined and Exs. M-1 to M-35 were marked. The Tribunal has referred to Exs. M-1 and M-2, which are the balance sheet and profit and loss account statement for the year 1981. Tac Floor Company had suffered a loss of Rs. 7,20,620.08. In the year 1982 again the said company had suffered a loss of Rs. 8,14,437.94. In fact, under Ex. M-3, which is an award passed by the Industrial Tribunal, Madras in a dispute between the Tac Floor Company and the employees, who were affected by the lay-off declared by the Management, the Tribunal held that the lay-off declared by the management was for valid ground and therefore, the lay-off was legal. An agreement under which the transfer of management of Tac Floor Company had been effected to the William Goodacre and Sons India Limited, had come into existence under Ex. M. 5. Under the agreement, the Tac Floor Company along with the land admeasuring approximately 7 acres, appurtenant thereto inclusive of all machineries but excluding 13 mat looms had been given to the 2nd respondent company on a leave and licence basis for a period of 5 years, commencing from 6th September, 1982. The 2nd respondent-Company under this agreement had to pay the 1st respondentCompany a sum of Rs. 1,00,000 per year as consideration for the leave and licence. The 1st respondent had undertaken to terminate the services of the workmen and staff employed in the Tac Floor Company prior to 6th September, 1982. Therefore, the Tac Floor Company has retained the right to terminate the leave and licence by giving three months" notice to the 2nd respondentCompany, if the 2nd respondent commits default in the payment of a lakh of rupees for a continuous period of two years or more or if the 2nd respondentCompany violates any of the terms of the agreement.

5. The Industrial Tribunal, on a careful consideration of the terms and conditions under which the factory management had been transferred by the 1st respondentCompany to the 2nd respondentCompany held that the transaction is a straight one and not moti-vated as alleged by the workmen. The Tribunal has

also referred to the documentary evidence adduced by the management, which makes it abundantly clear that the Tac Floor Company right from the year 1979 had not been very flourishing as the quantum of the production has been gradually going down and in the years 1981 and 82, it had suffered loss and the Board of Directors had felt that it is not a viable unit. In conclusion, the Industrial Tribunal held that the transfer of management of Tac Floor Company Unit from the 1st respondent Company to the 2nd respondent-Company is a bona fide transaction and that the services of the erstwhile employees of the 1st respondent Company in Tac Floor Company had been terminated long before the management was physically taken over by the 2nd respondent Company and the transaction attracts the application of Section 25-FF of the Industrial Disputes Act.

6. The writ petition came up for final hearing before Y. Venkatachalam, J. on 8.11.1995, the learned Judge passed the following order:

3. The arguments of both sides are heard.

4. I have perused the entire materials available on record, particularly with the regard to the contents of the affidavit filed by the writ petitioners. Having seen the entire facts and circumstances of the case on hand, I consider that it is just and proper to remand the matter to the third respondent/Industrial Tribunal, Tamil Nadu, Madras for giving a fresh disposal according to law after giving opportunity to both sides to let in oral or documentary evidence. In view of my conclusion, I did not touch the details of the facts involved as it amounts nothing but touching the merits of the main case.

5. In the result, the writ petition is allowed and the award passed by the third respondent in I.D. No. 38 of 1983 is hereby set aside and the third respondent is directed to give a fresh finding after giving opportunity to both sides to let in either oral or documentary evidence. In the circumstances, there will be no order as to costs. " 8.11.1995.

7. Aggrieved by the said above order, the Management of William Goodacre and Sons Ltd., Alleppey, filed Writ Appeal No. 225 of 1996 and the Management of Tac Floor Company owned by Alleppey and Company filed Writ Appeal No. 1055 of 1997.

8. We have heard the arguments of Mr. Sanjey Mohan, learned Counsel appearing for the appellant in W.A. No. 225 of 1996, Mr. P. Ranganatha Reddy for M/s. King Partridge learned Counsel for the appellant in W.A. No. 1055 of 1997 and Mr. V. Selvaraj, learned Counsel for respondents 1 to 8 in both the writ appeals.

9. The order of the learned single Judge was challenged as bad. Since the same was passed by the learned Judge without giving any reason as to why it considered it as a fit case to remit the matter to the Industrial Tribunal for fresh disposal. As already noticed, the Industrial Tribunal had rendered a finding after considering oral and documentary evidence and has held that the transaction is a

genuine one and that the agreement is not a sham and nominal as alleged. The learned Judge, in his order, did not also indicate as to what error was apparent on the face of the records so as to require the writ petition being allowed and the matter remitted for fresh disposal. In the absence of a finding rendered by the learned Judge that the award suffers from error apparent on the face of the records, the writ petition ought to have been dismissed. The learned Judge in his order has not expressed any view on the submissions made before him and in the circumstances, it is also not known to us as to what prompted the learned Judge to allow the writ petition and set aside a well considered order by the Industrial Tribunal. At the time of hearing our attention was drawn to the Minutes of the proceedings of the Board meeting of Alleppey Company Limited dated 26.5.1982, agreement dated 2.9.1983, counter statement submitted by the management of Alleppey Company Limited dated 2.9.1983 and the counter statement submitted by M/s. William Goodacre and Sons Limited, dated 2.9.1983 and also of the award dated 10.8.1984 and the order in Writ Petition No. 7508 of 1985 dated 8.11.1995.

