

IN THE HON. HIGH COURT OF MADHYA PRADESH  
JABALPUR

L. P. A. NO. 3 / 2000

Chhattisgarh Distrilleries  
(now known as Kedia Castle Dalleon Industries Ltd.)  
Bhilai, District Durg,  
Having its registered office at  
160, Kanchanbag, Indore (M.P.).  
through its Constituted Attorney  
Shri P.C. Chaurey, R/o 16/1-south  
Tukoganj, Indore.

JT (1992) (6) SC

VS 678

Appellant

1. General secretary,  
Chhatisgarh Chemical Mill Majdoor  
Sangh, Rajnandgaon (M.P.)
2. Industrial Court (Bench),  
'Krishna sadan'  
16-H.I.G., Shankar Nagar,  
Raipur (M.P.)

State of M.P. through secretary,  
Department of Labour,  
Vallbh Bhavan, Bhopal (M.P.)

To avoid making it  
inoperative, pending  
date is noted to  
1999 (4) SC 458

Plain language, no reading down  
1992 SC 1981  
Notes make us aware to read  
order down if possible

1991 SC 1792

Respondents

LETTERS PATENT APPEAL UNDER  
CLAUSE X OF THE LETTERS PATENT,  
BEING AGGRIEVED BY THE ORDER  
DATED 22.8.2000 PASSED IN W.P. NO.  
5064/99 BY THE LEARNED SINGLE  
JUDGE HON'BLE JUSTICE SHRI C.K.  
PRASAD,

MAY IT PLEASE YOUR LORDSHIPS:

The appellant files this appeal on the following facts and grounds:-

copy of order

27-11-2000



THE HIGH COURT OF MADHYA PRADESH, JABALPUR

L.P.A. Nos. 310/2000 & 311/2000

Date of decision: 27.11.2000

L.P.A. NO.310 OF 2000

Chhattisgarh Distilleries

v/s

General Secretary, Chhattisgarh  
Chemical Mill Mazdoor Sangh,  
Rajnandgaon and others.

L.P.A. NO.311 OF 2000

Kedia Distilleries Limited

v/s

General Secretary, Chhattisgarh  
Chemical Mill Mazdoor Sangh,  
Rajnandgaon and others.

(For full cause title, see next sheet)

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice.  
The Hon'ble Mr. Justice Arun Mishra.

Whether approved for reporting? *Yes*

For the Appellants: Shri A.H. Mathur Sr. Advocate with

Shri Rohit Arya, Advocate.

For the Respondents:

PER- ARUN MISHRA, JUDGE

These two Letters Patent Appeals No.310/2000 and 311/2000 arise out of the common order dated 22.8.2000 passed by the learned Single Judge in W.P.No.5063/99 and W.P. No.5064/99 whereby the learned Single Judge has directed the petitioners/appellants to make payment of last wages drawn by the workmen from the date of institution of writ petitions before this Court within period of three months, failing which it was directed that the petitions shall stand dismissed without further reference to the Bench. The direction has been issued under the provision of Section 65(3) of the Madhya

Whether reporters of Local Papers may be allowed to see Judge



L.P.A. NO. 310 OF 2000

Chhattisgarh Distilleries  
(now known as Kedia Castle Dalleon Industries Ltd.)  
Bhilai, District Durg,  
Having its registered office at  
160, Kanchanbag, Indore (M.P.),  
through its Constituted Attorney  
Shri P.C.Chourey, R/o 16/1-South  
Tukoganj, Indore.

V/s

1. General Secretary,  
Chhattisgarh Chemical Mill Mazdoor Sangh,  
Rajnandgaon (M.P.)
2. Industrial Court (Bench),  
'Krishna Sadan'  
16-H.I.O, Shankar Nagar, Raipur. (M.P.)
3. State of M.P. through Secretary,  
Department of Labour,  
Vallabh Bhavan, Bhopal.

L.P.A. NO. 311 OF 2000

Kedia Distilleries Limited,  
4-Delight Industrial Area, Bhilai,  
District Durg,  
Having its Registered Office at  
160, Kanchanbag, Indore (M.P.),  
through its Constituted Attorney  
Shri P.C.Chourey, r/o 16/1-South Tukoganj,  
Indore.

V/s

1. General Secretary,  
Chhattisgarh Chemical Mill Mazdoor Sangh,  
Rajnandgaon (M.P.),
2. Industrial Court (Bench),  
'Krishna Sadan'  
16-H.I.O., Shankar Nagar,  
Raipur (M.P.)
3. State of Madhya Pradesh  
through Secretary,  
Department of Labour,  
Vallabh Bhavan, Bhopal (M.P.).



