
(1958) 04 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1112 of 1957

Aeron Steel Rolling Mills

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 11-04-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 33B

Citation : AIR 1959 P&H 386 : (1959) 1 LLJ 73

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Advocate : Bhagirath Dass, for the Appellant; Anand Swaroop, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bishan Narain, J.—The industrial dispute between the Aeron Steel Rolling Mills, Jullundur City, and its workmen was referred to the Second Industrial Tribunal on 10-3-1956. This reference was still pending when the Industrial Disputes Act, 1947, was amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act XXXVI of 1956). The Amending Act came into force on 28-8-1950 and introduced a new Section 33B which gave the Government power to transfer certain proceedings from one Tribunal to another.

Acting under this new section the Government by Order dated 31-10-1957, withdrew all cases then pending before the Second Tribunal and transferred them all to the Industrial Tribunal, Punjab, constituted by notification dated 4-6-1957 under the Act as it stood after its amendment in 1956. The petitioning mill feels aggrieved at this transfer and has filed this petition under Article 226 of the Constitution challenging the validity of the order of transfer.

2. The order of the Government reads:

"In exercise of the powers conferred by Sub-section (1) of Section 33B of the Industrial Disputes Act, 1947, the Governor of Punjab is pleased to withdraw all

the references pending before the Second Industrial Tribunal, Punjab, Amritsar, and to transfer the same for adjudication and disposal to the Industrial Tribunal, Punjab, Jullundur, constituted, vide Notification No. 7183-C-Lab.57/11196 dated 4-6-1957, from the stage it had been left by the previous Tribunal. This also includes all the cases under Sections 33 and 33A of the Industrial Disputes Act, 1947."

The only objection raised by the learned Counsel for the petitioning mill is that it does not give any reason for the transfer and thus violates the provisions of Section 33B of the Act. The learned Counsel also urged that by this order his clients are seriously prejudiced as proceedings by the new Tribunal are to be taken from the stage they were left by the previous Tribunal.

3. Now, there was no specific provision permitting a reference from one Tribunal to another Tribunal in the 1947 Act and yet the Supreme Court in *Minerva Mills Ltd. Vs. Their Workers*, held that the Government could withdraw the dispute referred to a Tribunal and refer it to another Tribunal. This is all that has been done in the present case. It is true that in that case it was left open to the new Tribunal to start proceedings *dp novo*, but that circumstance does not affect the power of the Government to withdraw the Case from one Tribunal and refer it to another Tribunal.

After the amendment of the Act this power has been specifically given to the Government u/s 33B, although in Section 30, it has been left open to the Government to leave the case with the old Tribunal and not to transfer it. In the present case, the Government has chosen to transfer the cases to a Tribunal constituted in accordance with the provisions of Section 7A of the Act, but in the order it has given no reason for adopting this course.

4. It has been urged on behalf of the petitioning mill that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all, and reliance has been placed on AIR 1936 253 (Privy Council) and *Cutler v. Wandsworth Stadium Ltd.* 1949 AC 398, at p. 407. The contention is that the order of transfer could be made Only for reasons which must be stated in the order, and if no such reason is given, then the order is invalid.

The decision on the point raised depends on the determination whether this direction is merely directory or is mandatory and its non-observance would invalidate the order. Now, there is no doubt that the rule enunciated by the learned Counsel is a general rule, but Lord Simonds in *Cutler's* case, 1949 AC 398, has observed that this general rule is subject to exceptions and that the answer to the question depends on a consideration of the whole Act and the circumstances including the pre-existing law in which it was enacted. The matter, is expressed by Maxwell in these words:

"It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied

nullification for disobedience beyond the fundamental one that it depends on the scope and object of the enactment.

It may, perhaps, be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and, when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the Legislature."

Now the indention of the legislature is to enable the Government to transfer cases from one Tribunal or from one type of Tribunal to another. In the present case all the cases which were pending before one Tribunal have been transferred to another Tribunal, and it is not that one particular case has been transferred. In such circumstances it is not clear to me why the omission to give reasons for transfer of the case should invalidate the order of transfer. Moreover it is well established that statutes pertaining to official acts should be construed as directory. Crawford in hie Interpretation of Statutes has stated the law in these words:

"As a general rule, a statute which regulates the manner in which public officials shall exercise the power vested in them, will be construed as directory rather than mandatory, especially where such regulation pertains to uniformity order, and convenience, and neither public nor private rights will be, injured or impaired thereby. If the statute is negative in form, or if nothing is stated regarding the consequences or effect of non-compliance, the indication is all the stronger that it should not be considered mandatory."

The power of transfer is obviously in public interest and omission to give reasons therefore does not impair any public or private right Section 33B does not lay down that the order of transfer will not be effective it reasons therefore are not given. In this particular case, the transferee Tribunal has been directed to start proceedings from the stage left by the previous Tribunal. I cannot see how this circumstance adversely affects the employers unless it be that they are anxious to delay decision by the Tribunal. The order in question obviously will result in saving time and expense of the parties. (5) For all these reasons I am of the opinion- that the omission to give reasons in the order of transfer does not invalidate that order. The petition therefore fails and - is dismissed with costs. Counsel's fee Rs. 100/-.