LANCO ANPARA POWER LIMITED A

v.

STATE OF UTTAR PRADESH & ORS.

(Civil Appeal No.6223 of 2016)

OCTOBER 18, 2016 B

[A.K. SIKRI AND N.V. RAMANA, JJ.]

Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 – Buildings and other Construction Workers Welfare Cess Act, 1996 – Appellants undertaking construction activity wherein they had planned to set up their factories – In the process of construction of civil works, construction workers engaged – Case of respondent authorities that the appellants to pay the cess for the welfare of the said workers engaged in the construction work since the provisions of the BOCW Act and the Welfare Cess Act meant for construction workers became applicable – Case of the appellants that provisions of the Factories Act apply to the construction of building/project of the appellants – Held: Construction workers are not covered by the Factories Act – Thus, they are entitled to the welfare measures provided for such workers under BOCW Act and Welfare Cess Act – Appellants to pay cess for the welfare of the said workers – Factories Act, 1948. C D E

Dismissing the appeals and the petitions, the Court

HELD: 1.1 The construction workers are not covered by the Factories Act, 1948 and, therefore, welfare measures specifically provided for such workers under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Buildings and other Construction Workers Welfare Cess Act, 1996 cannot be denied. [Para 34][759-F-G] F

1.2 On the conjoint reading of section 2(m), 2(k) & 2(l) of the Factories Act, it becomes clear that "factory" is that establishment where manufacturing process is carried on with or without the aid of power. Carrying on this manufacturing process or manufacturing activity is thus a prerequisite. It is equally pertinent to note that it covers only those workers who are G H

A **engaged in the said manufacturing process. Insofar as these appellants are concerned, construction of building is not their business activity or manufacturing process. In fact, the building is being constructed for carrying out the particular manufacturing process, which, in most of these appeals, is generation,**
B **transmission and distribution of power. Obviously, the workers who are engaged in construction of the building also do not fall within the definition of 'worker' under the Factories Act. On these two aspects there is no cleavage and both parties are at *ad idem*. What follows is that these construction workers are not covered by the provisions of the Factories Act. [Para 21][753-D-G]**

C **1.3 Having regard to the above, if the submission of the appellants is accepted, the construction workers engaged in the construction of building undertaken by the appellants which is to be used ultimately as factory, would stand excluded from the provisions of BOCW Act and Welfare Cess Act as well. This could**
D **not be the intention while providing the definition of 'building and other construction work' in Section 2(d) of BOCW Act. [Para 22][753-G-H; 754-A]**

1.4 The High Court was right in observing that merely because the appellants have obtained a licence under Section 6
E **of the Factories Act for registration to work a factory, it would not follow therefrom that they answer the description of the "factory" within the meaning of the Factories Act. A bare reading of the definition of factory, thereof makes it abundantly clear that before this stage, when construction of the project is completed and the manufacturing process starts, 'factory' within the meaning**
F **of Section 2(m) of the Factories Act does not come into existence so as to be covered by the said Act. [Para 23][754-B-C]**

1.5 Section 2(d) of the BOCW Act dealing with the building or construction work is in three parts. In the first part, different activities are mentioned which are to be covered by the said
G **expression, namely, construction, alterations, repairs, maintenance or demolition. Second part of the definition is aimed at those buildings or works in relation to which the aforesaid activities are carried out. The third part of the definition contains exclusion clause by stipulating that it does not include 'any**
H **building or other construction work to which the provisions of**

the Factories Act, 1948, or the Mines Act, 1952 applies'. Thus, first part of the definition contains the nature of activity; second part contains the subject matter in relation to which the activity is carried out and third part excludes those building or other construction work to which the provisions of Factories Act or Mines Act apply. [Para 24][754-D-F]

1.6 The construction of the projects of the appellants is covered by the definition of "building or other construction work" as it satisfies first two elements of the definition. In order to see whether exclusion clause applies, the words 'but does not include any building or other construction work to which the provisions of the Factories Act apply are to be interpreted. The provisions of the Factories Act do not apply to the construction of building/ project of the appellants. The provisions of the Factories Act would "apply" only when the manufacturing process starts for which the building/project is being constructed and not to the activity of construction of the project. That is how the exclusion clause is to be interpreted and that would be the plain meaning of the said clause. [Para 25][754-G-H; 755-A-B]

Organo Chemical Industries v. *Union of India* **1980 (1) SCR 61 : (1979) 4 SCC 573 – referred to.**

1.7 The said meaning attributed to the exclusion clause of the definition is also in consonance with the objective and purpose which is sought to be achieved by the enactment of BOCW Act and Welfare Cess Act. If the construction of this provision as suggested by the appellants is accepted, the construction workers who are engaged in the construction of buildings/projects would neither get the benefit of the Factories Act nor of BOCW Act/ Welfare Cess Act. That could not have been the intention of the Legislature. BOCW Act and Welfare Cess Act are pieces of social security legislation to provide for certain benefits to the construction workers. [Para 26] [755-F-H]

1.8 Purposive interpretation in a social amelioration legislation is an imperative, irrespective of anything else. 'Superior purpose' contained in BOCW Act and Welfare Cess Act has to be kept in mind when two enactments – the Factories Act on the one hand and BOCW Act/Welfare Cess Act on the

A **other hand, are involved, both of which are welfare legislations. [Paras 27, 32][756-A-B]**

Allahabad Bank v. *Canara Bank* **2000 (2) SCR 1102 : (2000) 4 SCC 406 – relied on.**

