(1993) 01 CAL CK 0025

Calcutta High Court

Case No: Appeal No. 807 of 1992 and Matter No. 2388 of 1992

Susmrit Das and Others		APPELLANT
	Vs	
The Basumati Corporation Ltd. and Others		RESPONDENT

Date of Decision: Jan. 6, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 2(d), 25C
- Industrial Employment (Standing Orders) Act, 1946 - Section 10, 10(2), 15(2)(a), 2(c), 2(d)

Citation: 97 CWN 466

Hon'ble Judges: Mukul Gopal Mukherji, J; Arun Kumar Dutta, J

Bench: Division Bench

Advocate: Sakti Nath Mukherjee, Pradipta Roy and Partha Sengupta, for the Appellant;Arijit Chowdhury, K.S. Roy and Debjani Sengupta, for the Respondent

Final Decision: Dismissed

Judgement

Mukul Gopal Mukherji, J.
In these three appeals some common questions of fact and law do arise, for which they have been heard by analogously. The petitioners in the three writ applications impugned purported orders of transfer from our Calcutta to Siliguri and consequent release orders issued by the Managing Director, Basumati Corporation Ltd. The first writ application was filed by Nirmalendu Sekhar Karmakar and 13 others, the second by Sri Sekhar Sengupta and the third by Susmriti Das & 7 others. With the filing of the writ applications, the learned Single Judge passed an interim order for a limited period staying the operation of the order of transfer in Nirmalendu Sekhar Karmakar and 13 others, but made it clear that financial benefits as available to the writ petitioners would not be withheld and the same will be released from Calcutta without prejudice to the rights and contentions of both the parties. In Sekhar

Sengupta''s case it was ordered as an interim measure that he will work at Calcutta without prejudice to the rights and contentions of Basumati Corporation Ltd. for a certain period but if his joining duties disturbs industrial harmony or causes any indiscipline, the Basumati Corporation Ltd. will grant extraordinary leave to him. In Susmriti Das and others vs. Basumati Corporation Ltd. and others, the learned Single Judge directed both the sides to maintain status quo without prejudice to the rights and contentions of the parties which was extended later on. Ultimately with the filing of the affidavits, the trial Court vacated the interim orders but the Appeal Court restored the same with a direction to hear out all the three matters expeditiously.

2. By orders dated August 17, 1992 the writ applications of Nirmalendu Sekhar Karmakar and 13 others and of Sekhar Sengupta were dismissed by the learned Single Judge. By order dated August 24, 1992 the writ application of Susmriti Das and others was also dismissed. The present three appeals are directed against the aforesaid orders of dismissal of the writ applications.

3. On 29th July 1974 the West Bengal Legislature passed West Bengal Act XXXV of 1974 acquiring the undertaking of Basumati Private Ltd.

4. The orders of transfer which do form the subject matter of challenge in the three writ applications are from Calcutta to Siliguri unit of Basumati Corporation Ltd. The writ petitioners who are the appellants before us contend that they are not at all transferable to Siliguri, which is a separate department or establishment altogether. The certified Standing Orders of Basumati Corporation Ltd. do not permit such a transfer from Calcutta to Siliguri and Siliguri establishment is altogether a new establishment. The Hon''ble Information Minister of the State Government candidly assured that no journalist would be sent to Siliguri against his wishes and although options were invited in accordance with such an assurance, indiscriminate transfer orders have actually been issued irrespective of the consideration whether such an employee opted or not to go to Siliguri. The transfer orders were issued as a step in aid to close down the publication of Dainik Basumati from Calcutta. The transfer orders were malafide as most of the employees so transferred belonged to an Union affiliated to INTUC except only two individuals who although belonging to a Union affiliated to CITU, opposed the transfer scheme.

5. It was contended by Mr. Saktinath Mukherjee. the learned Senior Advocate, appearing for the appellants that the transferability of an employee depended on the provisions of law governing the service conditions of the employee concerned. In case there is no express provision, the terms of contract of employment will regulate such a transfer. Even in respect of a Government servant, his transferability would depend upon the provisions of law and if the service rules do not permit such a transfer from one office to another, such a transfer would not be affected. It is precisely after the recital of law on the question by the Calcutta High Court in the case reported in 65 CWN (Notes) 15, that Rules 5(40) of the West Bengal State

Services Rules. Part I did undergo a drastic change.

6. It is the common case of both the parties that the employees are governed by Paragraph 7 of the Certified Standing orders which reads as follows :-

7. Transler - Service of any workman is-. liable to be transferred from one post to another or from one department In.another or from one shift to another.

7. According to the respondents, the Basumati Corporation Ltd. has adopted the Bengal Model Standing Orders under Bengal Industrial Employments (Standing Orders) Act and in this context we may also look to para 24 of the Bengal Model Standing Orders which reads as follows :-

24. - Transfer of workmen any workmen may be transferred from one job to another or from one section or department to another in the interest of productionor efficiency of the establish-ment.

Provided that any such transfer shall not adversely effect (sic) total emolument or the basic conditions of service of workmen concerned.

