

**Mr. M. Shashikumar and ors. Vs. the Management of Bpl Limited
Represented by Its Authorised Signatory Mr. M. Jebakumar and**

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SooperKanoon Citation : sooperkanoon.com/386696

Court : Karnataka

Decided On : Sep-12-2008

Reported in : (2009)IIILLJ66Kant; 2009(2)AIRKarR530(D.B)

Judge : Manjula Chellur and; A.N. Venugopala Gowda, JJ.

Acts : Industrial Dispute Act, 1947 - Sections 2, 10, 10(4), 25F, 25FF, 25FFF, 25G, 25H and 33C(2); Contract Act - Sections 23; Madras State Electricity Supply Undertakings (Acquisition) Act, 1954

Appeal No. : Writ Appeal Nos. 1082 and 1219/2007

Appellant : Mr. M. Shashikumar and ors.;The Management of Sanyo Bpl Private Limited Represented by Its Authorise

Respondent : The Management of Bpl Limited Represented by Its Authorised Signatory Mr. M. Jebakumar And; the Mana

Advocate for Def. : Kasturi, Sr. Counsel,; Kasturi Assts, Adv. for R1, R2 and R38 and; T.S. Anantharam, Adv. for R1 to 37

Advocate for Pet/Ap. : T.S. Anantharam and; B.C. Prabhakar, Advs.

Judgement :

Manjula Chellur, J.

1. The appellants in W.A.I 082"07 were the workmen of the first respondent - (BPL Limited) working in one of the units wherein the unit was engaged in the manufacture of components of electronic products connected with colour television business.

2. The first respondent said to have entered into transfer agreement with the second respondent M/s Sanyo BPL, Private Limited on 14.12.2005. The relevant Clause 5.1 of the Business 'Transfer Agreement (hereinafter referred to as 'BTA') pertaining to employees matters indicates 'parties agree that the employees of the BPL Ltd (transferor or seller) shall become the employees of the Sanyo BPL (transferee or purchaser) on and from the closing date subject to terms and conditions set out in the employment contract to be executed between such employee and the transferee/purchaser. In advance, a notice came to be displayed by transferor dated 9.12.05 advising employees to accept the employment with the second respondent. If not, such employee would be given such service benefits applicable along with the gratuity etc. available as on 14.12.2005. As per the offer of employment in the respondent purchaser company, it was subject to condition that the employee concerned should settle the accounts with the seller or previous employer and seller should deliver to the purchaser a letter to that effect that accounts of such employee whoever was willing to join the service of second respondent were settled. It is not in dispute that the details of all the names of employees who were working for first respondent were set out at Annexure No. 2 to the BTA. Most of the employees accepted such offer except appellants 1 to 37. The compensation payable Under Section 25FF of Industrial Dispute Act (for short, referred to as the 'Act') sent to appellant employees was returned to the management.

3. Aggrieved by the same, the appellants approached the Labour Court which was contested by the management. It is not in dispute that only 37 employees neither accepted the employment nor the compensation offered by the management in terms of Section 25-FF of the Act.

4. In the dispute before the Labour Court, these 37 employees contended that all of a sudden, first respondent BPL refused to give work, to them from 1511 ' December 2005 onwards without assigning any valid and genuine reasons. It is further contended that the first respondent had obtained resignation letters from majority of the employees on 14.12.2005 by using coercion, undue influence and duress on the ground that business of the first respondent company has been transferred to second respondent Sanyo BPL.

5. The workers who were under the threat of losing their jobs after discontinuing their services with first respondent have taken fresh employment at second respondent Company. Some of the workmen protested and refused to tender resignation by not accepting the new terms and conditions of the employment. According to the appellants, this was nothing but a clear case of unfair labour practice by pressurising the employees who were in despair. According to them, as the first respondent BPL is still functioning having its several units at various places, the first respondent could have transferred the services of first respondent employees to various other units. According to them, both the first respondent BPL and second respondent Sanyo BPL are one and the same for the purposes of business transactions. There is no question of any of the employees discontinuing the services under the first respondent and therefore, they claimed re-instatement with continuity of service with full back wages and other consequential benefits contending that their termination is illegal and unjustifiable.

6. The first and second respondent management contested the matter before the Labour Court on the ground that the dispute Under Section 10 of the Act is not maintainable. Because of the transfer of undertaking by the first respondent, the second respondent company is manufacturing colour televisions and the first respondent BPL cannot manufacture the colour televisions any more. In accordance with the procedure, as the first respondent ceased to manufacture the colour televisions, it cannot give any employment and it had offered compensation in compliance of terms of Section 25-FF of the Act.

7. Well in advance as on 9.12.2005, all the employees of the first respondent company were informed about the transfer of undertaking and also the offer of

employment to employees of the first respondent by the second respondent - Sanyo BPL Co. on fresh terms and conditions. The employees who did not accept the employment with second respondent were given the benefits along with gratuity by settling their accounts as on 14.12.2005. Out of 496 employees, 459 had joined the second respondent transferee company. The first respondent could not have given anything better than the offer of employment and also compensation as required in law. Therefore, question of first respondent dismissing or refusing employment to the appellants would not arise.

8. According to the second respondent company, it is not even a necessary party to the proceedings. In furtherance of terms of business transfer, it was agreed that all the dues to the employees by the first respondent BPL were required to be settled on the closing date i.e. 14.12.2005 so that no employee could hold the second respondent Sanyo BPL liable for any dues that remained unpaid which arose prior to the closing date 14.12.2005, There is no relationship of employer and employee between the appellant and Sanyo BPL. Therefore, the dispute in question has nothing to do with the second respondent Company M/s Sanyo BPL. The question of second respondent company exploiting, exercising unfair trade practice or subjecting the employees to difficulties would not arise as there is no relationship of employer and employee between the appellants and second respondent. In strict compliance of business transfer agreement (BTA), Ms Sanyo BPL is functioning and there is no obligation on its part to continue the employees of BPL on account of transfer, Therefore, the second respondent company cannot be made liable for alleged termination or claim of backwages or compensation.

9. Both the parties had given evidence before the labour Court. The Labour Court passed a common award on 8.9.05 holding that the termination of appellant-workman was illegal and directed the respondent Nos. 1 & 2 to reinstate the services of appellants with continuity of service with full backwages and other consequential benefits. This came to be challenged before the learned Single Judge on several grounds.

10. The two managements contended that the order of the Labour Court was not justified in directing the reinstatement apart from holding continuity of service etc,

ignoring the fact of Section 25-FF of the Act including the proviso thereon, The learned Single Judge held that the Labour Court was not justified to proceed on the assumption that there is continuity of service of all the employees of first respondent in the unit of second respondent by virtue of first respondent holding 50% of the share in the second respondent company. The learned Single Judge after referring to the terms of BTA, held that the transferee company has not taken the responsibility of continuing the services of the workmen and it had only offered to accept the employees of the first respondent company as fresh employment on such terms and conditions as per the contract of employment. Therefore, he further held that the second respondent-transferee company was in no way responsible for the liabilities due or any benefits available to such employees of the first respondent upto 14,12.2005.

