Reserve Bank of India Vs Ashis Kusum Sen and Others

None

Court: Calcutta High Court

Date of Decision: Feb. 7, 1969

Acts Referred:
Constitution of India, 1950 â€" Article 226#Industrial Disputes Act, 1947 â€" Section 2(n), 22#Reserve Bank of India Act, 1934 â€" Section 8#Trade Unions Act, 1926 â€" Section 13, 17, 18, 2, 2(g)

Citation: 73 CWN 388

Hon'ble Judges: Sabyasachi Mukharji, J

Bench: Single Bench

Advocate: Subrata Roy Chowdhury, Biswaswarup Gupta, Tapas Kumar Banerjee and Jatin Ghosh for the Bank, for the Appellant; S.K. Acharyya and Tapas Roy for some of the employees, Somnath Chatterjee and Umesh Banerjee for some of the employees, Siddhartha Sankar Ray and Mrs. H. Dev Burman for 188 employees and Dr. Sambidananda Das for one of the employees, for the Respondent

Judgement

Sabyasachi Mukharji, J.
On the 14th of June, 1968 this suit was instituted by the Reserve Bank of India Act of 1934 against 1746 of its

employees as Defendants. The Reserve Bank of India has to perform many functions enjoined by the said statute. It has its various sections located

at 15 Netaji Subhas Road, Calcutta, and 8 Council House Street, Calcutta. The Defendants Nos. 1 to 10, it has been alleged, are members of the

supervisory staff who are Class II employees of the Plaintiff Bank. The Defendants Nos. 11 to 1672, it has been alleged, are members of the All

India Reserve Bank Employees Association and belong to Class II employees of the Plaintiff. It has been further alleged that Defendants Nos.

1673 to 1675 are members of the Supervisory Staff who are Class II employees of the said Bank. The Defendants Nos. 1676 to 1746 are

members of the All India Reserve Bank Employees Association. It has been further stated in the plaint that u/s 8 of the said Act a Central Board

was constituted with certain powers, and the said Central Board had pursuant to the said powers made certain regulations and conditions of

service for the said staff of the Bank known as the Reserve Bank of India (Staff) Regulations, 1948, hereinafter referred to as the said Regulations.

The clauses of the said Regulations have been set out in the plaint so far as they are material for the purpose of the present action. It has been

further stated that in March, 1966 it was agreed by and between the Plaintiff and the All India Reserve Bank Employees'' Association and the All

India Reserve Bank Workers'' Union that the CODE OF DISCIPLINE IN INDUSTRY hereinafter referred to as ''CODE'' would be applicable

to employees of the Plaintiff throughout India. It has been further asserted that there was an association of the Supervisory Staff known as All India

Reserve Bank Supervisory Staff Association.

2. The Plaintiff alleges that between the middle of December, 1967 and end of February, 1968 the Defendants in breach of the provisions of the

said Regulations and the Code and in breach of their contracts of employment took part in divers political demonstrations and political rallies,

violent activities, concerted stoppage of office work, intimidation of some employees who are described as loyal members of the staff and divers

other wrongful, illegal and tortuous acts resulting in frequent interruption of the Plaintiff''s normal business during office hours. It has been further

stated that after the Government of India had proposed the Banking Laws (amendment) Bill hereinafter referred to as the said Bill with a view to

introducing what is known as social control of banks in India, the Defendants with a view to expressing their disapproval of certain provisions of

the said Bill, called for and participated in what has been described as an illegal strike and illegal abstention from work on or about 28th February,

1968 contrary to provisions of law. It has been stated that the Plaintiff is a ""public utility service"" within the meaning of Section 2(n) of the Industrial

Disputes Act, 1947 as specified by relevant notification and as no notice of the strike as contemplated by Section 22 of the Industrial Disputes Act

was given, the said strike was illegal. The said strike, it has been asserted, was in violation of the specific condition of the said Regulations and the

Code. It has been further asserted that the said wrongful, illegal and tortuous acts of the Defendants took place on the 28th February, 1968, and

continued on the 29th of February, 1968 and they are alleged to have consisted of obstruction, intimidation and physical violence against the loyal

workers including officers and members of the supervisory staff and Class III employees of the Plaintiff, physical assaults on several loyal members

of the staff including lady telephone operators, wrongful and illegal watching and besetting unlawful confinement of loyal employees of the Plaintiff,

acts of nuisance, violent persuasion, malicious interference with trade, business and employment of the Plaintiff. Particulars of such alleged illegal,

wrongful tortuous acts and of the breaches of service conditions and contracts of employment between middle of December 1967 till the end of

February, 1968 have been set out in Part I of the Schedule annexed with the plaint and marked with the letter ""B"".

3. The Plaintiff asserts that with a view to maintaining discipline and ensuring smooth and proper conduct of the business, the Plaintiff proposed to

take disciplinary action against such of the employees as were instrumental to and/or participated in the said alleged illegal acts mentioned

hereinafter. According to the Plaintiff what was at first an illegal strike soon developed into an illegal intimidation and coercion with a view to

compelling the Plaintiff to withdraw disciplinary measures taken or proposed to be taken by the Plaintiff against such of the employees as were

instrumental to and participated in the said wrongful, illegal and tortuous acts. It has been further alleged that in or about the beginning of March,

1968 the Defendants and each of them wrongfully conspired together with and with each other with intent to injure the Plaintiff and thereby

compelling it to conduct its business in accordance with the requirements of the association of the Defendants. It has been alleged that there were

certain intimidations of officers, supervisory staff and loyal employees of the Plaintiff at the said two places of its business of the Plaintiff Bank,

physical violence and molestation, violent persuasion, shouting deafening slogans, unlawful confinement of the loyal officers of the supervisory staff

and malicious interference with the trade, business and employment of the Plaintiff. It has further been alleged that the Defendants committed

breaches of the contracts of Plaintiff''s loyal members of the staff, and forced the loyal members of the Plaintiff''s staff to abstain from working for

the Plaintiff. The Defendants had similarly conspired together with each other wrongfully to watch and beset the entrances exits and passages of the

said two offices of the Plaintiff, holding of meetings, pasting posters and shouting of deafening and offensive slogans, abuses and insults both inside

the office premises and outside thereof in the vicinity of the office premises of the Plaintiff, collectively leaving their posts and places of work and

compelling other employees to do the same by intimidation and threat of physical violent persuasion, making mass deputation to the Manager and

the departmental heads during office hours and intimidating and threatening the officers, supervisory staff and loyal employees, with a view to

preventing any work being done or business being transacted so long as the wrongful demands of the Defendants were not acceded to by the

Plaintiff. It has been further alleged that pursuant to and in furtherance of the said conspiracy the Defendants on divers dates between March, 1968

and June, 1968 wrongfully and without legal authority threatened and intimidated the officers, supervisory staff and loyal employees of the Plaintiff

at the said offices with violence and molestations. Particulars of such alleged wrongful, illegal and tortuous acts are mentioned in Part II of the

Schedule annexed to the Schedule marked ""B"". It has been further alleged that the Defendants and each of them wrongfully conspired with intent to

injure the Plaintiff to create a nuisance and did in pursuance of their conspiracy create nuisance particulars whereof have been mentioned in the said

schedule. It has been asserted that by reason of the aforesaid acts, the Plaintiff"s business, trade and employment have been and still are being

interrupted and maliciously interfered with and the Plaintiff has suffered and is suffering loss and damages and the Defendants in breach of their

contract of their service wrongfully and illegally deprived the Plaintiff of its employees in the manner mentioned in the said two places of business.

The Plaintiff has also been deprived, it has been asserted, of its rights of enjoyment of its office and places of business and the Defendants and each

of them threatened to invade the Plaintiffs right to the services of its employees and to the enjoyment of the said offices and places of business,

unless the wrongful demands of the Defendants are met. In these circumstances it has been stated that there exists no standard for ascertaining the

actual damages caused or likely to be caused by the aforesaid illegal and wrongful activities and wrongful invasion of the Plaintiff"s right. In the

premises the Plaintiff has filed this suit claiming: (1) Injunction restraining the Defendants and each of them by themselves or by their servants,

agents, nominee or assignees from: (a) threatening or intimidating any officer or any member of the supervisory staff or any employee of the

Plaintiff; (b) committing any act of wrongful confinement or detention of any officer or member of the supervisory staff or any employee of the

Plaintiff at the Plaintiff"s places of business at 15 Netaji Subhas Road, Calcutta and 8 Council House Street, Calcutta or within 100 yards of any of

the said premises; (c) threatening or intimidating any officer or member of the supervisory staff or any employee of the Plaintiff with a view to

stopping or interfering with the work and/or business of the Plaintiff in the said two office premises of the Plaintiff; (d) watching and besetting the

entrances, exits and passages at the said two offices of the Plaintiff or within 100 yards thereof; (e) holding any meeting or organizing any unlawful

gathering or assembly inside the buildings of the said places of the business of the Plaintiff or within 100 yards of the said places of business of the

Plaintiff with a view to interrupting the normal functioning of the Plaintiff"s work and/or business; (f) shouting insults, abuses and slogans inside the

office premises at the said two places of business of the Plaintiff or within 100 years of the said premises; (g) displaying posters within or outside

the said two places of business of the Plaintiff; (h) committing any act of malicious or wrongful interference with trade, business or employment of

the Plaintiff; (i) persuading or inducing any employee of the Plaintiff to abstain from working for the Plaintiff in the said two places of business; (j)

intimidating any customer or constituents or caller of the Plaintiff during office hours; (k) committing any act with a view to preventing work being

done and business being prevented at the said two places of business of the Plaintiff; and for other incidental reliefs.

