

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.11.2017

Delivered on : 09.02.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.28373 of 2008 & 19007 of 2012

and M.P.No.1 of 2008, 1 to 62 of 2010

and M.P.Nos.1 of 2011, 1 of 2012 and 2 of 2012

W.P.No.28373 of 2008:

The Management of E.I.D. Party India Ltd.,
Pugalur Sugar Factory Post
Pugalur 639 113
Rep. by its General Manager-HR ... Petitioner

versus

1. The Presiding Officer,
Industrial Tribunal,
Chennai.
2. The Workmen Rep. by the Secretary,
Pugalur Sarkarai Alai
Podhu Thozhilalar Sangam,
Pugalur 639 113.
3. The Workmen Rep. by the Secretary,
Pugalur Sarkarai Alai
Thozhilalar Sangam (AITUC)
Pugalur 639 113.
4. The Workmen Rep. by the Secretary,
Pugalur Sarkarai Alai,
Thozhilalar Munnetra Sangam (LPF)
Pugalur 639 13.
5. The Workmen Rep. by the Secretary
Pugalur Sarkarai Alai
Anna Thozhilalar Sangam (ATP)
Pugalur 639 113.
6. The Workmen Rep. by the Secretary,
D.S.A. Company Staff and Workers' Union
Pugalur 639 113.

7.The Workmen Rep. by the Secretary,
Deccan Sugars National Workers' Union (INTUC)
Pugalur 639 113.

8.The Workmen Rep. by the Secretary,
D.S.A. Company Workers' Union (CITU)
Pugalur 639 113.

9.The Management of
Nava Bharat Ferro Alloys Ltd.,
Sugar Division
47, Greams Road Ninth Floor,
Chennai-6

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of the first respondent in ID No.45 of 1993 and quash its award dated 24.09.2008 insofar as directing the petitioner to re-employ the workmen of the Ninth Respondent from 01.12.2008.

For Petitioner : Mr.G.Masilamani, S.C. for
Mr.Anand for M/s.T.S.Gopalan & Co.,

For Respondents: R1-Tribunal
M/s.S.Thangavel for R2
Mr.V.P.Rajendran for R3 to 6 & 8
Mr.M.Dhamodharan for R7
Mr.V.Karthik, S.C. for
M/s.S.Haroon Al Rasheed for R9

W.P.No.19007 of 2012:

1. The Workmen
Rep. by the Secretary,
Pugalur Sarkarai Alai
Podhu Thozhilalar Sangam,
Pugalur 639 113..

2. The Workmen Rep. by the Secretary,
Pugalur Sarkarai Alai
Thozhilalar Sangam (AITUC)
Pugalur 639 113.

3.The Workmen Rep. by the Secretary,
Pugalur Sarkarai Alai,
Thozhilalar Munnetra Sangam (LPF)
Pugalur 639 113.

4.The Workmen Rep. by the Secretary
Pugalur Sarkarai Alai
Anna Thozhilalar Sangam (ATP)
Pugalur 639 113.

5.The Workmen Rep. by the Secretary,
D.S.A. Company Staff and Worker's Union
Pugalur 639 113.

6.The Workmen Rep. by the Secretary,
D.S.A. Company Worker's Union (CITU),
Pugalur-639 113. Petitioners

versus

1.The Management of E.I.D. Party India Ltd.,
Rep. by its General Manager-HR
Pugalur Sugar Factory Post
Pugalur 639 113

2.The Presiding Officer,
Industrial Tribunal,
Chennai.

3.The Workmen rep. by the Secretary,
Deccan Sugars National Worker's
Union (INTUC),
Pugalur-639 113.

4.The Management of Nava Bharat
Ferro Alloys Ltd., Sugar Division,
47, Greams Road Ninth Floor,
Chennai-6. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records of the 2nd respondent culminating in I.D.No.45 of 1993 and quash the award dated 24.09.2008 in so far as it denies monetary benefits and restricts re-employment with effect from 01.12.2008 only and consequently direct the 1st respondent to reinstate all the retrenched workmen, with consequent benefits and backwages from the date of retrenchment, i.e. from 13.11.1992.

For Petitioners : Mr.V.P.Rajendran

For Respondents: Mr.G.Masilamani, S.C. for
for Mr.Anand for
M/s.T.S.Gopalan & Co., for R1

Mr.V.Karthick, S.C. for
M/s.S.Haroon Al Rasheed for R4
R2- Tribunal
R3- No appearance

Mr. Balan Haridass for the proposed
impleading properties

COMMON ORDER

The present writ petitions have been filed, seeking for the following reliefs:

W.P.No.28373 of 2008:

"To issue Writ of Certiorari, to call for the records of the first respondent in ID No.45 of 1993 and quash its award dated 24.09.2008 insofar as directing the petitioner to re-employ the workmen of the Ninth Respondent from 01.12.2008.

W.P.No.19007 of 2012:

"To issue Writ of Certiorari, calling for the records of the 2nd respondent culminating in I.D.No.45 of 1993 and quash the award dated 24.09.2008 in so far as it denies monetary benefits and restricts re-employment with effect from 01.12.2008 only and consequently direct the 1st respondent to reinstate all the retrenched workmen, with consequent benefits and back wages from the date of retrenchment, i.e. from 13.11.1992."

2. Both the Writ Petitions are filed against the award passed by the first respondent/Industrial Tribunal in I.D.No.45 of 1993, dated 24.09.2008.

3. Since the issues and grounds raised in these two writ petitions are common to each other pertaining to the above said award of the Industrial Tribunal, the same are taken up together for common disposal.

4. For the sake of convenience, the facts as narrated in W.P.No.28373 of 2008, are stated herein and the parties are also described as such.

5. The petitioner is a company registered under the Companies Act and was engaged in manufacturing of Sugar, Ceramics, Chemicals etc. The 9th respondent was having two Sugar Mills, viz., one at Pugalur in Tamil Nadu and the other one at Samarkhat in Andhra Pradesh.

6. In 1992, the 9th respondent had taken a decision to dispose of the Sugar Factory at Pugalur and for the said purpose, a negotiation was held between the 9th respondent and the petitioner. After conclusion of the negotiation, the petitioner had agreed to purchase the Sugar Factory with building and machineries, but without taking over the employees, employed by the 9th respondent. An agreement was entered into as such between the 9th respondent and the petitioner on 30.10.1992 and in the said agreement, it was clearly provided that the petitioner would not take over the employees of the 9th respondent and the 9th respondent should terminate the services of the employees by settling their dues in terms of statutory regulations.

7. In pursuance of the above agreement, a sale was concluded on 13.11.1992 and by which, the land and machineries of the Sugar Mill at Pugalur were conveyed to the petitioner and simultaneously, the 9th respondent put up a notice in the factory announcing the sale of the Unit. The 9th respondent, while terminating the services of the workmen, as agreed, paid notice pay and compensation as provided for under Section 25 FF of the Industrial Disputes Act, 1948. All the other statutory dues, viz., gratuity, PF, etc., had been settled and the workmen concerned, had also received the same.

8. After the sale of the Sugar Factory, the petitioner recruited its own employees on fresh terms. While recruiting its own employees, the petitioner had also offered fresh employment to more than 190 erstwhile workmen employed by the 9th respondent. The workmen of the 9th respondent, having aggrieved by the transfer of ownership and resultant non-employment, raised an industrial dispute before the Government of Tamil Nadu. By the Government Order, the issue was referred to before the first respondent for adjudication. The terms of reference for the stated adjudication, are as follows:

"Whether the transfer of the ownership of the Sugar Undertaking at Pugalur (Deccan Sugars) to the Management of EID Parry (India) Limited by the management of Nava Bharat Ferro Alloys Limited with effect from 13.11.1992 and the resultant non employment

of the workmen are justified and to what relief the workmen are entitled?

9. The order of reference also listed the names of 651 workmen who were employed by the erstwhile management/9th respondent. The Government Order of reference for adjudication before the first respondent/Tribunal, was challenged by the petitioner Management as well as the 9th respondent. The petitioner Management has challenged on the ground that it had not employed 650 workmen nor it terminated their services and therefore, the petitioner Management was not a necessary and proper party.

10. The 9th respondent has challenged the reference on the ground that once the sale had taken place and ownership was transferred and once statutory obligation had been discharged, there was no scope for any claim against them by the workmen. The challenge to the reference of the dispute had consumed more than 15 years and the litigation travelled up to the Hon'ble Supreme Court of India which finally declined to entertain the challenge by the petitioner as well as the 9th respondent.

11. After the prolonged litigation, at the instance of the petitioner and the 9th respondent, the first Respondent Tribunal finally embarked upon the dispute for adjudication in the year 2008. The workmen were represented by Respondents 2 to 8 herein representing various unions. Witnesses were examined on behalf of both the petitioner and the 9th respondent Management as well as the Workmen and several documents were marked in support of respective claims.

12. Before the first respondent Tribunal, various factual legal contentions were raised on behalf of the parties and number of decisions were relied upon in support of each other claims. The first respondent Tribunal after adverting to various submissions and after appreciating relevant materials placed on record, had initially come to the conclusion that the sale of the 9th respondent Unit to the petitioner was a genuine transaction and the same was not sham and nominal. The finding of the Tribunal which is found in para-19 of the award, is reproduced herein below:-

"19. The contention of the Respondent is that 1st Respondent and 2nd Respondent are two different entities and 2nd Respondent

purchased the 1st Respondent purchased the 1st Respondent company there is no pleadings and evidence for Sham and nominal, hence the transaction is binding on the workers. The 1st Respondent is owning other Sugar Factory and other business at different places and in different States. The 2nd Respondent has entered into an agreement with 1st Respondent. Thereafter, he purchased the property of 1st Respondent at Pugalur alone for Rs.16.16 crores. The documents also has been filed and marked as Exs.M23. The WW1 has not proved in the evidence that the transaction is a Sham and Nominal. Therefore, I am of the view that the transfer of the company made by 1st Respondent in favour of 2nd Respondent is a genuine transaction. It is not sham and nominal as contended by the learned counsel during the arguments."

13. After making a preliminary conclusion in regard to the genuineness of the sale, the Tribunal finally concluded at para 35 of the award as follows:

"35. In my view, the denial of work to those workers are not justified. They have been working in that sugar factory for a long period. Further, it is not the case of the respondent that they are not qualified or fit enough to work in the new machineries. The respondent has purchased the sugar factory without machineries for Rs.16.16 crores. It is not the case of the respondent that they have changed the entire machinery and workers are not fit enough or trained workers alone re-employed in the new machineries. Therefore, I am of the view that the denial of work to the workers are not bonafide one and the workers are entitled for re-employment like other workers. It is a pathetic that a worker without work he has been wandering in the Courts expecting orders of re-employment. It appears that 2nd respondent is running the factory with contractual workers. It is pertinent to note that a middle aged worker who has worked in the factory for all along these years how he will switch over to the other work, with the heavy heart, I conclude

by saying that the workers are entitled for the re-employment under the 2nd respondent from 1.12.2008 onwards. The non-employed workers have merely accepted the two months notice as contemplated Sec.25FF of Industrial Disputes Act the Management dragged the reference itself for 16 years. If it is the case of otherwise dismissal of single worker this Tribunal would have ordered for reinstatement with back wages. Under these circumstances, the workers are merely entitled for re-employment alone. The re-employed workers, except wages bonus and for other monetary benefits for all other administrative purpose, their appointment order notionally with effect from 1.12.1992 . If any monetary loss arisen even after the sale by way of legal cases it is for 1st Respondent to indemnify for 2nd Respondent as per Ex.M8 Clause No.4(a) in page.48. Further it is pertinent to note that the exhibit M.23 Sale Deed does not include sale of any machineries also. The sale price does not reflect the correct sale value also"

14. The petitioner management is aggrieved by the award of the Tribunal in regard to the direction for re-employment of the workmen with effect from 01.12.2008 with notional effect from 01.12.1992. As far as the workmen are concerned, they are aggrieved by the award of the Tribunal insofar as it did not direct the reinstatement of the workmen and only restricted to re-employment with effect from 01.12.2008 which challenge is made in other writ petition in W.P.No.19007 of 2012. The workmen in the said Writ petition, are also challenging the conclusion of the Tribunal regarding the transfer of undertaking, as according to them, the transfer was sham and nominal but not bona fide.

15. During the pendency of the writ petitions before this Court, Miscellaneous Petitions in M.P.Nos. 2 to 2 of 2017 have been moved by some of the workmen seeking to get impleaded in the litigation though admittedly, they were members of various Unions who were arrayed as parties before the Industrial Tribunal as well as before this Court. According to these workmen, the litigation before this Court is not being effectively pursued and therefore, their interest is vitally affected. According to them, since their livelihood is at stake due to protracted litigation at the instance of the petitioner management and the Unions were not very effective in their

efforts in claiming any relief for the workmen, they want to be heard along with other Unions. The impleading Petitions have not been ordered, but the learned counsel for the impleading petitioners, was however heard both on maintainability of the impleading petitions as well as on merits.

16. Mr.G.Masilamani, learned Senior Counsel appearing for the petitioner/Management, at the outset, would submit that on 15.07.1992 there was a resolution of the Board of the 9th respondent resolving to dispose of the Sugar Unit located at Pugalur in the State of Tamil Nadu. The resolution authorised the Managing Director and the Joint Managing Director of the Company to negotiate and finalize and dispose of the Sugar Factory by way of outright sale. Thereafter, an agreement was entered into on 30.10.1992 between the 9th respondent and the petitioner and in pursuance of the said agreement, a final sale was effected on 13.11.1992. A proper notice was put up in the factory premises by the 9th respondent on 13.11.1992 informing the transfer of undertaking and simultaneously, the employees were paid due compensation under Section 25 FF of the Industrial Disputes Act (hereinafter referred to as 'the I.D.Act') and correspondingly, the services of the workmen stood automatically terminated with effect from 13.11.1992. The learned Senior Counsel would draw the attention of this Court to the sum and substance of the notice dated 13.11.1992, which is reproduced below:-

"The ownership of the Sugar undertaking at Pugalur, Trichy District is transferred to E.I.D. Parry (India) Ltd., effective 10.15 a.m. on 13th November, 1992. Consequent to the above, all the employees listed hereunder are hereby informed that they are entitled to compensation under Section 25 FF of the Industrial Dispute Act, and shall cease to be in employment at 10.15 a.m. on 13th November, 1992. All the workmen are advised individually by a letter about their cessation of employment along with compensation and notice pay under Section 25 FF of the Industrial Dispute Act, and other payments on 13th November, 1992 by the administrative Office at Madras. A specimen copy of which is also displayed herewith.

"The transfer of undertaking takes effect at 10.15 a.m. On 13th November, 1992 when Nava Bharat concern to be the owner of the undertaking and consequently E.I.D.Parry (India) Ltd., shall be the owner of the said undertaking.