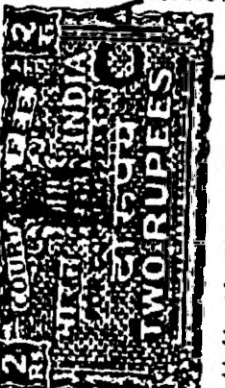
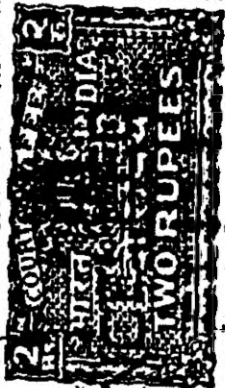
On 6.4.99 the Court and was answered by the Full Bench and Industrial Court Raipur XX XXXXX, was directed to decide the reference on merits within a period of four months. Before the Industrial Court, Union led the evidence and closed its case. It appears that no evidence was led by the petitioners-appellants/Management. It also appears that no reply was filed by the petitioners/appellants to the Statement of Claim filed by the Union. The main objection which appears to have been taken was that the employees were suspended and not retrenched.

4. The Industrial Court came to the conclusion that the burden of proof that there was suspension and not retrenchment has not been discharged by the Management. The Award directed that the workman should be paid minimum wages, dearness allowance and other allowances as fixed by the Government and they were also held entitled to the re-instatement alongwith two/third (66%) back wages. Direction was also issued to give the relief within 40 days. The Award has been made on 16.10.99 by the Industrial Court. The validity of the Award has been challenged in the Writ Petition No.5064/99. In the other Writ Petition (No.5063/99) also, an Award in the same terms has been passed on the same date, which has been assailed in the said writ petition and L.P.A. No.311/2000 arises out of the said writ petition.

5. That in the Writ Petition Nos. 5063/99 and 5064/99 filed by the Management, an application was moved on 3.1.2000 by the Union under the provisions of Section 65(3) of the MPIL Act. In the said application, it was submitted that the petitioner/Management has not re-instated the employees as directed and they are still out

of employment. The petitioner/Management is bound to comply with the provisions of Section 65(3) of the MPR Act. The affidavits of the employees to indicate the fact that they are out of employment, were also filed. It was prayed that Management be directed to comply with the provisions of Section 65(3) of the MPR Act so that the employees may get subsistence allowance and may be able to contest the matter before this Court. This application was opposed by the petitioner/Management by filing reply and it was submitted that complete machinery has been provided u/s 78-A of the MPR Act and the rules for executing the Award and enforcing it; and the power of this Court under Articles 226/227 of the Constitution of India cannot be fettered or made subject to statutory provision u/s 65(3) of the MPR Act. It was also submitted that identity of the claimants is not established; It has not been proved whether such claimants worked and when their services were terminated. Thus, the Award is patently illegal and in the facts and circumstances, Section 65 (3) of the MPR Act has no application, and affidavits which have been filed of the employees, are cyclostyled and cannot be acted upon so as to issue a direction u/s 65(3) of the MPR Act.

6. The applications filed in both the Writ Petitions No.5063/999 and 5064/99 have been decided by the learned Single Judge by the common order dated 22.8.2000. Learned Single Judge has allowed the application in both the cases and has directed the Management/appellant to comply with the provisions of Section 65(3) of the MPR Act within three months' time, by payment of last wage drawn by the workmen with effect from the date of



the institution of the writ petition within three months. In case, petitioners do not comply with the same, writ petitions shall stand dismissed without further reference to the Bench. This order has been passed on 22.8.2000 and the period fixed i.e. three months' time has expired on 21st November, 2000. It appears that these L.P.As have been preferred and an interim prayer has also been made and the matter has been heard/prior on 13.11.2000 to the expiry of three months' time.

7. The learned counsel for the petitioners/ appellants has raised the following submissions:-

(1) Section 65(3) of the MPIR Act has no application to the instant case, as that applies only where an order has been passed by the Labour Court and which is challenged before the Industrial Court and after passing of the order by the Industrial Court, the order of the Industrial Court is challenged in the Writ Petition before this Court; and

~~the~~ Section 65(3) of the MPIR Act applies to the order passed by the Industrial Court and not to an Award passed u/s 51 of the MPIR Act on a reference made to it by the State Government to arbitrate upon the matter.

(2) The powers of this Court under Articles 226/227 of the Constitution of India cannot be fettered by the statutory provisions like Section 65(3) of the MPIR Act.

(3) The impugned Award is perverse and the said persons were not in the employment. Hence, in the facts and circumstance of the case, direction to comply with the provisions of Section 65(3) of the MPIR Act is not warranted.

(4) The petitioners/appellants' company has been declared sick and therefore, protected u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the SICA). Hence, without seeking permission under the SICA, the Award cannot be enforced.

