

CASE NO.:
Appeal (civil) 1422 of 1999

PETITIONER:
INLAND STEAM NAVIGATION WORKS UNION & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 01/02/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil.

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T...J
RAJENDRA BABU, J. :

A Limited Company Rivers Steam Navigation Co. Ltd. [hereinafter referred to as the Company] operated a river service from West Bengal to Assam with a personnel of about 8,000 including clerical staff. Part of its operations was through East Pakistan. On account of armed conflict in 1965 with Pakistan, the Company had to suspend a major part of its operation. Retrenchment was done on a large scale as the Company had been incurring heavy losses for several years in spite of Government of India acquiring a controlling interest in it to prevent its liquidation. In the course of conciliation proceedings, the Management of the Company arrived at a settlement with the appellant Union on August 26, 1965. However, the Company could not carry on profitably and, therefore, on account of its bankruptcy various creditors, the Union of India and several banks filed a petition in the Calcutta High Court for winding up of the Company. After protracted proceedings in the High Court, an application was filed under Sections 391 to 394 of the Companies Act, 1956 for sanctioning a Scheme of Arrangement and Compromise between the company and the Central Inland Water Transport Corporation Ltd. [hereinafter referred to as the Corporation]. When the Scheme was sanctioned, the appellant Union had appeared before the Court to protect the interests of the workmen. The appellant Union in fact filed an appeal to the Division Bench of the High Court which, however, was dismissed upholding the order of the learned Single Judge sanctioning the Scheme.

In brief, the Scheme provided, inter alia, that all the properties and assets but only some of the liabilities would vest in the Corporation. It was agreed that the Corporation would take over as many of the members of the staff and work force of the Company as was possible under the circumstances but the number to be employed would be in its discretion. Those employees who were not taken over by the Corporation were to be paid compensation by the Company out of the funds the Government of India agreed to supply. Upon the approval of the Scheme the Company would be closed and on payment of

all creditors it would stand dissolved without winding up. In the course of the order made by the Company Court certain questions were left open for consideration and they are:

1. whether there is a closure of the Company within the meaning of the Industrial Disputes Act, 1947 [hereinafter referred to as the ID Act] ;

2. whether the agreement dated 25.8.1965 is capable of enforcement;

3. whether the workers are workmen or entitled to prefer any claim on the basis of the agreement dated 25.8.1965; and

4. whether the transferor Company or the transferee Company can assert that there has been closure and further that agreement is not capable of enforcement.

The scheme was in fact sanctioned by an order made on 3.5.1967 and on that very day, the Company issued a notice of closure. Thereafter, the Corporation issued fresh letters of appointment and out of 8,000 employees of the Company, the Corporation is stated to have employed about 5,173 workers. Thus, a large number of employees of the former company stood unemployed.

The State of West Bengal made an order of reference purportedly under Section 33C(2) of the ID Act to compute the benefits covered by the settlement dated 25.8.1965 between the Union and the Company and by another order of reference called for computation of the retrenchment benefits arising under Section 25 FF of the ID Act. The orders of references were challenged in the High Court and were quashed by an order made on 15.7.1969. Again, on 27.10.1969, the Government of West Bengal made another order of reference to the Labour Court on various claims preferred by the Union from the Corporation which are capable of being computed in terms of money arising out of the settlement dated 25.8.1965 and under Section 25FF of the ID Act to which two lists were attached. List I consisted of names and addresses of 420 employees and the Labour Court was asked to adjudicate as to whether these employees continued in the employment under the Corporation and other monetary benefits they were entitled to. In regard to 98 employees mentioned in the List II, the Labour Court was asked to compute retrenchment benefits arising under Section 25FF of the ID Act. Another question was referred as to whether the Company has been closed within the meaning and contemplation of Section 25FFF of the ID Act and if so, what amount of compensation the workmen mentioned in both the lists were entitled to? This reference was again challenged in the High Court under Article 226 of the Constitution by a writ petition. The writ petition was partly allowed striking down the issue relating to claim arising under Section 25FFF from the Company. The Union of India did not file against it an appeal but the Corporation went in appeal against the order in so far as the learned Single Judge held that the Labour Court had jurisdiction to adjudicate upon other issues. The Division Bench dismissed the appeal. Thereafter the matter was carried to this Court. This Court in *Central Inland Water Transport Corporation Ltd. vs. The Workmen & Anr.*, 1974 (4) SCC 696 disposed of the said

matter.

