Supreme Court of India
Durgapur Casual Workers Union & ... vs Food Corp.Of India & Ors on 9 December, 2014
Author: .....J.
Bench: Sudhansu Jyoti Mukhopadhaya, Prafulla C. Pant

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10856 OF 2014
(Arising out of SLP (C) No.31531 of 2009)

DURGAPUR CASUAL WORKERS UNION & ORS. ... APPELLANTS

VERSUS

FOOD CORPORATION OF INDIA & ORS. ... RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. This appeal has been preferred by the appellant-Durgapur Casual Workers Union and others (hereinafter referred to as, 'the workmen' for short) against the judgment and order dated 25th February, 2009 passed by the Division Bench of the High Court at Calcutta in F.M.A. No.2345 of 2005 (C.A.N. 8685 of 2007 and C.A.N.4726 of 2008). By the impugned judgment, the High Court allowed the appeal preferred by the respondent-Food Corporation of India (hereinafter referred to as, 'the Corporation' for short) and set aside the Award dated 9th June, 1999 passed by the Central Government Industrial Tribunal (hereinafter referred to as, 'the Tribunal' for short) as affirmed by the learned Single Judge of the High Court at Calcutta.

3. The factual matrix of the case is as follows:

The Corporation had long back setup a rice mill in the name and style of Modern Rice Mill at Durgapur and it had been handed to successive contractors for running the same. The concerned workmen, forty nine in numbers, had been working as contract labours under the contractors in the rice mill. The last contractor was M/s Civicon. The contract system was terminated and the rice mill was closed in the year 1990-1991. Thereafter, the concerned workmen were directly employed by the Corporation in June, 1991 as casual employees on daily wage basis in the Food Storage Depot at Durgapur for performing the jobs of sweeping godown and wagon floors, putting covers on infested stocks for fumigation purpose, cutting grass, collections and bagging of spillage from godowns/wagons etc. There being an industrial dispute between the workmen and the Corporation

regarding the regularisation of services of the workmen, the Government of India, Ministry of Labour in exercise of powers conferred on them by clause (d) of sub Section (1) and Sub Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as, 'the Act' for short) referred the following dispute to the Tribunal for adjudication vide Ministry's order No.L-22012/348/95-IR (C.II) dated 18th July, 1996.

SCHEDULE "Whether the demand of Durgapur Casual Workers Union for absorption of 49 casual workmen as per list enclosed by the management of FCI, Durgapur is justified? If not, what relief they are entitled to?"

4. The said reference was registered as Reference No.21 of 1996 before the Tribunal. The Tribunal on appreciation of evidence brought on record by the Management of the Corporation and the workmen and hearing the parties answered the reference in favour of the workmen by Award dated 9th June, 1999 and held that continued casualization of service of workmen amounts to unfair labour practice as defined in item no.10 in part I of the Fifth Schedule of the Act and that social justice principle demands order of absorption and thereby directed the Management to absorb 49 casual workmen as per list.

5. The Corporation being aggrieved preferred a Writ Petition being W.P.No.21368 (W) of 1999 before the High Court at Calcutta. The learned Single Judge of the High Court on hearing the parties and taking into consideration the evidence on record, dismissed the writ petition by judgment and order dated 18th February, 2005 and affirmed the Award passed by the Tribunal.

6. Aggrieved by the aforesaid judgment of the learned Single Judge, the Corporation preferred an appeal before the Division Bench of High Court at Calcutta. One of the grounds taken was that the appointments of the workmen were backdoor appointments. The workmen were working under the contractor whose services as terminated in the year 1990-1991 and thereafter on their demand, the workmen were engaged as casual workmen under the Corporation in June, 1991. It was contended that in view of Constitution Bench judgment of this Court in Secretary, State of Karnataka and others v. Umadevi (3) and others, (2006) 4 SCC 1 and decisions rendered by this Court in other cases, regularization of service cannot be allowed if it violates the basic principles of Articles 14 and 16 of the Constitution of India. The Division Bench of the High Court by impugned judgment dated 25th February, 2009 while setting aside the award as affirmed by the learned Single Judge held as follows: "Hence, it appears that Appointing Authority has every right to appoint either in substantive capacity or in casual manner and/or ad-hoc. It is also a settled legal position of law that regularization/absorption of casual appointee/ad-hoc appointee in a permanent post is not other mode of appointment....."

