SUPREME COURT OF INDIA

Parry and Co.

Vs.

P. C. Pal, Judge on the Second Industrial Tribunal, Calcutta

C.A.No.284 of 1967

(J. M. Shelat, V. Bhargava and C. A. Vaidialingam, JJ.)

27.11.1968

JUDGEMENT

SHELAT, J.:-

1. This appeal by certificate is directed against the judgment and order of the Division Bench of the High Court of Calcutta setting aside the order of a Single Judge of that High Court in a writ petition under Article 226 of the Constitution.

2. The facts relevant for this judgement may first be set out. The appellant company was at the relevant time carrying on business at various places in India including Calcutta as merchants, selling agents and manufacturers. Its registered office is at Madras. Its business at Calcutta was two-fold: (1) as selling agents of certain companies, and (2) of conducting an engineering workshop at Kidderprore. According to the company its agency business began to decline from 1954 and it had, therefore, to retrench some of its employees in the year. The company consequently decided upon a police of reorganising its business by giving accent to its manufacturing activities and of giving up the agencies held by it. In pursuance of the said policy, the company relinquished between April 1,

1960 and September 30, 1961, 13 agencies in Bombay, 11 in Delhi, 8 in Madras and 11 in Calcutta. It also closed down 3 of its branches in Northern India and 11 in South India. The total staff engaged at Calcutta consisted of 75 employees in the workshop at Kidderpore and 225 in the Branch office.

3. Apprehending that the said policy would result in retrenchment, the third respondent union wrote to the Deputy Labour Commissioner requesting him to intervene stating that the Board of Directors and the company had declared their police of surrendering agencies and that in the result the union feared that about 60 employees would be retrenched. The Deputy Commissioner called for the comments of the company's manager, who in his reply dated June 17, 1961 affirmed that the company had taken the said policy decision in consequence of which some of the employees would have to be retrenched. On June 20, 1961, the Deputy Commissioner held conciliation proceedings during which also manager made it clear that in pursuance of the policy of reorganising its business the company had decided to give up certain agencies. On June 23, 1961, the union sent to the company its demands inter alia claiming (a) that the retrenchment must be fully justified, and (b) that transfer of service to other places in the company's organisation should be offered to those who are willing to accept such transfer. Neither in its letter to the Deputy Commissioner nor in the conciliation proceedings, nor in the demands union disputed the fact that the company had taken the said policy decision and that the decision would result in retrenchment. Indeed, the said demands accepted the policy decision but called upon the company to pay certain amounts to those retrenched, to retrench only to the extent fully justified and to offer transfer to those retrenched. On June 28, 1961 the company sent its comments on the union's demands stating inter alia that (1) the company would pay one month's wages in lieu of notice as also retrenchment compensation, (2) that 85 permanent and 17 temporary employees would be retrenched with effect from July 1, 1961, (3) that re-employment of retrenched workmen would be governed by the provisions of Sec. 25-H, and (4) that the company's policy being to recruit local persons at its branches, transfer from one place to another had not been frequently resorted to by the company but the company would consider transfer of the employees concerned after employees retrenched at other branches had first been absorbed. On June 29, 1961, the company gave the notice of retrenchment to the employees concerned, also a notice to the Commissioner of Labour and the Conciliation Officer under Section 25-F (c), paid one month's wages to employees concerned in lieu of notice and also retrenchment compensation. The State Government by its order dated July 31, 1961, referred for adjudication to the Second Industrial Tribunal, Calcutta, the question whether retrenchment of the said 52 employees was justified and to what relief, if any, they were entitled.

4. In its statement of claim the union inter alia pleaded that the company had in a spirit of vindictiveness and to break the union retrenched the said employees, that with mala fide end in view it gave up in the name of a policy reorganization agencies although there were profitable, creating thereby an artificial condition to show fall in business and surplusage in staff, that the company's mala fides were apparent in that it gave up agencies in Calcutta only, that the company being dominated by persons from Madras its real object was to divert its resources to Madras from parochial and anti-union considerations, that as a result of giving up the agencies the company had suffered in profits, that the workload of the remaining employees had increased, that there was in fact no real surplusage, and lastly, that the company had not followed while retrenching the principle of "last come first go". The company's reply was that retrenchment was bona fide and in