11. By virtue of this reversal order, the dispute which was held in favour of the appellants by the Labour Court was set aside holding that whoever agreed to accept the fresh employment with. the transferee company will become the employees of the transferee company as if they were appointed by the transferee company for the first time and whatever dues or benefits available to them from the first respondent company were to be settled with the first respondent company and the second respondent company is not liable, to pay or comply with those benefits at any rate. Aggrieved by this, the present appeal (W.A. No. 1082/07) is filed by 37 employees who refused to accept the fresh employment with the transferee company contending that they are entitled for continuity of service with full backwages and other consequential benefits, as if there is no business transfer at all.

12. The second appeal W.A. 1219/07 is filed by the transferee company though the 37 agitating employees did not get any major relief because of the directions of the learned Single Judge to consider the case of these 37 employees for fresh employment as if voluntarily they are joining the transferee company on par with other 459 employees.

13. In the first appeal the appellants contend that the terms and conditions of the BTA is not in accordance with the provisions of Section 25-FF of the Act and

therefore, even if the employees of transferor company joined the transferee company, there is no interruption of service by such transfer, therefore, it cannot be a fresh employment. They further contend that the transfer or the transaction has to be taken place in a simple manner either under the first part of Section 25-FF or the proviso to Section 25-FF of the Act. If there was a transfer in real sense by the transferor to the transferee, there was no need to insist the resignation, of the employees to set new employment or fresh employment with the transferee company. The learned Single Judge did not divert his attention to this aspect. I under the guise of transfer of undertaking, both the managements are playing a trick on the employees and such act of the managements cannot deprive the benefits available to the workmen either in terms of money or in terms of service. The transferor company has cheated all such workers by influencing them to resign and the transferee company has persuaded them to accept fresh employment. Therefore, it is in clear violation of Part I of Section 25-FF of the Act is the contention of the agitating employees. The terms of BTA should be general in nature without causing any difficulty to the employees. In other words, it should not be detrimental to the interest of the employees. The learned Single Judge was not justified in not clarifying the terms and conditions of BTA in the real sense and even if there was a doubt, he ought to have interpreted the same as advantageous to the employees and not otherwise. With these averments, the agitating appellants have sought for setting aside the orders of the learned Single Judge by confirming the award passed by the labour court.

14. The transferee company who is the appellant in the second appeal is questioning the directions of the learned Single Judge to consider the representation of the agitating employees, if any, for fresh employment on par with 459 employees who voluntarily accepted the fresh employment of the transferee company. The learned Judge having come to conclusion that there is no relationship of employer and the employee between the transferee company and the agitating employees, ought not to have made such a direction as it is totally unwarranted. As a matter of fact, the transferee company did even plead its inability to accommodate the agitating employees numbering 37 for fresh employment having regard to the subsequent developments. With these averments, the transferee company has questioned this portion of the learned

Single Judge's order.

15. Section 25-FF of the Act, reads as under:

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 25F. 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-

- 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 transferor 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.

16. Learned Counsel for the appellant relies upon the following decisions in support of his contentions:

1. 2005(11) 1092 (MP) in the case of Mhow Hosiery (P) Ltd. v. Jitendra Nirvan Singh reported in 2005 (II) LU 1092 (MF):
2. : [1975]1SCR153 in the case of Central Inland Water Transport Corporation Ltd v. The Workmen and Anr.:

3. : (1964)ILLJ333SC in the case of Workman of Subong Tea Estate v. Subong Tea Estate Industrial Disputes Act Section 25F, 25FF,25G and 25H.
4. : (1991)ILLJ76SC in the case of Gurmau Singh and Ors. etc. v. State of Punjab and Ors.
5. 1953 (I) LLJ 14, High Court of Judicature, Bombay, Bombay Garage Ltd. v. Industrial Tribunal.
6. : (2006)ILLJ899SC in the case of Management of Metlur Beard Sell Ltd. v. Their workmen reported in : (2006)ILLJ899SC
7. 1984(11) LLJ in the case of Swastik Textiles Engineering (P) Ltd. v. Rajansingh Sant Singh
8. : (1989)ILLJ134Bom in the case of Vaman Mainly Gharat and Ors. v. M.P. Apte and Ors.

In the first case pertaining to MIIOW Hosiery Pvt.Ltd., the question was whether there was any undue influence applied by the employer on the workmen to submit resignation? According to the workmen before the Labour Court, his resignation was not voluntary but was by bringing pressure and undue influence. However, the Labour Court agreed that there was no pressure or undue influence and the resignation was voluntary. In an appeal before the Industrial Court, it was held in favour of the workman, therefore, the management company questioned the same by filing the writ petition. Their Lordships while referring to judgements of apex court in Laldip Parishat Jaiswal; Central Inland Water Transport case and Chairman and MD, NTPC Ltd. case, ultimately held that the resignation letter submitted by the workman was not voluntary and the petitioner exercised due influence and coercion to obtain the same. This case of the year 2005 mainly refers to question of definition of 'undue influence' and how such act should be considered by facts and circumstances of each case.

In the present case, according to the appellant employees, there was pressure on the employees to accept the fresh employment with transferee company and such employees who were in dire necessity, did not want to lose the opportunity, hence

accepted fresh employment with the transferee company.

The second case is Central Inland Water Transport Case. In the said case, the issue of controversy was whether the Rule enabling the employer to discharge services of permanent employee is opposed to public policy and void under Section 23 of the Contract Act, and so also, violative of Article 14 of the Constitution, It was ultimately held that resignation becomes effective only when it was accepted. This was the case referred to in Mhow Hosiery Pvt. Ltd.,

The third referred case is of Subang Tea Estate case where Sections 25-F, 25-FF, 25-G and 25-11 of Industrial Dispute were gone into in detail. The tea estate was owned by a company. There was a contract to sell the tea gardens. Pending execution of sale deed of tea gardens, the vendee took possession of and assumed control and management of the tea gardens. Subsequently, some of the workmen of the vendor company were retrenched. Their Lordships held that to such case, provisions of Section 25-FF of the I.D. Act would not be applicable and held that inspite of accepting retrenchment compensation by such workmen, they could still challenge the retrenchment itself. Their Lordships opined as stated above, because of non-compliance of statutory provisions of Section 25-G of the Act, when retrenchment was effected. While referring to the normal situation or circumstance which arises in an industrial undertaking like number of employee exceeding the reasonable and legitimate need of the undertaking, the workmen force may be surplus on account of rationalisation or on the ground of economy, reasonably and bonafidely adopted by the management were held as justifiable grounds in effecting retrenchment in its labour force by the management. Though normally the right of the management to effect retrenchment cannot be questioned, but in a dispute regarding the validity of retrenchment, it is necessary to adjudicate such question that is to consider whether the impugned retrenchment was justified for proper reasons.