"In the instant case it appears that the workmen, illegal appointees, moved the writ application in the year 1994 and got an order of status quo to maintain their service condition passed by the Writ Court and as such, service of the workmen since 1994 till this date is covered by the order of the Court, which is accordingly attracted by the said riders of para 53 as quoted, to negative their claim."

"Having regard to the aforesaid judgments of the Apex Court, now the law has got its firm root being the law of the land that no regularization even in respect of a workman under Industrial Dispute Act is permissible unless the contingencies of the law is satisfied, namely, appointment following the rule, appointment in a post and appointment for a long continuous period in the angle of Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. (supra). This law of the land was existing and it has been re- echoed and reviewed in Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. (supra)."

"In the instant case, from the decision under challenge in the writ application passed by the learned Tribunal below, it appears that the Tribunal did not answer by any findings as to why workmen were legally entitled to be absorbed permanently on considering the settled legal position of law that absorption and/or regularization are not the mode of permanent appointment. Even the reasoning as advanced, namely, "unfair labour practice", it also does not support the decision to regularize in absence of any statutory provision for regularization of service of the workmen under the four corners of the Industrial Dispute Act, 1947. On the other hand, Industrial Dispute Act provides under Chapter VC as already quoted above by Section 25-U, a penal consequences for imprisonment and fine. The very essence and concept of unfair labour practice in the angle and anvil of Section 25-T and 25-Uis that in the industrial sector there is complete bar to appoint the casual appointees for a continuous period with the object to deprive them the status and privileges of permanent workmen and as a coercive measures to avoid such contingency, law has been framed in a negative angle restraining/prohibiting such unfair labour practice under the pain of punishment with imprisonment for a term in Section 25U. Hence, even if any unfair labour practice is assumed though it requires to be proved by leading the evidence that such appointment as casual appointee for a continuous period was with the mens rea to deprive the workmen from their permanent status and privileges, the award prima facie speaks an "error of law" due to a decision applying principle of "unfair labour practice" for "permanent absorption" and it also covers the field of "without jurisdiction" principle....."

7. Learned counsel appearing on behalf of the appellants submitted that in absence of any pleading made by the Corporation before the Tribunal about legality of initial appointment of appellants, it was not open to the Corporation to raise such question before the Division Bench of the High Court. The Division Bench of the High Court was also not justified in giving any finding with regard to the initial appointment of the workmen, in absence of any issue suggested or framed by the Tribunal.

8. On the other hand, the respondents have taken a similar plea as was taken before the High Court that the initial appointments of the workmen were backdoor appointments and hence the regularization is not permissible.

9. We have heard the rival contention of the parties and perused the record.

10. The Industrial Disputes Act, 1947 is a beneficial legislation enacted with an object for the investigation and settlement of industrial disputes and for a certain other benefits. Section 2 (j) of the Act defines industry as follows:

"2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

The Industrial dispute is defined under Section 2(k) as follows:- "2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non- employment or the terms of employment or with the conditions of labour, of any person."

Section 2(ka) of the said Act defines "industrial establishment or undertaking" and reads as follow:

"(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;"

"Unfair labour practice", as defined under Section 2(ra) means any of the practices specified in the Fifth Schedule.

11. The industrial establishment or undertaking as defined in the Act not only includes the State Public Undertakings, the Subsidiary Companies set up by the Principal Undertaking and Autonomous bodies owned or control by the State Government or Central Government but also the private industries and undertakings.

Industrial Disputes Act is applicable to all the industries as defined under the Act, whether Government undertaking or private industry. If any unfair labour practice is committed by any industrial establishment, whether Government undertaking or private undertaking, pursuant to reference made by the appropriate Government the Labour Court/Tribunal will decide the question of unfair labour practice.

12. In the matter of appointment in the services of the 'State', including a public establishment or undertaking, Articles 14 and 16 of the Constitution of India are attracted. However, Articles 14 and

16 of the Constitution of India are not attracted in the matter of appointment in a private establishment or undertaking.

