



W.P. Nos.25603/2017, Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
29.08.2023	26.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.25603 OF 2017, 33856 OF 2018 & 4527 OF 2023

CONT. PTN. NO.1675 OF 2018

AND

W.M.P. NOS.26995, 26996, 34891 OF 2017, 4535, 6934, 39320, 39322,

39324 OF 2018, 1747, 7693 OF 2019 & 4535 OF 2023

W.P. NO. 25603 OF 2017

Podhu Thozhilalar Sangam
Rep. By its General Secretary
Mr. S.Kannan
No.296, Gandhi Raod
Kanchipuram 631 501.

.. Petitioner

- Vs -

1. State of Tamil Nadu
Rep. By the Secretary
Labour & Employment Department
Secretariat, Chennai 600 009.
2. The Assistant Commissioner of Labour
(Conciliation-I), Thirupurumputhur.
3. The Management of
Dong San Automotive India Pvt. Ltd.



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F3-F5, Sipcot Industrial Park
Irunkattukottai, Sriperumputhur Tk 602 105. .. Respondents

W.P. NO. 33856 OF 2018

Dongsan Automotive India Pvt. Ltd.
No.F3-F5, Sipcot Industrial Part
Irungattukottai, Sriperumbudur 602 105
Kanchipuram Dist., Tamil Nadu
Rep. By its Managing Director
Mr. Kim Min Seok, S/o Kim Jae Sung .. Petitioner

- Vs -

1. The Principal Secretary to Government
Labour & Employment (A2) Dept.
Fort St. George, Rajaji Salai
Chennai 600 009.

2. The Joint Commissioner of labour – II
DMS Compound, Teynampet
Chennai 600 006.

3. The Assistant Commissioner of
Labour (Enforcement)
Kancheepuram.

4. The Commissioner of Labour
Chennai 600 006. .. Respondents

W.P. NO.4527 OF 2023

Podhu Thozhilalar Sangam
Rep. By its General Secretary
Mr. S.Kannan



W.P. Nos.25603/2017, Batch

No.296, Gandhi Raod
Kanchipuram 631 501.

.. Petitioner

- Vs -

1. The Management of
Dong San Automotive India Pvt. Ltd.
F3-F5, Sipcot Industrial Park
Irunkattukottai, Sriperumputhur Tk 602 105.

2. The Management of
Dong Sung Automotive India Pvt. Ltd.
Rep. By its Managing Director
No.112, Singadivakkam Village
Kancheepuram District 631 561.

.. Respondents

CONT. PTN. NO.1675 OF 2018

Podhu Thozhilalar Sangam
Rep. By its General Secretaryl
Mr. S.Kannan
No.296, Gandhi Raod
Kanchipuram 631 501.

.. Petitioner

- Vs -

Mr. Kim Min Seok
Managing Director
Dong San Automotive India Pvt. Ltd.
F3-F5, Sipcot Industrial Park
Irungattukottai, Sriperumbudur Tk 602 105.

.. Respondents

W.P. No.25603 of 2017 filed under Article 226 of the Constitution of
India praying this Court to issue a writ of mandamus directing the respondents



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1 and 2 to forbear the 3rd respondent from changing the service conditions of its workers that too when the dispute is pending before the 2nd respondent.

W.P. No.33856 of 2018 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records pertaining to the impugned order – G.O. (D) No.646 dated 13.11.2018 passed by the 1st respondent and quash the same as illegal.

W.P. No.4527 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records pertaining to the order dated 10.01.2023 passed by the Hon'ble Industrial Tribunal, Tamil Nadu in I.A. No.3/2022 in O.P. No.29/2019 and quash the same and consequently pass an order impleading the 2nd respondent as respondent in O.P. No.29 of 2019 on the file of the Industrial Tribunal, Tamil Nadu.

Contempt Petition No.1675 of 2018 filed u/s Section 11 of the Contempt of Courts Act, 1971, praying this Court to punish the respondent for their wilful and deliberate disobedience of the order of this Hon'ble Court, made in W.P. No.25603 of 2017 dated 1.11.2017.