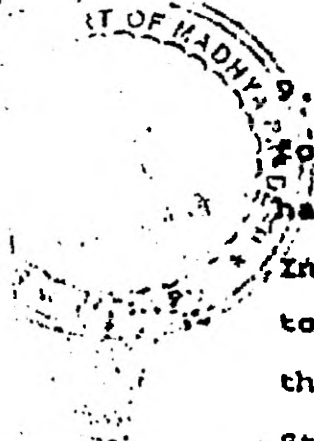
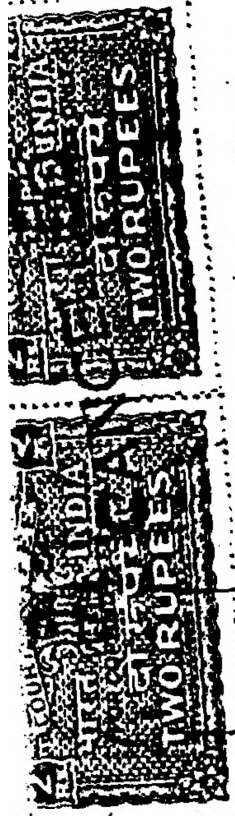
(5) Last submission raised is that non-compliance of the provisions of Section 65(3) of the MPIR Act cannot led to the dismissal of the Writ Petition.

8. After hearing the learned counsel for the appellants we are of the opinion that the present appeals are liable to be dismissed.


The first submission raised by the learned counsel for the appellants is that Section 65(3) of the MPIR Act has no application to the Award passed on arbitration by Industrial Court and Section 65(3) ibid has no application to such writ petition arising out of an Award passed by the Industrial Court in a matter referred to it by the State Government u/s 61 of the M.P.I.R. Act. In order to appreciate this submission, we have to quote the provision of Section 65 of the MPIR Act which reads thus:

"65. Appeal. - (1) Notwithstanding anything contained in the Act, an appeal shall lie to the Industrial Court-

(a) against a Final decision of a Labour







Court in respect of a matter falling under clause (a) or clause (c) of paragraph (A) or paragraph (B) or Paragraph (C) of sub-section (1) of section 61 by the person affected or the representative of employees or the employer;

- (b) against a conviction by a Labour Court, by the person convicted;
- (c) against the acquittal by a Labour Court, by the State Government;
- (d) for enhancement of sentence awarded by a Labour Court, by the State Government;

Provided that no appeal shall lie against an order of a Labour Court under Section 107.

(2) Every appeal shall be made within thirty days from the date of the decision, conviction, acquittal or sentence, as the case may be:

Provided that in computing the period of thirty days, the period requisite for obtaining a copy of the order appealed against shall be excluded:

Provided further that the Industrial Court may for sufficient reason, admit any appeal made after the expiry of such period.

(3) Where in any case, a Labour Court, by its order directs reinstatement of any employee and the employer prefers an appeal before the Industrial Court against such order, or any proceedings against the order of the Industrial Court in the High Court or the Supreme Court, as the case may be, the employer shall be liable to pay such employee during the pendency of such appeal, in the Industrial Court or such proceedings in High Court or the Supreme Court, as the case may be, full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule if the employee had not been employed in any establishment during such period and an affidavit by such employee had been filed to that effect in such court:

Provided that where it is proved to the satisfaction of the Industrial Court or the High Court or the Supreme Court as the case may be that such employee had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

10. The learned counsel further submits that an appeal lies to the Industrial Court against a final decision of Labour Court in respect of the matter falling under <sup>sub-</sup>clause (a) or <sup>sub-</sup>clause (c) of clause (A) or clause (B) or clause (C) of sub-section (1) of Section 51 of the MPIR Act. The statute has not specifically provided an appeal with respect to the matter under Section 51(1)(A)(b) of the MPIR Act. In order to appreciate the submission, it is apt to quote Section 51(1)(A) which reads thus:

"51. Powers of Labour Court.- (1) In addition to powers conferred under other provisions of this Act, a Labour Court shall have power to-


(A) decide-

(a) disputes regarding which application has been made to it under sub-section (3) of Section 31 of the Act;

(b) industrial disputes-

(i) referred to it under section 51 or 52;

(ii) in respect of which it is appointed as the Arbitrator by a submission."

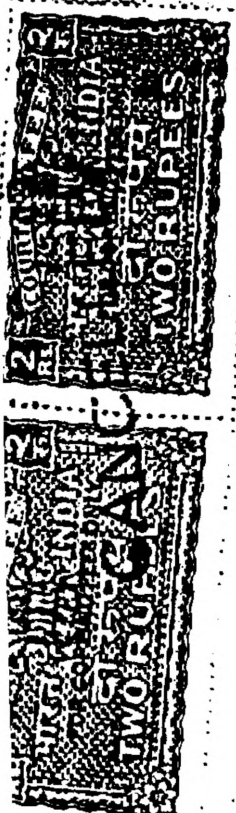


Learned counsel submits that industrial disputes referred to  $\surd$  under Section 51 or 52, or in respect of which it is appointed as the Arbitrator by a submission, no such appeal lies to the Industrial Court against the decision of the Labour Court and the reference was made u/s 51 of the MPIR Act by the State Government.

