

HIGH COURT OF MADHYA PRADESH: INDORE BENCH: INDORE

(SINGLE BENCH : HON. SHRI A. R. TIWARI, J.)

AS THIRD JUDGE ON DIFFERENCE OF OPINION BETWEEN TWO

HON'BLE JUDGES CONSTITUTING DIVISION BENCH

LETTERS PATENT APPEAL NO. 155 OF 1996

Manager, Kedia Distillery,
Industrial Estate,
Bhilai

v/s Chairman/President, State
Industrial Court, M. P., Indore
and 19 others

LETTERS PATENT APPEAL NO. 156 OF 1996

The Manager, Chhatigarh
Distillery, Kumhari,
District Durg

v/s Chairman/President, State
Industrial Court, M. P., Indore
and 19 others

LETTERS PATENT APPEAL NO. 162 OF 1996

Manager, Bhilai Engineering
Corporation, Impex,
Bhilai

v/s Chairman/President, State
Industrial Court, M. P., Indore
and 19 others

LETTERS PATENT APPEAL NO. 163 OF 1996

Manager, Simplex Engg. &
Foundry Works Ltd., Unit-I,
Bhilai and 11 others

v/s Chairman/President, State
Industrial Court, M. P., Indore
and 8 others

...

O P I N I O N

(Delivered on 05th December, 1997)

Altivalently these four Letters Patent Appeals under Clause-X of the Letters Patent were filed against the order dated 27.9.1996, rendered by Single Bench in Writ Petition No.1231 of 1995, presented by Manager, Simplex Engineering and Foundry Works Ltd., Unit-I, Bhilai, Unit-II, Bhilai, Unit-III, Rajnandgaon, Manager, Beekay Casting Ltd., Bhilai, Beekay Engineering Corporation, Bhilai, Unit-II, Bhilai, Manager, Bhilai Engineering Corporation, Raipur, Impex, Bhilai, Unit-II, Bhilai, Bhilai Wires Ltd., Bhilai, Manager, Kedia Distillery, Bhilai, Manager, Chhatigarh Distillery, Durg, Manager, Vishuvachet-Engineering Co., Bhilai, Manager, Simplex Casting Ltd., Unit-I, Bhilai and Unit-II, Raipur (15 petitioners), under Article 226/227 of the Constitution of India, in quest of quashing of order dated 27.9.1996 (Annexure- A/27) passed by Division Bench

of Industrial Court, Indore in Reference Cases No.1 to 15/
MPIR Act/93, over-ruling preliminary objections preferred
against the tenability of References 'A-1' to 'A-15', made
by State Government in exercise of power conferred by
Section 51 (a) of the M.P. Industrial Relations Act, 1960 on
26.2.1993, dismissing the writ petition and saying monosyllal
"no" to the prayers as projected.

2. Aggrieved by the order dated 27.9.1996, Manager,
Kedia Distillery, Bhilai filed Letters Patent Appeal No.155
of 1996; Manager, Chhatisgarh Distillery, Kumhari, District
Durg filed Letters Patent Appeal No.156 of 1996; Manager,
Bhilai Engineering Corporation, Impex, Bhilai filed Letters
Patent Appeal No.162 of 1996; and remaining 12 petitioners
of Writ Petition No.1231 of 1995 filed Letters Patent Appeal
No.163 of 1996. Letters Patent Appeals were heard by Divisional
Bench, constituted by Hon'ble Shukla and Hon'ble Chitre, JJ..
Arguments were concluded on 7.5.1997. Shukla, J., prepared
the order and sent it on 25.7.1997 for consideration by
Chitre, J., who differed and prepared separate order on
7.8.1997. Shukla, J., then passed the order on 7.8.1997 to
place the records before Hon'ble the Chief Justice who
directed on 2.9.1997 to list these appeals before me, as a
third Judge.

