
(1995) 09 CAL CK 0026

In the Calcutta High Court

Case No : Civii Order (W) of 1994 & Civil Order (W) of 1994

Ratneswar Bose

APPELLANT

Vs

National Instrument Limited

RESPONDENT

Date of Decision : 12-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 ILR (Cal) 60

Hon'ble Judges : A.K. Dutta, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra and Arun Kr. Lahiri, for the Appellant; Tapas Banerjee and Dipak Kr. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Dutta, J.—By this writ application under Article 226 of the Constitution of India the writ Petitioner Ratneswar Bose (hereinafter referred to as Petitioner) has prayed the Court for issue of a writ of or in the nature of Mandamus commending the Respondents to forthwith revoke, cancel, withdraw and/or rescind the office order No. 100 dated November 17, 1994 issued by the Respondent No. 3 and to act in accordance with law, along with the other reliefs prayed for therein, for the reasons stated and on the grounds made out therein.

2. The Petitioner was appointed as a skilled "C worker in the Thermomotor Unit of the Respondent No. 1 National Instruments Limited (hereinafter referred to as Company) in the year 1964. After successful completion of his training he was confirmed in the post of worker. Since 1969 he has been working as Optical Worker in the factory of the said Company, situated at Jadavpur in Calcutta. The said company has only one factory at Jadavpur and five regional Sales Offices at Madras. Hyderabad, Bombay, New Delhi and Bhubaneswar.

3. As an Optical Worker, he (Petitioner) does the job of manufacturing various finished products which are manufactured in the aforesaid factory of the

Company at Jadavpur, Calcutta. An Optical Worker is not a Mechanic and is neither engaged in the work of repair or servicing of any instrument of finished product. Besides Optical Worker, there are other staff who are appointed for the purpose of selling finished products of the Company. And, in the sales department there are posts of Sales Supervisor, Salesman, Sales Assistant and also Repair Mechanics. As an Optional Worker the Petitioner is engaged in the factory for manufacturing of goods ; and an Optical Worker has to operate different machines for doing such job. The said machines are installed only in the Factory, and not in any Regional Sales Office.

4. The National Instruments Limited is a Government of India Undertaking, and for some time past has been incurring loss for want of Orders for its products. The Government of India has declared the Company as "Sick Unit", and a hearing took place before Bench III of the Board for Industrial and Financial Reconstruction (for short B.I.F.R.) about the viability or otherwise of the said Company. But the said Bench could not pass its final order in view of a Stay Order passed by this Court.

5. It is contended by the Petitioner that he is a member of the Executive Committee of the "Workers" Union" known as M.I.O. Employees Union of the said National Instruments Limited. From 1984 to 1989 he was the General Secretary of the said Union. Presently, he is a member of the Joint Management Council, Works Committee of the said Company. As an active Member of the Union he had pointed out various irregularities committed by the Management, and had made representations to the different authorities stating therein that the management is responsible for the pitiable condition of the Company. Before the Bench No. III of the B.I.F.R. he had also stated that the Management is engaged in different malpractices, and the Company could be made a viable unit if those malpractices are stopped for ever. His aforesaid activities had made the Management furious, and the Respondents Nos. 2 & 3 herein became very much displeased with him, and were bent upon teaching him a good lesson. The Respondent No. 3, the Chief of the Personnel & Administration of the Company, had eventually issued the Office Order No. 100 dated November 17, 1994 whereby he (Petitioner) has been transferred from the factory at Jadavpur, Calcutta, to the Regional Sales Office at Madras with effect from November 28, 1994, which is challenged by the Petitioner in this writ application on the following grounds, amongst others:

1) That there is no post of Optical Worker in the Regional Sales Offices and no finished product of the Company is manufactured in the Regional Sales Offices, which are in no way connected with the manufacture of products ;

2) That the impugned order of transfer is illegal and against the interest of the Company in view of the fact that the Petitioner would have to sit idle in" the Regional Sales Office where no work of manufacture is done:

3) That a few months back four employees, viz. one Turner, one Lower Division Clerk, one Upper Division Clerk, and one Scientific Assistant were sent on

deputation from the Office of the Company at Calcutta to the Regional Sales Office at Madras, but the said employees were called back within a short time as they had no work there ;

4) That the Petitioner being a worker in the factory of the Company can only be transferred to another factory of the Company where post of Optical Workers exists ; and

5) That the impugned order of transfer has been issued for the purpose of sending him (Petitioner) to a far off place to cause immense suffering to him as a measure of victimisation;

Hence the instant writ application for the reliefs prayed for therein.