4. After the institution of the suit on the same date, on the 14th of June, 1968 the Plaintiff made this application before A.N. Sen, J. and A.N. Sen,

J. made an interim order in terms of prayers (a), (b), (c), (d), (e), (f) and (j) of the Notice of Motion which are more or less in identical terms with

the prayers in the plaint as set out hereinbefore. His Lordship further directed the notice to be served in a particular manner. It appears that on the

17th June 1968 the matter was mentioned on behalf of the Respondents before A.N. Sen, J. and His Lordship varied the order in respect of

prayer (d) by limiting it to 25 yards instead of 100 yards. It was further recorded that the Bank would grant permission for the holding of the

meeting at the canteen during luncheon recess. Certain other directions regarding holding of the meetings were given and it was further directed that

there should be no victimization during the pendency of the present proceedings but this order was not to prevent the Bank from issuing any show

cause notice for any offence committed by any of the employees before the order of Injunction was made. It appears that on the returnable date on

1st of July, 1968, A.N. Sen, J. further gave a direction against the employees from taking any mass casual leave. The Respondents thereafter

asserted that in violation of the said order of the 17th of June, 1968 certain disciplinary proceedings were being taken against some of the

Respondents and an application for committal for contempt was moved before A.N. Sen, J. By a judgment delivered on 26th August 1968, A.N.

Sen, J. disposed of the said application. By the said order A.N. Sen, J. directed that the status quo should be maintained that is to say, the

disciplinary actions and proceeding should not be preceded with until the disposal of the present application.

5. Various interesting and fundamental arguments were advanced in this case. Numerous decisions and several authorities were cited from the Bar.

Mr. S.K. Acharyya, appearing for some of the contesting Respondents urged that strike and picketing are not illegal in India today. The right to

strike and the right to picket are legitimate trade union rights recognized by law. According to Mr. Acharyya is there is any violation of the

provisions of the Industrial Disputes Act by participating in an illegal strike, the remedies as provided for in the said Act should be resorted to. Mr.

Acharyya secondly contended that the matter complained of in this suit, if true, are matters amenable to be rectified in appropriate criminal actions.

The Plaintiff has, according to Mr. Acharyya, no right to maintain a civil action as in the present form. Mr. Acharyya further submitted that the

prayers in this petition are so vague and general in nature that no civil Court should entertain them because it would be practically impossible to

enforce or superintend for this Court orders in respect of such prayers.

6. Mr. Somnath Chatterjee, learned Counsel for the other group of contesting Respondents, supported Mr. Acharyya and made an elaborate

argument raising certain fundamental issues. Mr. Chatterjee''s argument was that prima facie before this Court there was not enough acceptable

evidence of the alleged wrongs mentioned in the petition. Mr. Chatterjee drew my attention to the fact, that at least one of the Respondents who is

alleged to have conspired is dead and some others were on leave at the relevant time. Mr. Chatterjee further urged that the Petitioner has to state

who of the Respondents had conspired and when the conspiracy took place and has to adduce proper evidence to this Court of the various

wrongful acts complained of. He submitted that some of the Respondents numbering 188 being the clients of Mr. Siddhartha Sankar Ray had been

described as loayal workers and reliance had been placed on their affidavit by the Petitioner. So according to Mr. Chatterjee on their own showing

the petition is incorrect and this Court cannot place any reliance on such a petition. Mr. Chatterjee further submitted that there is no proper affidavit

by any person verifying the incidents relating to the period between middle of December 1967 to the end of February, 1968 which have been

mentioned in Part I of Annexure "B". There is no affidavit of Vidyasagar Bagga. He characterized the present petition and the affidavit-in-reply as

thoroughly reckless and urged that no reliance can be placed on them by this Court. he submitted that his clients should be given an opportunity to

test the veracity of the gentleman verifying the petition and the correctness of the statements and the urged that if I so feel I should set the matter

down to be tried on evidence. Mr. Chatterjee, secondly, submitted that the wrongs which have been complained of in the petition are within the

legitimate means of the workers for enforcing their trade union rights. Mr. Chatterjee mainly relied on the argument that u/s 18 of the Indian Trade

Union Act, 1926, the wrongs complained of having been done in contemplation and furtherance of a trade dispute the present action against his

clients and the clients of Mr. S.K. Acharyya, who are members of a registered trade union, is not maintainable. Mr. Chatterjee invites me to take a

broad view of the expression trade dispute. Mr. Chatterjee urged that the agitation was for withdrawal of certain provisions of the Banking Laws

(Amendment) Bill. In the said Bill, according to Mr. Chatterjee"s clients, in the grab of introducing social control of the banks drastic curtailments

of the rights and privileges of the workers have been sought for. As such, according to Mr. Chatterjee, they were entitled to agitate against them

inasmuch as the management of the Reserve Bank of India can influence the Government for the modification or withdrawal of the said provisions.

Mr. Chatterjee, then, submitted that on a proper reading of the plaint and the petition it would be manifest that the Petitioner is complaining of

certain alleged wrongful conducts of the employees which it has been further alleged the employees have resorted to for the purpose of compelling

the Petitioner to withdraw certain disciplinary proceedings. The alleged wrongful acts have clearly, he urged, been done in furtherance of and in

contemplation of a trade dispute. The Respondents are protected by Section 18 of the Indian Trade Union Act. Mr. Chatterjee also urged that the

Petitioner Bank as such has no right to institute the present proceedings. He submitted that an officer or employee of the Petitioner Bank, if

aggrieved by any particular act complained, if wrongful or illegal, may institute proceedings in respect of the said wrong done to him. Mr.

Chatterjee further submitted that as the Reserve Bank of India was not an institution for profit, there cannot be any question of suffering any

damage. Mr. Chatterjee further submitted that there was no basis for claim for damages. Mr. Chatterjee urged that his clients were not unruly, did

not indulge, in any violence or intimidation. Mr. Chatterjee stated that against an insensitive and callous management his clients had no demonstrate

to make known their views and grievances, which as workers and as citizens of this country, they are entitled to do, and before restraining these

persons from what was termed by Mr. Chatterjee as legitimate Trade Union activities and rights of the Trade Union movement, which, the

employees have secured as a result of a long process of struggle and agitation, I should weigh very carefully the evidence adduced and the case

made out by the Petitioner.

7. Mr. Subrata Roy Chaudhury, learned Counsel for the Petitioner urged before me that more than a prima facie case has been made out in facts

and circumstances of the matter before me. He urged that a Public concern was unable to discharge its statutory obligation and its duties so

necessary and vital for the finance and economy of the country. He argued that his client is asking for restraining the Respondents from various

violent and tortuous acts mentioned in the pleadings or from creating nuisance and disturbances which have made work impossible. He stated that

the case made out in the petition has been fully established by the facts adduced before me. He further urged that if the Respondents have not

committed these various violent, tortuous and wrongful acts then the Respondents would not be prejudiced if they are restrained by an injunction

from perpetuating these acts until the disposal of this action. On the other hand, he urged, if the Respondents have perpetuated these acts and the

Petitioner has a cause of action in preventing these wrongful acts, then unless an order is made, and the Respondents are permitted to go on in

indulging in these various wrongful activities irreparable loss and harm would be caused to his clients. He urged that on a proper reading of Section

18 of the Indian Trade Union Act it must be held that the said provision does not grant the Respondent any immunity from the acts which are illegal

or violent. He further urged that Section 18 grants immunity in cases where actions complained of "only" induce a break of contract or cause

interference with the trade, business or employment of some other person or with the right of some other persons to dispose of his capital and

labour but where apart from that they cause other injuries or result in other wrongful activities, Section 18 affords no protection. He drew my

attention to the particulars set out in petition and submitted that many of the instances have been verified as true to the knowledge of the Manager

of the Reserve Bank of India who has affirmed the affidavit in support of the petition. These instances, taken together with the resolutions and

circulars of the association of the Respondents the affidavit of the clients of Mr. Siddhartha Sankar Ray and the nature of denial by the other

Respondents fully establish, according to Mr. Rooy Chaudhury, the case made out in the petition. Mr. Roy Chaudhury urged that threat to break a

contract would amount to tort of intimidation. He also submitted that procuring breach of contract of one''s employees with threats and intimidation

would certainly amount to actionable wrong.