8. The appellants however do not accept the proposition that in law it was open to Basumati Corporation Ltd. to adopt Bengal Model Standing Orders since they had a specific certified Standing Orders of their own at the time of enforcement of Basumati Private Ltd. (Acquisition of Undertaking) Act 1974 and u/s 7(1) of the said Act with the acquisition of the undertaking, every workman shall continue to hold office on the same terms and conditions unless such terms and conditions of employment are duly altered by the State Government or Basumati Corporation Ltd. as the case may be.

9. Mr. Mukherjee contends that the mode of alteration is delineated in Section 10 of the Industrial Employment (Standing Orders) Act, 1946. Thus under the said provisions a set of Standing Orders can only be modified by agreement or by taking specific recourse to Section 10(2). In the instant case there has not been any due alteration of the Certified Standing Orders as required by Section 7 of the Basumati Private Ltd. (Acquisition of Undertaking) Act, 1974 by taking recourse to Section 10. No case of adoption of Model Standing Orders has also been made out because there is already an existing set of certified Standing Orders occupying the field.

10. Assuming that paragraph 24 of the Bengal Model Standing Orders was applicable, the transfer orders impugned would not be covered by the same either. It is the contention of the respondent No. 1 that the transfer from one department or section in Calcutta to Siliguri unit is permitted by paragraph 24. Let us examine the provisions of paragraph 24 of the Central Model Standing Order which provides inter alia for

Transfer

A workman may be transferred according is exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer..."

The Bengal Model Standing Orders in para 24 provides for Transfer of workmen". Any workman may be transferred from one job to another or from one section or department to another in the interest of production or efficiency in establishment.

11. The Preamble of the Industrial Employment Standing Orders Act, 1946 declares in the meaning been that :- "Whereas it is expedient to require employers in industrial establishment to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them". Section 2(g) defines Standing Orders to mean "Rules relating to matters set out in the schedule". Section 15(2)(a) enables the appropriate government to make Rules which may

(a) prescribe additional matters to be included in the schedule and the procedure to be followed in modifying Standing Orders Certified under this Act in accordance with any such addition.

12. Both the Central Government and the State Government of West Bengal in exercise of their rule making power u/s 15(2)(a) have thus added several matters which may be provided in Standing Orders under the Act. Thus Central Rule 2A has introduced serial No. 10A to the Schedule of the Act under which "transfer", without any qualification, is specified under serial No. 4 to be an additional matter. Similarly Rule 2A of the Bengal Rules declares that "matters relating to - (ii) inter departmental or inter-sectional or inter-mill or inter-factory or inter-garden transfer or transfer from one shift to another and change of jobs" shall be additional matters to be included in the Schedule.

13. On a comparison of the Bengal Standing Order with the Central Model Standing Orders, we find that the forcer does not cover the whole of the permitted field In Bengal Rule 2A (ii) it does not cover inter-mill or inter-factory transfers but permits inter-sectional or inter-departmental transfers only. The Central Model Standing Orders on the other hand permits inter-state and inter-establishment transfers which the Bengal Standing Order does not. Mr. Mukherjee argued taking a cue from this difference that inter-departmental or inter-station or inter-establishment transfers are different and distinct for which they have been specified separately in the Order itself. What the Bengal Model Standing Orders do permit are only inter-section or inter-department transfers "in the establishment i.e. in the same establishment and not between two establishments. in contrast in para 7 of the Certified Standing Orders of Basumati Private Ltd. transfer was permitted from one post to another or from one department to another or from one shift to another.

14. Mr. Chowdhury appearing for the respondents contended before us that the transfer from Calcutta to Siliguri was under the same establishment or department.

Both Mr. Mukherjee and Mr Chowdhury took us through the dictionary meaning of the two words establishment" and "department". Mr. Chowdhury further drew our specific attention to the definition of newspaper establishment in Section 2(A) of Working Journalists & Other Employees. Since no definition of establishment is there, either in Working Journalists Act or Industrial Standing Orders Act, Mr. Chowdhury submitted before us that going by dictionary meaning, we must accept every business house as an establishment. An incorporated company can also be a business house or an establishment. It is not necessarily to be governed by a definite geographical or territorial delimitation. Mr. Chowdhury further asserted that ''department'' is a part of the establishment. Since a ''department'' is not defined, we have to resort to the ordinary dictionary meaning. He asked us to held that the word ''department'' has a special meaning within Basumati Corporation Ltd. and we must not go by the meaning as asserted by Mr. Mukherjee that it means either "a Branch" or "a part" or subdivision or a distinct division. In explanation (a) to Section 2(d) of the Working Journalists (conditions of Service) & Miscellaneous Provision Act 1955. different departments, branches and centers of newspaper establishments shall be treated as parts thereof.

15. On this analogy. Mr. Chowdhury asserted that the Siliguri Centre of Basumati Corporation Ltd. would be treated as part of newspaper establishment. Going by the definition of an industrial establishment as given in Section 2(c) of Industrial Employment (Standing Orders) Act 1946 we may not always find a geographical delimitation to a particular site to be guiding principle, as in the railways or in respect of industrial establishments under Payment of Wages Act 1936. In Section 14 of the Working Journalists (Conditions of Service) & Miscellaneous Provisions Act 1955, we find ample provision making the said Industrial Employments (Standing Orders) Act 1946 applicable to newspaper employees.