17. The learned Senior Counsel would therefore, submit that after the transfer of ownership on 13.11.1992, the workmen cannot have any further claim as against the petitioner management since Section 25 FF of the I.D.Act had been complied with in full and the transfer of the undertaking had been found to be genuine and valid by the first respondent Tribunal. He would draw the attention of this Court to Section 25 FF of the I.D.Act, which reads as under:-

"25-FF. Compensation to workmen in case of transfer of undertakings.-

Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to or 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 to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if -

(a) the service of the workman has not been interrupted by such transfer,

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer."

18. Once the above Section has been complied with and which fact has not been disputed by the workmen, the question of any further claim against the petitioner Management, cannot be validly countenanced. In that view of the matter, the final conclusion by the first respondent Tribunal that the workmen

were entitled to be re-employed by the petitioner Management with effect from 01.12.2008 cannot be legally sustained.

19. The learned Senior Counsel would also draw the attention of this Court that each one of the worker has been individually addressed by the 9th respondent/Management on 13.11.1992 indicating the compensation entitled to by the workmen concerned and according to the learned Senior Counsel, this was accepted by the workmen witnesses, WW1 and WW2 in their evidence deposed before the Tribunal. This fact was also established by the Auditors Annual report 1992-93 of the 9th respondent in which it is stated that the 9th respondent had disposed of the Unit and paid due compensation to the workers concerned.

20. According to the learned Senior Counsel, the evidence of a worker, namely WW1 would show that the workers were seeking re-employment only in the 9th respondent management herein and not against the petitioner management. The other witness, namely WW2 had also deposed to the same effect. Therefore, the learned Senior Counsel would submit that the award of the Labour Court directing the re-employment of the workers would have no legal sanctity.

21. The learned Senior Counsel has also relied on several decisions including the decision of the Constitution Bench of the Hon'ble Supreme Court of India reported in "Anakapalla Co-Operative Agricultural and Industrial Society versus Its Workmen and others" (1962 (2) LLJ 621 (CB)). According to the learned Senior Counsel, the issue is directly covered by the decisions of the above Constitutional Bench. He would draw the attention of this Court to the following few paragraphs, which dealt with the history of the legislative intent in introduction of Section 25 FF of the I.D.Act.

"That takes us to the question as to what would be the nature of the appellants' liability to the employees of the Company. Before S. 25-FF was introduced in the Act in 1956, this questions 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 bonafide 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 bonafide 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 S. 25-FF was introduced in the Act. Sometimes, the claim for reemployment 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 re-employment 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 Legislature enacted S.25FF on September 4, 1956. As it was then inserted, S. 25-FF read thus :-

"Notwithstanding anything contained in S.25FF, no workman shall be entitled to compensation under that section by reason merely of the fact that there has been a change of employers in any case where the ownership or management of the undertaking, in which he is employed is transferred whether by agreement or by operation of law, from one employer to another :

Provided that-

(a) the service of the workman has not been interrupted by reason of the 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 employers to whom the ownership or management of the undertaking is so transferred is, under the terms of the transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer."

It may be relevant to add that this section conceivably proceeded on the assumption that if the ownership of an undertaking was transferred, the cases of the employees affected by the transfer would be treated as cases of retrenchment to which S.25FF would apply. That is why S.25FF begins with a non-obstante 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 S.25F that apparently was the scheme which the Legislature had in mind when it enacted S.25FF in the light of the definition of the word "retrenchment" prescribed by s, 2(oo) of the Act.

The validity of this 'assumption was, 'however, successfully challenged before' this Court in the case of Hariprasad Shivshankar Shukla v. A. Divikar (1). In that case, this Court was called upon to consider the true scope and effect of the concept of retrenchment as defined in S.2 (oo) and it held that the said definition had to be read in the light of the accepted connotation of the word, and as such. it could have no wider meaning than the ordinary connotation of the word, and according to this connotation, retrenchment means the discharge of surplus labour or Staff by the employer for an reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and does not include termination of services of all workmen on a bonafide closure of industry or on change of ownership or management thereof. In other words, the effect of this decision was that though the definition of the word "retrenchment" may perhaps have included the termination of services caused by the closure of the concern or by its transfer, these two latter cases could not be held to fall under the definition because of the ordinary accepted connotation of the said word. This decision necessarily meant that the word "retrenchment" in S.25FF had to bear a corresponding interpretation. In that case, the employees of the Barsi Light Railway Company, Ltd. had made a claim for retrenchment compensation under S.25FF against the purchaser of the Railway Co., and the employees of the Shri Dinesh Mills Ltd. had made a similar claim against their employer on the ground that the Mills had been closed. These claims had been allowed by, the Bombay High Court and the employers

had come to this Court in appeal. This Court having held that the word "retrenchment" necessarily postulated the termination of the employees' services on the ground that the employees had become surplus, allowed the appeals preferred by the employers and held that the employees' claim against the purchaser in one case and, against the employer who had closed his business, in the other, could not be sustained. Thus, as a result of this decision, it was realised that if the object of the legislature in introducing section 25-FF was to enable the employees of the transferor concern to claim retrenchment compensation unless the three conditions of the proviso to the said section were satisfied it could not be carried out any longer. The decision of this Court in Hariprasad's case(1) was pronounced on November 27, 1956.

This decision led to the promulgation of an Ordinance No. 4 of 1957. By this Ordinance, the original s. 25-FF as it was inserted on September 4, 1956, was substantially altered. Section 25-FF' as it has been enacted by the Ordinance reads thus:-

"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 s. 25-F, as if the workman had been retrenched:

Provided that nothing in this section shall; apply to a workman in any case where there has been a change of employers by reason of the transfer, if-

(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 the transfer or other wise, 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."

In due course, this Ordinance was followed by Act 18 of 1957 on June 6, 1957: By 'this Act, s. 25 FF as it was enacted by the Ordinance has been introduced in the parent Act. It would be noticed that the Ordinance came into force retrospectively as from December 1, 1956, that is to say, three 'days after the judgment of this Court was Pronounced in Hariprasad's case [1957-I L.L.J.243] (vide supra)

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 s. 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 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 S. 25-F, says the section,. as if they had been retrench ed. 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's case (1). 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, S. 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 s. 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, s. 25-FF makes a reference to s. 25-F for that limited purpose, and, therefore, in all cases to which s.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 s. 25-FF emphasizes 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 reemployment against the transferee of the undertaking. Thus, the effect of the enactment of s.25-FF is to restore the position which the Legislature had apparently in mind when s. 25-FF was

originally enacted on September 4, 1956. By amending s. 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.

In this connection, it is necessary to point out that even before s.25-FF was introduced 'in the Act for the first time, when such questions were considered by industrial adjudication- on general grounds of fair play and social justice, it does not appear that employees of the transferred concern were held entitled to both compensation for termination of service and immediate re-employment at the hands of the transferee. The present position which results from the enactment of s.25-FF, as amended, is, therefore, substantially the same as it was at the earlier stage. It is common ground that if a transfer is fictitious or 'benami' s. 25-FF has no application at all. In such a case, there has been no change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation.

Mr. Chari, however, urges that the present case ought to be governed by the provisions of s. 25-H of the Act. This argument proceeds on the assumption that the case of termination of service resulting from the transfer of ownership or management of an undertaking to which s. 25-FF applies is a case of retrenchment properly so-called. In our opinion, this assumption is clearly not well-founded. The first difficulty in accepting the correctness of this assumption is the decision of this Court in Hariprasad's case (1) to which we have already referred. The decision of this

Court in that case clearly shows that the termination of services resulting from transfer or closure is not retrenchment, and it is on the basis of the correctness of this decision that s. 25-FF as amended has been enacted. Besides, on a construction of S. 25-FF itself, it is difficult to equate the termination of services with which it deals with retrenchment covered by s. 25-F. As we have already indicated, s. 25-F is referred to in s. 25-FF to enable the assessment of compensation payable to the employees covered by Q. 25-FF. The clause "as if" clearly shows the distinction between retrenchment under S. 2(oo) and termination of service under s. 25-FF. In this connection, we may refer to the decision of this Court in M/s. Hari Singh Manufacturing Co. Ltd. v. Union of India and others [1960 - II L.L.J 1]. In that case, this Court had to consider the effect of the words "as if" occurring in s. 25-FF, and it has been held that by the use of the words "as if the workmen had been retrenched" under the said section, the Legislature has not sought to place closure of an undertaking on the same footing as retrenchment under s.25-F. Therefore, the plea that s.25-H applies to the present case cannot be accepted.

Mr. Chari then argued that though in terms s. 25-H may not apply to the present case, the general principle underlying the provisions of the said section should be invoked in dealing with the claim made by the respondents against the appellant. His argument is that too much emphasis should not be placed on the identity of the individual employer in dealing with the present question and he suggested that what is important to bear in mind is the identity of the undertaking which was run by the vendor before and which is run by the vendee now. If the undertaking is the same, there is no reason why the workman should not be entitled to claim continuity of service in the said undertaking, In our opinion this argument is misconceived. Once we reach the conclusion that in the case of a transfer of

any undertaking the Legislature has by s. 25-FF provided for payment of compensation to the employees on the clear and distinct basis that their services have been terminated by such transfer, it is difficult to see how any questions of fair play or social Justice would justify the claim by the resents that they ought to be re-employed by the, appellant. It is true that in cases falling under s. 25-F, workmen may get retrenchment compensation and they may yet be able to claim re-employment under s. 25-H and in that sense, some workmen may get both retrenchment compensation and re-employment. That is no doubt the effect of reading s.- 25,F and s. 25-H together. But it must be borne in mind that in the case of retrenchment, the undertaking continues and only some workmen are discharged as surplus and it is the problem of re-employment of this small number of discharged workmen. that is tackled by s. 25-H. Besides, under s. 25-H, a discharged workman may not be entitled to claim re- employment immediately after retrenchment or even soon thereafter. It is only if the employer who discharged him as surplus requires additional' workmen that his opportunity may occur. In the present case, however, the position is entirely different. As soon as the transfer is effected under s. 25 FF, all employees ate entitled to claim compensation, unless, of course, the case of transfer falls under the proviso ; and if Mr. Chari is right, these workmen who have been paid compensation are immediately entitled to claim re-employment from the transferee. This double benefit in the form of payment of compensation and immediate re-employment cannot be said to be based on any considerations of fair play or justice. Fair play and justice obviously mean fair play and social justice to both the parties. It would, we think, not be fair that the vendor should pay compensation to his employees or, the ground that the transfer brings about the termination of their services, and the vendee should be asked to take them back on the ground that the principles of social justice require him to do so. In this connection, it is relevant to remember that

the industrial principle underlying the award of retrenchment compensation is, as observed by this Court in the case of 'The Indian Hume Pipe Co. Ltd. v. The Workmen and another [1959 - II L.L.J. 830],

"to give partial protection to workmen who are thrown out of employment for no fault of their own, to tide over the period of unemployment";

and in that sense, the said compensation is distinguishable from gratuity. Therefore, if the transferor is by statute required to pay retrenchment compensation to his workmen, it would be anomalous to suggest that the workmen who received compensation are entitled to claim immediate re-employment in the concern at the hands of the transferee. The contention that in cases of this kind, the workmen must get retrenchment compensation and re-employment almost simultaneously is inconsistent with the very basis of the concept of retrenchment compensation. We are, therefore, satisfied that the general principles of social justice and fair play on which this alternative argument is based, do not justify the claim made by the respondents.

In the result, the appeal is allowed and the award is set aside. There would be no order as to costs.

22. According to the learned Senior Counsel that once the compensation is paid as contemplated under Section 25-FF of the I.D.Act, no further claim by the workmen would be entertained against the transferee company. In fact, the first respondent Tribunal itself has extracted the ratio laid down by the Constitution Bench of the Hon'ble Supreme Court in the aforesaid decision.

23. According to the learned Senior Counsel, once the transfer of the undertaking was held to be bona fide, the question of grant of any relief to the workmen against the petitioner even on equity does not arise at all.

24. The learned Senior Counsel would rely on the following decisions in support of his contentions.

i) "2005 (1) LLJ 853 (SC), (Maruthi Udyog Limited v. Ramlal and others). He would rely on the observations of the Hon'ble Supreme Court in paragraphs 21, 22, 23, 24, 39 and 44 which are extracted herein below:-.

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing therefrom. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee takes effect. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose.

"22.A Constitution Bench of this Court in Hariprasad Shivshankar Shukla vs. A.D. Divikar [(1957) SCR 121] interpreted the word 'retrenchment' as contained in Section 2(oo) of the ID Act, holding :

"For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in s.2 (oo) and as used in s.25F has no wider meaning than the ordinary, accepted connotation of the word : it means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business

as in the case of Shri Dinesh Mills Ltd. or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company."

"23.The history of the legislation has been noticed by a Constitution Bench of this Court in Anakapalla Co-operative Agricultural and Industrial Society Ltd. (supra) and it, while holding that a company taking over the management of a closed undertaking may in a given situation become successor-in-interest but as regard the interpretation of the relevant provisions of the 1947 Act following Hariprasad Shivshankar Shukla (supra), opined :

"..... 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, s. 25FF 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 s. 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, s. 25FF makes a reference to s. 25F for that limited purpose, and, therefore, in all cases to which s.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."

"24. The said decision, therefore, is an authority for the proposition that the expression 'as if' has limited application and has been employed only for the purpose of computation of quantum of compensation and takes within its purview a case where retrenchment as contained in Section 2(oo) of the 1947 Act has taken place within the meaning of Section 25F and not in a case falling under Sections 25FF or 25FFF thereof.

"25. to 38.

"39. The interpretation of Section 25J of the 1947 Act as propounded by Mr. Das also cannot also be accepted inasmuch as in terms thereof only the provisions of the said Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including the Standing Orders made under the Industrial Employment (Standing Orders) Act, but it will have no application in a case where something different is envisaged in terms of the Statutory Scheme. A beneficial statute, as is well known, may receive liberal construction but the same cannot be extended beyond the statutory scheme. [See Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd. Baroda, (2004) 5 SCC 385].

"40 to 43.

"44. While construing a statute, 'sympathy' has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the concerned workmen."