The next case is Gurmail Singh and others. Their Lordships while discussing the rights of retrenched workmen, who claimed continuity of service with successor-in-interest, held that the Courts have to see whether the transfer is fictitious or benami and in such cases, Section 25-FF has no application and workmen can

claim continuity of service. Where the transferor and the transferee are virtually same, the workmen can claim continuity of service with successor and third type of cases are where the transferor and the transferee are same or state instrumentality, Court can examine and review arrangements under which undertaking is proposed to be transferred and continuity of service could be ordered if complete succession to the business or undertaking exists. Court can ensure in such cases that no injustice results from changeover.

In the case of *Bombay Garage Ltd. v. Industrial Tribunal*, on the file of Bombay Judicature, the Court held that an employer cannot deprive his employees of the benefits that have accrued to them by reason of past services merely by transferring his business to another person or to another limited company; for the work done by the employees is primarily for the benefit of the concern although the owner also derives benefit therefrom; that, therefore, a new employer is bound to take into account the services rendered by them to their predecessor-in-title.

The next case pertains to *Mettur Beardsell Ltd.* In this case, the workmen of company called Mettur Beardsell transferred its textile operation to Mettur Textiles Pvt. Ltd, in or about 1982. Their workmen contended that they continued to be the workman of Beardsell. Said plea was rejected by the Industrial Tribunal. A writ petition came to be filed by the workmen and the same was disposed of in their favour. Challenging the same, an appeal came to be filed. Mettur Textiles workmen were also given notice of retrenchment. When the matter came up before the Supreme Court, their Lordships while referring to the three conditions prescribed at Clauses (a)(b) & (c) of the proviso to Section 25-FF of the ID. Act, held the conditions being satisfied. In the said case, the employees were informed of the transactions at all relevant points of time. Nearly 2500 employees had accepted that the transfer was genuine. Only 27 employees pressed their grievances. Out of them, 9 employees did not pursue. After referring to several earlier cases including *Anakapalli Coop* case at paragraph 15,16 & 17 their Lordships held as under:

Paragraph 15: Section 25-FF of the Act provides, inter alia, 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 satisfies the test prescribed in that Section shall be entitled to notice and compensation in accordance with the provisions of Section 25FF as if the workmen had been retrenched. This provision shows that workmen falling under the category contemplated by it, are entitled to claim retrenchment compensation in case the undertaking which they were serving and by which they were employed is transferred. Such a transfer, in law, is regarded as amounting to retrenchment of the said workmen and on that basis Section 25FF gives the workmen the right to claim compensation.

Paragraph-16. There is, however, a proviso to this Section which excludes its operation in respect of cases falling under the proviso. In substance, the proviso lays down that the provision as to the payment of compensation on transfer will not be applicable where, in spite of the transfer, the service of the workmen has not been interrupted, the terms and conditions of service are not less favourable after transfer than they were before such transfer, and the transferee is bound under the terms of the transfer to pay to the workmen, in the event of their retrenchment compensation on the basis that their service had been continuous and had not been interrupted by the transfer. The proviso, therefore, shows that where the transfer does not affect the terms and conditions of the employees, does not interrupt the length of their service and guarantees to them payment of compensation, if retrenchment were made, on the basis of their continuous employment, then Section 25-FF of the Act would not apply and the workmen concerned would not be entitled to claim compensation merely by reason of the transfer. It is common ground that the three conditions prescribed by Clauses (a), (b), and (c) of the proviso are satisfied in this case, and so, if Section 25-FF were to apply, there can be little doubt that the appellant would be justified in contending that the transfer was valid and the 57 employees can make no grievance of the said transfer. The question, however, is: Does Section 25-FF apply at all?

Para 17. It would be noticed that the first and foremost condition for the application of Section 25-FF is that the ownership or management of an undertaking is transferred from the employer in relation to that undertaking to a new employer. What the section contemplates is that either the ownership or the management of

an undertaking should be transferred; normally this would mean that the ownership or the management of the entire undertaking should be transferred before Section 25-FF comes into operation. If an undertaking conducts one business, it would normally be difficult to imagine that its ownership or management can be partially transferred to invoke the application of Section 25-FF. A business conducted by an industries undertaking would ordinarily be an integrated business and though it may consist of different branches or departments they would generally be interrelated with each other so as to constitute one whole business. In such a case. Section 25-FF would not apply if a transfer is made in regard to a department or branch of the business run by the undertaking and the workmen would be entitled to contend that such a partial transfer is outside the scope of Section 25-FF of the Act.

The next case is Swastik Textile Engineering in the High Court judicature. Gujarat. This case was relied upon by the learned Counsel for the appellant to contend that workmen were not bound to execute written undertaking.

The next case pertains to Vaman Maruty Gharat and Ors. v. M.P. Apte and ors. on the file of High Court judicature, Bombay. This case was pressed into service by the appellant's counsel in order to contend that the refusal of the second management...respondent to give work, to the appellants without any undertaking would amount to lock, out, which not being in accordance with law, would be an illegal lock out.

By relying on these decisions, learned Counsel for the appellant contended that majority of the workmen under the threat of losing their jobs, after discontinuing their service with the first respondent, took, up fresh employment with second respondent company which is an undue pressure on the employees. He also contends that first and second respondent are one and the same, therefore, there is no question of discontinuing the service under the first respondent and he contends that there is continuity of service with all past and future benefits.

17. According to the first respondent, on account of financial constraints, the first respondent had transferred the unit concerned with the manufacture of colour televisions to the second respondent, therefore, the appellant workman can only

claim compensation in compliance of terms of Section 25-FF of the Act. Mr Kasturi, learned Counsel for the respondent No. 1 further contends that though they were not under any obligation to arrange any fresh employment for the employees of first respondent with the second respondent, the respondent No J shouldered the responsibility of securing fresh employment for all the 496 employees with the second respondent after constantly and well-in-advance notifying the same on the notice board to all the employees concerned. In the process, the employees not only were given compensation as required in law, but also offer of fresh employment with the second respondent. In support of his submissions, he relied upon the following citations:

1. : (2006)IILLJ899SC (Management, Mettur Beardsell Ltd and Workmen of Mettur Beardsell Ltd. and Anr.)
2. : (1962)IILLJ621SC (Anakapalla Co-operative Agricultural and Industrial Society and Its workmen and others)
3. : AIR 1993 SC1388 in the case of Gurmail Singh and Ors. etc. etc. v. State of Punjab and Ors.
4. : (1970)IILLJ429SC (Parry and Co. Ltd. and P.C. Pal and Ors.)
5. : [1975]1SCR153 (Central Inland Water Transport Corporation Ltd. v. The Workmen and Anr.)
6. : (1981)IILLJ218SC (Firestone Tyre and Rubber Co. of India Pvt. Ltd. and Workmen

