
(2017) 03 RAJ CK 0142
In the Rajasthan High Court
Case No : 1959 of 2006

Managing Director

APPELLANT

Vs

The Judge, & Antr.

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 33\(2\)](#),
[Section 33\(1\)](#), [Section 25-F](#),
[Section 25-G](#), [Section 25-H](#), [Section](#)
[10-A](#)

Citation : (2017) 03 RAJ CK 0142

Hon'ble Judges : Sanjeev Prakash Sharma

Bench : SINGLE BENCH

Advocate : Vinendra Agarwal, Manoj Goyal, Kailash Kumar Chandel

Judgement

1. The petitioner, an urban cooperative bank, by way of present writ petition, has assailed the order and directions issued under the award dt.19/07/2005 passed by the Industrial Tribunal, Jaipur (hereinafter referred as the "Tribunal").

2. This case has checkered history. As per petitioner they had taken up the work of collection of payments of water and electricity consumption bills from private parties for the Government Department i.e. PHED and Rajasthan State Electricity Board. The work was being undertaken at all the branches of the petitioner-Bank and one of the registered union of the Bank namely; Apex Organization of Rajasthan Cooperative Sector Employees Union raised a demand on 18/02/1982 which contained 14 different demands. While the conciliation proceedings were undergoing, services of the members of the said Union were terminated and therefore, a claim petition was filed and reference was made by the State Government under Section 10-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act of 1947") to the effect that "Whether the action of the Manager, Urban Cooperative Bank Limited, Nehru Bazar, Jaipur in terminating services of 30 workmen mentioned in the list was justified and correct and if not, what relief they were entitled to ?" The list contained the name of 30 workmen.

3. A statement of claim was filed by the respondent-Union and it was stated that the action had been taken in vengeance and with the purpose to snub the demand raised by the Union and in this manner, the action was an unfair labour practice and came within the definition of exploitation. It was further claimed that while dispensing with the services of the workmen, notice or pay in lieu of notice and compensation for retrenchment in terms of Section 25-B and 25-F had not been paid. No show cause notice was given to any of the workmen and no domestic enquiry was conducted and the action was wholly unjustified. It was further stated that from the date of employment, the said workmen had been continuously performing their duties and were stopped to enter the premises and perform their duties w.e.f. 01/09/1982. It was further submitted that the petitioner itself had appointed the said workmen and was having full control over the said workmen and thus were its employees. The claim was filed for 15 workmen only out of total 30 and it was stated that they were performing the duties of Bill Clerk and there was no misconduct committed by them. Further, it was alleged that the provisions of Section 25-F of the Act of 1947 had been violated and all of them have been rendered jobless. For another 5 workmen, a separate statement of claim was filed reiterating the same submissions as above.

4. A reply was filed by the petitioner and it was stated that the concerned workmen had been appointed on different dates. The Union, which had raised the claim, was not recognized and most of the workmen of the Bank were not its members. The demand raised by the Union was illegal and could not be accepted. With regard to the nature of work, it has been stated that the workmen were only performing the duty of collecting the amount for the water and electricity bills as per the contract with the Government Departments i.e. PHED and RSEB. It is stated that as the work of PHED and RSEB was on contract basis, which ended, there was no work left for the said workmen and by complying the provisions of Section 25-G of the Act of 1947, the services of all the workmen were dispensed with. It is further submitted that the workmen had refused to accept the notice for one month and also refused to receive the compensation personally, hence by pay warrant, the amount was remitted through registered post at their respective residences. It was denied that there was any vengeance or prejudice to terminate the services of the workmen. Their termination was not on account of the misconduct and therefore, there was no option of conducting any domestic enquiry. The action had been on account of closure of the work for which the concerned persons had been appointed. Same reply was also given in relation to the other 5 workmen.

5. The Tribunal vide order dt.01/04/1991 passed an award holding that the termination order was legal and justified. It was further stated that the termination of services did not come within the definition of retrenchment and was covered under Section 2(oo) (bb) of the Act of 1947. As regards the allegation that other persons had been appointed after removing the workmen and therefore, there had been violation of Section 25-H of the Act of 1947, was also not accepted and it was held that if some employees had been appointed

after conducting interview, the violation of Section 25-H of the Act of 1947 cannot be said to be made out.