B *Atma Ram Mittal* v. *Ishwar Singh Punia* **1988 (2) Suppl. SCR 528 : (1988) 4 SCC 284;** *M.P. Mineral Industry Association* v. *Regional Labour Commr. (Central)* **AIR 1960 SC 1068 : 1960 SCR 476;** *Surendra Kumar Verma* v. *The Central Government Industrial Tribunal* **1981 (1) SCR 789 : (1980) 4 SCC 443;** *Workmen of American* C *Express* v. *Management of American Express* **(1985) 4 SCC 71;** *Carew and Co. Ltd.* v. *Union of India* **1976 (1) SCR 379 : (1975) 2 SCC 791;** *Bombay Anand Bhavan Restaurant* v. *Deputy Director, Employees' State Insurance Corporation & Anr.* **(2009) 9 SCC 61;** *Pegasus Assets Reconstruction P. Ltd.* v. *M/s. Haryana* D *Concast Limited & Anr* **2016 (1) SCALE 1;** *Richa Mishra* v. *State of Chhattisgarh and Others* **2016 (1) SCR 316 : (2016) 4 SCC 179;** *Shailesh Dhairyawan* v. *Mohan Balkrishna Lulla* **2015 SCR 70 : (2016) 3 SCC 619 – referred to.**

E **1.9 The submission that while granting permission under the Factories Act, various conditions are imposed which the appellants are required to fulfill and these conditions are almost the same which are contained in BOCW Act, cannot be accepted. Registration under the Factories Act becomes necessary in view** F **of provisions contained in Section 6 of the said Act as this Section requires taking of approval and registration of factories even at preparatory stage i.e. at the stage when the premises where factory is to operate has to ensure that construction will be done in such a manner that it takes care of safety measures etc. which are provided in the Factories Act. This means to ensure that** G **construction is carried out in such a manner that provisions in the Factories Act to ensure health, safety and provisions relating to hazardous process as well as welfare measures are taken care of. It is for this reason that even after the building is completed before it is occupied, notice under Section 7 is to be given by the** H **occupier to the Chief Inspector of Factories so that a necessary**

inspection is carried out to verify that all such measures are in place. Therefore, when the permissions for construction of factories is given, the purpose is altogether different. [Para 33][759-C-F]

1.10 It is made clear that insofar as objection to the calculation of cess as contained in the show cause notices is concerned, it would be open to the appellants to agitate the same before the adjudicating authorities. [Para 35][760-A-B]

Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and Others **1990 (3) SCR 111 : (1990) 3 SCC 682;** *B.N. Mutto* v. *T.K. Nandi* **1979 (2) SCR 409 : (1979) 1 SCC 361;** *Shri Hariprasad Shivshanker Shukla and another v. Shri A.D. Divelkar and others* **1957 SCR 121;** *Regional Director, Employees State Insurance Corporation, Trichur* v. *Ramanuja Match Industries* **1985 (2) SCR 119 : (1985) 1 SCC 218;** *Dadi Jagannadham* v. *Jammulu Ramulu and Others* **2001 (2) Suppl. SCR 60 : (2001) 7 SCC 71;** *Shyam Sunder and others* v. *Ram Kumar and another* **2001 (1) Suppl. SCR 115 : (2001) 8 SCC 24;** *Grasim Industries Ltd. v. Collector of Customs, Bombay* **2002 (2) SCR 945 : (2002) 4 SCC 297;** *Deepal Girishbhai Soni and Others* v. *United India Insurance Co. Ltd., Baroda* **2004 SCR 213 : (2004) 5 SCC 385;** *Bhikusa Yamasa Kshatriya (P) Ltd.* v. *Union of India and another* **1964 SCR (1) 860;** *Dewan Chand Builders and Contractors* v. *Union of India and Others* **2011 (13) SCR 214 : (2012) 1 SCC 101– referred to.**

Case Law Reference

1990 (3) SCR 111	**referred to**	**Para 10**
1979 (2) SCR 409	**referred to**	**Para 10**
1957 SCR 121	**referred to**	**Para 10**
1985 (2) SCR 119	**referred to**	**Para 10**
2001 (2) Suppl. SCR 60	**referred to**	**Para 10**
2001 (1) Suppl. SCR 115	**referred to**	**Para 10**

A	**2002 (2) SCR 945**	**referred to**	**Para 10**
	2004 SCR 213	**referred to**	**Para 10**
	1964 SCR (1) 860	**referred to**	**Para 13**
	2011 (13) SCR 214	**referred to**	**Para 16**
B	**1980 (1) SCR 61**	**referred to**	**Para 25**
	1988 (2) Suppl. SCR 528	**referred to**	**Para 27**
	1960 SCR 476	**referred to**	**Para 28**
	1981 (1) SCR 789	**referred to**	**Para 28**
C	**(1985) 4 SCC 71**	**referred to**	**Para 29**
	1976 (1) SCR 379	**referred to**	**Para 30**
	(2009) 9 SCC 61	**referred to**	**Para 31**
	2000 (2) SCR 1102	**relied on**	**Para 32**
D	**2016 (1) SCALE 1**	**referred to**	**Para 32**
	2016 (1) SCR 316	**referred to**	**Para 32**
	2015 SCR 70	**referred to**	**Para 32**

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6223 of 2016

WITH

Civil Appeal Nos. 10187-10188 of 2016

F W.P. (C) No. 64 of 2012

W.P. (C) No. 848 of 2013

W.P. (C) No. 385 of 2014

Civil Appeal No. 6569 of 2014

G T.P. (C) No. 342 of 2014

T.C. (C) No. 29 of 2015

W.P. (C) No. 174 of 2016

W.P. (C) No. 311 of 2016

H Civil Appeal No. 6571 of 2014

T.C. (C) No. 38 of 2016

Civil Appeal No. 10186 of 2016

W.P. (C) No. 698 of 2016

Civil Appeal No. 10189 of 2016.

From the Judgment and Order dated 28.04.2015 of the High Court of Judicature at Allahabad in Writ Tax No. 772 of 2011.