3. Facts are in narrow compass. In view of industrial
dispute between employers and employees, State Government
formulated the undernoted three terms and referred the same
for arbitration by the Industrial Court. Under Section
51 (a) of M.P. Industrial Relations Act, 1960

(2) क्या वेतन एवं मत्तों के पुनरीक्षण का बांन्वित्य है ? यदि हा
तो वेतन, मसंगाई मत्ता एवं अन्य मत्तों की क्या शर्तें
बांन्वित्य एवं इस संबंध में नियोजक को
बांन्वित्य

- (2) क्या प्रतिवर्ष 15 दिन का बाकस्मिक अवकाश, 10 दिन का स्थायी अवकाश तथा 30 दिन का चिकित्सा अवकाश दिये जाने का बाकित्व है ? यदि हां तो इस संबंध में नियोक्त को क्या निर्देश दिये जाना चाहिये ?
- (3) क्या सलेमन परिशिष्ट में उल्लिखित एम्प्लोयर्स का सेवा पृष्ठीकरण ग्रंथ एवं उचित है ? यदि नहीं तो इस सम्बन्ध में नियोक्त को क्या निर्देश दिये जाना चाहिये ?**

4. These references (A 1 to 15) were registered as Reference Cases Numbers 1/MPIR Act/93 to 15/MPIR Act/93. The appellants preferred preliminary objections against tenability of these references on grounds prodigious in number before Industrial Court, Raipur Bench. The learned Member-Judge of Raipur Bench, however, passed common order on 20.10.1994 directing placement of all cases before the President, Industrial Court to constitute Bench of two or more members to hear and decide preliminary objections, held to be of great importance. Bench, comprising of the President, who is now a Judge of this Court, and a Member-Judge, was constituted. These objections were heard at Indore and were dismissed by order dated 31.5.1995 (Annexure-'A/47') with direction that cases be sent to Raipur Bench for further proceedings in the matter. This order was unsuccessfully challenged in Writ Petition No.1231 of 1995, before Single Bench of this Court, presented on 15.9.1995.

5. After dismissal of objections on 31.5.1995 and before filing of Writ Petition No.1231 of 1995 on 15.9.1995, State Government passed amendment order on 27.7.1995/28.7.1995 and 30.7.1995/31.7.1995 adding one more term as Annexure extracted below, in regard to propriety or otherwise of interim relief, pending final adjudication, to removed employees (Annexure-'A-48 to 50') :-

(4) क्या अनुवर्षिक 15 दिनों का बाकस्मिक अवकाश, 10 दिनों का स्थायी अवकाश तथा 30 दिनों का चिकित्सा अवकाश दिये जाने का बाकित्व है ?

किए गए सम्मलान्तर्गत को विवाद का निराकरण होने तक अंतरिम राहत प्रदान करने का बाँझित्व है ? यदि हाँ तो इस संबंध में नियोजक को क्या निर्देश दिए जाना चाहिये ?

6. Raipur Bench considered Item No.4 and granted, during pendency of Writ Petition No.1231 of 1995, on 12.10.1995 interim relief, on the linchpin of more than two years old removal from service and of unlikelihood of possibility of final decision on references in near future, of reinstatement or of payment of wages drawn at the time of termination in the alternative. Appellants belatedly filed I.A.No.4563/96 on 9.9.1996 for amendment before Single Bench to question the validity of additional term as Item No.4 and order dated 12.10.1995 in Writ Petition No.1231 of 1995. This application was not allowed but liberty was granted to impugn the additional Reference and order before the Main Seat at Jabalpur in accord with territorial jurisdiction. Quashment of order of 12.10.1995 was sought.

7. Shukla, J., held that (i) there was no error in reference of Items No.1 to 3 (Para 39); (ii) Indore Bench of this Court has jurisdiction (Para 11); (iii) Reference of Item No.4 was per se illegal (Para 25); and (iv) Order dated 12.10.1995 was unfair and arbitrary (Para 34) and deserved to be quashed (Para 39). Reference of Item No.4 and order dated 12.10.1995 were accordingly quashed (Para 40).

8. Chitre, J., on the other hand, took the view that, notwithstanding hearing of preliminary objections and passing of order dated 31.3.1995 at Indore, Indore Bench possessed territorial jurisdiction as the preliminary objections were referred to Raipur Bench. No opinion was, thus, expressed in regard to Item No.4 and order dated 12.10.1995.

9. The counsel for parties filed an application for stay of the order.

10. In case of difference, the Third Judge can only record his opinion on point or points on which Division Bench differed and on no others under Clause XXVI of the Letters Patent as is held in 1977 M.P.L.J. 641 (Ladhuram Rameshwardayal Firm v/s Krishi Upaj Mandi Samiti, Shivpuri).