Section 51 of the MPIR Act is reproduced below:-

"51. Reference of disputes to Labour Court, Industrial Court or Board.- (1) Notwithstanding anything contained in this Act, the Government may, if on a report made by the Labour Officer or otherwise, it is satisfied that an industrial dispute exists, and-

(a) it is not likely to be settled by other means; or



(b) by reason of the continuance of the dispute-

(i) a serious outbreak of disorder or breach of the public peace is likely to occur; or

(ii) serious or prolonged hardship to a large section of the community is likely to be caused; or

(iii) the industry concerned is likely to be seriously affected or the prospects and scope of employment therein curtailed; or

(c) it is necessary in the public interest to do so;

refer the dispute or any matter appearing to be connected with or relevant to the dispute for arbitration to a Labour Court or the Industrial Court or a Board:

Provided that-

(1) No reference under this section shall be made to a Board without referring the matter to the parties and obtaining consent in writing of one of the parties to the dispute; and

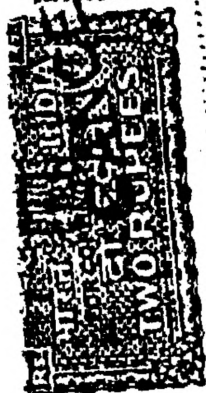
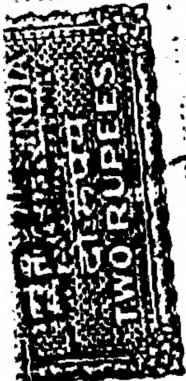
(ii) no reference shall be made to a Labour Court under this section if the matter in dispute is included in Schedule 1 or if the dispute is between employees and employees.

(2) A copy of the report sent by Conciliator under sub-section (2) of Section 43 and forwarded by the Chief Conciliator to the State Government under sub-section(3) of the said section shall also be made available to the Labour Court, or the Industrial Court or the Board, as the case may be, before it proceeds to deal with the reference under sub-section (1).

Thus, the submission raised is that Section 65(3) applies only in such cases where the Labour Court has by its order directs re-instatement of any employee and the employer prefers an appeal before the Industrial Court against such order, or any proceedings against the order of the Industrial Court in the High Court or the Supreme Court. In such exigency, the employer shall be liable to pay such employee during the pendency of such appeal, in the Industrial Court or such proceedings in High Court or the Supreme Court, as the case may be, full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule if the employee had not been employed in any establishment during such period and an affidavit by such employee had been filed to that effect in such court.

11. The learned counsel for the appellants submits that Section 65 has to be read as one unit. Operation of Section 65(3) is governed by appealability and further by the provisions of Section 61.

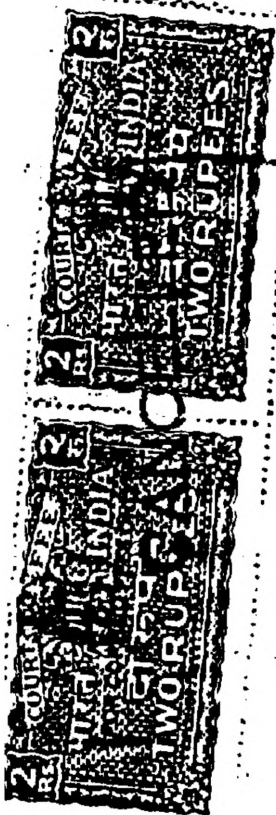
12. We are of the considered opinion that Section 65(3) has to be given interpretation in such a manner so as not to render it discriminatory for its application can be rendered discriminatory <sup>to apply only</sup> where the Labour Court has passed an order directing re-instatement and that is subject to appeal before the Industrial Court. If the submission raised by the learned counsel for the appellants is accepted, it is bound to create an anomalous situation. The employees whose re-instatement has been directed by the Labour Court would be entitled to the full wages last drawn by them, during the pendency of the



appeal before the Industrial Court against such order, or any proceedings against the order of the Industrial Court in the High Court or the Supreme Court and not where the matter has been adjudicate by the Industrial Court and in the Award the Industrial Court has observed the re-instatement and such an award is final and as finality is attached to the Award, or award is passed by Labour Court, that has not been made subject to further appeal before the Industrial Court by the Legislature. Reference can be made to the Labour Court, Industrial Court or Board. Section 65 of the MPIR Act requires the Arbitration to be concluded expeditiously. Section 56 of the MPIR Act require the arbitrator to pass an award which shall be signed by him. Section 58(2) requires the Award so made to be entered into the register kept for the purpose and section 58(3) requires the publication of the award in the manner as may be prescribed and an Award published under sub-section (3) of Section 58 shall be final and shall not be called in question by any Court in any manner whatsoever. Section 65 has been amended by M.P. Amendment Act No.13 of 1986 whereby sub-section (3) thereof was substituted. In sub-section (3) of Section 65, the words used are "any proceedings against the order of the Industrial Court in the High Court" or the Supreme Court." ought to be so construed so as to take in its ambit the awards ordering the re-instatement of any employee by the employer. Any other interpretation would lead to discriminatory results where on a dispute filed by Union before the Labour Court or by an employee, the employee would be entitled to be paid the last wage drawn at not in the case of Award where re-instatement has been ordered by the Labour Court and Industrial Court, on arbitration. Such an interpretation of sub-section (3) is impermissible.