10. We have carefully considered the above documents and also of the arguments advanced on either side. The Tac Floor Company was an Unit belonging to Alleppey Company Limited, Alleppey, which is a public limited company, whose main business is to manufacture coir products and sale and export thereof. The said company has a powerloom factory separately registered under the Factories Act. It has got separate licence under the coir Industries Act. The said factory came into existence in 1974 and commercial production was started in the year 1976. Unfortunately, the company was not allowed to operate 13 mat looms continuously, as the Government of India and the Coir Board refused to give necessary permit for the continuous operation of the looms. In order to see that the factory could run as an economically viable unit, it was felt that 13 mat looms and 25 matting looms should operate simultaneously, the Company also had sustained heavy loss in the years 1981 and 1982 respectively. Even though the application for renewal of licence was made in time, licence was not received for matting looms from 1982. The Company came to a situation where the company was unable to continue the work in the factory as an economically viable unit. Because of the refusal of the Government of India and the Coir Board to allow the operation of the looms and the sharp drop in the orders of the foreign markets, the company found it not possible to continue the working of the unit.

11. M/s. William Goodacre and Sons (India) Limited, the appellant in W.A. No. 225 of 1996 is a leading company in the Coir Industry with foreign contracts in International markets for coir products. Tac Floor Company held negotiations with them and the proposal was made regarding taking over of the Management by them and they expressed their willingness to take over the Management of Tac Floor Company units with their own plan of action and operational methods in an economic manner provided the appellant Company is prepared to settle all the claims of the labour and staff without any liability for M/s. William Goodacre and

Sons (India) Limited. An agreement was entered into between two companies. The management of Tac Floor Company, factory along with appurtenant land and other facilities were transferred in favour of William Goodacre and sons (India) Limited on a leave and licence basis with prior approval of the Board of Directors of both these Companies. The leave and licence agreement was executed on 2nd September, 1982 and under the agreement, the management of Tac Floor Company factory was transferred in favour of M/s. William Goodacre and Sons (India) Limited for a period of 5 years, Commencing from 6.9.1982 on a consideration of payment of licence fee of Rs. 1,00,000 per year, subject to the terms and conditions specified in the agreement. In view of the transfer of management, the management of Alleppey Company gave notices of termination of services of all the workmen in terms of Section 25-FFF of the Industrial Disputes Act. Compensation as provided u/s 25-FFF was tendered to the workmen. The workmen, whose services were terminated were paid one month's salary/wages in lieu of notice, compensation at the rate of 15 days wages for each year of service, gratuity as per the rate provided under the Payment of Gratuity Act, 1972, arrears of salary/wages and bonus by cheque attached to the termination notice. At the time of termination, there were only 147 workmen in the factory including staff and they were given termination notice individually along with dues payable to them. Most of the workers accepted the compensation and the terminal benefits. However, the issue was taken up by the Tac Floor Company Thozhilalar Sangam and an issue was referred for adjudication to the Industrial Tribunal as referred to in paragraph 3 supra. 12. The workers' Union contended that Section 25-FF is not applicable as the transfer was not bona fide and transfer was a guise to threaten the workers to agree to the demands of the management. According to the Union, they should be treated as continuing in employment with the transferor company. Detailed counter statement was filed by the management de-nying the allegations. No evidence was adduced for the workmen before the Industrial Tribunal. Management examined two witnesses to prove their contentions and balance sheet, leave and licence deed etc., were produced by the Management as Exhibits. The Labour Court found that the conditions contemplated u/s 25-FF were complied with and therefore, they cannot have any claim against the transferee management or transferor management. Since the transferor management has paid tendered full Compensation, there is no further liability. Therefore, the Tribunal held that barring the right to get compensation in terms of Section 25-FF and Section 25-F of the Industrial Disputes Act, the workmen are not entitled to any other relief. Out of 149 workers, only eight workers individually challenged the award. The grounds in the writ petition were against that there was no valid transfer as transfer was not bona fide and employees are entitled to re-employment under the transferor company. However, the learned Judge without considering any of the contentions and without going through the evidence and without a finding that there was an error apparent on the face of the record, or there is an error of law, mechanically remanded the matter to the Industrial Tribunal for fresh disposal.