6. At this juncture, it also needs to be noted that one of the workmen namely Mr. Trilok Chand separately challenged his termination order and an award came to be passed by the Industrial Tribunal, Jaipur on 22/08/1989 in his favour holding the action of terminating his services as bad and it was held that persons junior to him had been retained and had also been regularized in the regular pay-scale and therefore, the Bank had discriminated with him.

7. Against the said two awards, two separate writ petitions bearing SB Civil Writ Petition No.3048/1990 and 3956/1991 came to be filed by the petitioner as well as respondent No.2-Union respectively which came to be decided by this Court jointly vide order dt. 22/04/1994 holding that the Tribunal had failed to examine the facts and documents placed before it and at the same time, it was also held that no discussion had been arrived at in both the awards and accordingly, both the awards dt.22/08/1989 and 01/04/1991 were set aside and the matter was remanded to the Labour Court for deciding it afresh within a period of three months.

8. The Tribunal, on remand, framed six issues on 16/08/1994 in terms of the directions of the High Court as under:- "VERNACULAR MATTER OMITTED"

9. From above, it is clear that the Tribunal has examined the legality of termination of service of the workmen in terms of Section 25-F, 25-G and 25-N, 25-H, 33(1) and 33(2) of the Act of 1947.

10. The Tribunal vide its award dt.16/10/1995, with regard to Union's claim, re-examined all the facts and it was held that the Work Branch of the Bills Section was closed on 01/09/1982 and compliance of Section 25-F of the Act of 1947 was also made as the amount was offered and sent by registered post to the residence of the concerned workmen. However, it was ultimately held that the services of the workmen had been rightly dispensed with and the action was justified and no relief could be granted.

11. The Union again filed SB Civil Writ Petition No.3698/1996 and this Court vide its judgment dt.05/01/1999, after quoting various issues which had been framed by the Tribunal and noted in the order dt.22/04/1994 (supra), reached to the conclusion that the law relating to reinstatement had not been correctly appreciated by the Tribunal as well as the observations made by the High Court earlier in its order dt.22/04/1994 had been completely ignored while passing the award and rejecting the claim of the workmen. Accordingly, the award dt.15/10/1995 was quashed and set aside and the matter was again remanded to the Tribunal to decide it afresh.

12. A DB Special Appeal (Writ) No.123/1999 was preferred by the petitioner-Bank against the order passed in SB Civil Writ Petition No.3698/1996. The appeal was decided on 24/11/2003 observing that some issues had not been dealt with

by the learned Single Judge and the petitioner-Bank was allowed to prefer a review petition before the learned Single Judge. Same order was passed in relation to Trilok Chand's case also.

13. In terms of the observation of the Division Bench, SB Civil Review Petition No.30/2004 was preferred by the Bank which was heard on 27/01/2005 and was dismissed observing that the arguments raised in the review petition could be taken up before the Tribunal.

14. In these circumstances, the award impugned herein has been passed whereby after discussing all the issues, one after the another, it has been held that the services of the workmen had been wrongly dispensed with and the termination order was set aside. It may be stated that by this time, only 17 workmen remained before the Tribunal and it was therefore, directed that all the 17 workmen shall be entitled to salary and consequential benefits including continuity of service and reinstatement. For the other workmen, no dispute award was passed.

15. In the present writ petition, preferred by the petitioner- Bank, it has been urged that after passing of the order in review petition (supra), the petitioner-Bank did not file any other material before the Tribunal as per the liberty granted by the Single Judge in review petition and it was further submitted that there was no new material available before the Tribunal and hence the impugned award dt.19/07/2005 was clearly unjustified. It is submitted that the Tribunal could not have ignored its own order dt.28/09/1994 wherein the Tribunal had observed that the principal dispute is that whether the employees working in Bill Branch were connected with the main work with the Bank or not. A finding had been arrived at in the order dated 28/09/1994 that the Bill Branch had already closed and such a finding was not challenged by the respondent-Union and hence, the same had become final and the Tribunal now could not have reached to a different finding. It was further submitted that the cross examination of all the workmen clearly showed that they were only performing the duties relating to collecting the amount of the bills and admittedly, the work had been closed. In these circumstances, the award could not have ignored such facts. It is submitted that the Industrial Tribunal has completely ignored the ratio of the judgment of the Supreme Court in the case of J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Labour Appellate Tribunal of India, Calcutta and others: AIR 1956(SC) 231 and the High Court judgment passed earlier. It has been further argued that the Tribunal has committed an illegality in exercising jurisdiction vested in it. The findings and conclusion on issue no.1(b), 1(c), 2, 3, 4, 5, 6 and 7 are contrary to the pleadings and evidence on record and also contrary to Chapter-V of the Act of 1947.

