
(2003) 02 BOM CK 0109

In the Bombay High Court

Case No : O.O.C.J. W.P. No. 398 of 2003

Standard Chartered Bank Ltd.

APPELLANT

Vs

Grindlays Bank Employees Union and Another

RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2003) 97 FLR 760 : (2003) 2 LLJ 512

Hon'ble Judges : D.B. Bhosale, J

Bench : Single Bench

Advocate : K.K. Singhvi and Sudhir Talsania, instructed by Sanjay Udehsi and Co, for the Appellant; C.U. Singh and Sunil Dighe, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Bhosale, J.—This petition is directed against the award dated October 29, 2002, passed by the Presiding Officer, Central Government Industrial Tribunal No. II, Mumbai, in Reference bearing no. CGIT- 2/49 of 2001. The dispute was referred by the Government of India, Ministry of Labour, by order dated May 9, 2001 in exercise of the powers conferred by Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, (for short, "I.D. Act"). The reference reads thus:

Whether the action of the management of Standard Chartered Grindlays Bank to transfer the award staff to RMC located at Byoulla in Mumbai is justified? If not to what relief is the workmen entitled?

2. The Tribunal allowed the reference holding that the petitioner Bank is creating an artificial section in the name of Resources Management Centre and Area Manager Employees relation (for short RMC/AMER) by transferring the award employees there where there is no work, with the sole object of giving the work of permanent employees to the contractors, which action is not bonafide and

totally unjustified. By the impugned order, the Tribunal has also given direction to the petitioner Bank to place the transferred workmen in their original posts.

3. Mr. Singhvi, learned counsel appearing for the petitioner Bank, has assailed the Award principally on two grounds. Firstly, the Tribunal has enlarged the scope of reference. He submitted that the original order of reference was confined to only 35 workmen who were transferred and the Tribunal, therefore, ought not to have allowed the union to widen the scope of the reference by covering 60 workmen who were transferred subsequently. Though Mr. Singhvi initially advanced the aforesaid argument, after the order of this Court passed by R.J. KOCHAR, J. in earlier round of litigation in Standard Chartered Grindlays Bank Ltd. Vs. Grindlays Bank Employees Union and Another, was brought to his notice he did not press the said ground of challenge inasmuch as the same stood concluded not only by the aforesaid judgment of the learned single Judge of this Court, but even the appeal filed against it had also been dismissed by the Division Bench of this Court. The Division Bench (R.M. LODHA & D.B. BHOSALE, JJ.) by order dated October 11, 2002 disposed of the appeal holding that it is always open to the concerned Industrial Tribunal to pass appropriate consequential order concerning the workmen belonging to the award staff who have been transferred to RMC subsequently to the industrial dispute having been referred for adjudication. In view thereof, I need not consider the first contention advanced by Mr. Singhvi, learned senior counsel for the petitioner. Secondly Mr. Singhvi, learned senior counsel for the petitioner submitted that the transfer order being managerial prerogative ought not to have been interfered with by the Tribunal. He further submitted that it is within the managerial discretion of the employer to effect reorganisation, restructuring, redeployment and rationalisation of its business in the manner it considers best and in view thereof, the Tribunal has grossly erred in interfering with the orders of transfer. He placed heavy reliance upon the letter of appointment of one of the employees and submitted that one of the conditions of appointment itself empowers the petitioner Bank to transfer the award employees. He invited my attention to several settlements signed by and between the petitioner Bank and majority union as well as at the industrial level between the Indian Banks Association and various federations and confederations of the trade unions. He made reference to the following settlements. Firstly, the settlement dated September 6, 1995 between the management of the petitioner Bank and the All India Grindlays Bank Employees Association. Secondly, the settlement dated August 18, 1996 arrived at between the petitioner Bank and All India Grindlays Bank Employees Association. Thirdly, bipartite settlement dated March 27, 2000, which was arrived at, taking into consideration the need of reorganisation and redeployment of the staff. Lastly, he placed reliance upon the settlement arrived at on September 24, 2001. Having invited my attention to the aforesaid settlements, and relevant clauses which are reproduced in paragraphs (sic) to 9 of the writ petition, he submitted that though restructuring, reorganisation and rationalisation were essentially a management policy and it was within its right to

