Delhi and anr. Vs. Management of Blue Star Engineering Co. (Bombay) Private Ltd. and ors.

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Court : Delhi

Decided On : Jan-13-1972

Reported in : ILR1972Delhi649; 1973LabIC754

Judge : Hardayal Hardy, C.J. and; Prakash Narain, J.

Acts : Constitution of India - Article 226; Industrial Disputes Act, 1947 - Sections 33B

Appeal No. : Letter Patent Appeal No. 108 of 1970

Appellant : Delhi and anr.

Respondent : Management of Blue Star Engineering Co. (Bombay) Private Ltd. and ors.

Advocate for Pet/Ap. : L.M. Sanghvi,; S. Pappu,; M.S. Ganesh,;

Judgement :
ORDER

Sunder Section 33B themselves may be either administrative or quasi-judicial according to the context. An order transferring one industrial dispute from one Labour Court to another for purely administrative reasons, such as a transfer of the concerned officer, or in order to re-distribute the work between different

officers, and it is so stated in the order of transfer itself, would be purely administrative and could not be said to be quasi-judicial. On the other hand, if, as in the present case, when proceedings are pending before a Labour Court and evidence is actually being recorded by that Court any transfer from that Court to another on the ground that the presiding officer was prejudiced against one of the parties must obviously be made after notice to the other side. Propriety and fairness would require that the concerned judicial officer should not only be apprised of what is stated against him but also must be given an opportunity of making his own comments on such allegations. To state that it would be embarrassing for the said officer and, thereforee, it would be better not to ask for his comments would be to take away from such quasi-judicial proceedings of much of their solemnity and effectiveness. It seems, thereforee, that the order of transfer in the instant case was a quasi-judicial order and that the same is liable to be quashed because it was passed without even giving any opportunity to the other side (the management) to be heard regarding such allegations.'

(7) Counsel for the appellants drew our attention to a Division Bench judgment of this Court in Dunlop (India) Ltd. v. Delhi Administration and others (L.P.A. No. 137 of 1971)(1) and invited our attention to the following passage :-

'RULESof natural justice, as was observed by Hegde J. in Union of India v. J.N. Sinha & another : (1970)IILLJ284SC were not embodied rules nor could they be elevated to the position of fundamental rights. While making the reference, the appropriate Government was not deciding any rights of the parties. It simply referred the dispute for adjudication to a Tribunal which has the jurisdiction to decide the controversy and is bound to give hearing to the contending parties. There is thus no occasion for granting a hearing to any party by the appropriate Government at the time it makes the reference.'

(8) It was argued that while transferring this case the appropriate Government was not deciding any rights of the parties. Only one issue out of several other issues which could arise in the case, was under discussion at that stage. If the issue was decided against the management of respondent No. 1 the case would proceed on other issues and as such the rights of the parties were not being decided. The

Additional Labour Court to whom the case was transferred had the jurisdiction to decide the controversy and was bound to give a hearing to the contending parties. The evidence that had already been recorded by Shri R.K. Baweja had not been wiped off. In fact, the evidence of respondent No. 1 had not been concluded. The said respondent still had the right to examine one more witness. On the basis of the evidence that was already there and the evidence that was still to be recorded respondent No. 1 had the right of arguing the case on the basis of the issue under discussion and thereforee none of its rights were being decided.

(9) It was further argued that the order did not involve any civil rights of the parties. The question of violation of rules of natural Justice or of a fair hearing could arise only in those administrative orders where the civil rights of the parties were going to be affected. No such question had arisen in the present case. So, thereforee, whether the order was administrative or quasi-judicial, did not make any difference, for respondent No. 1 would have an opportunity and a hearing when the case proceeds before the Additional Labour Court to whom it was transferred.

(10) Reliance was also placed on a decision of the Supreme Court in Messrs Western India Match Co. Ltd v. The Western India Match Co. Workers Union & others : (1970)IILLJ256SC where by reference to an earlier decision of that Court in the State of Madras v. C.P. Sarathy : (1953)ILLJ174SC it was held on a construction of S. 10(1) of the Industrial Disputes Act that the function of the appropriate Government there under is an administrative function. On the strength of this judgment, it was argued that it depends upon the nature of the function of the Government and the object for which the power is conferred on it. If the Government is of the view that the parties would have a hearing before a final decision is made against them by the Court from whom proceedings are transferred it is not necessary that the Government should itself hear the parties before making an order of transfer.