16. Mr. Mukherjee cited before us the judgment of the Supreme Court in Kundan Sugar Mills Vs. Ziyauddin and Others, . In that decision the Supreme Court was called upon to decide whether a transfer of employees originally employed at Amrsha to a new factory opened at Bulanshahr under the same management was within the right of the employer as a condition of service. The argument was advanced on behalf of the management that the right to transfer is implicit in every contract of service. The Supreme Court held that the rights of an employer and an employee, apart from any statutory provision are governed by the terms of contract between them or by the terms necessarily implied there from. It was a case where there was no express agreement between the employer and the employee whereunder the employer had the right to transfer the employees to any of its concerns in any place and the employees the duty to join the concerns to which they may be transferred. As to whether such a term could be necessarily implied between the parties, the Supreme Court also considered the fact that when the said employees were employed at Amroha, the management had only one factory at Amroha and there was nothing on record to indicate that the employers intended to

purchase factories at other places or extend their activities on the same lines at different places or even if they had such an intention, the employees had knowledge of the same. The Supreme Court held in such circumstances, without more that it would not be right to imply any such term between the contracting parties when the idea of starting new factories at different places was not in contemplation. Ordinarily the employees would have agreed only to serve in the factory that was in existence and the employer would have employed them only in respect of that factory. The Supreme Court further held even though under the same management and under the same employer the two factories were different entities situated at different place to impart a term conferring a right on the employer to transfer employees to a different concern was really to make a new contract with them. The Supreme Court in this context distinguished the case of Alexandre Bouzourou vs. Ottoman Bank reported in AIR 1930 P.C. 118 where the Bank transferred a Bank employee from one branch to another and that too in a different town. It was held in this case that transfer was one of the ordinary incidents of the Bank''s employment and the Judicial Committee rightly observed that it would be difficult to assume from the point of view of proper organization of their staff that the bank would willingly agree that their employees should not be bound to serve outside the place where the contract was made except with their consent and such a condition of the contract would require to be clearly established. The Supreme Court emphasized the distinction in that the bank with its branches was one unit and transfer was one of the ordinary incidents of service in the Bank. In Mary (AnamalaiPtantation Workers'' Union) vs. Selamiparai Estate 1956 (1) LLJ 343 , labour was recruited in the plantations without any differentiation being made between factory and field workers and it was found as a prevailing practice that factory workers were transferred to the field and vice versa, according to exigencies of work. In Bata Shoe Co. Ltd. Vs. Ali Hasan and Another, transfer of an employee from one post to another was held not to be an alteration of the condition of service. In S. N. Mukherjee vs. Kemp & Co. Ltd. 1954 LJC 903. where an employee was transferred from one place to another, it was implicit in the contract of employment that he could be so transferred unless there was an express condition to the contrary in the contract of employment. Kemp & Co. had branches at different places and the business was regarded as one unit. The Supreme Court however held that the observations must be limited to the facts of the case. None of the cases was found to be a case similar to the one decided in Kundan Sugar Mills'' case and "It was not a condition of service of employment either express or implied that the employer has the right to transfer the employees to a new concern started by the employer subsequent to the date of employment of those employees."

17. In O''Brien & Ors. vs. Associated Fire Alarms Ltd. in (1969) 1 All E.R 93, the Court of Appeal in England also came to decide the question whether the refusal of the employees, employed in Liverpool to work in Cumberland on the plea that they could not return home each day. but not returen home every. week ends, amounted

to redundancy and could ensure dismissal considering the question as to whether there was an Implied term in the absence of any express term, the tribunal found that there was an implied term, the tribunal''s finding was held erroneous on a question of law and the judgment of Divisional court of the. Queens'' Bench was set aside and employees won a verdict that the transfer was not valid in law and they were entitled to redundancy payments. The implication of a term was thus found to be an implication of law.

18. A Division Bench of Karnataka High Court comprising of Chief Justice Bharudha and K. S. Bhat. JJ. on March 12. 1992 in Nippani Urban Cooperative Bank Ltd. vs. Their Workmen reported in Indian Factories and Labour Reports 1992 (65) at page 213 had the privilege of going through the ratio in Kudan Sugar Mills'' vs. Ziuauddin (ibid). It also reiterated the principle that the right to transfer of an employee depends upon the contract of service or the terms implied therein. When at the time of joining the service by the employee concerned, the employer had only one office and no branch and there could not have been any possibility of transfer, it was held in the case that the employee cannot be transferred to a branch opened subsequently. However, in the facts and circumstances of the said case there was no contract of service containing an express power of transfer and the Division Bench of the Karnataka High Court held that upon the facts of the said case and having regard to the decision of Kundan Sugar Mills''(ibid) no such power of the employer can be implied. The Division Bench in this context also distinguished the judgment of the Supreme Court in B. Varadha Rao Vs. State of Karnataka and Others, that the said judgment could have no application to the facts of the case because it related to a government servant and it was well-settled that transfer was a normal incident of government service. The Division Bench of the Karnataka High Court also distinguished the Supreme Court judgment in Syndicate Bank Ltd. vs. Their Workmen reported in 1966 FLR 380 since it related to an employee of a bank that had branches and there was no dispute that a transfer was a normal incident of the service of the employees of a bank. It merely reiterated the principle that an order of transfer should be interfered with in such cases only if it was made malafide or for some ulterior purpose. But this judgment did not support the broad submission that the only touchstone upon which interference with an order of transfer can be " justified would be if it is malafide. The true proposition is that if a transfer is an incidents of service, then an order of transfer may be interfered with only in such circumstances that show that the power to transfer has been used mala fide or for some ulterior purpose. This judgment however does not advance the case of the respondents in the present case. We have to analyze minutely as to whether or not paragraph 7 of the Certified Standing Orders as operating in the present case does really envisage a transfer to a branch or an establishment started subsequently at Siliguri, keeping in view the fact that at the time when the present employee petitioners joined the service of the erstwhile Basumati concern and were absorbed by the State Government and thereafter in Basumati Corporation Ltd. there was any

such express intention delineated in the service conditions by way of the Certified Standing Orders of a possible transfer to some other branch or establishment or department not locally situated in Calcutta.