11. In my view the difference can precisely be formulated as under :-

(a) Whether in the face of References (A 1 to A.15) to Raipur Bench, Indore Bench of this Court did not possess territorial jurisdiction, despite order having been passed at Indore on objections against such references and as such whether Indore Bench could not entertain writ petition impugning order dated 31.5.1995 and whether Reference of Item No.4, (Annexure-'A-48 to 62') made by State Government at Bhopal to Raipur Bench and order dated 12.10.1995, passed by Raipur Bench are not impugnable at Indore Bench of this Court due to non-possession of territorial jurisdiction ?

(b) If answer is in the affirmative, whether quashment of reference of Item No.4 and of order dated 12.10.1995 is without jurisdiction ?

12. Respondents No.5 and 6 had filed reply in Letters Patent Appeal No.163 of 1996 on 9.12.1996 to the effect that on the basis of liberty granted by Single Bench in Civil Revision No.1231 of 1995 on 27.9.1996, the appellants filed separate writ petitions particularised as follows: 4200 of 1996, 4201 of 1996, 4202 of 1996, 4203 of 1996, 4204 of 1996, 4205 of 1996, 4206 of 1996, 4207 of 1996, 4209 of 1996, 4213 of 1996, 4216 of 1996, 4251 of 1996 and 4265 of 1996 at Jabalpur before Single Bench against the order dated 12.10.1995, quashed by State Government order which were dismissed on 7.10.1996.

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Patent Appeals, against the order dated 7.10.1996 are pending before Division Bench at Jabalpur. I.A.No.5418/97 is filed before me in Letters Patent Appeal No.155 of 1996 to take copies of orders on record. L.P.A.No.195 of 1996 filed at Jabalpur is dismissed as withdrawn.

13. I have heard Shri A.M.Mathur, learned senior counsel with Shri Brajesh Pandya, for the appellants in all these four Letters Patent Appeals; Shri Piyush Mathur, learned Government Advocate for respondents No.1 to 4; and Shri L. P. Bhargava, learned senior counsel with Shri S. M. Bapat, for respondents No.5 (Shramik Sangh) and No.6 (Mill Mazdoor Sangh), today. None appeared for other respondents, who are said to be proforma parties.

14. The counsel for the appellants submitted that differing opinion about non-existence of territorial jurisdiction of this Bench is erroneous and unsustainable as the cause of action did arise here at least in part on passing of order dated 31.5.1995 at Indore. He has pressed points of constitution of Industrial Court and has also placed reliance on A.I.R. 1976 S.C. 331 (Nasiruddin v/s State Transport Appellate Tribunal) and A.I.R. 1995 S.C. 2148 (U.P.Rashtriya Chini Mill Adhikari Parishad, Lucknow v/s State of U.P. and others). He supported the opinion of Shukla, J., in this regard.

15. The counsel for Respondents No.5 and 6 contended that order dated 31.5.1995 came to be passed on reference by Raipur bench itself as incidental to main cases of references with direction to place the cases again before Raipur bench for further proceedings (Para 21 of Annexure-1) and that in view of this Indore Bench of this Court lacked territorial jurisdiction as held by Chitre, J. He, thus, urged that contrary opinion of Shukla, J., is contrary to law. He further submitted that reference of Item No. 3 and 4



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dated 12.10.1995, in the face of absence of territorial jurisdiction, is bad in law. Moreover, reply dated 9.12.1996 as referred to in Para 12 above further made the quashment inappropriate and illegal. G.A. descanted doughty ditto.

16. I proceed to examine the worth of rival contentions to record my opinion on points (a) and (b) as chronicled in Para 11 above.