8. Mr. Siddhartha Sankar Ray appearing for about 188 Respondents urged before me that in considering and in applying the test of whether the

acts complained of amounts to nuisance or wrongful interference, I should bear in mind the vital functions discharged by the Reserve Bank of India

and that it is Public Utility concern. What will be permitted as Labour agitation Mr. Ray urged, in a jute mill or in the tea garden in Assam cannot,

in the interest of national well-being, be permitted in such a vital Public Utility concern like the Reserve Bank of India. Mr. Ray secondly submitted

that it is important to bear in mind that the trade union rights of some of the workers cannot be utilized in such a manner as to be destructive of the

rights of all the workers. Mr. Ray drew my attention to the conduct of the association of the other Respondents to show its true character and its

political colour. Mr. Ray submitted that the Petitioner has for a long time held up the recognition of the Union belonging to his clients and in

disposing of this application I should make it quite clear that the pendency of the sit or the application does not in anyway affect the right of

recognition of their union.

9. Dr. S. Das, learned Counsel for the Respondent Akshay Kumar Chatterjee, submitted that his client did not commit any of the acts complained

of. He submitted that the application should be dismissed.

10. Inasmuch as this is an application for an interlocutory injunction it is necessary to consider whether a prima facie case has been made out and

what would be in the facts and circumstances of the case the proper order, having taken into consideration, the balance of convenience of the

parties. In order to consider whether a prima facie case has been made out or not it becomes necessary to decide whether the action as framed is

maintainable in law and if it is then whether the evidence and the affidavits are sufficient to sustain prima facie the allegations made.

11. For the purpose of deciding the above question it would be necessary to examine the frame of the suit. In paragraph 7 of the plaint it has been

stated that between middle of December, 1967 to end of February, 1968 the Defendants did various things in breach of the Regulations and Code

and in breach of their contracts of their employment. The validity of the said Regulations has been disputed in these proceedings by the contesting

Respondents. It has been stated that the said Regulations to be effective should have been with the consent of the Central Government and as that

was not done the same are not valid and binding. An application under Article 226 of the Constitution of India, it has been stated, is pending in this

High Court being Civil Rule No. 2735 (W) of 1966 challenging the validity of the said regulations. It has been asserted that it was agreed that until

the constitutional validity of the said Regulations have been determined by the Court of Law, the same could not be given effect to. The Petitioner

on the other hand asserts that they are valid. Furthermore, the Petitioner asserts that both under contract of employment and specific terms by

which most of the Respondents agreed to abide by the said Regulations and there are letters to that effect, and as such the Respondents should not

now be permitted to resile from that position. I am of the opinion that for the purpose of disposing of this application it is not necessary for me at

this stage to decide whether the said Regulations and the Code are valid or binding on the Respondents and if so if there have been any violation of

the said Code and the Regulations and the terms of employment for the following reasons:

(a) The said Regulations and the terms of the Code if they are valid are certain terms engrafted to the terms of employment of the employees. If

there have been breaches of these terms in order to restrain the Defendants in an action from committing the breaches of these terms it would be

necessary for the Court to be satisfied that such terms could be enforced by the Plaintiff in a suit for specific performance. As at present advised I

am of the opinion that the said terms cannot be enforced in a suit for specific performance even if the said Regulations, and the terms of the Code

are valid and even if there have been breaches of the said Regulations, Code and the terms of employment. As such in this application the

Petitioner is not entitled to injunction for the purpose of enforcement of the terms of the said Regulations, the Code and the terms of employment.

(b) In any event the participation in political demonstration, namely, the agitation against the Banking Laws (Amendment) Bill and the dismissal of

the United Front Ministry in West Bengal and the installation of the Ministry headed by Dr. P. C. Ghose, are matters of historic importance now

for the purpose of this application. The conduct of the Respondents relating thereto, if true and wrongful, though may be a relevant factor in judging

the subsequent conduct of the Respondents, no relief can be granted in respect of the same. So I need not judge the validity or the propriety of the

same at this stage.

12. It has been stated that in view of the various wrongful and illegal acts committed by the Defendants between middle of December, 1967 and

end of February, 1968 for the purpose of maintaining discipline and ensuring smooth and proper conduct of the business of the Plaintiff, the Plaintiff

Bank proposed to take disciplinary actions against such of the employees; who were instrumental to and participated in the said alleged illegal

activities, it has been further asserted in paragraph 8 of the plaint that in order to compel the Plaintiff to withdraw the steps taken for disciplinary

measures against those employees what was, according to the Plaintiff, an illegal strike soon developed into an illegal intimidation and coercion. It

has been stated that there was a wrongful conspiracy in March, 1968 between the Defendants and each of them to injure the Plaintiff and to

compel it to conduct its business in accordance with the requirements of the said Association of the Defendants. It has been further stated that

there was conspiracy to threaten and intimidate officers, supervisory staff and loyal employees of the Plaintiff at the said two places of business

with physical violence, molestation, violent persuasion and the various other conspiracy which have been set out in paragraph 9 of the plaint. Then

it has been stated in paragraph 10 of the plaint, pursuant to the said conspiracy the Defendants have committed various acts which have been

mentioned in paragraph 10 and Part II of Schedule "B" annexed to the plaint. In paragraph 11 it was stated that there was a conspiracy to injure

the Plaintiff by creating nuisance and in fact nuisance was created. It is therefore apparent that the basis of the claim of the Plaintiff is that there was

a conspiracy between each of the Defendants to commit various wrongful and tortuous acts and pursuant to that conspiracy certain wrongful acts

have been alleged to have been committed, particulars whereof have been mentioned. The Plaintiff asserts that as there is evidence of the

Defendant"s intention of continuing such wrongful acts the Defendants should be restrained by injunction. Apart from this there is a claim based on

conspiracy to commit nuisance and certain reliefs on that basis have been claimed. It will be dealt with separately later in this judgment. It is an

admitted position that the most of the Respondents are members of a registered Trade Union. It has been suggested on behalf of the Petitioner that

the Respondents have not been sued as members of a registered Trade Union. In my opinion, if the acts complained of are within the protection of

Section 18 of the Trade Union Act, 1926, and if the parties against whom grievances are being made are entitled to such protection, it is irrelevant

to consider whether they have been Trade Union or not. On behalf of the Respondents the main argument has been that even if the acts

complained of are true the Respondents are entitled to protection u/s 18 of the Trade Union Act, 1926. Before the question of protection or

immunity u/s 18 of the said Act is considered it is necessary to examine whether the Plaintiff is entitled to maintain a cause of action or is entitled to

reliefs claimed on the basis of the said cause of action in the facts of this case. Conspiracy to procure breach of service of one"s employees is

wrong. That is actionable as a tort at the instance of the party who has suffered damages as a result of such conspiracy. Committing breach of

one"s own terms of employment is also wrong but this is actionable as a breach of contract. If the plaint is strictly analyzed then it appears that in

paragraph 9 it has been alleged that the Defendants and each of them, have conspired with each other to do various wrongs to the Plaintiff as

mentioned in the said paragraph. It is not at all clear from the plaint or the petition that there was any conspiracy to threaten or intimidate, other

employees, other than the Defendants for the purpose of either procuring their breaches of contracts or for inducing them to commit breaches of

their contracts with the Plaintiff. There is no allegation that there was any conspiracy to threaten the Plaintiff or intimidate the Plaintiff. The question

therefore, arises, to whom did the Defendants conspire to threaten or intimidate? Did they conspire to threaten or intimidate employees, other than

those, who are the Respondents to this action, if so, is there any allegation or evidence of that. There cannot be a threat or intimidation to oneself

far less a conspiracy to intimidate or threaten oneself. If the plaint is read to mean that the Defendants conspired and as a result of that conspiracy

threatened and intimidated themselves, I am order the opinion that for such a cause of action no relief can be granted in this suit. If on the other

hand there is a conspiracy by some of the employees of the Respondents to procure breach of contracts of some other employees of the

Respondents or to induce such breaches and pursuant to that conspiracy any threats or intimidations were held out to the Plaintiff or to some other

employees an action might lie, apart form the question of protection u/s 18 of the Trade Union Act, 1926, either at the instance of the employer or

at the instance of those other employees who have been threatened or intimidated.