6. The Petitioner's writ application is opposed by the Respondents, contending, inter alia, in their affidavit-in-opposition that the company is in a very bad shape financially. It is under the B.I.F.R. and at the hearing held on January 13, 1994 it was decided to give a Notice for winding up of the company. A Notice was accordingly published for winding up of the company and for consideration of objection against the proposed winding up order and the hearing was fixed on April 27, 1994. The Order, however, could not be passed by the B.I.P.R. in view of the stay granted by this Court, directing that the case may be heard but the final order should not be passed.

7. The basic contributory factors for the bad shape of the company, according to the Respondents, are paucity of funds, huge liabilities, overheads and various other factors such as, absence of adequate marketing and diversification. There is total ban of recruitment and the only alternative to closure is to utilise its inner resources to the maximum possible extent. It has been observed that out of 907 workmen, about 620 workmen are unutilised and under-utilised. The only way out is to strengthen the marketing and after-sales service which could augment mobilisation of internal resources. In order to gear up the whole Administration as well as sales and servicing various steps were taken, e.g.

- i) Monning up of unutilised dues ;
- ii) Aggressive selling in far-flung areas ;
- iii) Liquidating piled-up stocks ;
- iv) Diversification into new items and areas and-
- v) Strengthening service and repair.

8. In order to gain customers' confidence it was also decided to constitute a task force for rectifying the defective stores lying with the customers. With a view to augmenting servicing Section and for promoting the objective of sales, various administrative decisions were taken and the employees of one Section were deployed to the Servicing and Marketing Section. It is not only internal deployment of persons, workmen were also transferred out from time to time in

the interest of the exigencies of the Company's work. Instead of keeping the employees idle and paying salaries to them month by month it was decided to utilise the services of workmen to the maximum possible extent and to deploy them to places where the sales could be promoted to the maximum possible extent. The Petitioner was also assigned duties to make a tour of Assam to promote sales of the company's products, and his performance was creditable. The Petitioner has been sitting idle, and it would appear from the working position of the Petitioner that he was receiving salary without any work whatsoever. In the Regional Sales Office at Madras there is requirement of persons with optic base such as the Petitioner. In order to utilise his services it was decided to transfer him to the Regional Sales Office at Madras where there is only one Sales Supervisor, one General Attendant-cum-Instrument Mechanic, and a recently transferred employee Sri Jayanta Goswami. The transfer of the Petitioner was effected legally and bona fide, and the Petitioner is not the only workman who has been transferred. There will be no change in the condition of his service and duties, and his services would be utilised at Madras Sales Office within his know-how. The basic point is not the existence of a post but utilisation of the services for the time being, instead of keeping the workers idle and paying them idle wages in the grave hour of crisis of the Company. A number of workmen have also been transferred to various Sales Offices for the said purpose. At this critical stage of the Company, it can hardly afford to keep the employees idle and pay salaries to them month by month. Such a situation would eventually lead to total closure of the establishment, and the possibilities of survival of the company would be totally remote. It is accordingly contended by the Respondents that the writ application filed by the Petitioner is liable to be rejected by the Court.

9. The company (National Instruments Ltd.) is undisputably a Government of India Enterprise under the Ministry of Industries, Department of Heavy Industry, having its registered Office and Factories at Jadavpur, Calcutta, and Regional Sales Office at Bombay, Madras, New Delhi, Bhubaneswar and Service Centre at Hyderabad.

10. The transferrability of the Petitioner does not seem to be disputed by him. All that he sought to contend in paras. 18 and 26 of his writ application is that he could only be transferred to another factory of the company where the post of Optical Worker exist. It would, however, oddly appear from the records that the Petitioner had previously been assigned duties to make a tour of Assam for promoting sales of the products of the Company, which was ungrudgingly accepted by him.

11. Before entering into the question of the Petitioner's order of transfer challenged here, the principles of law laid down and some of the observations made by the Supreme Court in matters of transfer of Government servants and employees of public undertakings seem worth bearing in mind:

The Supreme Court in Gujarat Electricity Board and Another Vs. Atmaram

Sungomal Poshani, (per Singh, J.) has observed that--

Transfer of a Government servant appointed to a particular cadre of transferable post from one place to another is an incident of service. No government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to another is generally a condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary in public interest and efficiency in the public administration.

In *Union of India and Others Vs. S.L. Abbas*, para has observed--

Who should be transferred where, in a matter for the appropriate authority to decide.