In Mettur Beardseil Limited the management of the Company transferred its textile operation to Mettur Textiles Pvt. Ltd. in or about 1982, The workmen of the Beardseil approached Industrial Tribunal contending that they still continue to be the workmen of Beardseil, This was rejected by the Tribunal but the High Court in the writ petition accepted the case of the workmen and writ appeal therefrom. Workmen in the Mettur Textile division were given notice of retrenchment which was upheld by the Industrial Tribunal and So also by the learned Single Judge but

not in a writ appeal by workmen. The said two judgements and so also Judgment of the workmen in contempt appeal setting aside the order of Single Judge for contempt were taken to Apex Court in the appeals Their Lordships after examining the entire material on record ultimately held that in the absence of specific averment of fraud (in transfer) and no evidence being let in, held that all the 3 conditions prescribed in (a,b,c) of proviso to Section 25-FF of the Act were satisfied and directed for the disbursement of balance amount deposited depending upon their entitlement. In this case, their Lordships held that the conclusions in the impugned judgements was on the premise as if the 27 employees alone were targeted. They also observed that at all the relevant point of time, the employees were informed of the transactions and out of 2500 employees, only 27 had grievance initially and out of said 27, 9 were not pursuing the matter. Therefore, they upheld the orders of the Industrial Tribunal rejecting the claim of the workmen. 'Their Lordships in this Judgment referred to case of Maruti Udyog Limited : (2005)ILLJ853SC wherein the distinction between 25FF and 25FFF were dealt in depth. In this Maruti Udyog Limited, the expression used 'as if in Section 25-FF and Section 25-FFF was the point for discussion and held that the word 'as if is of great significance. It was also held in this case that once a transfer or a valid closure comes into effect, the relationship of employer and employee takes effect and compensation alone is required to be paid to the workmen. They also refer to Management of R.S. Maddhoram and Sons v. Workmen : [1964]5SCR379 and so also relied on Anakappalli Case reported in : (1962)ILLJ621SC . After referring to the above three cases, their Lordships proceed to say the correct position of law at paras 15,16,17,18, & 19, which reads as under:

Paragraph 15: Section 25-FF of the Act provides inter alia 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 satisfies the test prescribed in that Section shall be entitled to notice and compensation in accordance with the provisions of Section 25-FF as if the workmen had been retrenched. This provisions shows that workmen falling under the category contemplated by it, are entitled to claim retrenchment compensation in case the undertaking which they were serving and

by which they were employed is transferred. Such a transfer, in law, is regarded as amounting to retrenchment of the said workmen and on that basis Section 25-FF gives the workmen the right to claim compensation.

16. There is, however, a proviso to this Section which excludes its operation in respect of cases tailing under the proviso. In substance, the proviso lays down that the provision as to the payment of compensation on transfer will not be applicable where, in spite of the transfer, the service of the workmen has not been interrupted, the terms and conditions of service are not less favourable after transfer than they were before such transfer, and the transferee is bound under the terms of the transfer to pay to the workmen, in the event of their retrenchment compensation on the basis that their service had been continuous and had not been interrupted by the transfer. The proviso, therefore, shows that where the transfer does not affect the terms and conditions of the employees, does not interrupt the length of their service and guarantees to them payment of compensation, if retrenchment were made, on the basis of their continuous employment, then Section 25-FF of the Act would not apply and the workmen concerned would not be entitled to claim compensation merely by reason of the transfer. It is common ground that the three conditions prescribed by Clauses (a), (b) and (c) of the proviso are satisfied in this case, and so, if Section 25-FF were to apply, there can be little doubt that the appellant would be justified in contending that the transfer was valid and the 57 employees can make no grievance of the said transfer. The question, however, is: Does Section 25-FF apply at all?

17. It would be noticed that the first and foremost condition for the application of Section 25-FF is that the ownership or management of an undertaking is transferred from the employer in relation to that undertaking to a new employer. What the section contemplates is that either the ownership or the management of an undertaking should be transferred, normally this would mean that the ownership or the management of the entire undertaking should be transferred before Section 25-FF comes into operation. If an undertaking conducts one business, it would normally be difficult to imagine that its ownership or management can be partially transferred to invoke the application of Section 25-

FF. A business conducted by an industries undertaking would ordinarily be an integrated business and though it may consist of different branches or departments they would generally be interrelated with each other so as to constitute one whole business. In such a case, Section 25-FF would not apply if a transfer is made in regard to a department or branch of the business run by the undertaking; and the workmen would be entitled to contend that such a partial transfer is outside the scope of Section 25-FF of the Act.

18. It may be that one undertaking may run several industries or businesses which are distinct and separate. In such a case, the transfer of one distinct and separate business may involve the application of Section 25-FF. The fact that one undertaking runs these businesses could not necessarily exclude the application of Section 25-FF solely on the ground that all the businesses or industries run by the said undertaking have not been transferred. It would be clear that in all cases of this character the distinct and separate businesses would normally be run on the basis that they are distinct and separate, employees would be separately employed in respect of all the said businesses and their terms and conditions of service may vary according to the character of the business in question. In such a case it would not be usual to have one muster-roll for all the employees and the organisation of employment would indicate clearly the distinctive and separate character of the different businesses. If that be so, then the transfer by the undertaking of one of its businesses may attract the application of Section 25-FF of the Act.

19. It was submitted by the teamed Counsel for the respondent that fraud was involved. The conclusions of the learned single Judge and the Division Bench, proceeded on the premise^ as if the 27 employees in question were targeted; In order to establish fraud there has to be specific averments or materials adduced to establish the same. In the instant case there was no specific averment in that regard and in any event no evidence was led. The High Court seems to have lost sight of the fact that huge amount of money had already been paid. It has not established that the purpose was to target the 27 employees and for that purpose the appellant spent huge amount of money. Undisputedly the employees were informed of the transactions at all relevant points of time. It is also not disputed by

learned Counsel for the respondent that nearly 2500 employees have accepted that the transfer is genuineness and out of 27 employees who originally pressed their grievances, nine are not pursuing it. The Tribunal had rightly noted these aspects. Unfortunately learned single Judge and the Division Bench made out a new case of fraud and the transaction to be 'sham'. The solitary material on which decisions of learned single Judge and the Division Bench was founded is one receipt showing payment for one month. The explanation given in 'that regard does not appear to have been considered in its proper perspective by the High Court.

