

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :- 30 .09.2010

Coram

The HONOURABLE MR.M.Y.EQBAL THE CHIEF JUSTICE  
and  
The HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.A.No.1459 of 2010 &  
M.P.No.1 of 2010

M/s.New Horizon Sugar Mills Ltd.,  
Ariyur, Kandamangalam P.O.  
Pondicherry 605 102  
Rep. by its Director,  
V.Kannan  
... Appellant/Petitioner

vs.

- 1.The Commissioner of Labour,  
Government of Puducherry,  
Vazhudavoor Salai,  
Puducherry - 605 009.
  - 2.Ariyur Sugar Mills Staff Welfare Union  
Rep. by its Secretary,  
84, Mariamman Koil Street,  
Ariyur, Kandamangalam P.O  
Puducherry.
  - 3.Puduvai Pradesa Sarkarai Aalai  
Thozhilalar Sangam,  
Rep. by its Vice President,  
Ariyur, Kandamangalam Post,  
Puducherry.
  - 4.Ariyur Sarkarai Alai Thozhilalar Nala Sangam,  
Rep. by its President,  
Ariyur, Kandamangalam Post,  
Puducherry.
- ... Respondents/Respondents

PRAYER : Writ appeals filed under clause 15 of the letter patent against the order dated 29.06.2010 made in W.P.No.11881 of 2010. Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a writ of Certiorarified Mandamus to call for the records and quash the order bearing Ref.9917/LAB/AIL/SOs/NHSM/2010 dated 18/3/10 on the file of the 1st respondent Labour Commissioner Pondicherry and Consequently forbear

the 1st respondent from computing or disbursing any dues including retrenchment compensation gratuity arrears of wages and other statutory benefits for the period subsequent to 31/12/04.

For Appellants :: Mr. S.Ravi for M/s.Gupta and Ravi

For Respondent 4 :: Mr.B.Ravi for R.Subramanian for R4.

For Respondent-1 :: Mr.D.Sreenivasan Govt. Pleader Pondicherry.

#### J U D G M E N T

THE HON'BLE CHIEF JUSTICE &  
T.S.SIVAGNANAM, J

This appeal is directed against the order made in W.P.No.11881 of 2010, dated 29.06.2010. The writ petitioner is the appellant.

2.The prayer in the writ petition was for issuance of writ of Certiorarified Mandamus to quash the order passed by the first respondent, dated 18.03.2010 and consequently to for bear the first respondent from computing or disbursing any dues including retrenchment compensation, gratuity and other statutory benefits for the period subsequent to 31.12.2004.

3. Though this case has a chequered history, the short issue which falls for consideration is :-

"what would be the date, which shall be reckoned for the purpose of computing the compensation payable under Section 25FF of the Industrial Disputes Act, 1947 to the workmen of the appellant Sugar Mill".

4. The facts, which are necessary for the disposal of the writ appeal, could be precisely stated as hereunder: -

The appellant availed certain credit facilities from the Indian Bank and committed default in repayment, and the Bank initiated proceedings under the SARFAESI Act 2002, and notice under Section 13 (2) of the Act was issued on 25.09.2004; possession notice under Section 13(4) was issued on 01.01.2005 and the notice of tender for sale of secured assets, both movable and immovable, was issued on 18.03.2005 and the auction was held on 24.03.2005, and M/s.EID Parry India Ltd was the successful bidder and they remitted a sum of Rs.12.50 crores on the same date towards part payment of the bid amount. The problem arose thereafter as several writ petitions came to be filed by the PNL Depositor Welfare Association, the Employees Association, Indian Bank, Pondicherry Cooperative Bank, Bank of Baroda and Greeta Enterprises & Developers (P) Ltd who filed

W.P.Nos.9834, 10060, 10077, 11715, 13592 and 15303 of 2005 respectively. These writ petitions were disposed of by a common order, dated 12.07.2005 with an observation that the workmen will be entitled to the benefits available under Section 25FF of the Industrial Disputes Act as against the third and fourth respondents therein by virtue of the prescription made under Section 13(6) of the SARFAESI Act therein. The third and fourth respondents were the successful bidders in the auction sale.