13. It was not contended by the Union that they were not allowed any opportunity before the Industrial Tribunal, Madras for adducing evidence. In the absence of any procedural infirmity, the learned single Judge is not correct in setting aside the award and remanding the matter to the Industrial Tribunal, Madras. The entire evidence adduced in the case were considered by the Tribunal, Madras and findings were arrived at considering the evidence and the pleadings in the case. There is absolutely no justification for setting aside the award of the Industrial Tribunal, Madras, which was passed in accordance with law.

14. With regard to the contentions of the Union that the transfer of the management was not bona fide, after considering the entire evidence and pleadings, the Tribunal found that the transaction was bona fide. The appellant in the grounds of appeal in W.A. No. 1055 of 1997 has stated that even though some decisions were cited to prove that once Section 25-FF is complied with and compensation paid, workers of the transferor company has no further claims, none of the decisions were referred to by the learned single Judge. The decisions cited before the learned single Judge as could be seen from the grounds raised are:

Workmen of Karnataka Agro Fruits Ltd v. Karnataka Agro Products Ltd. (1992) 1 L.L.J. 712; Workmen of Decan Sugars v. Hava Bharat Alloys Ltd. (1993) 1 L.L.J. 1211; G.V.M. Reddy v. Andhra Pradesh State Road Transport Corporation (1991) 1 L.L.J. 70; Punjab Land Development Corporation V. Labour Court (1991) 1 L.L.J. 70 and Anahapalla Co-operative Agricultural and Industrial Society v. Workmen (1962) 2 L.L.J. 621.

Learned Counsel for the appellant contended that all the above decisions support the view of the Industrial Tribunal, Madras that once Section 25-FF is Complied with, the employees of the transferor company cannot have any other relief.

15. At the time of hearing, Mr. Sanjey Mohan, learned Counsel for the appellant cited the following decision in support of his contention. Spencer Group etc., Union v. Industrial Tribunal 89 F.J.R. 728. It has been held as follows:

Having given our careful consideration to all the above decisions, we have no hesitation in holding that after the advent of Section 25-FF of the Industrial Disputes Act, there is no scope for invalidating the transfer of the ownership of management of an undertaking whether by agreement or by operation of law, on the ground that consent of the workmen had not been obtained. All that the workmen had not been obtained. All that the workmen are entitled to is notice and Compensation in accordance with the provisions of Section 25-F of the Industrial Disputes Act. If the workmen was in continuous service for not less than one year and that too only if the proviso to Section 25-FF of the Industrial Disputes Act was not attracted. Where the proviso to Section 25-FF of the Act is attracted and these conditions are satisfied, the workman is not entitled to notice and Compensation in accordance with Section 25-F of the Industrial Disputes Act

from the transferorCompany. It is needless to point out that if the transfer is mala fide or benami in character, then the transfer itself will be not only illegal but it will not have effect in law, and can be ignored. Similarly, if the transfer is not of the undertaking then also Section 25-FF of the Industrial Disputes Act will not be attracted. The attempt of Mr. N.G.R. Prasad on behalf of the workmen to introduce a theory of consent of the workmen for invalidating a transfer of ownership or management of an undertaking is, in our view, futile in view of the plethora of decisions cited above; Therefore, on the first point framed by us, we hold against the workmen that no consent is necessary for invalidating the transfer of ownership or management of an undertaking, within the meaning of Section 25-FF of the Industrial Disputes Act.

16. In support of his contention that what was granted is not a licence, but a lease, Mr. V. Selvaraj, learned Counsel, for respondents 1 to 8 cited:

Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala, ; Qudrat Ullah Vs. Municipal Board, Bareilly, ; Ariff v. Jadunath AIR 1931 EC. 79; Sahu Anand Sarup Vs. S. Taiyab Hasan and Others, .

17. In our opinion, the above judgments have no application to the facts and circumstances of the case. In this case, after tendering compensation and all retrial benefits and notice pay, the service of 147 workers were terminated. The Industrial Tribunal in the award found that the transfer was bona fide and provisions u/s 25-FF were complied with and the workmen of the transferorcompany has no claim barring the right to claim compensation in terms of Section 25-FF and Section 25-F of the Industrial Disputes Act. The above order of the Industrial Tribunal, in our opinion, was correct. In any event, there is no finding that the evidence was not properly considered or parties were not allowed to adduce evidence. In view of the above, remand of the case by the learned single Judge is entirely wrong. Since no infirmity was found out in the award, the learned single Judge, in our opinion, went wrong in remanding the matter. The learned Judge has also omitted to notice that Union did not challenge the award of the Industrial Tribunal, but only 8 persons challenged the award out of 147 employees. Therefore, substantial number of workers have not challenged the award. The award has become final and by remanding the matter, no useful purpose would be served and by remitting the matter, the learned single Judge is only opening a dispute, which was over several years ago. We are fully convinced with the reasonings given by the Industrial Tribunal. There is absolutely no justification for setting aside the award and remanding the matter. The order of the learned single Judge is, therefore, set aside.

18. Both the writ appeals succeed and the writ petition is dismissed. However, there will be no order as to costs.