

(1987) 11 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No's. 129 and 130 of 1986

Therapeutics Chemicals Research Corporation

APPELLANT

Vs

Justice R.D. Tulpule, Presiding Officer, Commissioner of
Income Tax and Another

RESPONDENT

Date of Decision : 24-11-1987

Acts Referred:

Constitution of India, 1950 — Article 227

Dock Workers (Regulation of Employment) Act, 1948 — Section 2

Citation : (1988) 3 BomCR 727

Hon'ble Judges : G.F. Couto, J;G.D. Kamat, J

Bench : Division Bench

Advocate : M.S. Usgaonkar and M. Bandodkar, in W.P. 129 and 130, for the Appellant; S.K. Kakodkar, S.A. for respondent No. 2 in W.P. 129 and 180, for the Respondent

Final Decision : Dismissed

Judgement

G.F. Couto, J.—These two writ petitions directed against the common award made by the Central Government Industrial Tribunals in five separate references give rise to identical issues and can, hence, be disposed of by the single judgment.

2. The petitioners in both the cases are Agencies recognised under the Export (Quality Control and Inspection) Act, 1963, and employ as workmen in their business, Samplers, Assistant Samplers, Sampling Boys, Chemists and Office staff. The said Act has been enacted in order to control the quality of export commodities which were to be notified by the Government. The Government of India had notified Iron Ore and Ferro Manganese and Manganese Ore as being commodities which were falling under the purview of the said Act. On 13th November, 1964, the Central Government constituted the Central Wage Board for Dock Workers employed in major ports. The said Board made some recommendations on 29th November, 1969, as regards the wages to be paid to

dock workers and the Central Government accepted the said recommendations on 28th March, 1970, with effect from 1st January, 1969.

3. The Goa Dock Labour Union claiming to represent the workmen employed by the petitioners, served a charter of demands on the petitioners, dated 7th February, 1973. It was claimed that the said workmen were entitled to the wages as recommended by the Central Board of the Dock Workers, with retrospective effect. The petitioners did not agree with this contention, for it was their case that their employees were not coming within the definition of "Dock Labourers" and, therefore, were not entitled to the benefits under the recommendations of the Central Wage Board. As a result, the Assistant Labour Commissioner was approached and conciliation proceedings initiated which ultimately failed. A failure report was made to the Central Government by the Conciliation Officer/ Assistant Labour Commissioner (Central), Vasco-Da-Gama. The Central Government, on going through the failure report, made a reference of the dispute to the Central Government Industrial Tribunal.

4. The learned Presiding Officer of the Central Government Industrial Tribunal finally disposed of the reference by an order dated 26th April, 1979 and held that the Samplers employed by the petitioners were Dock Workers within the meaning of section 2 of the Dock Workers (Regulation of Employment) Act, 1948 and, therefore, entitled to the benefits of the aforesaid recommendations. Aggrieved by this decision, petitioners approached the Court of the erstwhile Judicial Commissioner with writ petitions and the learned Judicial Commissioner, by his judgment dated 14th September, 1979 was pleased to set aside the Award of the Industrial Tribunal and to remand the matter back to the Central Government Industrial Tribunal.

5. In the meanwhile, the Central Government referred another dispute to the Central Government Industrial Tribunal being the Reference No. CGIT-19 of 1978. The crux of the problem was as regards the question whether the employees in the management of the petitioner were or not dock workers and covered by the provisions of the Dock Workers (Regulations of Employment) Act, 1948. This reference was ultimately decided by an Award made on 14th July, 1980, whereby the said employees were held to be dock workers within the meaning of the aforesaid Act. The petitioners, being aggrieved, filed writ petition in the courts of Judicial Commissioner on 16th August, 1980. This writ petition came to be decided by a Division Bench of this Court on 19th September, 1983. The Division Bench held that the dispute involving iron ore samplers was not an industrial dispute concerning a major port; that the iron ore samplers were not dock workers as defined in section 2(b) of the aforesaid Act and that the Central Government was not the Government for the then existing Union Territory of Goa, Daman and Diu, u/s 2(a)(ii) of the Industrial Disputes Act, 1947 and that it was the Administrator appointed under Article 239 of the Constitution who was the State Government for the said Territory. An appeal against this judgment of the Division Bench was filed by the respondent No. 2 herein, in the Supreme

Court. Their Lordships of the Supreme Court allowed the said appeal and remanded the matter to the Tribunal for fresh adjudication.

