

**(1990) 08 KAR CK 0010**

**In the Karnataka High Court**

**Case No : Writ Petition No. 18310 of 1988**

Workmen of Karnataka Agro Proteins Ltd.

APPELLANT

Vs

Karnataka Agro Proteins Ltd. and others

RESPONDENT

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**Date of Decision : 10-08-1990**

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226

Industrial Disputes Act, 1947 — Section 25 FF

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16 (4)

**Citation : (1991) 63 FLR 216 : (1991) ILR (Kar) 244**

**Hon'ble Judges : R. Ramakrishna, J**

**Bench : Single Bench**

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## **Judgement**

1. The General Secretary, Employees Union of Karnataka Agro Proteins Ltd. (K.A.P.L.), has filed this writ petition under Article 226 of the Constitution of India praying for the issue of a writ of mandamus or other appropriate order or direction directing the respondents to transfer the ownership of the first respondent to the 3rd respondent subject to the third respondent absorbing and continuing the service of the workers working in the first respondent company at Raichur and the registered office at Bangalore.

2. The first respondent is a body corporate incorporated under the provisions of the Companies Act. 1956. The Karnataka Agro Industries Corpn. Ltd. (K.A.I.C.), the Karnataka Agro Industrial Investment Corpn. Ltd. (K.S.I.I.D.C.) and some financial institutions hold shares of the first respondent.

3. The Government of Karnataka by its Notification No. CI 119 PUM 88(1) dated December 2-5, 1988 has declared the first respondent company as "Relief Undertaking" for a period of two years from December 2, 1988 u/s 3 of the Karnataka Relief Undertaking (Special Provisions) Act, 1977, with a view to enable the continuous running of the undertaking and for providing relief against unemployment.

4. The first respondent-company which was engaged in the manufacture of

edible refined oils and oil cakes, has suffered accumulated losses on March 31, 1987, amounting to Rs. 406.71 lakhs. The capacity utilisation came down to 15 to 20% while the break-even point was 60%. Therefore, a reference was made to the Board for Industrial and Financial Reconstruction (BIFR) Delhi, for determining the measures to be adopted under the Sick Industrial Companies (Special Provisions) Act, 1985, with respect to the company. After an enquiry in Case No. 269 of 1987, the Board for Industrial and Financial Reconstruction has declared the first respondent as a sick industrial company u/s 16(4) of the Sick Industrial Companies (Special Provisions) Act, 1985, and directed notice to the first respondent to show cause why it should not be wound up under the provisions of the Act.

5. The petitioner-Union, after it came to know about the proceedings, has participated in the deliberations and objected to the Board declaring the first respondent as a sick industrial undertaking and that the company should be wound as declared by them.

6. After due deliberations by the various authorities concerned, an offer was made to the third respondent to take over of the first respondent plant by the third respondent. The third respondent, vide his letter dated October 22, 1987, Annexure "D" to the writ petition, stated that he agreed to take over the first respondent plant though there was a heavy accumulated loss at a cost of Rs. 258 lacks subject to the following conditions :

(1) KOF would not be required to take over any of the employees of KAPL. Ex. KAPL employees, who, entirely on merits may be appointed by KOF in its sole discretion and judgment, will be de novo open market appointees of KAPL.

(2) KOF will not have any further responsibility under any circumstances for the residual liabilities of KAPL on any account whatsoever.

7. It is contended by the further petitioner that respondents 1 and 2 are not justified in selling the assets of the first respondent to the third respondent without ensuring continuity of service of the workmen working in the first respondent-company at Raichur and Bangalore as required under the proviso to Section 25-FF of the Industrial Disputes Act. The main purpose of declaring the first respondent-company as a "Relief Undertaking" was too ensure continuous running of the industrial undertaking and to give relief against unemployment to the workers. Respondents Nos. 1 to 3 being "State" or "other authorities" under Article 12 of the Constitution of India cannot conduct themselves in a manner alleged above without concern for the fate of the workers of the first respondent establishment.

8. The first respondent in his objection statement to this writ petition has mainly contended that the first respondent is not an instrumentality or agency of the State and is, therefore, outside the purview of Article 12 of the Constitution of India. Mere apprehension of the petitioner would not give rise to any cause of action and the writ petition is liable to be dismissed. He also denied the averment

that the plant and machinery of the first respondent will be sold to the third respondent on the terms and conditions stipulated by the latter as there is no final decision taken in the matter and it is only in the process of offer and acceptance. It is further contended that this respondent is a body corporated competent, among other things, to enter into contracts, buy and sell its assets. This right cannot be restricted or curtailed by imposing a condition on the buyer which is opposed to the law governing transfer of properties and assets. The writ petition is liable to be dismissed on the ground that the petitioner has no legal right to compel this respondent to transfer its assets subject to the condition that the workman employed by its are also transferred to employment of the intending buyer of the assets. The petitioner has no such legally enforceable right and even on this score, the petition is liable to be dismissed.

9. The third respondent has contended that they are co-operative societies registered under the Karnataka Co-operative Societies Act to carry out activities conducive to economic and socio-economic development of agriculturists by organising effectively production, procurement, processing and marketing of commodities. Neither the State nor the Central Government have contributed any capital, hence it is not an "authority" under Article 12 of the Constitution of India. The prayer of the petitioner for mandamus is misconceived and is wholly untenable in law and on facts. This respondent at the instance of respondent Nos. 1 and 2 and the secured creditor of respondent No. 1 had only agreed to consider the purchase of the fixed assets of this company whose net worth is minus Rs. 3.3 crores. It is further contended that the legal position does not warrant taking over of the concern along with the workman as the first respondent company is already overburdened by heavy loss and it is further contended that no one can be compelled to purchase a thing against his will and more so on conditions unacceptably to the buyer. The conditions stipulated for this purchase as above are lawful, fair and just and are beyond reproach.