The Supreme Court in *Shanti Kumari v. Regional Deputy Director, Health Service* AIR 1981 S.C. 1577 at 7 para.2 (per B.P. Jevan Reddy) has observed that --

Transfer of a Government servant may be due to exigencies of service or due to administrative reason. The Courts cannot interfere in such matters.

In the decision in *Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others*, it has been observed the Supreme Court that--

The transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and compelling grounds rendering the transfer order improper and unjustifiable.

The Supreme Court in *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, has observed--

In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest.

The Supreme Court in *Union of India v. S.L. Abbas* (Supra) has held that--

An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is

no doubt the authority must keep in mind the guidelines issued by the Company on this subject. Their Lordships went on to add in that case-- No doubt the guidelines required the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that departmental authorities should consider this aspect alongwith the exigencies of administration and enabling the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of the other employees." The Supreme Court reiterated therein that "The order of transfer can be questioned in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions.

Similar observations have been made by the Supreme Court in *Rajendra Roy Vs. Union of India (UOI) and Another*, (Per G.N. Ray, J.) observing therein--

Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is normal consequences and personal difficulties are matters for consideration of the department.

12. Caused in the background of the principles of law so laid down by the Supreme Court let me now consider whether there is any ground for interference with the impugned order of transfer, being Office Order No. 100 dated November 17, 1994, being Annexure "B" to the writ application.

13. The Petitioner sought to contend that the aforesaid order of transfer does not record any reason therefor for which the same is liable to be quashed. A decision of a Division Bench of this Court in *Mr. Mukul Mitra v. Union of India (1982) (II) C.H.N. 157* at p.162, para.13 (per M.M. Dutt, J.), referred to by the learned Advocate for the Petitioner in support of the said contentions. But a look to the aforesaid impugned order dated November 17, 1994 would at once make clear that specific reason was assigned for passing the transfer order stating therein that the transfer was effected "for the exigencies of the Company's work and for strengthening the Regional Sales Office". There is nothing in the aforesaid decision to indicate that the facts and circumstances or grounds for the reasons for the transfer order are required to be recorded therein.

14. The learned Advocate for the Petitioner had also referred to the decision of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, (per Krishna Iyer, J.) wherein it has been observed that--

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds

later brought out.

15. But as already indicated above, specific reasons have been recorded in the aforesaid transfer order dated November 17, 1994 transferring the Petitioner to the Regional Sales Office at Madras. The reasons had only been elucidated in the affidavit-in-opposition filed by the Respondents, which could hardly be deemed to be supplementation of reasons by fresh reasons in the shape of affidavit, as sadly sought to be submitted on behalf of the Petitioner.

16. It has been contended by the Petitioner that in the-Regional Sales Office at Madras there is no post of Optical Worker. But it is contended by the Respondents that in the Regional Sales Office at Madras there is requirement of person with optic base such as the Petitioner, and his services are sought to be utilised at Madras within his knowhow. At any rate, the management would be in a best position to judge and decide how to utilise the services of the Petitioner in the best possible way.

17. It has further been contended by the Petitioner that his transfer to the Regional Sales Office at Madras is against the interest of the Company as he would have to sit idle there. But it is contended by the Respondents that the Petitioner has been transferred to the Regional Sales Office at Madras by the impugned transfer order for purposeful deployment within his knowledge and capability. And, as already indicated, the management would indeed be the best Judge as to how to utilise the services of the Petitioner in the interest of all concerned. And, as held by the Supreme Court in *Union of India v. S.L. Abbas* (Supra)--

who should be transferred where, is a matter for the appropriate authority to decide.

18. It has further been sought to be contended by the Petitioner that the impugned transfer order is mala fide, passed by the authorities concerned to cause suffering to him as a measure of victimisation for having incurred the displeasure of the Respondent Nos. 2 & 3, who were--

bent upon teaching him a good leason for the reasons stated in paras. 9, 10 and 11 of the writ application, and is also arbitrary and capricious, for which the same is liable to be quashed. But the allegations so made by the Petitioner seems to be vague and unspecific. It is bereft of particulars of mala fide. There is no whisper either in the writ petition to indicate that the impugned transfer was effected arbitrarily or capriciously.