5. After the disposal of the writ petitions, sale certificate in respect of movable assets was issued in favour of the purchaser on 10.08.2005, but the sale certificate in respect of the immovable assets could not be registered owing to order of attachment under the provisions of the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004. At that stage of the matter, three writ petitions were filed in W.P.Nos.24834, 30532 & 36900 of 2005 by the Pudukkottai Pradesa Sarkarai Aalai Thozhilalar Sangam, Indian Bank and Ariyur Sugar Mills Staff Welfare Union respectively. This Court by an interim order dated 07.12.2005 appointed Justice K.P.Sivasubramaniam (retired) for computing the dues payable to the workmen and to submit a report. Simultaneously, Indian Bank was directed to deposit an initial amount of Rs.6.00 crores in a no-lien account for the purpose of disbursement to the workmen, after computation and this direction to deposit was complied with by the Indian Bank. While so, the writ petitions, which were filed challenging Protection of Interest of Depositors Act, came to be disposed of by order dated 23.08.2006, upholding the validity of the Act and consequently, the attachment on the immovable assets of the appellant was lifted and a sale certificate in respect of the immovable assets was executed and registered on 24.08.2006.

6. As against the common order in W.P.No.9834 of 2005 etc and against the interim order granted in W.P.No.24834 of 2005 etc., and against the order in W.P.No.1897 of 2006 etc batch, writ appeals in W.A.Nos.1788 & 1919 of 2005, 1142 to 1144, 1209, 1342 to 1345 of 2006 and 293 of 2007 were filed. These writ appeals along with the connected writ petitions filed by the successful bidder, the employees and workmen, were heard and disposed of by the Division Bench by a common order dated 27.03.2007, the operative portion of the order reads thus:-

"We are in entire agreement with the reasonings and findings rendered by F.M.Ibrahim Kalifulla, J., particularly in respect of the conclusion arrived at regarding the claim of the workers with reference to Section 25-FF of the Act."

"As far as the claims of the workers and their unions as well as Sacur Society, in modification of the order of A.Kulasekaran, J., in directing the parties/workers to go before the Commissioner appointed by the Court



(K.P.Sivasubramaniam, J.), we allow them to approach the Labour Commissioner, Puducherry, who shall go into the identity/veracity/eligibility/computation/distribution of their claims-amounts. As observed earlier, the Labour Commissioner shall along with the materials available before him, take the Memo filed by Justice K.P.Sivasubramaniam (Retd. Judge) as a supplement/extra material while deciding the claims. After decision, the Commissioner is at liberty to draw and disburse the amount lying with the Bank and if the Commissioner finds the amount available insufficient/deficit for the purpose of settling the claims or finds the amount in excess after settlement, in either case, he shall approach this Court for appropriate direction to the Bank. "

7. Two appeals were filed before the Hon'ble Supreme Court in C.A.Nos.6381 & 6382 of 2009, one by the appellant herein, against the order directing the deposit of Rs.6.00 crores and another by the auction purchaser, M/s.EID Parry India Ltd, against the order in W.A.No.1788 of 2005 holding that the appellant as well as M/s.EID Parry India Ltd are liable for the workers' dues under Section 25FF of the Industrial Disputes Act.

8. The Hon'ble Supreme Court by order dated 31.08.2009 ordered that the workers dues will have to be paid from and out of the sale proceeds lying with the Indian Bank and the auction purchaser, M/s.EID Parry India Ltd, will have no liability.

9. Based on such order, the Commissioner of Labour, the first respondent herein took up the work of computation. During the course of computation a doubt arose as to whether, the computation should be confined only for the compensation payable under Section 25FF of the Industrial Disputes Act or for other dues to the workmen as well.

10. Therefore, petition for clarification was filed before the Hon'ble Supreme Court and by an order dated 11.12.2009, the Hon'ble Supreme Court taking note of the plight of the workmen directed that the computation should be in respect of all amounts due to the workmen.