13. The Apex Court in the case of Gita Hariharan (Ms) and another V/s Reserve Bank of India and another (1999) 2 SCC 228, held that any interpretation of the provision which violates equality which is one of the basic principles of our Constitution, cannot be adopted. It is well settled that if one construction is given to a statute and by such interpretation it violates the constitutional limits whereas, on another construction, it may be found that the statute remains within the constitutional limits i.e. where two interpretations are possible, the Court will lean in favour of constitutionality of the provision since legislature is presumed to have acted in accordance with the Constitution. It cannot be presumed that the Legislature had intended to make difference in the status of the employees in whose case, an award has been passed by the Industrial Court vis-a-vis the employees in whose case the Labour Court has ordered the re-instatement. The sum and substance of the Award passed is that the re-instatement has been directed.

14. The Apex Court in the case of Madan Singh Shekhawat V/s Union of India and others, (1999) 6 SCC 459 has laid down the basic rule of interpretation to be the beneficent construction, pointing out the duty of the Court to interpret a provision especially a beneficial provision, liberally so as to give it a wider meaning, instead of giving a restrictive meaning which would negate the very object of the provision. Relevant rule in this case entitling an army officer to disability pension if he suffered disability "which is attributable to or aggravated by" military service. The rules further providing that "A person is also considered to be on duty when proceeding to his leave station or



returning to duty from his leave station at public expense". In the said case, the appellant Madan Singh Shekhawat was on casual leave, travelled at his own expenses to his home station and during journey, met with an accident which resulted in amputation of his hand. Disability pension was denied to him on the ground that he was not on duty because the journey being performed by him on leave was not "at public expense". Their Lordships held that the appellant could not be denied disability pension by giving a literal interpretation to the expression "at public expense". The expression held ~~xxxx~~ to mean that the army officer has been authorised to undertake journey for leave station. Therefore, he was held entitled to disability pension. The Apex Court in Madan Singh Shekhawat's case (supra) has held thus:

"15. It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule.

16. In Seaford Court Estates Ltd. v. Asher, (1949) 2 All ER 155, Lord Denning, L.J. (as he then was) held:

"When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. ... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

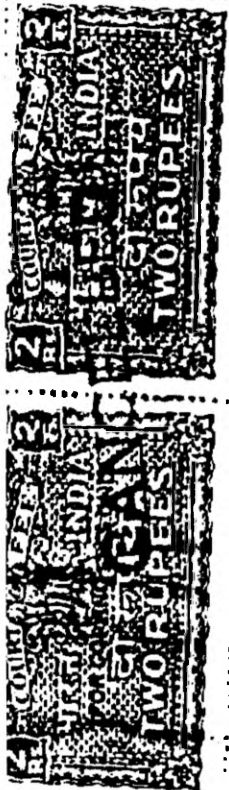
17. This rule of construction is quoted with approval by this Court in M. Pentiah v. Muddala Veeramallappa and also referred to by Beg. C.J. in Bangalore Water Supply & Sewerage Board v. A. Rajappa (1978) 2 SCC 213 and in Hameedia Hardware Stores v. B. Mohan Lal Sowcar, (1988) 2 SCC 513.

18. Applying the above rule, we are of the opinion that the rule-makers did not intend to deprive the army personnel of the benefit of the disability pension solely on the ground that the cost of the journey was not borne by the public exchequer. If the journey was authorised, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself."

The testing by touch stone envisaged in Paras 15 and 16 above quoted, a question is posed "how the makers of the Act had themselves come across this ruck in the texture of it and what is the intention of the legislature. The Legislature has clearly intended that an employee whose re-instatement has been directed, must obtain the last wages drawn by him if he has been re-instated, and employed and had not been employed elsewhere.

15. Learned counsel for the appellants submitted that since the provisions of Section 65(3) has not been challenged before this Court, hence only plain meaning has to be given to it. We are faced with the situation where interpretation of Section 65(3) is required to be made so as to further its objective and while interpreting the provision, we cannot make any violation of the intention of the Legislature by making it as espoused by the learned counsel for the appellants, which could render the provision ineffective, arbitrary and discriminatory.