16. The findings relating to non-compliance of Section 25-G and 25-H of the Act of 1947 were also erroneous. It was submitted that Chapter-V(B) applied to the industrial establishment under Section 25-L of the Act of 1947 and the Bank was not an industrial establishment within the meaning of Section 25-L of the Act of

1947 and Chapter-V(B) of the Act of 1947. It was submitted that the number of workmen in the factory, mines or plantation 300 or more could only be applicable for the provisions of Chapter-V-B. The petitioner's main argument is that the question relating to violation of Section 25-G and 25-H of the Act of 1947 was not referred under Section 10-A and therefore, the same could not have been gone into by the Tribunal. It was submitted that the issues could not have been framed in the order dt.16/10/2005 and the award has been passed illegally, arbitrarily ignoring the pleadings and evidence on record. The order passed by the Division Bench was ignored. Once a finding had been arrived at that the Bill Branch had been closed, there was no occasion for the Tribunal to have directed for reinstatement of the workmen and has prayed that the award be therefore set aside.

17. In support of the aforesaid submissions, the learned counsel for the petitioner has cited a judgment in the case of Regional Manager, SBI Vs. Rakesh Kumar Tiwari, reported in 2006(1) SCC 536, particularly Para 16 which reads as under:- "16. In the first appeal, the respondent had raised no allegation of violation of Section 25-G in his statement of claim before the Industrial Tribunal. His only case was that Section 25-H of the Act had been violated, Section 25-H unlike Section 25-G deals with a situation where the retrenchment is assumed to have been validly made. In the circumstances, if the employer wishes to re-employ any employee, he must offer to employ retrenched workmen first and give them preference over others. The two sections viz. Sections 25-G and 25-H therefore operate in different fields and deal with two contradictory fact situations. The Tribunal ignored the fact that there was no pleading by the respondent in support of an alleged violation of Section 25-G. Indeed the order of reference by the Central Government did not also refer to Section 25-G but only to Section 25-H. In the circumstances it was not open to the Tribunal to "fly off at a tangent" and conclude that the termination of service of the respondent was invalid because of any violation of Section 25-G by the appellant."

18. Counsel for the petitioner has also cited a judgment in the case of State Bank of Bikaner & Jaipur Vs. Om Prakash Sharma, reported in 2006(5) SCC 123, particularly Para 10, 12 and 14 which read as under:- "10. It is no doubt true, as was contended by Mr. M.P. Calla, learned Senior Counsel appearing on behalf of the respondent herein, that the Labour Court formulated four different issues and one of the issues was the purported non-compliance of Rule 77 of the ID Rules. But the Labour Court even could not have framed any such issue. Rule 77 reads thus:

"Maintenance of seniority list of workman: -The employer shall prepare a list of all workman in the particular category from which retrenchment is contemplated arranged accordingly to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial before the actual date of retrenchment."

12. The specific issue which was, therefore, referred for determination by the

Labour Court, related to the dispute as regards violation of Section 25H of the Act. If the said provisions had not been found to be violated, the question of setting aside the order of termination by the Labour Court did not and could not arise. The learned Single Judge proceeded on the premise that the High Court, in exercise of its writ jurisdiction, cannot sit in appeal over the Award of the Labour Court. The learned Single Judge was right, but then, only because the jurisdiction of the High Court, while exercising of its power of judicial review was limited, it would not mean that even a jurisdictional error could not have been corrected. The provisions of Article 226 and 227 of the Constitution of India would be attracted if the inferior Tribunal has, inter alia, committed a jurisdictional error. What would be the ground for judicial review, in regard to the orders passed by an inferior Tribunal is no longer a *res integra*.

14. In the instant case, the Award of the Labour Court suffers from an illegality, which appears on the face of the record. The jurisdiction of the Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of the reference. While passing the Award, if the Labour Court exceeds its jurisdiction, the Award must be held to be suffering from a jurisdictional error. It was capable of being corrected by the High Court in exercise of its power of judicial review. The High Court, therefore, clearly fell in error in refusing to exercise its jurisdiction. The Award and the judgment of the High Court, therefore, cannot be sustained. Consequently, the appeal is allowed and the judgment of the High Court is set aside. The award is set aside to the extent of order of reinstatement with back wages. The writ petition filed by the appellant in the High Court is, thus, allowed."