19. The Petitioner sought to contend in paras. 10 and 11 of his writ petition that he had stated before the Bench III of the B.I.F.R. that the management is engaged in different malpractices and the company could be made a viable Unit if those malpractices are stopped for ever, and had thereby incurred the displeasure of the Respondents Nos. 2 and 3, who were "bent upon teaching him a good leason". But it would oddly appear from the Annexure "A" to the writ

application that during the hearing before the said Bench of the B.I.F.R. on April 27, 1994 the Petitioner did not represent the Employees Union. The Annexure-A mentions the various representatives who were present before the said Bench on the said date. The Mathematical Instruments Employees Union (INTUC) appears to have been represented before the said Bench on April 27, 1994 by Sri Kamalendu Mukherjee, Working President, and Sri Arun Kumar Biswas, Assistant Secretary. The Petitioner's contention that he had made disparaging statements before the said Bench of the B.I.F.R. against the management, as stated by him, could hardly be accepted as such, in the aforesaid circumstances. There could therefore, be little ground for malice on the part of the Respondent Nos. 2 and 3 of the Company so as to victimise him by transferring him to the Regional Sales Office at Madras, as vainly sought to be contended by him.

In Para.9 of the writ application the Petitioner sought to contend that he was the General Secretary of the Union from 1984 to 1989. He could not conceivably have been transferred on November 17, 1994, after a lapse of about five years, by the Company out of grudge for him on that score. The Petitioner has also contended in the said paragraph that he is a member of the Joint Management Council, Works Committee of the said National Instruments Limited. But the Respondents in para. 10 of their affidavit-in-opposition has categorically stated that there is no Joint Management Council or Works Committee at present. The question of the Petitioner incurring the displeasure of the Respondents Nos. 2 and 3 could neither possibly arise as such.

20. No case of mala fide, excepting the aforesaid held allegations, has been made out by the Petitioner in the writ application. The requisite particulars to make out a case for mala fide are also wanting therein. It may be recalled in this context that the Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, (per Bhagwati, J.) has held--

We must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fide are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.

21. It may also be recalled that the Supreme Court in *Rajendra Roy v. Union of India*(Supra) has observed-

It may not always be possible to establish malice in fact in a straight-cut manner. In an appropriate case it is possible to draw reasonable inference of mala-fide action from the pleadings and antecedent facts and circumstances, but for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions.

22. With things as they are, the writ Petitioner appears to have pointedly and lamentably failed to substantiate that the impugned order of transfer was passed mala fide against him for an oblique purpose and/or for wreaking vengeance against him for having allegedly incurred the displeasure of the Respondent Nos.

2 and 3, as sadly sought to be contended in paras. 9, 10 and 11 of the writ application. Per contra, it would pretty clearly appear from the materials on record that the Petitioner had previously been assigned duties to make a tour of Assam for promoting sales of products of the Company, which was ungrudgingly accepted by him. The Annexure "F" to the affidavit-in-opposition filed by the Respondents further clearly indicate that the Petitioner had submitted a report to the company after completion of his said assignment. The said report would further indicate that he (Petitioner) had also given some suggestions therein for improving the sales of the products of the company from the experience gathered by him during his said tour. It appears from the Official records produced before the Court by the Respondents during the hearing that the performance of the Petitioner during his said tour at Assam for promoting sales of the Company had been creditable, and his performance had been duly appreciated by the Company in writing on November 1, 1994. The Company having thus appreciated his (Petitioner's) performance during his tour in Assam in the latter part of August, 1994 for promoting sales of the products of the company and having recorded appreciation for his said performance, it would seem so unlikely as to be scarcely credible and it would be have to believe that the Company would be "bent upon teaching him a good lesson" for being displeased with him within three months thereafter so as to transfer him to the Regional Sales Office at Madras to cause suffering to him as a measure of victimisation, as vainly sought to be contended by him. It also appears from the note of appreciation of the Petitioner's performance during his aforesaid tour at Assam (dated 1.11.1994) that it was suggested therein that to make use of the capabilities shown by him (Petitioner), he could be posted in any of the Regional Sales Offices, either at Madras or at Bombay, for helping servicing of optical based instruments and Field-Sales. Considering the performance and capability of the Petitioner, a proposal to that effect was made by the Chief of Personnel and Administration for approval by the Chairman and Managing Director which was approved on November 14, 1994 and was followed by the transfer order dated November 17, 1994. That being so, the Petitioner could not be deemed to have been transferred to the Regional Sales Office at Madras by the impugned order to cause suffering to him as a measure of victimisation for having incurred the displeasure of the Respondents Nos. 2 and 3, but by way of appreciation of his service while on tour to Assam for promoting sales of the products of the company and the consideration of his performance and capability for such work.

