CALCUTTA HIGH COURT

Jay Engg. Works Ltd

Vs.

The Fourth Industrial Tribunal Calcutta

A.F.O.O No. 16 of 1975

(Ramendra Mohan Datta, J.)

25.04.1977

JUDGMENT

Ramendra Mohan Datta, J.

1. This appeal arises out of the order dated 16th August, 1974 passed by Massud, J. The learned Judge discharged the Rule obtained by the Jay Engineering Works Limited, (hereinafter called the "company").

2. The main point which is involved in this matter is whether the dispute which was referred to by the Government of West Bengal was an "industrial dispute" within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. The short facts are that the petitioner-company runs various Usha Sewing Schools. The teachers and the durwans of the said schools demanded payment of dearness allowance. The company refused to pay the same and the reference was made to the Second Industrial Tribunal by the Government after the conciliation proceedings had failed. The appellant-company challenged the order of reference and took a preliminary point of law before the Tribunal that the order of reference dated 31st January, 1972 and the order of transfer of the industrial dispute from the Second Industrial Tribunal to the Fourth Industrial Tribunal dated 25th May, 1972 were invalid. It is contended that the different Usha Sewing Schools are not industries within the meaning of the word "industry" as defined in Section 2(j) of the said Act of 1947. In any event, the teachers of the said schools cannot come within the meaning of the word as defined in Section 2(s) of the said Act of 1947.

3. On behalf of the appellant reliance has been placed on the case of Sardar Jung Hospital, *New Delhi v. Kuldipsingh Sethi*[1], in which the Supreme Court after reviewing many of its previous decisions in connection with the expressions "industry"--"workman" and "industrial dispute" as defined by the Industrial Disputes Act, 1947 laid down the principles broadly. At page 1413 the Supreme Court observed:

> "It, therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employers or between employees and employees in relation to the employment or non-employment or the terms of employment

or with the conditions of labor of any person, there

[1] AIR 1970 SC 1407 : 1970 Lab IC 1172

must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense.

4. Then again at page 1414 the Supreme Court accepted the conclusion arrived at by its previous judgment and decision in Gymkhana Club case, . The conclusion which was so accepted runs as follows:

"* * * before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described, as an undertaking resulting in material goods or material services.

"Regarding "material services" and the meaning to be attached to the said expression the Supreme Court in the above case at page 1413 observed:

"Material services are not services which depend wholly or largely upon the contribution of professional knowledge, skill or dexterity for the production of a result. Such services being given individually and by individuals are services no doubt but not material services Even an establishment where many such operate cannot be said to convert their professional services into material services. Material services involve an activity carried on through co-operation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephones and the like. In providing these services there may be employment of trained men, and even professional men, but the emphasis is not on what these men do but upon the productivity of a service organized as an industry and commercially valuable. Thus the services of professional men involving benefit to individuals according to their needs, such as doctors, teachers, lawyers, solicitors, etc., are easily distinguishable from an activity such as transport service. The latter is of a commercial character in which something is brought into existence quite apart from the benefit to particular individuals. It is the production of this something which is described as the production of material services.

5. Applying the above principles to the facts of this case, it has to be examined if it can be said that the teaching staff and the durwans of the Usha Sewing Schools are "workmen" within the meaning of the Industrial Disputes Act.

6. This necessarily involves the determination of the questions as to whether the said persons are engaged in producing any material goods or rendering any material services. Are they running the sewing schools in a manner unconnected with the industry itself ?. Have these schools independent existence apart from the industry, being that of the Jav Engineering Works Ltd.?

What is the nature of the service which is being rendered by the teaching staff in such sewing schools ? It is further to be considered whether the teachers in the said sewing schools are using their intellectual skill alone while teaching the students in sewing.
7. It is thus necessary to go into the question in details and for that purpose we have to examine the findings of the Tribunal in this respect.

8. From the order of the Tribunal it appears that in deciding the preliminary objections raised by the company the Tribunal not only went into the documentary evidence placed before it but also the oral evidence adduced on behalf of the parties.