Ms. Pinki Anand, ASG., C. A. Sundaram, Gaurab Banerji, Ravindra Srivastava, Rana Mukherji, Ms. Vibha Datta Makhija, Sr. Advs., Akhil Sibal, Deepak Khurana, Ms. Aditi Sharma, Umesh Kumar Khaitan, Amar Dave, Mahesh Agarwal, Ankur Saigal, Ms. Sadapurna Mukherjee, Satyendra Kumar, E. C. Agrawala, Vikrant Panchnanada, Mahesh Agarwal, Ms. Neha Nagpal, Shashank Manish, Ms. Vaidehi Misra, Sahil Tagotra, B. S. Banthia, Prashant Shukla, Alok Hoonka, Nitin Gupta, Kush Agrawal, Nikilesh Ramachandran, Neeraj Shekhar, Arunabh Chowdhury, Rahul Pratap, Parshanto Chandra Sen, Shivanshu Singh, Udayan Verma, Ms. Sana Batta, A. Venayagam Balan, T. G. Narayanan Nair, K. Raghava Charyulu, Kailash Pandey, Vaibhav Shukla, Ranjeet Singh, Ms. J. Kataria, K. V. Sreekumar, Ravi Prakash Mehrotra, Rajeev Dubey, Pulkit Tare, Shreekant N. Terdal, Shibashish Misra, Alok K. Agarwal, Sanjeev Kr. Singh, Kumar Dushyant Singh, Puneet Taneja, Mishra Saurabh, Ankit Kr. Lal, Ms. Alka Agarwal, R. R. Rajesh, A. K. Sharma, Franklin Caesar Thomas, Chand Qureshi, M. P. Siddiqui, Upendra Prasad, Naveen Chawla, T. Mahipal, T. A. Khan, Rajesh Ranjan, Mukhesh Kumar Maroria, Advs. for the appearing parties.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Leave granted in SLP (C) Nos. 29105-29106 of 2011, SLP (C) No. 26363 of 2016 and SLP (C) No. 26330 of 2016. Since pure question of law is involved, we allow the transfer petition and transfer cases and also take up, along with these appeals, the writ petitions which were filed before the respective High Courts.

2. These appeals are filed by the appellants challenging the orders passed by different High Courts i.e. High Court of Allahabad, High Court of Orissa, High Court of Madhya Pradesh and High Court of Karnataka. These High Courts, however, are unanimous in their approach and have reached the same conclusion. In all these cases, appellants were issued

A show cause notices by the concerned authorities under the provisions of the Building And Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as 'BOCW Act') and Buildings And Other Construction Workers Welfare Cess Act, 1996 (hereinafter referred to as 'Welfare Cess Act'). They had challenged those notices by filing writ petitions in the High Courts on the ground that the provisions of BOCW Act or Welfare Cess Act were not applicable to them because of the reason that they were registered under the Factories Act, 1948. It may be mentioned that at the relevant time no manufacturing operation had commenced by the appellants. In fact, all these appellants were in the process of construction of civil works/ factory buildings etc. wherein they had planned to set up their factories. As the process of construction of civil works was undertaken by the appellants wherein construction workers were engaged, the respondent authorities took the view that the provisions of the aforesaid Acts which were meant for construction workers became applicable and the appellants were supposed to pay the cess for the welfare of the said workers engaged in the construction work. The appellants had submitted that Section 2(d) of the BOCW Act which defines 'building or other construction work' specifically states that it does not include any building or construction work to which the provision of the Factories Act, 1948 or the Mines Act, 1952 apply. Since the appellants stood registered under the Factories Act, they were not covered by the definition of building or other construction work as contained in Section 2(d) of the Act and, therefore, said Act was not applicable to them by virtue of Section 1(4) thereof. All the High Courts have negated the aforesaid plea of the appellants on the ground that the appellants would not be covered by the definition of factory defined under Section 2(m) of the Factories Act in the absence of any operations/ manufacturing process and, therefore, mere obtaining a licence under Section 6 of the Factories Act would not suffice and rescue them from their liability to pay cess under the Welfare Cess Act. This is, in nutshell, the subject matter of all these appeals. However, in order to understand the full implication of the issue involved and to answer the said issue, it would be apt to take note of certain facts from one of these appeals. This factual canvass is suitably available in the events that have occurred leading to the filing of Civil Appeal No. 6223/2016.

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3. In this appeal, the appellant proposed to set up a 2X600

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Megawatt capacity coal-based thermal power project namely "Anpara C" at Anpara in District Sonebhadra, Uttar Pradesh ("the Project"), pursuant to being selected in a tariff-based competitive bidding initiated by the Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. (UPRVUNL) on behalf of the Uttar Pradesh Power Corporation Ltd. (UPPCL). The project consists of two Steam Turbine Generators (STG) each having capacity of 600 MW and two pulverised coal fired steam generators and the balance of plant. The appellant, in respect of the aforesaid project, made an application to the Director of Factories, Uttar Pradesh, submitting the layout/drawings of the proposed plants and requesting for registration of the project as a factory under the provisions of the Factories Act, 1948 and the Uttar Pradesh Factories Rules, 1950. The appellant was granted registration and licence under Section 6 of the Factories Act, 1948 read with Uttar Pradesh Factories Rules, 1950 for the said Project, as a factory. Respondent No. 1 notified the Uttar Pradesh Building and other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2009 (for short 'BOCW Rules') on 04.02.2009. Immediately thereafter, the appellant received a notice of even date issued by respondent No. 2, intimating that the Chief Secretary, Government of Uttar Pradesh had directed that "establishments" engaged in construction activities were required to get themselves registered under the provisions of the BOCW Act and the BOCW Rules. Simultaneously, a letter of even date was also received from the District Collector, Sonebhadra, Uttar Pradesh, calling upon the appellant to get itself/its contractors registered under the provisions of the BOCW Act and the BOCW Rules. The appellant, vide its letter of even date, replied to the aforesaid communication dated 19.04.2010 of the District Collector, Sonebhadra, stating that the appellant was undertaking the construction activity of the Project under the provisions of the Factories Act and as such, in view of Section 2(1)(d) of the BOCW Act, the Project was exempted from the application of the BOCW Act, and consequently the Welfare Cess Act and BOCW Rules inasmuch as the provisions of the Factories Act apply to the Project.