11. Thereafter, the individual workmen submitted their claim statement before the first respondent and it appears that the first respondent convened a meeting, gave opportunity to the appellant and computed the wages payable and the appellant consented to pay the dues calculated upto 31.12.2004, but protested to the decision of the first respondent fixing the cut off date as October 2006. This decision of the first respondent was by his order dated 18.03.2010. Challenging the said order dated 18.03.2010, the appellant herein filed the writ petition in W.P.No.11881 of 2010 raising several contentions. The learned Judge after hearing the parties by an order

dated 29.06.2010 allowed the writ petition in part and set aside the penultimate paragraph of the order passed by the first respondent, dated 18.03.2010 and fixed the cut off date as 24.08.2006, as the date on which the benefits under Section 25FF of the Act as well as the other benefits are to be computed. As against this order in the writ petition, the present appeal has been filed.

12. Elaborate submissions on facts were made by the learned counsel appearing for the appellant. The learned counsel would submit that the learned Judge ought to have confirmed the date as fixed by Justice K.P.Sivasubramaniam (retired) as 31.12.2004 and erred in fixing the cut off date as 24.08.2006. Further, the learned counsel relying upon Section 25FF of the Industrial Disputes Act would submit that in the instant case, there is no retrenchment, but it is a deemed retrenchment by operation of law and therefore the appropriate date would be 31.12.2004 for all purposes. Further, the learned counsel would refer to Section 13 (4)(a) of the SARFAESI Act and contend that the possession of the secured asset was taken over by the Bank on 01.01.2005 and therefore, the cut off date should be only on 31.05.2004. It is further contended by the learned counsel that the issuance of the sale certificate is only a consequential proceedings after taking over possession under Section 13(4)(a) and such date cannot be the material date for the purpose of computing compensation. In support of his contention, the learned counsel relied on the following decisions of the Hon'ble Supreme Court in Anakapalla Cooperative Agricultural and Industrial Society Ltd Vs. Workmen, AIR 1963 SC 1489, The Board of Directors of the South Arcot Electricity Distribution Co., Ltd. Vs. N.K.Mohammed Khan etc., 1970 2 LLJ 44 and Workmen of Subong Tea Estate Vs. The Outgoing management of Subong Tea Estate and Anr. AIR 1967 SC 420.

13. Per contra, the learned counsel appearing for the workmen would contend that the proviso to Section 25FF of the Industrial Disputes Act are very relevant for the purpose of this case, which states that nothing in 25FF shall apply to the workmen where, there has been a change of employer by reason of transfer, if services of the workmen has not been interrupted by transfer; terms and conditions of services, after such transfer are less favourable to the workmen and the new employer is legally liable to pay the workmen, in the event of his retrenchment, compensation on the basis that his services has been continuous and not been interrupted by the transfer.

14. The learned counsel would further contend that the possession contemplated under Section 13(4)(a) of the SARFAESI Act is the right of the secured creditor to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured debt. That clause (b) Sub-Section 4 of the Section 13 gives power to the secured creditor to take over the management of the business and to right to

transfer it and only under Sub-Section 6 of Section 13, the actual transfer takes place. Further, in terms of Section 13 (8) time is granted to the borrower to settle the dues to the secured creditor and if the the same is done, no steps shall be taken to transfer the asset. Therefore, the learned counsel would submit that the order passed by the learned Judge is perfectly legal and valid. Further, the learned counsel by relying upon the Judgment of the Division Bench in W.A.No.1788 of 2005 etc batch dated 23.06.2007 would submit that the order passed in the writ petition was confirmed by the Division Bench, wherein the learned Judge directed that the workmen are entitled to benefits available under Section 25FF of the Industrial Disputes Act, by virtue of the prescription of under Section 13(6) and as against this finding, there was no appeal filed by the management and the Judgment has become final.