9. The facts as appreciated by the Tribunal may be set out as follows:

> "There are at present 85 Usha Sewing Schools spread over in different cities and suburban towns throughout the State. The employees of the schools who are designated as teachers are employed by the company. In 1961 there was a dispute between the company and the employees of the said schools in respect whereof an agreement was entered into whereby the employees of the schools were treated as workmen of the company, that is, of Jay Engineering Works Limited. Thereafter the said company entrusted one Eastern India Usha Corporation for conducting the sales of Usha sewing machines in West Bengal. The said Eastern India Usha Corporation is the sales division of the company. The said sewing schools which were started by the company were all controlled by the sales division. In 1968 there was a bi-partite settlement between the union and the sales division under the Industrial Disputes Act All the employees of the schools used to get bonus under the Bonus Act like the workmen of the factory of the said Jay Engineering Works Limited and other offices. They also got Provident Fund facilities and were also entitled to casual leave and sick leave like any other workmen of the company. The Tribunal came to the finding that the company all along treated Usha Sewing Schools as an industry within the meaning of the Industrial Disputes Act. The Tribunal relied on the evidence of one Sati Devi who gave evidence on behalf of the said teachers and durwans to the effect that the said persons often would be called by the sales manager to push Usha machines amongst the students. According to Sati Devi the schools were the sales organisation as each student purchased a machine from the company after training. The Tribunal relied on a letter (Ext. 1) dated 21st October, 1972 written by the Divisional Sales-Manager, addressed to all teachers of Usha Sewing Schools and particularly the first paragraph thereof which read as follows:
> "Usha Sewing Schools were started as a sales aid for sewing machines. That was the time when home sewing was not very popular and it was necessary to popularize it and the company used exhibitions, contests and schools for this purpose.

10. On behalf of the petitioner-appellant a lot of comment has been made inasmuch as both the Tribunal and the trial Court have relied on the said passage alone without going into other statements contained in the said letter of the Divisional Sales Manager and particularly to the paragraphs appearing thereafter.

"To appreciate the said letter fully it is necessary to set out the same in full:

"Eastern India Usha Corporation
(A Division of the Jay Engineering Works Ltd.)

10, Middleton Row, 3rd floor,
Calcutta-16.
Dated October 21, 1972.
Circular No. EI/AD/G-18/250
To
All Teachers of Usha Sewing
Schools,
Madam,

"Usha Sewing Schools were started as a sales aid for sewing machines. That was the time when homesewing was not very popular and it was necessary to popularise it and the company used exhibitions, contests and schools for this purpose.

"The situation has now changed and homesewing is common. Schools do not, therefore, serve the purpose for which they were originally started. They, however, still constitute a useful institution at which girls can learn sewing and embroidery at a moderate fee. Keeping this into view, EIU has continued to maintain and subsidise Usha Schools. Another reason for continuing the schools has been that a large number of teachers and other staff are on their rolls and discontinuance of schools would mean unemployment for them.

"Unfortunately a situation has now arisen when the schools have not only ceased to be useful from the company's business point of view, but have, in fact, become a drain on income. EIU has been losing about ₹ 20,000 per month on these in West Bengal.

"This is a loss which the company cannot bear, and if the schools do not become self-sufficient, they will have to be closed. The situation is threatening to become worse because school staff have been asking for dearness allowance, etc.

"We would like to avoid hardship to the school staff. A suggestion has, therefore, been made that the uneconomic schools may be handed over to such teachers as may be interested into taking them over on a mutually satisfactory basis. When a school is owned and managed by a teacher and her colleagues, their interest in it will be more, control will be better and they will definitely be able to make them profitable. The company will help in various ways by supplying the machines and other implements on reasonable terms and by conferring on the schools the status of affiliated schools so that students can still be sponsored by them for the Usha Diploma".

"This cannot obviously be a whole sale scheme and individual proposals will have to be examined on merits. I hope that teachers with initiative and confidence will come forward with proposals so that Usha Sewing Schools will continue to serve the community and the teachers and other staff will continue to benefit by them to even greater extent.

"You may please address your proposals to me personally so that we can attend to them promptly.

Yours faithfully,
Sd. Illegible,
Divisional Sales Manager.
C.C. to Co General Manager/Marketing--
EIU Control Section.
HO-Delhi.
EIU--Divisional Sales Manager/Admn.
Accounts Deptt.
Sales Officer,
Supervisors.

11. It will appear from the contents of the above letter that the comment made on behalf of the petitioner-appellant has no justification. It clearly shows the primary purpose why the sewing schools were originally started. The said schools are still being run under the sales division of the Jay Engineering Works Ltd. The main contents of the letter is that the schools are no longer profitable concerns and as such they have become a burden on the company's finances, Morever, it is to be noted that the letter was written as late as on 2lst October, 1972 whereas the order of reference was made as early as on 31st January, 1972. That may very well suggest that the rest of the letter related to the period subsequent to the date of the order of reference and not to the time when the order of reference was made,

12. The learned trial Judge has rightly taken note of the fact that it is not the dispute between Usha Embroidery and Tailoring Schools and their workmen, which has been referred to in the order of reference. The dispute here refers to Eastern India Usha Corporation, which is the sales division of Jay Engineering Works Ltd, and their workmen. These schools have, therefore, no independent existence apart from the industry itself and. accordingly, the position of the teaching staff and of the durwans and other workmen of the said industry would be the same. They do not stand on a different footing from the other staff of the industry. Accordingly, the present case is in no way affected by the principle decided in the case of Workmen of *Dimakuchi Tea Estate v. Dimakuchi Tea Estate*[2] The dispute which is the subject-matter of the order of reference is undoubtedly between the company which is the Jay Engineering Works Ltd. and its workmen. Under those circumstances, the principle decided by the Supreme Court in a series of cases such as *University of Delhi v. Ram Nath* [3], which deal with educational institutions only are not attracted to the facts and circumstances of the present case.