23. In view of the discussions above, the Petitioner appears to have remarkably and demonstrably failed to establish mala fide in the matter of passing of the impugned transfer order by the Company. And, there is not the merest and faintest whisper within the four corners of the writ application that the impugned transfer order has been made in violation of the statutory provisions/rules. As already indicated above, the Petitioner has also miserably failed to substantiate that the impugned transfer order was passed mala fide against him for an oblique purpose and/or for wreaking vengeance against him. That being so, there

seems to be no ground whatsoever for interfering with the impugned order of transfer.

24. The learned Advocate for the writ Petitioner had referred to the following decisions in support of his contention that the impugned transfer order is liable to be interfered with by this Court in the facts and circumstances stated, in the writ petition:

Dr. N.C. Singhal Vs. Union of India (UOI) and Others, (per Desai, J.), Vice-Chancellor, L.N. Mithila University v. Days Chand Jha (1986) 3 S.C.C. 378, Kundan Sugar Mills Vs. Ziyauddin and Others, Sunit Kr. Roy v. Union of India 1977 Lab. L.C. 794, Boots Pure Drug Co.(I) v. K.C. Bestoum 1977 11 Lab. L.J. 113, Jawaharlal Nehru University v. Dr. K.S. Jawatkar 1989 (59) F.L.R. 130, State of West Bengal and Others Vs. Hirendra Nath Banerjee, and In re: C.C.

25. But the aforesaid decisions do not seem to be applicable to and are clearly distinguishable from the facts and circumstances of the instant case before us for the reasons I shall presently discuss.

26. The first case Dr. N.C. Singhal v. Union of India 1985 (2) C.H.N. 20 was referred to in support of the contention that a transfer has to be from a post to post. In the said case a post of Ophthalmology was created at Wellington Hospital on February 1, 1971 by conversion of one post from amongst the unspecified Specialist Grade Post in Super time grade-II. It was contended by the Petitioner therein that the said post could only be filled in by way of promotion from amongst those holding the post in specialist grade in Ophthalmology, and he being the seniormost should have been promoted to that post from that date. The facts herein are entirely different. No proposition of law had either been laid down in the said decision that transfer has to be from one post to another.

27. In the second cited case there was a provision (being Section 10(14)) providing that transfer was to be effected in the equivalent post, implying a negative covenant. The employee concerned was transferred therein from the post of Principal to the post of Reader. In the case before us there is no such negative covenant, and transfer appears to have been effected with the same status, which is not the case in the aforesaid case.

28. The third case was cited to show that there could not be any transfer to a new concern subsequently started. The question for consideration therein was whether a person employed in a factory could be transferred to some other independent concern started by the same employer at a stage subsequent to the date of his employment. In the present case before us the Petitioner has been transferred to a Branch Sales Office of the company which could not be said to have been started as an independent concern.

29. In the above noted fourth cited case the Petitioner was transferred from Coke Plant at Bhowra to Fire Brick Plant at Kumarjhuri. It was found therein that the aforesaid two establishments were completely separate and employees of one

establishment could not be transferred to another establishment. The facts herein are entirely different.

30. The above noted fifth case was cited to show that deployment of driver as Packer was illegal and dismissal for violation of such order was unjustified. In the said case the driver was transferred to the Packing Section as a Packer, clearly amounting to change of his designation and category of service with lesser status and dignity. There was nothing either in the said case to indicate that the employer was willing to grant the scale of pay of a driver to the concerned employee on his deployment as a Packer. In the case before us there is no change of designation, status and dignity of the Petitioner by the impugned transfer order and there is no change scale of pay either.

31. In the sixth cited case the transfer of the Petitioner from Jawaharlal Nehru University to Monipur University was not upheld. In that case there was no transfer from one employer to another employer, which is not the case in the case in hand before us. The principle of law laid down in the said case is that no employee can be transferred without his consent from one employer to another.

32. The above noted seventh cited case relates to the post of Registrar, sent Controller's Office, which was a non-transferable post. In that case the employee concerned was asked to hold a post which was not validly created and the appointment had not been validly effected. The facts therein are not at all applicable to the facts and circumstances of the present case before us.