6. Pursuant to this order of remand, the said reference was re-numbered and, on an application of the parties, taken together with the reference in the case which had been remanded to the Industrial Tribunal by the Judicial Commissioner's Court. Ultimately, the said references were decided by the Central Government Industrial Tribunal and an Award was made on 6th November, 1985, and duly published in the Government of India's Gazette by notification dated 8th March, 1986. The learned Presiding Officer of the said Tribunal held that the concerned employees of the petitioners were dock workers within the meaning of the said expression in the Dock Workers (Regulation of Employment) Act, 1948. Accordingly, he held that they were entitled to the benefits of the Central Wage Board recommendations and qualified the same benefit as delineated in the Award.

7. Petitioners challenge the abovementioned Award made by the learned Presiding Officer of the Government Industrial Tribunal on 8th November, 1985, on the sole ground that the Tribunal had committed an error in holding that the petitioners' employees were dock workers within the meaning of the said Act. It was contended that the learned Presiding Officer had imported into that definition concepts which were alien to the aforesaid Act and, more particularly, some provisions of the Export (Quality Control and Inspection) Act, 1963. It is therefore, the case of the petitioners that this amounts to an error of jurisdiction apparent on the face of the record which is susceptible of being corrected in a writ petition.

8. Before we proceed to address ourselves to this challenge, it is necessary and expedient to deal first with the preliminary objections raised by Mr. Kakodkar, learned Counsel appearing for the second respondent. These preliminary objections indeed go to the very maintainability of the writ petitions and, therefore, if upheld, will make unavailable to the petitioners the relief's sought.

9. Mr. Kakodkar, first contended that much after the passing of the impugned Award, petitioners had arrived at an amicable settlement with the second respondent in the presence of the Conciliation Officer. This settlement was arrived at on 30th October, 1986 and under its Clauses (1) and (2) it is clear that the petitioners had by implication accepted the finding of the first respondent that their employees were dock workers within the meaning of the Act. In fact, it has been agreed that the Award impugned in the writ petitions would not give an effect to the extent of its retrospective application, from the date of the reference to 31st March, 1986, and that the same would stand set aside in that respect. Further, it has been agreed that the employees/ workmen covered by the said Award shall be paid a sum of Rs. 10,000/- only, in full and final settlement as regards their claim for revision wages and other service conditions, from the date of the References to 31st March, 1986. The learned Counsel urged that this reference to all the employees/ workmen covered by the Award, by implication,

shows that the petitioners had accepted the finding of the Tribunal that such employees were dock workers within the meaning of the Act, irrespective of what was laid down in Clause (8) to the effect that the settlement arrived at was without prejudice to the contentions of either parties in the present writ petitions. Mr. Kakodkar further contended that the said Clause (8) is of no value since jurisdiction cannot be imposed and given to the courts by agreement of the parties. He also submitted that once the petitioners had agreed to make their partial settlement, it is no more open to them to challenge the finding of the Tribunal as regards the status of their employees since they are estopped from doing this by the principles of the doctrine of approbate and reprobate. In fact, after having got some benefits by way of that agreement, the petitioners could not blow hot and cold at the same time and attempt to challenge the other part of the impugned award. Therefore, the writ petitions are not maintainable.