For Petitioners : Mr. N.G.R.Prasad, for
Mr. K.C.Karl Marx in WP



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25603/17, 4527/23 & Cont. Ptn.
1675/2018
Mr. S.Ravindran, SC, for
Mr. Inthu Karunakaran in WP
33856/2018

For Respondents : Mr. S.Ravindran, SC, for
M/s.Inthu Karunakaran for R-3
in WP 25603/17, for R-1 in WP
4527/23 & Respondent in Cont.
Ptn. 1675/2018
Mr. K.M.Vijayan, SC, for
Mr. C.Iyyapparaj for R-2 in WP
4527/2023
Mr. Ravi, Spl. GP for RR-1 & 2 in
WP 25603/17 & for
Respondents in WP 33856/2018

COMMON ORDER

As all the writ petitions and the contempt petition relate to one and same issue involving the Union and the Management of the transferor and transferee companies, they are taken up together and disposed of by this common order.

2. W.P. No.25603 of 2017 has been filed by the petitioner/Sangam for a direction to respondents 1 and 2 therein to forbear the Management/3rd



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respondent from changing the service conditions of its workers, that too when the dispute is pending before the 2nd respondent.

3. W.P. No. 4527 of 2023 is filed by the petitioner/Sangam to set aside the order of the Industrial Tribunal in I.A. No.3 of 2022 in O.P. No.29 of 2019 in and by which the plea for impleading the 2nd respondent/Management has been negated by the Tribunal.

4. W.P. No.33856 of 2018 has been filed by the petitioner/Management to quash the order of the 1st respondent directing the 3rd respondent to prosecute the petitioner by filing a complaint before the Divisional Magistrate Court, Sriperumbudur, for violation of the provisions of Section 25-N of the Industrial Disputes Act (for short 'the Act').

5. Contempt Petition No.1675 of 2018 has been filed alleging that the undertaking given before this Court by the respondent/contemnor in W.P. No.25603/2017 not to move the machineries has been breached and action in contempt has been committed by the respondent/contemnor and, therefore, prayer is made to punish the respondent/contemnor.



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6. For the sake of brevity, the petitioner/Union will be referred to as Union and the respondent/Management of Dong San Automotive and respondent/Management of Dongsung Automotive will be referred to as Transferor company and Transferee company.

7. The first in the series of writ petition, viz., W.P. No.25603/2017 was filed by the Union to forbear the Transferor company from changing the service conditions of its workers pending the dispute with the 2nd respondent. The main grievance expressed in the said writ petition is that from April, 2017, the workmen were not provided with the yearly increments, there were reduction of bus routes and the machineries of the Transferor company was moved to the Transferee company as a result of which, apprehending loss of work to the workers of the Transferor company, a dispute u/s 2 (k) of the Act was raised by the Union to restrain the Transferor company from moving the machinery outside the company and from transferring the workers to other company.



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8. It is the further case of the petitioner that as the Conciliation Officer had no power to pass such restraint order, the Union filed the present writ petition in which an assurance was given on behalf of the Transferor company that the machineries will not be moved. However, giving a go-by to the said assurance, on 10.03.2018, the entire machineries have been moved outside and a notice was also affixed stating that the Transferor company had sold the undertaking and that the workers of the Transferor company are terminated as if they are retrenched.

9. It is the further case of the Union that W.M.P. No.6894 of 2018 was filed seeking direction to the authorities for protecting the rights of the workers working in the Transferor company and to provide alternate employment with continuity of service with the Transferee company. It is further averred, that inspite of the aforesaid assurance, as the same was not followed, Contempt Petition in Cont. Ptn. No.1675/2018 has been filed by the Union in which the Transferor Company had submitted that the creditors had filed applications before this Court in A. Nos.7334/2017 and 455/2018 and directions were issued by this Court to the creditors to take possession of the



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machineries. This order, according to the Union, had been obtained on the basis of the collusive act between the Transferor Company and the creditors.

10. It is the further averment of the Union that as the Transfer Company had been employing more than 100 workers, before retrenchment, permission of the Government u/s 25-N of the Act had been obtained by the Transferor company. Due to the act of violation in not complying with Section 25-N of the Act, show cause notice was issued to the Transferor company on 22.3.2018 to which explanation was filed by the Transferor company on 3.4.2018 and after considering the complaint made by the Union and also the explanation submitted by the Transferor Company, G.O. (D) No.646 dated 13.11.2018 has been issued wherein direction had been given to the Assistant Commissioner of Labour to file a complaint with the Judicial Magistrate, Sriperumbudur. Challenging the said Government Order, the Transferor company has filed W.P. No.33856/2018, without even making the Union as a party and ex-parte order of stay has been obtained behind the back of the Union.



