

Bombay High Court

Maharashtra Rajya Mathadi ... vs 6 The Railway Goods Clearing And ... on 10 February, 2010

Bench: F.I. Rebello, J. H. Bhatia

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1339 OF 2009

Maharashtra Rajya Mathadi Transport  
and General Kamgar Union,  
Jivraj Bhanji Shah Market, Third floor,

Near Masjid Railway Station,  
Mumbai 400 009

...Petitioners.

v.

1 The Bombay Iron & Steel Labour  
Board, having office at

Kalamboli, Taluka Panvel,  
District: Raigad

2 State of Maharashtra

through its Secretary,  
Industries, Energy and Labour Department,  
Mantralaya,  
Mumbai 400 032.

3 The Collector, Thane.  
District Thane.

- 4 The Superintendent of Police,  
Thane, having his office at

Thane.

- 5 The Police Inspector,  
Boisar Police Station,  
Boisar-Tarapur,

Taluka Palghar, District Thane

- 6 The Railway Goods Clearing and Forwarding  
Establishments Labour Board for Greater Bombay,  
through its Secretary, having office at 84-A,  
Broach Sadan, Devji Ratanshi Road, Dana Bunder,  
Mumbai 400 009. ...Respondents.

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Mr.M.S.Topkar, adv., for the Petitioners.  
Mrs.Lata Desai with Ms.Pallavi Divekar, advs., for the Respondent No.

1.  
Mr.P.M.Palshikar, AGP for the Respondent Nos.2 to 5.

Mr.S.C.Naidu with Mr.Y.C.Naidu i/by C.R.Naidu & Co., advs. for the  
Respondent No.6.

CORAM : Ferdino I. Rebello  
& J.H. Bhatia, JJ.

DATED : 10th February , 2010.

ORAL JUDGMENT: (Per Ferdino I. Rebello, J.) Rule. Heard forthwith.

2 By consent of the parties, heard forthwith. Petitioners by the present petition have approached this Court seeking relief, by way of writ of mandamus to direct the respondent no.6 the Railway Goods Clearing and Forwarding Establishments Labour Board for Greater Bombay (Hereinafter referred to as the 'Railway Board') not to interfere with the work falling within the jurisdiction of the Respondent No.1 the Bombay Iron and Steel Labour Board (Hereinafter referred to as the Iron & Steel Board). Further relief is sought directing respondent nos.3 to 5 to extend necessary assistance including police protection and help to the registered workers of respondent no.1 allotted to do work in Jindal Steel, against any disruptive and harmful activities by any person, group or union against the members of the petitioner. Petitioner is a union representing workers, registered with the Iron & Steel Board and more specifically workers of Toli No.477.

3 The petitioner union is registered under the Trade Unions Act. According to them, they represent majority among the Mathadi workers in Mumbai and Navi Mumbai and many other districts of Maharashtra. Under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 which hereinafter shall be referred to as the 'Act', a scheme has been framed in respect of the unprotected workers employed in Iron and Steel markets or shops , yards including railway yards, goods sheds, factories and other establishments in connection with loading, unloading, stacking, carrying, weighing , measuring iron and steel or such other work including the work preparatory or incidental to such operations for efficient performance of work and generally for making better provision for the terms and conditions of employment of such workers and make provision for their general welfare. The Scheme framed is known as Bombay Iron and Steel Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 which hereinafter shall be referred to as the 'Iron & Steel Scheme'. The State Government under the Act also framed another scheme known as Railway Goods Clearing and Forwarding Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1976, which hereinafter shall be referred to as the 'Railway Goods Scheme'. Under the proviso (ii) to Clause 2(2) of the Railway Goods Scheme, it has been specifically provided that the Railway Goods Scheme shall not apply to the employment in connection with loading, unloading, stacking, carrying, weighing, measuring or other work including the work preparatory or incidental to such operations in railway yards or good sheds in Greater Bombay and Thane District to which the Iron and Steel Scheme, applies amongst other.