10. It was, however, urged by Mr. Usgaonkar the learned Counsel appearing for the petitioners, that the settlement arrived at on 30th October, 1986, cannot be construed in the manner done by Mr. Kakodkar. He submitted that one cannot read Clauses (1) and (2) in isolation, particularly in isolation from Clause (8). In fact, in Clause (8) of the agreement, it has been specifically agreed that the settlement was without prejudice to the contentions of either parties in the Writ Petitions Nos. 128, 129 and 130 of 1986, that is to say, the present writ petitions and another which was already disposed of. Clauses (1) and (2) respect only to a settlement of the payment of wages for the periods from the date of the References till 31st March, 1986, and that settlement has nothing to do with the Award. It represents a sort of ex gratia payment made to the employees by the petitioners.

11. There is considerable force in the submissions made by Mr. Kakodkar. Clauses (1) and (2) of the settlement arrived at on 30th October, 1986, give a clear indication that the petitioners had accepted that their employees who were covered by the Award were in fact dock labourers within the meaning of the expression in the Act. Clause (1) reads:-

"It is agreed by and between the parties that the aforementioned Award of the Central Industrial Tribunal to the extent of retrospective effect i.e. from the date of the respective reference to 31st March, 1986 will not be given effect to and that the same is set aside by mutual consent."

Clause (2), in its turn, is as under:---

"In view of Clause No. 1 parties agree that all employees/workmen, covered by the Award shall be paid a sum of Rs. 10,000/- (Rupees ten thousand only) in full and final settlement insofar as their claim for revision of wages and other service conditions from date of reference to 31st March, 1986."

A careful reading of the above two clauses makes it abundantly clear that they cover "all employees / workmen covered by the Award" i.e. the employees / workmen who had been held by the Tribunal to be dock workers within the

meaning of the Act. No doubt, under Clause (8) of the agreement, the contentions of the parties in the writ petitions had been saved but, reading the three clauses together, it would appear that the said clause is only in respect of the quantum of the wages for the period beyond 31st March, 1986, which had been awarded by the Tribunal. Otherwise, as rightly pointed out by Mr. Kakodkar, it would amount to below hot and cold, to approbate and reprobate and that, much, after having got the benefit for the period from the date of the references to 31st March, 1986, was not open to the petitioners. However, irrespective of this aspect of the case and the other preliminary objections to which we will advert in due time, we do not think it proper to dispose of these petitions on this narrow ground.

12. Mr. Kakodkar next contended that it is an admitted fact that out of the five Companies involved in the references, two had not challenged the references and the third who had filed the reference had arrived at a completely new agreement with the second respondent and only the present petitioners are challenging the Award. If this Court ultimately allows the petitions, such decision may give cause to industrial unrest inasmuch as the employees of the same status and category will be paid differently and their conditions of service will be different in accordance to the persons to whom they render their services. This circumstance should be borne in mind, according to the learned Counsel, by the Court to abstain from interfering with the Award. Mr. Usgaonkar joined issue by submitting that the Tribunal itself had not awarded the same rate of payment to the employees of the petitioners and the same conditions of service. Therefore, the apprehension of Mr. Kakodkar appears to be unfounded.

13. Mr. Usgaonkar may be to some extent correct in his submission but at the same time, it is clear to our mind that different service conditions will not be justified for the same kind and category of employees. The difference of pay may be justified, as the Tribunal held, in the light of the financial capacity of each of the employees but definitely not the other general conditions of service.

14. The third and the last preliminary objection raised by Mr. Kakodkar is that, strictly speaking, the present writ petitions are under Article 227 of the Constitution and not maintainable since no jurisdictional fact is in question and as the jurisdiction of the Tribunal was flowing from the terms of the references itself. The finding given by the Tribunal is in the circumstances, a pure finding of facts and this being so, in a writ petition under Article 226 of the Constitution, no Certiorari shall issue unless there is an error of jurisdiction apparent on the face of the record. In the present case, the learned Counsel further contended, no such error on the face of the record exists and, therefore, on the strength of the rulings of the Supreme Court in *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, and *Beant Singh Vs. Union of India (UOI) and Others*, , this Court cannot interfere in the exercise of its writ jurisdiction. The learned Counsel sought further support for the above submission in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, ; *Mohd. Yunus v. Mohd. Mustaqim*