He would therefore contend that the basic premise on which the first respondent Tribunal had granted the relief to the workman was on the basis of sympathy, but such sympathy cannot be allowed to override a well defined statutory scheme.

ii) "2007(1) LLJ 202 (SC) (Ram Pravesh Singh and others Versus State of Bihar and others), he would place strong reliance on paragraphs 21, 26 and 28, which are reproduced herein below:

"21. Let us now examine whether the principles of legitimate expectation can have any application in this case. What transpired several decades ago when the

Board commenced its operations and when its finances were sound, cannot have any bearing on its action in the year 1995. The position of the Board vis-à-vis the Society in 1995 was completely different from the position of the Board vis-à-vis the several ex-licensees when the Board took over their undertakings several decades back. Further, the assumption that whenever an undertaking is taken over, transferred or purchased, the transferee or purchaser should continue the services of the employees of the erstwhile owner of the undertaking, is not sound. In fact, statutory provisions seem to indicate otherwise. Section 25-FF of the Industrial Disputes Act, 1947 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 the provisions of Section 25-F, as if the workman had been retrenched, except in the cases mentioned in the proviso thereto. Therefore, the natural consequence of a transfer of an undertaking, unless there is a specific provision for continuation of the service of the workmen, is termination of employment of its employees, and the employer's liability to pay compensation in accordance with Section 25F. In *Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen* [AIR 1963 SC 1489], a Constitution Bench of this Court rejected the contention of the employees that, on transfer of the undertaking, the employees of the undertaking should be absorbed by the purchaser/transferee of the undertaking. This Court held :

"This double benefit in the form of payment of compensation and immediate re-employment cannot be said to be based on any considerations of fair play or justice. Fair play and justice obviously mean fair play and social

justice to both the parties. It would, we think, not be fair that the vendor should pay compensation to his employees on the ground that the transfer brings about the termination of their services, and the vendee should be asked to take them back on the ground that the principles of social justice require him to do so. and in that sense, the said compensation is distinguishable from gratuity. Therefore, if the transferor is by statute required to pay retrenchment compensation to his workmen, it would be anomalous to suggest that the workmen who received compensation are entitled to claim immediate reemployment in the concern at the hands of the transferee."

"22. to 25.

"26. The observations in Gurmail Singh (supra) on which reliance is placed are extracted below :

"This is where, as here, the transferor and/or transferee is a State or a State instrumentality, which is required to act fairly and not arbitrarily (see the recent pronouncement in Mahabir Auto Stores v. Indian Oil Corporation -- 1990 (3) SCC 752) and the court has a say as to whether the terms and conditions on which it proposes to hand over or take over an industrial undertaking embody the requisite of "fairness in action" and could be upheld. We think that, certainly, in such circumstances it will be open to this Court to review the arrangement between the State Government and the Corporation and issue appropriate directions. Indeed, such directions could be issued even if the elements of the transfer in the present case fall short of a complete succession to the business or undertaking of the State by the Corporation, as the principle sought to be applied is a

constitutional principle flowing from the contours of Article 14 of the Constitution which the State and Corporation are obliged to adhere to."

"It was very fair on the part of the State Government to decide that, as the tubewells would be operated by the Corporation, it would be prudent to run them with the help of the appellants rather than recruit new staff therefore and that the government should bear the burden of any losses which the Corporation might incur as a result of running the tubewells. But having gone thus far, we are unable to see why the government stopped short of giving the appellants the benefit of their past services with the government when thus absorbed by the Corporation. Such a step would have preserved to the appellants their rightful dues and retirement benefits. The conduct of the government in depriving the appellants of substantial benefits which have accrued to them as a result of their long service with the government, although the tubewells continue to be run at its cost by a Corporation wholly owned by it, is something which is grossly unfair and inequitable. This type of attitude designed to achieve nothing more than to deprive the employees of some benefits which they had earned, can be understood in the case of a private employer but comes ill from a State Government and smacks of arbitrariness. Acting as a model employer, which the State ought to be, and having regard to the long length of service of most of the appellants, the State, in our opinion, should have agreed to bear the burden of giving the appellants credit for their past service with the government. That would not have affected the Corporation or its employees in any way except to a limited extent indicated below and, at the same time, it would have done justice to the appellants. We think,

therefore, that this is something which the State ought to be directed to do."

"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 changeover."

These observations have to be understood in the background of the facts of that case. The appellants therein were tubewell operators in the Public Works Department (PWD) of the State Government. The State took a decision to transfer all tubewells to a Corporation wholly owned and managed by the State and as a consequence all the permanent posts with reference to the Tubewell Circle in the PWD were abolished. Notices were served in terms of Section 25F of the Industrial Disputes Act. When those notices were challenged, they were set aside on the ground that they were not in consonance with clause [c] of Section 25F. The State Government issued fresh notices of termination and they were also set aside by the High Court on the ground that they did not conform to clause [b] of Section 25F. Thereafter, the State Government served fresh notices terminating the services in accordance with Section 25F for the third time. The third round notices were also challenged. But the High Court upheld the notices of retrenchment. The order of the High Court was challenged before this Court. During the pendency of the long drawn litigation, the newly formed Corporation decided to take over their services by extending them the same scale of Pay, which they were getting when they were in the employ of the State Government. Therefore, the only

grievance that survived for consideration before this Court related to appellants therein being treated as fresh appointees on the dates of their respective appointment by the corporation, thereby denying them the benefit of their past service and seniority. It is in the context of examining the said grievance, this Court made the aforesaid observations. As noticed above, retrenchment under Section 25-FF was found to be valid. The Corporation had voluntarily taken over the services of the retrenched employees. The question whether the transferee or the purchaser of the undertaking should absorb the services of the employees of the previous employer was not in issue and therefore, the said decision is of no assistance. On the other hand, what may be relevant are the following observations of the Constitution Bench in Uma Devi (supra) :

"Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly ? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the

State by such directions, as such directions may turn counterproductive."

"27.

"28. The said observations made in an interim order with reference to the State's obligations will not be of any avail to seek employment under the Board. We are not concerned in these appeals about the rights of the employees of the Society vis-a-vis the Society or the State Government. We are concerned with a specific question as to whether they can seek absorption under the Board. We may in this behalf refer to the decision of this Court in *Bhola Nath Mukherjee v. Government of West Bengal* [1997 (1) SCC 562] relating to transfer of a licensee's undertaking to a State Electricity Board, as a consequence of revocation of the licence. In that case the Board initially allowed the employees of the erstwhile licensee to continue in its service but subsequently introduced terms which rendered them fresh appointees from the date of take over of the undertaking. The question that arose for consideration was whether the employees were entitled to compensation under Section 25FF of the Act; and whether the liability for payment of such compensation under Section 25FF of the Act was on the transferor or the Board. This Court held that employees had no right to claim any retrenchment compensation from the Board, nor did they have any right to claim to be in continuous employment on the same terms and conditions, after the purchase of the undertaking by the Board. The said decision clearly recognizes that the Board has no obligation towards the employees of the previous owner of the undertaking."

(iii) "2002 (1) LLJ 753 (AP) (*Bharat Coca-Cola Bottling South East Pvt.Ltd., Vijayawada versus Government of A.P. and others*)". The learned senior counsel would place reliance on paragraphs 2, 14 and 15 which are reproduced herein below:

"2.The basic fact of the matter is not in dispute. The petitioner which is a private limited company incorporated under the Companies Act, 1956 entered into a Business Purchase Agreement with respondent No.6 whereby and where under it acquired the business undertaking of the respondent No.6 situated at Ramavarappadu, Vijayawada in terms whereof services of 78 permanent employees were taken over by the petitioner. The petitioner set up a manufacturing unit at the village Atmakur, Vijayawada with a view to meeting the exacting quality standards of its beverages. The fifth respondent Union filed a complaint before the Assistant Commissioner of Labour on November 14, 1998 and the same was taken up for conciliation proceedings under the Industrial Disputes Act. A writ petition marked as W.P.No.34032 of 01998 was filed by the 5th respondent Union during the pendency of the said proceedings before this Court for a direction against the petitioner herein for absorption of its 61 members who were admittedly piece rated and casual workers.

"3. to 13.

"14. Having regard to the fact that there may not be sufficient work for the workmen of the transferor, a beneficial provision has been made by the Parliament while enacting the said provision. A legal fiction has been created therein as a result whereof the retrenchment would be presumed entitling the workmen to claim compensation in accordance with the provisions of Section 25-F of the Act. Clause (C) of the proviso appended thereto would apply only in the event where there has been a change of employer by reason of the transfer, if the new employer is under the terms of such transfer or otherwise, legally liable to pay the workman in the vent of his retrenchment, compensation on the basis that his service had been continuous and had not been interrupted by reason of such transfer.

"15. The change of the employer therefore must be by reason of the terms of transfer or otherwise which would include acts of volition on the part of the transferee to take over the employees of the establishment. Section 25-FF of the Act thus clearly postulates that the relationship between the workmen and the transferor Companies and the same is terminated by reason of deemed retrenchment and consequent payment of compensation in terms of Section 25-F thereof. If the subsequent transferee in the absence of any conditions of transfer or otherwise, did not take the services of the employees, no relationship of the employer and the employee comes into being. In other words, no change of employer takes place by reason of such transfer."

(iv) "1991 (2) LLJ 76 (SC) (Gurmail Singh and Others versus State of Punjab and others). The learned Senior Counsel would specifically draw the attention of this Court to para 21 of the judgment of the Hon'ble Supreme Court which is reproduced herein below:

"21. To sum up, even before the insertion of S. 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 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 refusal 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."

25. Learned Senior Counsel with all his scholarship at his command, would vehemently contend that after insertion of 25 FF of the I.D.Act, the Labour Court does not enjoy any discretion to grant any further benefit, particularly in the present case, where the compensation as due to the workmen under the statute, had been fully paid and the transfer of undertaking had been found to be not sham and nominal, but bona fide and genuine. He would profusely submit that the grant of benefit of re-employment as against the petitioner company does not have any legal legs to stand on and in the absence of any statutory or other legal provision, the award of the Labour Court cannot stand the test of judicial scrutiny. He would, therefore, pray for allowing the writ petition by setting aside the award of the Labour Court which is impugned in the writ petition.

26. Mr.V.P.Rajendiran, learned counsel appearing for the respondents 2 to 8 Unions, has made the following submissions.

The foremost submissions of the learned counsel is to the effect that the transfer of ownership from the 9th respondent to the present petitioner was intended to victimize the workmen and the transfer was sham and nominal and that the findings of the

first respondent Tribunal in favour of the petitioner Management on this aspect was incorrect and invalid. He would draw the attention of this Court to the sale deed dated 13.11.1992 and according to the learned counsel, the sale deed executed by an incompetent person. However, he was unable to point out that as to how the sale deed was executed by an incompetent person. At this, the learned Senior Counsel would refute the said contention upfront that the Joint Managing Director of the 9th respondent and the Vice Chairman and the Managing Director of the Petitioner Manager had entered into an agreement of sale on 30.10.1992 and in pursuant thereafter, the power agent had effected the sale. Therefore, there was nothing amiss in the sale transaction as between the 9th respondent and the petitioner company. The learned counsel for the Unions would alternatively submit that the Tribunal ought to have at least ordered re-employment with effect from December, 1992 and not from 01.12.2008. According to the learned counsel, the date fixed by the Tribunal for re-employment has no sanctity and therefore, in any event, the award passed by the Tribunal is liable to be interfered with.

27. The learned counsel would draw the attention of this Court to the observations made by a learned Division Bench of this Court in a case between the same parties in W.A.No.977 and 978 of 1999 dated 19.09.2007 wherein a challenge was laid by the petitioner Management against the reference by the Government. The observations of the Division Bench as stated in paragraphs 28 to 38 are extracted herein below:

"28. The main core of the argument on the part of the appellant is that they are not at all a necessary party to the reference and the Government has not applied its mind before referring the matter to the Industrial Tribunal for adjudication. It is also argued that since compensation has already been paid to the workers, referring the dispute to the Labour Court including the appellant as a party to the reference is bad in law.

"29. It is the specific case of the workers that the entire transfer of undertaking between the appellant and the third respondent is fictitious. At this juncture, it is appropriate to look into the agreement, dated 30.10.1992, entered into between the appellant and the third respondent. Clause (7) of the said agreement reads as follows:

"It is expressly agreed that the Transferee will not be liable to employ or retain the service of any workman/employee of

the transferor as from the date of the Transfer of undertaking. It is further agreed that the Transferor will notify its workmen/employees about the transfer of the undertaking and the date from which it so takes effect and settle all statutory claims of the workmen/employees upto the date of the transfer of undertaking prior to the transfer of undertaking. No claim of any employee of the transferor in respect of his employment with the transferor shall devolve on the transferee. It is also confirmed between the parties that the transferee is under no obligation of any form to the workmen/employees of the transferor. It is the sole liability of the Transferor to meet whatever claims his workmen/employees may have with reference to their employment as on the transfer date."

Clause (9) of the said agreement reads as follows:

"The transferor shall be liable and responsible for all obligations or liabilities arising from or in respect of the business of the undertaking upto and including the Transfer Date and shall indemnify transferee against all claims, expenses or other liabilities as a consequence of the failure, refusal or neglect on the part of the transferor to comply with its obligations under this clause."

"30. Thus, on a perusal of the said clauses of the agreement, no man of ordinary prudence could dispute that both the appellant and the third respondent have given a simple go-bye to the benefit and welfare of the employees who were till time working with the third respondent, which must have been the prime concern of both the Managements while entering into the transfer of Undertaking. We wonder as to how such sweeping, draconian, unilateral and lopsided clauses could be inserted into the agreement behind the back of the hundreds of poor workmen, that too detriment to their rights and depriving them of their sole livelihood. The pathetic result of this exfacie fictitious transfer is loss of lives of 140 workers apparently by and as

a result of starvation. Therefore, as has been held by the Honourable Apex Court in Gurmail Singh's case, such a fictitious transfer of ownership of an undertaking will not fall under the purview of Section 25-FF of the Act. A clever drafting of the agreement, apparently throwing to winds the welfare of the workmen, does not in any manner relieve the appellant from its obligations to face the reference before the Labour Court. After the transfer of the Undertaking, we do not know how the transferor company will consider the employment of workmen and it is for the transferee to consider the employment of the workmen, as he is holding the Unit. Therefore, since being a party to the fictitious transfer, ignoring the welfare of the workmen, leading to loss of livelihood of hundreds of workmen, which led to the loss of 140 lives, the appellant cannot now contend that it is not a necessary party to the reference and hence the reference has to be quashed insofar as it is concerned. The workers were never consulted before such transfer of the Undertaking. Since their rights and livelihood are at stake, the workers can very well question the validity of the agreement entered into between both the Managements. Therefore, as has already been held by the Division Bench, both the Managements are free to put forth all their defence legally sustainable before the Industrial Tribunal and it will not, in any way, affect the validity of the order of reference made by the Government. The Labour Court can also go into the prejudice caused to the workmen by virtue of such a transfer of the Undertaking.

"31. There is no dispute regarding the proposition laid down by the Honourable Apex Court in Sultan Singh's case [1996 (2) SCC 66] that sub-section (5) of Section 12 of the Industrial Disputes Act does not enjoin the appropriate Government to record reasons for making reference under Section 10 (1). This aspect has very well been discussed and decided by the Division Bench in the judgment dated 6.1.2006.