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11. It is the further averment of the Union that the dispute raised u/s 2 (k) before the Assistant Commissioner of Labour (Conciliation), Sriperumbudur eventually ended in failure and upon submission of failure report on 7.3.2019 by the Assistant Commissioner of Labour (Conciliation), the Government referred the dispute between the Union and the Transferor company to the Industrial Tribunal for adjudication by framing the following issue :-

“Whether the demand made by the Trade Union seeking to set aside the retrenchment of 113 workers by Dongsan Automotive India (P) Ltd., saying that the Undertaking has been transferred to Dongsung Automotive India (P) Ltd., with effect from 12.03.2018 and to reinstate the workers is justified. If yes, pass appropriate orders.”

12. It is the further averment of the Union that the 2 (k) dispute referred by the Government to the Industrial Tribunal was taken on file as O.P. No.29 of 2019 in which the Union filed claim statement and the Transferor Company filed written statement. It is the averment of the Union that the Transferee company having not been made as a party respondent in the original petition, even if the reference is answered positively, the order cannot be given effective implementation as the Transferor company is non-existent then.



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Therefore, the Union filed a petition in I.A. No.3/2022 to implead the Transferee company as 2nd respondent in the pending dispute before the Tribunal. However, the Tribunal, without properly appreciating the facts, has erroneously dismissed the impleading petition holding that the 2nd respondent is neither a proper nor a necessary party, aggrieved by which the writ petition in W.P. No.4527/2023 has been filed.

13. Learned counsel appearing for the Union, collectively made his submissions in W.P. Nos.25603/2017, Cont. Ptn. No.1675/2018 and W.P. No.4527/2023 by submitting that not only the undertaking given before this Court by the Transferor Company has been violated, by moving the entire machinery, but without following the provisions of the Industrial Disputes Act, more particularly, Section 25-F, 25-FF, 25-N and 25-O, the workmen have been retrenched and the undertaking of the Transferor company had been closed by transferring the assets to the Transferee company.

14. It is the further submission of the learned counsel that for the violation with respect to Section 25-F, 25-FF, 25-N and 25-O, rightly, the



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Government have initiated action by directing the Assistant Commissioner of Labour (Conciliation) to file complaint before the Judicial Magistrate, Sriperumbudur. It is the submission of the learned counsel that the aforesaid provisions are labour welfare legislations, which have been enacted to safeguard the workmen from unfair labour practice and also victimization at the hands of the employer. The following of the provisions before retrenching the workmen and closing the factory are mandatory conditions and failure to comply with the same would render the act illegal and the Government has all the powers to take action, including penal action against the Management. The Government, after carefully considering the violations perpetrated by the Transferor company had directed filing of the complaint, which cannot be said to be impermissible.

15. It is the further submission of the learned counsel that the undertaking given by the Transferor company before this Court has been violated under the guise of an order, alleged to have been passed by this Court in A. Nos.7334/2017 and 455/2018 at the instance of the creditors, which is nothing but a collusive act, enacted by the Transferor Company with



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the aid of the creditors. It is the submission of the learned counsel that had the undertaking given before this Court been brought to the notice of this Court in A. Nos.7334/2017 and 455/2018, definitely the Court would have safeguarded the interests of both the workmen as well as the creditors and only to cause prejudice and detriment to the workmen, the undertaking recorded by this Court has not been brought to the knowledge, while order was passed in A.Nos.7334/17 and 455/2018.

16. It is the further submission of the learned counsel that the dispute which has been referred to the Tribunal for adjudication, though relates to the Transferor company, but on the date of reference, the entire undertaking of the Transferor Company stood transferred to the Transferee company and, therefore, the Transferee company is a necessary and proper party to the dispute. It is the submission of the learned counsel that without the presence of the Transferee company as a party respondent in the dispute, even if any affirmative orders are obtained by the Union in favour of the workmen, the said order would be nothing but a paper order, which would not be enforceable, as on the date the order is passed, the Transferor company



would be a non-existent company and the orders could not be given effect to.

However, the Tribunal has not appreciated the aforesaid fact, which rejecting the plea for impleadment of the Transferee company as a proper and necessary party to the dispute, which order requires to be interfered with.

17. In support of the aforesaid submission, learned counsel for the Union drew the attention of this Court to the decision of the Apex Court in ***Hochtief Gammon – Vs – Industrial Tribunal & Ors. (1964 SCR (7) 596)***.

