REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.9753 of 2010
(Arising out of S.L.P.(C) No.4391 of 2010)

Transport & Dock Workers Union & Ors. .. Appellants

versus

Mumbai Port Trust & Anr. .. Respondents

J U D G M E N T

MARKANDEY KATJU, J.

1. Leave granted.

2. Article 14 of the Constitution (the equality provision) is a slippery slope, and a fine balancing act must be done by the Court to avoid slipping down the slope.

3. As observed by Lord MacMillan in 'Law and Ethics' 49 Scot. L. Rev.61, 69 (1933) :

> "The judiciary is constantly confronted with the necessity of making a choice between a legal principle which is sought to be applied in a particular case, and the choice which it makes in the particular instance resulting inevitably in the expansion or restriction of the principle applied or rejected."

4. The judicial process is thus not a bucket of readymade answers, but a process, or technique, for easing an endless flux of changing social tensions. This is illustrated in this case.

5. Heard learned counsel for the parties and perused the record.

6. This Special Leave Petition has been filed against the impugned judgment of the Bombay High Court dated 9th October, 2009 passed in Writ Petition No.3059 of 1999.

7. The appellants had filed a writ petition in the High Court complaining of violation of Article 14 of the Constitution on the ground that those Typist-cum-Computer Clerks who had been appointed in the Mumbai Port Trust prior to 1.11.1996 have to work for six and half hours a day, whereas Typist-cum-Computer Clerks (like the

appellants) who have been appointed after 1.11.1996 have to work for seven and half hours (excluding lunch break). This, it was alleged, violates Article 14 of Constitution.

8. The appellant no.1 is a registered Trade Union, which represents the employees of the respondent no.1 – Mumbai Port Trust, a body corporate constituted under Section 3 of the Major Port Trusts Act. The appellant nos.2 and 3 are working as Typist-cum-Computer Clerks with the respondent no.1 and were appointed to that post after 1.11.1996. The case of the appellants, in short, is that as regards the employees who were recruited as Typist-cum-Computer Clerks before 1.11.1996, their duty hours are six and half hours per day, whereas for the personnel who were recruited as Typist-cum-Computer Clerks after 1.11.1996 they are seven and half hours. According to the appellants, this is discriminatory and violates Article 14 of the Constitution. The appellants also claim that this practice is contrary to Clause 24 of the settlement dated 6th December, 1994 reached between the employees Union and the respondent Port, and also violates Section 9A of the Industrial Disputes Act. The appellants prayed that either their duty hours be reduced by one hour, or else they be given overtime allowance for one hour.

9. The reply of the respondent-Port is that the duty hours of the Typist-cum-Computer Clerks recruited before 1.11.1996 is seven hours per day, which includes half an hour lunch break, while the duty hours for the Typist-cum-Computer Clerks recruited after 1.11.1996 it is eight hours per day with half an hour lunch break. Thus, according to the respondent no.1, the difference in the duty hours of the personnel recruited before 1.11.1996 and after 1.11.1996 is one hour. According to the respondent no.1, though there is no settlement reached in this behalf, as a matter of practice and usage the duty hours of the personnel in indoor establishment was six and half hours. However, due to change in the technology and with introduction of privatization and setting up private Ports with whom the respondent-Port has to compete, the respondent-Port decided as a policy to have uniform working hours for the personnel working on the indoor establishment and the out door establishment. It is claimed that from the beginning so far as personnel working on out door establishment are concerned, their duty hours were seven and a half hours and therefore, to bring about uniformity in the duty hours of the personnel working on the indoor establishment and out door establishment, a policy decision was taken to change the duty hours

of personnel working in the indoor establishment. However, in order to avoid any litigation it was decided that the working hours of the personnel who were in the indoor establishment, will not be disturbed. While making new recruitment of personnel in the indoor establishment, it was made clear that they will have to work for eight hours, and it is only on acceptance of that condition by them that they were given employment. According to the respondent no.1, this condition was accepted by the personnel who were appointed on indoor establishment after 1.11.1996.

10. According to the respondent no.1, since the newly recruited personnel on the indoor establishment appointed after 1.11.1996 had agreed to eight hours as their duty hours, with the retirement of personnel who were recruited before 1.11.1996 in the indoor establishment, working hours of the personnel working in the indoor establishment would uniformly be eight hours, and thus the uniformity in the working hours of the personnel working on the indoor and outdoor establishments will be brought about. It was submitted by the respondent no.1 that by adopting such practice the respondent no.1 has not violated Article 14 of the Constitution. It was also claimed that the reliance placed by the appellants on Clause 24 of the

settlement dated 6th December, 1994 is misplaced because by that settlement no provision was made in relation to the duty hours. What was done by Clause 24 was that none of the clauses contained in that settlement were to be taken to have modified or cancelled any award, practice or usage, which was in existence. It was, therefore, submitted that the policy decision of the respondent-Port cannot be said to be contrary to Clause 24 of that settlement.