13. An undertaking of the Government, which comes within the meaning of industry or its establishment, cannot justify its illegal action including unfair labour practice nor can ask for different treatment on the ground that public undertaking is guided by Articles 14 and 16 of the Constitution of India and the private industries are not guided by Articles 14 and 16 of the Constitution of India.

14. In the light of above discussion, in the present case the issues that are to be determined are as follows:

1) Whether an issue relating to the validity of initial appointment can be raised in absence of any specific pleading or reference.

2) The Tribunal having held, as affirmed by the High Court that the respondent corporation had committed unfair trade practice against the workmen depriving them of status and privileges of permanent workmen; whether the workmen were entitled for relief of absorption?

15. Before deciding the issues, it is necessary to notice the relevant decisions of this Court regarding regularization of service/absorption in the Government Service or its undertakings in the light of Articles 14 and 16 of the Constitution of India.

16. In Uma Devi (3) Constitution Bench of this Court while observing that casual/temporary employees do not have any right to regular or permanent employment held as follows:

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for

absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular [pic]procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take [pic]the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

However, in respect of irregular appointments of duly qualified persons working for more than 10 years, this Court observed:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa11, R.N. Nanjundappa12 and B.N. Nagarajan8 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

17. This Court in the case of M.P. Administration v. Tribhuban, (2007) 9 SCC 748 while taking into account the doctrine of public employment involving public money and several other facts observed as follows: "6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed reinstatement [pic]of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of "workman" as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application of constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in Secy., State of Karnataka v. Umadevi (3) and other relevant factors pointed out by the Court in)a catena of decisions shall not be taken into consideration.

7. The nature of appointment, whether there existed any sanctioned post or whether the officer concerned had any authority to make appointment are relevant factors. (See M.P. Housing Board v. Manoj Shrivastava (2006)2 SCC 702, State of M.P. v. Arjunlal Rajak (2006)2 SCC 711 and M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey, 2006 (2) SCC 716.)

18. The effect of Constitution Bench decision in Uma Devi (3), in case of unfair labour practice was considered by this Court in Maharashtra State Road Transport and another v. Casteribe Rajya

Parivahan Karmchari Sanghatana (2009) 8 SCC 556. In the said case, this Court held that Umadevi's case has not over ridden powers of Industrial and Labour Courts in passing appropriate order, once unfair labour practice on the part of employer is established. This Court observed and held as follows:

"34. It is true that Dharwad Distt. PWD Literate Daily Wages Employees' Assn.v. State of Karnataka, (1990) 2 SCC 396 arising out of industrial adjudication has been considered in State of Karnataka v .Umadevi (3), (2006)4 SCC 1 and that decision has been held to be not laying down the correct law but [pic]a careful and complete reading of the decision in Umadevi (3) leaves no manner of doubt that what this Court was concerned in Umadevi (3) was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognised by the rules or procedure and yet orders of their regularisation and conferring them status of permanency have been passed.

35. Umadevi (3) is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

"47. It was strenuously urged by the learned Senior Counsel for the Corporation that the Industrial Court having found that the Corporation indulged in unfair labour practice in employing the complainants as casuals on piece-rate basis, the only direction that could have been given to the Corporation was to cease and desist from indulging in such unfair labour practice and no direction of according permanency to these employees could have been given. We are afraid, the argument ignores and overlooks the specific power given to the Industrial/Labour Court under Section 30(1)(b) to take affirmative action against the erring employer which as noticed above is of wide amplitude and comprehends within its fold a direction to the employer to accord permanency to the employees affected by such unfair labour practice."

19. Almost similar issue relating to unfair trade practice by employer and the effect of decision of Umadevi (3) in the grant of relief was considered by this Court in Ajaypal Singh v. Haryana Warehousing Corporation in Civil Appeal No.6327 of 2014 decided on 9th July, 2014. In the said case, this Court observed and held as follows: "20.The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for

decision nor was it decided in Umadevi's case.