(11) The next case relied upon by the counsel for the appellants is also a decision of the Supreme Court in Bombay Union of Journalists & others v. The State of Bombay and another, : (1964)ILLJ351SC . The relevant portion of Section 33B requires the appropriate Government to withdraw any proceeding under the

Industrial Disputes Act pending before a Labour court and transfer the same to another court, as the case may be for the disposal of the proceeding and the labour court to which the proceeding is so transferred may, subject to special direction in the order of transfer, proceed either de novo or from the stage at which the proceeding is so transferred. The only requirement for the exercise of this power however is that the appropriate Government has to make an order in writing and 'for reasons to be stated therein.'

(12) The argument advanced on behalf of the appellants was that just as in an application for a writ of mandamus against an order made by the appropriate Government under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, the Court is not sitting in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the Government, in much the same way, it is not for this Court to consider the propriety or the satisfactory nature of the reasons given by the Government under S. 33B of the Act. An extract from a passage in the above-mentioned judgment of the Supreme Court was pressed for consideration. It was there said that 'It would be idle to suggest that in giving reasons to a party for refusing to make a reference under Section 12(5), the appropriate Government has to write an elaborate order indicating exhaustively all the reasons that weighed in its mind in refusing to make a reference. It is no doubt desirable that the party concerned should be told clearly and precisely the reasons why no reference is made, because the object of Section 12(5) appears to be to require the appropriate Government to state its reasons for refusing to make a reference, so that reasons should stand public scrutiny; but that does not mean that a party challenging the validity of the Government decision not to make a reference can require' the court in writ proceedings to examine the propriety or correctness of the said reasons.'

(13) In the present case, the impugned order stated that the Workmen's Union in their application dated 25th October 1969 had sought transfer of the case of Shri N.R. Sharma'on the ground of alleged prejudice and in the interest of justice.' The Lieutenant Governor in exercise of the power conferred by Section 33B of the Act read with Government of India, Ministry of Home Affairs, Notification No. 2/2/61-Judl. Ii, dated the 24th March, 1.961 and for the afore-said reasons, ordered the

withdrawal of the case from the Labour Court presided over by Shri R.K. Baweja and transferred the same to the Addl. Labour Court presided over by Shri Hans Raj for adjudication. It was not for the courts to consider the propriety or satisfactory character of the reasons given by the appropriate Government. It was not the Case of respondent No. 1 that the appropriate Government had taken into account a consideration which was irrelevant or foreign nor were any malafides attributed to the Government. In this view of the matter, the validity of the impugned order could not be challenged by an application for a writ of mandamus.

(14) One other contention was also placed before us by the learned counsel for the appellants. Our attention was drawn to certain orders made by the Additional Labour Court after the case was received on transfer from the Court presided over by Shri R.K. Baweja. On 12.12.69 the Additional Labour Court registered the case and issued notices to the parties for 30.12.1969. On that day the presiding officer was on leave and the case was directed to be postponed to 2nd January 1970. On behalf of the Management of respondent No. 1 a statement was made by its representative that it wanted time to produce the remaining witness Shri Mehra who would appear on 17.1.1970. Counsel for the Workmen's Union put in an application for production of certain documents by the Management and the case was adjourned to 17.1.1970 for filing documents or objections. The case was again adjourned from 17.1.1970 to 23.1.1970 when Mr. Mehra the remaining witness for the Management was absent and a date for producing him was given by the Additional Labour Court. The argument on behalf of the appellants was that respondent No. 1 having submitted to the jurisdiction of the Addl. Labour Court was not entitled to challenge the validity of the impugned order.

(15) The record shows that on 15.1.1970, respondent No. 1 had filed writ petition in this Court, challenging the validity of the impugned order. It cannot thereforee be said that it had submitted to the jurisdiction of the Additional Labour Court. In any case, no such objection appears to have been raised before the learned Single Judge nor has any such objection been raised in the grounds of appeal filed in this Court. Counsel for respondent No. 1 replying to the arguments raised on behalf of the appellants submitted that it is true that only one issue was under discussion at the stage at which the impugned order was made but the issue went