13. The question then that requires consideration is whether conspiracy and threat as a result of that conspiracy to commit breach of contract is

actionable. This will involve consideration of the question whether the tort of intimidation covers threat to commit breaches of contract. It will be

necessary for this aspect of this question to consider the controversial decision of the House of Lords in the case (1) Rookes v. Barnard, 1964

Appeal Cases, p. 1129. There what happened was that the Plaintiff Rookes was an employee employed by the British Overseas Airways

Corporation. He was a skilled Draughtsman. He resigned membership of the Association of Engineering and Shipbuilding Draughtsmen, a

registered trade union. By an agreement made on April 1, 1949, between employers and employees, it was provided that no lock out or strike

should take place and any dispute should be referred to arbitration. The design office where the Plaintiff had worked as a Draughtsman was

subject to what is known in trade union jargon as ""closed-shop"" and on the Plaintiff"s refusal to rejoin the union, all the union members by a

resolution decided to inform the Corporation that if the Plaintiff was not removed from the design office the union would withdraw their labour and

notice was accordingly served on B.O.A.C. The Corporation, being informed of the resolution by the Defendants first suspended the Plaintiff and

thereafter dismissed him. The Plaintiff instituted an action for damage against Trade Union officials for using unlawful means to induce the

Corporation to terminate his contract of service with him and/or for conspiring to have him dismissed by threatening the Corporation with strike

action. Sachs, J. held that all acts complained of were done in pursuance of trade dispute and held further that threat to strike in breach of the

agreement of 1st of April, 1949 were unlawful acts constituting intimidation and were actionable as tort as they had harmed the Plaintiff the

Defendants were not protected by Section 1 and 3 of the Trade Disputes Act of 1906. The Court of appeal reversed that decision holding that

although the tort of intimidation existed it did cover the case of a threat to break a contract. The House of Lords held that the tort of intimidation

was established and comprehended not only threats of criminal or tortuous acts but breaches of contract and on the facts the Defendants have

committed tort of intimidation. Before this decision and its ramification and its validity in the context of the present dispute is examined, it is

necessary to remember certain salient distinction between the basis of the claim made in that case and the basis of the claim made in the instant

case. It appears to me reading the present plaint that there is no basis of any claim that there was any conspiracy to threaten the Plaintiff bank to

commit breaches of contracts or to induce other employees to commit such breaches. Threat of committing breach of contract and conspiracy to

commit a threat of breach of contract may or may not be an essential ingredient of the tort of intimidation, but in order to be a threat to commit a

breach of contract it must be held out to the person with whom the contract of employment or the contract subsists. The basis of the claims as laid

down in paragraphs 9 to 10 of the petition and the plaint does not seem to me to indicate that there was any threat or any conspiracy of any threat

to the Plaintiff bank with whom the employees had their contracts of employment about the committal of any breach of contracts. The threat that

has been complained of is the threat to the other officers and employees of the Plaintiff Bank. Whether that would again constitute an actionable

wrong in the facts of this case is a different question. But it is important to reiterate in the instant case the basis is not intimidation to the Plaintiff

Bank by threatening it with the breaches of contracts of the Defendants or by threatening it to procure the breaches of contracts of the employees.

Inasmuch as the decision in the case of Rookes v. Barnard, (Supra), has raised a good deal of controversy, as would be evident from the

subsequent decisions and authorities mentioned hereinafter, it is important to bear in mind the true scope of that decision. In the words of Lord

Reid at (1964) AC 1166. ""The case, therefore, raises the question whether it is a tort to conspire to threaten an employer that his men will break

their contracts with him unless he dismisses the Plaintiff, with the result that he is thereby induced to dismiss the Plaintiff and cause him loss.

14. The next question that was considered in the said decision was whether the Respondents were absolved from any liability in view of the

provisions of Trade Disputes Act, 1906. It was held that they were not so absolved. Explaining the history of the situation that led to the passing of

the Trade Disputes Act, 1906 at page 1175, Lord Reid observed: ""If that is a correct statement of the position in 1906 - and in think it is - there

were three classes of inducement which Parliament had to consider, (i) inducement accompanied by violence or threat (ii) inducement involving a

breach of contract, and (iii) mere inducement alone. As regards (i) and (ii) the law was thought to be clear, as regards (iii) it was not. Section 3 is

silent as to (i), so one might think that it leaves the existing liability unaltered. It deals with (ii) and (iii). I have stated my opinion as to how it deals

with (ii); it confers immunity, provided that there is no further element of illegality, such as intimidation. The question is how it deals with (iii). Does it

there go further and confer immunity even where there is intimidation? The general plan of the section appears to be to treat (ii)and (iii) in precisely

the same way it would seem a strange result if the liability of the present Respondents depended on the method which B.O.A.C. adopted in

acceding to their demand that the Appellant should be removed from the design office within a few days."" Lord Reid quoted at page 1176 the

following observations of Lord Loreburn in (1909) AC 506 at 511-512 ""it is clear that, if there be threats or violence, this section gives no

protection, for then there is some other ground of action besides the ground that "it induces some other person to break a contract", and so forth"".

At page 1178 of the said judgment Lord Reid concluded by saying ""In my judgment, it is clear that Section 3 does not protect inducement of

breach of contract where that is brought about by intimidation or other illegal means and that Section must be given a similar construction with

regard to trade, business or employment."" So, in my opinion, this Section does not apply to this case because the interference here has been

brought about by unlawful intimidation.

15. Citrioe in its Third Edition of Trade Union Law at page 29 observed as follows:

The threat by Barnard and his fellow employees, if carried out, would have involved a breach of their contract of employment, for it was admitted

that an undertaking in a collective agreement that no strike or lock out would take place had become a term of the contract of employment.

Rookes" claim for damages succeeded before Sachs, J. the jury awarding Ã¯Â¿Â½7,500 damages. The Court of Appeal unanimously reversed this

decision and in turn the House of Lords unanimously held that the three Defendants were liable to pay damages, but held also that the trial Judge

had erred in holding that punitive damages could be awarded and ordered a new trial on the question of damages. The threat to strike in breach of

contract was held to constitute the tort of intimidation and since this tort is actionable independently of the element of combination it fell outside the

protection given by Section 1 of the 1906 Act. The second limb of Section 3 of that Act was held in effect to be declaratory of the common law.

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16. In view of the confusion and uncertainty into which Rookes v. Barnard (Supra), plunged the law relating to trade disputes, the Trade Disputes

Act of 1965 was passed. It is nicely tailored to deal with the issues raised in that case and provides that a threat that a contract of employment will

be broken, or a threat to induce a breach of a contract of employment shall not be actionable. The object was stated to be to restore the law to

what it was generally believed to be prior to Rookes v. Barnard, (Supra), pending a full examination of the position of trade unions (inter alia) by

the Royal Commission on Trade Union and Employer''s Associations set up in 1965.

17. Not only did Rookes v. Barnard (Supra) itself caused confusion but the success of the applicant appears to have unleashed a veritable spate of

litigation challenging the protection given to trade unions, their members and officials in 1906.

18. The decision in Rookes v. Barnard (Supra), came up for consideration by the Court of Appeal in England in the case of A.J.T. Stratford and

Son Limited v. Lindley and Others, (1964), 2 All ER 209. At page 216 Lord Denning M.R. observed, ""so much for the common law as to

intimidation. What is the impact on it of the Trade Disputes Act, 1906? The important thing to notice is that, u/s 3,it is not actionable for a person,

in contemplation or furtherance of a trade dispute, to induce some other person to break a contract of employment. Note the emphasis on the

word ""induce"". It is the inducement by one person of another which is not actionable. It is still actionable for a person to break his own contract of

employment. It seems to me that the same must apply to threats. It is not actionable for one person to threaten to induce some other person to

break his contract. But it is still actionable for one person, in concert with others, to threaten to break his own contract. Rookes v. Barnard

(Supra) was of the latter class. It was a very special case. There was a very unusual contract, namely, a contract between employers and

employees that no lock out or strike would take place. In flagrant defiance of that contract, the employees threatened to break it. They threatened

to take strike action unless Rookes was discharged. The trade unions officers were the agents of the employees to convey that threat to the

employers. Rather than risk a strike, the employers dismissed Rookes by giving him regular notice. Understandably enough, the House of Lords

held that it was intimidation and not protected by the Trade Disputes Act, 1906. Each of the trade union officers (including Silverthrone who was

not an employee) was liable, because he was a joint tort-feasor in the threat to break the contract.

19. At page 217Lord Denning, M. R. further observed as follows:

In my judgment, in the instances which I have put, the acts of the trade union officer are protected by Section 3 of the Trade Disputes Act, 1906.

That section makes it clear that it is not an actionable wrong to induce such a break I cannot see that it is not actionable to threaten to induce it.

And that is all the trade union officer has done. I must decline, therefore, to extend Rookes v. Barnard (Supra) beyond its own particular

circumstances; for, if we did, we should greatly diminish the right to strike in this country. Nearly every strike notice would be unlawful mean that

an employer who, under threat of a strike, raised the wages would be entitled to recover damages from the trade union officers on the ground that

the increase was extorted by intimidation. No one has ever supposed that any such action would lie. It has always been though that Section 3

covered it.

* * * * * * * * * * * * *

20. The decision went up in appeal to the House of Lords where the decision of the majority of the Court of Appeal was reversed by the House.

The decision of the House of Lords is reported in 1965 Appeal Cases page 269. Lord Reid at page 325 observed as follows: -

On the view which I have taken of the present case it is not necessary to consider the scope and effect of the decision of the House of Lords in the

case of Rookes v. Barnard (Supra) and anything which I might say about that case would be obiter. So I do not think it would be appropriate to

discuss the grounds of the judgment in the Court of Appeal and I shall not express any opinion about them. I think, however, that I should point out

that Rookes v. Barnard and Ors. (Supra), was a case in which the Defendants caused loss to the Plaintiff by using unlawfully means to induce a

third party to incur a loss on him. But a case where the Defendants present to the Plaintiff the alternative of doing what the Defendants want him to

do so or suffering loss which the Defendant can cause him to incur, is not necessarily in pari passu and may involve questions which cannot arise

where there is intimidation of a third person.