"32. Coming to the question of application of mind, as directed by the Division Bench, the learned Additional Advocate General has produced the records relating to the impugned G.O.(D) No.318 Labour and Employment Department dated 30.4.1993 before the Court. As has been observed by the Division Bench in

its judgment dated 6.1.2006, the file contains all relevant materials such as Call Attention Motion in the Assembly with regard to the agitation by the workers of Deccan Sugars Factory at Pugalur; the report of the Labour Commissioner dated 13.4.1993 addressed to the Secretary to the Government, Labour and Employment Department, Chennai-9 regarding the termination of the workers; the report of the Commissioner of Labour dated 17.3.2003 etc. which speak about the agitation by the workers through their Union, demonstration in front of the main office, indulging in stone-pelting, using acid bombs, gasoline bombs, country bombs, damage to the Transport Corporation buses due to pelting of stones etc., which led to lathi-charge and firing warning shots by the Police and though the impugned reference did not mention all the events specifically, necessary and relevant materials are available for the Government to make an order of reference, which was correctly done by the first respondent. In this backdrop of the observations by the Division Bench, pursuant to the directions of the Honourable Supreme Court, the appellant, having gone through the files relating to the impugned G.O., has raised the following points, as could be seen from their additional affidavit dated 2.4.2007:

"(a) G.O.(D)318, dated 30.4.93 does not make any reference to a conciliation report or to the letter dated 10.4.93 written by the Assistant Commissioner of Labour and refers only to a letter dated 12.4.1993 of the Commissioner of Labour.

(b) No reference is made to the consistent stand of the appellant that it cannot be made a party to the reference and no relief can be granted against it. This issue is not even examined by the 1st respondent.

(c) The exposed file records the proceedings in the Assembly, the letter of Commissioner of Labour and the letter of Assistant Commissioner of Labour. These documents point to a law and order/public order situation which by itself cannot be the basis of a reference while conciliation was still going on.

(d) Specific attention is drawn to the following finding in the letter of the Assistant Commissioner of Labour "in the incident, none of the workmen or officials employed by the present management i.e. EID Parry (India) Limited are involved.

(e) There is also no reference to the judgment of this Honourable Court in WP 19772/92. It would specifically go to show that what was done was only transfer of undertaking and not a closure."

"33. Thus, all these points raised by the appellant, after perusal of the files produced by the first respondent, would raise the one and the only point of the appellant that the impugned G.O. does not contain all the details. This aspect has already been examined by the Division Bench in Para No.20 of its judgment and has observed that:

"Though the impugned reference did not mention all the events specifically, as rightly pointed out by the learned Additional Advocate General, necessary and relevant materials are available which are sufficient for the Government to make an order of reference. It is true that the Division Bench in 2005 (II) CTC 1 (supra), has observed in para 47 that it was incumbent upon the Government to have recorded a prima facie finding whether the workmen concerned were employees of the writ petitioner or only employees of the contractor, and whether the claim of the workmen concerned had already been settled. In other words, according to the learned senior counsel for the appellants, the order of reference must contain prima facie finding by the Government relating to existence of an industrial dispute. We have already extracted Section 10(1) of the Act which enables the appropriate Government that if any "industrial dispute exists" or apprehended and on satisfaction, to refer any matter in connection with the industrial dispute to a Court at any time. It will be useful to refer that in Sultan Singh's case (1996(2) SCC 66), the Honourable Supreme Court has held that sub-section (5) of

Section 12 of the Act does not enjoin the appropriate Government to record reasons for making reference under Section 10(1). It enjoins to record reasons only when it refuses to make a reference...."

"34. On a careful perusal of the materials placed on record and the judgment of the Division Bench of this Court dated 6.1.2006, in the light of the order of the Honourable Supreme Court and the subsequent affidavits filed by the appellant and the first respondent, when such a serious dispute is brought to its notice, a duty is cast on the Government to refer the matter for adjudication to the Industrial Tribunal based on the material, which was properly done by the first respondent Government. As has already been observed supra, Section 10(1) of the Industrial Disputes Act contemplates even on 'apprehension' the dispute can be referred to the Industrial Tribunal for adjudication and as has already been adverted to supra, since the transfer of Undertaking itself is fictitious, depriving the livelihood of hundreds of workmen, the appellant cannot be said to be an unnecessary party to the reference. The absence of conciliation proceedings, argued by the learned senior counsel for the appellant has already been dealt with by the Division Bench and has been well answered by Mr.Somayaji that in the peculiar facts and circumstances of the case, the communications of the Labour Commissioners could themselves be treated as failure reports to refer the matter for adjudication by the Government. At the cost of repetition, it has to be mentioned that we cannot traverse beyond the scope of the remand which is confined only to the records filed by the State and the affidavits filed by the parties in relation thereto.

"35. On consideration of the records filed by the State and the affidavits filed by the parties in relation thereto, we have no hesitation to hold that there is complete application of mind on the part of the first respondent while referring the dispute between the transferor company, transferee company and the employees for adjudication to the Industrial Tribunal and the fact that the appellant company is a necessary party to the adjudication cannot at all be disputed since being a transferee company.

"36. As has already been observed by the Division Bench, there is no dispute that the workmen have received the compensation only under protest, thus protecting and preserving their rights to agitate, but the appellant, for no better reason, is stalling the entire reference proceedings by resorting to various kinds of litigations, in spite of meritorious orders passed by the learned single Judge and the Division Bench, causing further agony to 651 employees, who were stripped-off their livelihood and thrown to streets over-night, resulting in the death of 140 of them also, under the garb of an agreement of transfer of Undertaking. When this aspect has been brought to the notice of the Division Bench, the appellant has commented the same that the entire aspect has been dramatized. Such an attitude of the appellant, commenting the traumatic condition of the poor workers as dramatic, besides being not appreciable is rather condemnable. The appellant unnecessarily dragging on the dispute and stalling the entire reference proceedings even after 14 years of reference, without allowing it see the light of the day, putting at stake the rights of the labour and their livelihood, we consider it appropriate to direct the appellant to deposit a sum of Rs.10,000/= per each employee, whose names have been mentioned in the impugned G.O., by way of costs before the Industrial Tribunal to which the reference is made, within four weeks from the date of receipt of a copy of this order.

"37. To sum-up, it is to be held that there is no res judicata operating in this matter and that the Government has applied its mind in the manner required by law and has considered all the facts and circumstances of the case while referring the dispute to the Labour Court for adjudication and that the appellant is a proper and necessary party to the reference made by the Government to the Labour Court.

"38. For all these reasons, we are not able to find any merit in the contentions of the appellant and accordingly, both these appeals are dismissed. Consequently, WAMP.No.133 of 2007 is closed. Since the reference itself is 14 years old, we direct the Industrial Tribunal to dispose of the Industrial Dispute within six months on merits and in accordance with law. The parties are directed to cooperate with the Labour Court for early disposal

of the case."

28. The learned counsel would submit that the learned Division Bench of this Court has observed that the transfer was fictitious and the workmen were not considered and the compensation received by them was only under protest and it is always open to the workers to question the validity of the transfer of the management. At this juncture, it is relevant to refer a specific finding of the Industrial Tribunal that on behalf of the workmen, no evidence was let in to the effect that the sale transaction was sham and nominal. This finding was recorded by the Tribunal in paragraph 19 of the award which is already extracted supra in this order. In the face of such finding, on the basis of appreciation of specific materials let in in the enquiry before the Tribunal, this Court does not think that it can take a different view on the same issue on the basis of certain facts which were disclosed only in the form of affidavit.

29. The learned counsel for the Unions would further submit that no proper notice was issued to the workman prior to the sale of the undertaking. At this, the learned counsel for the petitioner would submit that notices were sent by the Management by post to all the workers and also pasted at the factory premises. He would draw the attention of this Court to paragraph 35 of the award, in which, the Tribunal has clearly held that the denial of work to the workers was not justified and the workers had been working in the sugar factory for a long period of time. He would submit that it is not as if the 9th respondent Management was making loss which impelled the management to go for a outright sale, as at the relevant point, the 9th respondent was making a profit of Rs.11 crores annually and the sale price was fixed only at 16.6 crores. He would, in any case, urge this Court that the Tribunal ought to have granted re-employment at least from 13.11.1992, if not, from 01.12.2008. By such direction, hundreds of workers and their families would have been benefited, since during the long pendency of the litigation, 198 workers died and 212 workers had attained the age of superannuation. Because of the management's callous attitude in embarking upon treacherous and tortuous litigation journey upto the Hon'ble Supreme Court of India, and due to the reason of their financial economic strength nearly 200 workers died and equal number of them had attained the age of superannuation without sufficiently being compensated.

30. The learned counsel would further submit that once the petitioner Company continued with the same activity as that of the 9th respondent and in fact, the petitioner offered re-employment to the workmen on fresh contract basis who were erstwhile employees of the 9th respondent. In such

circumstances, there is no justification on the part of the petitioner to take a refuge under Section 25 FF of the I.D.Act and deny employment to the workers. According to him, denial of employment is nothing but denial of livelihood which is violative of Article 21 of the Constitution of India. Such action on the part of the petitioner, did not receive proper adverse re-action from the first respondent Tribunal as the Tribunal had merely rendered slender solace by ordering re-employment only

with effect from 01.12.2008. As stated that by the time, the award was passed, scores of workmen either died or superannuated.

31. As regards the contention putforth by the Unions regarding the profit made by the 9th respondent Company, the learned Senior Counsel would clarify that Section 25 FF of the I Act does not make any distinction between profit or loss making companies in the matter of transfer of undertaking. In the transfer, all has to be seen is, as to whether the sale is genuine and legitimate and valid and the same is not a camouflage to victimize the workers.

32. Shri Balan Haridass, the learned counsel appearing for the proposed impleading parties, would make his submissions as follows:

33. He would submit that the workers to whom, he is representing are necessary and proper parties before this Court since they have no faith in the Unions prosecuting their claim effectively before this Court as their past conduct did not inspire them to view otherwise. Although strong objections were raised both by the learned Senior Counsel appearing for the petitioner Management and the learned counsel for the respondents 2 to 8 Unions and also the learned counsel appearing for the 9th respondent, Shri Balan Haridass counsel would implore this Court to allow him to make his submissions on merits as well notwithstanding objections raised by the parties. Although this Court had initially expressed apprehension about allowing the counsel to make submissions on merits when the workers were actually not made parties in the present litigation, however, considering the fact that no prejudice would be caused to any party if the arguments of the counsel for the proposed parties are heard on merits. More over, the learned counsel took great pains to persuade this Court to hear his arguments on merits, since the livelihood of hundreds of workers is involved and the writ petitions ought not to be decided finally by this Court in the absence of effective and coherent submissions apprising this Court on both factual and legal aspects.

34. Considering the gravity of the issue and also considering the fact that the counsel merely wants to add the workers' perspective to the issue de hors the decision whether they are necessary or proper parties, this Court in the larger interest of the present litigation as such, allowed the learned counsel for the proposed parties to make his submissions on merits subject to, of course, finding to be given by this Court on maintainability of the impleading petitions.

35. As regards maintainability of the impleading petitions, the learned counsel would specifically draw the attention of this Court to the order passed by the Division Bench of this Court in W.A.No.352 and 353 of 1984 dated 28.01.1986 wherein the Bench has made the following observations:

"6. On the other hand, Miss Anna Mathew, learned counsel for the petitioners drew our attention to a pronouncement of the Supreme Court in *Air India v. Nergesh Meerza* [1981-II L.L.J. 314] to state that though the cause of the employees was earlier espoused by the Union, yet the individual employees themselves did agitate the matter before the Supreme Court and obtained reliefs. Whatever that be, as we have already pointed out, as persons affected, the petitioners can always invoke the jurisdiction of this Court under Article 226 of the Constitution of India."

He would further draw the attention of this Court to the order passed by a learned Single Judge of this Court in W.P.No.34547 of 2005 dated 22.07.2008, wherein, the learned Judge of this Court has held as follows:

"14. In view of the direction issued by this Court, the Central Government, vide its order dated 19.02.2004 referred the industrial dispute for adjudication by the CGIT, Chennai. The point for adjudication as mentioned in the order of reference reads as follows:-

"Whether the industrial dispute raised by Petroleum Workers Union against the management of Hindustan Petroleum Corporation Ltd., for regularisation of services of eight workmen as mentioned in the Annexure and also for other relief claimed in

Writ Petition No.12297 of 1998 is justified? If so, to what relief the concerned workmen are entitled?"

"15. It was thereafter, a Writ Appeal was filed against the order of the learned Judge in W.A.No.627 of 2004. The Division Bench of this Court took note of the subsequent reference made by the Central Government and, therefore, declined to interfere with the order. But, however, it modified the continued retention of the workmen and paragraph 2 of the said judgment of the Division Bench reads as follows:-

"Having regard to the arguments of either counsel and having regard to the facts and circumstances of the case, we dispose of this writ appeal with a direction to the Central Government Industrial Tribunal cum labour Court, Chennai to dispose of the industrial dispute referred by the Central Government in its reference dated 19.02.2004 within four months from the date of receipt of a copy of this order, after affording opportunity of hearing to either party. Pending the same, the eight members of the writ petitioner Union namely., 1. G.Sekar, 2. G.Karmegam, 3.J.Irudayaraj, 4.A.Rajkumar, 5.S.Egambaram, 6.K.Vadivelu, 7.K.Williams and 8.S.Irudayaraj, who are respondents 2 to 9 herein, shall be paid the existing wages for a period of four months Should there be a delay in disposing of the industrial dispute, then either party can mention to this Court, apart from the making such request before the Central Government Industrial Tribunal cum Labour Court itself. It is needless to mention that if the industrial dispute ends in favour of the workmen, then the appellants have to abide by the said award of the Industrial Tribunal cum Labour Court, and even if any appointment is made in place of the workmen in the meantime, they have to

pave way for the induction of the respondents workmen....”

[Emphasis added]

“16. It was thereafter, the CGIT took up the dispute as I.D.No.311 of 2004 and issued notice to the HPCL. In the meanwhile, the workmen, without any necessity, moved the Central Government for an amendment of the reference by requesting that the individual workmen should also be made as parties to the dispute. But when they did not get any reply, they filed an application being I.A.No.69 of 2004 before the CGIT seeking for impleadment of the eight workmen as petitioners in addition to the Trade Union. Though it was resisted by the HPCL, the CGIT allowed the said I.A. By an order dated 14.07.2004 and the workmen were also made as petitioners in addition to the Trade Union. Though it was resisted by the HPCL, the CGIT allowed the said I.A. By an order dated 14.7.2004 and the workmen were also made as petitioners 2 to 9 in the said Industrial Dispute.