effect such reorganisation, restructuring, and rationalisation, they resorted to it after due negotiations and binding settlements with the majority unions. Mr. Singhvi further placed reliance upon the list of employees (Exhibit C-I) who were redeployed from RMC/AMER and submitted that in view of various measures taken by the petitioner towards restructuring, rationalisation and reorganisation, several employees were required to be redeployed at the different places. In support of this submission, he invited my attention to the documents at serial Nos. 20 and 21 in the list of documents (Exhibit-M-4). He submitted that though the award employees are transferred to RMC/AMER, the petitioner Bank has not changed their service conditions including monthly wages paid to them. While commenting upon the impugned award, he submitted that the findings recorded by the Tribunal are perverse and are not based on the material placed on record. He further submitted that the Tribunal has failed to record its reasons to hold that the action of the petitioner Bank is mala fide. Mr. Singhvi submitted that the action of transfers being a policy of the management, there is absolutely no illegality committed by the management. He further submitted that engaging of the services of different agencies on contract basis was absolutely legal and to which the majority unions have agreed to in the settlements entered into and referred to above and further that the contracts are within the four corners of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. In support of his arguments, he placed reliance upon the judgment of the Supreme Court in B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others, and Parry and Co. Ltd. Vs. P.C. Pal and Others, .

4. On the other hand, Mr. C.U. Singh, learned counsel for the respondent-union, submitted that the sole intention of the petitioner Bank to transfer the award employees to RMC/AMER, was to humiliate them inasmuch as they were made to sit idle and not allowed to do any work so as to force them to accept voluntary retirement scheme. Mr. Singh submitted that the Tribunal has elaborately assessed the oral evidence led both by the petitioner and the respondent-union. It has considered the documents on which the respondent-union relied upon and found that the oral evidence led by the award employees is more reliable than led on behalf of the petitioner Bank. It was a pure matter of appreciation of the evidence and the petitioner, therefore, is not entitled to ask this Court to reappraise the said evidence in its writ jurisdiction under Article 226 of the Constitution of India. He further submitted that the finding of mala fide recorded by the Tribunal is based upon the evidence of 22 witnesses examined by the award employees, two witnesses of the petitioner Bank and the other material placed on record by both the sides. In view thereof, this Court cannot interfere with the finding of fact arrived at by the Tribunal. The finding of fact reached by the Tribunal which was the fact finding authority, should be considered as final and cannot be disturbed as long as they are based upon such materials which are relevant for the purpose. In short, Mr. Singh submitted that the finding of fact reached by the Tribunal as a result of appreciation of evidence and, therefore, cannot be reopened in the writ petition filed under Article 226 of the

Constitution. The transfer of the award employees was made with an ulterior motive and with the sole object of giving the work of permanent employees to the contractors. In support of his submissions, he placed reliance upon the following decisions: (1) National Radio Corporation v. Their Workmen, 1963 I LLJ 282; (2) The Management of the Syndicate Bank Ltd. Vs. The Workmen, ; (3) Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, ; (4) Sayed Yakoob v. Radhakrishnan AIR 1961 SC 477; (5) C. Prabhakaran v. Southern Petrochemical Industries Corporation Ltd., New Bombay, 2001 2 CLR 272. " :

5. I heard Mr. Singhvi, learned senior counsel appearing for the petitioner and Mr. Singh learned counsel for the respondent-union at length and with their assistance, perused the writ petition as well as the documents annexed thereto and the impugned Award in particular. Before I examine the merits of the contentions advanced by the learned counsel, it would be advantageous to advert to the judgments relied upon by them in support of their contentions.