11. In so far as the provision of Section 9A of the Industrial Disputes Act is concerned, it was submitted that since by the policy decision no change in relation to the personnel who were working was intended to be brought about, there was no question of giving any notice of change.

12. The learned counsel appearing for the appellants relied on the judgment of the Supreme Court in the case of **People's Union for Democratic Rights and Ors.** vs. **Union of India and Ors.** AIR 1982 SC 1473 to contend that a writ petition by workers, when they claim any violation of fundamental right, is maintainable. The learned counsel also relied on the judgment of the Supreme Court in the case of **Moti Ram** vs. **N.E. Frontier Railway** AIR 1964 SC 600 to claim

that the respondent-Port could not have framed a policy which violates the guarantee of Article 14 of the Constitution. The learned counsel appearing for the appellants further relied on the judgment of the Supreme Court in the case of **Olga Tellis and Ors.** vs. **Bombay Municipal Corporation and Ors.** AIR 1986 SC 180 to contend that even if an undertaking is given, that undertaking does not stop the person who has given the undertaking from asserting his fundamental right.

13. The learned counsel for the respondents on the other hand relied on the judgments of the Supreme Court, in the case of **Ravi Paul and Ors.** vs. **Union of India and Ors.** 1995 (3) SCC 300, and **M.P. State Textile Corporation Ltd.** vs. **Mahendra and Ors.** 2005(10) SCC 675, and submitted that in one establishment there can be employees having separate duty hours.

14. In our opinion the writ petition filed by the appellants should have been dismissed by the High Court on the ground of existence of an alternative remedy under the Industrial Disputes Act. It is well settled that writ jurisdiction is discretionary jurisdiction, and the discretion should not ordinarily be exercised if there is an alternative

remedy available to the appellant. In this case there was a clear alternative remedy available to the appellant by raising an industrial dispute and hence we fail to understand why the High Court entertained the writ petition. It seems to us that some High Courts by adopting an over liberal approach are unnecessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles. However, we may also consider the case on merits.

15. From the record the following facts emerge :

> (i) As a matter of practice, duty hours of the personnel working on indoor establishment including typist-cum-computer clerk was seven hours, which included half an hour lunch break;
>
> (ii) The respondent-Port as a matter of policy decided to include a condition in the offer of appointment that was given to the personnel who were selected for being appointed as a typist-cum-computer clerk after1.11.1996 that they will have to work in shift of eight hours duration;
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> (iii) They were to give their acceptance of this term, and it was only on their acceptance of the term that they were given appointment;
>
> (iv) It is an admitted position that so far as the personnel working on out door establishment of the respondent no.1 are concerned their duty hours were identical to the typist-cum-computer clerk

appointed after 1.11.1996;

(v) As a result of change in the policy after 1.11.1996 in the indoor establishment of the respondent-Port, there were typist-cum-computer clerks appointed before 1.11.1996 whose duty hours were seven hours and there were typist-cum-computer clerks appointed after 1.11.1996 whose duty hours are eight hours;

Except for different duty hours all other conditions of service of typist-cum-computer clerks working on the indoor establishment of the respondent no.1 were identical.

16. In the light of these admitted facts, the question to be considered is whether the action of the respondent no.1 in prescribing different working hours for typist-cum-computer clerks working in their indoor establishment with reference to their date of appointment is contrary to the guarantee contained in Article 14 of the Constitution. The reason that has been given by the respondent-Port for prescribing different working hours for typist-cum-computer clerks with reference to their date of appointment as found in paragraph 9 of the counter affidavit filed on behalf of the respondent in the writ petition in the High Court is as follows :

> "At many points the typist-cum-computer clerks had to work in shift timings of the docks and other operational departments for eight hours. Thus

> in subsequent appointments a provision for working in shift timing as required by the management was included. The management also considered that with computerization under the MIS project and operation of the Container Traffic Control System and the Cargo Management and Information System, persons to be recruited in the category of Typist-cum-Computer Clerks had to work full time on operation of computers in consonance with the operation working."

17. In paragraph 10 of their Affidavit the respondents stated:

> "10. That the general objective in changing the timings of the newly recruited Typist-cum-Computer Clerks was to have persons working in timings in tune with the dock working, to do away with the distinction between indoor and outdoor and to bring about uniformity in the working hours in various fields and administrative posts in the organization and thus promote operational efficiency."