16. Learned counsel for the appellants has placed reliance on the decision in "Whirlpool of India Limited v/s Employees' State Insurance Corporation, (2000) 3 SCC 185 to submit that plain language cannot be ignored just in order to give a construction beneficial to the working class in social welfare

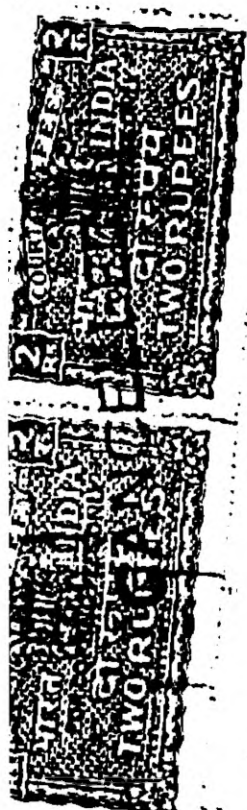






19. Learned counsel for the appellants has further relied on "Delhi Transport Corporation V/s D.T.C.Mazdoor Congress and others, AIR 1991 SC 101 (Para 214) to submit that plain and liberal meaning has to be given to the provision from a bare reading Relevant portion of of the same./ Para 214 reads thus:

"214. On a proper consideration of the cases cited hereinbefore as well as the observations of Seervai in his book "Constitutional Law of India" and also the meaning that has been given in the Australian Federal Constitutional Law by Colin Howard, it is clear and apparent that where any term has been used in the Act which per se seems to be without jurisdiction but can be read down in order to make it constitutionally valid by separating and excluding the part which is invalid or by interpreting the word in such a fashion in order to make it constitutionally valid and within jurisdiction of the legislature which passed the said enactment by reading down the provisions of the Act. This, however, does not under any circumstances mean that where the plain and literal meaning that follows from a bare reading of the provisions of the Act, Rule or Regulation that it confers arbitrary, uncanalised, unbridled, unrestricted power to terminate the services of a permanent employee without recording any reasons for the same and without adhering to the principles of natural justice and equality before the law as envisaged in Art. 14 of the Constitution, cannot be read down to save the said provision from constitutional invalidity by bringing or adding words in the said legislation such as saying that it implies that reasons for the order of termination have to be recorded. In interpreting the provisions of an Act, it is not permissible where the plain language of the provision gives a clear and unambiguous meaning can be interpreted by reading down and presuming certain expressions in order to save it from constitutional invalidity. Therefore, on a consideration of the above decisions, it is impossible to hold by reading down the impugned provisions of Regulation 9(b) framed under S. 53 of the Delhi Road Transport Act, 1950 read with Delhi Road Transport (Amendment) Act, 1971 that the said provision doesnot confer arbitrary, unguided unrestricted and uncanalised power without any guidelines on the authority to terminate the services of an employee without conforming to the principles of natural justice and equality as envisaged in Art. 14 of the Constitution of India....."



20. Learned counsel for the appellants has further relied on Kalawatibal V/s Soiryabai and others, AIR 1991 SC 1581 to submit that section 65 of the MPIR Act has to be read in its entirety as one composite unit without bifurcating it or ignoring any part of it. There is no dispute with the submission xxx canvassed for its applicability to the instant case. We are not ignoring any part and without ignoring any part of Section 65, without an appeal being filed, sub-section (3) of Section 65 contemplates the proceedings before the High Court against the order of the Industrial Court and that order may be original order and order includes the Award directing re-instatement.

21. Learned counsel has also relied on Ashok Kumar alias Golu V/s Union of India and others, AIR 1991 SC 1792 to submit that a Bill cannot be read part of the statute and if the interpretation with the aid of extrinsic material would result in violence to the plain language of Section 433A of the Code of Criminal Procedure. Thus, such a course has to be abided. Here, without any aid of any extrinsic material, it is possible to construe and give a meaning to Section 65(3) which we had adopted.

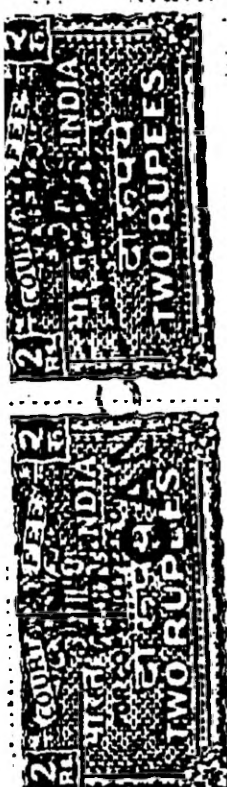
22. Learned counsel for the appellants has also relied on a decision of the Apex Court in Hameedia Hardware Stores V/s B. Mohan Lal Sowear, AIR 1988 SC 1060 where their Lordships treated the provisions of T.N. Buildings (Lease and Rent Control) Act, 1960 Section 10(3)(a)(iii) and Section 10(3)(e) and laid down that the absurd results are to be avoided while making interpretation of the provisions. We are following the same principles in the instant case.

23. The decision of the Apex Court in Shamrao V/s Parulekar and others, AIR 1952 SC 324 is also to the same effect. It also points out the duty of the Court to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used. There is no dispute that we are following the same salutary principle of interpretation respectfully.

24. Learned counsel has further submitted that there is no ambiguity in the provision of section 65(3) of the MPIR Act. Hence, it is not open to the Court to embark upon a question as to what is the intention of the Legislature. Hence, the surrounding circumstances cannot be looked into. The decision of the Apex Court in Commissioner of Income Tax, Madhya Pradesh and Bhopal V/s Sm. Sodra Devi, AIR 1957 SC 832 cited by the learned counsel for the appellants is also of no substantive value to the appellants in the facts of case.