13. Here in this case the facts are not that the teachers did not in any way contribute to the material service of the factory. The facts as found by the Tribunal are entirely different and we do not see any reason as to why such finding should not be accepted. I have already set out the said letter containing the admission that the primary object of starting the Usha Sewing Schools was to promote sales of sewing machines. Over and above that the evidence adduced on behalf of the workmen is that the schools are run by the sales division of Jay Engineering Works. The teaching staff not only impart tailoring education but they also promote sales of the sewing machines to the students. The evidence of Sita Devi reveals that she has herself at her initiative caused sales

of at least 50 machines to the students. The further fact is that the schools were not economically self supporting and as such the company subsidised the same in so far as the deficit was concerned. On a previous occasion, on July 3, 1961 an agreement for three years was entered into wherein the provident fund benefits were extended to the schools and the salaries of the

[2]AIR 1958 SC 358

[3] AIR 1963 SC 1873

apprenticeship teachers and other teaching staff and dearness allowance were increased. Thereafter another representation was made in April, 1967. Certain other benefits were conferred on the teaching staff and the durwans. Then again in November, 1967 on the basis of such representation and a charter of demand the scales of pay were again revised and higher pay was fixed for them. This fact would show that the company had all along treated the teaching staff and the durwans of the schools as their workmen. It is further to be noted that except for the dearness allowance, in respect of other matters such as the provident fund, bonus, leave and other facilities the teaching staff of the schools did not in any way stand differently from the other workmen of the sales division of Jay Engineering Works The Tribunal took note of the fact that the company had Usha Sewing Schools in different cities and in the suburban towns throughout the State. The company had started and maintained an air-conditioned school at Chowringhee in Grand Hotel Arcade. This must have been done in aid of publicity. In 1968 there was a bi-partite settlement between the union and the sales division of Jay Engineering Works under the provision of Industrial Disputes Act. All the old employees of the school got the benefit of the Bonus Act just as that of the other workmen of the factory. The Tribunal believed the evidence of Sita Devi who deposed before the Tribunal to the above effect.

14. The learned trial Judge took note of the fact that in the third schedule to the Industrial Disputes Act it is specifically stated that the question of bonus and the provident fund were matters which were within the jurisdiction of the Industrial Tribunal. The learned trial Judge also relied on the opening sentence of the said letter dated October 21, 1972 which has been set out in full herein above.

15. On these facts the present case stands on a different footing and the various principles of law decided in the various cases by the Supreme Court, it correctly applied, would make the sewing schools parts of the industry itself. The teachers and the durwans of the said sewing schools likewise would be placed at par with the other work men of the industry being the Jay Engineering Works. The learned trial Judge has dealt with the said cases in details in his judgment. The learned trial Judge delivered his judgment on 16th August, 1974 and since then several other recent pronouncements have been made by the Supreme Court and other High Courts touching on similar points.

16. The learned trial Judge distinguished the Delhi University case (supra) from the facts of the instant case Both the Tribunal and the learned trial Judge have proceeded on the basis of the fact that the teachers of the sewing schools were engaged not only in imparting tailoring education but also in promoting the sales of the sewing machines. The students who learnt sewing were expected to buy sewing machines otherwise their training would become useless. The Tribunal accepted the position on point of fact that the teachers of the schools were often asked by the sales division to push selling of the sewing machines among the students. The Tribunal also accepted the position that the sewing schools were parts of the sales division of the company. It has further found that the teachers in the sewing schools were not teachers simpliciter is in an

educational institution where their duty is merely to impart education to the students 1 hey were competent to deal with the technical matters relating to the sewing machines and could make the machines in order in case it would become defective. In that sense they would show the technical aspect of the machines to the students and teach them how to handle the same in the proper way. They would demonstrate and do the manual labor in running the machines for the purpose of imparting tailoring education and in that sense they would do some manual work The non-teaching staff of the school generally would comprise of clerks, accountants, etc., and there is no evidence that such works would be done by any other class of workers in respect of the schools. The same must have been done by the teachers themselves. Furthermore, the teachers were also responsible for doing the supervisory works in respect of the running of the schools and under those circumstances the teachers can very well be called workmen within the meaning of Section 2(s) of the Industrial Disputes Act. That being the position the schools form a part of the main industry and its teaching staff and durwans stand on the same footing as those of the other workers. Accordingly, the order of reference cannot be challenged on the ground that the same relates to an institution which is not an industry.