18. In paragraph 5 of their Affidavit, the respondent no.1 has further stated :

> "5. The respondents submit at the outset that Mumbai Port is a Commercial organization, which now competes not only with other Indian major ports but also private ports and terminals within India and the surrounding region. In this competitive world, the only way for survival is through cost efficient service to port users. Thus systems and work procedures have to be changed to meet the demands of the Trade. This is one step to provide better and cost efficient service."

19. Thus, the reason that has been given by the respondent-Port for adopting the practice of prescribing different working hours for Typist-cum-Computer Clerks recruited after 1.11.1996 is the change in the situation, change in technology, the desire to bring in uniformity in working hours of the personnel working on indoor establishment and out door establishment. It was submitted before us that the Port considered the option of increasing the duty hours of the existing personnel working at that time on the indoor establishment. However, it was thought that effecting change in that regard may involve the Port in litigation and introduction of the change may get delayed. Therefore, it was decided by the Port to change the duty hours of the personnel recruited on indoor establishment after 1.11.1996 without disturbing the duty hours of the personnel working at that time on the indoor establishment, after giving the personnel, to be newly recruited, a clear understanding that in case they accept the offer of appointment, they will have to work for eight hours and it is only on their acceptance of this term that they were given the appointment. Thus, for the achievement of the object i.e. bringing

in uniformity in the duty hours of the personnel working on the indoor establishment and out door establishment, the respondent-Port classified persons working on the indoor establishment for the purpose of duty hours into two classes, the basis for classification being the date of their appointment, and the object being to become competitive in business and efficient.

20. In our opinion Article 14 of the Constitution does not take away from the State or its instrumentality the power of classification, which to some degree is bound to produce some inequality vide **State of Bombay** vs. **Balsara** AIR 1951 SC 318. However, in our opinion, mere inequality is not enough to violate Article 14. Differential treatment, per se, does not constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for differentiation vide **Ameerunnissa Begum** vs. **Mahaboob Begum** AIR 1953 SC 91 (para 11), **Babulal Amthalal Mehta** vs. **Collector of Customs** AIR 1957 SC 877 (para 16) etc.. If the law or the practice deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

21. It has been repeatedly held by this Court that Article 14 does not prohibit reasonable classification for the purpose of legislation or for the purposes of adoption of a policy of the legislature or the executive, provided the policy takes care to reasonably classify persons for achieving the purpose of the policy and it deals equally with all persons belonging to a well defined class. It is not open to the charge of denial of equal protection on the ground that the new policy does not apply to other persons. In order, however, to pass the test of permissible classification, as has been laid down by the Supreme Court in the catena of its decisions, two conditions must be fulfilled; (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational relation to the object ought to be achieved by the statute in question, vide **Gopi Chand** vs. **Delhi Administration** AIR 1959 SC 609 (see also Basu's 'Shorter Constitution of India, fourteenth edition 2009 page 81).

22. Thus the classification would not violate the equality provision

contained in Article 14 of the Constitution if it has a rational or reasonable basis.

23. However, the question remains: what is 'rational' or 'reasonable'? These are vague words. What may be regarded as rational or reasonable by one Judge may not be so regarded by another. This could lead to chaos in the law.

24. Should this vagueness or uncertainty be allowed to remain so that Judges may have total freedom or discretion? We think not. The law should be, as far as possible, clear and certain so that people know where they stand and conduct their affairs accordingly. Also, if total freedom is given to Judges to decide according to their own individual notions and fancies the law will run riot.

25. Hence in our opinion an attempt should be made to clarify the meaning of the words 'reasonable' or 'rational'.

26. Numerous decisions of this Court on Articles 14 and 19 of the Constitution have no doubt held certain classifications to be reasonable while other classifications have been held to be unreasonable. But what is reasonable and what is unreasonable

does not appear to have been discussed in depth by any decisions of this Court, and no tests have been laid down in this connection. All that has been said is that it is not prudent or pragmatic to insist on a mathematically accurate classification covering diverse situations and all possible contingencies in view of the inherent complexities involved in society, vide **State of Karnataka** vs. **Mangalore University Non Teaching Employees Association** (2002) 3 SCC 302 (para 10), **Ombalika Das** vs. **Hulisa Shaw** (2002) 4 SCC 539 (para 11) etc.

27. In our opinion while it is true that a mathematically accurate classification cannot be done in this connection, there should be some broad guidelines.

28. There may be several tests to decide whether a classification or differentiation is reasonable or not. One test which we are laying down and which will be useful in deciding this case, is : is it conducive to the functioning of modern society? If it is then it is certainly reasonable and rational.