18. Per contra, learned senior counsel appearing for the Transferor company submitted that the Government Order dated 13.11.2018 alleging violations of provisions of Section 25-N is wholly arbitrary inasmuch as the Government Order takes a contradictory stand, as in the first part, the Government Order goes on the premise that the Transferor company had initiated transfer of undertaking in terms of Section 25-FF of the Act and on the second part stating that the Transferor company has retrenched 113 workers in violation of Section 25-N of the Act.



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19. It is the further submission of the learned senior counsel that once there is a transfer of undertaking, there is no retrenchment at all irrespective of the number of workmen working and what is contemplated u/s 25-FF is only that the workmen should be compensated, as if they are retrenched. It is the further submission of the learned senior counsel that since Section 25-FF is invoked by the Transferor Company, there is no element of retrenchment. Further, it is the submission of the learned senior counsel that for the purpose of transfer of undertaking in terms of Section 25-FF, irrespective of the number of workmen working in the company, there is no necessity to refer to Chapter V-B of the Act including compliance of Section 25-N. There is no necessity for the Transferor company to comply with Section 25-N when Section 25-FF is invoked.

20. It is the further submission of the learned senior counsel that Section 25-FF of the Act does not envisage compliance of Section 25-F of the Act, as there is no element of retrenchment. In this regard, reliance was placed on the decision of the Apex Court in ***Maruti Udyog Ltd. – Vs – Ram Lal & Ors.*** ***(2005 (2) SCC 638)***.



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21. It is the further submission of the learned senior counsel that even the reference made for adjudication relates to transfer of undertaking by the Transferor Company and, therefore, the violation alleged u/s 25-N is *per se* illegal. Therefore, the writ petition filed by the Transferor Company challenging the said prosecution is maintainable and the prosecution is wholly devoid of merits and, therefore, there is no necessity for this court to drive the Transferor company to the criminal court to face the prosecution, as it is the admitted fact that the undertaking has been transferred invoking Section 25-FF of the Act.

22. Insofar as W.P. No.25603/2017 is concerned, learned counsel for the Transferor company submits that only if a particular condition of service is changed, cause of action arise for the Union by invoking Section 33-A of the Act and the writ jurisdiction cannot be invoked for apprehended cause of action and in this regard, reliance is placed on the decision of this Court in the case of ***Puthiya Jananayaga Thozilalar Munnani – Vs – Government of Tamil Nadu & Ors. (2019 (2) LLN 236).***



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23. Countering the contentions in W.P. No.4527/2023, learned senior counsel for the Transferee Company submits that the reference of the dispute for adjudication pertains to the Union and the Transferor Company and the Transferee company is no where in the picture. Therefore, the Transferee company is neither a proper party nor a necessary party in O.P. No.29 of 2019.

24. It is the further submission of the learned counsel that the Tribunal cannot travel materially beyond the terms of the reference and it is to determine the scope of its power and jurisdiction from case to case. Placing reliance on the decision of the Division Bench of this Court in ***Management of Premier Mills Ltd. – Vs – Presiding Officer, Labour Court & ors. (2010 (2) LLJ 757)***, learned counsel submitted that the transferee company has no liability whatsoever towards the workmen of the transferor company in terms of Section 25-FF of the Act and the workmen are entitled to compensation only from the transferor company in terms of Section 25-FF of the Act.



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25. It is the further submission of the learned senior counsel that if employment is offered by the Transferee company as mentioned in proviso to Section 25-FF of the Act, the workmen would not be entitled to any compensation and the said proviso would come into operation only when the transferee company agrees to employ the workmen of the transferor company.

26. It is the further submission of the learned senior counsel that clause 3.2 and 3.3 of the Agreement for Transfer of Undertaking dated 9.3.2018, the Transferee company had expressed its unwillingness for taking the workmen of the Transferor company on its rolls as it has sufficient manpower. Such being the case, the workmen of the transferor company are only entitled for compensation at the hands of the Transferor company. It is the further submission of the learned counsel that a sum of Rs.4.5 Crores had been earmarked by the Transferor company for paying compensation to the workmen and of that 48 workmen have already accepted the compensation and the balance amount of Rs.2.39 Crores has been deposited to the credit of O.P. No.29/2019 with regard to the compensation for the balance workmen.



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Further, the workmen have no right to claim both compensation as well as re-employment from the Transferor company, as that is not envisaged u/s 25-FF of the Act.