6. The Apex Court in National Radio Corporation (supra), while considering the scope in an appeal under Article 136 of the Constitution, held thus 1963 I LLJ 282:

"..... The Tribunal has elaborately examined the oral evidence led both by the respondents and the appellant. It has considered the documents on which the respondents relied and it has come to the conclusion that the oral evidence led by the employees is more reliable than that led on behalf of the appellant. That is a pure matter of appreciating evidence and the appellant is not entitled to ask this Court to reappreciate the said evidence in an appeal under Article 136."

It is thus clear that while examining the contentions advanced by the learned counsel for the petitioner, it will have to be borne in mind that if the Tribunal has elaborately examined the oral evidence to reach a conclusion that the transfers are mala fide, it would not be possible to reappreciate the said evidence in the writ petition under Article 226 of the Constitution unless the finding is perverse. Similarly, the Apex Court in Indian Overseas Bank (supra) in paragraph 17 of the report held that "the finding of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on material or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings. at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken". Yet in another judgment in Syed Yakoob (supra), the Apex Court has elaborately discussed the limits of the jurisdiction of the High Court in issuing writ of certiorari under Article 226. The relevant paragraph of the report reads thus:

"..... A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals: these are cases where orders are

passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction, A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy of sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

In *Syndicate Bank Ltd. (supra)*, the Apex Court has taken a view that if an order of transfer is made mala fide or for some ulterior purpose, the Industrial Tribunal should interfere and set aside such an order of transfer, because the mala fide exercise of power is not considered to be the legal exercise of the power given by law.

7. The Apex Court in *Parry and Co. (supra)* relied upon by Mr. Singhvi, learned senior counsel for the petitioner, has taken a view that it is well established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bona fide it is not competent of a Tribunal to question its propriety. He specifically placed reliance upon paragraph 14 of the report in support of his contention. The Apex Court in *BHEL Workers Association, Hardwar and Ors. (supra)* while dealing with Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, held that it is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the

Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered u/s 10 of the Act. Similarly the question whether the work done by the contract labour is the same or similar work as that had been done by the workmen directly employed by the principal employer of any establishment is matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25(ii)(v)(a). Mr. Singhvi submitted that in view of the law laid down by the Supreme Court in the aforesaid report, it cannot be said that engaging the services of the contract labour was illegal and it is a prerogative of the principal employer.

8. I have carefully gone through the impugned judgment and other materials placed on record with the assistance of learned counsel appearing for the parties. The union has examined as many as 22 witnesses in support of their case, whereas the petitioner Bank has examined two witnesses and placed other materials on record. It reveals from the evidence of the witnesses examined by the petitioner Bank that RMC is a unit of one of the segments of the Bank which, according to the I petitioner, came to be created by way of reorganisation of business, a new support service segment with an intention to play a pivotal role as proactive centre for assessment of skills, training and subsequent redeployment within the Bank at its various branches, units, departments, sections. In so far as AMER is concerned, it was created under the administrative control of Area Manager, Employee Relations in order to keep pace with the efficient working and overall business interests of the bank as the Bank was required to reorganise its business from time to time. In short, according to Mr. Singhvi, learned senior counsel for the petitioner, RMC/AMER are the training centres. It is very pertinent to note that though the petitioner Bank has come with a case that these departments were created by way of reorganisation of business or to keep pace with the efficient working and overall interests of the Bank as it was required to reorganise its business, the award employees who are transferred to RMC/AMER have neither been given any training nor any work. Admittedly, the award employees who have been transferred to these places are sitting idle and no training whatsoever is being given to them. RMC/AMER are the units of the petitioner Bank, no customers go there, it is not the place of business, nor any training is being imparted there and in view of this, undoubtedly, the question arises as to why and for what purpose the award employees in large numbers are transferred there. I found material inconsistencies and contradictions in the statements of two witnesses examined by the petitioner Bank on the aforesaid issue. The Presiding Officer of Central Government Industrial Tribunal No. II, Mumbai, has discussed the evidence of the witnesses examined by the petitioner Bank in paragraphs 15, 17, 18 and 19 of the Award and has made observations in the Award on the basis of assessment of the evidence. In view of my aforesaid observations, the case of the award employees will have to be examined as to whether the workmen were

illegally treated as surplus and kept separate with the objective to facilitate their exit from the service of the petitioner Bank and whether RMC/AMER is a camouflage department set up as a pool or cage for alleged redundant/surplus employees in the light of the VRS announced in May 2001.