and others AIR 1984 S.C. 39 and Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, . He further submitted that in paragraph 7 of the judgment dated 11th September, 1983, the Division Bench of this Court had stated correctly the position of the law, namely, that the High Court in exercise of its jurisdiction either under Article 226 or 227 of the Constitution cannot interfere with a finding of fact recorded by a subordinate or inferior Court and if, however, the Tribunal, while deciding a jurisdictional fact, wrongly assumes jurisdiction, then the High Court would be justified in examining the correctness of the finding on the jurisdictional fact. However, according to the learned Counsel, the Division Bench was in error in holding the view that the Tribunal had assumed jurisdiction while deciding a jurisdictional fact. The jurisdiction of the Tribunal has indeed flown from the reference itself. In this connection, the learned Counsel placed reliance in the decisions of the Supreme Court in Sadhu Ram Vs. Delhi Transport Corporation, and The Workmen and Others Vs. Hindustan Lever Ltd., . Proceeding with his argument, Mr. Kakodkar further submitted that the petitions are under Article 226 of the Constitution, although they are not, equally no writ of certiorari shall issue in these cases in the light of the observations of the Supreme Court in Sadhu Ram Vs. Delhi Transport Corporation, .

15. Mr. Usgaonkar was however of a different view. He contended, placing reliance in Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, , that whenever there is an error apparent on the face of the record, a writ of certiorari can be issued. According to him such error exists in the face of the impugned Award since the employees of the petitioners do not come within the definition of dock workers in the Act and the respondent No. 1 had wrongly taken recourse to the provisions of the Export (Quality Control and Inspection) Act to bring the said employees within the meaning and the purview of the definition of "dock workers" in the Dock Workers (Regulation of Employment) Act. This, according to the learned Counsel, constitutes a manifest and clear error apparent on the face of the record.

16. It is well settled that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution. In fact in Mohd. Yunus' case (supra), the Supreme Court observed that the supervisory jurisdiction conferred on the High Courts under Article 226 of the Constitution is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority, and not to correct an error apparent on the face of the record, much less an error of law. The Court further observed that in exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal and it will not review or re-weigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision.

Similarly, in Sayed Yakoob's case (above), Their Lordships of the Supreme Court held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals but these are cases where orders are

passed by inferior courts or Tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction. Here, the Court added, a writ can, similarly, be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly and if 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.

In Chandavarkar Sita Ratna Rao's case, the Court held that, while exercising its jurisdiction under Articles 226 and 227 of the Constitution, the High Court should not interfere with findings of facts unless such findings are perverse or based on no evidence to justify it or has resulted in manifest injustice.

Then, in Sadhu Ram's case (above), the Supreme Court observed that the jurisdiction under Article 226 of the Constitution is truly wide but, for that very same reason, it has to be exercised with great circumspection and it is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. The Court further observed that where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering but, where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, it is not proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workmen had raised no demand with the management and that there was no industrial dispute which could be properly referred by the Government for adjudication.

In Shri Ambica Mills Co. Ltd.s" case the Supreme Court, similarly, observed that a writ of certiorari under Article 226 of the Constitution can be issued not only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record. But the Court further observed that errors of fact, though they may be apparent on the face of the record, cannot be corrected. In the light of the above decision of the Supreme Court, it becomes clear that not in all cases the High Court can, in exercise of its writ jurisdiction, interfere with findings of facts given by the courts below. The High Court does not sit, while exercising its writ jurisdiction, as an Appellate or Revisional Court and may interfere only when the findings are either perverse or when there is an error of jurisdiction which is apparent on the face of the record. This being so, it will be pertinent to see what, according to the Supreme Court's decision, amounts to an error apparent on the face of the record.