25. The learned counsel for the appellants has relied on Council of Homoeopathic System of Medicine, Punjab and others V/s Suchintan and others, AIR 1994 SC 1761 to submit that Regulation cannot be construed causing violence of the language. This decision is of no avail. Further reliance of the appellants' learned counsel on Nelson Motis V/s Union of India and another, AIR 1992 SC 1981 is also of no avail as their Lordships have observed that the language used in the provision has to be given an unambiguous meaning understood in ordinary sense and therefore the question of reading down the provision so as to limit its application does not arise.

26. We are unable to agree with the submissions raised



by the learned counsel for the appellants on the interpretation of the provisions of Section 65(3) of the MPIR Act. The ratio of the decisions cited by the learned counsel for the appellants do not help the submissions canvassed by the learned counsel.

27. The second submission of the learned counsel for the appellants is that this Court's power under Articles 226 and 227 of the Constitution of India are ample and not fettered by the statutory provision under Section 65(3) of the MPIR Act. In our opinion, the Legislative Intendment is that either re-instatement should be ordered or an employee must obtain the wages last drawn by him. Thus, the power of this Court under Articles 226 and 227 of the Constitution have to be exercised in such a manner so as to further the mandate of the provision and not to restrict the legislative mandate and intent, as held by the apex Court in the case of C.M.Sarsiah V/s E.E., Panchayat Raj Department and another, 2000-I-LLJ wherein, when a challenge was made to an award passed by the Labour Court directing re-instatement of workmen with back-wages, the Supreme Court has held that this Court has no jurisdiction to direct non-compliance of the provisions of Section 17-B of the Industrial Disputes Act. In the said case, it has been held as follows:-

"3. Having examined the provisions of Section 17-B of the Industrial Disputes Act, we are of the considered view that the Court has no jurisdiction to direct non-compliance with the same when the condition precedent for passing an order in terms of Section 17-B of the Act is satisfied, and this being the legislative mandate, the Division Bench of the High Court committed serious error in interfering with the direction of the learned single judge. We accordingly set aside the impugned order passed by the Division Bench and direct that the order of the learned Single Judge requiring compliance with Section 17-B of the Industrial Disputes Act shall be complied with by the employer. This appeal is accordingly allowed. There shall be no order as to cost."

- 20 -

That dehors of provision of Section 65(3) which enables the Court to direct payment of wages last drawn, the powers exist in this Court independently under Article 226/227 of the Constitution of India to direct and apply the same principles as contained in Section 65(3), even if it is not applicable, principle underlying it can be made applicable by this Court.

28. The next submission raised by the learned counsel for the appellants is with respect to the perversity of the Award. This question is still to be decided by the learned Single Judge in the writ petitions and with the limited object of looking into the submissions, we have gone through the Award. We find that on merits, reply was not filed by the petitioners before the Industrial Court, it was not the specific case set up that employees as per this list, were not serving with the petitioners. They had proceeded on the basis that these were the employees who were suspended. In the preliminary submissions filed, it was not specifically disputed that the employees were not in the service of the petitioners/Management. No cross examination was made to that effect, and also from the terms of reference made by the State Government, it does not appear that it was disputed before the Government that the employees were not engaged by the Management. What was in question, was validity of retrenchment only. These are the prima facie observations without meaning to decide them on merits at this stage so as to repel submissions of appellants.

29. The next submission raised is with respect to the enforceability of the Award, as the submission is raised that the petitioners-Company has been declared a sick company on 18.9.98 and 22.9.98 and therefore, protected by Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. Section 22(1) and 22(3) of the SICA read thus:

\*22. Suspension of legal proceedings, contracts, etc.-  
(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under Section 17 is under preparation or

consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

"(3) Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended to that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate."

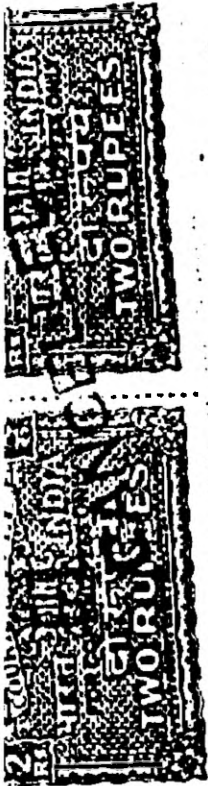
A bare reading of sub-section (3) of Section 22 of the SICA, it is clear that a declaration by the Board is required with respect to the sick industrial company that the operation of all or any of the contracts, assurances of property, agreements settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended to that all or

any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board. There is no such declaration made by the Board so as to suspend the operation of the Award u/s 22(3) of the SICA.