17. The principle has been decided by the Supreme Court in a series of cases. In the case of Secretary, Madras Gymkhana Club *Employees' Union v. Management of the Gymkhana Club*[4] , it was observed:

> "The principles so far settled come to this. Every human activity in which enters the relationship of employers and employees, is not necessarily creative of an industry. Personal services rendered by domestic and other servants, administrative services of public officials, service in aid of occupations of professional men, such as doctors and lawyers, etc., employment of teachers and so on may result in relationship in which there are employers on the one side and employees on the other but they must be excluded because they do not come within the denotation of the term 'industry'. Primarily, therefore, industrial disputes occur when the operation undertaken rests upon co-operation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the co-operation is to produce material services.
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> "The Supreme Court at page 563 arrived at the conclusion the relevant passage whereof has been set out in the beginning of this judgment, to the effect that to be an industry the work--
>
> "must bear the definite character of 'trade' or 'business' or 'manufacture' or calling or must be capable of being described as an undertaking in material goods or material services.

18. As observed hereinabove, the matter thereafter came up for consideration in the case of Safdar Jung Hospital, *New Delhi v. Kuldip Singh Sethi*[5] This was a Bench of six learned Judges and the judgment was delivered by Hidayatullah, C.J. It will appear from page 1414 of the above report that the Supreme Court accepted the above conclusion arrived at in the Madras Gynkhana Club case (supra). Regarding its previous decision in the case of Hospital Mazdoor Sabha , the Supreme Court in this case observed at page 1415 that the said Hospital Mazdoor Sabha ease took an extreme view of the matter which was not justified. This Safar Jung Hospital case can be

said to be the leading case on this point inasmuch as the subsequent cases which would be discussed presently have all followed the principles laid down in this case. At page 1414 it was observed that if a hospital, a nursing home or dispensary is run as a business in commercial way there may

[4] AIR 1968 SC 554 AT P. 562 : 1968 Lab IC 547 at. p 555

[5] AIR 1970 SC 1407: 1970 Lab IC 1172

be found elements of an industry there. Then the hospital would be more than a places where persons can get treated for their ailment and it would become a business. The principle has been broadly stated in that case as will appear from the passages set out in the beginning of this judgment.

19. The matter was again considered in the case of Federartion of *Indian Chamber of Commerce and Industry v. K. Mittal* [6], by two learned Judges of the Supreme Court. All the previous case laws were again considered. It was observed at page 777 (of AIR):

> "In our view, the linchpin of the definition of industry is to ascertain the systematic activity which the organization is discharging, namely, whether it partakes the nature of a business or trade, or is an undertaking or manufacture or calling of employers. If it is that and there is co-operation of the employer and the employee resulting in the production of material services, it is an industry notwithstanding that its objects are charitable or that it does not make profit or even whore profits are made, they are not distributed among the members.

20. The latest pronouncement has been made in the case of the Workmen of *Indian Standards Institution v. The Management of Indian Standards Institution*[7] This is a decision by three of the learned Judges of the Supreme Court. In this case also the Supreme Court analysed the principle decided in the various cases and ultimately held that the activities of the Indian Standards Institution made it an industry within the meaning of the definition of the said Act. On facts it was found that the undertaking of the institution answered the broad test laid down in the Safdar Jung Hospital case (supra) and in the Federation of the Indian Chamber of Commerce and Industry case.

21. *Veeraswami, C.J , sitting with Natarajan, J., in the case of Karuppannan v. Addl. Registrar of Trade Unions*[8] applied the principle of Safdar Jang H spit(sic) case and observed that even professional people may be workmen if they aid in the production of material goods and render material services On facts, however, it was found that Pasteur institution was not an industry within the meaning of the Act.

22. Masud, J, has relied on the case of *Corporation of Nagpur v. Its Employees* [9], but the said case has been criticized in subsequent decisions of the Supreme Court. We, however, observe that it is not necessary to rely on the said case for the purpose of arriving at our decision. We hold that the principle decided in the case of *University of Delhi v. Ramnath AIR 1963 SC 1873* (supra) has no application in the facts and circumstances of this case because in the present case the schools are being run in a commercial way and these schools cannot be described solely as educational institution.