19. It is further submitted that the jurisdiction of the Tribunal comes only out of the terms of reference under Section 10(4). Lastly, it has also been contended that even if in the earlier writ petition, the issue regarding the Tribunal having gone beyond the terms of reference had not been taken up, since it is a legal issue, the same is not barred from being taken up. It has been further stated that there has been no specific averment in the claim relating to noncompliance of Section 25-G and 25-H. It is also submitted that as the Branch had been closed, no one else could be said to have been appointed and if the employees were working in the other Branches, the workmen had no claim on them. Reliance is also placed on judgment reported in 2001(1)RLR 154. A recent order passed by this Court dt.05/01/2017 in SB Civil Writ Petition No.1567/2000 has also been cited where it was held that the terms of award could not go beyond the terms of reference as there was no reference with regard to violation of Section 25-G and 25-H of the Act of 1947.

20. The respondents have appeared in person through their one of the representative and it has been alleged that the Tribunal has examined each and every aspect and the findings arrived at do not call for any interference. It is further submitted that the respondents had called for the record relating to the fact that there were other employees who had been retained. No proof had been

produced by the petitioner-Bank that all the Branches relating to the work had been closed. It is specifically urged that the Branches at Sanganer continued to [perform the work of collection of amount for bills of PHED and RESEB. It has been also pointed out that for the Bank, one R.S. Tanwar had appeared as witness who has given list of persons who were appointed in between 1974 to 1979 and who have been regularized. It is stated that several of the petitioners had been working since 1977 but they were not regularized. The respondent-Union had taken up their case of regularization before the Conciliation Officer and orally the Bank had also agreed to give them benefit of regularization but to the shock of the members of the Union, only their members were ousted although there were more than 100 workmen performing the same duties as the workmen and only the services of workmen were terminated.

21. It has been submitted that on remand of the case, the respondent-Union moved an application for calling the record and documents from the petitioner which included the method of payment of salary to the Clerks of the Bank and the date of appointment of the Clerks and Cashiers and Class IV Employees with the petitioner-Bank and the terms of contract with the RSEB and PHED. It is submitted that the learned Judge, vide his order dt.28/09/1994, held that from the documents, which have been placed on record, it is clear that appointments have been made in between 01/11/1974 to 31/08/1982 in the Bank of the persons who were junior to the members of the respondent-Union and the selections were not made for a particular branch and taking into consideration this aspect, the record was not considered to be required to be called from the petitioner.

22. In view of such observations of the Tribunal, it is submitted by the respondent-Union before the Court that the fact regarding persons persons junior to them been allowed to continue was already observed and if the order of 28/09/1994 which has attained finality and such a finding of the order dt.28/09/1994 has not been assailed by the petitioner, in the circumstances, the finding arrived at finally need not be interfered with. It is asserted that the contract between the Bank and the PHED as well as RESEB did not terminate on 31st August, 1982 but continued to be in force even thereafter and the reason put forth for dispensing with the services of the members of the respondent-Union was false and contrary to record. Therefore, even if for the argument sake, it is accepted that the work of collection of amount of bills had been closed in certain branches, the members of the respondent-Union were not attached to the work of collection of amount of bills but were working for the Bank and they could be appointed in other branches and also allotted different work.

23. It was submitted that the case of the respondent-Union was specific that their members were appointed with the Bank and were posted in the Bill Branch and if for any reason, in a particular Branch, the Bill Section was closed, the petitioner could not have earmarked and the services of the members of the respondent-Union could not have been dispensed with for the said reason as the

persons, who were appointed at later in point of time and had been posted in other Branches of the Bank, were allowed to continue. Thus, the members of the respondent-Union did not have any right to be posted in a particular Branch and therefore, the petitioner cannot be allowed to take advantage of their own wrong doings. The respondent has also submitted that the issues had been framed by the Labour Court originally in the award passed on 01/04/1991 which had been in favour of the petitioner-Bank and at that time, the Bank did not raise objection relating to the framing of issues as regards Section 25-G and 25-H of the Act of 1947. In the appeal also, no such argument was raised earlier and now they are estopped from raising the said question at this stage when finally the award has been passed in terms of the directions issued by this Court while remanding the matter back to the Labour Court.