21. The latest case in which I find that the decision of Rookes v. Barnard and Ors. (Supra) came up for consideration is the decision of the Court

of Appeal in England in the case of (2) Morgan v. Fry and Others, in (1968) 3 All ER page 458, where Lord Denning, M.R., observed as follows:

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The only ground of the action is that it is an act of intimidation which interferes with the Plaintiff"s employment or with his right to dispose of his

labour as he wills; but the House of Lords in Rookes v. Barnard (Supra), held that the last two limbs do not apply when the interference is brought

about by intimidation or other illegal means. So I cannot rely on the last two limbs, but I think this case is covered by the first limb. The words

exactly cover it, so long as "induce" includes "a threat to induce", which I think that it does, see (3) J. T. Stratford and Co. Limited v. Lindley per

Salmon, L.J. and per myself. The Trade Disputes Act, 1965, now makes it clear for the future.

22. There are, however, two arguments to the contrary - First in Stratford v. Lindley (Supra), Lord Pearce expressed the view that the Section

only protects the trade union official from an action by the employer; and that it does not protect him from an action by a third party, such as Mr.

Rookes, or, in this case, the Plaintiff. I am afraid that I do not agree. The words are "shall not be actionable", without qualification. I see no

justification for inserting the words "by the employer".

Second - It is said that the trade union officials here are not protected; because of the decision in Rookes v. Barnard (Supra), where the trade

union official Mr. Silverthorne (who had threatened to induce a breach of contract of employment) was not protected by the section. I find it

difficult to see why Mr. Silverthorne was not protected. The speeches do not make it clear; but I think that the reason must have been because on

the findings of the jury Mr. Silverthorne was a party to a conspiracy to which the three Defendants were parties, and that no distinction was to be

drawn between them (see what Lord Reid said). So all of them were guilty of threats actually to break contracts of employment (as distinct from

threats to induce) and were accordingly not protected.

In my opinion, therefore, the Defendants are protected by Section 3.

4. Justification

If I am wrong about this point also, there still remains the contentions that the Defendant Mr. Fry and the other Defendants were justified in what

they did. The Courts have not yet been called upon a consider what part, if any, justification plays in the tort of intimidation, see Rookes v. Barnard

(Supra). So I hesitate to say anything about it; but I must say that if Mr. Barnard and his friends were really trouble-makers who fomented discord

in the docks, without lawful cause or excuse, then the Defendants Mr. Fry and his colleagues might well be justified in saying the men would not

work with them any longer.

23. It is not necessary for me to go into these matters any further, because the action fails on the first point that the strike notice was not unlawful.

5. Conclusion

If the arguments submitted to us in this case were right, it would mean that the decision in Rookes v. Barnard (Supra) had reversed the whole of

the labour law in this country as it had been understood for sixty years. I decline to give the decision that effect. It should be confined to cover the

case when these is a pledge not to strike.

24. Inasmuch as, in the petition and the plaint as I read it, I do not find that there is any allegation of any conspiracy to intimidate the Plaintiff Bank

with any threat by the employees, I do not think that it can be contended that the facts of the instant case come within the main principle of the

decision in the case of Rookes v. Barnard and Ors. If it can be commended that the petition and the plaint properly read mean to suggest that the

threat was held out to other employees, including the officers and supervisory staff other than the Defendants and there was conspiracy to hold out

such threat and as a result of that the Plaintiff has been damnified or injured, then the question would arise whether such a wrong is actionable at

the instance of the Plaintiff. There is good deal of force in the argument of Mr. Chatterjee that such a case has not been very clearly made out.

There cannot be threats by the Defendants to themselves. Threats to form the basis of an action for a tort of intimidation must emanate from one

person directed to some other person. If the plaint or the petition can be read that the Defendants and each of them threatened themselves, there

would be no basis of that cause of action. But if the plaint or the petition can be construed to mean that the Defendants held out threats to other

employees, other than those who are Defendants, and thereby committed the tort of intimidation then it might be argued that there is basis for some

cause of action. Even though the plaint and the petition is not, as I have mentioned hereinbefore, clear on the point , I think inasmuch as there is an

allegation to the effect that there was conspiracy to threaten and intimidate the officers, supervisory staff, loyal employees and as a result of this

conspiracy mentioned in para. 9 of the petition the officers, supervisory staff and employees were threatened as alleged in paragraph 10 of the

petition it can be argued and I would not reject such argument in an interlocutory stage that there is some basis for the case that there was a

conspiracy by the Defendants to hold out threats to other persons to commit breaches of their contracts. The question therefore arises is whether

such alleged acts of threats or intimidation are actionable in this case.

25. Lord Reid observed in the case of Rookes v. Barnard 1964 Appeal Cases at p. 1167 as follows: -

The first contention of the Respondents is very far-reaching. They say there is no such tort as intimidation. That would mean that, short of

committing a crime, an individual could with impunity virtually compel a third person to do something damaging to the Plaintiff which he does not

want to do but can lawfully do; the wrongdoer could use every kind of threat to commit violence, libel or any other tort, and the Plaintiff would

have no remedy. And a combination of individual could be same, at least if they acted solely to promote their won interests. It is true that there is

no decision of this house which negatives that argument. But there are many speeches in this house and judgments of eminent judges where it is

assumed that that is not the law and I have found none where there is any real support for this argument. Most of the relevant authorities have been

collected by Pearson, L.J. and I see no need to add to them. It has often been stated that if people combine to do acts which they know will cause

loss to the Plaintiff, he can sue if either the object of their conspiracy is unlawfully or they use unlawful means to achieve it. In my judgment, to

cause such loss by threat to commit a tort against a third person if he dos not comply with their demands is to use unlawful means to achieve their

object.

26. The main basis of the decision in the case of Rookes v. Barnard and others, was that the tort of intimidation includes threat of breach of

contract. Though by legislation in England by the Trade Disputes Act of 1965 protection has been granted to threats of breaches of contracts, or

inducements to commit breaches of contracts there is yet no final adjudication as to the question whether a threat to break a contract would

amount to tort of intimidation. But the learned editors of Halsbury''s Laws of England, Third Edition, Volume 37 at page 126, (paragraph 219)

state as follows: -

Although, therefore, it is not an actionable wrong for an individual merely to induce a person not to serve or not to employ another when no breach

of contract is thereby caused, yet, if the inducement is accompanied by illegal means, such as violence, intimidation, coercion, obstruction,

molestation, fraud or misrepresentation and damage results to a person intended to be harmed there is an actionable wrong at his suit. Threats to

break a contract come within the category of unlawful acts in relation to intimidation.

In Halsbury''s Laws of England, Third Edition, Volume 38 the law is stated thus at page 58 (paragraph 73) -

Every person commits an offence who, with a view to compel any other person to abstain from doing, or to do, any act which such other person

has a legal right to do or to abstain from doing, wrongfully and without legal authority uses violence to on intimidation to such other person, or his

wife or children, or injures his property; or persistently follows him about from place to place, or hides any tools, clothes or other property owned

or used by him, or deprives him or hinders him in the use thereof; or watches or besets the house or other place where he resides, or works, or

carries on business, or happens to be, or the approach to such house or place or follows him with two or more other persons in a disorderly

manner in or through any street or road.

27. In that view of the matter I am of the opinion that this is a substantial case for enquiry at the trial and there is an arguable case for the Plaintiff

on the basis of cause of action, as pleaded.

28. The next question that requires consideration is whether the Defendants are entitled to protection in view of Section 18 of the Trade Union Act

in respect of the acts complained of. Section 18 of the Trade Union Act, 1926 deals with some contingency as provided in Section 3 of the Trade

Disputes Act, 1906 of England.

29. Before this question is answered it will be appreciated to deal with some of the cases cited from the Bar. Reliance was placed on the decision

in the case of (4) Vere Cornwall Bird and Ors. v. Joseph Reynold Oneal and Anr. 1950 Appeal Cases, page 907. Thereafter the Respondents

had summarily dismissed a clerk employed by them on a weekly basis and paid her a week''s wages in lieu of notice, the executive committee of

the Trade Union to which she belonged, after ineffective steps had been taken to obtain for her reinstatement or compensation, passed a resolution

authorizing their general secretary to take the necessary steps to picket the business premises of the Respondents. Pickets were thereupon engaged

by the organizers and the general secretary of the union. In an action by the employers against 8 members of the executive committee and general

secretary and another member of the committee of the union claiming damages and an injunction restraining the Defendant their servants, agents

from unlawfully watching and besetting employer''s business premises. It was further alleged in the alternative that the members of the Union had

created a nuisance. It was found as a fact by the trial Court and the First Appeal Court before the matter came before the Judicial Committee of

the Privy Council that intimidation and threats of violence were used by pickets against prospective customers. It was held by the Judicial

Committee that the concurrent findings of fact clearly established that intimidation and threats of violence were used by pickets to an extent which

amounted to an actionable nuisance. It was further found that the pickets were not the servants of the individual Appellants; they were appointed

by the union, which could, of course, only act by agents, in this case the executive committee and the general secretary and as such it did not create

relationship of master and servant between the individual members of the executive committee and the pickets so as to make the former

responsible for the acts of the latter.