to the root of the controversy between the parties. It was material to the decision of the case. The issue related to the status of Shri N.R. Sharma, respondent No. 3. The case of the Union was that lie was a workman under the Industrial Disputes Act whereas the case on behalf of respondent No. 1 was that he was a Supervisor receiving Rs. 770.00 per mensem as wages. The Workmen's Union had examined 9 witnesses while on behalf of respondent No. 1, one of its Directors had been examined and the Manager of the said respondent was still to be examined. More than 200 documents had been filed. The decision of the issue thereforee depended upon the demeanour of the witnesses examined on behalf of the parties and the documents produced by them. If Shri R.K. Baweja came to the conclusion that Shri N.R. Shrama was not a workman that would be the end of the matter for the Labour Court would then have no jurisdiction to proceed with the case. On the other hand, if Shri R.K.. Baweja came to the conclusion that Shri N.R. Sharma was a workman then since his service's had been terminated without any inquiry he was entitled to re-instatement or compensation etc. as the case may be. In either event, the result of the case turned on the decision of the issue before the Labour Court. The inquiry had proceeded for considerable time and so far as the evidence of the Workmen's Union is concerned it had already been concluded.

(16) Counsel for the appellants had no doubt argued that no civil consequences ensued from the order of withdrawal made by the Lieutenant Governor and that no prejudice was likely to be caused to respondent No. 1. It was said that in any event, respondent No. 1 would have an opportunity of addressing arguments before the Addl. Labour Court and since the case was to proceed from the stage at which it stood at the time of the withdrawal, the evidence would still be there and respondent No. 1 could refer to the said evidence and the documents. We are not quite sure if this would be a correct approach to the problem. A considerable amount of time was spent in recording the evidence. The oral evidence examined by the parties had made impression on the mind of the Labour Court. Apart from the expense involved in the conduct of the proceedings, the demeanour of the witnesses had been watched by the Labour Court. A written record of evidence cannot take the place of oral evidence examined by the Labour Court, It cannot thereforee be said that no civil consequences had ensued from the order of withdrawal.

(17) Reliance was placed by the learned counsel for respondent No. 1 on a decision of the Supreme Court in Associated Electrical Industries (India) Private Ltd., Calcutta v. Its Workmen 1961-11 Llj 122 where it was said that though the appropriate Government is competent to transfer the proceedings, it could exercise its powers only after complying with the requirements of Section 33B. To say, that it is expedient to withdraw a case from one Tribunal and transfer it to another repeatedly on three occasions in respect of the same proceedings is not to give any reasons as required by the section. Normally, when an industrial dispute is referred to an Industrial Court or tribunal it should be tried before the said court or tribunal, and so the power of transfer can be exercised only for sufficient reasons.

(18) In the case of Workmen of Punjab Worsted Spinning Mills, Chheharata v. State of Punjab & others (1965-11 Llj 218 (7) Harbans Singh of the Punjab High Court (as he then was), referred to two other decisions of the Supreme Court, namely. Board of High School and Intermediate Education v. Ghanshyam Das Gupta : AIR 1962 SC1110 and to the observations of Das J. (as he then was) in Province of Bombay v. Khushaldas S. Advani : [1950]1SCR621 . The principle deduced by the learned Judge from the decisions of the Supreme Court was that where the court finds that there were two parties, the Management of the Mill and the Workmen, it would be open to the State Government to transfer the case from one Tribunal to another for purely administrative reasons, say, for example, if the work with one Tribunal is heavy and the Tribunal cannot cope with it. But there can be no administrative reasons for transferring a case after the same had been concluded and only the award was to be given. When there is a dispute between the employer on the one side and the workman on the other and if the State Government is going to act on the allegations made against the impartiality of the Tribunal, at the instance of one of the parties, it is necessary that it should give a reasonable opportunity to the other party to be heard before an order of transfer which obviously is going to have serious effects on their rights, is passed. The principle laid down in that case clearly applies to the facts of the present case except that in the instant case the proceedings had not reached the stage to which Harbans Singh J. referred in the case before him. That would not however make much difference as the present case had also reached an advanced stage and all

that remained was that one more witness had to be examined on behalf of the Management and arguments were to be heard before the award was given.

(19) The decision of Harbans Singh J. was followed by another Judge of the Punjab & Haryana High Court in Technological Institute of Textiles v. Labour Court, Jullundur& others 969 I.F.J. 276 where Narula J. referred to the later history of that case. It transpired that the decision of Hanbans Singh J. was challenged in Letters Patent Appeal No. 60 of 1963 preferred by the Management of the Punjab Worsted Spinning Mills, Chheharata. The appeal was dismissed by a Division Bench (Dulat & Grover JJ.) on 19th February 1965. The learned Judges constituting the Division Bench repelled the argument of the counsel for the appellant to the effect that the order passed in that case was different from the one passed by the Supreme Court in the case of Associated Electrical Industries, Calcutta v. Its Workmen 1961-II Llj 122. In as much as the appropriate Government had in the case before the Supreme Court merely stated that it was expedient to transfer the case, which was merely staling a conclusion, in the Chheharata case(7) the State Government had mentioned the reasons, however brief the reasons be, i.e. public interest, which, according to the counsel for the employer was not a conclusion but the statement of reason. Dulat J. held that the distinction sought to be made was somewhat subtle but not real.