15. The learned Government Pleader appearing for the first respondent would submit that after the direction issued in the writ petition, the compensation has been disbursed to 134 workmen out of the total 333 workmen by reckoning the cut off date as 24.08.2006 and prayer was made to issue appropriate directions to enable the first respondent to disburse the amount, since there is lot of pressure from the workmen, who were languishing without any funds and there is a law and order situation being created on account of delay in disbursement.

16. We have considered the submissions on either side and perused the materials available on record.

17. As noticed above, the Supreme Court by order dated 11<sup>th</sup> December, 2009 clarified that while exercising computation of the dues payable to the workmen, the Commissioner shall verify all the documents and quantify the amount payable to the employees. The dispute before the Commissioner was as to up to what date the employees are entitled. According to the appellant-management the dues payable to the retrenched workmen shall be up to 31<sup>st</sup> December, 2004, whereas, according to the respondent, the workmen shall be paid their dues up to October, 2006. The Commissioner of Labour, after examining the records and analyzing the claim, came to the conclusion that the workers shall be deemed to have been in service up to October, 2006, and therefore, they are entitled to get their claim up to October, 2006. For better appreciation the relevant portion of the order of the Labour Commissioner is worth to be reproduced herein below: -

"Whereas the NHSM in the said meeting has consented for disbursement of all dues to be calculated and paid upto 31.12.2004, but not ready to certify any dues that may be paid to the workers, after the period 31.12.2004.



Whereas the undersigned in compliance with the orders of the Hon'ble Supreme Court and in the context of stand exhibited by the NHSM has made a thorough examination and objective analysis of the veracity of the claims raised upto 10/2006, and arrived at a reasoned decision that during the period of possession and the auction of the New Horizon Sugar Mills by the Indian Bank and the EID Parry have been the successful auction purchaser, came into occupation of the said Mill in November 2006, the workers as per the records available, were continuously been in the service of the Mill without been issued with any appropriate Notice/for their Retrenchment till 10/2006, by the Management of NHSM, Ltd., And further having noted from the other documents available that some of the employees, having been admitted into retirement by the NHSM, vide its own communication dated 31.1.2006, that the workers irrespective of the various developments taken place, were remained in service of the NHSM, and carrying out the maintenance works upto 10/2006, and therefore are entitled to have all their claim amounts, except credit Society, settled upto the period of October 2006."

18. From the impugned judgment, it appears that possession was taken by the Authorised Officer of the Bank on 01<sup>st</sup> January, 2005, but the contention of the workmen was that they continued in service till October, 2006. The learned single Judge, after elaborate discussion of facts and the law, came to the conclusion that till a Certificate of Sale is issued by the secured creditor, no valid transfer took place and there was no cessation of employment of the workmen. The learned single Judge further held that the Certificate of Sale was issued on 24<sup>th</sup> August, 2006, and it was only thereafter the assets were transferred in favour of the purchaser. The learned single Judge in his judgment held that 24.8.2006 shall be taken as the date up to which the workers would be entitled to the benefits under Section 25-FF of the Industrial Disputes Act. Section 25-FF of the Industrial Disputes Act deals with the provision with regard to payment of compensation to the workmen in case of transfer of undertaking. The section clearly states that where the ownership or management of an undertaking is transferred either by agreement or by operation of law from the employer to a new employer, every workman, who has been in continuous service for not less than one year in that undertaking shall be entitled to notice and compensation in accordance with the provisions of Section 25-F of the Industrial Disputes Act, as if the workman had been retrenched. Admittedly, in the instant case, the movable and immovable assets had been sold by the bank invoking the

provisions of Section 13 of the SARFESI Act. At this stage, we would like to refer to sub-section (8) of Section 13 of the SARFESI Act, which reads as under: -

"If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset."