17. The counsel for the appellants has searched solace under Section 20 (c) of the Code of Civil Procedure, deeming it to be a protective umbrella, to plead that petition at Indore Bench against the order dated 31.5.1995, rendered at Indore, was entertainable because the "cause of action" in part arose at Indore. In structuring this plea, it seems to be overlooked that it is at once "destructive" in the sense that so far as References of Item No.4 (A-48 to 62) in July, 1995 to Raipur Bench and order dated 12.10.1995 of Raipur Bench, concerning establishments at Ehilai, Rajnandgaon, Raipur, Durg, are concerned, no cause of action, wholly or in part, in terms of Section 20 (c) of the Code, evidently arose within local limits of the jurisdiction of this Court at Indore. Frankfurter, J., observed in classic terms that "He that takes the procedural sword shall perish with the sword". The plea is demonstrably so sharp that it inevitably ends up "cutting" itself. Belief, if misplaced or overdosed, seldom offers relief. Havelock Ellis in "The Dance of Life" cautioned that "man must not swallow more beliefs than he can digest". The illation is that in an effort to save writ petition and thus Letters Patent, appellants' proceduralism perishes. Quashment of order dated Item No.4 and order dated 12.10.1995 on almost conceded non-accrual of any cause of action for the same here.

Decides the question in accordance with what seems to be just or reasonable in its eyes". In (1955) AC 696, 728 (Davis Contractors Ltd. v Fareham Urban District Council), Lord Radcliffe put it elegantly thus :-

"their actual persons should be allowed to rest in peace. In their place there rises the figure of the fair and reasonable man. And the spokesman of the fair and reasonable man, who represents after all no more than the anthropomorphic conception of justice, and must be the court itself."

19. What thus luculently falls for consideration is as to (i) what is meant by "cause" or action; (ii) what are the "local limits" of the jurisdiction in terms of Section 21 (2) of the Code; (iii) what was sought to be achieved via challenge to order dated 31.5.1995; (iv) what can be termed as just, fair and reasonable in conformity with law or procedural propriety; and (v) what is the impact of presentation of writ petitions against Item No.4 and/or order dated 12.10.1995 at Jabalpur and pendency of Letters Patent Appeals against dismissal order dated 7.10.1996 ? These questions, bereft of conundrum or legal acrobates, are simple, so should be the answers as march towards well-demarcated journey of the lit.

20. Employees, large in number, are flagellated and foined by the order of termination of service and fall on "thorns of life to bleed". Article 21 of the Constitution of India spoke of "right to life" which is interpreted to include "right to livelihood". Reference of additional item as No.4 seems to be born of that urge as the longevity of lit makes the sufferer impatient. After all, patience is never limitless. Dryden had cautioned that "Be-wary of the fury of the patient man". The attitude of lit, who can't see the society, must change. Thoreau stated that "Things do not change, we change". Are the employers here willing to change and prepared to put full-stop to litigative urges ? Likewise, are the employees in a mood to think in terms of industrial peace ?

21. Article 226 of the Constitution of India clearly says that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction".

Likewise Article 227 contains that every High Court shall have superintendance over all Courts and Tribunals "throughout the territories in relation to which it exercises jurisdiction".

The inbred question is whether any cause of action, wholly or in part, can be said to have arisen in the territory in relation to which Indore bench of this Court exercises jurisdiction ?

22. The stage is now set to consider points, producing no serra, seriatim, as documented in Para 19 above. First point is as to what is meant by cause of action ? In (1996) 3 S.C.C. 443 (South East Asia Shipping Co.Ltd. v/s Nav Bharat Enterprises Pvt.Ltd. and others), it is held that :-

"It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a court of law. The cause of action means, therefore, every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. In view of the admitted position that contract was executed in Bombay, i.e. within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done within the jurisdiction of the Bombay High Court; merely because bank guarantee was executed at Delhi and transmitted for performance to Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original side of the Delhi High Court. The contention that the Division bench was right in its holding and that since the bank guarantee was executed and liability was enforced from the bank at Delhi, the Court got jurisdiction, cannot be sustained."

23. In A.I.R. 1979 S.C. 154 (State H.D. Vashisht v/s M/s Glaxo Laboratories (I.) (P.) Ltd.), it is held that suitor fails if material facts, constituting "cause of action", are not averred. The facts and reliefs, claimed in the writ petition manifestly the occurrence of cause outside the territories

Bench of the High Court. The appellants claimed in the petition relief of quashment of order dated 31.5.1995, of references (Annexures-'A/1 to A/15' and Annexures-'A/48 to A/62') made by the State Government at Bhopal to Industrial Court, Bench Raipur. Interim relief of stay of further proceedings at Bench Raipur was also sought. By amendment applications, which were not allowed, quashment of order dated 12.10.1995 (Annexure-'P/7'), passed by Bench Raipur with reference to Item No.4, dubbed as without jurisdiction, was sought. In my view, mere consideration of preliminary objections, seeking invalidation of references triable by Bench Raipur and eventual disposal of the same by order dated 31.5.1995 at Indore, could furnish no cause of action, even in part, in the territory of this Bench. The meaning of "cause of action" is, thus, beyond any obscurity. There can be no legal battle to achieve armistice and plea should reflect absonance.