9. Now it is well settled principle of law as held by the Apex Court in Syndicate Bank Ltd. (supra) that if an order of transfer is made mala fide or for some ulterior purpose, the Industrial Tribunal should interfere and set aside such an order of transfer, because the mala fide exercise of power is not considered to be legal exercise of the power given by law. The Tribunal in paragraph 11 of the Award has summarised in nutshell the evidence of the witnesses examined by the award employees wherein almost every witness has stated that the management had appointed same workers on contract to perform the work, which they were doing earlier. They were also given the names of different agencies, such as A-1 Couriers, Top Securities V-IV Securities, NAT Air Condition Engineering, Omkar Enterprises/ Vishal Darshan Enterprises/Central Hospitality Services, United Courier Services etc. It further reveals from their evidence that after having engaged the services of different contractors, the award employees have been transferred to RMC/AMER where they are admittedly sitting idle. Paragraphs 11 and 12 of the impugned judgment demonstrate that findings of fact reached by the Tribunal, are as a result of the appreciation of evidence. It cannot be said, in the present writ petition, that findings arrived at are based on no evidence and that could be regarded as an error of law which can be corrected by a writ of certiorari. It would be more advantageous if the relevant observations made by the Tribunal in paragraph 11 are reproduced, as it is, to appreciate whether the Tribunal has reached the conclusion on proper appreciation of evidence placed before it. The relevant portion of paragraph 11 of the impugned Award reads thus:

"11. Let us now scrutinise the evidence on record in this context, Witness examined by the Union viz. D'Cruz who was appointed as a clerk in 1967 disclosed in short that, management entrusted entire despatch of materials to contractor A-I Couriers and because of this outsourcing of work the number of workers were reduced and added that contractor is functioning within the premises at Mahatma Gandhi Road. He further disclosed that he was transferred to RMC in May 2001 where he is sitting idle as no work exists/available and that the same position is with other colleagues. He pointed out that the transfer was resisted but in vain. He denied that his services were due to exigencies of work and that it was justified. Shirke who joined as Cash van driver in 1991 deposed to the effect that his work is being given to one contractor "Top Securities V-IV Securities" and that at the place, i.e. RMC where he is transferred there is no work, he denied that his transfer was genuine. Chavan peon engaged in 1988 testified that his entire despatch of material has been entrusted to contract couriers, i.e. OM Couriers and that he has no work in RMC where he is transferred and that he is sitting idle along with others. Pendurkar and Air Condition plant helper engaged in 1966 pointed out that he reported to RMC on