27. It is the further submission of the learned senior counsel that though dispute was referred leading to the filing of the O.P. No.29/2019 and the case is going on for five years, and the case is at the stage of trial, that too after completion of evidence of the Union and also completion of the chief examination and marking of documents by the witness of the Transferor Company and is posted for cross examination, however, at the fag end, the Union has come forward with the present petition for impleadment of the Transferee company, when the Transferee company has no scope either with regard to payment of compensation to the workmen and even in respect of their re-employment.

28. It is the further submission of the learned counsel that the Government is statutorily empowered u/s 18 (1) (d) to add any establishment or company to a reference, which is likely to be interested or affected by the



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dispute u/s 10 (5) of the Act. However, in the present case, the Government having not included the Transferee company as a party respondent itself makes it clear that the Government has understood the scope of adjudication and has refrained from adding the Transferee company as a party respondent to the reference. The Tribunal has properly adverted to the materials while rejecting the stand of the Union for impleadment of the transferee company and, therefore, interference is warranted with the said order.

29. In support of the aforesaid contentions, learned counsel placed reliance on the following decisions :-

- i) *Management of Premier Mills Ltd. – Vs – Presiding Officer, Labour Court & Ors. (2009 SCC OnLine Mad 3238);*
- ii) *State Bank of Bikaner & Jaipur – Vs – Om Prakash Sharma (2006 (5) SCC 123);*
- iii) *Hochtief Gammon – Vs – Industrial Tribunal, Orissa & Ors. (AIR 1964 SCR (7) 596)*

30. Learned senior counsel appearing for the respondent/contemnor in the contempt petition submits that in the order in W.P. No.25603/2017, there



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is no undertaking recorded that the Transferor company should not remove its machineries. What has been recorded is only to the effect that there is no intention of winding up of the business and till date the 3rd respondent there in has not removed any machinery.

31. It is the further submission of the learned counsel that there is no order that the machineries should not be removed and that the machineries, which were removed does not belong to the Transferor company, but were given to the Transferor company by the entities, which had placed business orders on the transferor company and upon the contract being terminated with the Transferor company, A. Nos.455/2018 and 7334/2017 were filed by the respective companies to remove their machineries, which were allowed by this Court and, therefore, there is no wilful disobedience of the orders of this Court.

32. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



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33. The Transferor company, which had employed the workmen belonging to the Union had since ceased to function upon the transfer of the undertaking to the Transferee company. The said issue is not in dispute. The whole dispute in the present case hinges on four issues, which are as hereunder :-

- i) *Firstly, the non-compliance of the condition with regard to obtaining prior permission from the Government u/s 25-N before transfer of the undertaking and the legality of the retrenchment of the workman u/s 25-F and 25-FF without following Section 25-N;*
- ii) *Secondly, whether the Government Order directing the Assistant Commissioner of Labour (Conciliation) to file a complaint for violation of the provisions of the Act is permissible.*
- iii) *Thirdly, whether the undertaking given by the Transferor company not to remove the machineries, has been violated and the machineries have been removed clandestinely to the Transferee company;*



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iv) *Lastly, whether the Transferee company is a proper and necessary party, who is to be impleaded in O.P. No.29/2019;*

34. Issue Nos. 1 and 2, arising out of W.P. No.4527/23 and W.P. No.33856/2018, are interconnected with each other, and necessarily, they have to be dealt with together and, accordingly, they are taken up together for deliberation.

35. To appreciate the aforesaid issues, it is necessary to advert to the relevant provisions, which have a bearing on the case and, the relevant provisions are extracted hereunder :-

“25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;



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(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25FF. Compensation to workmen in case of transfer of undertakings.—*Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:*

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

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

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less



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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.

25N. Conditions precedent to retrenchment of workmen.—*(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—*

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served



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simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final



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and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply



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in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

25-O. Procedure for closing down an undertaking.—

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.



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(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refused to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant



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permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified herein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission



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under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

36. It is the admitted case of the parties that the Transferor company entered into an agreement dated 9.3.2018 with the Transferee company for transfer of the undertaking and as the Transferee company was not ready to take the employees of the Transferor company, by an order dated 12.03.2018, the Transferor company terminated all the workers as retrenched, in compliance of the provisions of the Act. This is evidenced even in the order passed by the Industrial Tribunal. Therefore, even at the very outset, it can safely be concluded that Section 25-O would not stand attracted on the averments made by either side.