24. "Local limits" are again not in tenebrosity. Bhillai, Rajnandgaon, Raipur, Durg and Bhopal are not in the territories in relation to which this Bench exercised jurisdiction. Manifestly -

- (a) References are ordered at Bhopal and directed to Industrial Court, Bench Raipur (A-1 to A-15).
- (b) Final adjudication has to take place at Raipur (A-47).
- (c) Additional Item No.4 (A-48 to A-62) is also triable at Raipur.
- (d) Order dated 12.10.1995 (A-7) is passed at Raipur.
- (e) Order dated 31.5.1995 (A-47) is on objections against A-1 to A-15 only.

No part of cause of action thus arose within local limits of

this Bench. Bo-peep has to be shunned and spurned.

25. Challenge to order dated 31.5.1995 clearly meant that references, triable at Raipur, be mortalised. This was sought to be achieved when quashment of this order was claimed in writ petition and thereafter in these appeals. Is it desultory desuetude ?

26. Law and procedure required adherence to local limits i.e. well-demarcated territories. This observance can be termed as just, fair and reasonable. Impugment of order dated 12.10.1995 in separate writ petitions at Jabalpur and later recourse to Letters Patent Appeals there further spell out the hollowness of the plea about availability of jurisdiction.

27. Hon'ble Shukla, J., assumed jurisdiction on under-noted points :-

(i) The Division Bench has jurisdiction to hear appeals against the order passed by Single Bench at Indore (Para 11).

(ii) Reference of Item No.4 was impermissible without leave from Division Bench of Industrial Court as matter was subjudice before it. It interfered with judicial proceedings and was made without opportunity of hearing (Paras 23, 34 and 37).

(iii) Order dated 12.10.1995 (Annexure-'A/7') is vitiated as being passed without opportunity of hearing in fact has (Para 28).

(iv) Order was passed during pendency of petition and as such Bench at Indore could interfere on proper grounds (Para 32).

I am unable to find any discussion in the order as to how it

petition against order dated 31.5.1995 for quashment of references (Annexures-'A/1 to A/15' and 'A/48 to A/62'), made at Bhopal for Bench at Raipur was entertainable at Indore ?
Points, as noted above, do not and cannot create jurisdiction when there is none here. Order on Item 1 to 3 is not disturbed at all (Para 39).

28. Learned Single Judge (Hon'ble Jain, J.) did not permit the proposed amendments about Item No. 4 and order dated 12.10.1995. This amendment is not specifically allowed even by Division Bench. Respondents No. 5 and 6 had thus no occasion to plead facts in oppugnation by way of consequential amendment in the return.

29. Hon'ble Chitre, J., held against the jurisdiction in the undernoted terms :-

"Thus, I hold that this Bench of the High Court did not have the jurisdiction to adjudicate over the objections raised by the appellants in the writ petition about the said reference and the controversy involved. The appellants could have filed the writ petition at Jabalpur Main Seat of this High Court. They may file such petition if permissible by legal provisions. Therefore, I do not agree with my learned brother on this point of jurisdiction of this Bench of the High Court to entertain the controversy between the appellants and the respondents in context with the said reference of the State Government.

30. Nature and scope of power of Letters Patent Bench are indicated by Apex Court in (1996) 3 S.C.C. 52 (Baddula Lakshmaiah and others v/s Sri Anjaneya Swami Temple and others) as noted below :-

"It is the internal working of the High Court which splits it into different 'Benches' and yet the court remains one. A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the jurisdiction as was vested in the Single Bench. It is not an appeal against an order of a subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error."

31. The Court of Error, however, does not seem to have made any correction by upsetting order on amendment

Applications (I.A.No.4563/96 and 4564/96).