29. In the present case, as we have noted, the purpose of the

classification was to make the activities of the Port competitive and efficient. With the introduction of privatization and setting up private Ports, the respondent had to face competition. Also, it wanted to rationalize its activities by having uniform working hours for its indoor and outdoor establishment employees, while at the same time avoiding labour disputes with employees appointed before 01.11.1996.

30. In the modern world businesses have to face competition with other businesses. To do so they may have to have longer working hours and introduce efficiency, while avoiding labour disputes.

31. Looked at from this point of view the classification in question is clearly reasonable as it satisfies the test laid down above.

32. We do not mean to say that the above is the only test to decide what is reasonable, but in our opinion it is certainly one of the tests to be adopted if we want our country to progress. We have to take a practical view of the matter instead of relying on abstract, a priori notions of equality.

33. Coming back to the present case, the object of the new policy adopted by the respondent-Port was to bring about uniformity in the working hours of the personnel working on the indoor and outdoor establishment. For achieving that purpose the Port took a policy decision to lay down a condition in the appointment orders of the personnel recruited on indoor establishment after 1.11.1996 that they will have to work for eight hours. For the purpose of classification the date 1.11.1996 was chosen, because different duty hours were to be made applicable from the one which were applicable to the existing personnel working on the indoor establishment in relation to the persons to be employed after that date. The purpose of this was to make the organization competitive and efficient.

34. For the purpose of bringing about uniformity in the working hours of the personnel working on the indoor establishment, two options were available to the Port; (i) either to take steps to bring about change in the working hours of the personnel presently working on the establishment and then apply that change to the personnel who are recruited in future, or (ii) to apply the changed practice in case of new recruits after obtaining their consent for adoption of the new practice and thus introduce the change gradually because

personnel recruited before 1.11.1996 were bound to retire sooner or later with their retirement, and a day would come when in the indoor establishment the only personnel working will be those who have been recruited after 1.11.1996.

35. Of these two options the Port appears to have chosen the second option because in the opinion of the Port it would be relatively hassle free. It was submitted before us that the Port apprehended that if it had decided to take the first option, it would have been involved in labour disputes and that litigation would have prevented the Port from introducing the change. We do not see anything unreasonable in the stand of the Port.

36. It is nobody's case before us that the decision of the Port was not *bona fide*. In our opinion, the decision of the Port was *bona fide*, and hence no fault can be found with the said decision and it cannot be said that it violates Article 14 of the Constitution.

37. The policy decision of the Port cannot be said to cause any prejudice to the interest of the personnel recruited after 1.11.1996 because before their recruitment they were clearly given to understand as to what would be their working hours, in case they

accept the appointment. In our opinion the introduction of the new policy was a *bona fide* decision of the Port, and the acceptance of the conditions with open eyes by the appellants and the recruits after 1.11.1996 means that they can now have no grievance. It is well settled that Courts should not ordinarily interfere with policy decisions.

38. In our opinion, since the classification with reference to the date of appointment of typist-cum-computer clerks was for the purpose of bringing about uniformity in working hours of the personnel working in indoor and outdoor establishments, and its aim was to make the organization competitive and efficient, it cannot be said that it was unreasonable and hence violative of Article 14 of the Constitution. Also, avoidance of labour disputes is a reasonable basis for the classification.

39. In our opinion, Article 14 cannot be interpreted in a doctrinaire or dogmatic manner. Absolute and inflexible concepts are an anathema to progress and change. As observed by the great Justice Holmes of the U.S. Supreme Court, the machinery of the government would not work if it were not allowed some free play in its joints vide

Missourie, Kansas and Tennesee Railroad vs. **May** 194 U.S. 267(1904). Excessive interference by the judiciary in the functions of the executive is not proper. In several decisions, we have held that there must be judicial restraint in such matters, vide **Divisional Manager, Aravali Golf Club** vs. **Chander Hass** (2008) 1 SCC 683. In **Government of Andhra Pradesh** vs. **P. Laxmi Devi** (2008) 4 SCC 720 the doctrine of judicial review of statutes has been discussed in great detail, and it has been observed that the judiciary must show great restraint in this connection.

40. Those who entered service after 1.11.1996 knew that they have to work for seven and half hours excluding lunch break and with open eyes they accepted the employment. Hence there is no question of violation of Article 14 of the Constitution.

41. In our opinion, fixing of hours of work, provided they do not violate any statutory provision or statutory rule, are really management functions and this Court must exercise restraint and not ordinarily interfere with such management functions.