19. According to Mr. Mukherjee the dictionary meaning of the expression ''department'' as a part of the complex whole must necessarily mean the complex situated in a particular place because the definition of industrial Establishment both in Payment of Wages Act and the Factories Act adopted by the Industrial Standing Orders Act, 1946, requires a particular site or place and not two different stations or places. Mr. Kukherjee contended that where there are two different places, the movement will be an inter-station or inter-establishment movement and not inter-departmental movement. Furthermore the word has to be interpreted keeping in view the pronouncement of the Supreme Court of the law on the point enunciated in Kundan Sugar Mills'' Case (ibid) since in the instant case there is no express provision for inter-station or inter-establishment movement.

20. The added matter to the Schedule contemplates express provisions for one or the other kinds of transfer. In matters where there are clear cut Standing Orders holding the field, there cannot be any question of implied condition because the Act requires that such condition is to be expressed precisely and made known to the employees.

21. Mr. Chowdhury cited before us a Single Bench decision of Gujarat High Court in Dr. Jayesh VasudevbhaiTrivedi vs. Stale of Gujarat and Ors. reported in 1990 Labour and Industrial Cases 713 for the proposition that the court is not to interfere with a transfer order on the ground of personal inconvenience. It was however held in the said decision that if the court interferes on the ground of such personal inconvenience then the transfer of the government servant or employees of the public undertakings will be practically impossible and the public administration would come to a grinding halt and cause irreparable loss or inconvenience. The court has to consider whether the transfer order is passed mala fide or is arbitrary and cogent and convincing evidence are there and whether the transfer is without reasons. This decision however is not applicable to the facts of the present case. After all it was a case of an Assistant Professor in Medicine who was transferred to a different post which he challenged on various grounds including inter alia the ground that the place of transfer would not suit his old parents and that there will be a personal inconvenience since his wife was a candidate for the ensuing M.D. Examination.

22. It was held in the Workmen of Dewan Tea Estate and Others Vs. The Management, that the Standing Orders become part of the statutory terms and conditions of service between the industrial employer and his employees. If the Standing Orders thus become part of the statutory terms and conditions of service they would govern the relations between the parties unless of course it can be shown that any provision of the Industrial Disputes Act is inconsistent with the said

Standing Orders. In that case it was held permissible to urge that the statutory provision contained in the Act should override the standing orders which had been certiiled before the said statutory provision was enacted. In that case there was an alleged conflict between definition of lay off as contained in the statute and the substantive rule of the standing orders, the latter being found to be helpful to the employer. Supreme Court held that the definition in the Act overrides the statutory conditions as to lay off included in the Certified Standing Orders. There was provision in the Standing Orders that if for any reason the workmen could not be employed, there would be lay off and because of the depression in trade by reason of the pooir prices generally commanded by the Tea produced by tea gardens, the management had to face a very difficult position and it took the stand that in the interests of the employees and employers'' own business it would be appropriate to lay off the workmen for a certain period in order to avoid closure of business. The circumstances which caused financial depression were beyond the control of the management and lay off was therefore inevitable and the employers resorted to the same. The workmen on the other hand contended that the lay off was not at all justified and employees were entitled to full wages for the period of the lay off. The Tribunal held that the relevant standing order justified the lay off and the trade reasons resulting from the depression in trade and financial liabilities arising there from fell within the scope of the standing orders and the tribunal banked upon the last clause in the standing orders which was generally in terms in support of the plea that the lay off was justified. In the alternative, the Tribunal thought that even if the lay off was not justified by the relevant clause in the standing order, the respondent employers had a common law right to declare a lay off and this right was recognized by Section 25C of the Industrial Disputes Act. It was held by the Supreme Court that the tribunal was wrong that u/s 25C any right of the employer to declare lay off for reasons which the employer regarded as sufficient or satisfactory in that behalf, was recognized at all. No such common law right can be spelt out from the Provisions of Section 25C. In the Standing Orders there was a provision that the Manager can for other causes beyond his control close down either the factory or field work or both with notice and in cases where workmen were laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay as the case may be. But when the workmen have to be laid off for an indefinitely long period their services may be terminated after giving them due notice or pay in lieu thereof. There was an argument made on behalf of the employer that the stoppage of supply may cover cases of stoppage of financial assistance since when lay off was declared, the employer found that they could not raise enough money to carry on the operation in the tea gardens, and hence it was a case of stoppage of supply. The Supreme Court held that this argument was wholly misconceived and stoppage of supply in that case meant only stoppage of raw material or other such thing and In respect of the factory the stoppage of supply would mean the stoppage of tea leaves or in the

case of field work it may mean the stoppage of supply of other articles necessary for field operations. As regards other causes beyond his control i.e. beyond the control of the manager, the Supreme Court held that it was unable to accept the contention that the financial difficulties of the companies could be taken is other causes beyond his control". The Supreme Court thus found that since the lay off was not at all justified and no lay off was contemplated under the alleged common law right, the employees were declared to be entitled to full wages for the period of the purported lay off.

