Management, Mettur Beardsell Ltd vs Workmen Of Mettur Beardsell Ltd. & Anr on 26 April, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2056, 2006 (9) SCC 488, 2006 AIR SCW 2572, 2006 LAB. I. C. 2230, (2007) 1 JCR 237 (SC), 2006 (4) SCALE 612, 2006 (7) SRJ 192, (2006) 3 PAT LJR 289, (2006) 4 SERVLR 25, (2006) 2 LABLJ 899, (2006) 2 SCT 579, (2006) 3 LAB LN 687, (2006) 6 SCJ 259, (2006) 4 SUPREME 714, (2006) 4 SCALE 612, (2006) 109 FACLR 1057

Author: Arijit Pasayat

Bench: Arijit Pasayat

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           CASE NO.:
Appeal (civil)  7150-7151 of 2003

PETITIONER:
Management, Mettur Beardsell Ltd.

RESPONDENT:
Workmen of Mettur Beardsell Ltd. & Anr.

DATE OF JUDGMENT: 26/04/2006

BENCH:
ARIJIT PASAYAT & TARUNCHATTERJEE

JUDGMENT:
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J U D G M E N T With CIVIL APPEAL NOS. 2258 OF 2006 (Arising out of SLP (C) NO. 22724 OF 2004) AND CIVIL APPEAL NO. 2259 OF 2006 (Arising out of SLP (C) NO. 5071 OF 2005) And CIVIL APPEAL NO. 7152 OF 2003 ARIJIT PASAYAT, J.

Leave granted in SLP (C) Nos. 22724 of 2004 and 5071 of 2005.

These appeals have a common matrix. By the impugned judgment rendered by a Division Bench of the Madras High Court three appeals were disposed of. Writ Appeal No.761 of 1992 was against order dated 22.7.91 passed in Writ Petition No.11956 of 1987 passed by a learned Single Judge, while Writ Appeal No.760 of 1997 was against the order dated 24.2.1997 in Writ Petition No.1063 of 1988 passed by a learned Single Judge. The third appeal before the Division Bench was Contempt Appeal No.13 of 1992 directed against order dated 11.12.1992 in Contempt Application No.336 of 1992 passed by learned Single Judge.

Factual background as highlighted by the appellant- Management of Mattur Beardsell Ltd. is as

follows :

Mettur Beardsell Ltd. started business in 1936 and conducted operations successfully till 1970, when it faced financial problems. On 19.5.1977 a Resolution was passed to hive off its textile operation by entrusting it to its wholly owned subsidiary which was to be formed. In fact on 19.12.1981, Mettur Textile Pvt. Ltd. was formed. On 21.6.1982 at the Annual General Meeting of Mettur Beardsell Ltd. shareholders authorized entering into of an arrangement on behalf of Mettur Beardsell Ltd. and Mettur Textile Pvt. Ltd. For the sake of convenience they are described as Beardsell and Textile hereinafter.