accordance with law, that it had relinquished all the pharmaceutical agencies, general sales agencies except one, and a number of other agencies not only in Calcutta but also in Bombay, Delhi and Madras, that it had absolute right to decide which business it should continue and which to give up, that as matter of business policy it had decided to discontinue the agency business with the result that retrenchment had become inevitable that the union had indulged in correct, irrelevant and irresponsible allegations, that though the actual surplusage was 66, it had retrenched only 52 employees of whom 17 were temporary, and that the question whether the workload on the remaining employees had increased or not was irrelevant. In support of its reply the company produced two statements, Ex. 9 and E, showing the number of and places where branches were closed and the agencies relinquished. The Calcutta branch had at the time 21 agencies out of which 11 were given up. Prima facie, the surrender of so many agencies would result in surplusage of employees. On these pleadings and the issues arising therefrom the only question before the Tribunal, therefore, was whether retrenchment of 52 employees was justified.

5. However, the union challenged not only the legality and propriety of the retrenchment but also the propriety and reasonableness of the said policy decision alleging absence of good reason for relinquishing agencies and further alleging that an artificial surplusage was caused for weakening the union and parochial considerations. The Tribunal thought that these questions required elucidation by the company. It held that though 11 agencies in all in Calcutta were given up, since two of them were given upon on July 1, 1961 and the third on August 1, 1961, only 8 agencies were given up before the notice of retrenchment. The Tribunal, however, failed to observe that notice of giving up these three agencies were served by the company as early as May 1, 1961.

6. The Tribunal held that though agencies were surrendered in places other than Calcutta also, the company led no evidence that the staff was retrenched in these places also and whether such retrenched staff was absorbed in those places. In the union's statement of claim, however, no such question was raised, the only question raised being that no agencies were given up in the places other than Calcutta. Next, the Tribunal rejected the company's case about its policy of reorganising its business. The manager of the Calcutta branch gave evidence and also produced an extract from a speech of the managing director, East India Distilleries and Sugar Factories Ltd., of which the appellant-company is a subsidiary. The manager also gave certain other reasons which led the company to give up certain agencies. The Tribunal, however, rejected this evidence on the ground that the manager could not give evidence about the policy decision as that was the function of the Board of Directors, that the extract from the said speech reflected the policy of the East India Distilleries Co., but not necessarily of the appellant company and that the additional reasons given by the manager showed that the real reasons for giving up the agencies were those reasons and not the policy decision. The rejection of the manager's evidence was totally unwarranted and the finding that the policy decision was not proved was contrary to the evidence on record. As already stated, in the union's letter to the Labour Commissioner, the union had based its request for intervention on the footing that it apprehended retrenchment as a result of the company's said policy decision. During conciliation proceedings also the manager had clarified that retrenchment was inevitable on account of the said policy decision. Besides, there was no reason why the manager could not depose about the company's said decision. The additional reasons given by the manager were the reasons to show why of the 21 agencies the particular 11 agencies were surrendered. The finding of the Tribunal that these agencies were not given up on the account of the company's said policy was not