21. We have noticed that Industrial Disputes Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees.

22. Section 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under said provision if the employer retrenches workman. Such a workman cannot be retrenched until he/she is given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice apart from compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

If any part of the provisions of Section 25F is violated and the employer thereby, resorts to unfair trade practice with the object to deprive the workman with the privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 and 16 of the Constitution of India.

23. Section 25H of the Industrial Disputes Act relates to re-employment of retrenched workmen. Retrenched workmen shall be given preference over other persons if the employee proposes to employ any person.

24. We have held that provisions of Section 25H are in conformity with the Articles 14 and 16 of the Constitution of India, though the aforesaid provisions (Articles 14 and 16) are not attracted in the matter of re- employment of retrenched workmen in a private industrial establishment and undertakings. Without giving any specific reason to that effect at the time of retrenchment, it is not open to the employer of a public industrial establishment and undertaking to take a plea that initial appointment of such workman was made in violation of Articles 14 and 16 of the Constitution of India or the workman was a backdoor appointee.

25. It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be resorted and thereby workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Section 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.

26. However, in other cases, when no such plea is taken by the employer in the order of retrenchment that the workman was appointed in violation of Articles 14 and 16 of the Constitution

of India or in violation of any statutory rule or his appointment was a backdoor appointment, while granting relief, the employer cannot take a plea that initial appointment was in violation of Articles 14 and 16 of the Constitution of India, in absence of a reference made by the appropriate Government for determination of question whether the initial appointment of the workman was in violation of Articles 14 and 16 of the Constitution of India or statutory rules. Only if such reference is made, a workman is required to lead evidence to prove that he was appointed by following procedure prescribed under the Rules and his initial appointment was legal."

20. In the present case, it is admitted that the workmen had been working as contract labours under the contractor in the rice mill of the Corporation. The contract system was terminated and the rice mill was closed in the year 1990-1991. The effect was termination of services of the workmen. In that view of the matter, they were entitled for re-employment when the employer proposed to take into his employment any person, in view of Section 25H, which reads as follows:

"Section 25H. Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re- employment and such retrenched workman who offer themselves for re-employment shall have preference over other persons."

Under Section 25H the retrenched workman who offer themselves for employment shall have preference over other persons. It was for the said reason the workmen were employed by the Corporation in June, 1991.

21. This Court in Ajaypal Singh held that the provisions of Section 25H are in conformity with Articles 14 and 16 of the Constitution of India, though, the aforesaid provisions (Articles 14 and 16) are not attracted in the matter of re-employment of retrenched workmen in private industrial establishment and undertakings. In that view of the matter it can be safely held that the workmen who were retrenched, were rightly taken in the services of Corporation. Admittedly, no plea was taken by the Corporation either before the State Government or before the Tribunal that the initial appointment of workmen were illegal or they were appointed through back door means.

22. In this background, we are of the view that it was not open to the Division Bench of the High Court, particularly in absence of any such plea taken by the Corporation before the Tribunal to come to a finding of fact that initial appointments of workmen were in violation of Articles 14 and 16 of the Constitution of India, nor it was open to the High Court to deny the benefit to which the workmen were entitled under item 10 of Part I of the Fifth Schedule of the Act, the Tribunal having given specific finding of unfair trade practice on the part of the Management of the Corporation.

23. Having accepted that there was unfair trade practice, it was not open to the Division Bench of the High Court to interfere with the impugned award.

24. For the reasons aforesaid, we aside the impugned judgment dated 25th February, 2009 passed by the Division Bench of the High Court at Calcutta in F.M.A. No.2345 of 2005 (C.A.N.8685 of 2007

and C.A.N.4726 of 2008). Award dated 9th June, 1999 passed by the Tribunal in Reference No.21 of 1996 as affirmed by the learned Single Judge by order dated 18th February, 2005 in W.P. No.21368 (W) of 1999 is upheld. The respondent- Corporation is directed to implement the Award from its due date as ordered by the Tribunal. The appeal is allowed with aforesaid observations and directions. No costs.

.....J. [SUDHANSU JYOTI MUKHOPADHAYA] .....J.

[PRAFULLA C. PANT] NEW DELHI;

DECEMBER 09, 2014.