The workers were informed about the transfer. On 9.2.1982 information about Integrated Textile Division consisting of manufacturing and marketing divisions of the Textile Division in all locations including Madras with necessary support staff was given. On 22.9.1982 notice to workers was given that E.D.P. Department will also be treated as a part of the Integrated Textile Division. The E.D.P. Department was to continue to operate from 49, Rajaji Road where the Integrated Division was situated. The office of Beardsell was on 47 Bose Road which is different address. On 29.11.1982 individual letters/notices were sent to employees, who have been in the Textile Division, that they were being treated as part of the Integrated Textile Division with unaltered terms and conditions of work. On 30.11.1982 circular was sent to the employees that employees' allocation has been completed, Beardsell was to become a partner of new formed subsidiary "Textile" to ensure that Textile Division could be treated separately. On 14.12.1982 a partnership firm called "Mettur Textiles" was formed between the Textile and Beardsell evidenced by a partnership deed. On 3.3.1983 an agreement was entered into amongst Beardsell, Textile and one Rukmini Investments Pvt. Ltd. (in short 'Rukmini'). Beardsell was paid Rs.1,74,00,000/- by Rukmini Investments for divesting all rights and assets in the Integrated Textile Division. Later Rukmini took over entire partnership business and incorporated it as Mettur Textile Industries Ltd. On 25.1.1983 employees of the Integrated Division were informed individually about the arrangement and their absorption with effect from 01.01.1983 without change in the conditions of service. On 31.1.1983 employees were informed that their services would be absorbed by Textile and that terms and conditions which would be uninterrupted would cover salary, wages, benefits, retrenchment and retirement. On 24.3.1983 notices were sent to the workmen informing them that Beardsell had retired from partnership and that the terms and conditions of work would not be any way less favourable than the prevailing situation. On 13.5.1983 letters were written by the respondent-Employees Association to Beardsell admitting the transfer to Mettur Textile and requested for an option for retention/retransfer to the rolls of Beardsell. Their claim was that they ought to have been a Memorandum of Settlement under Section 12(3) of the Industrial Disputes Act, 1947 (in short the 'Act'). On 17.6.1983 the respondent-workmen through their Association wrote a letter to the Labour Officer that they may be taken back as on the date of transfer of the partnership by Beardsell.

> On 22.6.1983 several unions entered into settlement under Section 12(3) of the Act agreeing to continue as employees of Textile and not of Beardsell. On 16.7.1983 Beardsell wrote a letter to the Labour Officer informing him that all the employees working in the Integrated Textile and Thread Division had become employees of Textile and indicated that the said employees have left its service on 31.12.1982. Thereafter certain letters appear to have been written to the Provident Fund Commissioner. The workmen have objected to consideration of these documents on the ground that they were not before the Labour Court or the High Court. On 6.4.1984 Mettur Beardsell Employees Association wrote to Labour officer contending that they were employees of and paid by Mettur Textile Industries ltd. from July, 1983.

I.D. Case No.8 of 1984 was registered on the basis of grievance by the respondent-workmen asserting that they continued to be workmen of Beardsell. By an Award dated 5.12.1986 Industrial Tribunal rejected the claims of the workmen. A Writ Petition No.11956 of 1987 was filed by the respondents- workmen against the Award in I.D. No.8 of 1984. By judgment dated 22.7.1991, the Writ Petition was allowed holding that the workmen should be treated as employees of Beardsell with all consequential benefits. Writ Appeal No.761 of 1992 was filed by the appellant which has been dismissed by the impugned judgment. In the meantime the Contempt Petition No.366 of 1992 was filed by respondent-workmen alleging that the direction by the learned Single Judge on 22.7.1991 to the effect that the workers should be treated as employees with all consequential benefits had not been complied with. By order dated 11.12.1992 learned single judge hold that there was contempt and sentenced the Managing Director of Beardsell to two weeks' imprisonment and fine of Rs.2,000/-. Contempt Appeal No.13 of 1992 was filed against the order of learned single judge and the contempt matter was stayed. However, by the impugned judgment the Contempt Appeal was dismissed. On 12.4.1984 a letter was sent by Mettur Textile Industries Ltd. intimating each workman that he was being retrenched. On 23.4.1984 employees replied that they may be continued in service of Mettur Textile Industries Ltd. On 14.11.1984 respondents raised I.D. 89 of 1984 challenging the retrenchment. By its award dated 19.6.1987 Industrial Tribunal rejected the claim. Respondent-workman filed writ petition No.1063 of 1988 against the said Award. By order dated 24.2.1997 learned Single Judge dismissed the writ petition. Writ Appeal No.760 of 1997 was filed by the respondent-workmen. By the impugned judgment the High Court allowed the Writ Appeal. It appears that a claim petition under Section 33 (C)(2) of the Act for the period 1984 to 1992 was filed which was numbered as C.P. No.2242 of 1991. The Labour Court directed payment of Rs.44.5 lacks. By order of this Court dated 16.11.2004 the direction of the Labour Court for payment was stayed. The sole basis of learned Single Judge coming to the conclusion that the workmen continued to be the employees of Beardsell is founded on Ex.22 i.e. voucher of Beardsell used for payment subsequent to the claim of transfer of employees. The explanation offered by Beardsell as to why the same cannot be utilized for forming any opinion has been discarded by learned Single Judge and the Division Bench without indicating any reason affirmed the findings overlooking evidence led by the Beardsell to show that there was nothing illegal in the transfer. Learned Single Judge and the Division Bench proceeded as if the ultimate objective of the transfer was to target the concerned 27 workmen out of whom 9 have withdrawn from the dispute and was confined to only 18 workmen. Both learned Single Judge and the High Court lost sight of the fact that more than 2500