only unwarranted but was contrary to the evidence on record. The further reasoning of the Tribunal that there could be no such policy decision because though the agencies were given up no corresponding development in manufacturing activities was taken up was also without foundation. The evidence of the manager was that such development had already been launched in Madras and , about the time of his giving evidence, also at Kidderpore. That evidence was not accepted as according to the Tribunal the development on the manufacturing side of the company's business should have been contemporaneous with the surrender of the agencies in Calcutta. The fact that such activities were also not undertaken in Kidderpore could not possible be a reason for disbelieving the company's case about the said policy. To disbelieve the company's case on the ground that no such manufacturing activity was undertaken in Calcutta was altogether unjustified. The Tribunal next found that there could not be any real surplusage in the staff as the company had during the year 1960 made 17 appointments. The Tribunal accepted the union's case that this circumstance indicated that there was no need of retrenchment. It rejected the company's explanation that until retrenchment was decided upon and calculations were made about the extent of retrenchment, temporary appointments had to be made in place of those who retired or left the company's service. Even though the agencies were given up winding-up work in connection with them would still require the same staff. Besides, all the 17 temporary employees were included in the list of retrenched employees. As regards the statement Ex. G showing surplusage of 66 employees the Tribunal questioned its correctness on the ground that although four Agencies were given up in 1960 no retrenchment was made during that year that on the other hand 17 temporary hands were engaged, that the evidence of the union's secretary showed that after the retrenchment work-load of the remaining employees had increased, and lastly, that retrenchment could have been avoided by transferring the employees concerned to other branches of the company. Though the Tribunal gave a clear finding that the company had not resorted to retrenchment with the intention of victimisation, yet it held that "the allegations made by the union (as to parochial considerations) do not appear to be unfounded or unreasonable". The reasons given for this observation were that the company's head office was at Madras, that the chairman and the directors of the company were from Madras and that the agencies given up in Madras were less in number than in Calcutta. On these findings the Tribunal held that the scheme of reorganization was not sufficiently established, that mere surrender of agencies was no proof of such a scheme, that therefore, a good case for retrenchment was not made out, that the company had failed to establish the exact number of surplus employees and the extent of retrenchment, that it failed to observe the principle laid down in Section 25-G, that the said notice dated June 29, 1961 was not in accordance with Rule 77 of the West Bengal Industrial Disputes Rules, 1958 as the notice was of June 29, 1961 while retrenchment, was to take effect from July 1, 1961. The Tribunal held that the retrenchment therefore was not with immediate effect, the proviso to that rule did not apply and a notice of one month, as required by sub-clause (1) of that rule, was necessary and that not having been done the retrenchment was invalid as being in breach of Section 25-F (c). In accordance with these findings of Tribunal ordered reinstatement and payment to the 52 employees of back wages as from July 1, 1961.

7. Aggrieved by this order the company filed a writ petition for certiorari which was heard by a learned Single Judge of the High Court. This learned Single Judge held that an employer has the right to reorganise his business in any manner he likes for the purpose of economy or convenience, that a Tribunal therefore, cannot question its propriety, the only limitation being that it should be bona fide and not with the object of victimising employees. He observed that though the Tribunal had found that the union had failed to establish victimisation or any unfair labour practice, it had, yet come to an inconsistent finding that the probability that the union's activity would be weakened

by large scale retrenchment could not be ignored or overlooked. The learned Judge found that in coming to this finding the Tribunal acted not upon evidence but on mere conjectures. He also held that in view of the evidence the Tribunal was in patent error in rejecting the company's case of relinquishment of agencies and the resultant retrenchment. He further held that the finding of the Tribunal that the policy of reorganization was not bona fide but was for parochial considerations was based on inferences for which there were no justifying premises. Lastly, he held that the Tribunals' finding that the company did not establish retrenchment of 52 employees was not justified as the grounds given by it, namely, (1) that retrenchment could have been avoided by transferring the employees concerned to other centres, (2) that the principle of "last come first go" was not followed, and (3) that the procedure under Section 25-F (c) was not observed were not warranted by the evidence.

8. As regards the first ground, the learned Judge held that ground was not sustainable. As to the second ground he held that being a finding of fact he could not substitute his own opinion in place of the Tribunal's and remanded that part of the case to the Tribunal for further consideration. Regarding the third ground, he found that the Tribunal was in error in holding that clause 1 of R. 77 of the said rules applied and that a month's notice not having been given thereunder the retrenchment was invalid. He set aside the award and remanded the case to the Tribunal for limited purpose of enforcing retrenchment according to the principle of "last come first go".

9. In appeal against the said judgement, a Division Bench of the High Court held that the High Court could interfere in a writ petition for certiorari with the Tribunal's findings only within well-reorganized limits, such as ,where the inferior tribunal has acted without jurisdiction or in excess of it or where it has acted illegally as when it acts in breach of the principles of natural justice, or where there is an error of law apparent on record. The superior Court in such cases acts in supervisory and not appellate jurisdiction and therefore, cannot review findings of fact however erroneous they are. The Division Bench found that the findings of the Tribunal that the company had failed to prove its scheme of reorganization, that retrenchment was effected in Calcutta only, that the company was actuated by parochial considerations, and therefore retrenchment was not bona fide could not be said not to have been supported by evidence and that therefore the learned Single Judge was not competent to interfere with those findings.

