

Management of M/S. M. S. Nally Bharat Engineering Co. Ltd.

Vs

State of Bihar and Others

Civil Appeal No. 1102 of 1990

(K. Jagannatha Shetty, Dr. T.K. Thommen JJ)

09.02.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. Special Leave is granted.

2. This appeal from order of the Patna High Court raises an important question as to the scope of Section 33-B of the Industrial Dispute Act, 1947 ('the Act').

3. The facts can be quite shortly stated : The appellant-company is mainly engaged in construction of coal washeries on contract basis indifferent collieries and also doing allied and incidental work. Shivaji Prasad Sinha - respondent 4 was a Senior Supervisor in the company's establishment at Dhanbad. It is said that he was caught red-handed when carrying 55 pieces of electromagnetic clutch plates kept concealed in the tool box of his scooter. The management held domestic enquiry into the incident and found him guilty of committing theft. He was accordingly dismissed from services. The dispute arising therefrom was referred under Section 10(1)(c) of the Act to Labour Court, Dhanbad for adjudication. The Labour Court registered the case as Reference case No. 4 of 1988 and issued notice to the parties. The parties entered appearance and filed their respective pleadings. When the matter was thus pending consideration the respondent seems to have written to the Government stating that it would be difficult for him to attend the Labour Court, Dhanbad since he has been residing at Hajipur and it would be convenient for him if the case is transferred to Labour Court, Patna. That application was made without intimation to the management. The government, however, has acceded to the request of the respondent and without opportunity to the management transferred the case to Labour Court, Patna. The Notification issued in that regard reads as follows :

#"Notification Patna dated August 8, 1988##

S.O. In exercise of powers conferred by subsection (1) of Section 33-B of the Industrial Disputes Act, 1947 (14 of 1947) the Governor of Bihar after careful consideration of the application of the petitioner Shri Shivaji Prasad Sinha wherein he has prayed for the transfer of a adjudication proceedings to Patna keeping in view to the difficulties expressed by him to attend the Labour Court, Dhanbad regularly due to his residence at Majipur is pleased to withdraw the proceeding shown in Annexure 'A' pending before Labour Court, Dhanbad and transfer the said proceeding to the Labour Court, Patna for speedy disposal from the stage at which the case is transferred."

4. The management moved the High Court by way of writ Petition under Article 226 of the Constitution to have the Notification quashed. The High Court did not agree summarily dismissed the writ Petition with an observation :

"Since no Prejudice is being caused to the Petitioner and no allegation of mala fide has been made against the Presiding Officer, Patna, we are not inclined to interfere with order under challenge.

This application is dismissed."

5. The management in the appeal challenges the government notification withdrawing and transferring the pending case from the Labour Court, Dhanbad to Labour Court, Patna.

6. Since the impugned notification has been issued under Section 33-B of the Act, we may for immediate reference set out section. Omitting immaterial words, it is in these terms :

"33-B. Power to transfer certain proceedings. - (1) The appropriate government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal, or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred."

7. Section 33-B provides power to the appropriate Government to withdraw any proceedings pending before a Labour Court or Tribunal and transfer it for disposal to another Labour Court or Tribunal. It could be exercised suo moto or on representations of the parties. The expression 'may' in sub-section (1) of Section 33-B only makes it discretionary in so far as the appropriate Government taking a decision as to whether the powers conferred thereunder has to be exercised or not. But when once a decision is taken to transfer a pending case then the requirement of giving reasons becomes mandatory. The authority is under legal obligation to record reasons in support of its decision. Reasons would be life of the decision. Failure to give reasons or giving reasons not germane would be fatal to the decision.

8. In *Associated Electrical Industries (P) Ltd. v. Its Workmen.* ((1961) 2 LLJ 122, 130 : AIR 1967 SC 284) the government withdrew and transferred a reference from one tribunal to another tribunal merely stating that expediency required the withdrawal and transfer. The validity of the order of withdrawal and transfer was challenged inter alia on the ground that no reasons were stated for passing the order. Gajendragadkar, J. (as he then was) speaking for this Court observed that the requirement about the statement of reasons to be recorded must be complied with both in substance and in letter. To say that it is expedient to withdraw a case from one tribunal and transfer it to another does not amount to giving reasons as requirement by the section.