(20) It may be mentioned here that the Appellate Bench did not consider it necessary to go into the more controversial question whether the order of transfer in the circumstances of that case was quasi-judicial or not. We are told that against the decision of the Appellate Bench a petition for special leave was filed in the Supreme Court which too was rejected.

(21) Counsel for respondent No. 1 also referred to a Bench decision of Punjab High Court in the Municipal Committee, Kharar, District Ambala v. The State of Punjab wherein while dealing with a somewhat similar question relating to the requirement of recording reasons in support of an order under Section 238 of the Punjab Municipal Act (3 of 1911) for superseding a Municipal Committee, Narula J. had observed that before a Municipal Committee could be allowed to be superseded there must always exist reasons for the Government to come to that

conclusion. A statutory safe-guard against abuse of the power conferred on the State Government under Section 238 of the Act has been provided by making it necessary for the Government to state that reasons for coming to the requisite conclusion in the notification itself. The decision of the State Government is not subject to appeal. As a result of the notification under S. 238 of the Punjab Municipal Act, drastic consequences ensue. The orders of the State Government are subject to scrutiny by this Court in exercise of its writ jurisdiction within certain limits.

(22) Dua J. (as his Lordship then was) while agreeing with Narula J. further observed as below :-

'ITis, however necessary for the notification superseding the Committee to contain reasons for the supersession. This requirement is expressed in mandatory language and nothing cogent or convincing has been brought to our notice to persuade us to construe the requirement as merely optional or permissive. Indeed, it has not even been canvassed on behalf of the respondents that reasons can without entailing invalidation be dispensed with or that a notification even without stating the reasons is legally sustainable. The broad contention pressed before us is that the reasons for superseding the Municipal Committee, as contemplated by Section 238, are actually stated in the impugned notification.'

(23) This case was followed by a Full Bench of this Court in Swaj Parkash v. State of Punjab (1968) Delhi 7 where Dua J. observed:-

'I have once again scrutinised the scheme of the Punjab Municipal Act in my endeavor to see if there is reasonable ground for holding action under Section 238 to be purely administrative so as to completely exclude judicial approach. I am not unmindful of the perpetual difficulty of distinguishing between judicial, quasi-judicial and administrative functions of the executive, all of which are sometimes so blended io one and the same transaction that it is far from easy, without a good deal of artificial reasoning, to draw any clear line between them. Principles emerge from decisions only obscurely and executive officers are often confronted with a baffling task in trying to keep their different roles and functions within their proper spheres. Section 238 of the P.M. Act is perhaps one of those provisions in which

are blended together administrative; and quasi-judicial functions. This section perhaps does contemplate an administrative act in so far as the actual order superseding a Municipal Committee is concerned, but this order has to be found on a judicial appraisal of the fact and circumstances on which the Government comes to the conclusion that a given Municipal Committee is incompetent to perform or has persistently made default in the performance duties imposed on it by or under the statute.'

(24) The same view was taken by P. B. Mukharji J. (as he then was) in Shri Shew Sakti Oil Mills Ltd., v. Second Industrial Tribunal (1959) F.J.R. 13.

(25) In the case of Technological Institute of Textiles v. Labour Court Jullundur(10) to which we have already referred one of the arguments addressed on behalf of the respondents 2 and 3 who were workmen in that case was that the expression used in the impugned order in that case normally 'in the interest of justice' to transfer the case, satisfied the requirements of Section 33B(1) of the Act. It was argued that this constituted , statement of reason. The argument was repelled and it was held by Narula J. that the more use of stereotyped and high sounding phrases like 'interest of administration', 'interest of expediency' and 'interest of justice' did not satisfy the mandatory requirement of Section 33B(1) of the Act as one cannot after reading such expression alone become any wiser about the factual reasons which impelled the Government to transfer a particular case.