The next case referred was Anakappalla Co-operative Agricultural and Industrial Society and its workmen and Others wherein it is held as under:

The first question which fails to be considered in this appeal is whether the appellant is a successor-in-interest of the Company. The learned Solicitor General contends that the agreement of sale under which the appellant has arrived on the scene, clearly shows that it cannot be treated as a successor-in-interest of the company. The terms of the agreement of sale show that the appellant has left with the company a part of its land, its investments to the tune of Rs. 19 lakhs and its liability to the tune of Rs. 27 lakhs.....The argument, therefore, is that though the work of the company was, in a sense, a going concern when it was purchased by the appellant the appellant had not purchased the entire concern including the goodwill; and so, it would be inappropriate to describe the appellant as the successor-in-interest of the company.....On the other hand, under the second transfer, the transferee had purchased not only all the tangible assets of the old company, but the goodwill which was expressly valued in the sale deed at a very large sum of Rs. 3 lakhs....

The question as to whether a purchaser of an Industrial concern can be held to be a. successor-in-interest of the vendor will have to be decided on a consideration of several relevant facts. Did the purchaser purchase the whole of the business? Was the business purchased as a going concern at the time of sale transaction? Is the business purchased carried on at the same place as before? Is the business carried on without a substantial break in time? Is the business carried on by the

purchaser the same or similar to the business in the hands of the vendor? If there has been a break in the continuity of the business, what is the nature of the break and what were the reasons responsible for it? What is the length of the break? Has goodwill been purchased? Is the purchase only of some parts and the purchaser having purchased the said parts purchased some other new parts and started a business of his own which is the same as the old business but is similar to it? These and all other relevant factors have to be borne in mind in deciding the question as to whether the purchaser can be said to be a successor-in-interest of the vendor for the purpose of industrial adjudication. It is hardly necessary to emphasize in this connection that though all the facts to which we have referred by way of illustration are relevant, it would be unreasonable to exaggerate the importance of any one of these facts or to adopt the inflexible rule that the presence or absence of any one of them is decisive of the matter one way or the other. If industrial adjudication were to insist that a purchaser must purchase the whole of the property of the vendor concern before he can be regarded as a successor-in-interest, it is quite likely that just an insignificant portion of the property may not be the subject-matter of the conveyance and it may be urged that the exclusion of the said fraction, precluded industrial adjudication from treating the purchaser as a successor-in-interest. Such a plea, however, cannot be entertained for the simple reason that in deciding this question, industrial adjudication will look at the substance of the matter and not be guided solely by the form of the transfer. What we have said about the entirety of the property belonging to the vendor concern, will apply also to the good will, which is an intangible asset of any industrial concern. If goodwill along with the rest of the tangible property has been sold, that would strongly support the plea that the purchaser is a successor-in-interest, but it does not follow that if goodwill has not been sold, that alone will necessarily show that the transferee is not a successor-in-interest. The decision of the question must ultimately depend upon the evaluation of all the relevant factors and it cannot be reached by treating any one of them as of overriding or conclusive significance.

It is in the light of this legal position that the question about the character of the appellant vis-a-vis the vendor company has to be judged. It would be recalled that the vendor company sold the concern to the appellant because it was faced with

the problem of recurring losses, and so, the appellant, in purchasing the concern, was not prepared to have both the advances and the understandings included in the sale transaction. The appellant society has been formed tile local cane-growers with he object of manufacturing sugar which would suit each one of them in turn and so the purchaser was not particularly interested in including the goodwill of the company in the sale transaction. The exclusion of 4,000 bags of processed sugar shows that the purchaser wanted to accommodate the company in that matter. On the other hand, the appellant has carried on the business of the company without an appreciable break; the business thus carried on is the same as that of the company, the place of business is the same, and the very object of entering into the sale transaction was to enable the local cane-growers to carry' on the business of the company. Therefore, we are inclined to take the view that having regard to all the relevant facts in this case, the tribunal was right in law in coming to the conclusion that the appellant is a successor-in-interest of the company.

That takes us to the question as what would be the nature of the appellant's liability to the employees of the company. Before Section 25FF was introduced in the Act in 1956, this question was considered by industrial adjudication on general considerations of fair play and social justice. In all cases where the employees of the transferor concern claimed re-employment at the hands of the transferee concern, industrial adjudication first enquired into the question as to whether the transferee concern could be said to be a successor-in-interest of the transferor concern. If the answer was that the transferee was a successor-in-interest in business, then industrial adjudication considered the question of re-employment in the light of broad principles. It enquired whether the refusal of the successor to give re-employment to the employees of his predecessor was capricious and unjustified, or whether it was based on some reasonable and bona tide grounds. In some cases, it appeared that there was not enough amount of work to justify the absorption of all the previous employees; sometimes the purchaser concern needed bona fide the assistance of better qualified and different type of workers; conceivably, in some cases, the purchaser has previous commitments for which he is answerable in the matter of employment of labour; and so the claim of re-employment made by the employees of the vendor concern had to be weighed

against the pleas made by the purchaser concern for not employing the said employees and the problem had to be resolved on general grounds of fair play and social justice. In such a case, it was obviously impossible to lay down any hard and fast rules. Indeed, experience of industrial adjudication shows that in resolving industrial disputes from case to case and from time to time, industrial adjudication generally avoids-as it should-to lay down inflexible rules because it is of the essence of industrial adjudication that the problem should be resolved by reference to the facts in each case so as to do justice to both the parties. It was in this spirit that industrial adjudication approached this problem until 1956 when Section 25FF was introduced in the Act. Sometimes, the claim for re-employment was allowed, or sometimes the claim for compensation was considered. But it is significant that no industrial decision has been cited before us prior to 1956 under which the employees were held entitled to compensation against the vendor employer as well as reemployment at the hands of the purchaser on the ground that it was a successor-in-interest of the vendor.

It was in the background of this broad position, which had evolved out of industrial adjudications that, the legislative enacted Section 25FF on 4 September 1956....

It may be relevant to add that this section conceivably proceeded on the assumption that if the ownership of an undertaking was transferred, the eases of the employees affected by the transfer would be treated as cases of retrenchment to which Section 25F would apply. That is why Section 25FF begins with a non-obstinate clause and lays down that the change of ownership by itself will not entitle the employees to compensation, provided the three conditions of the proviso are satisfied. Prima facie, if the three conditions specified in the proviso were not satisfied, retrenchment compensation would be payable to the employees under Section 25F; that apparently was the scheme which the legislature had in mind when it enacted Section 25FF in the light of the definition of the work, 'retrenchment' prescribed by Section 2(oo) of the Act.