9 In the instant case, the key question for consideration is whether the government before accepting the representation of the workman and transferring the case from the Labour Court, Dhanbad to Labour Court, Patna should have given an opportunity to the management ? The validity of the reasons given the government for transferring the case is another question to be considered.

10. We will presently consider the question but before doing so a brief survey of some of the High

Courts' decisions bearing on this aspect may be usefully made. The Punjab High Court in *Workmen of Punjab Worsteds Spinning Mills, Chheharta v. State of Punjab* ((1965) 2 LLJ 218) has expressed the view that the power to transfer pending case under Section 33-B is not a mere administrative but quasi-judicial power and the appropriate Government cannot transfer a case on the basis of allegations of one party without giving reasonable opportunity to other party to represent its point of view. This was also the view recognised by the Madras High Court in *Management of Sri Rani Lakshmi Ginning and Weaving Mills (P) Ltd. v. State of Madras* ((1975) 30 FLR 166, 167 (Mad)). It was explained by the Madras High Court that the reasons given by a party who moved for transfer may not be valid or relevant or may not be true at all. Whether such reasons in fact exist and whether those reasons have any relevance for a transfer could be tested only if the other party has notice of the same.

11. The High Courts of Calcutta, Andhra Pradesh and Allahabad have however, taken contrary view. In *Jay Engineering Works Ltd. v. Fourth Industrial Tribunal, Calcutta* (1977 Lab IC 1739, 1750 (Cal)) the Calcutta High Court has observed that it would be difficult to appreciate how under such circumstances, the government could be called upon to give a notice to the parties before making the order under Section 33-B. There could be no principle involved in giving such a notice. Nobody's rights could possibly have been affected in taking such action and there is no question of observing the principle of natural justice. The Andhra Pradesh High Court in *Muthe Steels (India) Ltd. v. Additional Labour Court, Hyderabad*, (1979 Lab IC 325, 329 : 54 FJR 437 (AP)) has adopted a similar line of reasoning. It was emphasized that Section 33-B in terms does not contemplate an notice being given before a transfer is made of any proceeding from one Labour Court to another. There is no right to any party to have any question decided by a particular court. An arbitrary exercise of power of transfer is adequately safeguarded by the statutory requirement to record reasons for such transfer. The Allahabad High Court in *Pioneer Ltd., v. Labour Court Gorakhpur* (1983 Lab IC 335, 338 (1982) 2 LLN 397 (All)) has also expressed similar views.

12. After the leading English case of *Ridge v. Baldwin* (1964 AC 40 : (1963) 2 All ER 66) and an equally important case of this Court in *A. K. Kraipak and others v. Union of India* ((1969) 2 SCC 262 : (1970) 1 SCR 457) there was a turning point in the development of doctrine as natural justice as applicable to administrative bodies. Both the authorities laid down that for application of rules of natural justice the classification of function as 'judicial' or 'administrative' is not necessary. Lord Reid in *Ridge* case (1964 AC 40 : (1963) 2 All ER 66) explained 'that the duty to act judicially may arise from the very nature of the function intended to be performed and it need not be shown to be superadded'. Hedge, J., in *Kraipak* case ((1969) 2 SCC 262 : (1970) 1 SCR 457) said that under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement or acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision.

13. What is thus important in the modern administration is the fairness of procedure with elimination of element of arbitrariness. The State functionaries must act fairly and reasonably. That is, however, not the same thing to state that they must act judicially or quasi-judicially. In *Keshav Mills Co. Ltd. v. Union of India*, ((1973) 1 SCR 380 : (1973) 3 SCR 22) Mukharjea, J. said (SCC p. 387, para 8 : SCR p.30)

"The administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly."