42. Differential treatment in our opinion does not per se amount to violation of Article 14 of the Constitution. It violates Article 14 only

when there is no conceivable reasonable basis for the differentiation. In the present case, as pointed out above, there is a reasonable basis and hence in our opinion there is no violation of Article 14 of the Constitution.

43. In our opinion it is not prudent or pragmatic for the Court to insist on absolute equality when there are diverse situations and contingencies, as in the present case. In view of the inherent complexities involved in modern society, some free play must be given to the executive authorities in this connection.

44. As regards cut-off dates, this Court in **Government of Andhra Pradesh and Ors.** vs. **N. Subbarayudu and Ors.** 2008(14) SCC 702 has observed vide paragraphs 5 to 9 :

> "5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See **State of Punjab** vs. **Amar Nath Goyal** 2005(6) SCC 754)

> **6.** No doubt in **D.S. Nakara** vs. **Union of India** 1983(1) SCC 305 this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in **Nakara case** as observed in para 29 of the decision of this Court in **State of Punjab** vs. **Amar Nath Goyal**.
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> **7.** There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.
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> **8.** In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide **State of Bihar** vs. **Ramjee Prasad** 1990(3) SCC 368, **Union of India** vs. **Sudhir Kumar Jaiswal** 1994(4) SCC 212 (vide SCC 5), **Ramrao** vs. **All India Backward Class Bank Employees Welfare Assn.** 2004(2) SCC 76 (vide para 31), **University Grants Commission** vs. **Sadhana Chaudhary** 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.
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> **9.** As has been held by this Court in **Aravali Golf Club** vs. **Chander Hass** 2008(1) SCC 683 and in **Govt. of A.P.** vs. **P. Laxmi Devi** 2008(4) SCC 720 the court must maintain judicial restraint in matters relating to the legislative or executive domain."

45. In our opinion, there is often a misunderstanding about Article 14 of the Constitution, and often lawyers and Judges tend to construe

it in a doctrinaire and absolute sense, which may be totally impractical and make the working of the executive authorities extremely difficult if not impossible.

46. As Lord Denning observed :

> "This power to overturn executive decision must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own responsibilities and they have the right to make decisions. The Courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the Court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the courts and the government and the authorities, which would be most undesirable. The courts must act very warily in this matter." (See 'Judging the World' by Garry Sturgess Philip Chubb).

47. In our opinion Judges must maintain judicial self restraint while exercising the powers of judicial review of administrative or legislative decisions.

48. "In view of the complexities of modern society", wrote Justice Frankfurter, while Professor of Law at Harvard University, "and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others

become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and expressed in memorable language : It is misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong."

49. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote :

> "It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the state. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of skepticism-by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest." (see `Essays on Legal History in Honour of Felix Frankfurter' edited by Morris D. Forkosch.)

50. In our opinion adjudication must be done within the system of

historically validated restraints and conscious minimization of the Judges' preferences. The Court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of administration while the Court does not. In the words of Chief Justice Neely, former Chief Justice of the West Virginia Supreme Court of Appeals :

> "I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financer, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

51. In administrative matters the Court should, therefore, ordinarily defer to the judgment of the administrators unless the decision is clearly violative of some statute or is shockingly arbitrary. In this connection, Justice Frankfurter while Professor of Law at Harvard University wrote in `The Public and its Government' -

> "With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of government. The great judges are those to whom

> the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people."

52. In the same book Justice Frankfurter also wrote -

> "In simple truth, the difficulties that government encounters from law do not inhere in the Constitution. They are due to the judges who interpret it. That document has ample resources for imaginative statesmanship, if judges have imagination for statesmanship."

53. In legal scholarship, Roscoe Pound challenged the rigid formalism of Justice Field. Pound strongly argued against a jurisprudence founded upon immutable first principles and sought in the social sciences and related fields a means for making the law responsive to a changing world.

54. As observed by Justice Frankfurter :

> "It would be comfortable to discover a Procrustean formula…….. If such were the process of Constitutional adjudications in this most sensitive field, it would furnish an almost automatic task of applying mechanical formula and would hardly call for the labors of Marshall or Taney, of Holmes or Cardozo. To look for such talismanic formula is to assume that the broad guarantees of the Constitution can fulfill their purpose without the nourishment of history."

55. In **Keshavanand Bharti** vs. **State of Kerala** AIR 1973 SC 1461 (vide paragraph 1547) Khanna,J. observed :

> "In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error."

56. In the present case there was a reasonable basis for the classification, and hence there is no violative of Article 14 of the Constitution.

57. For the reasons given above there is no merit in this appeal and hence it is dismissed.

…….....J.
[Markandey Katju]

.. ..J.
[Gyan Sudha Misra]

New Delhi:
November 15, 2010