4. The respondents were not satisfied with the aforesaid stand taken by the appellant. Thus, show cause notice dated 17.02.2011 was issued by respondent No. 2 as to why action be not taken against the appellant for failing to get itself registered under BOCW Act. It was followed by another notice of even date stating that the appellant had

not furnished requisite information relating to construction activities undertaken by it as required under Section 4 of the Welfare Cess Act read with Rule 6 of the Welfare Cess Rules. Some more notices were issued to the similar effect with regard to the construction activities in respect of the township in Anpara, undertaken by the appellant. Insofar as township is concerned, appellant got itself registered through its principal contractors under Welfare Cess Act and started paying the cess. However, in respect of construction activity and factory premises, the appellant reiterated its stand that by virtue of Section 2(1)(d) of the BOCW Act, it was excluded from the coverage thereof. The contention of the appellant was rejected by the respondents which led to issuance of further notices demanding cess.

5. At this juncture, the appellant filed the writ petition in the High Court of Judicature at Allahabad challenging the validity of notices dated 14.03.2011 and 02.04.2011 demanding payment of cess, on the following grounds:

(i) That the appellant is not amenable to assessment of liability under the Welfare Cess Act inasmuch as the Factories Act is applicable to the Project, and the Project is as such, exempt from the applicability of the said Act by virtue of the exclusionary cause contained in Section 2(1)(d) of the BOCW Act.

(ii) That respondent No. 2, vide impugned notice dated 02.04.2011, was proceeding to calculate the alleged cess payable by the appellant on the basis of the cost of the Project, and not on the cost of construction of the said Project, whereas under the scheme of the Cess Act, cess is payable only on the cost of construction incurred annually, and not on the entire project cost, which includes several other components apart from civil construction works.

6. The respondents filed their counter affidavit contesting the petition. After hearing, the writ petition has been dismissed by the High Court vide judgment dated 28.04.2015, gist whereof has already been taken note of above.

7. Emphatic submissions were made by Mr. Sundaram, learned senior counsel appearing in some of these appeals, questioning the approach and conclusion reached by the High Court. Other senior counsel Mr. Gaurab Banerji and Mr. Akhil Sibal supplemented those submissions lending their candour thereto. These submissions were further

supplemented by M/s. Prashant Shukla, Arunabh Chowdhury and K. Raghava Charyulu, Advocates. It may not be necessary to take note of individual submissions made by these counsel. Instead, for the sake of brevity, we are reproducing the submissions of these counsel in consolidated form hereinafter.

8. These counsel have led two prong attacks on the demands raised by the respondents for payment of cess under BOCW Act read with Welfare Cess Act, which is as under:

i) In the first instance, it is argued that BOCW Act does not apply to those undertakings which are registered under the Factories Act. To support this submission, emphasis was laid on the definition of "building or other construction work" as contained in Section 2(1)(d) of BOCW Act, which reads as under:

"**Section 2(1)(d)** : "building or other construction work" means the construction, alternation, repairs, maintenance or demolition of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communication dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aquaducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply.

(emphasis added)"

(ii) Second submission, which in fact flows from first submission noted above, was that the approach of the High Court in dealing with the matter was contrary to law. In this behalf, it was pointed out that the High Court has rejected the case of the appellants herein on the ground that even if the appellants had obtained a licence under the Factories Act for registration to work a factory, the appellants were still not excluded

A from the provisions of Welfare Cess Act as no manufacturing process or factory operation had started by the appellants and, therefore, appellants did not answer the description of 'factory' within the meaning of Factories Act. As per the High Court, since the appellants had only undertaken the process of construction of premises which are to be ultimately used as factories, and since such power project has not started B and there was no operation for which the licence was obtained under the Factories Act till the production commences, it could not be said that "factory" has come into existence and, therefore, the appellants were not entitled to take advantage of mere registration under the Factories Act.

C Dubbing the aforesaid approach as erroneous, it was the argument of the appellants that the High Court ignored the pertinent aspect that even when the building was under construction, the establishments which were covered by the Factories Act stood excluded by virtue of definition contained in Section 2(d) of BOCW Act which pertained to construction D of building and, therefore, specifically covered the stage of construction itself. It was argued that matter should have been seen from that angle. Advancing this argument further, it was also submitted that the Legislature is alive to the fact that the factory is not running at the stage when building or other construction work is going on. However, it still chose to exclude those buildings or other construction work to which the provisions E of Factories Act apply.

9. Expanding the aforesaid submissions, the appellants even gave the rationale in couching the definition of Section 2(d) of the BOCW Act in that specific manner by submitting that once the provisions of Factories Act apply, all the benefits which are admissible to the workers under the F BOCW Act and Welfare Cess Act are granted under the Factories Act as well. This submission was buttressed by pointing out the provisions/ conditions stipulated while granting the permission under the Factories Act. It was submitted that the safety measures and facilities which the appellants were obligated under those conditions were the same as G stipulated in BOCW Act.