19. It is, therefore, evidently clear that the transfer of secured assets has been done by operation of law after the borrower failed to tender the dues and the expenses as provided in the aforesaid provision. Admittedly, therefore, after the borrower failed to tender the dues to the secured creditor, namely, the bank, the assets were sold in auction and the sale was confirmed on 24.3.2005. Thereafter the sale certificate in respect of plant and machinery was issued on 10.08.2005. However, the sale certificate in respect of immovable assets could not be registered owing to order of attachment under the provisions of the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004, and the sale certificate was registered only on 24.08.2006. In our considered opinion, therefore, the ownership of the undertaking stood transferred on 10.08.2005 when the sale certificate in respect of plant and machinery was issued. Because of the delay caused in getting clearance for the registration of the sale certificate in respect of plant and machinery, it cannot be held that the undertaking was transferred on 24.08.2006. In the facts and circumstances of the case, and the provision of law quoted herein before, we have no hesitation in holding that the assets of the undertaking stood transferred on 10.08.2005 and up to that date, the workmen shall be entitled to their benefits in accordance with Section 25-FF of the Industrial Disputes Act.

20. We, therefore, allow this appeal in part, and hold that the workmen shall be entitled to the benefits of Section 25-FF of the ID Act upto 10.08.2005. The operative portion impugned judgment is modified accordingly. No costs. Consequently, miscellaneous petition is closed.

Sd/-  
Asst. Registrar

//true copy//

Sub Asst.Registrar

Pbn/pv-



To

The Commissioner of Labour,  
Government of Puducherry,  
Vazhudavoor Salai,  
Puducherry - 605 009.

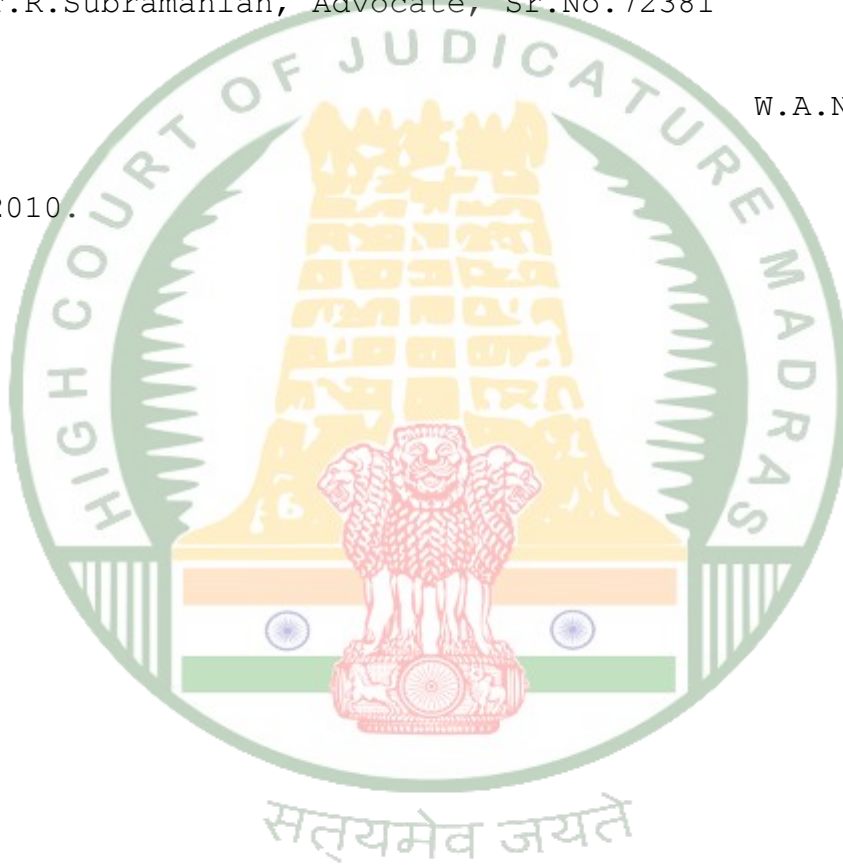
1 cc to M/s Gupta & Ravi, Advocate, Sr.No.72229

1 cc to Sr.Government Pleader, (Pondicherry) Sr.No.72357

1 cc to Mr.R.Subramanian, Advocate, Sr.No.72381

Judgment in  
W.A.No. 1459 of 2010

TRM {CO}  
TP/21.10.2010.



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