14. The procedural standards which are implied by the duty to act fairly has been explained by Lord Person in *Pearlberg v. Varty* ((1972) 1 WLR 534, 547 : (1972) 2 All ELR 6) :

"A tribunal to whom judicial or quasi-judicial functions are entrusted is held to be required to apply those principles (i.e. the rules of natural justice) in performing those functions unless there is a provision to the contrary. But where some person or body is entrusted by Parliament with administrative or executive functions there is no presumption that compliance with the principles of natural justice is required although, as 'Parliament is not to be presumed to act unfairly', the courts may be able in suitable cases (perhaps always) to imply an obligation to act with fairness."

15. In *Mohinder Singh Gill v. Chief Election Commissioner* ((1978) 1 SCC 405, 434 : (1978) 2 SCR 272) Krishna Iyer, J. commented that natural justice though varying is the soul of the rule as fair play in action. It extends to both the fields of judicial and administrative. The administrative power in a democratic set up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Good administration demands fair play in action and this simple desideratum is the fount of natural justice. Fairness is flexible and it is intended for improving the quality of Government by injecting fair play into its wheels.

16. In *Maneka Gandhi v. Union of India* ((1978) 1 SCC 248 : (1978) 2 SCR 621) Bhagwati, J., expressed similar thought that *audi alteram partem* is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act a healthy check on the abuse or misuse of power.

17. In *Swadeshi Cotton Mills v. Union of India*, ((1981) 1 SCC 664 : (1981) 2 SCR 533) Sarkaria, J., speaking for himself and Desai, J., said that irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied. The presumption is that in a democratic polity wedded to the rule of law, the State or the Legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly. In the same case, Chinnappa Reddy, J., added (at p. 212) that the principles of natural justice are not considered so fundamental as to be 'implicit in the concepts of ordered liberty'. They are, therefore, implicit in every decision making function, call it judicial, quasi-judicial or administrative. The learned Judge went on to state that where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive, it should be followed by the authorities unless it is excluded by express words of statute or by necessary implication.

18. Citations could be multiplied since there is fairly abundant case-law has come into existence : See, for example, *E. P. Royappa v. State of Tamil Nadu* ((1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348) and *Union of India v. Tulsiram Patel* ((1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp 2 SCR 131). More recently in a significant judgment in *Charan Lal Sahu and others v. Union of India* ((1990) 1 SCC 613 : (1989) 4 JT 582) learned Chief Justice Sabyasachi Mukherjee has referred to almost all the authorities of this Court on this aspect and emphasized that the

principles of natural justice are fundamental in the constitutional set up of this country. No man or no man's right should be affected without an opportunity to ventilate his views. The justice is a psychological yearning, in which men seek acceptance of their view-point by having an opportunity before the forum or the authority enjoined before the forum or the authority enjoined or obliged to take a decision affecting their right.

19. It may be noted that the terms 'fairness of procedure', 'fair play in action', 'duty to act fairly' are perhaps used as alternatives to "natural justice" without drawing any distinction. But Prof. Paul Jackson points out that 'such phrases may sometimes be used to refer not to the obligation to observe the principles of natural justice but, on the contrary, to refer to a standard of behaviour which, increasingly, the courts require to be followed even in circumstances where the duty to observe natural justice is inapplicable' ("Natural Justice" by Paul Jackson, 2nd edn., p. 11).

20. We share the view expressed by Professor Jackson. Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure that the vast power in the modern State is not abused but properly exercised. The State-power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant consideration. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. To use the time-hallowed phrase "that justice should not only be done but be seen to be done" is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case. As Lord Pearson said in *Pearlberg v. Varty* ((1972) 1 WLR 534, 547 : (1972) 2 All ELR 6) (at p. 547), fairness does not necessarily require a plurality of hearings or representations and counter representations. Indeed, it cannot have too much elaboration of procedure since wheels of administration must move quickly.