In the said decision, it was explained that the scope of Section 33C(2) of the ID Act is limited and those proceedings are akin to the execution proceedings. It was also made clear that the right to receive compensation as if the workmen are retrenched under Section 25FF is available only against the owner of the undertaking that is the transferor and not against the transferee and in order to decide the claims of the workmen it would be necessary to decide as to whether the Corporation was a closure of the Company and whether the transferee would be liable to pay compensation and that the workmen are entitled to reemployment against the Corporation. If the Tribunal comes to the conclusion that the Corporation wrongfully absorbed the employees, the Tribunal will have to consider as to what reliefs to be given depending upon the circumstances and such questions can be adjudicated under Section 33C(2) of the ID Act and thus allowed the appeal, holding that the Labour Court had no jurisdiction to deal with the questions referred to it under Section 33C(2). Thereafter, yet another reference was made to the Labour Court.

The Government of West Bengal by an order made on June 8, 1978 with subsequent corrigendum referred the industrial dispute between the Company and the Corporation on the one hand and their workmen represented by appellant Union on the other for adjudication upon the following issues:

1. Whether M/s River Steam Navigation Co.Ltd. has been closed down within the meaning and contemplation of Section 25 FFF of the ID Act?
2. Whether the said company has been transferred to M/s Central Inland Water Transport Corporation Ltd.?
3. Whether Section 25 FFF of the ID Act is attracted to the present case?
4. Whether the settlement dated 25.8.1965 is binding on M/s Central Inland Water Transport Corporation Ltd.?
5. Whether the workmen who were employed by the said Company have a right to be continued in service by the said Corporation and whether the refusal of the said Corporation to absorb them is wrongful?
6. To what relief, if any, are the workmen entitled?

The Tribunal found that as regards the question as to closure of the company the scheme of arrangement itself set at rest the matter. Clause 8 of the scheme of arrangement would show that upon approval of the Scheme by the Court the existing company shall be closed and upon payment to all the creditors the existing company shall be dissolved without winding up pursuant to an order to be obtained from the court. Pursuant to the approval of the scheme of arrangement, a notice of closure was obtained in the Anandabazar Patrika, the Jugantar Patrika and the Hindustan Standard, as per Ex. A, A/1 and A/2. In case under Section 481 of the Companies Act when the affairs of the company had been completely wound up or when the liquidator cannot proceed with the winding up of the company for want of funds and assets or for any other reason whatsoever, and it is just and reasonable an order of dissolution can be passed.

In the instant case, such an order was made and, therefore, this resulted in the civil death and the very existence of the company came to an end. It was also held that by Section 25F of the ID Act a prohibition against retrenchment until the conditions prescribed by that section are fulfilled, is imposed, by Section 25FFF(1) of the ID Act termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited. So it is not a condition precedent to closure. The Tribunal held that there is a complete closure of the company with effect from 3.5.1967 and thus answered the issue no. 1 against the appellant union. On the second issue, it was noticed that in the scheme there is no provision for transfer of the undertaking and stating so this issue was disposed of. As regards the third issue, the Tribunal took the view that Section 25FF of the ID Act is not attracted in the present case inasmuch as there is no transfer of undertaking and hence the payment of compensation would not arise. On Issue No. 4, the Tribunal recorded a finding that there is no agreement or settlement to which the Corporation is a party and the binding effect on the company which is not in existence and which was not a party to the settlement cannot be agitated. On Issue No. 5, the Tribunal held that the scheme does not provide for any right to continuation in service in the Corporation in respect of former employees of the company. On the contrary, the scheme of arrangement provided that it was left with the bona fide discretion of the Corporation as to the number of employees it could take. Thus there was no right to continue in employment with the Corporation. It was also held that the transferee Corporation has no obligation whatsoever in relation to payment of compensation, etc. to the workmen as per the list attached and these workmen are not entitled to any relief whatsoever. This award was challenged before the High Court and the High Court held that the none of the reliefs could be granted to the appellant union and so far as claim made in respect of compensation under Section 25FFF of the ID Act, the High Court took the view that the appellant union can claim the same but the quantum of compensation can be determined by a court in accordance with law in the presence of necessary parties. The writ petition was accordingly disposed of. Against this order, the present appeal is filed by special leave.