10. Counsel for the company raised three contentions: (1) that since the Tribunal had held that there was no victimisation, its jurisdiction was limited to the consideration only whether the employees were retrenched within the meaning of Section 2(oo) of the Act and whether the employer's obligations under Sections 25-F, 25-G and 25-H were complied with, (2) that the Tribunal had no jurisdiction to consider the question whether the reorganization scheme was for parochial consideration or otherwise, i.e., whether the scheme had merits, which opinion is entirely managerial, and (3) that some of the findings of the Tribunal were without legal evidence and based on mere surmises and therefore perverse. The contention on behalf of the union, on the other hand, was that the scope of interference by the High Court in a certiorari petition was limited and only on certain well-recognised grounds and, that the learned Single Judge was not correct in allowing the petition for that meant interfering with findings of fact arrived at by the Tribunal.

11. The grounds on which interference by the High Court is available in such writ petitions have by now been well established. In Basappa v. Nagappa, 1955 SCR 250= (AIR 1954 SC 440) it was observed that a writ of certiorari is generally granted when a Court has acted without or in excess of its jurisdiction. It is available in those cases where a tribunal, though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural justice where no particular procedure is prescribed. But a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown, can be so corrected. In Dharangadhara Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152= (AIR 1957 SC 264) this Court once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence. Likewise, in State of Andhra Pradesh v. S. Sree Ram Rao, AIR 1963 SC 1723 this Court observed that where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion interference under Article 226 would be justified. The question for our determination, therefore, is whether the learned Single Judge was within the aforesaid well recognised limits when he set aside the award. Before, however, we examine that aspect of the case we may first consider the scope of the Tribunal's jurisdiction in cases of retrenchment arising under Section 25-F of the Act.

12. In D. Macropollo and Co. v. Their Employee's Union, (1958) 2 Lab LJ 492= (AIR 1958 SC 1012) this Court held that if a scheme or reorganization has been adopted by an employer for reasons of economy or convenience and it has been introduced in all the areas of its business, the fact that its implementation would lead to the discharge of some of the employees would have no material bearing on the question as to whether the scheme was adopted by the employer bona fide or not. In the circumstances, an industrial tribunal considering the issue relating to retrenchment, should not attach any importance to the consequences of reorganization. The resulting discharge and retrenchment would have to be considered as an inevitable, though unfortunate, consequence of such a scheme. It also held that where the finding of a tribunal is based on wrong and erroneous assumption of certain material facts, such a finding would be perverse. A recent decision in Ghatge and Patil Concerns' Employee's Union v. Ghatge and Patel (Transport) (P) Ltd., (1968) 1 SCR 300= (AIR 1968 SC 503) was a case of an employer reorganising his business from conducting a transport business himself through employees engaged by him to conducting it through a contract system whereunder he let out his motor trucks to persons who, before this change, were his employees. Admittedly, this was done because he could not implement some of the provisions of the Motor Transport Workers Act, 1961. The change over to the contract system was held by the Tribunal not to have been effected for victimising the employees. The employees had voluntarily resigned and hired the employer's truck on contract basis. It was held that a person must be considered free to so arrange his business that he avoids a regulatory law and its penal consequences which he has without the arrangement, no proper means of obeying. In Workmen of Subong Tea Estate v. The Outgoing Management of Subong Tea Estate, (1964) 5 SCR 602= (AIR 1967 SC 420) this Court laid down the following propositions: (1) that the management can retrench its employees only for proper reasons which means that it must not be actuated by any motive of victimisation or

any unfair labour practice, (2) that it is for the management to decide the strength of its labour force, for the number of workmen required to carry out efficiently the work in his industrial undertaking must always be left to be determined by the management in its discretion, (3) if the number of employees exceeded the reasonable and legitimate needs of the undertaking it is open to the management to retrench them, (4) workmen may become surplus on the ground of rationlisation or economy reasonably or bona fide adopted by the management or on the ground of other industrial or trade reasons, and (5) the right to effect retrenchment cannot normally be challenged but when there is a dispute about the validity of retrenchment the impugned retrenchment must be shown as justified on proper reasons, i.e., that it was not capricious or without rhyme or reason.