The Solicitor-General contends that the question 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 25FF itself, lie 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 services, provided, of course, they satisfied the test of the length of service prescribed by the section. The said part further provides the manner in which and the extent to which the said compensation has to be paid. Workmen shall be entitled to notice and compensation in accordance with the provisions of Section 25F, says the section, as if they had been retrenched. The last clause clearly brings out the fact that the termination of the services of the employees does not in law amount to retrenchment and that is consistent with the decision of this Court in Hariprasad case (1957-1 LLJ 243)(vide supra). 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 in question whose services are terminated by the transfer of the undertaking should be entitled to compensation, and so. Section 25FF provides that on such termination compensation would be paid to them as if 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 25FF makes a reference to Section 25F for that limited purpose, and therefore, in all cases to which Section 25FF 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 next case referred to is Gut-mail's case wherein it is held as under:

(A) Industrial Disputes Act (1947), Section 25FF-Transfer of undertaking by State to State owned Corporation-Court can review arrangement and issue appropriate

direction is-Re-employment of Government Employees by Corporation-Continuity of service upheld in instant case for sole purpose of pensionary benefits:

Continuity of service-Re-employment of Government. Employees by State owned Corporation on transfer of undertaking,

Pension-Re-employment-Continuity of service.

At paragraph-21 it held as under:

Paragraph-21: To sum up, even before the insertion of Section 25FF in the Act, the employees of a predecessor had no right to claim re-employment by the successor in business save in exceptional circumstances. Even where available, that claim was not a matter of absolute right but one of discretion, to be judicially exercised, having regard to all the circumstances. An industrial tribunal, while investigating such a claim, had to carefully consider all the aspects of the matter, It had to examine whether the refusal to give re-employment was capricious and industrially unjustified on the part of successor in business or whether he could show cause for such revisal on reasonable and bona fide grounds such as want of work, inability of the applicant to carry out the available work efficiently, late receipt of the application for re-employment in view of prior commitments or any other cause which in the opinion of the tribunal made it unreasonable to force the successor-in-interest to give re-employment to all or any of the employees of the old concern. This discretion given to industrial courts is no longer generally available because of the insertion of Section 25-FF. But in a case where one or both of the parties is a State instrumentality, having obligations under the Constitution, the Court has a right of judicial review, over all aspects of transfer of the undertaking. It is open to a Court, in such a situation to give appropriate directions to ensure that no injustice results from the change-over. In the present case, the parties to the transfer are a State on the one hand and a fully owned State Corporation on the other. That is why we have examined the terms and conditions of the transfer and given appropriate directions to meet the needs of the situation. We, therefore, direct the State Government and the Corporation which is but a wholly owned State instrumentality bound to act at the behest of the State to carry out our directions above, the Corporation being at liberty to amend its rules

and regulations, if necessary to give effect to the same.

The next case referred is M/s. Parry and Co. Ltd wherein at Paragraph 16, it was held as under:

Paragraph 16: As regards the company's refusal to transfer the retrenched employees, the Tribunal's finding was clearly against law. The liability of an employee to be transferred and the rights of the company to transfer him did not mean that there was a corresponding obligation on the company to transfer the employee to another branch. No evidence was led by the union to show that if transferred, these workmen could have been absorbed at other places, either because there were vacancies or that the work there was the same as was done by them at Calcutta. There was equally no evidence whether wage-scales, dearness allowance and other conditions of service were the same in Madras and other centres. It is true that the company had started developing its manufacturing business in Madras but the Tribunal made no enquiry whether these employees could have been fitted in the manufacturing work when they had done only administrative and other duties connected with the agency business, yet, the tribunal drew the conclusion that because the company failed to transfer these employees to other centres, retrenchment was not justified.

In the case of Central Inland Water Transport Corporation Ltd. v. The Workmen and Anr. it was held at para No. 18 as under:

Paragraph 18: 'The effect of Section 25FF which is explained by this Court in Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen : (1962) IILLJ621SC is, so far as it is relevant, as follows; (i) 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 compensation is made payable because of such termination (p 745); (ii) in all cases to which Section 25FF 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 (p.746); (iii) By the present Section 25-FF the Legislature has made it clear that if industrial undertakings are transferred, the

employees of such transferred undertakings 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 (p.746) and (iv) Since Section 25FF provides for payment of benefit on the basis that the services of the employees stand terminated, neither law nor social justice would justify the claim of the employees that they ought to be reemployed by the transferee (p. 748). That being the position in law under Section 25FF, the former employees of the company who were not absorbed by the Corporation can hardly make out a claim against the transferee Corporation either for compensation on termination of their service following the transfer or for reemployment. The claim at any rate of the employees in List H as against the Corporation under Section 25 FF was clearly misconceived

The last case referred is Firestone Tyre and Rubber Co. of India Pvt.Ltd. and Workmen, wherein it is held at paras 8 & 9 as under:

Paras 8; 'We will take the finding of discrimination first as this is the ground on which the 12 workmen were straightaway ordered to be reinstated. The Tribunal having found that the inquiries held against the workmen had not been properly noted that it was well settled that in such a situation the employer should be given an opportunity to adduce evidence before the Tribunal in support of the action taken by them, but proceeded to hold that in view of the other finding that the 12 workmen had been unfairly discriminated against, they were entitled to reinstatement and, therefore, no useful purpose would be served by permitting the management to adduce evidence seeking to justify the dismissal of the workmen on the ground of misconduct It was contended on behalf of the appellant that the Tribunal had no jurisdiction to address itself to the question of discrimination. Section 10(4) of the Industrial Disputes Act lays down:

Where in an order referring an industrial dispute to a Labour Court. Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication the Labour Court or Tribunal or National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.

9. In this case the points of dispute were specified in the Schedule to the order of reference, and the Tribunal was, therefore, required to confine its adjudication to those points and matters that were incidental to them. From a reading of demands 1 (A) and 1(B) as a whole it is clear that the demand for reinstatement in respect of both groups of workmen as made arises on the alleged invalidity of the action taken by the management in dismissing these workmen. The issue of unfair labour practice or discrimination by reason of subsequent reinstatement on a permanent basis of some and not all the 25 workmen was not a matter referred to the Tribunal for adjudication, nor it can be said to be in any way connected with or incidental to the right of reinstatement claimed by the 101 workmen from the date of their dismissal. The fairness of subsequent absorption of some workmen is a matter quite irrelevant for judging the validity of the earlier dismissal of these workmen along with others; it is an entirely separate and independent question. The Tribunal also did not frame an issue on the alleged discrimination. That being so, we think the Tribunal travelled outside its jurisdiction in recording a finding of unfair labour practice and discrimination.

18. That being the position in law under Section 25FF, the former employees of the company who were not absorbed by the Corporation can hardly make out a claim against the transferee Corporation either for compensation on termination of their service following the transfer or for re-employment. The claim at any rate of the employee in List II as against the Corporation under Section 25-FF was clearly misconceived.