23. Mr. Chowdhury citing the decision in Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, contended that in any proceeding under Article 226 the High Court would be justified in refusing to carry on an investigation into the allegations of mala fide, if necessary particulars of the charge making out a prima facie case are not given in the writ petition. Keeping in view the well-established rule that the burden of establishing mala fide lies very heavily on the person who alleges it and after considering all the allegations made by the writ petitioner in regard it was found in the said decision that there was no sufficient evidence to establish malus animus and the Supreme Court thought that the High Court therefore was justified in dismissing the writ petition in limine on seeing that a prima facie case requiring investigation had not been made out. On the analogy of this decision Mr. Chowdhury contended that the present petitioners not having established any case of mala fide at all against the employer management of Basumati Corporation Ltd., the writ application was liable to be dismissed and the learned Trial Judge has rightly dismissed it accordingly and no interference was called for by the Appeal Court.

24. We must always keep in mind that the Certified Standing Orders are conditions of service statutorily recognized vide Tata Chemicals Ltd. and Others Vs. Kailash C. Adhvaryu, . It was held in that case that the Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946 create rights and obligations but the Act does not provide any special or particular remedy for enforcing such rights and obligations and the workman whose rights are infringed by violation of any Standing Order can, therefore, proceed by an ordinary action in a Civil Court in order to enforce such rights against the employer. Reference was made to Bidi, Bidi Leaves'' and Tobacco Merchants Association Vs. The State of Bombay, .

25. Mr. Chowdhury. however, asserted that in Calcutta Electric Supply Corporation Ud. vs. Ramratan Mahato reported in 1975 Labour and Industrial Cases 740, a Division Bench of the Calcutta High Court took a different view where the services of workmen of Calcutta Electric Supply Corporation were terminated in breach of Standing Orders of the employer corporation and it was held that the employee cannot maintain a suit for declaration that the termination of his service is null and void and that he still continues in service. Such a case does not fall within any of the well-recognized exceptions mentioned above. Such termination would nevertheless

be a breach of contract between the master and servant and a dismissal in breach of contract would only sound in damage. The Standing orders, framed under the Industrial Employment (Standing Orders) Act. 1964 do not confer any status upon the employee. They merely incorporate certain terms and conditions in the contract of service by virtue of the statute. The contract of service nonetheless remains a contract for personal service. Thus the Single Bench judgment of Gujarat High as earlier referred to was clearly dissented from by our High Court.

26. Mr. Chowdhury following the reiteration of the principle of law in this Calcutta High Court Division bench judgment contended that no writ lies in the present case in view of the fact that the petitioners do have their remedy to follow the reliefs set out in the Industrial Disputes Act and either the union or the individual workman concerned will try to exhaust the relief as set out in the Industrial Disputes Act first by going in for alternative remedies and not invoke the writ jurisdiction of this Court straightway.

27. Mr. Chowdhury by referring to a decision in Phani Bhusaii Dey vs. Sudhamayee Roy&Anr. reported in 91 CWN 1078 at page 1080 paragraph 3 contended before us that it is too well- settled a proposition that no temporary injunction is to be granted to party seeking it unless it can sufficiently prove a case of possible injury without temporary injunction being granted to it. In the facts and circumstances of the present case he contended that the transfer is within the industrial establishment as meant and understood by the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act. 1955 since all centres of newspaper establishments will be treated as parts of the same industrial establishment by virtue of the definition of a newspaper establishment in Section 2(d) of the said Act. Mr. Chowdhury contended that there is one principle on which there is complete unanuity of all courts in the world and this is that where the words or the language used in a statute are clear and cloudless, plain simple and explicit unclouded and unabscured, intelligible and painted so as to admit of no ambiguity, vagueness, uncertainty or equivocation, there is absolutely no room for deriving support from external aids. In such case, the statute should be interpreted on the face of the language itself without adding, substracting or omitting words there from. Where the language is plain and unambiguous the court is not entitled to go behind the language so as to add or supply omissions and thus play the role of a political reformer of a wise counsel to the Legislature. He cited the decision in S.P. Gupta Vs. President of India and Others, in this context. The establishment is to be meant lo be the entire business house and according to paragraph 7 of the Standing Order, a transfer from one department to another is justified since the establishment is under the control of the same person or body of persons namely Basumati Corporation Ltd. for the production or publication of one or more newspapers and include newspaper establishments specified as one establishment under the schedule by necessary implication the different departments, branches and centers of newspaper establishments shall be treated as parts of the integral

