(2002) 02 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4294 of 2001

Alcobex Metals Ltd. APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 33B

Citation : (2002) 94 FLR 1178 : (2003) 1 RLW 109 : (2002) 3 WLN 1

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : P.K. Lohra, for the Appellant; Sajjan Singh and S.K. Malik, for the Respondent

Final Decision : Allowed

Judgement

Chauhan, J.—Though the matter was listed today on the application moved under Clause (3) of Article 226 of the Constitution, with the consent of the learned counsel for the parties the matter was heard finally.

2. The instant writ petition has been filed for quashing the order dated 8.10.2001 (Annex. 4) by which the appropriate Government has withdrawn the case from Labour Court, Jodhpur and transferred the same to Labour Court, Kota in exercise of its powers u/s 33-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, 1947). The grievance raised by the petitioner is that the order impugned has been passed without issuing any notice to him and no reason has been recorded by the appropriate Government while transferring the said case. Thus, the order is liable to be quashed.

3. There can be no quarrel to the settled legal proposition that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order (vide Ku. Shrilekha Vidyarthi v. State of U.P. and Ors. (1).

4. In Life Insurance Corporation of India v. Consumer Education and Research

Centre, (2), the Apex Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest.

5. The same view has been taken by the Supreme Court in Mahesh Chand v. Regional Manager, U.P. Financial Corporation and Ors. (3) and Union of India v. ML. Capoor (4).

6. In State of West Bengal v. Atul Krishna Shaw, (5), the Supreme Court . observed that "giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensible part of sound system of judicial review."

7. In S.N. Mukherji v. Union of India (6), it has been held that the object underlying the rules of natural justice is to prevent mis-carriage of justice and secure fair play in action. The expanding horizen of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

8. In Krishna Swamy v. Union of India (7), the Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order of borne-out from the record. The Court further observed that "reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also administer how the mind of the maker was activated and actuated and there rational nexus and syntheses with the facts considered and the conclusion reached. Lest it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21."

9. Similar view has been taken by the Supreme Court in Institute of Chartered Accountants of India v. L.K. Ratna and Ors. (8), Board of Trustees of the Post of Bombay v. Dilipkumar Raghavendranath Gavendranath Nadkarni and Ors. (9), Vasant D. Bhavsar v. Bar Council of India and Ors., (10) and Charan Singh v. Healing Touch Hospital and Ors. (11), Similar view has been taken by this Court in Rameshwari Devi Mewara v. State of Raj. and Ors., (12).

10. So far as the instant case is concerned it is fully covered by the judgment of the Hon''ble Supreme Court in. Associated Electrical Industries (India) Pvt. Ltd., Calcutta v. Its Workmen (13), wherein the Apex Court categorically held that while passing the order u/s 33-B of the Act, 1947 the appropriate Government must record reasons and the said requirement is to be complied with both, in substance and in letter. Merely stating that the withdrawal of the case is expedient is not to give any reasons as required by the section.

11. Similar view has been expressed by the Hon''ble Supreme Court in Management of M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar and Ors., (14), wherein the Apex Court held that the authority is under legal obligation to record reasons in support of its decision while passing the order u/s 33-B of the Act, 1947. While deciding the said case, the Apex Court relied on the judgment in Pannalal Binjraj v. Union of India (15), and Ajantha Industries v. Central Board of Direct Taxes (16). While interpreting Section 127 of the Income Tax Act, 1961 the Apex Court held that recording of reasons for transferring the case from one jurisdiction to another was mandatory and the said reasons must be communicated to the assessee as merely recording the reasons in file was not sufficient.

12. One of the fundamental principles of natural justice is Audi alter-am par-tern, i.e. no man should be condemned unheared.

13. Even if there is no provision in the statute about giving of notice, if the order in question adversely affects the rights of an individual, the notice must to given. (Vide East India Commercial Co. v. Collector of Customs (17) and Maneka Gandhi v. Union of India (18). The notice must be clear, specific and unambiguous (Vide Management of the N.R. Co-operative Credit Society Ltd. v. Industrial Tribunal (19). The object of notice is to give an opportunity to the individual concerned to present his case.

14. Thus, settled legal proposition remain that principles of natural justice are inbuilt in the statutory rules and require observance unless the same stand excluded by the rules itself. The adjudicating authority must be impartial and without any interest or bias of any type; where the adjudicating authority is exercising judicial or quasi-judicial power, the order must be made by that authority and that power cannot be delegated or sub- delegated to any other officer; the adjudicating authority must give full opportunity to the affected person to produce all''the relevant evidence in support of his case; the adjudicating authority must disclose all material placed before it in the course of the proceedings and cannot utilize any material unless the opportunity is. given to the party against whom it is sought to be utilized; the adjudicating authority must give an opportunity to be party concerned to rebut the evidence and material placed by the other side.