30. There was evidence, however, that the organizer and the chief picket were present and actively assisting in picketing which constituted a

nuisance and had caused damage to the Respondents'' trade, and they were therefore each responsible for the tort in the commission of which they

had assisted, and were liable to damages and to an injunction against the continued commission of the nuisance.

31. It will be important to bear in mind the observation of the Privy Council in that case that the concurrent findings of fact established that

intimidation and threats of violence were used to prevent the customers from entering the business premises of the employer to an extent which

amounted to an actionable nuisance. It was further found that the Defendants had conspired to achieve their purpose by use of unlawful means.

There was therefore an injunction from creating a nuisance by use of threat and intimidation. While dealing with this case it is important to bear in

mind Mr. Chatterjee''s criticism that in the petition in the instant case before me there is no allegation and there is no evidence before me of the fact

that any customer or constituents of the Bank was intimidated. I will refer later to this point while discussing the prayers.

32. In the case of (5) Crofter Hand Woven Harris Tweed Company Limited and Ors. v. Veitch and Anr., 1942 AC, 435 what happened was that

the Respondents were the official of the Transport and General Workers'' Union to which all the Dockers of Stornway, the main port of the island

of Lewis, and the great majority of the operatives employed in the spinning mills on that island, belonged, the yard spun in the mills was woven into

tweed cloth by the crofters in their homes and the cloth, when woven, was finished in the island mills and sold by the mill owners as Harris tweed

under a trade mark known as the ""stamp"". The Appellants were producers of tweed cloth, which was also hand-woven by crofters, and could

therefore be sold as Harris tweed, but not under the ""stamp"". The Appellants obtained their yard from the mainland at a cheaper price than that

charged by the island mills and the cloth when woven was sent for finishing on the mainland. The Respondents in combination with each other

instructed the Dockers at Stornway to refuse to handle yard imported from the mainland.

33. It was held that the predominant purpose of the combination was legitimate promotion of the interests of the persons combining, and since the

means employed were neither criminal nor tortuous in themselves, the combination was not unlawful.

34. Reliance was placed by all sides during the hearing of this application before me on the decision of the Full Bench of this Court in the case of

(6) Jay Engineering Works Limited and Ors. v. State of West Bengal and others, reported in 72 CWN 441. It is important to bear in mind the

scope of the mater before the Full Bench of this Court in that case. There what happened was that the United Front Ministry in West Bengal had

issued certain executive circulars which were said to have affected the Police and the Magistracy in respect of their functions. The question that

arose was whether such circulars were valid and proper. It was held that the magistracy and the police have certain duties to perform in certain

situations and the executive government cannot by executive circular deter the police in the performance of the said functions. The case arose in the

background in what has been popularly known as ""Gherao"". In a very exhaustive judgment Sinha, C.J. has dealt with the history of the trade union

movement in England and in India and has explained the reasons and the necessity of the several provisions of the Trade Union Act. Sinha, C.J.

has been pleased to hold that strikers and picketing are recognized weapons in the armory of labour. There is no exemption from civil wrong or

criminal action save to the extent provided in Sections 17 and 18 of the Trade Union Act. Where Section 7 of the Criminal Law Amendment Act

was applicable molestation, violence or intimidation, loitering and persistently following a person have been declared as offences, they are usually

connected with the act of picketing. There are no express provisions in the Trade Union Act regulating strikes or picketing but these are recognized

weapons in the armory of labour. It was observed paragraph 33 at page 470 of the said judgment by Sinha, C.J.: -

Watching and besetting are not encouraged by Trade Union Laws anywhere in the world. The term to "beset" a place given in the Oxford

Dictionary is "to set about", to close round, hem in, surround or occupy a place.

35. It must however be borne in mind that the decision was not concerned with the question of the extent of civil liability where protection u/s 18 of

the Trade Union Act was not available and the method of enforcing such liability. As was observed by B. C. Mitra, J. in the said case at page 579,

it is not necessary for me and I accordingly refrain from expressing any views with regard to Section 18 of the Act as the question of immunity

from civil liability is not involved in the writ petitions now before us."" What were the actual scope and effect of immunity from civil liability u/s 13 of

the Trade Union Act as well as the method of enforcing that liability, were not at issue in the said decision before the Full Bench.

36. In this context it is now necessary to examine Mr. Chatterjee''s argument whether if the alleged wrongs committed by the Respondents are

protected by Section 18 of the Trade Union Act in this case. It is first contended that the agitation started against certain provisions of the Banking

Laws (Amendment) Bill where it has been argued that in the garb of social control of Bank very stringent curtailment of the rights of the workers

were being introduced. Mr. Chatterjee contended that inasmuch as the management and the authority of the Reserve Bank of India in Calcutta

could influence the Government which was introducing the Bill the agitation in respect thereof is a trade dispute u/s 2(g) of the Trade Union Act. I

am unable to agree. In order to be a trade dispute the dispute must be between the workers and the management. The dispute regarding the

certain provisions of the Banking Laws (Amendment) Bill was not a dispute between the workers and the management of the Reserve Bank of

India in Calcutta. It was next contended that the scheme or the plan of installing Electronic computers raised apprehensions in the minds of the

employees and the movement was started to demonstrate against such a scheme. Whether opposition to automation is justified or not is another

question, the apprehensions were of course understandable. But I do not find that there was, with the management of the Reserve Bank of India in

Calcutta and the Respondents, any dispute as to the introduction of the Electric Computer commonly known as ""Automation"". The next point

urged by Mr. Roy Chaudhury was that there were certain agitations and demonstrations prior to the end of February, 1968 protesting against

dismissal of the United Front Ministry in Calcutta and the installation of the Ministry headed by Dr. P. C. Ghose. I am clearly of the opinion that

these acts were not in contemplation or furtherance of any trade dispute. It is true that the Respondents as citizen of India have their rights but in

respect of these activities if there be any liability for any civil wrong, u/s 18 of the Trade Union Act the Respondents cannot claim any immunity. I

am, however, of the opinion that all these aforesaid three factors are really irrelevant for the purpose of the present application. They are all of

historical importance in the background of this case because it is not the case of the Petitioner that for those reasons any future plan of action is

contemplated and as such injunction should be granted. If because of the participation in the strike and movements in connection with the aforesaid

matters Respondents have incurred certain liabilities in respect of which they are not protected under provisions of Section 18 of the Trade Union

Act, the Respondents would be liable in respect of the same. But there can be no question of granting any injunction in respect of the said acts.

37. The real main question is whether the alleged wrongs committed subsequent to end of February 1968 until making of this application to this

Court, are protected in view of Section 18 of the Trade Union Act. Sub-section (1) of Section 18 of the Trade Union Act provides as follows: -

No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any officer nor member thereof in

respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that

such act induces some other person to break a contract of employment or that it is in interference with the trade, business or employment of some

other person or with the right of some other person to dispose of his capital or of his labour as he wills.

Trade dispute"" has been defined in Sub-section (g) of Section 2 of the said Act in the following manner: -

Trade dispute"" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers

which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and

''workmen'' means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

38. There are two questions involved in this matter, firstly, whether the acts complained of were done in contemplation or furtherance of ""trade

disputes"", secondly, if they were so done are the Respondents protected u/s 18 of the Trade Union Act. It has been stated in paragraph 8 of the

petition that with a view to maintaining discipline and ensuring smooth and proper conduct of the business of the Plaintiff the Plaintiff had proposed

to take disciplinary action against some of the employees as were instrumental to or participated in the illegal acts what have been mentioned in the

paragraphs prior thereto. Thereafter it has been alleged that in order to compel the Plaintiff to withdraw the disciplinary measures taken or

proposed to be taken the Respondents did various wrongful acts, particulars whereof are set out in paragraphs 9 and 10 and 11 of the petition.