“17. In the affidavit filed in support of the writ petition, in paragraph 7, a contention was raised that the impleadment of the workmen by the CGIT was erroneous and the HPCL reserved its right to challenge the said order at an appropriate stage meaning, after the Award was passed. In view of the said averment, the learned Advocate General argued that the CGIT has no power to implead any party and the dispute is only between the Trade Union and the Management and the individual workers have no right of say in collective industrial dispute. But, however, it is found from the prayer made in the present writ petition no such attack is made against the order dated 14.07.2004 made in I.A.No.69 of 2004 and the certified copy of the I.A. Order has also not been filed. Hence, they cannot be permitted to raise such an issue without proper pleadings. Even otherwise, under Section 18(3) of the I.D. Act, when an Award is binding on a party, the Tribunal has power to implead any part,

who is proper and necessary to the dispute. The power of the Tribunal to implead a new party has been approved by the Supreme Court vide its judgment in Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Orissa and others [1964 (2) L.L.J. 460]."

He would therefore, submit that the Court has the power to implead any party to the litigation for giving effective implementation of its order. Being individually aggrieved of their long non-employment, the workers' cries need to be heard in order to fulfill their expectation that justice being done to them.

36. Apart from canvassing the impleadment, Shri Balan Haridoss, would also make his submissions in regard to the merit of the workers' claim vis-à-vis the claim of the petitioner management. In this regard, he would draw the attention of this Court to para 12 of the claim statement filed on behalf of the Unions which is reproduced below:

"12. The Petitioner submits that even though the workmen rendered their service for the Management for several decades they have been victimized by the respondent and they have been threatened and compel them for fresh recruits new employment. This was also proved by the second Respondent as recruited 145 employees of Pugalur Sugar Factory as a fresh recruit and contract basis. Due to this ulterior motives the transaction was undertaken was against the Industrial Dispute Act, 1947."

37. In the same breath, he would also draw the attention of this Court to para 23 of the counter statement filed on behalf of the petitioner Management before the Tribunal which is reproduced herein below:

"23. With regard to para-12 of the claim statement, it is submitted that there is no legal or contractual obligation on the part of the 2nd respondent to take into employment any employee or workman employed in the Pugalur Sugar Factory of the 1st respondent. However, for its own reasons, when the 2nd Respondent started running the Unit by recruiting its workmen on fresh terms, a large majority of them turned out to be the erstwhile workmen of the 1st Respondent.

However, this has nothing to do with the claim of the Petitioner Workmen for employment against the 2nd Respondent."

38. He would submit that the entire exercise of transfer of undertaking was done with oblique motive of victimizing then (existing) employees under the 9th respondent management which fact was fortified by the action of the petitioner for having recruited 145 erstwhile employees on fresh contractual terms. Once the same industry has been carried on notwithstanding the transfer, the termination of the workmen and re-employing some of them on fresh terms amounts to unfair labour practice and the same is against the provisions of the Industrial Disputes Act.

39. He would further submit that the transfer suffers from legal malice and the management had not let in any evidence before the Tribunal as to the basis of leaving several hundreds of workmen and re-employing only 198 workmen on fresh terms. The Government reference for adjudication is regarding non-employment of the workmen and therefore, the Tribunal was called upon to decide the correctness and validity of non-employment of the workmen. The learned counsel for the proposed parties, would rely on the following decisions in support of his various contentions.

(i) "AIR 1950 SC 188 (Bharat Bank Ltd., Delhi versus The Bharat Bank Employees' Union, Delhi Union of India). The learned counsel would particularly draw the attention of this Court to paragraph 84 of the judgment of the Hon'ble Supreme Court which is reproduced herein below:

"84. We would now examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength

between the employers on the one hand and the workmen's organization on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function."

He would lay emphasis on the fact that the industrial adjudication has to travel beyond the scope of administration of justice and arrive at an equitable solution as between the workers and the management.

(ii) "1986 (3) SCC 156 (Central Inland Water Transport Corporation Limited and another versus Brojo Nath Ganguly and another), wherein, the Hon'ble Supreme Court of India, while dealing with the case of unsustainable terms with the contract of the employment had made some momentous observation as found in paragraphs 88 and 89 of the judgment, which are extracted herein below:-

"88. As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognized, at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their creation. Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances. For example, in section 138(2) of the German Civil Code provides that a transaction is void "when a person" exploits "the distressed situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages, which are obviously disproportionate to the performance given in return." The position according to the French law is very much the same.

"89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It

will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.

The learned counsel would submit that when the bargaining power is tilting in favour of the one party, the Courts have to follow the principle in consonance with right and reason intended to secure social and economic justice and which confirms to the mandate of the great equality clause in Article 14 of the Constitution of India. In the instant case, he would submit that the decision for transferring of undertaking was unilaterally taken without taking into consideration of the workers' welfare and therefore, such decision of the management which affect the very livelihood of the workers at large, cannot be allowed to remain to the detriment of the workers' interest.

(iii) "1991 (1) SCC 189 (Gurumail Singh and others versus State of Punjab and others)" wherein, the Hon'ble Supreme Court has held in paragraphs 16 and 17, which were extracted herein below:-

"16. The Supreme Court was dealing with a case of genuine transfer between two parties—a predecessor and a successor—at arms' length where the principles of the law of contracts clearly held the field. The employees of the predecessor had no privity

of contract with the successor and could make no claims against him. The industrial law, however, safeguarded his interests by inserting S. 25FF and giving him a right to compensation against his former employer on the basis of a notional retrenchment except in cases where the successor, under the contract of transfer itself, adequately safeguarded them by assuring them of continuity of service. and of employment terms and conditions. In the result. he can get compensation or continuity but not both. The present case before us raises an allied, but sometimes more important issues. as to whether there cannot be situations in which the court or industrial adjudicator, should, in the interests of justice, fair play and industrial peace, hold the employee entitled to continuity with the successor without being compelled to be satisfied with compensation from the predecessor. The Supreme Court itself has visualised such a case and made it clear that if a transfer is fictitious or benami S. 25FF has no application at all. Of course, in such a case, "there has been no change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation". A second type of cases which comes to mind is one in which there is form, and perhaps also in law, a succession but the management continues to be in the hands of the same set of persons organized differently such as in *Bombay Garage Ltd. v. Industrial Tribunal*, [1953] 1 L.L.J. 14 and *Artisan Press v. L.A.T.*, [1954] II L.L.J. 424. In such cases, the transferee and transferor are virtually the same and the over-riding principle should be that no one should be able to frustrate the intent and purpose of the law by drawing a corporate veil across the eyes of the court. (see, *Palmer, Company Law*, 23rd Edn., pages 200-201, paras 8 and 10 and the decision in *Kapur v. Shields*, [1976] 1 W.L.R. 131, cited therein). These exceptions to the above rules, we think, would still be operative. But it is not

necessary here to decide whether this principle will help us to identify the corporation with the State Government in the present case for the present purposes, particularly as there is a catena of cases which do not approve of such identification (see Accountant and Secretarial Services P. Lid: v. Union, [1988] 4 S.C.C. 324 and the cases cited therein.). Leaving this out of account then, we may turn to a third category of cases, which we think would also fail as an exception to the principle behind S. 25FF. This is where, as here, the transferor and/or transferee is a State or a State instrumentality, which is required to act fairly and not arbitrarily (see the recent pronouncement in Mahabir Auto Stores v. Indian Oil Corporation, [1990] 3 S.C.C. 752 and the Court has a say as to whether the terms and conditions on which it proposes to hand over or take over an industrial undertaking embody the requisite of "fairness inaction" and could be upheld. We think that, certainly, in such circumstances it will be open to this Court to review the arrangement between the State Government and the Corporation and issue appropriate directions. Indeed, such directions could be issued even if the elements of the transfer in the present case fall short of a complete succession to the business or undertaking of the State by the Corporation, as the principle sought to be applied is a constitutional principle flowing from the contours of Article 14 of the Constitution which the State and Corporation are obliged to adhere to. We are making this observation because it was attempted to be argued on behalf of the State and the Corporation that only certain assets of the State 'industry', viz. the tubewells, were taken over by the latter and nothing more. We do not quite agree with this contention but, in view of the approach we propose to adopt, this aspect is not very material and need not be further discussed. Looking at the facts of this case in the above perspective, it appears to us that the State Government has acted arbitrarily towards the appellants. It is true that the State Government was incurring losses and

decided to transfer the tubewells to the Corporation. This decision would have been the most unexceptionable, prudent and perhaps the only decision that the Government could have taken, if it had decided to completely cut itself off thereafter from any responsibility or liability arising out of the operation of the tubewells. But that the Government did not do. As pointed out earlier, the State Government, although transferring the tubewells, undertook to recoup any losses that the Corporation might incur as a result of the transfer. The result, therefore, was that, despite the transfer of tubewells to the Corporation the Government continues to bear the losses arising from this activity. But, while doing so, it has abridged the rights of the appellants by purporting to transfer only the tubewells and retrenched the appellants from service as a consequence. A grievance has been made that, while several other members of staff belonging to the irrigation department such as engineers, clerks, etc. have been sent on deputation to the Corporation, the State has only chosen to retrench the service of as many as 498 tubewell operators. This differential treatment may not amount to discrimination as contended by the appellants because those others belonged to categories of Government staff which could come back to Government service in the event of the Corporation finding their services unnecessary at a future date, for one reason or another as they were persons with general qualifications who could be fitted into the other work of the irrigation branch. The tubewell operators, however, could not have been sent on deputation because there was no possibility at all of their being fitted into the irrigation branch later, in case the Corporation could find no use for them because, once the tubewells had been transferred for good to the Corporation, the Government could find no openings for them in the service. While, therefore, we do not agree with the appellant that the State Government discriminated against the appellants as compared with the other members of the staff by sending them on

deputation but not the appellants, we think that this treatment meted but to the other staff shows that the Government did not hesitate to burden the Corporation with the liability of their salary etc. while serving on deputation which would only augment the losses, if any, that the Corporation would incur by operating the tubewells. But when it came to the case of the appellants, the Government has considered it fit to retrench their services, simultaneously making some arrangement or issuing some directions enabling the Corporation to absorb them as if they were fresh recruits. The assurance that they would be paid according to their original scales of pay and at their original leaves of pay came as a later development only because of the pending litigation. It was very fair on the part of the State Government to decide that, as the tubewells would be operated by the Corporation, it would be prudent to run them with the help of the appellants rather than recruit new staff therefore and that the Government should bear the burden of any losses which the Corporation might incur as a result of running the tubewells. But having gone thus far, we are unable to see why the Government stopped short of giving the appellants the benefit of their past services with the Government when thus absorbed by the Corporation. Such a step would have preserved to the appellants their rightful dues and retirement benefits. The conduct of the Government in depriving the appellants of substantial benefits which have accrued to them as a result of their long service with the Government, although the tubewells continue to be run at its cost by a Corporation wholly owned by it, is something which is grossly unfair and inequitable. This type of attitude designed to achieve nothing more than to deprive the employees of some benefits which they had earned, can be understood in the case of a private employer but comes ill from a State Government and smacks of arbitrariness. Acting as a model employer, which the State ought to be, and having regard to the long length of service of most of the appellants, the state, in our opinion, should have

agreed to bear the burden of giving the appellants credit for their past service with the Government. That would not have affected the Corporation or its employees in any way except to a limited extent indicated below and, at the same time, it would have done justice to the appellants. We think, therefore, that this is something which the State ought to be directed to do."

In the above case, the Hon'ble Supreme Court of India held that in the case of transfer of undertaking, the workers ought to have been given the benefit of past service, being a model employer. Here it should be noted that this case pertains to the fact that the transfer of undertaking was between the Government on one side, the instrumentality of the State on the other side and not in respect of two private establishments.

iv) "2010 (3) SCC 192 (Harjinder Singh versus Punjab State Warehousing Corporation)". The learned counsel would draw the attention of this Court to paragraphs 24 and 47 of the judgment of the Hon'ble Supreme Court of India which are reproduced herein below:-

"24. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Indian Factories Act, Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act, Workmen's Compensation Act, the Employees Insurance Act, the Employees Provident Fund and Miscellaneous Provisions Act and the Shops and Commercial Establishments Act enacted by different States.

".....

"47. Justice Krishna Iyer, speaking for the Court, made it very clear that even though the judges are "constitutional invigilators and statutory interpreters" they should "also be responsive to part IV

of the Constitution being "one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order". The Learned Judge made it very clear that when the Judges "decode social legislation, they must be animated by a goal oriented approach" and the Learned Judge opined, and if I may say so, unerringly, that in this country "the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme."

The learned counsel would greatly draw strength from the observations of the Hon'ble Supreme Court in the above referred paragraphs in regard to the adaption of philosophy of social justice, in administration of justice by the Courts. Any State like ours where unemployment is a menace, the Courts have to follow the object of both of social justice in interpreting the larger constitutional scheme towards achieving such goal.

40. In regard to the contention of legal malice, the learned counsel for the proposed parties would rely on the decision of the Hon'ble Supreme Court of India, reported in "2010 (9) SCC 437 (Kalabharati Advertising versus Hemant Vimalnath Narichania and others)", particularly paragraph 25 which is reproduced herein below:

"25. The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide Addl. Distt. Magistrate, Jabalpur v. Shivakant Shukla,

AIR 1976 SC 1207; Smt. S.R. Venkataraman v. Union of India, AIR 1979 SC 49; State of A.P. v. Goverdhanlal Pitti, AIR 2003 SC 1941; Chairman and M.D., B.P.L. Ltd. V. S.P. Gururaja & Ors., (2003) 8 SCC 567; and West Bengal State Electricity Board v. Dilip Kumar Ray, AIR 2007 SC 976).

41. The learned counsel also relied upon a decision of the Hon'ble Supreme Court, reported in "2015 (6) SCC 494 (Oil Natural Gas Corporation Limited versus Petroleum Coal Labour Union and others), particularly on paragraphs 29 and 30 of the judgment which are extracted below:

"29. Further, it is very clear from the facts that all the concerned workmen have got the qualifications required for their regularization, except one of them and have been employed by the Corporation even prior to 1985 in the posts through various irregular means. The Tribunal has got every power to adjudicate an industrial dispute and impose upon the employer new obligations to strike a balance and secure industrial peace and harmony between the employer and workmen and ultimately deliver social justice which is the constitutional mandate as held by the Constitution Bench of this Court in a catena of cases. This above said legal principle has been laid down succinctly by this Court in the case of The Bharat Bank Ltd., Delhi v. The Employees of the Bharat Bank Ltd., Delhi & the Bharat Bank Employee's Union, Delhi[7], the relevant paragraph of the said case is extracted hereunder:

"61. We would not examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be

within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organization on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. In describing the true position of an Industrial Tribunal in dealing with labour disputes, this Court in *Western India Automobile Association v. Industrial Tribunal, Bombay, and others*[1949] F.C.R. 321 quoted with approval a passage from Ludwig Teller's well known work on the subject, where the learned author observes that "industrial arbitration may involve the extension of an existing agreement or the making of a new one or in general the creation of new obligations or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements."

The views expressed in these observations were adopted in its entirety by this Court. Our conclusion, therefore, is that an Industrial Tribunal formed under the Industrial Disputes Act is not a judicial tribunal and its determination is not a

judicial determination in the proper sense of these expressions."