In Satyanarayan Laxminarayan Hegde's case (supra), addressing to this question, Their Lordships of the Supreme Court observed that an error which had to be established by a long drawn process of reasoning on points where there may be conceivably be two opinions can hardly be said to be an error apparent on the face of the record. In fact, where an alleged error is far from self-evident

and if it can be established, it has to be established, by lengthy and complicated arguments, such as an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ, the Court added.

Similarly, in Beant Singh's case (supra), while approving the law laid down by the Supreme Court in the above authority. Their Lordships of the Supreme Court observed that the High Court does not sit as a Court of appeal to substitute its own judgment for that of the authorities which are empowered to give their decisions. In such cases and that, apart from jurisdictional errors, the High Court may correct errors apparent on the face of the record, however, an error to be apparent must be one which does not take prolonged arguments to bring it to the surface.

17. We have already mentioned that the whole case of the petitioners is that the first respondent has committed a jurisdictional error which is apparent on the face of this Award inasmuch as he misconstrued the definition of "dock worker"s in the Act and imported into it extraneous considerations from a different Act. To make good these submissions, the learned Counsel appearing for the petitioners had, undoubtedly, taken pains and advanced elaborate arguments. This being so, and in the light of the above judgments of the Supreme Court, it would appear that, in fact the alleged error apparent on the face of the record is not apparent at all. It comes to the surface only after elaborate and lengthy arguments. This strengthens and gives merit to the submission of Mr. Kakodkar that no writ of certiorari issues in the facts and circumstances of this case. But, assuming that the petition was filed under Article 226 of the Constitution, it will be appropriate to observe that what the Supreme Court held in *Sadhu ram*'s case is to be borne in mind in the present case where the Tribunal has not derived its jurisdiction by deciding a jurisdictional fact and where the jurisdiction of the Tribunal had flown directly from the reference made to it by the Central Government. This view is also supported by what the Supreme Court held in *The Workmen and Others Vs. Hindustan Lever Ltd.*, to the effect that the Tribunal derives its jurisdiction by the order of reference and not on the determination of a jurisdictional fact which it must of necessity decide to acquire jurisdiction. This being the law as laid down by the Supreme Court, it would appear that Mr. Kakodkar is also right in his alternate submission that even if the petition is filed under Article 226 of the Constitution, the same is not maintainable and no writ of certiorari shall issue in the present case.

18. Despite the view taken above as regards the question that no certiorari can issue in the present petitions, we turn to the merit of the case. Mr. Usgaonkar took us extensively through the impugned Award and, in the first place, contended that it is clear from the said Award that the first respondent arrived at his finding that the employees of the petitioners are dock workers within the meaning of the Act, not on the basis of the terms of the definition but, taking recourse to a different legislation namely the Quality Control Act. He submitted

that the learned Presiding Officer of the Tribunal has held the view that since a certificate of the Quality Control is necessary for allowing the ship to leave the port with its cargo and in the definition of the "dock worker" it is said that a person employed or to be employed in work in connection with the preparation of ships or vessels for leaving port, the petitioners' employees come within the definition. He urged that this approach of the problem is entirely wrong since the definition is concerned only with the cargo and, in no manner, with the quality or the cargo. In this connection, he drew support in the decision of the British Court of Appeal in *National Dock Labour Board v. John Bland & Co. Ltd.* 1970(2) all elr 577 as well as in *National Dock Labour Board v. John Bland & Co. Ltd. and others*, 1971(2) ALL ELR 779 . He also relying in the decision of the Supreme Court in *Serajuddin and Co. Vs. Their Workmen*, , submitted that although some of the employees of the petitioners are working in the port, and even on board the ships, for collecting samples of ore, nonetheless, they are not in any manner concerned with the loading or unloading of the vessels or with the movements or storage of cargo in the preparation of ships for the receipt or discharge of cargoes or for leaving port. He urged that the activities of the petitioners' employees are restricted to make a report about the quality of the ore and, therefore, to satisfy the requirements and the purposes of the Export (Quality Control and Inspection) Act. He submitted that the Statement of Objects and Reasons of the Dock Workers (Regulation of Employment) Act, is sufficient to show that the purposes of the Act are entirely alien to the purposes of the Quality Control Act and, therefore, the principles of the latter Act imported in the definition of "dock workers" by the Tribunal could not have been imported. This appears clear, according to the learned Counsel from the observations of the Supreme Court in *M/s. Serajuddin and Co.'s case* (supra). The learned Counsel for the petitioner further contended that except for a few employees of the petitioners, all others are not working in the port or in its vicinity and this fact also takes them away from the definition of "dock workers" under the Act.