June 16, 2000 however his work has been entrusted to contractor NAT Air Condition Engineering and that he is sitting idle in RMC as no work has been allotted to him. Kahar a temporary sub-staff engaged in 1991 disclosed that he along with temporary staff through union had raised dispute in Ref. 2/47 of 1993 and 2/26 of 1995 and their demands were upheld by the Tribunal by the Award dated June 30, 1997 and that by virtue of the Award his services were regularised. However, it was transferred to RMC Byculla and that his work of cleaning/sweeping has been given to contractors Omkar Enterprises/Vishal Darshan Enterprises/ Central Hospitality Services and that the place where he is transferred at RMC he is sitting idle, Vaz engaged as clerk cum typist in 1966 deposed that Bank engaged 20 persons through United Courier Services and that the Bank attracted workmen for early exit and that fear was created telling that RMC will be shifted to a distant place and the workmen not accepting to carry exit schemes will have to face hardship and that Bank compelled many unwilling workmen to opt for exit from service. Kanchan temporary peon engaged in 1989 a beneficiary of the Award referred to above deposed to the effect that the job performed by them has been entrusted to contract labour - Omkar Enterprises and that he was transferred to RMC a camp meant to humiliate and frustrate the workmen and pave way to workmen to accept the Bank's exit schemes and added that he is a victim of Bank's early separation scheme. He disclosed that he took VRS out of frustration, Ribeiro clerk-cum-typist recruited in 1964 pointed out that RMC is an artificial department where employees are not given any work nor there exists any work and added that the Bank out-sourcing the jobs to contract labour and to cover up the illegal surplus they have been dumped there, on the pretext of transfer. Falcon a clerk-cum-typist engaged in 1966 also deposed to the effect that transfer to RMC has been totally misused to achieve the ulterior purpose to create fear psychosis among the employees, frustrate them and create an atmosphere to compel the employees to exit from the services and that Bank has achieved its objective with large number of workmen opting for the Bank's exit schemes while hundreds of permanent jobs have been converted into contract employment through outsourcing, Vishwanathan temporary sub-staff on ad-hoc basis in 1982/1992 beneficiary of the Award disclosed that transferring him to RMC his work has been given to contract and that he is sitting idle along with his colleagues transferred there. Apte clerk recruited in 1967 pointed out that he was working as out put control known as Daily Transaction list and now as Beam journal of which work is concerning to scrutiny and verifications of entire digital operations of the Bank has been given to the contractors viz. Scope International Private Limited and that to reduce the permanent employees the Bank introduced VRS and that transfer to RMC is its outcome. He disclosed that since transfer to RMC, he is sitting idle along with his colleagues. Brave clerk engaged in 1992 disclosed that his work of outward clearing and collection of up country cheques were allotted to Talisman Consultants Private Limited and that Bank introduced exit scheme in order to reduce the strength of permanent employees and that RMC is created to convert into contract employment thereby job insecurity hanging over the head like a

sword. Smt. Mandrekar a clerk-cum-cashier engaged in 1992 stated that Bank appointed some workers on contract to perform the work in the Bank transferring the permanent workmen to RMC, Sawant clerk-cum-typist engaged in 1964 also deposed to the effect that workmen who do not opt for the exit schemes have been shunted to RMC and compelled to accept exit schemes announced by the Bank in the year 2001 and that the transfer to RMC is abnormal and mala fide intended to achieve ulterior objectives of the Bank and that he has been falsely charge-sheeted. Nerurkar a clerk-cum-typist recruited in 1961 pointed out that as the Assistant Secretary of the Union five times he had visited RMC however he found no work exists there, Shriyan AC plant helper recruited in 1988 has also pointed out that his work has been handed over to contractor and now he has no work in RMC and added that there is no centralised Air conditioning plant and that Bank has not appointed any technician/operator in RMC and that under the service conditions he is required to work under the supervision of a technician and that his transfer to RMC is for deprivation of work and engagement of contract labour. Surti a peon engaged in 1988, Rathod temporary peon on ad hoc basis engaged in 1989 a beneficiary of the Award so also Subhedar and Pandey cleaner-cum-sweeper and Pandey temporary peon engaged in 1988 also disclosed on their agony on account of transfer to RMC. Mr. Shanbhag a member of the Managing Committee of the Union who retired in 1999 pointed out on outsourcing of work through contractors, introducing exit schemes and that transfers have direct nexus to that. Thus witnesses referred to above in various categories/ cadres/ Sections/ departments/ units consistently pointed out that the Bank with ulterior motives transferred the workmen in majority to RMC and that the transfer is mala fide and totally unjustified."

In paragraphs 15, 17, 18 and 19 of the Award, the Tribunal has discussed the evidence laid by the petitioner. Perusal of the observations made by the Tribunal, demonstrate that it is not a case of "no evidence".