24. Heard counsel for the parties and examined the material and documents available on record.

25. A look at the terms of reference would show that the terms of reference, as quoted herein above, does not limit to non-compliance of one particular provision of the Act of 1947. The terms of reference specifically empowers the Tribunal to examine whether the action of terminating the services was legal, justified and valid or not ? Thus, if the Tribunal, while examining the reference, has framed issues with regard to non-compliance of Section 25-F, 25-G and 25- N as well as Section 33(1) and 33(2) of the Act of 1947, no illegality can be said to have been committed. This Court does not find the submission of learned counsel for the petitioner to have any force that the Tribunal could only limit itself to see the non-compliance of Section 25-F of the Act of 1947. The judgment cited by learned counsel for the petitioner relating to the scope of the Tribunal to remain within the limits of the terms of reference are to be rested as it is and therefore, there can be no two quarrels of the settled legal position that the Tribunal has to limit itself within the jurisdiction as provided to it in accordance with the terms of the reference referred to it under Section 10A of the Act of 1947.

26. The contention of counsel for the respondent-Union about the findings having been already given by the Tribunal while passing the order dt.28/09/1994 regarding employment of persons after the members of the respondent-Union was also required to be noted. Once persons junior to the members of the respondent-Union were working, admittedly, the principle of last come first go was required to be followed and has not been followed. Therefore, the action of removing the members of the respondent-Union stands vitiated in law. A person, who is appointed in the Bank is not informed that he will be allotted which type of work. Though it may be the intention of the Bank to allot a particular work to an employee who is taken on rolls or appointed in the Bank, even on daily wages, but one cannot assume that with the closure of the work, the person, who was posted to do that particular work, alone would be removed like the case in hand where allegedly the work of collection of amount against bills for electricity and water is said to have been closed by the Bank and only those

employees, who were collecting the said amount as Clerks of the Bank, have been removed. It is not the case of the petitioners that the selection and appointment of employees is done separately for each work. When the post is of Clerk, he can be allotted any work which is available in the Bank relating to clerical job. The underlying principles of removing an employee have to be within the framework of Section 25- G and 25-H of the Act of 1947 and admittedly, there is violation thereto by the petitioner.

27. In view of what has been stated herein above, the submission of learned counsel for the petitioner that the Tribunal has travelled beyond its jurisdiction and beyond the terms of reference is rejected.

28. As regards the second contention of the petitioner with regard to the work having come to an end relating to collection of amount for the bills, a look at the documents, which have been placed on record, would show that the petitioner-Bank did not adduce any evidence in respect of their contention that the work had been stopped/closed. On the other hand, there is ample evidence to believe that while in certain branches, the work of collection of bills had been closed, in other branches of the Bank, it continued and even if the contention of the petitioner is accepted that as on today, the work has been closed, it cannot be said that the work in the Bank has come to an end. Admittedly, the respondents were appointed as Clerks. In the circumstances, even if the field of duties, allotted to them, has come to an end, it cannot be denied that the work at other place in the Bank, still continues and the submission of the learned counsel that in the circumstances, the members of the respondent-Union could not be reinstated, does not any basis and the order passed by the Tribunal, therefore, does not warrant any interference. Even otherwise, the award passed by the Tribunal is dealing with all the issues independently, taking into consideration the law laid down by the Apex Court and this Court, this Court does not find it necessary to deal with each and every issue again in writ jurisdiction. The scope of this Court in writ jurisdiction relating to an award is limited as held by the Apex Court in the case of *Sadhana Lodh Vs. National Insurance Company Ltd.*, reported in (2003) 3 SCC 524, wherein it has been held in Para No.7 as under:- "7. The supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

29. In the case of *Harjinder Singh Vs. Punjab State Warehousing Corp.*: 2010(1) SCR 591, Hon'ble Judges of the Supreme Court passed separate orders with the same view. Hon'ble Justice G.S. Singhvi observed in Para 23 as under:- "23. Of

late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that meagre wages earned by him may be the only source of his livelihood. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private. "

30. While Hon'ble Justice AK Ganguli observed in the said judgment in the case of Harjinder Singh Vs. Punjab State Warehousing Corp. (supra) in Paras No.11 to 21 as under:- "11. That being the legal position, under Article 38 of the Constitution, a duty is cast on the State, which includes the judiciary, to secure a social order for the promotion of the welfare of the people. Article 38(1) runs as follows:

"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

This is echoing the preambular promise

12. Therefore, it is clearly the duty of the judiciary to promote a social order in which justice, economic and political informs all the institution of the national life. This was also made clear in *Kesavananda Bharati* (supra) by Justice Mathew at para 1728, p. 1952 and His Lordship held that the Directive Principles nevertheless are:

"...fundamental in the governance of the country and all the organs of the State, including the judiciary are bound to enforce those directives. The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels

into which each generation must pour its content in the light of its experience."