19. Mr. Kakodkar, however, joined issue and while submitting, on one hand, that the dictionary meaning of the word "vicinity" is of "some nearness in space" and, therefore, as the nearness is a relative quantity, it will be erroneous to consider only the distance and not that what is more important is the integrated and continuous process for the inspection in submitting the report and, on the other, then the emphasis is not on the loading, preparation of ships but on the work in connection with the said loading, unloading, movement, storage of cargoes or preparation of ships. According to the learned Counsel, u/s 6(d) of the Export (Quality Control and Inspection) Act, 1948, there is a prohibition for the export of notified commodities unless the said commodity is accompanied by a certificate that it satisfies the conditions relating to the quality control. Therefore, according to the learned Counsel, this certificate is something that is legally necessary for the leaving of the ship and the cargo depot. He further contended that the Dock Workers (Regulation of Employment) Act is a beneficent piece of legislation and should as such, be construed liberally and not in a narrow

manner, for such narrow manner of interpretation may defeat the very object and purpose of the Act. In this connection, reliance was placed by the learned Counsel in the decision of the Supreme Court in *Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others*, . He also contended that the Statement of Objects and Reasons appended to the Bill of an Act should be ruled out as an aid to the construction of a statute, as held by the Supreme Court in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, .

20. The "dock worker" as defined in section 2(b) of the Dock Workers (Regulation of Employment) Act reads as under:---

""Dock Worker" means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work, in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port."

A dock labourer is thus a person who is employed in or in the vicinity of any port and in addition, works in connection with the loading, unloading, movement or storage of cargoes or in connection with the preparation of ships for the receipt or discharge of cargoes or leaving port. Mr. Usgaonkar is, therefore, right when he contends that two conditions are necessary for a person coming under that definition, one being that such person works in or in the vicinity of a port and second, that he works in connection with the cargoes. The definition of "dock worker" is verbatim equal to the definition to the "dock worker" in Dock Workers (Regulation of Employment) Act, 1946, which is in force in United Kingdom. In *National Dock Labour Board v. John Bland & Co. Ltd.*'s case (supra), the Court of Appeal had observed that the said definition speaks of cargo and since the Act provides that he "cargo" includes anything carried or to be carried in a ship or other vessel, to ascertain the scope of dock work one has to find the meaning of the word "cargo" and, therefore, a man is a dock worker only when he is employed in connection with a cargo or cargoes. This view was upheld in appeal, in the decision reported in 1971(2). The All England Law Reports 779. There is no dispute that, in fact, a dock worker should be connected with the cargo but what is submitted is that it is not necessary that the work should strictly be of loading, unloading, movement or storage of cargoes or work of preparation of ships for receipt and discharge of cargoes or leaving port. What is submitted is that the work should be in connection with any of these activities and therefore, if connection with any such activities is established and is a continues process necessary for any such activities, then, a person doing such kind of work comes within the purview of the said definition. This submission appears to us to be correct, especially while interpreting a beneficent piece of legislation as the Dock Workers (Regulation of Employment) Act is. As observed by the Supreme Court in *Andhra University v. Regional Provident Fund Commissioner of Andhra Pradesh and others*, 1934(4) SCC 509, in interpreting a beneficent piece of legislation the same should be construed liberally and not in a narrow manner, for this may defeat the object and the purpose of the Act. We also find merit in the

submission of Mr. Kakodkar that the word "connection" means "relation" and, therefore, the work should be in relation with any of the above activities in order to bring a person within the definition of "dock worker" in the Act. Also, there is merit in the submission of the learned Counsel that the word "vicinity" should not be given a narrow meaning so as to be construed as being a thing very close to the port.

