(1987) 12 CAL CK 0016

Calcutta High Court

Case No: Appeal from Original Order No. 3138 of 1986

State Bank of India and Others		APPELLANT
	Vs	
Amal Kumar Sen and Others		RESPONDENT

Date of Decision: Dec. 24, 1987

Acts Referred:

- Constitution of India, 1950 - Article 12, 36, 37, 38

Citation: 92 CWN 846

Hon'ble Judges: Ajit Kumar Nayak, J; A. M. Bhattacharjee, J

Bench: Division Bench

Advocate: Biswarup Gupta, Mr. Subrata Roy, Mr. Amalendu Mitra and Mr. Dipak Kumar Paul, for the Appellant;Bimal Chatterjee and Mrs. Monica Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

1. We dismiss this appeal and affirm the order of temporary injunction granted by the learned Chief Judge, City Civil Court, Calcutta. But a few prefatory words by way of introduction before we proceed to state our reasons.

2. Our resolve in the Preamble to our Constitution to secure ''Social Justice'' to all must not be taken to be a mere sonorous prelude to a grandiloquent parchment. Because in the Directive Principles of State Policy also, which have been declared in Article 37 to be "fundamental in the governance of the country", ''the State'' in Article 38, has been categorically commanded "to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order", in which ''Social Justice'' "shall inform all the institutions of the national life".

3. Jurists have very often indulged in metaphysical hyper-boles and legal verbomania in mystifying the concept of Justice. Even Lord Denning has said only the other day in his "The Road to Justice" (1955 - page 4) that "the question, ''what is Justice?'' has been asked by many men far wiser than you or me and no one has yet found a satisfactory answer". According to the Socialist thinkers, however, all these

obfuscations about Justice have been deliberately done by or at the behest of the ruling class so that those who are ruled may remain confused and may not, therefore, take up y bellicose attitude to demand Justice.

4. We have no doubt that in the Indian context, in the class-ridden Society that we live in, ''Social Justice'' should mean Justice to the weaker and poorer section of the Society and in the light of the Preamble to our Constitution, where we have resolved to secure to all "Economic Justice" also and "Equality of Status and Opportunity", securing ''Justice'' would mean securing that to the weaker and the poorer section which would make them Equal with the rest of the Society.

5. As we have already noted, Article 38 mandates the ''State to secure and protect ''Social Justice'' and as would be evident from the definition of the expression ''State'' in Article 36 read with Article 12 of the Constitution, and as has been pointed out by Mathew, J. in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , all the organs of the State, ''including the Judiciary'', are under the constitutional obligation to secure, protect and administer ''Social Justice''. This being our Constitutional ethos, the least the Judiciary can do is to evolve a new Jurisprudence, a new consequential juristic principle to be applied to our forensic adjudicatory process, to ensure administration and advancement of ''Social Justice''. Commenting on the system of trial that is operating in India known as ",Adversary System of Trial", Justice Krishna Iyer has once observed thus, though extra-Judicially in a Paper presented to the Third International Conference of Appellate Judges in New Delhi in 1984: -

"Adversarial process is gladiatorial justice, the strong win the bout, the weak lose it with punched nose, bleeding face and. broken head. The (robed) Umpire is uninterested in the justice of'' the cause but forbids violation of the boxing rules (called law) and there ends his duty. This neatly fits into the capitalistic ethic of industrialist and worker fighting without any special consideration for the weaker party, the bonded serf and the feudal chief disputing in a far-off court equally free to bring lawyers. Both have equal chance and if ''might'' proves itself ''right'' because of the uneven fight, the Judge says the system is ''that'' and be is a part of the system. Is the Proletariat equal in the contest to the Proprietariat in presenting, proving and pressing the rival cases right upto the forensic apex? Is the poor debtor as against the money lender, the prisoner as against the jailor; the handicapped as against the hefty, the deserted wife as against the brutal husband, the low-caste pariah as ''against the high-caste patrician, ''equal''?"

6. In this set-up, therefore, the new Juristic principle that is to be evolved to enable our forensic machinery to rise up to We challenge for "Social Justice'' is that whenever the weaker or the poorer section is pitted in forensic combat against the stronger or the richer section, then if two interpretations are reasonably possible, whether of the facts or the laws involved, the interpretation in favour of the former is to be adopted so that ''Social Justice'' i.e., justice to the weaker or the poorer

section of the Society, is ensured. We have adverted to all these as in the case before us, the workers are pitted against their employer and are seeking intervention of the Court to prevent attempted wage-cut by the latter.