13. Since this is an appeal arising from a writ petition for certiorari we also would not interfere with the conclusions arrived at by the Tribunal except on grounds on which the High Court could have done. Mr. Gupte's contention was that the findings of the Tribunal were beyond its jurisdiction, that they were unwarranted by evidence on record and were based either on wrong assumptions or mere conjectures without any foundation in the evidence, and therefore, this is a fit case for our interference. It is not in dispute that the company gave up 11 out of its 21 agencies in Calcutta, that is, more than half of its agency business was given up during the years 1960 and 1961. There was clear and unchallenged evidence that certain agencies were likewise given up in other places including Madras. The manager gave evidence that this was done in pursuance of the policy decision taken by the company to reorganise its business by concentrating more on its manufacturing side than its agency business as the company found the agency business unprofitable on account of import restrictions and other reasons. The Tribunal, however, rejected this evidence on the ground that the policy decision being the function of the Board of Directors, the manager was not competent to depose about it and that if the company wanted to establish it should have produced a resolution of the Board and on that ground held that the company had failed to prove the said policy. In the first place we fail wholly to appreciate the Tribunal's view that the said policy could not be proved through the manager. In the second place, in the very first letter of the union to the Deputy Labour Commissioner; as also during the conciliation proceedings, it was assumed that the company had taken such a decision, that consequently retrenchment was apprehended and that therefore that officer should intervene. In these circumstances, the finding that the company had failed to establish its policy was not only beyond the scope of the enquiry before the Tribunal but totally invalid. As held in J. K. Iron and Steel Co. v. Iron and Steel Mazdoor Union, (1956) 1 Lab LJ 227= (AIR 1956 SC 231) the Tribunal had to confine itself to the pleadings and the issue arising therefrom and it was therefore, not open to it to fly off a tangent disregarding the pleadings and reach any conclusion that it though as just and power.

14. It is well established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bona fide it is not competent of a tribunal to question its propriety. If a scheme for such reorganization results in surplusage of employees no employer is expected to carry the burden of such economic dead-weight and retrenchment has to be accepted as inevitable, however unfortunate it is. The Legislature realised this position and therefore provided by Section 25-F compensation to soften the blow of hardship resulting from an employee being thrown out of employment through no fault of his. It is not the function of the Tribunal, therefore, to go into the question whether such a scheme is profitable or not and whether it should have adopted by the employer. In the instant case, the

Tribunal examined the propriety of reorganization and held that the company had not proved to its satisfaction that it was profitable. The Tribunal then held (a) that the scheme was not reasonable inasmuch as the number of agencies given up in Madras was less than that in Calcutta, (b) that though development of manufacturing activity was taken up in Madras, no such activity was undertaken in Kidderpore, and (c) that the company should have developed its manufacturing activity in Kidderpore simultaneously with the surrender of the agencies. It is obvious that while reorganising its business it is not incumbent on the company to develop its manufacturing side at the very place where it has surrendered its agencies, namely, Calcutta, nor to do so at the very same time. These considerations which the Tribunal took into account were totally extraneous to the issue before it and the Tribunal ought not to have allowed its mind to be influenced by such considerations and thereby disabling itself from viewing the issue from proper perspective. It was also beyond its competence to go into the question of propriety of the company's decision to reorganise its business. Having come to the conclusion that the said policy was not actuated by any motive of victimisation or unfair labour practice and therefore was bona fide, any consideration as to its reasonableness or propriety was clearly extraneous. Therefore, its finding that the company had failed to establish that it was profitable was incompetent. It is for the employer to decide whether a particular policy in running his business will be profitable, economic or convenient and we know of no provision in the industrial law which confers any power on the tribunal to inquire into such a decision so long as it is not actuated by any consideration for victimisation or any such unfair labour practice.

15. The finding that the policy decision was actuated by parochial considerations, namely, for transferring the company's resources from Calcutta to Madras at the cost of the former, was without evidence and was entirely speculative. Even assuming that the company had decided to concentrate its activity in Madras there is nothing in the industrial low to compel it to continue its business in Calcutta. As regards the Tribunal's finding that there was no surplusage in spite of the company having given up more than half of its agencies, the manager produced the statement, Ex. G, showing that on his calculation there would be a surplusage of 66 employees. The Tribunal rejected the case of a surplusage on the grounds that though 4 agencies were given up in Calcutta in 1960 the company had during that year engaged 17 temporary employees, that there was overload of work on the remaining employees after retrenchment and that retrenchment could have been avoided by transferring the retrenched employees to other branches specially as their conditions of service included the liability of being transferred. It is true that no retrenchment was carried out in 1960 and there was evidence of the union's secretary that work had accumulated when he gave his evidence in January 1962. These facts however, would not by themselves mean that there was no surplusage and that retrenchment was unjustified. As laid down in Workmen of Subong Tea Estate, (1964) 5 SCR 602= (AIR 1967 SC 420) (supra), it is for the management to decide the strength of its labour force to carry out efficiently the working of its undertaking. If, as a result of reorganisation, the number of its existing employees exceeded the reasonable and legitimate needs of the undertaking the management, subject to its obligation to pay compensation, can effect retrenchment. So long as retrenchment carried out is bona fide and not vitiated by any consideration for victimisation or unfair labour practice and the employer comes to the conclusion that he can carry on his undertaking with reasonable efficiency with the number of employees retained by him after retrenchment, the Tribunal ought not ordinarily to interfere with such decision. The fact that in 1960, 17 temporary appointments were made or that the union's secretary deposed that work had accumulated would not mean that the surplusage calculated by the manager was unjustified. Accumulation of work at a given point of time, unless it is constant, may be seasonal or due to