23. Considering the facts of this case we have no doubt in our mind that the teachers of the Usha Sewing Schools and the durwans connected therewith are workmen within the meaning of the word as defined in the Industrial Disputes Act and that they have been rendering material services to the company with a view to produce material goods. They are part and parcel of the company, connected with and controlled by the company

[6] AIR 1972 SC 763 : 1972 Lab IC 413 [8](1976) 2 Mad. L.J. 43 : (1976) L.I.C. 1388

[7] AIR 1976 SC 145 1976 Lab IC 137 [9] AIR N1960 SC 675

through its sales division. They are directly connected with the pushing of sales of Usha Sewing machines to their students. Their salary, pay scale, bonus, provident fund, leave facilities, etc., are the same as enjoyed by the other workmen of the industry and particularly that of the sales division. It is quite evident that there it functional integration and inter-dependence as between the sales division and the schools. It is to be noted that there is no separate managing committee for the schools and the entire thing is looked after by the sales division of Jay Engineering Works Ltd. The company itself treated the teachers as workmen before the conciliation officer in arriving at a settlement of an industrial dispute on a previous occasion. That by itself would suggest that it was an industrial dispute within the meaning of the Act and it was resolved therein. The dispute here arose when these employees were deprived of their claim for dearness allowance which others have got. Hence there is direct and substantial interest and community of interest of the workers working under the same sales division. Accordingly, the other workmen could very well make a common cause with these employees.

24. The decision in the case of *Vishnu Sugar Mills Ltd. Harkhua v. State of Bihar*[10] , is distinguishable on facts The learned trial Judge has rightly observed that the said report in the Patna case did not disclose the character of such primary schools, or the terms of employment or condition of service of the said dismissed teachers. We have already observed that the case of ***University of Delhi v. Ramnath*** has no application to this case and the same is distinguishable on facts. We accordingly hold that the said schools form part of the main industry, viz., Jay Engineering Works Ltd. inasmuch as they satisfy the test as laid down in the several Supreme Court cases discussed above.

25. That being the position the order of reference is valid and cannot be assailed as made without jurisdiction.

26. Another important point has been raised by Mr. Banerjee in this appeal. The order of reference was first made on 31st January, 1972 for deciding the industrial dispute by the Second Industrial Tribunal Thereafter it transpired that the Second Industrial Tribunal was without any Judge and, accordingly, in exorcise of the power conferred by Section 33B of the Industrial Disputes Act, 1947 the said industrial dispute was withdrawn from the said Second Industrial Tribunal and transferred to the Fourth Industrial Tribunal. The said order dated 25th May, 1972 is set out as follows:

Government of West Bengal
Labour Department,
Calcutta,
the 25th May, 1972.
ORDER
No. 2696-1. R.IR/10L-219/71

"Whereas an industrial dispute exists between Messrs. Eastern India Usha Corporation (a division of the Jay Engineering Works Ltd.) 10, Middleton Row, Calcutta-16, and their workmen represented by Jay Engineering Employees' Union, 113/2, Hazra Road, Calcutta-26 relating to the matter specified in the Schedule below, being a matter specified in the Third Schedule to the Industrial Disputes Act, 1947 (Act XIV of 1947);

[10] AIR 1964 Pat 94 : 1966 (1) Lab LJ 777

"And whereas under the Government of West Bengal, Labour Department Order No. 421-I.R. /IR/10L-219/71 dated the 31st January, 1972 the said industrial dispute was referred to the Second Industrial Tribunal, constituted under this Department Notification No 808-I.R. /IR/3A-2/57 dated the 11th March, 1957 for adjudication;

"And whereas the said Second Industrial Tribunal is without any Judge and it is expedient that the proceedings of the said Industrial dispute should be withdrawn from the file of the said Second Industrial Tribunal and transferred to some other Tribunal for speedy disposal;

"Now, therefore, in exercise of the power conferred by Section 33B of the Industrial Disputes Act, 1947 (Act 14 of 1947), the Governor is pleas-ed hereby to withdraw the proceedings of the said industrial dispute from the Second Industrial Tribunal and transfer the same for disposal to the Fourth Industrial Tribunal constituted under Notification No. 808-I.R/IR/8A/2/57 dated the 11th March, 1957;

"The said Fourth Industrial Tribunal shall for this purpose meet at such places and on such dates as it may direct.

"The Schedule.

"Dearness allowance for the teaching staff and durwans of Usha Sewing Schools.

By order of the Governor
N.R. Sircar.
Asst. Secy. to the Govt. of
West Bengal.
No. 2696/2(5)-IR.

27. It transpired that the Judge of the Second Industrial Tribunal had retired on 2nd January, 1972 and there was no fresh appointment made until the second order of reference was made Section 33B reads as follows:

(1) The appropriate Government may, by order in writing and for reasons to be stated therein withdraw any proceedings 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 Labor 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.

28. The first point urged by Mr. Banerjee is that no sufficient reasons have been stated as is

required under Section 33B and as such the order made under Section 33B is invalid. From the said order of reference dated 25th May, 1972, it will appear that the only reason which has been given is to the effect that the Second Industrial Tribunal had no Judge at the material time.