7. The facts of the case and also the legal questions involved have been comprehensively detailed in the order under appeal. The petitioners have come up with the assertion that on 20th September, 1985 they fully worked for the prescribed hours, but that the Bank authorities have still illegally decided to deduct one day''s salary from the monthly wages payable to them for the month of September, 1985 or from the salaries payable for any .subsequent month. The Bank authorities have, however, asserted that out of 574 employees who attended office on that date, 365 employees did not work for several hours on that day and they are therefore, entitled to deduct their wages for that day. As the learned Judge has rightly pointed out, the question as to whether the concerned staff worked or abstained from work on that day is a disputed question of fact and can not be decided on the materials now on record and must await determination on evidence at the trial. And we would now add that even if on the materials now on record, both the conclusions are equally plausible or possible, the conclusion in favour of the workers should be preferred until the matter is finally clinched otherwise at the trial.

8. Even if we assume that the concerned staff abstained from work on that date, the question as to whether in the case of monthly-salaried employees, as they are, the employer can resort to pro rata wage-cut for that day only without resorting to any disciplinary proceeding under the rules governing the service, is a question on which different High Courts, and even our own High Court, have spoken in different voices on different occasions. The single-Judge decision of this Court in Monoj Kanti Bose vs. Bank of India (1976 2 CLJ 427) appears to be an authority for the view that in such a case even though the "employer may claim compensation against the employee", "the employer can not claim right to deduct any part of the salary". But the later single-Judge, decision in Algemene Bank vs. Central Government (1978 1 CLJ 1) appears to have ruled that "performance of work for a specified period is one of the Principal terms of employment" and "no wages, therefore, become payable for the period of unauthorised absence from work" and accordingly, "deduction of wages pro rata for failure of consideration from the employee''s side is permissible" and "deduction in such cases is not penalty". While another later single-Judge decision of this Court in Krishnatosh Das Gupta vs. Union of India (1980 1 LLJ 42) has followed the decision in Monoj Kanti Bose (supra), the two yet later single-Judge decisions in Samarendra Nath Guha Roy (1983 2 CCN 186) and in Sushil Kumar Das vs. Reserve Bank of India (1984 1 CCN. 31) have followed the decision in Algemene Bank (supra). All these being single-Judge decisions, we were invited by the learned Counsel for the parties to resolve the conflict in this case. At one stage we were also inclined to do so, but we have thereafter decided not to do so at this stage as the determination of that question in the Monoj Kanti Bose way might result in pre-judging the entire suit and as the present appeal can also be effectively

disposed of without deciding that question at this stage. But we would only add that, as we have already indicated, if it were necessary for us to prefer one view to the other and if both the views, the one following Monoj Kanti Bose (supra), and the other following Algemene Bank (supra), appeared to us to be equally possible or plausible, we would have preferred to follow Monoj Kanti Bose (supra), that having ruled in favour of the weaker and the poorer section of the Society and having thus secured ''Social Justice''.

9. Now, firstly, if it can not be decided on the materials on record as to whether the concerned staff abstained from work on that date and, secondly, if the law on the point, as to whether pro rata wage-cut for that date can be resorted to even if the monthly-salaried staff abstained from work on that date, is not beyond doubt and dispute in view of Monoj Kanti Bose (supra) and Algemene Bank (supra) and other decisions referred to above, then there should be no doubt teat the proposed wage-cut would, it allowed to take effect, cause more injury to the employees than the temporary prevention of such wage-cut would cause to the employer, for, if the plaintiffs finally fail, the defendants would, if so entitled under the law, be ultimately entitled to resort to wage-cut. We would also add that if on the materials on record and under the law applicable thereto, the case of the employees for temporary prevention of wage-cut and the case of the employer for resorting to immediate wage cut appear to be equal balanced, ''Social Justice'' would require that the balance should be tilted in favour of the employees until the matter is finally decided by the Court on merits.

10. It has been urged that even if the injunction prayed for is not granted and the wage-cut is resorted to, then even if the plaintiffs succeed in the suit they will be in no difficulty in realising the deducted wages from the State Bank of India. This argument does not appeal to us and, borrowing from the Division Bench decision of this Court in Swadeshi Industries Ltd. Vs. Administrator Panihati Municipality, , we would say that once it is held, as we do, that the contentions raised by the plaintiffs are substantial both on facts as well as on law, it can not be said that as the State Bank of India is a body which is rich enough to pay back the deducted wages, if the plaintiffs succeed, the prayer for temporary injunction should be refused. As we have already indicated, between deduction of wages of the employees and the temporary prevention of such deduction by the employer, the balance of convenience and inconvenience would be in favour of employees.

11. An announced at the outset, we dismiss this appeal with costs assessed at 10 G.M. and confirm the impugned order of temporary injunction passed by the learned Chief Judge. Records, with a copy of our judgment, to go down at once.

Ajit Kumar Nayak, J. I agree.