37. No doubt, it is the claim of the Transferor Company that upon entering into the agreement, the Transferor company terminated all the workers as retrenched in compliance with the provisions of the Act. However, clause (a) of Section 25-F carries in its fold two alternatives; either giving one month's notice in writing indicating the reasons for retrenchment and the



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period of notice has expired; or the workman has been paid in lieu of such notice, wages for the period of the notice. Clause (b) further mandates that the workman has been paid, at the time of retrenchment, compensation, which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. Clause (c) mandates that notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

38. From the above clauses it transpires that before retrenching the workmen, one month's notice along with reason for retrenchment should be given or the workman should be paid in lieu of such notice. Though it is claimed that the workmen have been paid, however, it is not clear, even from the order of the Tribunal, as to when the said retrenchment compensation has been paid. Further, there is also no material as to whether clause (c) of Section 25-F has been complied with.



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39. The whole case of the Transferor company is premised on Section 25-FF of the Act, based on which it is contended that so long as the undertaking is transferred, compliance of Section 25-FF alone is required and it does not envisage compliance of Section 25-F. Though such a contention is advanced, however, it is to be noted that Section 25-FF also mandates that notice and compensation, as provided for u/s 25-F should be paid in respect of retrenchment of workmen upon transfer of undertaking.

40. The stand of the Transferor company that the reemployment u/s 25-H would not stand attracted in a case where Section 25-FF is invoked. This Court is not for a moment inclined to hold that Section 25-H would come into play even if Section 25-FF is invoked. However, what is envisaged u/s 25-FF should be complied with in letter and spirit before due compliance can be attributed is the necessary question that has to be decided, which can be done only at the time of trial by the Tribunal and not otherwise, even by this Court in the present writ petition.



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41. In fact, one aspect, which has due relevance in the present context is that Section 25-FF uses the word “*before such transfer*”. Necessarily, it means that before the transfer is effected, there should be due compliance of Section 25-FF. However, even according to the Transferor company, many of the workmen have not received the due amount as per Section 25-FF and that the amount has been deposited to the credit of O.P. No. 29/2019. It is not clear as to when the compliance of Section 25-FF was made and no record evidencing the same is also available before this Court. Therefore, it becomes imperative for the Tribunal to test the order of retrenchment in the light of the provisions carried on in Section 25-FF as also Section 25-N to find out full compliance without which it could not be said that compliance is effected.

42. Further, clause (c) of Section 25-FF mandates notice to be served on the appropriate Government. However, there is no material available on record with regard to compliance of clause (c) of Section 25-FF.

43. Be that as it may. Section 25-N of the Act relates to the conditions precedent to retrenchment of workmen. It is the stand of the Transferor



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Company that Section 25-N would not stand attracted as the undertaking of the Transferor company is transferred to the Transferee company and only Section 25-FF would stand attracted. However, the said contention, even on the face of the aforesaid provisions, is wholly unsustainable.

44. Section 25-FF relates to the compensation to be paid to the workmen upon the undertaking being transferred. Even according to the Transferor company, the workmen are terminated from service, as if retrenched, on the basis of the transfer of undertaking. In essence, *prima facie*, this Court is of the opinion that the termination is retrenchment clothed in a new dress and in that case, the conditions, which have been prescribed u/s 25-N would have a bearing. Section 25-N, extracted above, prescribed that where the employer intends to retrench the employee, the workman shall be given three months' notice in writing indicating the reasons for retrenchment along with similar provision, as contained in Section 25-F with regard to payment in lieu of notice and that the prior permission of the appropriate Government to be obtained before the workmen are retrenched. Section 25-FF relates only to the compensation payable on the workmen being retrenched upon transfer of



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undertaking, but Section 25-N is the collective provision, which deals with retrenchment and sub-section (2) to Section 25-N clearly stipulates that *an application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment*". This clearly shows that the appropriate Government should be put on notice about the reason for retrenchment. However, in the case on hand, it is not known whether such compliance had been made. Therefore, necessarily the Tribunal is bound to appreciate the above provisions before passing any orders as to the legality of the retrenchment, vis-a-vis the compliance of the aforesaid provisions which should be based on the due compliance of the provisions of the Act, failure of which would render the retrenchment bad. Therefore, merely for the asking of either side, this Court cannot give any decision that Section 25-N is not applicable and that compliance of Section 25-FF is suffice as the undertaking has been merely transferred.