29. In the affidavit-in-opposition it has been stated that the former Judge of the Second Industrial Tribunal had retired on 2nd January, 1972. That being the position, it is argued that on the date of the first reference there was no Judge in the said Second Industrial Tribunal and, accordingly, the reference was invalid. It is contended that under Section 7A the appropriate Government would constitute the Tribunal and would appoint one person only as the Presiding Officer of the Tribunal. Under Section 8 of the said Act the appointment was to be made in case of vacancy. It is urged that neither the reference could validly be made to such a Tribunal which had no Judge nor could such reference be called a pending reference within the meaning of Section 33B. It is contended that if the Presiding Officer is not in existence then there cannot be any question of any reference being pending before him. Mr. Banerjee has further urged that from the affidavit-in-opposition filed on behalf of the Government it transpired for the first time that the employees union made an application for such withdrawal and transfer by its letter dated 25th April, 1972 which was received by the Government on May 5, 1972. This has not been communicated to Mr. Banerjee's client and, accordingly, this unilateral transfer is illegal and no opportunity having been given to the appellant there was violation of the rules of natural justice.

30. On the question as to whether the provision of Section 33B has been complied with in making the order of transfer the law is settled that before an order is passed the reasons for withdrawal and transfer have got to be stated in the order which must be in writing. It would not amount to stating the reasons in compliance with the said section if it is only stated that it is expedient to withdraw the reference from one Tribunal and to transfer it to another. Such a bare statement would not be in compliance with the said section. The reasons have to be specifically mentioned as provided in the section and the requirement must be complied with both in substance and in letter. See *Associated Electrical Industries (India) Pvt. Ltd. Calcutta v. Its Workmen*[11], The expression "may" in Sub-section (1) of Section 33B only makes it discretionary in so far as the appropriate Government taking a decision as to whether or not the powers conferred thereunder has to be exercised but once a decision is taken that such power has to be exercised then it becomes mandatory on the appropriate Government to have the reasons stated in the order which must be in writing. It would seem that the essence of this new provision which was enacted in 1956 is that by this provision the Government has been empowered to interfere with the proceeding when it did not remain within its administrative process but was being dealt with by the judicial process. From the scheme of the Act it would appear that after the order of reference is made under Section 10(1) of the Industrial Disputes Act the administrative power of the appropriate Government generally ends and the judicial proceeding commences, and such proceedings would be deemed to have concluded as provided under Section 20(3) thereof from the date on which the award would become enforceable under Section 17A of the said Act. In between the said period it would remain a pending proceeding within the domain of the judicial process generally for ail purposes except in respect of cases where any vacancy would arise which would have to be filled up by exercising the administrative power under Section 8 or by exercising powers under the new provision of Section 33B. It is true that a reference under Section 10 is discretionary bat once the discretion is exercised in favour of making a reference and the matter is referred to the Tribunal, the administrative power of the appropriate Government generally comes to an end though not for all purposes and the judicial process

begins. During this period in spite of such administrative interference for the said limited purposes the matter remains pending before the Tribunal and continues to be so even at the same time the appropriate Government exercises power under Sections 8 and 33B. The administrative power under such circumstances is exercised in aid of the

[11] AIR 1967 SC 284 at p. 285

judicial process. This interference with the judicial function by the executive has to be sparingly exercised and in order that such extreme power is not exercised capriciously, it has been provided that the reasons in respect of exercising such administrative power have to be stated in the order so that, if need be, the same might be subjected to judicial review. To my mind, that must be the reason why the executive has been required to comply with the said mandatory provision in case it is thought that the matter has to be transferred from one Court to another.

31. In my opinion, in this case, the reasons have been stated in the order and as such it must be held that the requirements have been complied within the facts and circumstances of this case. No further reason could be called for, for the purpose of withdrawing and transferring the case to another Tribunal. In the above Supreme Court case of Associated Electrical Industries India) Private Ltd., Calcutta as d in several other cases cited from the Bar, the facts were that the Government in stating the above reasons only quoted the language of the Section and stated that the Government thought it expedient to withdraw and transfer the case. As stated above, that would not amount to the compliance with the requirement of the section. Unlike those cases in the instant case two reasons have been stated. First, it is stated that there is no Judge and the second is that the said pending proceeding required speedy disposal. It is to be noted that under Section 15 of the Act it is provided that the Tribunal "shall hold its proceedings expeditiously". That envisages a duty to dispose of matters speedily. That being the position, it must be held that it is a good reason for withdrawing the matter and transferring it to another Court when the matter could not be speedily disposed of by the former Court for some difficulty, such as there being no Judge for sometime because the vacancy had not been filled up for some reason or other.