21. A case with a not dissimilar problem was in *Pannalal Binjraj and another v. Union of India* ((1975) 31 ITR 565 : 1957 SCR 233 : AIR 1957 SC 397). There the Commissioner of Income Tax by the power vested under Section 5(7-A) of Income Tax Act, 1922, transferred an assessee's case from one Income Tax Officer to another without hearing the assessee. Section 5(7-A) of the Income Tax Act, 1922 provide : (ITR p. 573)

"The Commissioner of income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred."

22. This section did not provide for affording an opportunity to the assessee before transferring his case from one Income-tax Officer to another. The assessee challenged the constitutional validity of the section. This Court upheld its validity on the ground that it is a provision for administrative convenience. N. H. Bhagwati, J., speaking for this Court, however, remarked : (ITR p. 589)

"... It would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer under Section 5(7-A) of the Act is made by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are

reduced however briefly to writing ... There is no presumption against the bona fide or the honesty of an assessee would not be justified in refusing authorities would not be justified in refusing to an assessee a reasonable opportunity of representing his views when any order to the prejudice of the normal procedure laid down in Section 64(1) and (2) of the Act is sought to be made against him, be it a transfer from one Income-tax Officer within the state to an Income-tax Officer without it, except of course where the very object of the transfer would be frustrated if notice was given to the party affected."

23. Section 5(7-A) was replaced by Section 127 of the Income-tax Act, 1961, which now makes it obligatory to record reasons in making the order of transfer after affording a reasonable opportunity of being heard to the assessee in the matter. In *Ajantha Industries v. Central Board of Taxes* ((1976) 1 SCC 1001 : 1976 SCC (Tax) 127 : (1976) 2 SCR 384) this court considered the validity of a transfer order passed under Section 127 and it was held that merely recording of reasons on the file was not sufficient. It was essential to give reasons to the affected party. The order of transfer in that case was quashed for not communicating reasons to the assessee.

24. In the present case, the States has withdrawn the pending reference from the Labour Court, Dhanbad and transferred it to another Labour Court at the distant District of Patna, on the representation of the workman, without getting it verified from the management. The state in fairness ought to have got it verified by giving an opportunity to the management which is a party to the pending reference. Denial of that opportunity is a fatal flaw to the decision of the government.

25. The management need not establish particular prejudice for want of such opportunity. In *S. L. Kapoor v. Jagmohan* ((1980) 4 SCC 379 : (1981) 1 SCR 746, 765) Chinnappa Reddy, J., after referring to the observation of Donaldson, J., in *Altco Ltd. v. Sutherland* ((1971) 2 Lloyd's Rep 515) said that the concept that justice must not only be done but be seen to be done is basic to our system and it is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. It was emphasized that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary.

26. This takes us to the reasons given by the Government in support of the order of transfer. The Government has stated that the workman is having his residence at Hajipur and it would be, therefore, inconvenient for him to attend the Labour Court regularly at Dhanbad. However, most of the factors do not point that way. The workman and his family members seem to still residing in colony quarters at Dhanbad (Annexure C). His two sons are studying in De Nobili School at Mugma which is a nearby village. Reference may be made to a letter dated September 8, 1988 (Annexure D) of the Headmaster of the School in which the children of the workman are studying. Reference may also be made to a letter (Annexure B) from the Assistant Electrical Engineer in proof of the electricity supplied to the quarters occupied by the workman at Dhanbad. As against these material, the workman has not produced any proof in support of his allegation that he has been residing in a village home near Patna. In fact, in the counter-affidavit, he has not defined the documents annexed to the Special Leave Petition, and not seriously disputed the factum of his residence in the colony quarters at Dhanbad. Even the alleged recommendation of the Ward Commissioner referred in his counter-affidavit has not been produced. We have, therefore, no hesitation in holding that the Government was misled by the representation of the workman.

27. In the result, we allow the appeal and quash the notification dated August 8, 1988 by which the Government of Bihar transferred the case from the Labour Court, Dhanbad to the Labour Court, Patna. The Labour Court, Dhanbad shall now proceed to dispose of the matter as expeditiously as possible.

28. In the circumstances of the case, we make no order as to costs.

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