33. The above noted eighth cited case had been referred to urging the Court to lift the veil and to find that the impugned transfer order was not justified. The ninth and the last cited case also relates to lifting the veil for ascertaining the reasons for transfer. But the question of lifting the veil would arise if there is a veil to be lifted. If there is no veil, the question of lifting the veil for ascertaining the reasons of transfer could not conceivably arise. The facts and circumstances in the aforesaid two cited cases are different from the facts and circumstances herein. It was laid down in the aforesaid eight last cited case that though an order of transfer like any other administrative or executive order is passed invariably for administrative purposes or in public interest and hence outside the purview of examination by the Courts of law, if it is established that the order is for collateral purposes and hence mala fide, it cannot be sustained, and it will be a fit case for Court's interference. The Court can scrutinise an order of transfer, though administrative, if mala fide and passed in colourable exercise of power, even though it may be free from violation of any constitutional or any statutory provision. Though the Government might state that the transfer was bona fide, it is not the end of the matter, and the Government is required to place full materials before the Court for determination whether the transfer order was bona fide or not. It was further observed therein that the power vested in public body to transfer any official must be used honestly, bona fide and reasonably. It must be in the interest of public purposes.

34. Unhappily for the writ Petitioner, has already observed, for the reasons amply and appallingly made clear above, (Petitioner) has miserably failed to establish that the impugned order of transfer was passed mala fide against him for any oblique or collateral purpose and/or for wreaking vengeance against him. The said order could neither be said to have been passed in colourable exercise of power. The question of lifting the veil for ascertaining the reasons of transfer could not clearly arise as such.

35. In view of the discussions above there could clearly be no running away from the inescapable conclusion that the impugned order of transfer was passed by the company legally and bona fide. There is nothing before the Court to show that the said order was passed in violation of any statutory provision/rules or mala fide. There is nothing to interfere with the impugned order of transfer as such.

36. The company, admittedly, has been declared by the Government of India to be a "Sick Unit", which is financially in a very bad shape. Undisputedly, the Company is under the B.I.F.R., and at the hearing held on January 13, 1994 it was decided to give a Notice for winding up of the company, but the final Order in the matter could not be passed by the Bench III of the B.I.F.R. in view of an Order of stay granted by this Court. The company, evidently, is not economically viable. In order to gear up the whole administration, in" the aforesaid circumstances, the following steps, amongst others, were taken, as stated by the Respondents in their affidavit-in-opposition:

- i) Aggressive selling in far-flank areas ;
- ii) Liquidating piled-up stocks ;
- iii) Strengthening service and repair etc.;

It is contended by the Respondents that the writ Petitioner has been sitting idle and receiving salary without any work whatsoever. The Annexure "G" to the affidavit-in-opposition filed by the Respondents would also lend point to the said contention clearly indicating therein that the Petitioner had to sit idle for "non-supply of job" for the months indicated therein. It was observed by the company that there was requirement of manpower at the Regional Sales Offices. In the Regional Sales Office at Madras, there is requirement of a person with Optic base such as the Petitioner. In order to utilise his services it was therefore decided by the company to transfer him to the Regional Sales Office at Madras by the impugned transfer order in view of his performance and capability exhibited by him during his tour to Assam for promoting sales of the products of the company. It is contended by the Respondents that there shall be no change in the condition of his service and his service would be utilised at the Regional Sales Office at Madras within his know-how and capability. There would neither be any change in his scale of pay, dignity and status. The basic objective for transferring him to the Regional Sales Office at Madras by the impugned transfer Order is to utilise his services, instead of allowing him to sit idle and pay him idle wages, in

appreciation of his performance during his tour to Assam for promoting sales of the products of the Company and in consideration of his performance and capability therefor. It would further pretty clearly appear from the affidavit-in-opposition filed by the Respondents, read with annexure "E" thereto, that the Petitioner is not the only person to be transferred from the factory of the company at Jadavpur, Calcutta, to its Regional Sales Office at Madras, but quite a number of employees, including Workers, Orderly-cum-General Service Attendant, L.D. Clerks, Stenographer etc. had been transferred to the company's Regional Sales Offices at New Delhi, Bhubaneswar, Hyderabad, Madras and Bombay, in the circumstances stated by the Respondents. The Petitioner could not thus be said to have been singled out for the purpose as a measure of victimisation, as sought to be contended by him. In such circumstances, the writ Petitioner should have accepted the impugned order of transfer in good grace, exhibiting his sense of belonging to the company, being a part of it, a Leader of the Union, as he claims himself to be, in the best interest of the company and the employees thereof, and lent his helping hand in the struggle of the company for its survival in this grave hour of crisis, instead of challenging the same in Court, the way he did, to the prejudice of all concerned.

In the premises above, there is nothing to interfere with the impugned transfer order.

The writ application be, accordingly, dismissed All interim orders stand vacated as such.