

(2018) 02 PAT CK 0104

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7361 Of 2016

Baidyanath Ayurved Bhawan Private Limited

APPELLANT

Vs

State Of Bihar Through The Additional Secretary And Anr

RESPONDENT

Date of Decision : 21-02-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(B)

Citation : (2018) 3 PLJR 95

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Alok Kumar Sinha, Indrajeet Bhushan, Manish Kumar, Ravi Verma, Nishant Kumar Jha

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent no.2.

2. The instant writ petition has been filed by the petitioner for setting aside the notification bearing no. 3/D-111/2014 L.R.1084 dated 21.03.2016

whereby the State Government acting through its Additional Secretary, Labour Resources Department in exercise of power under Section 33-B of the

Industrial Disputes Act, 1947 (for short "I.D. Act, 1947") has transferred Reference Case No.10 of 2001 from Labour Court, Patna to Labour

Court, Dalmiyanagar.

3. The petitioner is a Limited Company having several manufacturing units in India including Patna and Hajipur. The respondent no.2 filed Reference

Case No. 10 of 2001 before the Labour Court, Patna and the matter was being contested by both the parties, who filed their respective written

statements and adduced oral and documentary evidence and it was fixed for final

hearing.

4. In the month of February, 2016, the Presiding Officer of the Labour Court, Patna was transferred and the post fell vacant. On such vacancy, the

respondent no.2 filed an application before the State Government requesting for transfer of Reference Case No. 10 of 2001 to the Labour Court,

Dalmiyanagar. The State Government exercising its power vested under Section 33-B of the I.D. Act, 1947 transferred the said reference case to the

Labour Court, Dalmiyanagar where it was registered as Reference Case No. 01/2016/Reference Case No. 10/2001.

5. It is submitted by the learned counsel for the petitioner that the reason assigned by the State Government for transferring the reference case from

the Labour Court, Patna to the Labour Court, Dalmiyanagar is not proper. He submitted that before withdrawing the proceeding from Labour Court,

Patna and transferring the same to Labour Court, Dalmiyanagar, no opportunity of hearing was given to the petitioner and no reason has been

assigned for such transfer. He submitted that if no opportunity is given before passing an order under Section 33-B of the I.D. Act, 1947, the order

would be bad in law and would be violative of the principle of natural justice. In this regard, he has placed reliance on the decision of the Supreme

Court in Management of M/s M.S. Nally Bharat Engineering Company Limited Vs. State of Bihar & Ors. [(1990) 2 SCC 48].

6. On the other hand, learned counsel appearing for the State submitted that under Section 33-B of the I.D. Act, 1947 the State Government has been

vested with the right to withdraw any proceeding pending before the Labour Court, Tribunal or National Tribunal and to transfer the same to another

Labour Court, Tribunal or National Tribunal for disposal of the same and the Labour Court, Tribunal or National Tribunal to which the proceeding is so

transferred. He submitted that the order was passed by the State Government assigning reasons and after considering the application of the employee

for transfer of the proceeding and as the Labour Court, Patna fell vacant, the decision to transfer Reference Case No.10 of 2001 was in accordance

with law and under the provisions and power vested under the I.D. Act, 1947.

7. Learned counsel appearing for the respondent no.2 supported the submissions made by the learned counsel for the State. He submitted that the

case registered by the Labour Court, Patna stood transferred to the Labour

Court, Dalmiyanagar long back. The counsel for the management has also submitted his written argument on 29.10.2016 before the Labour Court, Dalmiyanagar. The proceeding with respect to the said case has come to an end as written submissions on behalf of both the parties have been filed. He submitted that the respondent no.2 committed no wrong in approaching the State Government for transfer of the case from Patna to Dalmiyanagar as the post of Presiding Officer of the Labour Court, Patna was vacant and he was in urgent need of adjudication of the case at the earliest possible time.

8. I have heard learned counsel for the parties and perused the record.

9. There is no dispute to the fact that the State Government suo motu or on an application made to it can withdraw a pending proceeding before the Labour Court and transfer it to another Labour Court. However, the contention of the petitioner that before transferring the case no opportunity of hearing was afforded to the petitioner has not been denied either by the State or by the respondent no.2.

10. In Management of M/s M.S. Nally Bharat Engineering Company Limited Vs. State of Bihar & Ors. (Supra), while allowing the appeal and quashing the notification by which the Government of Bihar transferred the case from the Labour Court, Dhanbad to the Labour Court, Patna, the Supreme Court held :-

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

25. The management need not establish particular prejudice for want of such opportunity. In S.L. Kapoor v. Jagmohan, [(1980) 4 SCC 379]

Chinnappa Reddy, J., after referring to the observation of Donaldson, J., in Altco Ltd. v. Sutherland, [1971] 2 Lloyd's Rep. 515 said that he concept

that justice must not only be done but be seen to be done is basic to our system and it is concerned not with a case of actual injustice

but with the appearance of injustice or possible injustice. It was emphasized that

the principles of natural justice know of no exclusionary rule

dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself

prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary.â?? (emphasis mine)

11. From the ratio laid down by the Supreme Court in Management of M/s M.S. Nally Bharat Engineering Company Limited Vs. State of Bihar &

Ors. (Supra), it would be manifest that before transferring the pending proceeding from one Court to another Court in exercise of power under Section

33-B of the I.D. Act, 1947, the appropriate Government is not only required to record cogent and proper reason but it must also afford an opportunity

of hearing to the other side. Any violation in this regard would make the order of transfer bad in law and denial of opportunity would be fatal flaw to

the decision of the Government.

12. In the light of the admitted facts of the case and the ratio laid down by the Supreme Court in Management of M/s M.S. Nally Bharat Engineering

Company Limited Vs. State of Bihar & Ors. (Supra), the impugned notification of transfer dated 21.03.2016 cannot be sustained. It is set aside

accordingly. The further proceedings before the Labour Court, Dalmiyanagar shall stand transferred to the Labour Court, Patna, which has become

functional. The Labour Court, Dalmiyanagar is directed to transfer the record of Reference Case No. 01/2016/Reference Case No. 10/2001 to the

Labour Court, Patna within one week from the date of receipt/production of a copy of this order. Once the records are received, the Labour Court,

Patna shall be required to dispose of the proceeding after giving an opportunity of hearing to the parties as early as possible and preferably within

three months.

13. With the aforesaid observations and direction, the writ petition stands allowed.