It has been further held by this Court in the case of Life Insurance Corporation Of India v. D. J. Bahadur & Ors.[8], as follows:

"22. The Industrial Disputes Act is a benign measure, which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure, so that the energies of the partners in production may not be dissipated in counter-productive battles and the assurance of industrial justice may create a climate of goodwill...."

"30. Thus, the powers of an Industrial Tribunal/Labour Court to adjudicate the industrial dispute on the points of dispute referred to it by the appropriate government have been well established by the legal principles laid down by this Court in a catena of cases referred to supra. Therefore, the Tribunal has rightly passed an award directing the Corporation to regularize the services of the concerned workmen."

42. The learned counsel would rely on the observation in regard to the power of industrial Courts in dealing with the labour disputes. He has relied upon the decision of the Hon'ble Supreme Court reported in "2015 (9) SCC 62 (Tamil Nadu Terminated Full Time temporary LIC Employees Association versus Life Insurance Corporation of India and others)", wherein, it has been held in paragraph 42 as under:

"42. Furthermore, as per the legal principle laid down by this Court in the case of Bharat Bank (supra), the Industrial Court while adjudicating an industrial dispute has the right to override contracts and create rights which are opposed to contractual rights. The CGIT has rightly adjudicated the industrial dispute referred to it by the Central Government at the instance of the concerned workmen on the points of dispute, on the basis of pleadings

and evidence on record and legal principles laid down in the Awards passed by the NIT. "

43. The learned counsel has also relied upon the decision reported in "2017 (4) SCC 449 (Secretary, Mahatma Gandhi Mission and another versus Bhartiya Kamgar Sena and others), particularly, paragraphs 87 to 90 which are reproduced herein below:

"87. When Mathew, J. declared that Article 14 interdicts the State from creating inequalities, he was stressing the obvious. Further, he articulated the remedial measures the State has been enjoined to take recourse to: eliminate the existing inequalities through positive-affirmative-action, rather than passive neutrality.

"88. What is the remedy open to the citizen and the corresponding obligation of the judiciary to deal with such a situation, where the inequalities are created either by the legislation or executive action? Traditionally, this Court and the High Courts have been declaring any law, which created inequalities to be unconstitutional, but in *Nakara's* case this Court realised that such a course of action would not meet with the obligations emanating from a combined reading of the directive principles and Article 14. Therefore, this Court emphatically laid down in *Nakara's* case that it is possible to give an appropriate inductive relief by eliminating the factors, which creates the artificial classification leading to a discriminatory application of law.

"89. Though this Court is not bound by the law declared by the municipal courts of other countries, this court in the last 70 years always examined with due regard decisions of the American Supreme Court on questions of constitutional law. In a comparable situation, American courts did exercise jurisdiction by granting appropriate injunctive orders compelling the State to comply with the constitutional

mandate by ignoring the legislative command and extending the benefit provided under a legislation to a certain class of people who were expressly excluded from receiving that benefit provided by the legislation. [See: James Plyler v. J. and R. DOE et al. (supra) [37]]

"90. Notwithstanding the wholly unsatisfactory reasoning adopted by the High Court for allowing the claims of the writ petitioners, (the respondents herein), we are convinced that the conclusion of the High Court could be justified on basis of the principle enunciated in D.S. Nakara's case."

44. The learned Senior Counsel V.Karthick, appearing for the 9th respondent Management has made the following submissions:

He would rely on the resolution of the Board of Directors of the Company dated 15.07.1992 in and by which, it was resolved to dispose of the Sugar Unit at Pugalur by way of outright sale. According to the learned senior counsel, proper notice was issued to all the share holders of the company by the Board on 03.09.1992 and subsequently, on 30.09.1992 consent was accorded to the Board of Directors of the Company in terms of the provisions of Section 29(3)(1)(a) of Companies Act, 1956 for the sale of the Sugar Unit including land, building and machinery. Thereafter, suitable compensation has been paid to all the workmen under Section 25-FF of the I.D.Act and the same was also recorded in the Audit Report. He would draw the attention of this Court to the deposition of Management Witness -2, K.Ravindran, before the Tribunal in which the witnesses has clearly stated that the petitioner herein had not given any undertaking to the erstwhile employees of the 9th respondent and he would submit that the petitioner herein had recruited their own employees on their own merit and in the process, about 192 fresh employees who were erstwhile employees came to be appointed.

45. The learned Senior Counsel would submit that the Tribunal had given a clear finding that the 9th respondent Company had settled the accounts of 657 employees with compensation as per Section 25-FF of the ID Act in paragraph 10 of the award. He would also draw the attention of this Court to para 19 of the award in which the Tribunal has given a clear finding that the transfer of undertaking was a genuine transaction and the same was not sham and nominal and he would also rely on the findings of the Tribunal has found in para-35

which was already extracted supra.

46. After making his submissions in respect of merits of the claim of the workmen as against the 9th respondent, the learned Senior Counsel would also rely on the following decisions in support of his contention.

i) "2006 (2) LLJ 889 SC (Management, Mettur Beardsell Ltd. versus Workmen of Mettur Beardsell Ltd. and another)" wherein in paragraphs 8 to 10, the Hon'ble Supreme Court has held that the consent of the workmen was not pre-requisite for a valid transfer. The said paragraphs are extracted below:-

"8. The basic issues involved in the cases are as follows:

1. Was there a transfer of undertaking under Section 25FF of the I.D.Act?
2. Was this transfer vitiated by fraud?
3. Is consent of the employees required in a case of transfer of undertaking under Section 25FF?

"9. The second and third issues are being considered on the basis of stands presently raised, though there was no such plea forming foundation of the reference made to the Industrial Tribunal.

"10. Elaborate arguments were advanced on the question as to whether an employee's consent is a must under Section 25FF of the Act. The common law rule that an employee cannot be transferred without consent, applies in master-servant relationship and not to statutory transfers. Though great emphasis was laid by learned counsel for the respondent on Jawaharlal Nehru University v. Dr. K.S. Jawatkar and others (1989 (Supp.) 1 SCC 679), a close reading of the judgment makes it clear that the common law rule was applied. But there is not any specific reference to Section 25FF or its implication. There is nothing in the wording of Section 25FF even remotely to suggest that consent is a pre-requisite for transfer. The underlying purpose of Section 25FF is to establish a continuity of service and to secure benefits otherwise not

available to a workman if a break in service to another employer was accepted. Therefore, the letter of consent of the individual employee cannot be a ground to invalidate the action.

He would also draw reference to paragraphs 15 and 16.

"15. Section 25FF 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 S. 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 S. 25FF 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 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 S. 25FF 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 Cls. (a), (b) and (c) of the proviso are satisfied in this case, and so, if S. 25FF 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 25FF apply at all?

ii) "1997 (1) LLJ 362 (Mad) (Spencer Group Aerated Water Factory Employees' Union and another versus The Presiding Officer, Industrial Tribunal and others)". The learned senior counsel would draw the attention of this Court to paragraphs 24 and 26 in order to emphasis the legal position that workmen's consent was not necessary for validating the transfer of ownership or management of undertaking within the meaning of Section 25-FF of Act. Paragraphs 24 to 26 are reproduced herein below:-

"24. Having given our careful consideration to all the above decisions we have no hesitation in holding that after the advent of Section 25FF of the I.D. Act there is no scope for invalidating the transfer of the ownership or management of an undertaking, whether by agreement or by operation of law, on the ground that consent of the workmen had not been obtained. All that the workmen are entitled to, is notice and compensation in accordance with the provisions of Section 25F of the Industrial Disputes Act, if the workman was in continuous service for not less than one year and that too only if the proviso to Section 25FF of the I.D. Act, was not attracted. Where the proviso to Section 25FF of the Act is attracted and those conditions are satisfied, the workman is not entitled to notice and compensation in accordance with Section 25F of the I.D. Act from the transferor Company. It is needless to point out that if the transfer is malafide or benami in character, then the transfer

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

"25.

"26. Therefore, we answer the first point, by holding that consent is not at all necessary for effecting a transfer within the meaning of Section 25FF of the I.D. Act and on the subsidiary question, we hold that the workmen had tacitly submitted themselves to the transfer of management by their own conduct in not only working under the third respondent company, but also agitating their claim for wages from the third respondent.

iii) "1993 (1) LLJ 1211 (Workmen of Deccan Sugars versus Nava Bharat Ferro Alloys Ltd. & others)". The learned senior counsel would take this Court through the observations of the learned Single Judge of this Court in the aforesaid decision particularly in paragraphs 1 to 3 and 9, which are reproduced as under:

"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 Pugalur 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."

"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."

iv) "2004 (3) LLJ 539 (Management of Gordon Woodroffe Agencies (P) Ltd. versus P.O., Principal Labour Court and others)". The learned counsel would heavily rely on paragraphs 12 and 13, which read as under:

"12. Having heard the learned counsel for the parties and perused the records, we are satisfied that so far as the legality and genuineness of the closure is concerned, the Labour Court after considering the evidence brought on record has given a conclusive finding in favour of the appellant which finding has been confirmed by the learned Single Judge as well as the Division Bench of the High Court and the same has become final. Therefore, we will have to consider whether consequent to such finding of the Labour Court, it can direct payment of further compensation over and above what is contemplated under the Act. The answer to this question is found in the two judgments relied on by learned counsel for the appellant before us. In the case of M/s. Om Oil and Oil Seeds Exchange Ltd. (supra), this Court held :

"If the management was entitled to retrench 30 workmen and did so after paying wages for the period of notice and retrenchment compensation, we fail to appreciate the grounds on which an order for payment of 50 per cent of the wages in addition to retrenchment compensation may be made. Retrenchment compensation is paid as solatium for termination of service resulting in unemployment, and if that compensation be paid there can be no ground for awarding compensation in addition to statutory retrenchment compensation. If the Industrial Tribunal comes to the conclusion that an order of retrenchment was not properly made,

and the Tribunal directs reinstatement an order for payment of remuneration for the period during which the employee remained unemployed, or a part thereof may appropriately be made. That is because the employee who had been retrenched for no fault of his had been improperly kept out of employment, and was prevented from earning his wages. But where retrenchment has been properly made and that order has not been set aside, we are not aware of any principle which may justify an order directing payment of compensation to employees properly retrenched in addition to the retrenchment compensation statutorily payable."

"13. In our opinion, the ratio laid down in the above case clearly applies to the facts of this case. In the instant case also, the Labour Court came to the conclusion that the closure of the establishment was legally justifiable and the management had as required under the law, offered apart from the compensation payable for the closure, all other statutory dues which some of the employees collected without demur and in the case of respondent-workmen even though the same were offered on time, they did not accept it, therefore, the question of paying any additional ex gratia compensation which is not contemplated under the statute, does not arise. This Court in the case of N.S. Giri (supra) held : "An award under the Industrial Disputes Act cannot be inconsistent with the law laid down by the Legislature or by the Supreme Court and if it does so, it is illegal and cannot be enforced." Thus, it is clear from the pronouncements of this Court that the Labour Court or for that matter the High Court had no authority in law to direct payment of any additional sum by way of ex gratia payment otherwise than what is provided under the statute when the act of the management in closing down the establishment is found to be valid and all legally payable amounts have been paid or offered in time. In such a situation, contrary to the statute, the principle of

social justice cannot be invoked since the Legislature would have already taken note of the same while fixing the compensation payable."

v) "2006 (13) SCC 619 (Kerala Solvent Extractions Limited versus A.Unnikrishnan and another)", wherein, the Hon'ble Supreme Court has held in paragraphs 9 and 10 as under:

"9. Shri Vaidyanathan, learned Senior Counsel for the appellant, submitted, in our opinion, not without justification, that the Labour Court's reasoning bordered on perversity and such unreasoned, undue liberalism and misplaced sympathy would subvert all discipline in the administration. He stated that the management will have no answer to the claims of similarly disqualified candidates which might have come to be rejected. Those who stated the truth would be said to be at a disadvantage and those who suppressed it stood to gain. He further submitted that this laxity of judicial reasoning will imperceptibly introduce slackness and unpredictability in the legal process and, in the final analysis, corrode legitimacy of the judicial process.

"10. We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process

will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

47. The learned Senior Counsel would therefore submit that the Courts can grant the relief only within a frame work of law and statute and cannot travel beyond the scope of the litigation and grant the relief outside the frame work of law on the basis of sympathetic consideration. The effect of the arguments made by the learned Senior Counsel that the Court cannot ignore legal principles completely and embark upon granting reliefs on the basis of equitable consideration alone.

47 (a). As regards the employment of the workers in the present litigation, as stated supra, a strong objection was raised by the learned counsels appearing for both the management as well as the Unions. However, Shri G.Masilamani, learned senior counsel appearing for the petitioner management would rely on the following decisions to resist the attempt of the workers to get themselves impleaded in the writ proceedings.

i) "1961 (1) LLJ 504 (SC) (Ram Prasad Vishwakarma versus Chairman, Industrial Tribunal)", wherein, while dealing with the similar issue of workmen claiming independent right to represent although a collective dispute was pending for adjudication, the Hon'ble Supreme Court has made the following observation:

"The question is, whether, when thereafter he thought his interests were being sacrificed by his representative, he could claim to cancel that representation, and claim to be represented by somebody else. In deciding this question, we have on the one hand to remember the importance of collective bargaining in the settlement of industrial disputes, and on the other hand, the principle that the party to a dispute should have a fair hearing. In assessing the requirements of this principle, it is necessary and proper to take note also of the fact that when an individual workman becomes a party to a dispute under the Industrial Disputes Act he is a party, not independently of the Union which has espoused his cause.

"It is now well-settled that a dispute between an individual workman and an employer cannot be an industrial dispute as defined in section 2(k) of the Industrial

Disputes Act unless it is taken up by a Union of the workmen or by a considerable number of workmen. In Central Provinces Transport Service Ltd. v. Raghunath Gopal Patwardhan (1) Mr. Justice Venkatarama Ayyar speaking for the Court pointed out after considering numerous decisions in this matter that the preponderance of judicial opinion was clearly in favour of the view that a dispute between an employer and a single employee cannot per se be an industrial dispute but it may become one if it is taken up by an Union or a number of workmen. "Notwithstanding that the language of section 2(k) is wide enough to cover disputes, between an employer and a single employee", observed the learned Judge, "the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of adjudication under the Act, when the same had not been taken up by the Union or a number of workmen".

"This view which has been re-affirmed by the Court in several later decisions recognizes the great importance in modern industrial life of collective bargaining between the workman and the employers. It is well known how before the days of collective bargaining labour was at a great disadvantage in obtaining reasonable terms for contracts of service from his employer. As trade unions developed in the country and collective bargaining became the rule the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workmen, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards all other disputes.

The necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the Union. The Union or those workmen who have by their sponsoring turned the individual

dispute into an industrial dispute, can therefore claim to have a say in the conduct of the proceedings before the Tribunal.

"It is not unreasonable to think that s. 36 of the Industrial Disputes Act recognises this position, by providing that the workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member. While it will be unwise and indeed impossible to try to lay down a general rule in the matter, the ordinary rule should in our opinion be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the Tribunal to permit other representation of the workman concerned. We are not satisfied that in the present case, there were any such exceptional circumstances. It has been suggested that the Union's Secretary Fateh Singh himself had made the complaint against the appellant which resulted in the order of dismissal. It has to be observed however that in spite of everything, the Union did take up this appellant's case against his dismissal as its own. At that time also, Fateh Singh was the Secretary of the Union. If the Union had not taken up his cause, there would not have been any reference. In view of all the circumstances, we are of opinion, that it cannot be said that the Tribunal committed any error in refusing the appellant's prayer for representation through representatives of his own choice in preference to Fateh Singh, the Secretary of the Union.

"As a last resort, learned counsel for the appellant wanted to urge that the Secretary of the Union had no authority to enter into any compromise on behalf of the Union. We find that no such plea was taken either in the appellants application before the Tribunal or in his application under Arts. 226 and 227 of the Constitution to the High Court. Whether in fact the Secretary had any authority to compromise is a question of fact which cannot be allowed to be raised at this stage.

"In the application before the High Court a statement was also made that the compromise was collusive and mala fide. The terms of the compromise of the dispute regarding the appellant's dismissal were that he would not get reemployment, but by way of "humanitarian considerations the company agreed without prejudice to pay an ex-gratia amount of Rs. 1,000/- (Rupees one thousand) only" to him. There is no material on the record to justify a conclusion that this compromise was not entered in what was considered to be the best interests of the workman himself."

ii) "AIR 1997 SC 2334 (The K.C.P.Ltd. versus Presiding Officer and others)", wherein, the Hon'ble Supreme Court of India has held as under in paragraphs 15 and 18:

"15. Learned counsel for the appellant company vehemently submitted that when respondent No. 2 - union had espoused the cause of all the 29 dismissed workmen, and the reference was got made by it under Section 2(k) of the Act, the union which represented all the workmen including the dismissed respondents 3 to 14 was entitled to act on behalf of all of them by way of collective bargaining and could legitimately enter into the settlement which was for the benefit of all concerned workmen. Under these circumstances, individual workmen had no independent right to contest their dismissal orders and were bound by the settlement which was not shown by them to be in any way ex-facie, unfair or unjust that it was a package deal entered into by respondent No. 2 - union with the appellant company and in such a collective industrial bargaining there was always give and take that there were no exceptional grounds for rejecting such a settlement which was for the benefit of all concerned workmen and the Labour Court ought to have acted upon the same. Consequently, the order of the Labour Court refusing to act upon said settlement so far as respondent Nos.3 to 14 are concerned, was patently erroneous in law and hence, the order of the learned Single Judge of the High Court confirming such order of

respondent No. 1 and further order of the Division Bench also equally suffered from patent errors of law. In support of these submissions, various decisions of this Court were cited to which we will refer a little later. "

"16.

"17.

"18. It has to be kept in view that the industrial dispute was raised by respondent No. 2 - union on behalf of all the 29 workmen who were dismissed from service by the appellant company. It was an industrial dispute as defined by Section 2(k) of the Act raised by the union on behalf of its members. Respondents Nos. 3 to 14 were at the relevant time, members of the union and even till date they continue to be the members of the sponsoring union. This was not a reference raised by a dismissed employee as per Section 2A of the Act. Consequently, as which was in charge of the proceedings and could represent all the 29 dismissed workmen on whose behalf the dispute was raised by it. When the said union having considered the pros and cons of the situation, entered into the settlement on behalf of all the workmen from whom it had taken cudgels unless the said settlement was found to be ex-facie, unjust or unfair it could not be gone behind by these respondents who can be said to be parties to the same through their representative union - respondent No. 2. In this connection a reference is also required to be made to Section 18(1) of the Act which lays down as under:

"A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement."

iii) "2014 (3) LLN 1037 (V.Alagappan and others versus Presiding Officer, Industrial Tribunal, Madras and others)". The learned senior counsel would draw the attention of this Court to

paragraphs 8 and 13 to 16 of the order rendered by a learned single Judge of this Court, which read as under:

"8. As against the above contention, Sri S.Ravindran, learned counsel appearing for the fifth respondent, would contend that in the first place, the petitioners have no locus standi to challenge the award impugned in this writ petition and as could be seen from the very prayer of the parties before the first respondent Tribunal, the contesting unions before the tribunal only wanted to withdraw the whole dispute as not pressed in the light of the settlement reached between the fifth respondent-management and therefore, the Tribunal was not called upon to examine the various terms of the settlement. The learned counsel also contended that as held by the Hon'ble Supreme Court in the judgments in the K.C.P., Ltd. v. Presiding Officer and others [1996 (2) L.L.N.970], as well as to the one in Federation of Labour Co-operative, Ltd., v. Balayya [1961 - I L.L.J. 565], it was well within the jurisdiction of the Tribunal to accept the prayer of the unions while not pressing the dispute in the larger interest of the industry as a whole as well as the interest of the workmen concerned, who were in service as on the date of the settlement. In other words, according to the learned counsel, the settlement having been entered into between respondents 2 to 4 and the fifth respondent-management in the larger perspective of the maintenance of the cordial relationship between the parties, any sacrifice made by both thee parties cannot be dissected with a microscopic view in order to interfere with the settlement between the parties.

"9. to 12.

"13. That apart, when we come to the question of locus standi of the petitioners to challenge the award on various grounds urged in this writ petition, again, it will have to be held that it is well settled that in respect of a collective dispute espoused on behalf of the workmen which came to be referred for adjudication before the first

respondent Tribunal, it will be for the union concerned which raised the dispute to make its stand clear before the Tribunal either on merits of the dispute or about the ultimate resolution in whatever manner it came to be concluded as between the parties. In this context, the judgment of the Hon'ble Supreme Court in Ram Prasad Wishwakarma v. Industrial Tribunal and others [1961-- I L.L.J. 504] which dealt with the industrial dispute covered by S.2(k) of the Industrial Disputes Act and stated the legal position as under, would be relevant:

" The necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the union. The union or those workmen who have by their sponsoring turned the individual dispute into an industrial dispute, can therefore claim to have a say in the conduct of the proceedings before the Tribunal.

If the union had not taken up its cause, there would not have been any reference. In view of all the circumstances, we are of opinion that it cannot be said that the Tribunal committed any error in refusing the appellant's prayer for representation through representatives of his own choice in preference to Fateh Singh, the secretary of the union."

"14. Therefore, applying the above said ratio to the facts of this case, the dispute raised here also came to be referred for adjudication at the instance of the respondents 2 to 4 along with the fifth respondent-management by virtue of a joint application made under S.10(2) of the Act. The petitioners were nowhere in the picture at the time when the dispute was sponsored by the union before it came to be referred for adjudication under G.O.(D) No.112, dated 31 January 1995. Till the miscellaneous application in M.A.No.63 of 1996 was filed by the petitioners, it was the unions, viz., respondents 2 to 4, who were pursuing the

dispute before the first respondent Tribunal on behalf of the entire set of workmen employed in the fifth respondent-management. There is no controversy that it was a collective dispute raised by respondents 2 to 4, though ultimately it came to be referred by way of joint application under S.10(2) of the Industrial Disputes Act. None of the individual workmen of the fifth respondent-management had anything to say when the dispute came to be sponsored by respondents 2 to 4 prior to its reference as well as after the dispute came to be numbered and was pending consideration before the first respondent Tribunal.

"15. In such circumstances in the larger interest of the workmen as a whole employed in the fifth respondent-management, when the settlement, dated 6 January 1996, came to be reached between respondents 2 to 4 on the one hand and the fifth respondents 2 to 4 were fully competent to resolve the dispute which was pending before the first respondent tribunal in the overall interest of their and the fifth respondent industry. Therefore, when such a perception which weighed with respondents 2 to 5 while reaching the settlement was in the larger interest of the workmen as well as the industry, in fitness of things, it should be held that any such decisions should be allowed to be exercised only by the union which represented its members, who were then on the rolls of the fifth respondent as on the date of the settlement. By no stretch of imagination, the petitioners who admittedly left the services of the fifth respondent prior to the said settlement, majority of them under voluntary retirement scheme and some of them by way of superannuation, be held to have any say in the resolution of the said dispute. Therefore, even the order of the first respondent Tribunal, dated 14 March, 1996, rejecting the petitioner's application in M.A.No.63 of 1996 cannot be held to be unjustified, in the facts and circumstances of this case.

"16. Therefore, when the impugned award along with the above said order i the miscellaneous application is thus scrutinised based on the above factors, it

will have to be held that the petitioners really had no say on the date when the settlement, dated 6 January 1996, came to be reached more so when they ceased to be the members of respondents 2 to 4 and also ceased to be the workmen of the fifth respondent as on that date. Therefore, even on that score, it will have to be held that they did not have any right at all to step into the shoes of respondents 2 to 4 before the Tribunal to pursue the dispute when it was reported by respondents 2 to 4 that the whole dispute did not survive for consideration by virtue of the settlement reached among themselves with the fifth respondent-management outside the jurisdiction of the first respondent Tribunal."

48. Before venturing into the main issues which are placed before this Court for consideration, the issue of impleadment of individual workman has to be considered in the overall facts and circumstances of the case as indicated above. Though much effort has been undertaken by the learned counsel Shri Balan Haridoss in impressing upon this Court about the necessity of the workers being heard in the present litigation, this Court cannot lose sight of the basic facts that admittedly the workers who are seeking to get impleaded themselves, are the members of the Unions, respondents 2 to 8 herein. The said unions were represented by a counsel and the Unions had fully participated in the proceedings before the first respondent Industrial Tribunal.

49. The decisions relied upon by the learned counsel for the proposed party were rendered in certain exceptional circumstance where the interest of individual workman was likely to be affected by the outcome of litigations pending therein. This Court does not find any such exceptional circumstances in the present case for allowing the impleadment of the individual workman since this Court of the considered view that they are neither necessary or proper parties. This Court finds that the interest of the workmen was sufficiently projected and canvassed before this Court by the trade unions which are arrayed as respondents 2 to 8 herein.

50. Moreover, if the individual workmen are to be impleaded in the present litigation, this Court would consciously or unconsciously fall into error by converting the collective dispute into one of individual dispute particularly, at the

stage where this Court is only called upon to exercise its judicial review in respect of the award passed by the first respondent Tribunal under the Article 226 of the Constitution of India. Such conversion of dispute would completely change the complexion and character of the collective bargaining which is recognized in the scheme of the Industrial Disputes Act.

51. The learned counsel was unable to point out any worthwhile reasons as to how the interest of the workmen was not properly canvassed before this Court. Mere pendency of the litigation before this Court, which was not the fault of by any party, cannot be the reason for individual workmen to get themselves impleaded in the litigation.

52. This Court finds that the decisions cited by the learned Senior Counsel appearing for the petitioner Management, are more acceptable and can be applied to the factual matrix of the present case in preference to the decisions relied upon by the learned counsel appearing for the proposed workmen.

53. Be that as it may, despite the fact that the individual workmen cannot have independent say in a collective bargain which was nothing but under Section 2(k) of the I.D.Act. The arguments advanced on their behalf were fully heard and this Court proposes to address the same instead of eschewing the same altogether to the larger satisfaction of all the concerned. This Court is of the considered view that allowing the workmen to get impleaded at this stage, is not going to advance the cause of the workers any further or to their advantage that what has been pleaded by the Unions on their behalf. The impleadment as such would only result misjoinder of the parties and would also undermine the very basic scheme of collective bargaining as enshrined in the provisions of the Industrial Disputes Act. Therefore, this Court rejects all the impleading petitions filed by the individual workmen.

54. As regards, the main dispute is concerned, the following issues are emerged for consideration by this Court.

(1) Whether the very transfer of ownership of the 9th respondent without the the transfer of services of the workmen, is valid, legal and vitiated by fraud?

(2) Whether the 9th respondent Management had complied with the Section 25-FF of the I.D.Act in its letter and spirit?

(3) Whether findings of the first respondent Tribunal are liable to be re-

appreciated on the basis such the findings are legally unacceptable and perverse?

(4) Whether the ultimate award of the Tribunal on the basis of equitable consideration i.e. directing re-employment of the workman can be countenanced in law?

(5) Whether the consideration of equity alone can be the basis for grant of any relief to the workman in order to achieve larger goal of securing social justice in furtherance of the constitutional scheme?

55. Issue No.1:

Whether the very transfer of ownership of the 9th respondent without the the transfer of services of the workmen, is valid, legal and vitiated by fraud?

As narrated above, the first respondent Tribunal on the basis of the materials placed for consideration, had come to a definite conclusion as found in paragraph 19 of the award which was extracted supra that the transaction between 9th respondent and the petitioner herein was a genuine transaction and the same was not sham and nominal. According to the Tribunal, not even an iota of evidence was made available on behalf of the workmen pointing out to the factum of the transfer of the ownership was sham and nominal which called for interference. In the said circumstances, the Tribunal had no option except to come to the conclusion in favour of the Management.

56. De hors the findings of the Tribunal, the arguments advanced on behalf of the Unions and the workmen on the said aspect, are considered by this Court assailing the transfer of ownership that the transfer was only to achieve collateral purpose with oblique motive in victimizing the workmen. This Court has gone through the extract of the resolution passed by the Board of Directors of the 9th Respondent dated 15.07.1992 and also the agenda which was slated in the 20th Annual General Body Meeting of the 9th respondent dated 03.09.1992 and explanatory statement pursuant to Section 173(2) of the Companies Act and also final resolution of the Board on 30.09.1992 and finds no mala fide intention on the part of both the transferor or transferee companies in entering into sale agreement on 30.09.1992 and the sale of the Unit on 13.11.1992. So also the Hon'ble Supreme of India and other Courts have repeatedly held that before the change of the ownership, no consent of workmen was mandatory. Moreover, the composition of the petitioner

company Board was completely different and it was not the case of the workmen, unions/workmen that the directors of both the companies were the same and share pattern of both the companies was also the same. The two companies being completely different entities, this Court is unable to appreciate the arguments of the unions/workmen that the transaction was some kind of collusive in nature in order to victimize the workmen. Such inference is completely far fetched and cannot be read into otherwise a genuine transaction between two companies on the basis of commercial decision taken by the 9th respondent company and the petitioner herein. Further, normally, this Court will refrain from diluting the findings of the Tribunal/Labour Court unless the same is projected to be a perverse finding derives from any materials whatsoever. In the instant case, the findings of the Tribunal premised on acceptable reasons on the basis of the relevant materials made available before it and such finding of fact cannot be discountenanced for the purpose of substituting a different finding by this Court. In fact, except the oral arguments advanced by the learned counsel appearing for the Unions/Workmen, no worthwhile materials were placed before this Court in order to render a favourable finding overriding the conclusion of the Tribunal in this regard. Therefore, this Court is of the considered view that the transaction namely, the transfer of ownership of the 9th respondent company to the transferee company, viz., the petitioner herein is a genuine and legitimate commercial transaction in terms of the Companies Act and the plea of same being sham and nominal was only raised for the purpose of the case and therefore, the Tribunal had rightly rejected the said contention as being without merits. This Court also endorses the findings of the Tribunal without any reservation.