10. The Tribunal, in my view, has elaborately examined the oral evidence led both by the petitioner-Bank and the respondent union. It also appears to have considered the documents on which the parties have relied upon and after considering the entire material placed on record found that the transfer of the award employees is mala fide exercise of power or it was made for ulterior purpose, like making them to sit idle and to suffer mental stress besides being humiliated and quit the job by accepting VRS. The findings of the Tribunal, in my view, based upon the evidence produced before it, the approach in scanning and assessing the evidence is correct and do not suffer from perversity. The merits, in my opinion, have been examined in a proper perspective. The findings of mala fide exercise of power cannot be disturbed inasmuch as they are based upon the evidence or material which are relevant for the purpose. That is the pure matter of appreciating the evidence. It would not be possible for me or, rather the petitioner is not entitled to ask this Court to reappraise the said evidence in writ jurisdiction of this Court under Article 226 of the Constitution. The finding of fact recorded by the Tribunal cannot be regarded as an error of law which can be

corrected by a writ of certiorari.

11. The law laid down by the Apex Court in case of Syed Yakoob (*supra*) is sufficient enough for my guidance while appreciating the arguments advanced by the learned counsel for the petitioner. It is clear from the evidence placed on record that for no reason the contract labour were engaged by the petitioner Bank. To my specific query put to Mr. Singhvi, learned senior counsel for the petitioner as to what was the reason for the petitioner Bank to engage the services of the contract labour when their own employees where available for doing the same work. The only reply that came from Mr. Singhvi, learned counsel for the petitioner was that the Award employees were not efficient and to improve the efficiency and performance Of the petitioner Bank, they engaged the services of the contract labour. It may be taken note of at this stage that the case made out in the pleadings, including in paragraph 10 of the writ petition, the petitioner has taken a stand that in some cases the employees required upgradation of their skill or some training and it was, therefore, decided to create a department known as RMC. Mr. Shete, the petitioner's witness, however, has stated that no training is being given to the staff though earlier training was given to clerical staff. The petitioner Bank has also placed reliance upon various settlements for engaging the services of the contract labour. Mr. Singhvi, before me, has submitted that the award employees were sitting idle even before and after their transfer and as long as their service conditions are not changed and they are being paid their wages they cannot make any grievance. Thus, it appears that inconsistent stands are being taken by the petitioner to justify their action of transfers. Moreover, I did not find anywhere on record that the petitioner Bank has made out a case of inefficiency of the award employees for engaging the services of the contract labour. However, I find from the evidence on record that different agencies have been engaged by the petitioner Bank in the place of award employees and transferred them to RMC for no fault of theirs and any justifiable reason. It is true that it is within the managerial discretion of the employer to reorganise and rearrange his business in the manner he considers best. However, it is permissible as long as that is done bona fide and not actuated by any motive of victimisation or unfair labour practice. The judgment of the Apex Court, relied upon by Mr. Singhvi in *Parry and Co. (supra)*, in my view, rather supports the award employees in view of the finding on the issue of mala fide. I am satisfied that the action of the petitioner Bank to transfer its employees was the mala fide exercise of the power. The sole object appears to me of transferring the award employees under the guise of restructuring, reorganisation and rationalisation was to make them sit idle in RMC/AMER, humiliate them and force them to quit by accepting the VRS which cannot be permitted. Undoubtedly, it is permissible for the employer to engage services of the contract labour, that does not mean that such statutory power could be exercised mala fide. Mala fide exercise of power cannot be considered to be the legal exercise of the power given by law. In view of my findings that the impugned transfers are tainted with mala fide, the law laid down by the Apex

Court in BHEL Workers Association, Hardwar and Ors. (supra) would not be of any help to the petitioner. I have no manner of doubt that the petitioner Bank has used the weapon of transfer with ulterior motive and it was mala fide exercise of power with the sole object of giving work of permanent employees to the contractors and to make the permanent employees sit idle in so-called RMC/AMER department and drive them to quit their jobs by accepting VRS.

12. In the result, the writ petition is dismissed summarily.

13. At this stage, Mr. K.K. Singhvi, learned senior counsel for the petitioner, seeks protection to enable the petitioner Bank to carry this order in appeal. I am inclined to grant protection for a period of four weeks. Order accordingly.