workmen were involved and all of them accepted transfer and did not raise any dispute. It was, therefore, utterly fallacious on the part of the learned Single Judge and the Division Bench to hold that the entire arrangement of transfer was with oblique motives. Further claim petition under Section 33(C)(2) of the Act has been adjourned by the Labour Court notwithstanding pendency of these cases.

According to learned counsel for the Beardsell, both learned Single Judge and the Division Bench completely misconceived the scope of the dispute raised. There was no dispute regarding the genuineness of the transfer. However, learned Single Judge as well as the Division Bench proceeded on the basis as if there was a dispute as regards genuineness of the transfer. A bare reading of the reference made to the Industrial Tribunal makes the position clear that there was no such dispute. Additionally, learned Single Judge introduced a concept of consent which is foreign to Section 25FF of the Act. The Division Bench not only erred in affirming the conclusions of the learned Single Judge, but also without any challenge before the Tribunal or before learned Single Judge referred to certain materials which were not brought on record by the workmen and Beardsell had no opportunity to meet those materials. Conclusions of fraud were arrived at when the workmen have not established and mala-fides and fraud.

Learned counsel for the respondents-workmen on the other hand submitted that though the plea of illegality of transfer was not spelt out in so many words in the reference that was the core issue; and, therefore, no infirmity can be attached to judgment of the learned Single Judge and the Division Bench. Reference was made to several decisions to contend that consent is inbuilt in any transfer in service jurisprudence.

At this juncture, in view of rival contentions it is to be noted that the reference itself did not relate to legality of transfer. The reference as was made by the Government of Tamil Nadu under Section 10(1)(b) of the Act in its G.O. Ms. No.202 dated 19.1.1984 of the Labour Department reads as follows :

> "The dispute coming on for final hearing on Wednesday, the 29th day of October, 1986 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru A.L. Somayaji for Thiruvalargal Aiyar and Dolia and Miss G. Devi, Advocate appearing for the workmen and of Thiru S. Jayaraman, Advocate for management No.2 and this dispute having stood over till this day for consideration.
>
> The basic issues involved in the cases are as follows:
>
> 1. Was there a transfer of undertaking under Section 25FF of the 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?

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.

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.

The scope and ambit of Section 25FF of the Act needs to be delineated.

In Maruti Udyog Limited v. Ram Lal And Others. (2005 (2) SCC 638) it was observed as follows:

> "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".

In D. R.Gurushantappa v. A.K. Anwar & Ors. (1969 (1) SCC 466) this Court noted as follows:

> "So far as the first point is concerned, reliance is placed primarily on the circumstances that, when the concern was taken over by the Company from the Government there were no specific agreements terminating the Government service of Respondent No.1 or bringing into existence a relationship of master and servant between the Company and respondent No.1. That circumstance, by itself, cannot lead to the conclusion that Respondent No.1 continued to be in Government service. When the undertaking was taken over by the Company as a going concern, the employees working in the undertaking were also taken over and since, in law the Company has to be treated as an entity distinct and separate from the Government,