Reading the petition, I am of the opinion, that it is manifest that the movement or the agitation or the demonstration wrongful conducts that are

being challenged in this action were admittedly, in the language of paragraph 8 of the plaint, done by the Defendants with a view to compelling the

Plaintiff to withdraw disciplinary measures taken or proposed to be taken by the Plaintiff against such of the employees as were instrumental to

and/or participated in the alleged wrongs acts mentioned in the previous paragraphs of the plaint. It is, in my opinion, therefore, a dispute

connected or conditions of labour of some persons. It is also a dispute between the employers and the workers. Therefore, in my opinion, the

wrongs complained of subsequent to the end of February 1968 up to June 1968 and in respect of which injunctions are now being sought for from

this Court were all done in contemplation or in furtherance of trade dispute. Next matter for consideration is whether even then the said acts are of

such nature that they are protected from civil liability in respect thereof u/s 18 of the Trade Union Act. I have discussed the relevant authorities on

this aspect of the matter. I will state any conclusions on this point later in the judgment. At this stage it would be relevant to discuss the case of the

(7) Cunard Steamship Company Ltd. v. Stacey Lloyd"s List Law Reports, 1955, Vol. 2, page 247. In that case there was a strike led by

Defendants seamen employed by Plaintiff shipowners. Meetings were held by the Defendants in attempt to persuade fellow-employees to leave

their ships, resulting in Plaintiff"s ships being unable to sail. The strike was however, unsupported by Union. An action was brought by the Plaintiff

against the Defendants claiming damages for conspiracy and an injunction restraining the Defendants from conspiring with each other to persuade

or from persuading seamen to break their contracts with Plaintiffs. On an application being made interlocutory injunction was granted by the trial j.

there was an appeal. It was contended in appeal that the Defendants were protected by the Trade Disputes Act, 1906 of England and that the

evidence adduced was insufficient to establish lawful engagement of seamen within the provisions of Merchant Shipping Act, 1894. The Court of

Appeal held that the Plaintiff established a prima facie case of inducement of breach of contracts and the Defendants" evidence fell short of proving

that none of them had been lawfully engaged in accordance with the provisions of Merchant Shipping Act, 1894. Furthermore availability to the

Defendants of the protection of Section 3 of the Trade Disputes Act, 1906 was open to serious doubts which were further held that the

continuance of Defendants" action would involve Plaintiffs in further serious loss, whereas Defendants" loss would be comparatively trivial; and

accordingly the balance of convenience was overwhelming in favour of Plaintiffs and as such the Court would not interfere with the discretion of the

trial Judge and the appeal was accordingly dismissed. Reliance was placed by Mr. Roy Choudhury on this decision. It was however contended by

Mr. Chatterjee that there were some peculiar circumstances which raised serious doubts about the non-availability of the protection u/s 3 of the

Trade Disputes Act and furthermore the continuance of the injunction was considered not to cause serious loss to the Defendants. Here of course

Mr. Chatterjee contended that deprivation of the legitimate trade union rights of his clients for the protection of their vital interest was not a trivial

loss in the facts and circumstances of this case. Reliance was also placed by Mr. Chatterjee on the decision of the Court of Appeal in the case of

(8) Camden Exhibition and Display Ltd. v. Lynott, (1966) 1 QBD 555, where a joint council for the exhibition industry, consisting of an equal

number of representatives of Trade Unions and employers concerned, laid down working rules for the industry. Normal working hours were 40

hours a week and a rule provided that overtime required to endure the proper performance of the contract should not be subject to restriction but

might be worked by agreement and direct arrangement between the employer and operatives concerned. The notices sent to employees u/s 4 of

the Contracts of Employment Act, 1963, stating, inter alia, that the working hours were in accordance with the working rules following a revision

of wages in the industry early were dissatisfied with the increased obtained and proposals were made and a resolution passed that overtime should

be banned in order to secure an increase in wages. The Defendants were shop stewards employed by the Plaintiffs exhibition contractors, in the

middle of March, 1965 the Defendants told the general manager of the Plaintiffs that he and his members were disgusted at the revised wages and

that none of the Plaintiff''s workmen would work overtime as from midnight on March 26, 1965. Thereafter the men refused to do overtime. On an

application being made the trial Judge granted injunction restraining the Defendants, from inducing or procuring servants of the Plaintiffs to break

their contract of service with the Plaintiffs by restricting overtime. On an appeal it was held that it was a trade dispute as contemplated u/s 3 of the

Trade Disputes Act, 1906, even if there had been a breach or a procurement or inducement to commit a breach of contract by the Defendants in

respect of the terms as to overtime and the appeal was allowed.

39. The claim of the Plaintiff on the basis of the alleged conspiracy to create a nuisance and commission of actual nuisance in pursuance to the

conspiracy, now requires consideration. The basis of the claim for nuisance has been stated in paragraph 11 of the plaint. Mr. Somnath Chatterjee,

learned Counsel for the Petitioner, apart from his submission there was no evidence of such allegation, argued that nuisance to be actionable must

be only in relation to enjoyment of immovable property. He drew my attention to several passages from the well known Text Book in support of

his contentions, especially on Winfield on tort (7th Edn., p. 391). In Halsbury''s Laws of England, 3rd Ed., Vol. 28 at page 126 (paragraph 152) it

has been stated as follows: -

The term ''nuisance'' as used in law is not capable of exact definition. It has been sued with meanings varying in extent by the old writers; and even

at the present day there is not entire agreement whether certain acts or omissions shall be classed as nuisance or whether they do not rather fall

under other divisions of the law of tort.

Nuisance may be broadly divided into acts not warranted bylaw or omissions to discharge a legal duty, which acts or omissions obstruct or cause

in convenience or damage to the public in the exercise of rights common to all Her Majesty''s subjects; acts or omissions which have been

designated or treated as nuisances by statutes: acts or omissions generally but not always or necessarily connected with the user or occupation of

land which cause damage to another person in connection with the latter''s user of land or interference with the enjoyment of land or of some right

connected with the land.

40. Considering the relevant authorities and the provisions of law in the background of the facts and circumstances of this case I have prima facie

come to the following conclusions for the disposal of this application -

(i) Wrongful termination of contracts by the employees of an employer or wrongful breaches of contracts by employees, even if they be in violation

of the terms of employment or in violation of any regulations controlling the employments, cannot be remedied by the process of injunctions

restraining the employees from committing breaches of their contracts. In my opinion that would be enforcing personal contracts of employments

and inasmuch as the Plaintiff would not be entitled to specific performances of such contracts the Plaintiff would not be entitled to injunctions. This

is the position quite apart from the question of protection under the Trade Union Act of 1926.

(ii) A strike which is wrongful or illegal, in view of the provisions of the Industrial Disputes Act, as in this case for failure to give notice in a Public

Utility concern, may entail consequences contemplated under the provisions of the Industrial Disputes Act or other acts, but do not provide a basis

for a civil action restraining the employees from going on with the strike.

(iii) In respect of a trade dispute, as defined u/s 2(g) of the Trade Union Act, if anything is done by the employees who are members of a

registered Trade Union in contemplation or in furtherance thereof, which induces, breaches of contracts of other employees or which procures

breaches of contract of other employees or causes interference with the trade, business or employment of some other person or with the right of

some other persons to dispose of his capital or his labour, as he wills, the same, in my opinion would not be actionable. But such inducement or

procurement or interference must be by lawful means and not by means which would be illegal or wrongful by other provisions of law.

Procurement of breaches of contracts of one''s employees or inducement to procure breaches of contracts of one''s employees and conspiracy in

respect thereto would be actionable without the protection of Section 18 of the Trade Union Act.

(iv) Even though the agitations against the Banking Laws (Amendment) Bill, the dismissal of the United Front Ministry, protest against installation of

Dr. P. C. Ghose Ministry, the introduction of Electronic Computer be not in furtherance or contemplation of trade disputes, these are really

irrelevant for the purpose of the present application. The real complaints in respect of which interference of this Court is being sought, in my

opinion, are those alleged acts of the Respondents which have been done for the purpose of compelling the Plaintiff to withdraw certain disciplinary

proceedings against some employees. From the pleadings it seems to me that these acts were done in contemplation and/or in furtherance of a

trade dispute.

(v) I am also of the opinion that in furtherance or contemplation of a trade dispute it will also not be actionable to threaten to induce breaches of

contracts. In my opinion the decision of the House of Lords in the case of Rookes v. Barnard (Supra) must be limited to the scope of the facts of

the peculiar case. If it were necessary for me I would have held that Section 18 of the Trade Union Act protected not only inducement of breaches

of contracts but threats to so induce. I would have preferred to rely on the observation of Lord Denning in the cases of Camden Exhibition and

Display Ltd. v. Lynott, I Queen''s bench Division, page 555 to 565 to the effect.

If it is not actionable to induce such a breach, I cannot see that it is actionable to threaten to induce it.

But as Prof. Hamson had observed even before the decision in Rookes v. Barnard (Supra), went before the Court of Appeal in an article in

Cambridge Law Journal 1961 p. 189 at 199 that the case was found on the additional and essential ground that the Respondents combined to use

unlawful threats to cause B.O.A.C. to disturb the Plaintiff in his employment. It is really not threat to induce the breach of contract or to procure

the breach of contract that was material but the threat to induce or procure the breach of contract by unlawful means or by unlawful threats that

was the main feature of the decision in the case of Rookes v. Barnard (Supra). But in this case there is no question of applying the principle of

Rookes v. Barnard (Supra), as I have found in the plaint it has not been alleged that any threat was held out to the employer. In the plaint and the

petition, however, there are allegations that there was conspiracy to threaten other employees with physical violence, violent, persuasion,

molestation, intimidation, wrongful confinement, detention, watching and besetting, with a view to procure or induce breaches of their contracts or

their terms of employment and several wrongful acts were done in pursuance to the conspiracy. At least the plaint and the petition are capable of

that construction. I am of the opinion that the said alleged acts are not protected by Section 18 of the Trade Union Act.