19. The learned Counsel Sri B.C. Prabhakar appearing for second respondent contends that the first respondent company cannot manufacture colour television any more as entire unit of colour television is transferred to the second respondent therefore, it cannot continue any employment to its employees and had offered compensation in terms of Section 25-FF of the Act. He further contends that the offering of compensation in terms of Section 25-FF of the Act alone was required to be complied with by the 1st respondent and nothing else. It was also submitted that 459 employees out of 496 employees of the first respondent without any grievance whatsoever have joined the second respondent company under fresh employment after receiving compensation from the first respondent. As per the

terms of the business transfer, the first respondent had to settle all the dues payable to the employees of the first respondent on the closing date i.e. 14.12.2005. Subsequent to 14.12.2005, no employee could call upon the second respondent for discharging any liability. As a matter of fact, in the absence of any specific dispute between the second respondent and the appellant hereunder, second respondent is not even a necessary party is the contention of the learned Counsel.

20. The contention of the second respondent is to the effect that as the transfer of the unit is valid and genuine, the only liability by virtue of Section 25-FF would be compensation payable as if it is a case of retrenchment. Hence, question of demanding fresh employment, continuity of employment or additional amount other than the compensation payable to the workmen is not contemplated. For this he relies upon the following decisions:

1) : (2004)IIILLJ539SC Management of Gordon Woodrgffe Agencies Pvt. Ltd. v. Presiding Officer Principal Labour Court and Ors.:

21. In this case, when the closure of establishment was questioned, such closure was found valid and was also held that all the amounts legally payable were paid or offered in time to the concerned workmen. Therefore, it was held that the non-acceptance of such offer by the workmen would not lead to payment of additional ex gratia compensation which is not contemplated under the Statute, In other words, their Lordships said that except the payment payable under the Statute, no direction for payment of any additional amount as ex gratia payment could have been ordered.

2. : (2005)ILLJ853SC Mariti Udyog The Land Tribunal. v. Ram Lal and Ors.:

In this case, apart from the interpretation and the limited application of Section 25-FF and Section 25-FFF of the Act, their Lordships also held that in a case of closure or transfer of the undertaking, the workmen concerned are entitled to receive compensation only and the provisions of the Act does not postulate a situation where a workman despite having received the compensation would again have to be officered a job by the management reviving the industry.

3. : (1970)IILLJ44SC The Board of Directors Of The South Arcot Electricity Distribution Co. Ltd. and N.K. Mohammed Khan, Etc.

In this case, the dispute arose when the company carrying the business of distribution of electricity as licensee under the government was taken over by the Government, in exercise of the powers under the Madras State Electricity Supply Undertakings (Acquisition) Act of 1954. The employees of the company claimed retrenchment compensation under Section 25-FF and filed an application before the Labour Court Under Section 33-C(2) of the Industrial Dispute Act. The same came to be allowed and a direction was issued to the company to pay the amount. Both the writ petition and the writ appeal filed by the management were dismissed. The matter was taken up before the Supreme Court. It was contended before the Supreme Court, that the right which accrued to the employees under the principle clause of Section 25-FF was defeated because of the compliance of the conditions laid down in the proviso to the Section and also contended that Labour Court had no jurisdiction to decide whether workers were entitled to retrenchment compensation or not Their Lordships held that the Labour Court under Section 33-C(2) had jurisdiction to deal with the claim by the various workers as it was a right which accrued to them under Section 25FF of the Act and was an existing right at the time when the applications were made. It was further held that mere denial of the right by the company could not take away its jurisdiction so that the order made by the Labour Court was so incompetent.

4. : (2003)IILLJ222Mad Indian Oxygen Employees Union And Another And Union of India And Others:

In this case, Section 25-FF of the Act was held as a design to serve the purpose of the employees and in fact as a safety valve or a protective measure to safeguard the genuine cause of workmen in case of transfer of an undertaking, hi the above case, the contention of the workmen was there should not be any transfer of undertaking at all without any tripartite settlement without giving opportunity to the petitioners to participate in all the deliberations from the deliberations of transfer or closure of tine undertaking. His Lordship held that the intention of law in safeguarding the interest of the workmen was not intending to create a right for the

workmen to interfere with or obstruct the transfer of undertaking which is the fundamental right guaranteed to the employer or the undertaking. Therefore, the only protection or safeguard for which the workmen can claim if the transfer or closure of undertaking is genuine is compensation under Section 25-FF of the Act.

5. 1992(I) LLJ 712 in the case of Workmen of Karnataka Agro Proteins Ltd. v. Karnataka Agro Proteins Ltd. and Ors.

In this case, the question was whether the workmen can claim against the transferee undertaking for absorption and continuity of service. The Court held that when once a transfer of ownership or management of undertaking comes into effect, the employment of the workmen under the transferor employer comes to an end. Only compensation is payable, no claim whatsoever could be made against the transferee concern.

22. In the present case, according to the 37 employees, under the guise of BTA agreement, the first and second respondents have made the majority of employees to accept the fresh employment with 2nd respondent and accordingly, majority of the employees accepted under the threat of losing their livelihood, therefore, it is nothing but coercion, undue influence and duress exercised on the employees of the first respondent. They term it as unfair labour practice compelling the employees who are in despair to accept the deterrent terms and conditions of fresh employment.

23. By Act 18 of 1957. Section 25-FF of the Act was substituted which has come into effect from 28.11.1956. The object and effect of substituting Section 25-FF was to restore the position which was in the mind of legislature when Section 25-FF was originally enacted on 4.9.1956. With amending Section 25-FF, the sea-change was brought into effect i.e. whenever industrial undertakings are transferred, the employees of such undertakings would be entitled for compensation.

24. In order to apply the benefits available to the workmen under Section 25-FF, one has to consider the underlying intent of the transfer i.e., whether it is a fictitious or a benami one, whether the vendee of the industrial concern can be

called as transferee-in-interest, whether the nature of business is the same or not, whether the form and appearance of the new concern is different though it is managed by the same set of people, whether a portion of the business is transferred or entire concern is transferred, whether there is continuity of service of employees without any break, in their work.

25. In *Anakapalkfs* case, the Apex Court had an occasion to discuss the position prior to 1956 and after 1956 when Section 25FF was introduced. Prior to 1956, it was always decided on general consideration of fair play and social justice. Several facts and circumstances would be considered and ultimately, in the light of broad principles of natural justice, fair play and social justice, the matters were decided. In that regard, the exercise was to know whether the transferee concern could be a successor-in-interest of the transferor and then consider the question of re-employment of the employees of predecessor-in-interest. Therefore, there used to be a caution to see whether the refusal of the successor to give reemployment to the employees of the predecessors was capricious and unjustified or whether it was under bonafide and reasonable grounds. Depending upon the amount of work, the number of employees, qualification of the employees, different type of workers and the previous commitments of the successor-in-interest were taken into consideration. In this background, it is said prior to 1956, it was always a matter of fair play and social justice.