13. In view of such clear enunciation of the legal principles, I am in clear agreement with Brother J. Singhvi that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it. In doing so this Court should make an effort to protect the rights of the weaker sections of the society in view of the clear constitutional mandate discussed above.

14. Thus, social justice, the very signature tune of our Constitution and being deeply embedded in our Constitutional ethos in a way is the arch of the Constitution which ensures rights of the common man to be interpreted in a meaningful way so that life can be lived with human dignity.

15. Commenting on the importance of Article 38 in the Constitutional scheme, this court in *Sri Srinivasa Theatre and Others vs. Government of Tamil Nadu and others* [(1992) 2 SCC 643], held that equality before law is a dynamic concept having many facets. One facet- the most commonly acknowledged- is that there shall be not be any privileged person or class and that none shall be above the law. This Court held that Art 38 contemplates an equal society [Para 10, pg. 651].

16. In *Indra Sawhney and Others vs. Union of India and Others* [1992 Supp. (3) SCC 217], the Constitution Bench of the Supreme Court held that:

"The content of the expression "equality before law" is illustrated not only by Articles 15 to 18 but also by the several articles in Part IV, in particular, Articles 38, 39, 39-A, 41 and 46." [at Paras 643, pg. 633]

17. Therefore, the Judges of this Court are not mere phonographic recorders but are empirical social scientists and the interpreters of the social context in which they work. That is why it was said in *Authorised Officer, Thanjavur and another vs. S. Naganatha Ayyar and others* :[(1979) 3 SCC 466], while interpreting the land reforms Act, that beneficial construction has to be given to welfare legislation. Justice Krishna Iyer, speaking for the Court, made it very clear that even though the judges are "constitutional invigilators and statutory interpreters" they should "also be responsive to part IV of the Constitution being "one of the trinity of the nation"s appointed instrumentalities in the transformation of the socio-economic order". The Learned Judge made it very clear that when the Judges "decode social legislation, they must be animated by a goal oriented approach" and the Learned Judge opined, and if I may say so, unerringly, that in this country "the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme." [Para 1, p. 468]

18. I am in entire agreement with the aforesaid view and I share the anxiety of my Lord Brother Justice Singhvi about a disturbing contrary trend which is discernible in recent times and which is sought to be justified in the name of globalisation and liberalisation of economy.

19. I am of the view that any attempt to dilute the constitutional imperatives in

order to promote the so called trends of "Globalisation", may result in precarious consequences. Reports of suicidal deaths of farmers in thousands from all over the country along with escalation of terrorism throw dangerous signal. Here if we may remember Tagore who several decades ago, in a slightly different context, spoke of eventualities which may visit us in our mad rush to ape western ways of life. Here if I may quote the immortal words of Tagore:

"We have for over a century been dragged by the prosperous West behind its chariot, choked by the dust, deafened by the noise, humbled by our own helplessness and overwhelmed by the speed. We agreed to acknowledge that this chariot-drive was progress, and the progress was civilization. If we ever ventured to ask "progress toward what, and progress for whom", it was considered to be peculiarly and ridiculously oriental to entertain such ideas about the absoluteness of progress. Of late, a voice has come to us to take count not only of the scientific perfection of the chariot but of the depth of the ditches lying in its path."

20. How stunningly relevant are these words and how deep are the ditches created in our society by the so called advance of globalization.

21. At this critical juncture the judges' duty, to my mind, is to uphold the constitutional focus on social justice without being in any way misled by the glitz and glare of globalization."

31. The aforesaid view has again been reiterated by the Supreme Court in the case of Bhuvnesh Kumar Dwivedi Vs. M/s. Hindalco Industries Ltd.: (Civil Appeal Nos. 4883-4884 of 2014), decided on 25/04/2014.

32. In view of the findings arrived at in the foregoing paras and the law as quoted above, this Court finds no merit in the contentions raised by counsel for the petitioner. A quietus must be now given to the controversy pending before this Court for last 26 years. The judgment passed by the Tribunal does not warrant any interference and the writ petition deserves to be dismissed with costs.

33. The writ petition is accordingly dismissed with costs quantified to Rs.50,000/- to be paid by the petitioner and disbursed equally to the workmen who are members of the respondent-Union.