4 The Iron and Steel Scheme came into force in 1970 and the Railway Goods Scheme came into force in 1976.

5 The issue as to who is entitled to do Mathadi work in the establishment of M/s. Jindal Iron and Steel Company Limited, now known as M/s. JSW Steel Limited (In short 'Jindal Steel') in its

establishment at Boisar Railway Yard had arisen in Writ Petition (L) No. 2225 of 2006. After registration, Iron & Steel Board had allotted its registered workers grouped in Toli No.191A and 194 to Jindal Steel in or around 1982-83. As there was increase in the work of the registered workers, the Iron & Steel Board further allotted registered workers of Toli No.235 in 1985 and then Toli No.254 in 1999. There are about 42 registered workers of the Respondent No.1 Board, in the three tolis working in Jindal Steel.

6 It is the case of the petitioners that despite the clear provision contained in Railway Goods Scheme, Railway Board tried to usurp the work in the Railway Yard which was already being done by the Iron & Steel Board. This led to disputes between the Iron & Steel Board and the Railway Board. The Commissioner of Labour resolved the dispute and declared that the work in Jindal Steel at Boisar Railway Yard fell within the jurisdiction of Iron & Steel Board and that there was no question of the said work being done by the registered workers of Railway Board in toli No.189. Despite this decision, which was never challenged, the Railway Board and its registered workers insisted upon the work in Jindal Steel and tried to create dispute. The registered workers of Railway Board in Toli No.189 then raised the same issue before the Hon'ble Labour Minister. The Hon'ble Minister by his order directed that some registered workers from Toli No.189 of Railway Board shall be allowed to work in Jindal Steel at Boisar Railway Yard alongwith the workers of tolis assigned by the Iron & Steel Board. The number was to be decided by the Chairman of the Iron & Steel Board.

7 Petitioners challenged the decision of the Minister by filing Writ Petition Lodging No.2255 of 2006 before this Court. Workers of the Railway Board also filed Writ Petition No.6902 of 2006 seeking implementation of the order of the Labour Minister. This Court after hearing all the parties was pleased to allow the petition filed by the petitioners herein and dismissed the petition filed on behalf of the workers of Railway Board by a common order dated 15.2.2007. This Court held that the order of the Minister was illegal and without jurisdiction and that the work in Jindal Steel at the Boisar Railway Yard could be done only by the workers of the Iron & Steel Board.

8 It is the case of the petitioners that thereafter work started and continued smoothly and unaffected for some time. However in the recent past once again some disgruntled elements and workers of the respondent no.6 Railway Board have started demanding work in Jindal Steel and also started threatening, abusing and assaulting registered workers of the respondent no.1, who are members of Petitioner Union and duly allotted to Jindal Steel. These workers are registered with the Respondent No.6. It is also pointed out that some union on behalf of such workers has written some letters to the respondent no.6 asking it to ensure that the work of Jindal Steel is allotted to them. Respondent no.1 also wrote letter to the respondent no.6 regarding interference of the work done at Boisar Railway Yard and consequently, the present petition.

9 Reply has been filed on behalf of the respondent no.1,Board.

In their affidavit, it is pointed out that toli no.477 comprising of 42 registered workers was constituted on 10.12.2006 by amalgamating four tolis namely, 235/254, 191A, 194 to carry out the scheduled operations for M/s. Jindal Steel. Workers registered with the respondent no.1,Board have been carrying out scheduled operations of M/s. Jindal Steel. Respondent No.6 Board, it is set out

therein has time and again attempted to obstruct and usurp the work of Toli No.477. At the instance of workers of Toli no.189, meeting was held where the Hon'ble Minister on 8.2.2006 directed that some workers of toli no.189 of the respondent no.6 Board shall be allowed to work for Jindal Steel in Boisar Railway Yard. Consequent upon which the petition earlier referred to was filed and disposed off. Respondent No.1 Board also wrote letter to Senior Police Inspector, Palghar Police Station, Palghar that workers of toli no.189 registered with the respondent no.6 board were not allowing the workers of toli no.477 registered with the first respondent to carry out the work of M/s. Jindal Steel. Similarly, the respondent no.1 addressed a letter to the respondent no.6 and brought to the notice the orders passed by this court with a request to ensure that the workers of toli no.189 do not obstruct the work in any manner whatsoever. The rest of affidavit pertains to the correspondence about the obstructions caused by the workers of toli no.189 registered with the respondent no.6 board interfering with the work of toli no.477, registered with the respondent no.1 board.