(vi) The next question is whether there is sufficient evidence in this case to substantiate the allegations or atleast some of the allegations made in the

petition. Mr. Chatterjee''s criticism that the petition is vague and unsatisfactory is to a very large extent correct. It is true that the civil tort of

conspiracy is notoriously difficult to establish. Even then there should have been more particulars about the alleged conspiracy about the persons

intimidated and the nature of the intimidation. The incidents prior to end of February 1968 have not been properly verified. There is not a single

affidavit by any officer or a supervisory staff verifying about alleged incidents of molestation, intimidation or other wrongful acts. There is not a

single affidavit by any customer or any constituents of the Bank stating about any threat or intimidation or molestation. Among the alleged

Respondents who are alleged to be the conspirators and the wrong doers one is admittedly dead, some admittedly on leave at the relevant time

and some have retired prior to this time. Reliance was placed on behalf of the Petitioner on the affidavit and statements of Rakhal Chandra Roy

Chaudhury, Mukundalal Saha, Sushil Kumar Chaudhury to prove that there have been intimidations and acts of violence. They are themselves

Respondents and according to the allegation in the petition they are all conspirators and wrong doers. But even if the position so far as the petition

is concerned be unsatisfactory, when the evidence has been adduced before me, it would be wrong to ignore to consider that evidence and refuse

the Petitioner''s prayers only because the petition is unsatisfactory. I have before me the statements subsequent to the end of February 1968 to

June 1968 verified by the Manager of the Reserve Bank of India. I have the affidavit of Sushil Kumar Chaudhury, Mukundalal Saha and Rakhal

Chandra Roy Chowdhury. I have the circulars and the resolutions of the association of the Respondents. I have also the affidavit-in-opposition

filed on behalf of the main contesting Respondents, where the happenings of the events have not really been denied but the nature of the incidents

have been disputed. Having considered all these evidence before me and having considered the probabilities of the situation I am of the opinion

that the evidence is not so unsubstantial or inadequate as to disentitle the Petitioner to any relief.

(vii) The next question that requires consideration is whether on the ground of alleged conspiracy to commit nuisance and several acts of nuisance

mentioned the Petitioner is entitled to any relief in this action. Nuisance is incapable of exact definition. It must however depend on the facts and

circumstances of each case. Whether nuisance has occurred or not has to be judged with reference to the alleged wrongs committed and the

locality and the institution affected thereby and the extent of it. It is certainly true what would be nuisance in a vital national institution in the heart of

city of Calcutta may not in certain circumstances amount to nuisance in a remote industrial centre or a Tea Garden. In order to judge whether

nuisance has taken place or not, the political, social, economic situation prevailing in a country as well as the subjective standards of the persons

affected will have to be taken into consideration. All these considerations must however be judged from an objective standpoint. I am aware that it

is lamentably true that a section of people have the feeling, whether justified or unjustified it is not necessary for me to decide, that in order to make

legitimate grievances redressed it is sometimes necessary to make a nuisance of themselves to be heard or taken note of. Nuisance however must

continue to be judged by the Court, in my opinion, from a robust commonsense point of view. Having considered the allegations and the evidence

from the above points of view I have come to the conclusion that a prima facie case on this ground has been established.

(viii) Quite apart from the provisions of Section 7 of Criminal Law Amendment Act, about whose applicability to Calcutta I have nothing to be

satisfied prima facie, watching and besetting by employees in certain circumstances may amount to a nuisance. Reliance may be placed for this on

the observations in the judgment of Jay Engineering Works v. State of West Bengal, (Supra), at page 470 (paragraph 33) watching and besetting

may in certain circumstances constitute unlawful means of procuring or inducing breaches of contract by the employees.

(ix) The next question that requires to be considered is, in the background of the prima facie case made out and in the background on the point

involved in this case what order should be in the interest of justice after considering the balance of convenience of the parties I have come to the

conclusion that in respect of some of the wrongs complained of in paragraphs 9 and 10 as well as in paragraph 11 of the petition, the Petitioner is

entitled to some reliefs, the form of which I will indicate later. It has been urged by Mr. Chatterjee that if any order is made restraining the

Respondents in the manner claimed, the same should be on terms and he has urged before me that pending disposal of the suit the Petitioner should

not continue with the disciplinary measures or disciplinary proceedings as mentioned in para. 8 of the petition for the purpose of withdrawal of

which the alleged wrongs are alleged to have been committed. Various decisions, reported and unreported, have been cited before me, on the

question whether the said disciplinary proceedings form the subject-matter of the present suit before the High Court or on the question whether the

Court should interfere with the disciplinary proceedings. I do not think that for the purpose of considering the propriety or impropriety of whether

there should be an injunction on the Petitioner from proceeding with the disciplinary proceedings until trial, it is necessary for me to consider these

decisions. The facts here disclose an unhappy state of affairs. Whether it is the resultant of the political motivation of a Section of the employees or

the intransigence of an insensitive employer or both or the inherent difficulties of balancing the conflicting interests, it is difficult to fathom at this

state. The points involved in this case are important. How to maintain workable if not cordial relationship between the management of a National

Public Utility concern and its employees? If under the stress, of the contemporary social and economic circumstances of a developing society in an

under-developed country, that relationship is put to strain, what should be the process, protective of the legitimate rights of the employees, and

effective for the management of its authority and maintenance of discipline, which will serve the purpose of restoring normalcy? The efficiency and

the adequacy of the existing provisions of law to answer these questions would require consideration at the trial. The employees are doing certain

acts, the employer asserts that these are wrongful. The employees contend that these are the legitimate weapons in the armoury of labour. The

validity of that contention is in dispute in this action. In my opinion, considering the facts of this case, such orders should be made where it would

be possible to accommodate the conflicting views until the matter is tried with due regard to the balance of convenience of the parties. I do not

think that in the facts of this case the Petitioner would suffer great prejudice or inconvenience if they are restrained from proceeding with the

disciplinary actions mentioned in paragraph 8 of the petition.

(x) Inasmuch as the recognition of the Union of the clients of Mr. Siddhartha Sankar Ray is not the subject-matter of this action I cannot give any

directions in respect thereof.

41. In that view of the matter, having considered all the facts and circumstances of this case I direct and order that there would be injunction,

restraining the Respondents each of them by themselves or their servants or agents from:

(a) threatening with violence or molestation or intimidation or violent persuasion any officer or member of the supervisory staff or any other

employee of the Plaintiff with a view to induce or procure breaches of their contracts of employment or with a view to inducing them from

abstaining from working for the Plaintiff or committing breaches of their terms of agreements with the Plaintiff,

(b) committing any act of wrongful confinement of detention of any officer or member of the supervisory staff, or any employee of the Plaintiff at

the Plaintiff"s places of business at No. 15, Netaji Subhas Road, Calcutta and 8, Council House Street, Calcutta, or within 25 yards of any of the

said premises,

(c) threatening or intimidating with physical violence or molestation or violent persuasion any officer or member of the supervisory staff or any

employee of the Plaintiff with a view to stopping or interfering with the work and/or business of the Plaintiff at the said two premises of the Plaintiff,

(d) watching and besetting the entrances, exits and passages at the said two offices of the Plaintiff or within 30 yards thereof,

(e) holding any unlawful meeting or organizing any unlawful assembly inside the buildings of the said places of business or within 30 yards of the

said place of business in such a manner as to create a nuisance or to interfere with the normal work of the Plaintiff"s work at the said two places of

business,

(f) shouting insults and abuses and slogans inside the said premises in such a manner as to create a nuisance or to interfere with the Plaintiff"s

normal work of function at the said two places of business or within 25 yards thereof. This will, however, not prevent holding of meetings by the

employees in the said building with the permission of the Plaintiff as provided in the order of A.N. Sen, J. on 17th June 1968. I do not think that

the Petitioners are entitled to any order in terms of prayers (g), (h) and (i) in view of the provisions of the law discussed by me hereinbefore. I

would have granted injunction in terms of prayer (j) if there was any averment or evidence before me that any customer or constituent or caller of

the Plaintiff has been intimidated during office hours. I have not been able to find such evidence. In my opinion, the Petitioner is not entitled to

injunction in respect of prayer (k) in view of the provisions of the law discussed hereinbefore by me. There will also be an injunction restraining the

Respondents, each of them their servants and agents from inducing breaches of contracts through means of mass casual leave, by threats of

physical violence or violent persuasion or intimidation.

There will also be injunction restraining the Petitioner until disposal of the suit from proceeding with any departmental proceedings for disciplinary

action in respect of alleged offences alleged to have been committed by the Respondents before the 14th of June 1968, as mentioned in paragraph

8 of the petition. This will however not prevent the Petitioner from issuing show cause notices, in respect thereof.

Directions for early hearing of the suit must await service of the Writs of Summons on all the Respondents. Cost of this application will be costs in

the cause. Save to the extent indicated above there will be no further order on this application. All interim orders save as aforesaid are hereby

vacated.