15. However, the principle of natural justice had to be considered in the context of the fact-situation and in view of the Scheme the Rules applicable in a particular case. If an employee remains absent for more than a stipulated period and the statutory rules or standing orders provide for automatic termination of his services in such an eventuality, without holding inquiry or giving opportunity of being heard, observance of principle of natural justice is mandatory proposition. Hon''ble Supreme Court has categorically held in a catena of decisions that a statutory rule is void if it stipulates for automatic termination of services of an absenting employee after expiry of a stipulated period. (Vide Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer,

Labour Court and Ors. (20), Gujarat State Road Transport Corporation and Anr. v. Mulu Amra (21), D.K. Yadav v. J.M.A. Industries Ltd. (22), Scooters India Ltd. v. Vijay E.V. Eldred, (23), Uptron India Ltd. v. Smt. Shammi Bhan (24) and Scooters India Ltd. v. M. Mohammad Yaqub and Anr. (25).

16. However, there may be cases where opportunity of hearing or holding enquiry may prove to be a useless formality i.e. these are the cases where person may have nothing to say in answer or where there can be no answer to the charges or even if the hearing is accorded the result would definitely remain the same (vide Chairman, Board of Mining Examination & Chief Inspector of Mines and Anr. v. Ramjee (26), Union of India v. P.K. Roy and Ors. (27), Channabasappa Basappa Happali v. State of Mysore (28), Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors., (29), S.L. Kapoor v. Jag Mohan (30), State of U.P. v. O.P. Gupta (31), Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh and Ors., (32), Syndicate Bank v. Genera! Secretary, Syndicate Bank Staff Association (33), Punjab & Sind Bank and Ors. v. Sakattar Singh (34), Dharmarath-makara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal and Anr., (35), Aligahr Muslim University v. Mansoor Ali Khan (36), Union of India and Anr. v. Mustafa & Najibai Trading Co. and Ors. (37), Dr. J. Shashidhara Prasad v. Governor of Karnataka and Anr., (38), M.C. Mehta v. Union of India (39), Designated Authority (Anti Dumping Directorate), Ministry of Commerce v. Haldor Topsoe A/S, (40), and H.C. Sarin v. Union of India (41).

17. The instant case stands fully covered by the judgment of the Hon''ble Supreme Court in Management of M/s. M.S. Nally Bharaf Engineering Co. Ltd. (supra) wherein after considering a large number of judgments, the Hon''ble Apex Court held that powers u/s 33-B of the Act, 1947 cannot be exercised without giving an opportunity of hearing. While deciding the said case the Apex Court resolved the controversy as there has been divergent views of various High Courts on this issue for the reason that the Madras High Court is Management of Sri Rani Laksmi Ginning and Weaving Mills (P) Ltd. v. State of Madras (42), held that without giving an opportunity of hearing, the transfer is not valid; on the other hand the Andhra Pradesh High Court in Muthe Steels (India) Ltd. v. Additional Labour Court, Hyderabad (43), Calcutta High Court in Jay Engineering Works Ltd. v. Fourth Industrial Tribunal, Calcutta (44) and Allahabad High Court in Pioneer Ltd. v. Labour Court, Gorakhpur (45), had taken a view that hearing is not required. The Apex Court after considering the law of the subject came to the conclusion that opportunity of hearing must be given before passing the order of transfer u/s 33-B of the Act, 1947.

18. The learned counsel for the respondents in the present case could not satisfy the Court on either of the two grievances raised by the petitioner. As there is nothing on record to show that any notice had ever been issued to the petitioner or the appropriate Government while passing the transfer order had recorded any reasons, the order impugned cannot be sustained in the eyes of law. Shri

Sajjan Singh, learned counsel appearing for the State half-heartedly tried to satisfy the Court that the reasons for transfer have clearly been mentioned in the impugned order itself. However, the impugned order simply states that in view of the facts mentioned in the application, the transfer order is being passed.

19. I am of the considered opinion that recording such a statement does not amount recording the reasons. The reasons must express as what were the facts; how the authority has applied its mind and what prevailed in the mind of the competent authority to pass such an order. As the said elements are missing, it cannot be held to be a case of giving reasons. The reasons must be furnished both in "substance and letter."

20. In view of the above, the petition succeeds and is allowed. The impugned order dated 8.10.2001 (Annx. 4) is hereby quashed with liberty to the appropriate Government to pass a fresh order after meeting the requirement as explained above i.e. giving show cause notice to the petitioner and after hearing him to record the reasons, if in the opinion of the appropriate Government transfer of the case is necessary. There shall be no order as to costs.