10. Taking support of interpretative tools to support the aforesaid twin submissions, it was submitted by the counsel for the appellants that Section 2(d) had to be given literal meaning, in the absence of any ambiguity in the said provision and number of judgments were cited in H this behalf. Some of those judgments are as under:

i) In ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh*** v. ***Presiding Officer, Labour Court, Chandigarh and Others***[1], this Court while interpreting the word 'means' observed that if the definition has used the word 'means', it shall include certain things or acts and the definition has used the word 'means', it shall include certain things or acts and the definition is a hard-and-fast definition and no other meaning can be assigned to the expression than is put down in definition. This Court further observed that if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law. This Court after making reference to its judgment in ***B.N. Mutto*** v. ***T.K. Nandi***[2] observed that "the Court has to determine the intention as expressed by the words used. If the words of a statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense". It was further observed that "the cardinal rule of construction of statute is to read statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning."

ii) In ***Shri Hariprasad Shivshanker Shukla and another*** v. ***Shri A.D. Divelkar and others***[3], it was held that "there is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute".

iii) In ***Regional Director, Employees State Insurance Corporation, Trichur*** v. ***Ramanuja Match Industries***[4], the Court pointed out that "there is no doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending

[1] (1990) 3 SCC 682
[2] (1979) 1 SCC 361
[3] 1957 SCR 121
[4] (1985) 1 SCC 218

A the statutory benefit to those who are not covered by the scheme".

iv) In ***Dadi Jagannadham*** v. ***Jammulu Ramulu and Others***[5], this Court, while interpreting the provisions that fell for consideration, made the following observations in paragraph 13:

B "13. .... The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words C used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, D make up deficiencies which are there."

v) In ***Shyam Sunder and others*** v. ***Ram Kumar and another***[6], this Court explained as to how to interpret the provisions of an enactment in the following words:

E "... when the words used in a statute are capable of only one meaning. In such a situation, the courts have been hesitant to apply the rule of benevolent construction. But if it is found that the words used in the statute give rise to more than one meaning, in such circumstances, the courts are not precluded from applying such rule of construction. F The third situation is when there is no ambiguity in a provision of a statute so construed. If the provision of a statute is plain, unambiguous and does not give rise to any doubt, in such circumstances the rule of benevolent construction has no application."

G vi) Similarly in **Grasim Industries Ltd.** v. ***Collector of Customs, Bombay***[7], the Constitution Bench of this Court explained the principle of literal interpretation as under:

[5] (2001) 7 SCC 71
[6] (2001) 8 SCC 24
H [7] (2002) 4 SCC 297

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (*sic* altering) the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in *Crawford* v. *Spooner* [(1846) 6 Moore PC 1 : 4 MIA 179] "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to a few decisions of this Court would suffice. (See: *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd.* v. *Custodian of Vested Forests* [1990 Supp SCC 785 : AIR 1990 SC 1747], *Union of India* v. *Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 : AIR 1992 SC 96] ,*Institute of Chartered Accountants of India* v. *Price Waterhouse* [(1997) 6 SCC 312] and *Harbhajan Singh* v. *Press Council of India* [(2002) 3 SCC 722 : JT (2002) 3 SC 21])"

A vii) In ***Deepal Girishbhai Soni and Others*** v. ***United India Insurance Co. Ltd., Baroda***[8], while interpreting the provisions that fell for consideration, the principle was applied even in the context of beneficial legislation, when the language was plain, depicting clear intention of the legislature, in the following terms:

B "53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of
C extending the statutory benefit to those who are not covered thereby. (See *Regional Director, ESI Corpn.* v. *Ramanuja Match Industries* [(1985) 1 SCC 218 : 1985 SCC (L&S) 213 : AIR 1985 SC 278])."

Relying upon all the aforesaid judgments, the forceful exhortation
D was to follow this literal construction while interpreting Section 2(d) of BOCW Act in the manner appellants suggested to us.

11. Mr. Rana and Mr. Srivastava countered the aforesaid submissions giving equally salubrious response. Their fervent plea was that the view taken by the High Court while interpreting the provisions
E of Section 2(d) of BOCW Act was perfectly justified and any other interpretation as suggested by the appellants would defeat the very purpose of these Acts. It was argued that mere registration under the Factories Act would be of no consequence inasmuch as definition of 'factory' contained in Section 2(m) of the Act unambiguously suggest
F that the provisions of the said Act would apply only when manufacturing process is actually carried on. It was further submitted that the definition of 'worker' under the Factories Act does not include construction workers and, therefore, construction workers would not be entitled to various benefits which are contained in different provisions of the Factories Act. It is for this reason at the stage of construction of the
G building, which is to be ultimately used as a factory, the provisions of BOCW Act would be applied. It was also emphasised that while interpreting the provisions of these two Acts, "superior purpose" behind therein had to be kept in mind and this enactment which is for the welfare

[8] (2004) 5 SCC 385

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of the weaker section, i.e. workers of unorganised sector, had to be liberally construed by giving that construction which accords them the benefit eschewing the other approach which would preclude them from getting the benefit under the Acts. In this hue, the learned counsel strongly urged upon this Court to invoke the principle of purposive interpretation, which is in vogue, to do complete justice in the matter. It was also argued that exclusion provision contained in Section 2(d) of BOCW Act had to be construed narrowly as per the settled proposition of law.

12. We have bestowed our due and serious consideration to the submissions made of both sides, which these submissions deserve. The central issue is the meaning that is to be assigned to the language of Section 2(d) of the Act, particularly that part which is exclusionary in nature, i.e. which excludes such building and construction work to which the provisions of Factories Act apply. Before coming to the grip of this central issue, we deem it appropriate to refer to the objectives with which the Factories Act and BOCW Act were enacted, as that would be the guiding path to answer the core issue delineated above.

