

(1992) 12 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 19742 of 1992

Workmen of Deccan Sugars

APPELLANT

Vs

Nava Bharat Ferro Alloys Ltd. and others

RESPONDENT

Date of Decision : 11-12-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 25B, 25D, 25F, 25FF

Citation : (1993) 1 LLJ 1211

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Ms. R. Vaigai, for the Appellant;

Judgement

1. Though at the outset I told the counsel that the proper remedy for the petitioners would be to approach the authorities constituted under the

Industrial Disputes Act to get the relief which they want, learned counsel for the petitioners insisted upon the question raised in the writ petition

being decided here. It is submitted that so far no Court has considered the question and given a decision. The point raised in the Writ Petition is

whether in a case of transfer of undertaking, the employer is bound to comply with the requirements of Ss. 25-N and 25-O of the Industrial

Disputes Act (hereinafter called "the Act") which are found in Chapter V-B thereof. In the present case, a notice was issued by the first respondent

namely, Deccan sugar undertaking at Pugalur, Tiruchirapalli District, is transferred to the second respondent E.I.D. Parry (India) Limited effective

10.15 a.m. on November 13, 1992. Consequently, all the employees listed thereunder were informed that they are entitled to compensation under

S. 25-FF of the Act and shall cease to be in employment at 10.15 a.m. on November 13, 1992. It is only in challenge of the said notice the

present writ petition has been filed for a declaration that the non-employment of the workmen of the Sugar Factory at Pugalar on November 13,

1992 by the first and second respondent is illegal, unconstitutional and void ab initio as being contrary to the provisions of the Act and that

consequently, the workmen are entitled to be continued in service with effect from November 13, 1992, with continuity of service, full back wages

and all other benefits on the same terms as under the first respondent until altered in accordance with law.

2. It is admitted that the employees of the first respondent do not automatically become employees of the transferee, the second respondent, on the

transfer of the undertaking. It is the contention of learned counsel for the petitioners that after the introduction of Chapter V-B of the Industrial

Disputes Act, any employer who wants to retrench the workmen shall comply with the provisions of S. 25-N thereof if the undertaking has more

than one hundred workers. It is also contended that in the present case, the transfer of undertaking would tantamount to closure of the undertaking

within the meaning of S. 25-O of the Act and the procedure prescribed therein ought to have been followed.

3. As seen already the notice refers to S. 25-FF of the Act. Under that section where the ownership or management of an undertaking is

transferred, whether by agreement or by operation of law, from one employer 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 provision of S. 25-F, as if the workman had been retrenched. It is not necessary to refer to the Proviso to the Section. The crucial words

used in the section are "as if the workman had been retrenched."

4. The question whether termination of employment on account of a transfer of undertaking or closure of undertaking will amount to retrenchment

was considered by the Supreme Court in Hariprasad v. A. D. Divelkar AIR 1957 S. C. 121. At that time Ss. 25-FF and 25-FFF of the Act were

differently worded. The Supreme Court held that in spite of wide definition of the word "retrenchment" contained in S. 2(oo) of the Act, it had only

the ordinary accepted connotation of the word and it did not include termination of service by closure of undertaking or transfer of undertaking. On

the facts, the Court was concerned with closure of undertaking. In Anakapalla Co-operative Agricultural and Industrial Society Limited Vs.

Workmen, the Supreme Court considered the provisions of S. 25-FF of the Act and held that a legal fiction was introduced by that section for a

limited purpose and on a transfer of undertaking, the cesser of employment was treated as if it was retrenchment and it was not, in fact a

retrenchment. The Court observed that "as if" occurring in S. 25-FF clearly showed the distinction between actual retrenchment under S. 2(oo) of

the Act and termination of service under S. 25-FF of the Act.

5. Subsequently in a number of cases the Supreme Court has considered the provisions of S. 2(oo) of the Act and held that the decisions in above

two cases should be confined to the facts and circumstances of those cases and the definition of retrenchment as found in S. 2(oo) of the Act is

very wide which will include any kind of termination of service excepting that expressly excluded by the section. But none of the cases is related to

a transfer of undertaking governed by S. 25-FF of the Act.