26. With the introduction of Section 25-FF with effect from 28.11.1956, the entire scenario has changed. In other words, there is a sea change in the law. As a matter of fact, reading of principal Section would indicate by fiction of law, the compensation payable under Section 25FF would be treated as retrenchment compensation. Of course, the foundation is fair play and social justice but within the framework of the law. If we look at the law evolved on this provision of law, ultimately one would accept that the employees of the predecessor had no right to claim re-employment from the successor in business except in exceptional circumstances. Even if employment was available, as a matter of right, one cannot have access to that as it is only a discretion. However said discretion has to be exercised properly depending upon the facts and circumstances of each case.

27. The important and foremost condition precedent to apply Section 25FF is the transfer of ownership or management of an undertaking from one employer to another employer. Unless the entire undertaking or the ownership is handed over from one employer to another employer, Section 25FF does not come into operation.

28. The operation of this Section would not take place if the transfer in question would attract the three conditions of the proviso. Therefore, payment of compensation as if it is a case of retrenchment would not come into play on the transfer of ownership or management of an undertaking, where in spite of such transfer, the service of the workman continues without interruption, the terms and conditions of services are not less favourable after transfer than they were before said transfer and the transferee is bound under the terms of the transfer to pay the workmen in the event of their retrenchment compensation on the basis that their services had been a continuous one without any interruption by reason of transfer. Unless and until the transfer affects the terms and conditions of the employees as stated above, payment of compensation Under Section 25FF as if it was a retrenchment Under Section 25F would not come into picture.

29. The crucial test is to see whether by reason of transfer of the unit from one employer to the other employer, would attract the terms and conditions of proviso to Section 25FF. If proviso is attracted, it is not a transfer and the employees are not entitled for any retrenchment, compensation, if the transfer in question does not fall under the proviso, then Section 25FF comes into play. In other words, if the transfer of ownership and management of undertaking from the first respondent to second respondent does not fall under the proviso, the employees can claim all the benefits available to them under the principal Section of Section 25FF. i.e. retrenchment compensation alone. This would clearly go to show that re-employment cannot be claimed as a matter of right by the employees of the transferred unit or the undertaking.

30. According to the appellants/workmen, 50% of the investment in the second respondent concern still continues to be that of the investment of first respondent, therefore, there is no legal transfer of the unit as contemplated Under Section

25FF. According to them, there are several units of first respondent dealing with other industrial products, therefore, the employees could have been absorbed in those units instead of coercing them to accept fresh employment with the second respondent.

31. In view of the above discussion, as a matter of fact, neither the first respondent nor the second respondent company was under any legal obligation to offer employment to the employees of the transferor company. In that view of the matter, the only legal claim they can have access to is retrenchment compensation.

32. Mere fact of having 50% of stakes in the new concern by the first respondent does not attract any of the conditions of proviso, Likewise, offering fresh employment by the second respondent company by virtue of BTA agreement between the transferor and transferee will also not attract any of the terms and conditions of proviso to Section 25FF.

33. With the legal position as stated above, by virtue of fresh employment in the second respondent company, at the instance of the first respondent company, it can be termed only as an extended benefit or concern of a loyal employer to its employees. The acceptance of fresh employment was under the control of employees, i.e. option of the employee concerned. Out of 496 employees, majority of the employees almost 459 in number, except the appellants/workmen who are 37 in number have accepted the fresh employment with the second respondent. It is not the case of the appellant/workmen that the terms and conditions of the fresh employment would attract any of the terms of proviso to Section 25FF. If it were to be so, majority of the employees would not have accepted the fresh employment. In the present case, after receiving all the benefits legally payable by the first respondent transferor employer, the employee wanting to join the fresh employment with the transferee second respondent employer had to produce 'no due certificate' issued by the transferor employer before joining the 2nd respondent. This would only indicate that apart from paying compensation regarding Section 25FF and other dues, the employees would also get new or fresh employment with the second respondent. At any stretch of imagination this

extended benefit shown by the first respondent employer is not lacking fair play and social justice. Actually, the employees are getting double benefit, one legally accepted benefit Under Section 25FF and another is fresh employment without driving the employees to go in search of fresh employment.

34. In view of the above discussion and reasoning, we are of the opinion the learned Single Judge was justified in setting aside the award of the Labour Court by accepting the case of the respondent-managements. We do not find any good ground to interfere with the said finding of the learned Single judge.

35. In order to absorb employees of the predecessor employer in other units of the first respondent-management, there is nothing on record to show that there are enough vacancies to absorb all the 496 employees of Colour Television unit of the first respondent. The fact of first respondent having other units would not automatically enable the employees of colour television unit to get absorbed in the other units. On the other hand, the evidence of MW.1 would indicate the circumstances in which the first respondent undertaking transferred its ownership of colour television unit to the second respondent unit. He has given the exact loss sustained in the colour television unit of the first respondent with the statistics. One cannot expect the first respondent unit to have financial crunch for all time to come which would affect ultimately the very existence of the first respondent company. Therefore, there is nothing wrong if one of the concerns of first respondent unit was transferred to a different management. None of other units of the first respondent company are dealing in colour television process. Therefore, the contention of the appellants/workmen that they could have been absorbed in the other units cannot be entertained. If these 37 employees were to be absorbed in other units of the first respondent company, it is nothing short of injustice towards other employees.

36. Then coming to the appeal tiled by the transferee 2nd respondent Sanyo BPL, their intention is that in view of complying with all the terms and conditions of BTA, by offering fresh employment to 459 employees out of 496, such employees who accepted fresh employment are continuing their work in the manufacture of colour televisions. Admittedly, the first respondent company is not dealing with the

manufacture of colour televisions. As it is seen the dispute between the parties arose somewhere in the year 2005. Majority of the employees have taken the fresh employment with the Sanyo BPL Pvt. Ltd. In the absence of any obligation or compulsion on the transferee company either to pay compensation or to offer employment to the employees, in the absence of relationship of employer and employee between the workmen and the transferee company, the learned Judge ought not to have made a direction for absorption of the 37 rebellious employees by the transferee company. The direction of the Court should be within the permitted parameters of law. There cannot be any direction which is not recognised or contemplated under law. If a provision is provided to do a particular thing in a particular way, that alone could not be enforced. In view of payment of compensation being the only remedy available under Section 25-FF of the Act, social justice cannot be invoked by saddling the transferee company with the direction of absorption of contesting workmen. Therefore, though we accept and concur with the finding of the learned Single Judge in so far as genuineness and validity of the transfer of the undertaking by the first respondent to the second respondent - Sanyo BPL Pvt. Ltd, we hold that the direction of the learned Single Judge to absorb 37 appellants/workmen is without any justification and therefore erroneous. Accordingly, the following:

ORDER

Writ Appeal No. 1082/2007 filed by the appellants/workmen is dismissed.

Writ Appeal No. 1219/2007 filed by Sanyo BPL Private limited is allowed.

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