Before us it is contended that the Division Bench of the High Court while dealing with the appeal arising out of the company matter held that it was not within the scope of the scheme to find out first whether there was a closure of the company within the meaning of the ID Act and the that claim of the workmen under the ID Act based on agreement dated 25.8.1965 was not within the jurisdiction and province of the application for sanction of the scheme and that the agreement will have to be enforced in a properly constituted proceedings. The stand of the appellant union is that in view of this statement made in the course of the order according sanction of the scheme for dissolution of the company it could be inferred that it was a case of reconstruction of the company, the properties and the assets are transferred to and vested in the Corporation by the members of the company. Liabilities in relation to creditors have nothing to do with the matter of employment in relation to River Transport Undertaking continued by the Corporation after sanction of the scheme as employer as

defined by Section 2(g) of the ID Act and in support of this proposition relied upon the decision in Central Bank of India Ltd. vs. P.S.Rajagopalan, 1964 (3) SCR 140.

The party in person emphasised that this Court in Central Inland Water Transport Corporation Ltd. [supra] observed that there is no actual change of employer by reason of the transfer nor do the three clauses of Section 25F of the ID Act apply. Therefore, prima facie the claim of the workmen would be either for work or for compensation under Section 25FF of the ID Act against the Corporation. It is also submitted that the workmen belonged to the under-privileged segments of the society and were exploited and dominated and that the scheme did not reveal discontinuity in service and that they had not impleaded Union of India as party in the proceedings initiated earlier. Therefore, it is contended that the appellant union are entitled to relief at any rate from the defunct company and in terms of the agreement the monetary compensation will have to be paid by the Union of India, wherever the workmen of the erstwhile company are not absorbed in service of the Corporation.

This Court in Central Inland Water Transport Corporation Ltd. [supra] took the view that the liability of the Corporation would not arise in the case because the question as to whether the transferee of an undertaking is a successor or not involves several factors. So far as the claim against the Corporation is concerned this Court made it clear that the workers who were taken over by the Corporation were given fresh appointments from June 5, 1967 with different conditions of service and there was break in the condition of service. Even assuming that on such investigation, conclusion could be drawn that the Corporation is a successor the matter will not be settled because, the transferee even as a successor would be liable neither to pay compensation nor to re-employ the workmen whose employment stood automatically terminated on the transfer. Where by operation of law the employment of workmen stands terminated, it may be difficult to sustain it on the basis of a term in a settlement prohibiting retrenchment, though statutorily binding on the transferee as a successor. Therefore, the view taken by the Tribunal that the Corporation is not liable to pay either compensation or to absorb the workmen in question is unexceptionable. As rightly held by the High Court, the workmen in question are entitled to compensation in case of closing down of an undertaking. Here there has been no transfer of the undertaking from the company to the Corporation as found by the Tribunal and upheld by the High Court because by order made by the company court the scheme of arrangement was to close down the company and what was taken over by the Corporation was a separate arrangement. Therefore, in the eye of law what is to be held is that the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer and every workman who has been in service for more than ten years in that undertaking immediately before such closure shall be entitled to notice and compensation in accordance with the provision of Section 25F as if the workman has been retrenched. In case where an undertaking is closed down by reason of financial difficulties as was the position in the present case it cannot be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer. Therefore, if an application is made by the

workmen or by the union on their behalf before a Labour Court under Section 33C(2) of the ID Act it will be proper for the Labour Court to examine the claims under Section 25FFF of the ID Act, of each of these workmen and award compensation accordingly which shall be payable by the Union of India and to those proceedings the erstwhile company and the Union of India shall be parties.

In the circumstances, we direct the concerned Labour Court on the filing of such applications to dispose the same within a period of three months. The appeal shall stand allowed in part accordingly. In other respects, the same shall stand dismissed. No costs.

JUDIS