10 Secretary of the Respondent No.6/Board, Mr. D.H.

Chaudhary has filed an affidavit. According to the Secretary, the scheme of the Railway Board applies to the registered workers in employment of railway goods clearing and forwarding establishments operating in railway yards and goods sheds; their establishments operating in railway yards and goods sheds and private railway sidings of railway establishments doing work of similar nature. Under this scheme of the Railway Board, workers registered with the board can carry on all the scheduled work, except such scheduled work which registered workers under other schemes were carrying on work prior to 15th December, 1976 in Greater Mumbai and Suburban Mumbai; 10th January, 1983 in Thane District and 3rd November, 1987 in Raigad District.

Jindal Steel receives raw-material and dispatches finished goods through the Boisar Railway Yard, District Thane and as operations of Jindal Steel being post 10th January, 1983 the schedule work in Boisar Railway Yard is statutorily required to be carried out by workers registered with the respondent no.6 Board. Toli No.189 comprising of about 57 registered Mathadi workers has been registered with the respondent no.6 board and allotted to carry out scheduled work in Boisar Railway Yard.

An additional affidavit came to be filed on 4th February, 2010. Reference is made to Clause (2) of the Iron and Steel Scheme, which reads as under:

"(2) Application :- This scheme shall apply to employment of registered workers by registered employers in Iron and Steel markets or shops, yards, including railway yards, good-sheds, factories and other establishments in connection with loading, unloading, stacking, carrying, weighing , measuring iron and steel or such other work including work preparatory or incidental to such operations in the areas specified in the Schedule hereto."

It is set out that paragraph B of Part 1(2) of the Schedule appended to the Iron and Steel Scheme mentions the areas wherein railway yards are located and where the Iron and Steel Board will carry out work. Paragraph (B) of Part 1(2) of the Schedule of the Iron and Steel Scheme does not include

Boisar Railway Yard. A conjoint reading of clause (2) with the Schedule appended to the Iron and steel Scheme, therefore, it is contended, makes it clear that railway yards, specified in Part 1(2) Paragraph B of the Schedule are only within the jurisdiction of Iron and Steel Board. Except for the said railway yards, Iron and Steel Board cannot allot work to toliies registered with it in any other railway yard. The applicability of the Iron and Steel Scheme in so far as railway yards are concerned are thus restricted to the railway yards mentioned in the Schedule to the Iron and Steel Scheme. Proviso to Clause 2(2) of the Railway Scheme 1976 would exclude operations only in respect of railway yards wherein the Iron and Steel Board has jurisdiction to function under its Scheme. As the Boisar Railway Yard is not specified in the Schedule to the Iron and Steel Scheme, it follows that of necessity the work of the Boisar Railway Yard has to be administered by unprotected workers allotted by the Railway Board.

11 At the hearing of the arguments on behalf of the petitioners, the learned counsel points out that the issue as to who can carry out work related to Iron and Steel at Boisar Railway Yard has been answered by this Court in Maharashtra Rajya Mathadi Transport and General Kamgar Union v. The Bombay Iron and Steel Labour Board and Ors. reported in 2007 I CLR 800 and as such neither the respondent no.6 Board cannot allot workers of Toli No.189 to do work of Jindal Steel nor can the respondent nos.3 to 5 in the face of the judgment of this Court refuse to grant protection to their members. It is, therefore, submitted that the petition be allowed.