45. At this stage, it would not be in the interest of either side to give any opinion with regard to the legality of the retrenchment, as it is for the Tribunal



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to decide upon the same in relation to Section 25-FF and Section 25-N and also to see the import of Section 25-F into Section 25-FF. It is also the duty of the Tribunal, on the materials placed before it, to come to the conclusion as to the mandatoriness of Section 25-N vis-a-vis 25-FF and render a definitive opinion, as it would have a bearing in the case. Therefore, this Court does not want to transgress into the domain of the Tribunal at the threshold to hold one way or the other, as it would have a prejudicial effect on the determination of the dispute, which has been referred to the Tribunal by the Government.

46. Therefore, on the first issue, this Court holds that the Tribunal, at the outset, shall decide whether Section 25-N of the Act would stand in the way of Section 25-FF being pressed into service and before compensation could be paid u/s 25-FF, whether the provisions of Section 25-N should be complied with, as that determination would be fulcrum on the basis of which the other issues would have to be decided.

47. Insofar as the second issue relating to the issuance of G.O. (D) No.646 dated 13.11.2018 directing the Assistant Commissioner of Labour



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(Enforcement), Kanchipuram to file a complaint in the Court of Judicial Magistrate, Sriperumbudur, for violation of Section 25-K and 25-N of the Act, as aforesaid, the issue of whether Section 25-N is mandatory, which is to be followed before Section 25-FF would come into play, in the case on hand, is to be decided by the Tribunal, upon appreciating the materials that would be placed at the time of trial. Even at the threshold, this Court cannot step into the shoes of the Tribunal and decide the issue one way or the other, as the same would have a cascading and prejudicial effect on the outcome of the dispute, which is pending adjudication. Therefore, in the interest of justice, this court is of the considered opinion that the issue relating to the direction by the Government, vide the aforesaid Government Order, to file a complaint, cannot be decided at this point of time and the same would have to await the final verdict that would be given by the Tribunal in the dispute, which is referred to it for adjudication.

48. Therefore, W.P. No.33856/2018 filed by the Transferor company assailing the aforesaid Government Order does not merit acceptance and,



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accordingly, the said writ petition deserves to be dismissed. The second issue is answered accordingly.

49. Insofar as W.P. No.25603/17 and its off-shoot, Cont. Ptn. No.1675/2018 are concerned, it is to be noted that the writ petition was filed to restrain the Transferor Company from moving its machineries. According to the Union, an undertaking was given by the Transferor company, though it is countered by the Transferor Company that there was no such undertaking. In this scenario, it is relevant to have a look at the order of this Court dated 1.11.2017, which is quoted hereunder :-

“Learned counsel for the third respondent submitted that there is no intention of winding up of the business and till date, the third respondent has not removed any machinery. Recording the said statement, finally two weeks time is granted to file counter affidavit.”

50. True it is that in the aforesaid order, no undertaking has been given by the 3rd respondent therein, viz., the Transferor company that the machineries would not be removed. However, one important aspect is evident from the said order, which is that the 3rd respondent therein had given a



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categorical submission that there was no intention for winding up the company. Yet within three months from the said order, or said submission, on 9.03.2018, Agreement has been entered into for transfer of undertaking excluding the workmen of the Transferor company. The above order dated 1.11.2017 coupled with the agreement dated 9.3.2018 and the alleged retrenchment dated 12.3.2018 leaves a bitter taste in the mouth of this Court and this Court can very well say that all was not well on the fateful day, i.e., on 1.11.2017, when the said submission was made on behalf of the 3rd respondent, viz., the Transferor company. However, this Court does not want to add anything to the aforesaid act.

51. However, it is the stand of the Transferor company that pursuant to the application in A. No.7334/17 and 455/18 filed by the creditors, this Court had ordered the creditors to take possession of the machineries. However, the fact that the writ petition with regard to the machinery not to be removed, being pending before this Court, the said fact had not been brought to the notice of the Court, when the order in A. No.7334/17 and 455/18 were passed. However, in view of the fact that already the machineries have been removed



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and since there was no explicit orders or undertaking on behalf of the Transferor company in the aforesaid writ petition, keeping W.P. No.25603/17 pending would not serve any fruitful purpose and, therefore, the said petition deserves to be closed as it has become infructuous. ***Accordingly, W.P. No.25603/2017 is closed as having become infructuous. The third issue is answered accordingly.***

52. Coming to the issue of contempt, in view of the orders passed in W.P. No.25603/2017, wherein this Court has held that there was no explicit undertaking given before this Court with regard to removal of the machinery, the alleged disobedience of the order of this Court, sought to be made through the contempt petition in Cont. Ptn. No.1675/2018 has not been made out. ***Therefore, no useful purpose would be served in keeping the contempt petition also pending and, accordingly, Cont. Ptn. No.1675/2018 is also closed.***

53. Coming to the issue with regard to impleadment of the Transferee company in the dispute, which has been referred for adjudication, which



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impleadment has been rejected by the Tribunal, the delay in the impleadment is put against the Union in addition to the contending that the Transferee company is neither a proper party nor a necessary party and that there was no relationship between the Transferee company and the workmen of the Transferor company.