32. The purpose behind Article 226 is to incinerate injustice and to secure and advance justice. In A.I.R. 1984 S.C. 1164 (Babulal Nagar and others v/s Shree Synthetics Ltd. and others), it is held that :-

"Nothing appears more well settled than that the extraordinary jurisdiction under Art. 226 conferred on the High Court was a weapon forged to overreach injustice and secure and advance justice. When therefore, this extra-ordinary power is used to defeat justice and to promote technicality not only its *raison d'être* is violated but it becomes a handy instrument for those to whom litigation cost is a luxury enjoyed at the cost of others and employed to exhaust and harass an unequal opponent. Sad as it may appear that unfortunate situation emerges in this appeal."

.....The High Court, therefore wholly misread the relevant provision and interfered with the decision of the Industrial Court which was pre-eminently just and within the four corners of its jurisdiction. What left us guessing was that according to the High Court the Industrial Court had narrow jurisdiction while dealing with the order of the Labour Court, yet the High Court in exercise of its extraordinary jurisdiction interfered with the decision of the Industrial Tribunal. Times without number, it has been pointed out that Art. 226 is a device to secure and advance justice and not otherwise. (Sadhuram v. Delhi Transport Corporation (1983) 4 SCC 156 : (1983 Lab IC 1516)."

33. True it is that Letters Patent Bench did possess jurisdiction to examine validity of the order of Single Bench but it was free to examine whether entertaining of writ petition at Indore was within jurisdictional competence in terms of territory assigned to Indore Bench of this Court? The order of additional reference of Item No.4 was passed in July, 1995 after disposal of objections on 31.5.1995. So the matter was not subjudice at Indore at that stage. The reference of Item No.4 and the order dated 12.10.1995, passed at Raipur, do not become inapplicable at Indore on linchpin of interdependency of writ petition. The prayer for quashing of order dated 31.5.1995 is unavoidably inter-linked with references, of which validity or otherwise could not be adjudicated at Indore for want of territorial jurisdiction.

There is, thus, nothing to make departure or tear up any tenebrosity. The plea in support of jurisdiction is only the passing of the order at Indore. Cause of action is not the order but the references sought to be incinerated here. This is beyond the mandate of Article 226/227 and the scope of provision providing exclusion.

36. The appellants embraced, without justification and legal backing, "short-cut" which often proves to be a "wrong-cut". There is no arm or charm to litigate in instalments via separate petitions and Letters Patent Appeals at Indore and Jabalpur. Let law and justice live in harmony rather than in-antimony. Indeed, there is absence of territorial jurisdiction. Even a right decision by a wrong forum becomes a nullity.

37. In a democratic set up, all Governments have to remain wedded to the concept of welfare of the "greatest numbers". Clement Atlee had held that "If a free society cannot help the many who are poor, it cannot save the few who are rich". Francis Hutcheson had held the view that "that action is best which procures the greatest happiness for the greatest numbers". In the absence of territorial jurisdiction, it is not open to this Bench of the Court to examine the merits of the matter and to be able to observe that references by the State Government, oppugned by the employers as contrary to law and bereft of due application of mind, are born of aforesaid urge to retain or restore industrial peace and to intervene to prevent dropping of ~~the~~ section like hot brick. The special forum can decide as to 'who is wronged' and 'who has wronged'. After all, as observed in Ash Grove or Tennessee 297 U.S. 546, it is not a summary, non-judicial proceeding upon which the Court should not pass. Manifestly, it is a contested matter and requires adjudication in accord with law and logic.

38. Industrial Court has to exhibit candour and decide the matter according to law. It has to keep in focus the undernoted mighty words of Professor Pannick to avoid sense of panic -

"Judges are mere mortals
but they are asked to
perform a function that
is utterly divine."

And sure enough, parties to lis cannot afford to forget the observations of De Tocqueville that "Liberty cannot stand alone and must be paired with a companion virtue - i.e. liberty with law, liberty with common good."

Barring two features, to be indicated later in this order of Opinion, more, if necessary, should be said only by Labour/Industrial Court or other proper forum. In view of territorial fetter, this Court, in my view, should slip to the concept that 'silence is gold'.

39. In the ultimate analysis, I respectfully concur with the opinion of brother Chitre, J., that the Bench at Indore has no territorial jurisdiction to adjudicate the worth of objections directed against references made at Bhopal for Raipur Bench or to decide claim against Item No.4 or order dated 12.10.1995 and respectfully opine against the opinion of brother Shukla, J.. In my humble view the impugment of the orders is in reality the attack on references and is a step to interfere with course of proceedings at Raipur Bench.