13. Insofar as Factories Act is concerned, its Preamble mentions that it is an Act to consolidate and amend the law regulating labour in factories. It is enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose it seeks to impose upon the owners or occupiers certain obligations to protect workers unwary as well as negligent and to secure for them employment in conditions conducive to their health and safety. This Act also requires that the workers should work in healthy and sanitary conditions and for that purpose it provides that precautions should be taken for the safety of workers and prevention of accidents. Incidental provisions in Factories Act are made for securing information necessary to ensure that the objects are carried out and the State Governments are empowered to appoint Inspectors, to call for reports and to inspect the prescribed registers with a view to maintain effective supervision. The duty of the employer under this Act is to secure the health and safety of workers and extends to providing adequate plant, machinery and appliances, supervision over workers, healthy and safe premises, proper system of working and extends to giving reasonable restrictions. Detailed provisions are, therefore, made in diverse chapters of the Act imposing obligations upon the owners of the factories to maintain inspecting staff

A and for maintenance of health, cleanliness, prevention of overcrowding and provision for amenities such as lighting, drinking water, etc. Provisions are also made for safety of workers and their welfare, such as restrictions on working hours and on the employment of young persons and females, and grant of annual leave with wages. In ***Bhikusa Yamasa Kshatriya (P) Ltd.*** v. ***Union of India and another***[9], this Court highlighted the
B necessity and rationale behind legislating this Act and the objectives which it sought to achieve, in the following manner:

> "9. The Factories Act, as the preamble recites, is an Act to consolidate and amend the law regulating labour in factories. The Act is enacted primarily with the object of protecting
C workers employed in factories against industrial and occupational hazards. For that purpose it seeks to impose upon the owners or the occupiers certain obligations to protect workers unwary as well as negligent and to secure for them employment in conditions conducive to their health
D and safety. The Act requires that the workers should work in healthy and sanitary conditions and for that purpose it provides that precautions should be taken for the safety of workers and prevention of accidents. Incidental provisions are made for securing information necessary to ensure that the objects are carried out and the State Governments are
E empowered to appoint Inspectors, to call for reports and to inspect the prescribed registers with a view to maintain effective supervision. The duty of the employer is to secure the health and safety of workers and extends to providing adequate plant, machinery and appliances, supervision over
F workers, healthy and safe premises, proper system of working and extends to giving reasonable instructions. Detailed provisions are therefore made in diverse chapters of the Act imposing obligations upon the owners of the factories to maintain inspecting staff and for maintenance
G of health, cleanliness, prevention of overcrowding and provision for amenities such as lighting, drinking water, etc. etc. Provisions are also made for safety of workers and their welfare, such as restrictions on working hours and on the employment of young persons and females, and grant

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H [9] 1964 SCR (1) 860

of annual leave with wages. Employment in a manufacturing process was at one time regarded as a matter of contract between the employer and the employee and the State was not concerned to impose any duties upon the employer. It is however now recognised that the State has a vital concern in preventing exploitation of labour and in insisting upon proper safeguards for the health and safety of the workers. The Factories Act undoubtedly imposes numerous restrictions upon the employers to secure to the workers adequate safeguards for their health and physical well-being. But imposition of such restrictions is not and cannot be regarded, in the context of the modem outlook on industrial relations, as unreasonable...."

14. Coming to BOCW Act, its Statement of Objects and Reasons, depicting the legislative intent, reads as under:

"(1) It is estimated that about 8.5 million workers in the country are engaged in building and other construction works. Building and other construction workers are one of the most numerous and vulnerable segments of the unorganised labour in India. The building and other construction works are characterized by their inherent risk to the life and limb of the workers. The work is also characterised by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. In the absence of adequate statutory provisions, the requisite information regarding the number and nature of accidents is also not forthcoming. In the absence of such information, it is difficult to fix responsibility or to take any corrective action.

(2) Although the provisions of certain Central Acts are applicable to the building and other construction workers yet a need has been felt for a comprehensive Central Legislation for regulating their safety, health, welfare and other conditions of service. It had been considered necessary to levy a cess on the cost of construction incurred by the employers on the building and other construction

A works for ensuring sufficient funds for the Welfare Boards to undertake the social security schemes and welfare measures."

15. In the Statement of Objects and Reasons of this Act itself, it was considered necessary to levy a cess on the cost of construction B incurred by the employers while constructing building etc. This led to passing of Welfare Cess Act. The Statement of Objects and Reasons behind this Act was to provide for the levy and collection of a cess on the cost of construction incurred by the employers for augmenting the resources of the Building, and Other Construction Workers' Welfare Boards constituted by the State Governments under the Building and C Other Construction Workers' (Regulation of Employment and Conditions of Service) Ordinance, 1995.

16. Scheme of BOCW Act came up for consideration by this Court in the ***Dewan Chand Builders and Contractors*** v. ***Union of India and Others***[10]. Recognising that the noble purpose behind the D said Act is to ensure welfare of the building and construction workers in order to provide basic human dignity enshrined in Article 21 of the Constitution, the Court observed as under:

"10. It is thus clear from the scheme of the BOCW Act that its sole aim is the welfare of building and construction E workers, directly relatable to their constitutionally recognised right to live with basic human dignity, enshrined in Article 21 of the Constitution of India. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available 'to every building F and construction worker, by constituting Welfare Boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act, which is questioned in these appeals as G unconstitutional.

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17. It is manifest from the overarching schemes of the BOCW Act, the Cess Act and the Rules made thereunder

H [10] (2012) 1 SCC 101

that their sole object is to regulate the employment and conditions of service of building and other construction workers, traditionally exploited sections in the society and to provide for their safety, health and other welfare measures. The BOCW Act and the Cess Act break new ground in that, the liability to pay cess falls not only on the owner of a building or establishment, but under Section 2(1)(i)(iii) of the BOCW Act

"in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor";

The extension of the liability on to the contractor is with a view to ensure that, if for any reason it is not possible to collect cess from the owner of the building at a stage subsequent to the completion of the construction, it can be recovered from the contractor. The Cess Act and the Cess Rules ensure that the cess is collected at source from the bills of the contractors to whom payments are made by the owner. In short, the burden of cess is passed on from the owner to the contractor."