whole. In this context if the employees of Calcutta are sent to Siliguri. no prejudice will be caused to them since their pay scale is in no manner interfered with and they would not be prejudicially affected at all. Not only both the units are part and parcel of the same establishment with the meaning of Industrial Employee Standing Orders Act, 1949, they are part and parcel of the newspaper establishment as well within the meaning of Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act. 1955. that apart according to Mr. Chowdhury under Certified Standing Orders par. aph 7, management has the power to transfer any newspaper employee to any other department in Siliguri. Mr. Chowdhury further cited before us a decision in S.K. Gupta and Anr. vs. K.P.JainandAnr. reported in AIR 1979 SC 734 thereby referring the way in which a particular word is to be interpreted by the Courts and whether or not the court could refer to the meaning as attributed to the different words as used in various dictionaries in preference to the manner in which the said words were applied in the definition given in the statute. Where in a definition section of a statute a word is defined to mean a certain thing, wherever that word is used in that statute, it shall mean what is stated in the definition unless the context otherwise requires. But where the definition is an inclusive defintion, the word not only bears its ordinary, popular and natural sense whenever that word would be applicable but it also bears its extended statutory meaning. At any rate such expansive definition should be so construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having opposite effect (see Jobbins vs. Middlesex County Council (1949) 1 KB 142). Where the definition of an expression in a definition clause is preceded by the words "unless the context otherwise requires" normally the definition contained in the Section should be applied and given effect to but this normal rule may however, be departed from, if there be something in the context to show that the definition should not be applied. The observation of Khanna, J. in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, was to kept in mind in this context. H would thus appear that ordinarily one has to adhere to the definition and if it is an expansive definition, the same should be adhered to. The frame of any definition more often than not is capable of being made flexible but the p-ecision and certainty in x law requires that it would not be made loose and be kept tight as far as possible. Kalya Singh Vs. Genda Lal and Others, was also referred to. Mr. Chowdhury further argued on the analogy of this decision that strictly speaking omision of the Certified Standing Orders to clearly envisage the transfer from one station to another does not mean and imply that the makers of the standing Orders did not envisage transfer from one place to another and if an transfer is adhered to from Calcutta to Siliguri, the basic fabric of the scheme recognized by way of Certified standing Order would not change.

28. Mr. Chowdhury further contended that every word in the service condition has to be read and interpretated from the text and context The Standing Order did not contain indeed an enabling provision from one station to another but there is a

provision for transfer from one department to another. There is thus no restrictive provision imposed in the Standing Orders. There not having been definition given of an "establishment" either in the Working Journalists Act or in the Standing Orders Act, there is no harm if we look for its ordinary meaning in the dictionary where it means the whole of a business house. We are not necessarily to be guided by a definite geographical or territorial delimitation. Mr. Chowdhury contended that "department" has a special meaning within Basumati Corporation Ltd. Hard cases may bad laws. There may not be any unanimity in construing the effect in the contract. However it does not lie in the mouth of the appellants that they could not properly construe the Standing Orders. It is immaterial that they did not understand it. Standing Order overrides the service contract. One cannot contract out of Standing Orders. The standing Orders were created at a time when the company was in a growing situation and did not reach the saturation point. There was no duty cast on the employers to make known to each and individual employee about the terms embodied in the Standing Orders. Mr. Chowdhnrv obviously placed before us the object which is to be achieved by the provisions of the Industrial Employment standing- Orders) Act 1946. u/s 4 the Standing Orders must have to be certified by the Certifying Officer. The Standing Orders were to be limited to the items in the schedule and one cannot act beyond the schedule. Something could not be add in the Standing Orders that is not in the schedule but not the vice versa. Mr. Chowdhury by placing before us the comparative chart of the West Bengal and the Central Model Standing Orders contended that in such model standing orders reference was made to various kinds of things which may not have any application at all in the individual establishments Comparison to the two model standing orders do not carry the matter further. Mr. Chowdhury contended that both in Kundan Sugar Mills case and also in O'' Brien and Ors. vs. Associated Fire Alarms Ltd case (bid), there was no standing orders at all and no question of implied breach of contract was there. Whether such a term is implied or not was to be taken as a question of law according to the English decision but in the facts of the present case there is an express term and not any implied term and the said term is loud enough. Mr. Mukherjee on the other hand contended that the recognized test of an implied term was applied by law in the case of C Brien & Ors. vs. Associated Fire Alarms Ltd. (ibid) and the context was officious vice-standard.

29. Mr. K. S. Roy with Mrs. Debjani Sengupta appearing for Basumati Corporation Ltd. in the appeal over Sekhar Sengupta''s appeal against the order of rejection of his writ application contended that there is no statutory definition of the department or establishment. Management. In Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers'' Union, it was held that it is well-settled law that the meaning which different words ought to be understood to bear is not to be ascertained by any process akin to speculation and the primary duty of a court is to find out the natural meaning of the words used in the context in which they occur, that context including any other phrase in the Act used the words

in dispute. The Court ought, therefore, to give a literal meaning to the language used by Parliament unless the language is ambiguous or its literal sense gives rise to any anomaly or results in something which would defeat the purpose of the Act. As regards Industrial Employment (Standing Orders) Act, 1949 the object is for the employers to define with certainty the conditions of service in their establishments and to reduce them to writing and to get them compulsorily certified with a view to avoid unnecessary industrial disputes. The Act even gave individual workman the right to context draft standing orders or to apply for their modification in addition to existing rights to raise industrial dispute. The Act is a beneficial piece of legislation and therefore unless compelled by any words in it, the court would not be justified for widening the scope of application of any of the Standing Orders. The policy of Section 10 of the Act is clear enough that modification should not be allowed within six months from the date when the standing orders or the last modifications thereof came into operation. The object of providing the time limit was that the standing orders or their modifications should be allowed to worth for sufficiently long time to see whether they work properly or not. This time limit is not rigid because a modification even before six months is permissible if there is an agreement between the parties.