the employees, as a result of the transfer of the undertaking, became employees of the company and ceased to be employees of the Government. This position is very clear at least in the case of those employees who were covered by the definition of workmen under the Industrial Disputes Act in whose cases, on the transfer of the undertaking, the provisions of Section 25-FF of that Act would apply. Respondent No.1 was a workman at the time of the transfer of the undertaking in the year 1962, because he was holding the post of an Assistant Superintendent and was drawing a salary below Rs.500 per mensem. As a workman, he would, under Section 25-FF of the Industrial Disputes Act, become an employees of the new employer, viz., the Company which took over the undertaking from the Mysore Government which was the previous employer. In view of this provision of Law, there was in fact, no need for any specific contract being entered into between the Mysore Government and respondent No.1 in terminating his Government service, nor was there any need for a fresh contract being entered into between the Company and Respondent No.1 to make him an employee of the Company".

Again in Management of R. S. Madhoram And Sons Agencies (P) Ltd. v. Its Workmen. (1963 (5) SCR 377), the position was highlighted as follows:-

"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.

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?

It would be noticed that the first and foremost condition for the application of S. 25FF is that the ownership or management of an undertaking is transferred from the employer in relation to that undertaking to a new employer. What the section contemplates is that either the ownership or the management of an undertaking should be transferred; normally this would mean that the ownership or the management of the entire undertaking should be transferred before S. 25FF comes into operation. If an undertaking conducts one business, it would normally be difficult to imagine that its ownership or management can be partially transferred to invoke the application of S. 25FF. A business conducted by an industries undertaking would ordinarily be an integrated business and though it may consist of different branches or departments they would generally be interrelated with each other so as to constitute one whole business. In such a case, S. 25FF would not apply if a transfer is made in regard to a department or branch of the business run by the undertaking and the workmen would be entitled to contend that such a partial transfer is outside the scope of S. 25FF of the Act. It may be that one undertaking may run several industries or business which are distinct and separate. In such a case, the transfer of one distinct and separate business may involve the application of S. 25FF. The fact that one undertaking runs these business could not necessarily exclude the application of S. 25FF solely on the ground that all the business or industries run by the said undertaking have not been transferred. It would be clear that in all cases of this character the distinct and separate businesses would normally be run on the basis that they are distinct and separate, employees would be separately employed in respect of all the said businesses and their terms and conditions of service may vary according to the character of the business in question. In such a case it would not be usual to have one muster-roll for all the employees and the organization of employment would indicate clearly the distinctive and separate character of the different businesses. If that be so, then the transfer by the undertaking of one of its businesses may attract the application of S. 25FF of the Act.

But where the undertaking runs several allied business in the same place or places, different considerations would come into play. In the present case, the muster-roll showing the list of employees was common in regard to all the departments of business run by the transferor-firm. It is not disputed that the terms and conditions of service were the same for all the employees and what is most significant is the fact that employees could be transferred from the department run by the transferor-firm to another department, though the transfer conducted several branches of business which are more or less allied, the services of the employees were not confined to any one business, but were liable to be transferred from one branch to another. In the

payment of bonus all the employees were treated as constituting one unit and there was thus both the unity of employment and the identity of the terms and conditions of service. In fact, it is purely a matter of accident that the 57 workmen with those transfer we are concerned in the present appeal happened to be engaged in retail business which was the subject-matter of the transfer between the firm and the company. These 57 employees had not been appointed solely for the purpose of the retail business but were in charge of the retail business as a mere matter of accident. Under these circumstances, it appears to us to be very difficult to accept Sri Setalvad's argument that because the retail business has an identity of its own it should be treated as an independent and distinct business run by the firm and as such, the transfer should be deemed to have constituted the company into a successor-in-interest of the transferor firm for the purpose of S. 25FF. As in other industrial matters, so on this question too, it would be difficult to lay down any categorical or general proposition. Whether or not the transfer in question attracts the provision of S. 25FF must be determined in the light of the circumstances of each case. It is hardly necessary to emphasize that in dealing with the problem, what industrial adjudication should consider is the matter of substance and not of form. As has been observed by this Court in Anakapalle Co-operative Agricultural and Industrial Society v. Its workmen and others [1962 - II L.L.J. 621] the question as to whether a transfer has been effected so as to attract S. 25FF must ultimately depend upon the evaluation of all the relevant factors and it cannot be answered by treating any one of them as of overriding or conclusive significance. Having regard to the facts which are relevant in the present case, we are satisfied that the appellant cannot claim to be a successor-in-interest of the firm so as to attract the provisions of S. 25FF of the Act. The transfer which has been effected by the firm in favour of the appellant does not, in our opinion, amount to the transfer of the ownership or management of an undertaking and so, the tribunal was right in holding that S. 25FF and the proviso to it did not apply to the present case".