(emphasis supplied)

17. Keeping in view the aforesaid objective of the respective Acts, we now deal with the scope and ambit of Section 2(d) of BOCW Act. As noticed above, one of the submissions of the appellants is that literal interpretation needs to be given to the said provision as it categorically excludes those building or construction work to which Factories Act apply. In this very hue, it is argued that as the benefit under the Factories Act are already given to the construction workers who are involved in the construction work, there is no need for covering the construction workers who are engaged in building or construction work of the appellants under BOCW Act or Welfare Cess Act.

18. Before dealing with the argument predicated on literal construction, we would like to deal with the second aspect as the answer to that would facilitate the answer to this aspect as well. Section 2(m) of the Factories Act defines 'factory' in the following manner:

"(m) "factory" means any premises including the precincts

A thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

B (ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of [the C Mines Act, 1952 (35 of 1952)] or [a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place].

[Explanation [I] - For computing the number of workers for the purposes of this clause all the workers in [different D groups and relays] in a day shall be taken into account;]

[Explanation II - For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process E is being carried on in such premises or part thereof;]..."

19. Section 2(k) of the Factories Act defines 'manufacturing process' in the following manner:

(k) "manufacturing process" means any process for-

F (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

G (ii) [pumping oil, water, sewage or any other substance; or]

(iii) generating, transforming or transmitting power; or

(iv) [composing types for printing, printing by letter press, lithography, photogravure or other similar process or book

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binding;] [or]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;[or]

(vi) [preserving or storing any article in cold storage;]

20. It is also necessary to take note of the definition of 'worker', which is contained in Section 2(l) of the Factories Act. It reads as under:

> (l) "worker" means a person 8[employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process 7[but does not include any member of the armed forces of the Union];

21. On the conjoint reading of the aforesaid provisions, it becomes clear that "factory" is that establishment where manufacturing process is carried on with or without the aid of power. Carrying on this manufacturing process or manufacturing activity is thus a prerequisite. It is equally pertinent to note that it covers only those workers who are engaged in the said manufacturing process. Insofar as these appellants are concerned, construction of building is not their business activity or manufacturing process. In fact, the building is being constructed for carrying out the particular manufacturing process, which, in most of these appeals, is generation, transmission and distribution of power. Obviously, the workers who are engaged in construction of the building also do not fall within the definition of 'worker' under the Factories Act. On these two aspects there is no cleavage and both parties are at *ad idem*. What follows is that these construction workers are not covered by the provisions of the Factories Act.

22. Having regard to the above, if the contention of the appellants is accepted, the construction workers engaged in the construction of building undertaken by the appellants which is to be used ultimately as factory, would stand excluded from the provisions of BOCW Act and Welfare Cess Act as well. Could this be the intention while providing

A the definition of 'building and other construction work' in Section 2(d) of BOCW Act? Clear answer to this has to be in the negative.

23. We may mention at this stage that High Court is right in observing that merely because the appellants have obtained a licence under Section 6 of the Factories Act for registration to work a factory, it B would not follow therefrom that they answer the description of the "factory" within the meaning of the Factories Act. We have reproduced the definition of 'factory' and a bare reading thereof makes it abundantly clear that before this stage, when construction of the project is completed and the manufacturing process starts, 'factory' within the meaning of Section 2(m) of the Factories Act does not come into existence so as to C be covered by the said Act.

24. We now advert to the core issue touching upon the construction of Section 2(d) of the BOCW Act. The argument of the appellants is that language thereof is unambiguous and literal construction is to be accorded to find the legislative intent. To our mind, this submission is of D no avail. Section 2(d) of the BOCW Act dealing with the building or construction work is in three parts. In the first part, different activities are mentioned which are to be covered by the said expression, namely, construction, alterations, repairs, maintenance or demolition. Second part of the definition is aimed at those buildings or works in relation to E which the aforesaid activities are carried out. The third part of the definition contains exclusion clause by stipulating that it does not include 'any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), applies'. Thus, first part of the definition contains the nature of activity; second part contains the subject matter in relation to which the activity F is carried out and third part excludes those building or other construction work to which the provisions of Factories Act or Mines Act apply.

25. It is not in dispute that construction of the projects of the appellants is covered by the definition of "building or other construction work" as it satisfies first two elements of the definition pointed out above. G In order to see whether exclusion clause applies, we need to interpret the words 'but does not include any building or other construction work **to which the provisions of the Factories Act ..... apply'**. The question is as to whether the provisions of the Factories Act apply to the construction of building/project of the appellants. We are of the firm

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opinion that they do not apply. The provisions of the Factories Act would "apply" only when the manufacturing process starts for which the building/project is being constructed and not to the activity of construction of the project. That is how the exclusion clause is to be interpreted and that would be the plain meaning of the said clause. This meaning to the exclusion clause ascribed by us is in tune with the approach adopted by this Court in ***Organo Chemical Industries*** v. ***Union of India***[11]. Two separate, but concurring, opinions were given by Justice V.R. Krishna Iyer and Justice A.P. Sen, and we reproduce here below some excerpts from both opinions:

> "**Justice A.P. Sen** (para 23)
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> Each word, phrase or sentence is to be considered in the light of general purpose of the Act itself. A bare mechanical interpretation of the words *'devoid of concept or purpose'* will reduce much of legislation to futility. It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole.
>
> **Justice V.R. Krishna Iyer** (para 241)
>
> A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to 'damages' a larger, fulfilling meaning."

26. The aforesaid meaning attributed to the exclusion clause of the definition is also in consonance with the objective and purpose which is sought to be achieved by the enactment of BOCW Act and Welfare Cess Act. As pointed out above, if the construction of this provision as suggested by the appellants is accepted, the construction workers who are engaged in the construction of buildings/projects will neither get the benefit of the Factories Act nor of BOCW Act/Welfare Cess Act. That could not have been the intention of the Legislature. BOCW Act and Welfare Cess Act are pieces of social security legislation to provide for certain benefits to the construction workers.