30. We are however, not concerned with the other points recited in the said case but it must be borne in mind that while reading the Standing Orders we must not interpret it in a manner so that we can spell out an implied authority to transfer there from unless it is clearly envisaged.

31. Mr. Mukherjee cited before us the decision in Deputy Chief Controller of Imports and Exports, New Delhi Vs. K.T. Kosalram and Others, for the proposition that dictionary meanings, however, helpful in understanding the general sense of the words cannot control the meaning where the scheme of the statute or the instrument considered as a whole clearly conveys a somewhat different shade of meaning. It is not always a safe way to construe a statute or a contract by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the instrument upon the basis of the definitions. What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered form the context, the nature of the subject matter, the purpose or the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects. The context in which a word conveying different shades of meaning is used, is of importance in determining the precise sense which fits in with the context in which it is intended to be conveyed by the author. In the facts of the said case the words used in the license were accordingly construed in the

background of the scheme of the Import Control Order, 1955 with regard to a particular entry and the Import Trade Control Policy which fitted with the scheme and policy of the Import Trade Control.

32. In Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, there was question of interpretation of the word includes'' and it was held by the Supreme Court that the word includes'' was intended not to expand the meaning of ''Prize chit'' but to cover all transactions or arrangements of the nature of the prose chits under different names. Relying on this observation of the Supreme Court, Mr. Chowdhury contended that the word "department" will cover all such branches or establishments founded by the employers at a point subsequent to the date of bringing into operation the Certified Standing Orders, even though they may cover different names. We are, however, unable to accept this submission of Mr. Chowdhury as a general proposition and we have to construe the meaning of the word ''department'' on the basis of its plain meaning as it does appear from the Certified Standing Orders.

33. He referred to Section 3(2) of the Industrial Employment (Standing Orders) Act. 1946 to contend that where model standing Orders have been prescribed, they shall be so far applicable in conformity with such model. He stressed the meaning of the word "department" so as to construe it as a part of the establishment which may be in conformity with the definition to a "newspaper establishment" in the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act. 1955. He contended that the different departments, branches and centers of newspaper establishments should be treated as part of the entire establishment within the meaning of Section 2(d) of the Working Journalists and Other Newspaper (Condition of Service) and Miscellaneous Provisions Act, 1955.

34. We are. however, unable to accept the contention as infallible. Both Mr. Mukherjee and Mr. Chowdhury wanted to fall back upon the ratio as propounded in Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, . Mr. Mukherjee on the one hand contended that the Supreme Court did not differ from the concept of an establishment as adhering to a place of operation, it went so far as to say that all the newspaper establishments irrespective of the geographical location and irrespective of the individual separate entities could be clubbed together for the purpose of wage board award and different Journalists working in different concerns could be treated as belonging to a same establishment irrespective of the geographical location thereof and irrespective of the different incorporate bodies owing and controlling the proprietory interests and their management. Both Mr. Mukherjee as well as Mr. Chowdhury agreed that details and precision ought to be there in the service conditions. Mr. Mukherjee contended that in Express Newspaper (Pvt) Ltd. vs. the Union of India (Ibid) the definition of a newspaper establishment u/s 2(d) of the Working Journalists and Other Newspaper Act, may comprise within its scope chains of multiple units, but

even so, the establishment should be one individual establishment producing or publishing a chains of newspapers or multiple units of newspapers. If such chains or multiple units were, though belonging to same person or body of persons whether incorporated or not, produced or publishes by separate newspaper establishments, common control would not render the constitution of several newspaper establishment as one establishment for the purpose of the definition, they would none the less be separate newspaper establishments though under common control working on this analogy Mr. Mukherjee contended that reliance would be placed in the Calcutta High Court decision in Provat Kumar Kar and Others Vs. William Trevelyan Curties Parkar, , where our Calcutta High Court Construed the term "employed in an industrial establishment" and observed in same particular place, that place being used for manufacture or an activity amounting to industry as that term is used in the Act." A similar interpretation was put in the expression industrial establishment" by the Madras High Court in Sri Rama Bilas Service Ltd. vs. Stale of Madras reported in AIR 1956 Mad 115 at page 122. The decisions lend support to the contention that a newspaper establishment like an industrial establishment should be located in one place though it may be carrying on its activities of production or publication of one or more newspapers than one. If these activities are carried on in different places namely in different towns and cities of different states, the newspaper establishments producing or publishing such newspapers cannot be treated as one individual establishment but should be treated as separate newspapers establishments for the purpose of working out the relations between themselves and their employees. Even if this aspect of the law was taken into consideration the Supreme Court in Express Newspaper Ltd. vs. the Union of India (ibid) went so far as hold that irrespective of the fact that they were different newspapers establishments owned by different companies or organizations, they could be clubbed together for being treated alike for the purpose of Wage Board Award. We however, think that what the Supreme Court ''.observed with regard to the two cases above on the point regarding the meaning of an industrial establishment" could properly be taken into consideration for the purpose of our case so as to arrive at a definite conclusion that the establishment in Siliguri is a different industrial establishment and could not be merely termed as a department of the Calcutta establishment and that being so. the service conditions as embodied in the Certified Standing Orders cannot cover such impugned transfers.