40. Ex consequenti, I record my opinion on points (a) and (b), as formulated in Para 11 above, as under :-

(a) Indore Bench of this Court did not possess territorial jurisdiction and as such writ petition was not entertainable or was liable to be dismissed on that count alone.

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(b) In the absence of territorial jurisdiction, it was not open to examine validity of or quash reference of Item No.4 (Annexure-'A/48 to A/62') made at Bhopal for Bench Raipur or consequential order dated 12.10.1995 (Annexure-'A/7') passed at Raipur with regard to interim relief in Writ Petition or Letters Patent Appeals.

41. Writ Petition No.1231 of 1995, filed against the order dated 31.5.1995, dismissing objections in regard to tenability of Reference of Item No.1 to 3, was dismissed by Single Bench after considerations of points as posed and opposed. Hon'ble Shukla, J., held that there was no error as regards Item No.1 to 3 and thus sustained order of dismissal of the petition. He, however, considered additional Item No.4 and order dated 12.10.1995, passing interim award, both of out-side the territorial jurisdiction, and ordered quashment. Hon'ble Chitre, J., opined that entire controversy was beyond local limits and as such lis was not entertainable at Indore. As noted above, I have agreed with opinion of Hon'ble Chitre, J. Even then, I deem it proper to mention twin features 'Stare decisis', as indicated in Para 38 above :-

(1) Legal proceedings aim at doing justice to the wronged. There can be interim orders as well as a step towards final determination. In proceedings under Section 125 Cr.P.C., interim maintenance, as held in A.P.J. 1986 S.C. 984 (Sent. Govind Singh Rswat) can be granted.

Section 11 of Industrial Disputes Act, 1947 makes it clear that "award" means an "interim or final determination of any industrial dispute". Court at Raipur passed an award on 12.10.1995 on Item No.4, passing interim determination on 12.10.1995.

trial dispute, directing reinstatement of concealing workmen or payment of wages as drawn by them on the date of termination.

If this direction was *ex parte*, employers could have approached the same forum on proper grounds for proper opportunity but when they chose to assail the same in High Court, they were required to discharge statutory obligations in terms of Section 17-B of the Industrial Disputes Act, 1947, which provides that :-

"17-B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:"

The appellants do not seem to have obeyed the direction of statute and counsel for the parties do not seem to have brought this position of law to the notice of Single Bench or Letters Patent Bench. Letters Patent bench heard stay application on 1.11.1996 and directed that "parties shall maintain status-quo". I do not find any reference to Section 17-B of the Industrial Disputes Act. Law is not one-way traffic. Maxim "expressio unius exclusio alterius" does not offer succour at all times or all stages. The maxim in Calquhoun V. Proofs (1889) 21 Q B D-52 has been called "a valuable servant but a dangerous master". Section 17-B is not a superfluous provision but is intended to offer aid when litigation is incessantly pursued. S.B. also stayed on 3.11.1

42. The order dated 27.9.1996, dismissing Writ Petition No.1231 of 1995, is thus sustainable, though on different o

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Additional reason or ground stated above, i.e. lack of territorial jurisdiction and as such these Letters Patent Appeals, four in number, directed against the order dated 27.9.1996, have the fate to suffer similar dismissal on the majority view of lack of territorial jurisdiction at this Bench, by Letters Patent Bench with no orders as to costs.

43. The Omega has been said. Now these Letters Patent Appeals shall be placed by the office before the same Division Bench i.e. Letters Patent Bench on 12.12.1997, after obtaining orders of Hon'ble the Chief Justice for constitution of Special Bench, for passing final order in conformity with majority view in these Letters Patent Appeals.

44. As regards costs, I leave the parties to bear their own costs, as incurred, in this proceeding of opinion.

45. I direct that this Opinion shall be retained in Letters Patent Appeal No.155 of 1996 and a copy thereof shall be placed in each of the connected three Letters Patent Appeals for ready reference.

[Signature]
J U D G E
05-12-1997
04.30 PM

Sisarna SK/*

TRUE COPY
[Signature]
10-8-98
High Court of Madhya Pradesh
Indore Bench, Indore