The writ petition discloses misconception regarding the true scope and effect of Section 25-FF of the Industrial Disputes, Act. That section guarantees to the employees compensation in case of transfer as if they were retrenched u/s 25-F of the Industrial Disputes Act.

10. It is admitted that the first respondent company, due to various reasons, has become economically unviable and to safeguard the interest of the creditors and also to make the industry economically viable, the third respondent agreed to take over subject to the conditions stated supra.

11. Learned counsel for the petitioner, Sri D. Leelakrishana, has submitted that if the conditions imposed by the third respondent are accepted, then there will be unemployment of the workmen who are presently engaged in the first respondent-company and hence this Court, acting under Article 226 of the Constitution, can issue continue the service of the workmen in the transferee-company.

12. Sri S. Vijayashankar, learned counsel for respondent No. 1 has submitted that he accumulated loss is growing higher and higher everyday due to various reasons and since the first respondent company is a body corporated incorporated under the provision of the Companies Act, winding up proceedings should be initiate as per the direction given by the Board for Industrial and Financial Reconstruction or the company should be handed over to the third respondent for running the same under its management. Learned counsel further submitted, that since the matter is not finalised, it is premature to get a direction from this Court directing the third respondent that at the time of transfer of ownership, the third respondent should absorb and continue the services of the workman of the first respondent company.

13. Learned counsel for respondent No. 3, Sri R. J. Babu, submitted that if they took over the ownership of the first respondent, which is minus Rs. 3.3 crores worth, it cannot be burdened with absorbing all the workmen as it has to plan for employing the required number of workmen in accordance with the capital outlay and if it is burdened it is burdened with taking the workmen who are presently engaged in the first respondent, it cannot think of purchasing the company. Learned counsel further submitted that initially the petitioner has no legal right to pray this Court to give a direction of this nature and the third respondent is not duty-bound to take the employees to have more burden after taking over the first respondent-company.

14. It is true that only two alternatives are left open for the first respondent, i.e., to wind up under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, or to transfer the ownership in favour of the third respondent to continue the manufacturing activities of the company. Whenever a transaction of this nature has taken place, the purchaser should not be burdened with conditions detrimental to his interest when the law is very clear on the point.

15. Section 25-FF of the Industrial Disputes Act provides 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 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 provisions of Section 25-F as if the workman had been retrenched.

Section 25-F of the Industrial Disputes Act prescribes the conditions precedent to retrenchment of workmen such as giving one month's notice in writing intimating the reasons for retrenchment and payment of compensation in accordance with the said section.

16. In Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, where the sale of an industrial concern and its effect on the services of the workman came up for consideration, it was held thus (pp. 629-630) :

"The Solicitor-General contends that the questions in the present appeal has now

to be determined not in the light of general principles of industrial adjudication, but by reference to the specific provisions of Section 25-FF itself. He argues, and we think rightly, that the first part of the section postulates that on a transfer of the ownership or management of an undertaking, the employment of workmen engaged by the said undertaking comes to an end, and it provides for the payment of compensation to the said employees because of the said termination of their service, provided, of course, they satisfied the test of length of service prescribed by the section. The said part further provides the manner in which and the extend to which the said compensation has to be paid. Workmen shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, says the section, as if they had been retrenched. The last clause clearly brings out the fact that the termination of the service of the employees does not in law amount to retrenchment and that is consistent with the decision of this Court in Hari-prasad's case (1957 I LLJ 243). The Legislature, however, wanted to provide that though such termination may not be retrenchment technically so-called, as decided by this Court, nevertheless, the employees it question whose service are terminated by the transfer of the undertaking should be entitled to compensation, and so, Section 25-FF provides that on such termination compensation would be paid to them as if the said termination was retrenchment. The words "as if" bring out the legal distinction between retrenchment defined by Section 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer with which it deals. In other words, the section provides that though termination of services on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the said termination was retrenchment. This provision has been made for the purpose of calculating the amount of compensation payable to such workmen, rather than provide for the measure of compensation over again, Section 25-FF makes a reference to Section 25-F for that limited purpose, and, therefore, in all cases to which Section 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern.

The scheme of the proviso to Section 25-FF emphasises the same policy. If the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law, and so, there is no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading Section 25-FF as a whole, it does appear that unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. Thus, the effect of the enactment of Section 25-FF is to restore that position which the Legislature had apparently in mind when Section 25-FF was originally enacted on September 4, 1956. By amending Section 25-FF, the Legislature has made it clear that if industrial undertakings are transferred, the employees of such transferred undertaking should be entitled to compensation, unless, of course, the continuity in their service or

employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso."

17. In *The Central Inland Water Transport Corporation Ltd. Vs. Their Workmen*, it is reiterated that on a transfer of ownership or management of an undertaking, the employment of workmen engaged by the said undertaking comes to an end, and compensation is made payable because of such termination. In all cases to which 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern.

18. In view of the law being settled, this Court cannot give a special direction to the respondents to transfer the ownership of the first respondent to third respondent subject to the third respondent absorbing and continuing the services of the workmen working in the first respondent-company at Raichur and its registered office at Bangalore.

19. In view of the foregoing, this writ petition is dismissed.

20. There is no order as to costs.