On the other hand, on behalf of the respondent no.6, the learned counsel submits that the judgment in Maharashtra Rajya Mathadi Transport and General Kamgar Union (Supra) will not be binding precedent as it did not consider the import of clause 2 of the Schedule annexed to the scheme of 1970 Iron and Steel Scheme as the Boisar Railway Yard is not included in the Schedule. The ratio of that decision, therefore, cannot be binding precedent because it omitted to consider the scope of clause (2) and Schedule of the Iron and Steel Scheme. Learned counsel placed reliance in the case of Dr. Vijay Laxmi Sadho v. Jagdish AIR 2001 Supreme Court 600 and State of Bihar v. Kalika Kuer @ Kalika Singh and others AIR 2003 Supreme Court 2443. It is further submitted that it will be appropriate to refer the aforesaid legal issues to a larger bench and hence, it is prayed that this issue be placed before the Hon'ble Chief Justice in terms of Rule 28 of the Bombay High Court (Original Side) Rules for being heard by a Special Bench/Larger Bench.

12 On behalf of the Intervenors, the learned counsel submits that the intervenors were not parties to the earlier proceedings and as such, the judgment in Maharashtra Rajya Mathadi Transport and General Kamgar Union (Supra) cannot affect their rights. It is submitted that work at Boisar Railway Yard has to be carried on by the workers registered with the respondent no.6 board. It is submitted that the petitioner/union was not made party in the earlier petition. In the present petition, also it was not made party with malafide intention. It is, therefore, submitted that the petition should be dismissed.

From the pleadings and the contentions raised by the parties, in our opinion, the following questions arise for consideration:

1 Whether the judgment in Maharashtra Rajya Mathadi Transport and General Kamgar Union (Supra) is distinguishable and/or not binding on the respondent no.6 and/or on the Intervenor/Union as it was not a party in the earlier petition ?

2 Consequently, if the judgment is binding on the respondent no.6 and the members of the Intervenor are the petitioners entitled to relief as prayed for ?

14 We may also note that this Court in the earlier judgment had framed and decided the following issues :

"6 From the two petitions, the issues which arise for consideration are:

(1) Whether the registered workers of toli no.189 can carry on the work of Iron and Steel at the Boisar Railway Yard, which work is being carried out by workers registered with Iron and Steel Labour Board.

(2) Whether it was open to the Minister for Labour to have issued any directions to Iron and Steel Labour Board for taking workers from toli no.189 of Railway Board and register them with their Board and adjust them in toli no.235."

We may also gainfully record the findings of this Court on issue no.1 which read as under:

"8.....There can therefore, be no dispute, nor can the workman of toli No.189 or for that matter Respondent No.2 contend that the work of unloading of steel and iron at Boisar of M/s.Jindal can only be done by registered workers of Respondent No.1. In fact the communication of 4.6.2005 would indicate that a similar dispute had been raised by workers of toli No.189; A joint meeting was held between Respondent Nos.

1 and 2 Boards by the Jt. Labour Commissioner and after elaborate discussions, it was unanimously decided that no work of Jindal Steel company can be allotted to toli no.189 registered with Railway Board. This was communicated by the Joint Labour Commissioner on 4.6.2005. It is therefore, clear, considering the two schemes that the work connected with the loading etc. of iron and steel falls within the jurisdiction of Respondent No.1 and can only be done by the workers registered with Respondent No.1. Relief to that extent sought for by the Petitioner in Writ Petition No.6902 of 2006 cannot be granted as that work under the 1976 scheme could not have been done by the workers registered with Respondent No.2 Board. The first question answered accordingly."

15 The issue was thus directly in issue and answered by the Bench. In our opinion, if any of the respondents was aggrieved by the judgment then either they ought to have applied for review if maintainable or moved the Hon'ble Supreme Court. Having resorted to none of the reliefs available, it is not open to the contesting respondents to raise the contention as now raised. Those issues stand concluded.

Once they are concluded the principles analogues to res-judicata will apply.