various reasons and not necessarily because there was no surplusage. The management had worked out the surplusage which would occur in consequence of their giving up the agency business. Barring the bare statement of the union secretary that work had accumulated and that employees were doing overtime work there was no rival data available to the Tribunal to the startling conclusion that there would be so surplusage at all even though a little more than half of the agency business was given up. Such a conclusion could be arrived at only on the assumption that the accumulation of work was permanent, which assumption could not follow the evidence.

16. As regards the Company's refusal to transfer the retrenched employees, the Tribunal's finding was clearly against law, The liability of an employee to be transferred and the rights of the company to transfer him did not mean that there was a corresponding obligation on the company to transfer the employee to another branch. No evidence was led by the union to show that if transferred, these workmen could have been absorbed at other places, either because there were vacancies or that the work there was the same as was done by them at Calcutta. There was equally no evidence whether wage-scales, dearness allowance and other conditions of service were the same in Madras and other centres. It is true that the company had started developing its manufacturing business in Madras but the Tribunal made no enquiry whether these employees could have been fitted in the manufacturing work when they had done only administrative and other duties connected with the agency business, yet, the Tribunal drew the conclusion that because the company failed to transfer these employees to other centres retrenchment was not justified.

17. Equally the Tribunal's decision on Rule 77 was contrary to its provisions. The Rule by sub-clause (1) provides that when an employer finds it necessary to retrench any workman he shall at least one month before the date of actual retrenchment give notice thereof to Labour Commissioner and to the Conciliation Officer. The proviso to it states that where an employer retrenches any workman with immediate effect by paying him wages in lieu of notice he shall immediately after such retrenchment give notice thereof to the said officers. Obviously, sub-clause (1) did not apply to the facts of this case. It is true that the notice was given two days before the actual retrenchment and was not given "immediately". But the Tribunal could not conclude that since the notice immediately after retrenchment the proviso did not apply, and therefore, it would be sub-clause (1) which would be applicable and since one month's notice was not given the retrenchment was invalid. In our view such a conclusion was not only incorrect but contrary to the very object of the rule. We are in agreement with the earned Single Judge that though the notice was not given immediately after the retrenchment but two days before it, the company had substantially complied with the requirements of the proviso. The object of the proviso clearly is that where it is not possible for an employer to give one month's notice to the two authorities concerned by reason of his retrenching the employees with immediate effect, information should be supplied to the two officers immediately after such retrenchment. It instead of giving such information after the retrenchment it is given two days before the retrenchment takes place it is hardly possible to say that the requirement of the proviso was not carried out. So long as the object underlying the proviso was satisfied it did not make any difference that information was given a little earlier than the date when retrenchment took place.

18. We have no doubt in our mind that some of the findings arrived at by the Tribunal and which

influenced its verdict were beyond its competence. The rest were either speculative or contrary to the evidence on record and were consequently liable to be set aside in a writ petition of the High Court, therefore, was not correct in its view that the learned Single Judge could not interfere with those findings or that such findings did not fall under one or the other recognized grounds justifying the High Court's interference.

19. In the result we allow the appeal, set aside the order passed by the Division Bench and restore the order passed by the learned Single Judge including his order of remand to the Tribunal to prepare a list of 52 persons liable to be retrenched in accordance with the principle of "last come first go". In the circumstances of the case we do not make any order as to costs.

Appeal allowed.