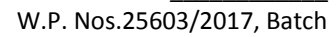
54. True it is that as on date, there is no established relationship between the Transferee company, which is sought to be impleaded, and the workmen, represented by the Union. However, this Court has already held that it is for the Tribunal to decide whether Section 25-N is mandatory before Section 25-FF comes into play. If any finding that Section 25-N is mandatory is given by the Tribunal, necessarily, the order would be in favour of the workmen, in which event the transfer of the undertaking to the Transferee company would render the order only a paper order, as no reinstatement could be granted. However, if the Transferee company, which has taken the undertaking of the Transferor company, is impleaded as a party respondent in the pending dispute, necessarily, the order would become enforceable, as the Transferee company would be stepping into the shoes of the Transferor company at that



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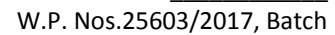
point of time so as to subsume the interest of the workmen, which otherwise the workmen would not be entitled to. In fact, the decision, which has been extracted by the Tribunal in *Hochtief case (supra)* leans more in favour of the workmen and the said portion is quoted hereunder :-

“Reverting then to the question as to the effect of the power which is implied in s. 18(3)(b), it is clear that this power cannot be exercised by the Tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the Tribunal to deal with an industrial dispute is -derived solely from the order of reference passed by the appropriate Government under s. 10(1). What the Tribunal can consider in addition to the disputes specified in the order of reference, are only matters, incidental to the said disputes; and that naturally suggests certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it, purporting to exercise its implied power under s. 18(3)(b). If it appears to the Tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer may be joined. Similarly, if the



(Emphasis Supplied)

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57. Further, the aspect of delay in moving the petition to implead has been raised by the Transferor and the Transferee company. True it is that there is delay on the part of the Union to raise the issue with regard to impleadment and seek for impleadment of the Transferee company. But that delay alone cannot be put against the Union when much higher stakes with regard to the employment and other legal issues are involved in the facts of the case. Therefore, the delay, though is a impediment, but that cannot be the reason to put spokes in the wheel of justice and it has to be kept rolling, which alone will be in the interest of either party to the *lis*.

58. Therefore, this Court is of the considered opinion that the impugned order in I.A. No.3/2022 in O.P. No.29/2019 deserves to be set aside and the implead petition in I.A. No.3/2022 ought to be allowed by impleading the Transferee company as party respondent to the dispute. ***Accordingly, W.P. No.4527/2023 is liable to be allowed by setting aside the order in I.A. No.3/2022 in O.P. No.29/2019 by impleading the Transferee company as party respondent to the dispute.***



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59. Though very many decisions have been pressed into service in support of the contentions and counter contentions, but for the fact that this Court has not deliberated the legal issues, it would not be necessary to multiply the decisions and, therefore, the said decisions have not been adverted to.

60. In the result, in view of the discussion made above, the following order is passed :-

- i) *W.P. No.25603/2017 is closed as having become infructuous;*
- ii) *W.P. No.33856/2018 is dismissed ;*
- iii) *W.P. No.4527 of 2023 is allowed setting aside the order passed in I.A. No.3/2022 in O.P. No.29/2019 by impleading the Transferee company as party respondent in O.P. No.29/2019;*
- iv) *Cont. Ptn. No.1675/ 2018 is closed;*
- v) *Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.*



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26.09.2023

Index : Yes / No

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To

1. The Principal Secretary to Government
Labour & Employment (A2) Dept.
Fort St. George, Rajaji Salai
Chennai 600 009.
2. The Joint Commissioner of labour – II
DMS Compound, Teynampet
Chennai 600 006.
3. The Commissioner of Labour
Chennai 600 006.
4. The Assistant Commissioner of
Labour (Enforcement)
Kancheepuram.
5. The Assistant Commissioner of Labour
(Conciliation-I), Thirupurumputhur.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.25603 OF 2017,
ETC., BATCH**

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26.09.2023