16 We may now deal with the contention as to the applicability of the Railway Goods Scheme and correspondingly, the Iron and Steel Scheme to Boisar Railway Yard in the context of the new arguments advanced. The Railway Board Scheme in paragraph 2(2) makes it clear that the scheme shall not apply to the employment in connection with loading, unloading, stacking, carrying, weighing, measuring or other work including work preparatory or incidental to such operations in railway yards and goods-sheds in Greater Bombay and Thane District to which the Iron Steel scheme applies. Paragraph 2(2) makes it applicable to the area specified in the schedule. Perusal of the Schedule in terms of Clause 2.2 would show that it has been extended from time to time though initially in terms of part II (2), it was made applicable to the area comprising Thane Taluka of Thane District. By the Government Notification of 27th July, 1982, it was made applicable to all the remaining areas in Thane District not included in part II and areas comprising Panvel and Karjat talukas of Raigad District from 1.10.1982.

In other words, as of 27.7.1982 , Iron and Steel Scheme has been made applicable to the remaining areas in Thane District. Boisar Railway Yard is in Thane district. Apart from that we may note the following from the Iron and Steel Scheme 17 Item 1 of Schedule to Mathadi Act relates to employment in Iron and Steel Markets, etc. Pursuant thereto the Iron and steel Scheme is framed in 1970. The preamble of the said Scheme says it is applicable to "the areas specified in the Schedule appended to this Scheme". Clause 2(2) makes the Scheme applicable to "..... including railway yards, ..... in the areas specified in the Schedule appended hereto". Clause 3, entitled "Commencement" lays down that the various clauses therein shall apply to the various areas as set out in the Schedule.

The Schedule to the Scheme is divided into four parts. These four parts depict the extension of area of operation of Iron and Steel Scheme from time to time.

Part I (2) from clauses A to M refers to areas in Greater Bombay only. Thus, the Iron and Steel Scheme was initially applicable only Greater Bombay when it was formulated in 1970.

Part I - 1(1) sought to include all the remaining areas in Greater Bombay not included in part I.

Part II (2) sought to include the areas comprising Thane Taluka of Thane District from 1.6.1972.

Part III (3) made the Scheme applicable to all the remaining areas in Thane District not included in Part II and areas comprising the Panvel and Karjat talukas of Raigad District from 1.10.1982.

18 The Railways Scheme, 1976 as its preamble says is applicable to "..... such operations in the area of Greater Bombay...." in contradistinction with Iron Scheme, which as stated above becomes applicable to the operations in areas specified in Schedule to the Scheme and the said areas have been extended from time to time as stated above.



The proviso to clause 2(2) of this Scheme puts a permanent prohibition upon the Railway Board not to claim work in connection with the activities mentioned therein and performed by the Boards established under the seven Schemes mentioned therein. All the Schemes mentioned therein are in respect of the Boards which have come into existence prior to the establishment of Railway board. The prohibition is absolute and is for the past, present or future work performed by the respective seven Boards. The argument, therefore, that the respondent no.6 can carry on work except work carried on prior to the various dates mentioned in the reply of the Railway Board has to be rejected. Once Iron & Steel scheme applies, the Railway Scheme will cease to apply.

As per section 1(4A) of the Mathadi Act the Railway Scheme became applicable to Greater Bombay from 1976. The area of its applicability was extended to Thane District on and from 10.1.1983 and then to Raigad District from 3.11.1987.

19 It will thus, be clear from the aforesaid that at the Boisar Railway Yard in so far as the work pertaining to Iron and Steel would be covered by the Iron and Steel Board and consequently, this work cannot be done by the workers of the Railway Board. The contention therefore, raised on behalf of the respondent no.6 Board that on account of Boisar Railway Yard not being notified for the aforesaid reasons has to be rejected.

20 Apart from that even assuming that the point was required to be considered and was not considered that by itself would not make the judgment per incuriam. First, we may refer to the judgment in Dr.Vijay Laxmi Sadho (Supra), which was cited on behalf of the respondent no.

6. In that case, the learned Single Judge was not in agreement with the view expressed by another Single Judge in another matter and instead of referring the matter to the larger bench sought to distinguish it by styling it as "per incuriam". It is in that context, the observations by the Supreme Court in the matter of judicial discipline that if a Bench disagrees with the views of a Co-ordinate Bench whether in the case of different arguments or otherwise on a question of law, it is apparent that the matter be referred to a larger Bench for resolution of the issues.