30. In the case of Baburao P. Tawade and others V/s Iles Limited and another, 1995 Lab. L.C.2200, the Bombay High Court and in the case of Modi Industries Limited V/s Additional Labour Commissioner, 1994 LLJ 482, High Court of Allahabad have held that Section 22 does not create a bar against the workers as the workers cannot be expected to work without payment of their wages. Similar is the view taken by the Bombay High Court in National Textile Corporation Ltd. V/s B.M. Jagaonkar and others, 1997 (1) CLR, 1102.

That apart, we find that since no such ban has ever been imposed, u/s 22(3) and u/s 22(1) of the SICA, no proceedings for winding up industrial company or for execution distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board.

It is not a case where any proceedings for winding up industrial company or any property of the industrial company or appointment of the receiver or





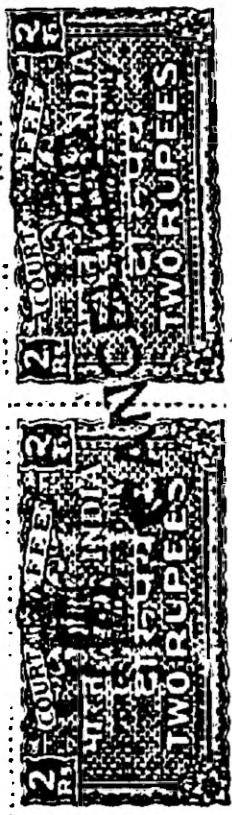
suit for recovery of money or for the enforcement of any security or guarantee in respect of any loans or advance granted to the industrial company is being proceeded with. It is only with respect to the claims covered u/s 22(1) of the SICA, the consent of the Board is required and not to the nature of the claims in the instant petitions. The mandate of Section 65(3) of the MPR Act has to be followed by the employer is not excluded by section 22(1) of SICA.

31. The learned counsel for the appellants has relied on a decision of the apex court in the case of Maharashtra Tubes Limited v/s SIICOM, (1993) 2 SCC 144, where the Apex Court has held that the proceeding under section 22(1) has to be broadly construed so as not to confine it to 'legal proceedings and for attachment and sale of the debtors' property, but will include coercive action like section 29 of the State Financial Corporation Act. Their Lordships have observed that the word 'proceedings' in section 22(1) cannot be given a narrow or restricted meaning to limit the same to legal proceedings, and the proceeding u/s 29 of the State Financial Corporations Act, 1951 are <sup>not</sup> different than the proceedings u/s 22(1) of the SICA. In the case of Real Value Applicances Limited v/s Canara Bank and others, AIR 1998 SC 2064, the proceedings against the assets were barred and in the case of Tata Davy Limited v/s State of Orissa (JT (1997) 7 SC 216), their Lordships of the Supreme Court were posed with a question of recovery of sales tax without the consent of the Board. The decisions cited are distinguishable and being totally different, fail to operate in the instant case. There is no order u/s

22(3) of the SICA and no proceeding is contemplated u/s 22(1) of the SICA. In the absence of declaration u/s 22(3) of the SICA, Award or Settlement cannot stand suspended.

32. The learned counsel for the appellant has lastly urged that the order of automatic dismissal of the writ petitions on non-payment of wages last drawn within three months, is bad in law and ought not to have been passed.

33. The consequence of non-compliance of Section 65(3) of the MPIL Act is not given in the Act. However, this Court considered the question in the case of Madhya Pradesh Dugdh Mahasangh V/s Gangadhar Sharma and another, 1990 MPLJ 138 while directing the compliance of Section 65(3), it was directed to be the condition precedent for hearing of the appeal on merits. The jurisdiction of this Court under Articles 226/227 of the Constitution give respect to the legislative mandate and it is open to the Court while exercising the power under Article 226/227 of the Constitution to direct the observance of the legislative mandate envisaged u/s 65(3) of the MPIL Act and also to direct dismissal of the case if the legislative mandate which is the wholesome purpose and public policy behind it, is not observed. However, as these appeals are preferred and were heard prior to the expiry of the three months' period, i.e. on 13.11.2000 and by the time, the matter is decided, the period fixed by the learned Single Judge of this Court has come to an end on 21.11.2000, we set aside the direction of automatic dismissal of both the writ petitions and grant time of one month from the date of this order to comply with



the direction issued by the learned Single Judge on 22.8.2000. failing which, the writ petitions shall be placed before the Single Bench to pass an appropriate order with respect to whether the appellants are entitled to further prosecute the writ petitions. Both the appeals stand dismissed.

*Bhawani Singh*  
Chief Justice

*Arjun Mishra*  
Judge

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High Court of Madhya Pradesh,  
JABALPUR.

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CJ

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Application received on	Applicant told to appear on	Applicant appeared on	Application (with or without further or correct particulars) sent to record-room	Application received from record-room with record or without record in further or correct particulars on	Applicant given notice for further or correct particulars on	Applicant given notice for further funds on	Notice in column (8) or (7) complied with on	Copy ready on	Copy delivered or sent on	Court-fee realized
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