[11] (1979) 4 SCC 573

A 27. Purposive interpretation in a social amelioration legislation is an imperative, irrespective of anything else. This is so eloquently brought out in the following passage in the case of ***Atma Ram Mittal*** v. ***Ishwar Singh Punia***[12]:

> "9. Judicial time and energy is more often than not consumed
> B in finding what is the intention of Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And
> C these signs are either the words, the context, the subject-matter, the effects and consequence, or *the spirit and reason of the law.* (emphasis by the court) See *Commentaries on the Laws of England* (facsimile of 1st Edn. of 1765, University of Chicago Press, 1979, Vol. 1, p. 59). Mukherjea, J. as the learned Chief Justice then was, in
> D *Poppatlal Shah* v. *State of Madras* [AIR 1953 SC 274 : 1953 SCR 677 : 1953 Cri LJ 1105: (1953) 4 STC 188] said that each word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind them said Judge Learned Hand, a long time ago. It appears, therefore,
> E that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislature has used and the true meaning of what words [**Ed.**: Lord Reid in the aforecited case had observed: (All ER p. 814) "We often say that we are looking for the
> F intention of Parliament, but this is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said."] as was said by Lord Reid in *Black-Clawson International Ltd.* v. *Papierwerke Waldhof-Aschaffenburg A.G* [1975 AC 591, 613 : (1975)
> G 1 All ER 810: (1975) 2 WLR 513] . We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law."

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[12] (1988) 4 SCC 284

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28. How labour legislations are to be interpreted has been stated and restated by this Court time and again. In ***M.P. Mineral Industry Association*** v. ***Regional Labour Commr. (Central)***[13], this Court while dealing with the provisions of the Minimum Wages Act, 1948, observed that this Act is intended to achieve the object of doing social justice to workmen employed the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions the court should adopt what is sometimes described as a beneficent rule of construction. In ***Surendra Kumar Verma*** v. ***The Central Government Industrial Tribunal***[14], this Court reminded that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

29. We would also like to reproduce a passage from ***Workmen of American Express*** v. ***Management of American Express***[15], which provides complete answer to the argument of the appellants based on literal construction:

> "4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn* v. *Simmonds* [(1971) 3 All ER 237]). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations..."

30. In equal measure is the message contained in ***Carew and Co.***

[13] AIR 1960 SC 1068
[14] (1980) 4 SCC 443
[15] (1985) 4 SCC 71

A *Ltd.* v. ***Union of India***[16]:

> "21. The law is not "a brooding omnipotence in the sky" but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar
B is a good guide to meaning but a bad master to dictate..."

31. The sentiments were echoed in ***Bombay Anand Bhavan Restaurant*** v. ***Deputy Director, Employees' State Insurance Corporation & Anr.*** [17] in the following words:

> "20. The Employees' State Insurance Act is a beneficial
C legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Employees' State Insurance
D Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve
E the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects.

32. In taking the aforesaid view, we also agree with the learned counsel for the respondents that 'superior purpose' contained in BOCW
F Act and Welfare Cess Act has to be kept in mind when two enactments – the Factories Act on the one hand and BOCW Act/Welfare Cess Act on the other hand, are involved, both of which are welfare legislations. (See ***Allahabad Bank*** v. ***Canara Bank***[18], which has been followed in ***Pegasus Assets Reconstruction P. Ltd.*** v. ***M/s. Haryana Concast***
G ***Limited & Anr.***[19] in the context of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Companies Act, 1956. Here the concept of 'felt necessity' would get

[16] (1975) 2 SCC 791
[17] (2009) 9 SCC 61
[18] (2000) 4 SCC 406
H [19] 2016 (1) SCALE 1

triggered and as per the Statement of Objects and Reasons contained in BOCW Act, since the purpose of this Act is to take care of a particular necessity i.e. welfare of unorganised labour class involved in construction activity, that needs to be achieved and not to be discarded. Here the doctrine of Purposive Interpretation also gets attracted which is explained in recent judgments of this Court in ***Richa Mishra*** v. ***State of Chhattisgarh and Others***[20] and ***Shailesh Dhairyawan*** v. ***Mohan Balkrishna Lulla***[21].

33. We are left to deal with the argument of the appellants that while granting permission under the Factories Act, various conditions are imposed which the appellants are required to fulfill and these conditions are almost the same which are contained in BOCW Act. We are not convinced with this submission either. It is already held that provisions of Factories Act are not applicable to these construction workers. Registration under the Factories Act becomes necessary in view of provisions contained in Section 6 of the said Act as this Section requires taking of approval and registration of factories even at preparatory stage i.e. at the stage when the premises where factory is to operate has to ensure that construction will be done in such a manner that it takes care of safety measures etc. which are provided in the Factories Act. This means to ensure that construction is carried out in such a manner that provisions in the Factories Act to ensure health, safety and provisions relating to hazardous process as well as welfare measures are taken care of. It is for this reason that even after the building is completed before it is occupied, notice under Section 7 is to be given by the occupier to the Chief Inspector of Factories so that a necessary inspection is carried out to verify that all such measures are in place. Therefore, when the permissions for construction of factories is given, the purpose is altogether different.

34. It is stated at the cost of repetition that construction workers are not covered by the Factories Act and, therefore, welfare measures specifically provided for such workers under the BOCW Act and Welfare Cess Act cannot be denied.

35. We, thus, hold that all these appeals are bereft of any merit. Accordingly, these appeals, along with the writ petitions filed before this

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[20] (2016) 4 SCC 179 at Page No. 197

[21] (2016) 3 SCC 619 – Para 31

A Court as also those which are the subject matter of the transfer petition and transfer cases, are dismissed with cost. We, however, make it clear that insofar as objection to the calculation of cess as contained in the show cause notices is concerned, it would be open to the appellants to agitate the same before the adjudicating authorities.

B 36. No costs.

Nidhi Jain Matters dismissed.