35. After giving our anxious consideration to the facts of the case and various questions of law adverted to by all the learned Advocates appearing for the different parties, we arrive at the conclusion that construing the Certified Standing Order we do not find that any implied authority of the management to be there to effect transfer of the employees from Calcutta to Siliguri which could be spelt out from the existing Certified Standing Orders. It is always the desire of the Legislature that the Standing Order would be framed with certainty and precision. Even if it is true that

the Certified Standing Orders came into existence when the Concern was in a growing situation but it ought to have taken into account as and the subsequent developments took place so that the subsequent units that were added to the establishment could really be taken as departments of the entire concern. We cannot shut out eyes to the fact that there is no publication of Basumati since 7.10.1992. We cannot hold that this subsequent event does not affect the situation in any manner whatsoever. We find however that some publications are still done from the Calcutta establishment since the Basumati Corporation Ltd., continues publishing the fortnightly journal. We cannot also ignore the fact that apparently an assurance was given by the Hon''ble Minister that unwilling persons should not be so transferred. Only such willing employees would be invited to go on transfer. However that assurance was followed in its breach. We cannot, however, reach a firm finding that they were so transferred just because they belonged to a union with a particular political colour. We have to agree on this point that the burden is entirely on the writ petitioners and the question whether or not burden has been fully discharged regarding proof of mala fides, we are not fully satisfied. The submissions on this score are really vague, sketchy and not worthy of making any efficacious representation against. Mr. Chowdhury in this context contended that the respondent No. 3 was described as the author of the transfer orders but he was not specifically impleaded by name. Since we are not arriving at any finding about the mala fides on the part of the respondent authority, need not enter further on the said question that the writ application are to fail only because of the fact that the person issuing the transfer orders has not been impleaded by name.

36. We cannot fully agree with the submission of Mr. Chowdhury learned counsel for the respondents that the writ jursdiction cannot be effective because Basumati Corporation Ltd. is not "state". Mr. Chowdhury''s submissions in their regard were that the Standing Orders were not statutory but contractual in nature and as regards Basumati Corporation Ltd. there is not the all pervasive control of the State and all finances are not exclusively provided by the Government and furthermore it is not a Government agency which discharges Government functions. Mr. Chowdhury contended on this score that he does not know of the Government functions in dissemination of news. It is thus not a governmental function at all. We cannot persuade ourselves to agree on any of the submissions advanced by Mr. Chowdhury on this score. Basumati Corporation Ltd. is a full-fledged Government controlled organization where all the finances are provided by the Government and it is indeed in the knowledge of everybody that it discharges, after nationalization, a governmental duty. The State Governments do publish newspapers and bulletins and in a welfare state we cannot contend today that catering news or information to educate the public and keep them enlightened about what is happening in the whole world in general and in India in particular is not a governmental service. The learned Trial Judge in the facts of the present case clearly went wrong in going through the question relating to the financial viability vis-a-vis the existence of the

organization in Calcutta and took into consideration the economic policy of the management in opening up a new venture in Siliguri. The learned Trial Judge was also clearly wrong in having taken into account the decision of the Board of Directors of Basumati Corporation Ltd. on 29th January, 1987 so as to alter the condition of the employment by adoption of Bengal Model Standing Orders under the Industrial Employment (Standing Orders Act) 1946 as a service condition applicable to the employees of the respondent No. 1. The learned Trial Judge has also misconstrued the pleadings in finding that the apprehension of the writ petitioners was not a real one in coming to a finding that the respondents were not taking steps to close down the publication from Calcutta in opening up a new establishment at Siliguri. Really on 7th October 1992 the management has taken a decision to stop publication of Dainik Basumati from Calcutta and there is no question of simultaneous publication of Dainik Basumati both from Calcutta and Siliguri. The learned Trial Judge has really erred in law in arriving at a conclusion while interpreting the definition of establishment and industrial establishment vis-a-vis the concept of department, that no separate at Siliguri. We cannot persuade ourselves to agree with the submissions of the respondents that only steps have been taken to open a new department at Siliguri, even though the management remains the same and it is same establishment that covers both the units, one at Calcutta and the other at Siliguri. The learned Trial Judge had observed in his interpretation of the definition of the ''department'' that it is so comprehensive as to include both the Calcutta as well as the Siliguri units to be a part and parcel of the one and the same comprehensive whole. The opening of the unit of Siliguri does not mean the opening of a new department at Siliguri but also opening of another separate establishment at Siliguri and that being so, paragraph 7 of the Standing Order does not permit the nature of the transfer impugned. It cannot be held in such circumstances that the service conditions are quite sufficient for the management to pass the impugned orders of transfer asking the writ petitioners to join at Siliguri. We therefore, set aside the order of the learned Trial Judge impugned quash the orders of transfer under challenge and direct the respondents authorities to proceed in accordance with law.
There will be, however, no order as to costs.

All parties to act on a signed copy of the ordering portion of the judgment.

Aran Kumar Datta, J.

I agree.