The views according to us reflect the correct position in law.

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 Section 25FF as if the workmen had been retrenched. This provision shows that workmen falling under the category contemplated by it, are entitled to claim retrenchment compensation in case the undertaking which they were serving and by which they were employed is transferred. Such a transfer, in law, is regarded as amounting to retrenchment of the said workmen and on that basis Section 25FF gives the workmen the right to claim compensation.

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

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

It was submitted by the learned counsel for the respondent that fraud was involved. The conclusions of the learned Single Judge and the Division Bench proceeded on the premises as if the 27 employees in question were targeted. In order to establish fraud there has to be specific averments or materials adduced to establish the same. In the instant case there was no specific averment in that regard and in any event no evidence was led. The High Court seems to have lost sight of the fact

that huge amount of money had already been paid. It has not established that the purpose was to target the 27 employees and for that purpose the appellant spent huge amount of money. Undisputedly the employees were informed of the transactions at all relevant points of time. It is also not disputed by learned counsel for the respondent that nearly 2500 employees have accepted that the transfer is genuineness and out of 27 employees who originally pressed their grievances, nine are not pursuing it. The Tribunal had rightly noted these aspects. Unfortunately learned Single Judge and the Division Bench made out a new case of fraud and the transaction to be "sham". The solitary material on which decisions of learned Single Judge and the Division Bench was founded is one receipt showing payment for one month. The explanation given in that regard does not appear to have been considered in its proper perspective by the High Court.

On the question of fraud few decisions need to be noted. In Shrisht Dhawan (Smt.) v. M/s Shaw Brothers (1992 (1) SCC 534), it was noted as follows:

> "20. But fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law."

The warning by Venkatachaliah J in G.B. Mahajan and Ors. v. Jalgaon Municipal Council and Ors. (1991 (3) SCC 91) on the use of concept of reasonableness was founded on the following passage quoted from Tiller v. Atlantic Coast, (1942) 3189 US 54.

> "A phrase begins life as a literary expression; its felicity leads to its lazy repetition; and repetition soon establishes it as a legal formula, undiscriminatingly used to express different and sometimes contradictory ideas."

In Shrisht Dhawan's case (supra) it was further observed as follows:-

> "xx xx xx xx xx If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its cope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation t the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in

commercial transactions non-disclosure of every fact does not vitiate the agreement."

A sham transaction is one which was always intended and devised to be a fraud of a provision of the concerned statute in relation to which it is alleged to be a fraud.

That being so the orders of the learned Single Judge and the Division Bench cannot be maintained and are, therefore, set aside.

It appears that taking serious note of the fact that the orders were not complied with, contempt proceedings were initiated and orders have been passed. It is not in dispute that a part of the amount payable was deposited in this court and has been disbursed. In view of the fact that the orders of learned Single Judge and the Division Bench are being set aside, the question of consequential action under Section 33(C)(2) of the Act does not arise. At the same time it cannot be lost sight of the fact that orders of the learned Single Judge and the Division Bench were not complied with. Since a sum of Rs.10 lakhs has already been deposited and Rs.5 lakhs have also been disbursed, in the peculiar circumstances of the case, we direct that the balance money be disbursed to the employees on the basis of their entitlements. This exercise shall be done by the Tribunal. Appeals are accordingly disposed of. No costs.