32. On the question as to whether the vacancy should have been filled up under Section 8 instead of exercising powers under Section 33B in my opinion, it is not obligatory on the part of the appropriate Government to fill up the vacancy in order to exercise powers under Section 33B. In other words, Section 8 is no bar to the exercise of power under Section 33B. The power under Section 8 is independent of the power conferred by Section 33B. Section 8 does not in any way control the provision of Section 33B. There is no duty cast upon the Government to supply the vacancy in order that the power to withdraw and transfer could be exercised. If the vacancy can be filled up speedily then there is no point in exercising powers under Section 33B; it is because the vacancy could not be filled up speedily for some reason or other, that the Government thinks fit to proceed under Section 33B so that the held up matter could be immediately set into motion. As it is, it appears that from January till May the vacancy was not filled up by making an appointment Under such circumstances, it is quite opposite for the appropriate Government to exercise powers under Section 33B in order that the proceeding might be expedited and disposed of speedily. It is quite possible that the Government in exercising its discretion under Section 33B took into account that this would be the speedier remedy and as such withdrew the case and transferred it to the Fourth Tribunal. In any event, the language in the two sections, being Sections 8 and 33B, do not in any way, indicate that Section 8 is a controlling section. After all, whether or not the matter is heard by a new incumbent in the same Tribunal or by another

Tribunal would hardly make any difference and there is hardly any scope of any prejudice being suffered for such transfer because the matter was not entertained by any Judge initially. That being the position, the arguments of Mr. Banerjee on this point are not acceptable.

33. It is next argued that the order of reference became bad because at the time the reference was made there was no Judge. It is difficult to appreciate how this point could arise when the Tribunal to which the dispute was referred was very much in existence. Both the second and the fourth Tribunals were constituted by the same notification on 11th March, 1957 aid both were in existence at the material time. The Judge had retired on 2nd January 1972. It must be that the reference was made to the said Tribunal with the expectation that the appointment would be made soon thereafter. This not having been done the question arose whether the same had to be withdrawn and transferred to another Tribunal. The result, therefore is, that the matter was very much pending before the said Tribunal although there was no Judge. The language used in Section 8 also makes it clear that even in case of vacancy the proceeding may be continued after the vacancy is filled up. Because the proceeding can be pending that is why it can be continued.

34. In my opinion, once a reference is made under Section 10(1) the reference is commenced before the Tribunal and it would continue to be pending before the Tribunal whether or not the presiding Judge is there or there is a vacancy. Accordingly, such a reference remained a valid reference and there could be no difficulty in exercising power under Section 33B in withdrawing and transferring the matter from the said Tribunal to another. It was the pending master which was so withdrawn and transferred under Section 33B. As to whether such a transferred matter would be heard de nove by the transferee-Court or the same would be proceeded with from the stage at which it was so transferred is another matter to which we are not concerned with in this case. All that the section requires is that it must be the speaking order so that it might be subjected to judicial review.

35. Mr. Banerjee next argues that before the order of withdrawal and transfer was made under Section 33B no notice was served upon the appellant and that not having been done the principle of natural justice has been violated with the result that the order of transfer became invalid.

36. Mr. Banerjee further contends that in course of the High Court proceeding it transpired from the affidavit-in-opposition that a letter was written on behalf of the union to the Government and pursuant thereto the Government took action under Section 33B. The copy of the said letter was not sent to the appellant nor was it mentioned in the order itself.

37. On behalf of the respondents it is urged that the appellant never made any grievance about the absence of such notice at any stage. Even in the affidavit in reply no such point was taken except to lay that they will refer to the letter dated 15th April, 1972 when the same would be produced to ascertain the meaning and scope thereof. Only in the grounds of appeal the point was taken to the extent that copies of the said letter were not sent to the appellant. Whether such conduct amounted to the violation of the principle of natural justice or not was nowhere indicated and not even argued either before the Tribunal or before the trial Court.

38. Mr. Banerjee has argued by relying on several Supreme Court oases that the principle of natural justice should be followed even in matters of administrative functions. Mr. Banerjee relied on two Punjab cases in the case of Workmen of *Punjab Worsted Spinning Mills, Chheharta v. State of Punjab*[12] and in the case of *Technological Institute of Textiles v. Labour Court,*

Jullundur[13] where the learned Judges have applied the principle of natural justice. It is to be noticed that the point which is now sought to be made out in substance is that the Government was bound to give notice before exercising powers under Section 33B. This point was not dependent on whether a letter was written by the union or not. This point could have been urged before the Tribunal as also before the trial Court but the appellant has chosen not to do so. Even assuming that the appellant came to know of the said letter from the said affidavit- in-opposition yet there is no indication in the affidavit in-reply about the point as to the violation of the principles of natural justice. Even in the grounds of appeal it was expected that this point would be specifically taken but the same is quite silent everywhere except at the last stage when Mr. Banerjee took up this point in course of his argument. All that was argued before Masud, J., was that copies of the letter dated 25th April, 1972 written by the employees' union were not sent to the appellant and as such the transfer being a unilateral transfer was illegal. The learned trial Judge observed as follows:

> "It is true that the Government should have sent a copy of the representation of the Employees' Union to the petitioner-company before the transfer order was made. But the objection to my mind is more of a form than of substance. There is no allegation that Government acted mala fide in this particular case in transferring the said dispute to the 4th Industrial Tribunal. It is quite possible, in certain cases if a particular. Tribunal expresses a view in a pending matter before it and the Government without reference to the parties transfer to any other Tribunal the authority of such transfer might be challenged. In this particular case the dispute had not been taken up at all by the 2nd Industrial Tribunal.
>
> "The learned Judge further observed that the petitioner could have raised this preliminary point before the tribunal that there was no justification for Transfer of the case from the second Industrial Tribunal to the 4th Industrial Tribunal. It was also observed that there was no allegation that the transferee, Court was prejudiced against the petitioner in any way.

39. In any opinion, the learned trial Judge was quite justified in taking into consideration the said facts. The facts in this case reveal that after the order of reference was made nothing whatsoever was done by the Tribunal because there was no Judge who could take action thereon. It remained pending for a few months and then it was sought to be expedited by transferring it to another Tribunal It is 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 33B. There could be no principle involved in giving such a notice. Nobody's rights could possibly have been affected in taking such action under Section 33B. These are special facts and circumstances which have to be considered to appreciate whether or not the principle of natural justice has been violated. The union's letter no doubt in the ordinary course should have been brought to the notice of the appellant but in the facts and circumstances of this case the absence of such

[12] 1965--II L.L.J. 218

[13] 1970--I L.L.J. 188

communication cannot be held to be violative of any principle of natural justice. This is a case where there is no provision whereby the Government is called upon to give any notice before taking such action under Section 33B and in the special facts and circumstances of this

case I do not think that there could be any question of the principle of natural justice being violated for not giving such notice or for not sending copies of the said letter to the appellant. In any event, the point should not be allowed to be urged at this stage. In this connection reference may be made to the provision of Section 12(5) of the Industrial Disputes Act which provides specifically that the reasons have to be communicated. There is no such requirement provided under Section 33B and such a provision should not be unnecessarily read into the provision to bring into play the principles of natural justice. The Legislature was conscious as to whether it was necessary that the reasons had to be communicated and whether it would be sufficient if reasons were to be stated in the order.

40. After considering all these points. I am of the opinion that the powers exercised under Section 33B by the appropriate Government was valid and proper and the order of withdrawal and transfer could not be challenged as invalid.

41. The only other point which has been urged by Mr. Banerjee is that the order of reference is invalid because a settlement, arrived at by and between the parties, remained operative and the same would remain binding on the parties until two months' notice would be given to either of the parties.

42 On behalf of the respondents it is contended that under Sub-rule (3) of Rule 68 of the West Bengal Industrial Disputes Rules, 1958 the settlement thus arrived at in order that the same might be binding between the parties a copy thereof must be sent jointly by the parties to the Assistant Secretary to the Government of West Bengal Labour Department. The admitted position is that the same had not been sent jointly with the result that the said Sub-rule (3) of Rule 68 of the Rules of 1958 had not been complied with. This is a mandatory provision. The Supreme Court in the case of Workmen of Delhi Cloth and *General Mills Ltd. v. Management of Delhi Cloth and General Mills Ltd*[14]. decided that a copy of the settlement has to be sent in compliance with the statutory provision. The said observation was made in connection with the Central Rules being Sub-rule (4) of Rule 58 which is in pari materia with Sub-rule (3) of Rule 68 of the West Bengal Industrial Disputes Rules, 1958. The said Sub-rule (3) of Rule 68 is set out as follows:

> "Where a settlement is arrived at between an employer and his workman/workmen otherwise than, in course of conciliation proceeding before a Board of Conciliation Officer the parties to the settlement shall jointly send a copy thereof to the Assistant Secretary to the Government of West Bengal Labour Department.
> "Admittedly the said requirement under the sub-rule had not been complied with. A copy of such settlement had not been sent jointly to the Government In my opinion it is not an idle ceremony but a mandatory provision which must be strictly complied with. If it is not jointly sent then the Government cannot take any notice of it. That being the position, no valid settlement stands in the way of the order of reference.

[14] A.I.R. 1970 S.C. 1851 (1970) L.I.C. 1407

43. The overall result is that none of the points raised by Mr. Banerjee in this appeal has succeeded and, accordingly, the appeal is bound to be and is hereby dismissed with costs. The

trial Court order is hereby confirmed interim orders, if any, are vacated. Let the file be sent to the Tribunal forthwith with the direction that the hearing of the matter be expedited.

Salil Kumar Hazra, J.

44. I agree.

Appeal dismissed.