6. The matter is considered in detail by a Constitution Bench of the Supreme Court in Punjab Land Development and Reclamation Corporation

Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, . After referring to all the earlier rulings, the Bench held that

"retrenchment" means termination by the employer of the services of the workman for any reason whatsoever except those expressly excluded in

the Section. Once again the Constitution Bench held that the judgments of smaller Benches were not in any way contradictory to what was held by

the Constitution Benches in the above two cases namely Hariprasad v. A. D. Divelkar AIR 1957 SC 121 and Anakapalle Co-operative

Agricultural and Industrial Society Ltd. v. Workmen and others (supra). Learned counsel for the petitioners took me through several paragraphs of

the judgment of the Supreme Court in Punjab Land Development (supra). They are general discussions of the development of law brought about

by the amendments introduced by the Legislature. The Court also discussed the issue as to when a judgment can be said to be "per incuriam".

7. Learned counsel invited my attention to the ruling of the Supreme Court in Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills

Ltd. and Another, . The Supreme Court had to consider in that case the

Constitutional validity of S. 25-N of the Industrial Disputes Act which was introduced by an amendment in 1976. The Court did not have to consider the scope of S. 25-N of the Act vis-a-vis the operation of S. 25-FF of the Act which was already in the statute. No doubt, the Court has at length referred to the reasons for the amendment of the Act. It is not necessary for me to refer to the same in the present case.

8. Chapter V-B of the Act was introduced by the Act 32 of 1976. That Chapter applies to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months. S. 25-N of the Act sets out the conditions precedent to retrenchment of workmen. S. 25-Q of the Act sets out the procedure for closing down an undertaking. S. 25-S of the Act is of great importance and it reads thus :

The provisions of Ss. 25B, 25D, 25FF, 25G, 25H and 25J in Chapter V-A shall, so far as may apply also in relation to an industrial establishment to which the provisions of this Chapter apply.

9. When the Legislature introduced Chapter V-B it was fully aware of Chapter V-A and the provisions contained therein including S. 25-FF. S.

25-S of the Act makes it applicable also to the large industrial establishments covered by Chapter V-B of the Act. S. 25-FFF of the Act deals

with compensation payable to the workmen in case of closing down of undertakings governed by Chapter V-A. Similarly S. 25-O of the Act deals

with closure of undertakings governed by Chapter V-B. S. 25FFF of the Act is not made applicable to large undertakings. It goes without saying

that in the case of large undertakings having more than one hundred workmen, S. 25-O of the Act will apply and not S. 25-FFF of the Act. But

that is not the position regarding S. 25-FF. The said section is expressly made applicable to all undertakings whether they fall within Chapter V-A

or Chapter V-B. That is the only section which deals with compensation to workmen in case of transfer of undertakings in the entire Act. When the

Legislature has taken care to make that section applicable to the undertakings governed by Chapter V-B also, it is futile to contend that S. 25-N

would apply to termination of employment on transfer of undertakings also even though the section does not refer to it and on the other hand it

refers only to retrenchment. Otherwise, the Legislature would have removed S. 25-FF of the Act as it would be redundant and unnecessary if S.

25-N of the Act is intended to apply to transfer of undertaking too, S. 25-FF of the Act contains a fiction for a limited purpose and it refers to S.

25-F of the Act expressly. Even if S. 25-N of the Act can be held to cover all cases of retrenchment in the sense in which learned counsel wants to

be understood, the Section will be general rule and S. 25-FF of the Act will be a special rule. Special will exclude the general. Hence S. 25-FF is

the only section applicable in this case.

10. Learned counsel for the petitioner contended that transfer of undertaking really amounts to closure of undertaking, or at any rate, should be

equated to the same. For this purpose, reliance is placed on an observation of Supreme Court in Hariprasad's case (supra) that termination of

employment arising on transfer of undertaking and closure of undertaking would not be retrenchment as defined by S. 2(oo). There is no substance

in the argument. The Supreme Court never said that transfer and closure were one and the same. The Court maintained the distinction between the

two situations. The Legislature has not wiped out the same and thought if find to retain S. 25-FF of the Act even while introducing S. 25-N, S. 25-

O of the Act. If the Legislature thought it necessary to equate transfer of undertaking to closure, it would have said so expressly. The fact that two

different sections are kept in the statute book simultaneously, one dealing with transfer and the other with closure proves the unsustainability of the

contention of learned counsel. It should also be remembered that for closure of S. 25-FFF is available. Hence the contention raised by learned

counsel for the petitioners that transfer of undertaking would amount to closure has no merit. In these circumstances, I do not accept the

contentions raised by learned counsel for the petitioners. The Writ Petition is without any merit and is dismissed.