(26) Counsel for the appellants himself conceded that the impugned order could not be supported on the ground that S To that extent thereforee he appeared to agree with the decisions of Harbans Singh J. and Narula J. in the two Punjab cases referred to above. He however submitted that in the instant case the appropriate Government has also used the ground of 'alleged prejudice' and since an application had been made on behalf of the workmen the expression 'alleged prejudice' meant the prejudice in favor of the Management of respondent No. 1 He also argued that in the impugned order the case was withdrawn not only on the ground of 'in the interest of justice' which was no doubt vague but also on the ground of 'alleged prejudice.' The order also said that it was for the aforesaid reasons that the case was being withdrawn. That showed that the appropriate

Government was satisfied that prejudice was alleged against the Labour Court and that onstituted the statement of reason.

(27) We have already said that it was not necessary for the appropriate Government to write a detailed order but when an application was made by one of the parties to the dispute that there was alleged prejudice on the part of Shri R. K. Baweja, the Government need not have stated that it was satisfied with the truth of the allegations made by the workmen. But we do not see what prevented the appropriate Government from staling that the appropriate Government was prima fade satisfied about the truth or otherwise of the allegations. No inquiries were made by the appropriate Government nor was any conclusion mentioned in the impugned order that the appropriate Government was prima fade satisfied about the truth of the allegation made by one of the parties and yet an order was made for transferring the case from one Labour Court to another Labour Court at a fairly advanced stage of the proceedings. Learned Single Judge referred to a decision of the Supreme Court in A. K. Kraipak and others v. Union of India and others : [1970]1SCR457 and to the following observations made by K. S. Hegde J.

'INa welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. 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 of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously..... What was considered as an administrative power some years back is now being considered as a quasi-judicial power.'

(28) We do not consider it necessary to refer to that, aspect of the case for we are definitely of the opinion that the requirement as to statement of reasons is mandatory and goes to the root of the matter. We are also of the opinion that the order was made by the appropriate Government in a quasi-Judicial matter and no such order could be made without notice to the opposite party.

(29) Counsel for respondent No. 1 also drew our attention to a recent decision of the Supreme Court in Purtabpur Company Ltd. v. Cane Commissioner of Bihar and others : [1969]2SCR807 . The respondent in that case had moved the

Government of Bihar under Clause 6 of the Sugar Cane (Control) Order, 1966 for altering or modifying reservation of sugar cane area made in favor of the appellant. The question arose whether the proceedings before the Cane Commissioner were quasi-Judicial. K. S. Hegde J. who had written the judgment in Kraipak's case(14)observed that the rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions. Where both the parties to a dispute in a quasi-judicial proceeding had made separate representations to the Government and the deciding authority, but the representations were not made available to each other and one of the parties was not given opportunity to represent its case and the grievance, it was justified in complaining that the principles of natural justice had been contravened.

(30) The only criticism that the learned counsel for the appellants made in the present case was that in the case of Purtabpur Company Ltd.(15) there was a dispute between the parties and the order made by the Cane Commissioner brought in civil consequences. There was no such allegation in the present case. We do not agree with the learned counsel for the appellants. Admittedly there was a dispute between the two parties. The Management of respondent No. 1 was arrayed on one side and the workmen were arrayed on the other side. The proceedings had gone on for a considerable time before the Labour 660 unsuitable for the post.

(31) Court and yet the order of withdrawal was made on the exparte representation made by the work-men who probably felt that they were not going to get a decision in their favor from the Labour Court and thereforee attributed prejudice to Shri R. K. Baweja. In such circumstances, there was a lis between the parties and the dispute had to be decided on the basis of objective criteria. This dispute could not be decided unless a copy of the representation was made available to the Management of respondent No. 1 and it was allowed to show cause why the case should not be withdrawn.

(32) Counsel for respondent No. 1 also sought to draw oar attention to a decision of the Supreme Court in Bhagat Raja v. Union of India and others : [1967]3SCR302 . We do not consider it necessary to refer to that decision which dealt with a revision under the Minieral Concession Rules (1960) and provided that the Central Government must make a speaking order for we are of the opinion that even if the impugned order is held to be a speaking order it does not satisfy the requirements of Section 33B.

(33) The result is that the appeal is dismissed but there will be no order as to costs so far as this appeal is concerned. The order of transfer is set aside and the parties are directed to appear before Shri R. K. Baweja on 28th January, 1972 when the Management of respondent No. 1 should bring its witnesses on that day and the proceedings should beconcluded before Shri R. K. Baweja relinquishes his office.