57. Issue No.2:

(2) Whether the 9th respondent Management had complied with the Section 25-FF of the I.D.Act in its letter and spirit?

As regards the compliance of Section 25-FF of the I.D.Act, the evidence which was placed before the Tribunal was unimpeachable and overwhelming to the effect that the compensation as contemplated in the said Section has been duly complied with. The audit report was filed and the compensation paid to each of workmen in the form of a statement, has already been filed in the industrial proceedings. In fact, the payment of compensation had not been seriously disputed by the Unions/workmen and that was not the bone of contention between the management and the Unions/workmen. Their claim for reinstatement emanated on the premises that the transfer of undertaking was questionable and the workman having been left in

the lurch in the middle of their service career with little compensation, are to be considered for reinstatement, particularly in view of the fact that the transferee company, the petitioner herein to be carried on the industrial operations and recruited nearly 200 erstwhile workmen on fresh terms. In the case of Anakapalla Co-Operative Agricultural and Industrial Society versus Its Workmen and others" (1962 (2) LLJ 621 (CB), the Hon'ble Supreme Court has clearly held that in case of bona fide transaction, the workers employed by the transferor company, entitled to retrenchment compensation only under Section 25-FF of ID Act against the transferor and not the re-employment as against the transferee purchaser. The ratio laid down by the Constitutional Bench is directly and squarely applicable to the facts of the present case. Once no valid dispute has been raised in regard to settlement of compensation in terms of Section 25-FF of the I.D.Act, further attempt by the workers to stake any claim against the transferee company, namely, the petitioner herein cannot be countenanced to be a valid claim in the eye of law. In fact, the learned counsel Shri Balan Haridoss attempted to make a distinction between the decision of the Constitution Bench of the Hon'ble Supreme Court of India and other decisions on the ground that the decision of the Constitution Bench was dealing with the issue of absorption. However, this attempt was stonewalled by the strong objection raised by the learned Senior Counsel appearing for the petitioner Management stating that the ratio laid down by the Constitution Bench and the law declared by the Hon'ble Supreme Court of India, is not open to any interpretation by this Court which is bound by the ratio laid down therein. This Court finds that the learned Senior Counsel objection is valid and acceptable and the attempt of the learned counsel appearing for the workmen to attract this Court's interpretative skills to dissect and vivisection the niceties of the ratio laid down by the Hon'ble Constitution Bench has to be rejected outright as a desperate attempt made on the part of the workmen crying for attention.

58. In fact, as regards the application of 25-FF and the compensation to be payable under the section, it was an open and shut case for the petitioner Management. Once the said Section has been complied with as in the present case, the question of considering any further claim particularly for reinstatement by way of enforcing any statutory right does not arise at all. Right to reinstatement must arise within the frame work of law, of course, such right can be recognized outside the frame work on the basis of equitable consideration in exceptional circumstances in order to conform to social and noble cause of securing social justice and parity. However, the Courts must be extremely cautious and circumspect in sidestepping statutory scheme and enter into the nebulous area of equity and dispense

justice only on that ground. As stated above, the compensation having been settled simultaneously when the transfer of ownership took place in November, 1992 and such compensation was in terms of Section 25-FF of the I.D.Act, this Court has to necessarily reach to inexorable conclusion that the 9th respondent had complied with Section 25-FF of the I.D.Act in its letter and spirit and there is no scope for any other conclusion.

59. Issue No.3:

"Whether findings of the first respondent Tribunal are liable to be re-appreciated on the basis such the findings are legally unacceptable and perverse?"

The crucial findings of the first Respondent Tribunal can be segregated into two parts. One is that the finding in regard to the transfer of undertaking from the hands of the 9th respondent Management to the hands of the petitioner Management. As narrated above, in paragraphs 10 and 19 of the award, the categorical conclusion of the Tribunal was in favour of the Management. According to the findings of the Tribunal, the transaction was genuine and the same was not sham and nominal and the settlement of payment towards compensation as per Section 25-FF of the I.D.Act to all the employees, was not disputed. Such clear findings of the Tribunal were based on the material facts and no contra materials were placed before this Court for tinkering with the valid findings of the Tribunal. This finding is insofar as compliance of Section 25-FF of the I.D.Act is concerned and also endorsing the claim of the management that the transaction was a genuine one and not vitiated by any fraud for the purpose of victimizing the workers. This Court, therefore, accepts that the findings of the Tribunal are legally acceptable and not being perverse which calls for any interference from this Court. As regards the finding that the denial of work to the workers has not been bona fide and therefore, they are entitled for re-employment like other workers, cannot be countenanced both in law and on facts since no material basis was disclosed by the learned Tribunal in coming to such conclusion. Although it was the fact that merely 200 erstwhile workers came to be reemployed on fresh terms by the transferee company, leaving out several hundreds of other workers from reemployment, cannot be said to be per se mala fide since it was entirely within the domain of the transferee company to recruit its own workers in order to suit their own administrative and industrial expectation and policy. Of Course, the use and expression "heavy heart" discloses the sympathetic mind set of the Tribunal, yet as held by the Hon'ble Supreme Court of India in the case of "Maruthi Udyog Limited v. Ramlal and others" (2005 (1) LLJ 853 (SC)", that While construing a

statute, 'sympathy' has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the concerned workmen. In the same judgment, the Hon'ble Supreme Court has held that the beneficial statute may receive liberal construction but the same cannot be extended beyond the statutory scheme. Therefore, the conclusion as such by the Tribunal appears to be not in consonance with the statutory frame work particularly in the scheme of ID Act. Nevertheless, ultimately the conclusion has to be weighed with the overall consideration on the basis of lofty principle of equity which is enshrined in Article 14 of the Constitution of India. While adopting such perspective, this Court has to see whether the final award by the first respondent Tribunal granting the relief of reemployment to the workers with effect from 01.12.200/8 is a valid piece of award in furtherance of achieving socialistic agenda as envisaged in the preamble of the Constitution of India.

60. Issue No.4:

"Whether the ultimate award of the Tribunal on the basis of equitable consideration i.e. directing re-employment of the workman can be countenanced in law?

The first respondent Tribunal was entrusted with the unenvious task of settling a dispute between the large workforce and legally rightful management of the 9th respondent and the petitioner herein. The Tribunal has to tread the path of justice on a thin edge balancing the law on one side and the social justice on the other. While upholding the transfer of ownership as genuine and legitimate and not sham and nominal, yet the first respondent Tribunal did not perceive itself to be completely oblivious to the crying need of hundreds of workmen suffering under the pressure of non-employment in their middle ages. Therefore, the Tribunal took up the task of striking a fine balance between application of law and implementation of social agenda. In such a complex situation, the learned Tribunal has come out appreciably with a fair and equitable solution for settlement of the dispute between the work force and the management by ordering re-employment to the workers with the effect from 01.12.2008. This direction which is based on the finding of the Tribunal that the petitioner Management itself has recruited nearly 200 erstwhile workers of the 9th respondent management on fresh terms and there was no justification for leaving out the other workmen. In any event, it is not the case of the petitioner Management that they were not in need of any further workmen for their industrial operations which they continue after the purchase of the Unit. In fact, during the

pendency of the prolonged dispute at the instance of the management, scores of workers either died or attained their age of superannuation. Therefore, the Industrial Tribunal took into consideration the long pendency of the dispute for nearly 16 years and felt that the petitioner management had indulged in the luxury of the litigation and made use of the pendency in order to frustrate the claim of the workmen. Therefore, the Tribunal was of the view that the workers need to be compensated not as a matter of any statutory right, but as a matter of grace and equity for achieving a larger social justice as envisaged in the overall constitutional scheme. The Tribunal probably took into consideration the weak bargaining power of the work force which was crushed under the mighty management and the Court cannot be a mute spectator to such injustice being meted out to weaker section of the society, after all, the application of law must be towards dispensing justice and not to dispense with justice. In such scenario, the first respondent Tribunal came out with an equitable solution of granting of re-employment to the workers with effect from 01.12.2008 with certain other directions as contained in paragraph 35 of the award. This Court does not find anything legally or equitably amiss in such direction passed by the Tribunal, since the consideration which weighed with the Tribunal was long pendency of the dispute for over 16 years at the instance of the managements viz., the 9th respondent and the petitioner herein and also admitted fact that nearly 200 erstwhile workers came to be employed in the petitioner company on fresh terms. The Tribunal was also very much conscious on its limitation and refrained from ordering reinstatement of the workers as such remedy was not available to the workers after enactment of Section 25-FF of the ID Act. Therefore, the Tribunal took upon itself the responsibility of striking a fine balance between following the established legal principles and also not allowing social justice to suffer unjustly and therefore, chosen to pass the award which is impugned in the Writ Petitions.

61. Issue No.5:

"Whether the consideration of equity alone can be the basis for grant of any relief to the workman in order to achieve larger goal of securing social justice in furtherance of the constitutional scheme?"

As elaborated above, this Court has to come to a conclusion that by sticking to legal rigidity, Courts cannot lose sight of the larger social purpose for which they are established, particularly in industrial adjudication where bargaining power is always presumed to be tilted in favour of mighty managements. In such adjudication, the Courts, viz., the Tribunals/Labour

Courts have to take into consideration various factors like violation of fundamental rights, loss of livelihood and esteem etc. which are enshrined in Article 21 of the Constitution of India. If the Courts have come to the conclusion by adopting a straight jacket formula with a narrow social and a tunnel legal vision, such conclusion shall only lead to denudation of higher social purpose and destitution of judicial conscience. An extraordinary situation calls for a path-breaking approach in order to offer extraordinary remedy with principles of fairness, equity, good conscience and socio legal justice without offending the rule of law altogether. As far as the present case on hand, the claim of reinstatement alone is prohibited when a compensation amount is paid in terms of Section 25-FF of the ID Act, there is no bar for ordering re-employment of the workers, while taking into consideration the peculiar facts and circumstance of the case. In the instant case, the learned Tribunal has precisely done that on the basis of the fact that the dispute was kept pending for 16 years and nearly 200 erstwhile workers have been re-employed on fresh terms by the petitioner Management. Therefore, the learned Tribunal has applied the principle of equity fair play and good conscience without undermining the statutory scheme and granted the relief to the workmen by means of ordering re-employment and not reinstatement. In industrial adjudication, the Industrial Courts have been vested with the special jurisdiction to deal with the sensitive issues that arise between the work-force and the Management and in settlement of such disputes, equity can play a pivotal and monumental role for achieving the larger industrial peace and purpose. The principal aim of the industrial dispute is to achieve industrial peace and the Tribunal has attempted precisely that by offering a solution to the vexed legal battle between the workers and the management. Therefore, this Court unhesitatingly hold that in the peculiar facts and circumstances of the case, the award passed by the Tribunal does not call for any interference of this Court and on the other hand, this Court would place its appreciation the manner in which the first respondent Tribunal has addressed the issues and offered an equitable solution.

62. In the light of the above narrative and findings, this Court is of the considered view that the impugned award passed by the first respondent Tribunal does not suffer from any infirmity or irregularity calling for interference of this Court and therefore, the writ petitions filed by the petitioner management as well as the workers are liable to be dismissed as devoid of merits. No costs.

63. In the result, both the Writ Petitions are dismissed. Consequently, all connected Miscellaneous Petitions, including the impleading petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

suk

To

1. The Presiding officer
Industrial Tribunal, Chennai.

+2 Ccs to Mr.V.P. Rajendran, Advocate sr 10436 & 10437.

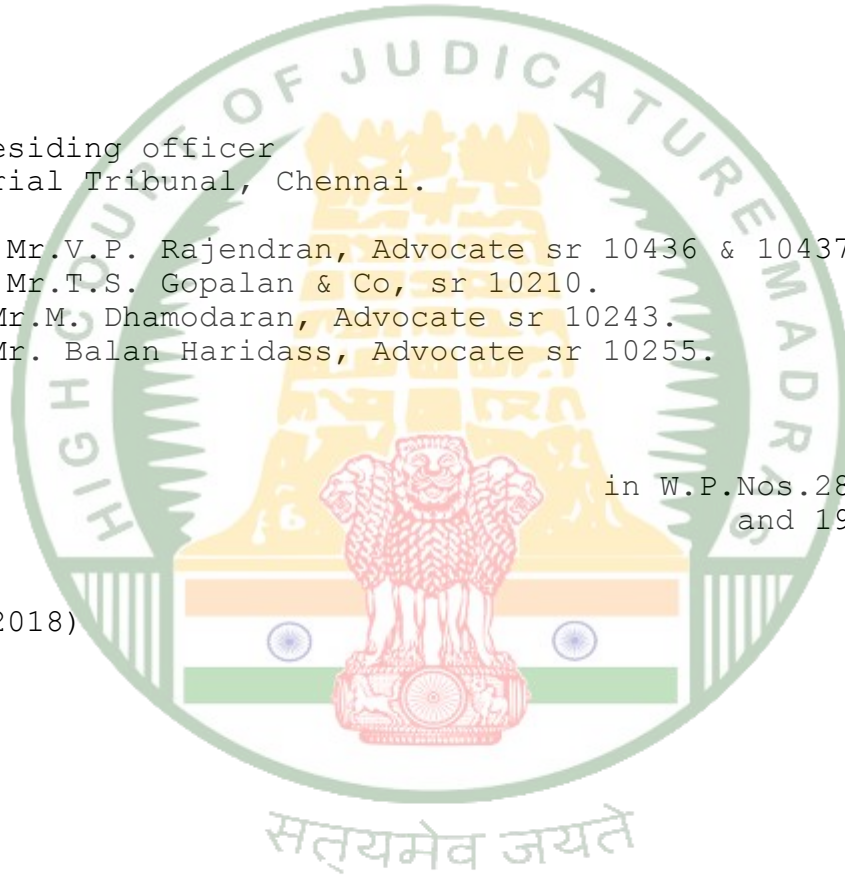
+2 Ccs to Mr.T.S. Gopalan & Co, sr 10210.

+1 CC to Mr.M. Dhamodaran, Advocate sr 10243.

+1 CC to Mr. Balan Haridass, Advocate sr 10255.

in W.P.Nos.28373 of 2008
and 19007 of 2012

SSD(CO)
SP(15/03/2018)



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