21 We may also refer to the judgment of Kalika Singh (Supra). The Supreme Court noted as to when the judgment could be said to be "per incuriam"

"5 At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In Halsbury's Laws of England (Fourth Edition) Vol.26:

Judgment and Orders Judicial Decisions as Authorities (pages 297-298, Para 578) we find it observed about per incuriam as follows:

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction while covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. A decision should not be treated as given per incuriam, however,

simply because of a deficiency of parties, or because the Court had not the benefit of the best argument and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake."

Lord Godard C.J. in Huddersfield Police authorities case observed that where a case or statute had not been brought to the Court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.

6. In a decision of this Court reported in 2000(4) SCC 262 Govt. of Andhra Pradesh and Anr. v. B. Satyanarayana Rao (Dead) by Lrs., it has been held as follows:

"Rule of Per Incuriam can be applied where a Court omits to consider a binding precedent of the same court or the superior court rendered on the same issues or where a court omits to consider any statute while deciding that issue. We therefore find that the rule of per incuriam cannot be invoked in the present case. Moreover a case cannot be referred to a larger Bench on mere asking of a party. A decision by two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law."

Applying those tests we are clearly of the opinion that the earlier judgment in Maharashtra Rajya Mathadi Transport and General Kamgar Union (Supra) cannot be said to be per incuriam and consequently the issue of referring it to the Hon'ble Chief Justice for placing before a larger Bench will not arise.

22 In so far as the stand of Intervenors is concerned, we may note that the writ petition no.6902 of 2006 was filed by the group leader of toli no.189. In other words, he was espousing the cause of the workers registered with the respondent no.6 and the members of toli no.

189. The prayer was to restore the work of the workers of toli no.189 for the work of loading of Jindal Steel at Boisar Railway Yard. Merely because those workers have now joined the intervenor/union can not result in holding that the earlier judgment is not binding on them. Apart from that respondent no.6, the Railway Board was party to the earlier proceedings. Once the judgment is binding on the Railway Board, the workers of Toli No.189 cannot claim any independent rights.

23 In the light of above, in our opinion, earlier judgment concludes the issue. Once, there was judgment in favour of the workers of toli no.477 represented by the petitioners/union, respondent no.6 board was duty bound to withdraw toli no.189 and not to interfere with the work of the respondent no.1. To that extent action of the respondent no.6 discloses their failure to comply with the binding judgment of this Court.

24 Once, there is binding judgment of this Court, respondent nos.3 to 5 were bound to assist the respondent no.1 as also the workers of toli no.477 in discharging and performing their duties without interference by the members of the intervenor union or the workers of toli no.189. To that extent in our opinion, rule will have to be made absolute in terms of prayer clauses (a) and (b) will read as under:

"a) That this Hon'ble Court be pleased to issue Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India directing Respondent No.6 not to interfere with the work falling within the jurisdiction of Respondent No.1 Board and also directing the Respondent No.6 to take appropriate action against its workers who interfere with the work of workers who are registered with Respondent No.1 Board and allotted to employers registered with Respondent No.1 Board;

b) That this Hon'ble Court be pleased to issue appropriate Writ, order, direction directing Respondent Nos.3 to 5 to extend necessary assistance, including police protection and help to registered workers of Respondent No.1 allotted to work in Jindal Steel, against any disruptive and harmful activities by any person, group, Union against them;"

25 In spite of the earlier judgment, we find an affidavit filed by D.H.Chaudhary, Secretary, Railway Goods Clearing and Forwarding Establishments Labour Board in paragraph 12 of the affidavit setting out that the work at Boisar Railway Yard has to be carried out by the workers registered with the respondent no.6/Board, which was a party in the earlier petitions. The Railway Board chose not to challenge the judgment, which has become final. In the light of that, issue show-cause notice to the Secretary, D. H. Chaudhary, Secretary, Railway Goods Clearing and Forwarding Establishments Labour Board for Greater Bombay as to why action of contempt should not be taken against him. Notice made returnable on 11th April, 2010.

(J.H.BHATIA, J.)

(FERDINO I. REBELLO, J.)