21. It is not disputed that the employees of the petitioners are Samplers. Assistant Samplers, Sampling Boys and Chemists. The Samplers, Assistant Samplers and Sampling Boys collect Samples of the ore in several places, including on the board of the ships while the ore is being loaded. This ore is taken to the laboratories of the petitioners which are situated at Margao and it appears also at Sanvordem. The samples are duly analysed in the said laboratories and a report about the quality is made. Now, section 6 of the Export (Quality Control and Inspection) Act deals with the powers of the Central Government in regard to the quality control and inspection and provides that if the Central Government after consulting the Council, is of the opinion that it is necessary or expedient so to do for the development of the export trade of India, it may, inter alia, prohibit the export in the course of international trade of a notified commodity unless it is accompanied by a certificate issued u/s 7 that the commodity satisfies the conditions relating to control or inspection, or it has affixed or applied to it a mark or seal recognised by the Central Government as indicating that it conforms to the standard specifications applicable to it under Clause (c). It is also common ground that the iron is one of the notified commodities and, therefore, there is no manner of doubt that the export of iron ore is not permissible and is, on the contrary, prohibited unless the certificate spoken to in Clause (d) of section 6 of the Export (Quality Control and Inspection) Act is issued. The said certificate becomes, therefore, a sine que non for the export of the cargo, namely, of the cargo of ore. This being so, it cannot be said that the view taken by the respondent No. 1 in his Award is not possible to be taken. It is true that Mr. Usgaonkar, relying in M/s. Serajuddin & Co.'s case, submitted that he office of a mine which is at the mouth of the mine itself cannot be said to be a mine and applying these observations by analogy to the case at hand, said that the employees of the petitioners who were not at all working in the port but at Margao or at Sanvordem can not be said to be dock workers. M/s. Serajuddin & Co.'s case was a case where in an industrial dispute, the question arose whether employees of an office of a mine were to be considered as mine workers. Dealing with the said question, the Supreme Court observed that the Mines Act contains a definition of "mine" and the said definition inter alia shows that a "mine" means an excavation where in an operation for the purpose of searching for or obtaining minerals has been or is being carried on. The Court observed that it was significant that the definition of "mine" excludes the office of the mine which was separately defined as meaning an office at the surface of the mine concerned. Therefore, according to Their Lordships of the Supreme Court there was no doubt that the office of the mine

though it may be situated at the surface of the mine itself, was not within the definition of the mine in the Act. Obviously, the above observations are not attracted to the facts and circumstances of this case since it was the existence of a separate definition of the office of the mine that caused Their Lordships of the Supreme Court to hold that the office of the mine was not coming within the definition of mine given in the Mines Act. In the case at hand, there is nothing in the Dock Workers (Regulation of Employment) Act to show that the definition of dock workers excludes those workmen who are doing some work connected with any of the activities mentioned in the definition of an office. We are also mentioning that Mr. Kakodkar is also right in submitting that in the definition of "dock workers" it is not said that the definition is confined only to those persons who are employed on work of loading, unloading, movement or storage of cargoes or preparation of ships for receipt and discharge of cargoes or leaving port. The definition, as rightly pointed out by the learned Counsel, is wide enough and embraces any person who is employed in connection with any of the above activities.

22. In the light of the above discussion, we find also no substance in these petitions on merits. The petitions, therefore, are liable to fail. The result is that the petitions are dismissed and the rule is, accordingly, discharged with no order as to costs in the circumstances of the case.