

(1970) 03 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Appeal No. 44 of 1970

Management of Blue Star Engineering Co. (P) Ltd.	APPELLANT
Vs	
The Lt. Governor, Delhi Administration, Delhi and Others	RESPONDENT

Date of Decision : 02-03-1970

Acts Referred:

Citation : (1970) ILR Delhi 851 : (1971) LabIC 526

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : N.N. Goswami, O.P. Malhotra, V.S. Bhatnagar, A.B. Saharia and N.C. Sikri, for the Appellant;

Judgement

S. Raagarajan, J.

(1) The services of Shri N. R. Sharma (fourth respondent), a Supervisor in the petitioner-company, who was drawing wages of Rs. 770.00 per month, was terminated with effect from 9th October 1968 (as per Annexure C to the writ petition) He raised an industrial dispute with regard to the termination of his appointment which was referred to the Labour Court constituted for the Union Territory of Delhi, then presided over by Shri Desh Deepak. On his being transferred he was succeeded by Shri R. K. Baweja (fifth respondent) who recorded evidence of both parties and completed all the evidence except for one witness for the management who was absent at the hearing; more than 200 documents are alleged to have been filed. At that stage the Under Secretary of the Delhi Administration (second respondent) passed an order (on 2nd December 1969) transferring the above proceedings from Shri Baweja to the Additional Labour Court presided over by Shri Hans Raj (sixth respondent). The said transfer appears to have been made on a representation made by the workers Union dated 26th October, 1969 alleging that Shri Baweja was prejudiced against Shri N. R. Sharma. The order of transfer (Annexure E to the Petition) referred" to the above application (dated 25th October 1969) said to be made "on the ground of alleged prejudice and in the interest of justice" and directed that the case be

proceeded with by the Addl. Labour Court (Shri Hans Raj) from the stage at which it stood at the time of transfer.

(2) The petitioner questions this order of transfer as not complying with section 33B of the Industrial Disputes Act "in substance and in letter"; though the order was quasi-judicial it was made on the representation of the Union and without hearing the management. It was further attacked as having been made under political pressure, an allegation which, in the view I take, need not detain us.

(3) Section 33B may now be read:-

"(1)The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labor Court, Tribunal or National Tribunal and 853 Ing CO. (P) LTD. v. The LT. Governor, Delhi Administration, Delhi & Others transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour 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; Provided that where a proceeding u/s 33 or section 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court. (2) Without prejudice to the provisions of subsection (1), any Tribunal or National Tribunal, if so authorized by the appropriate Government, may transfer any proceeding u/s 33 or section 33A pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette and the Labour Court to which the proceeding is so transferred shall dispose of the same."

In the light of the above provision, which requires reasons to be stated before such an order (in writing) is made transferring the proceedings, the precise terms of the impugned order (dated 2nd December 1969) may also be noticed:-

"NO.F. 289/CO(I)/68-Lab.:—Whereas the industrial dispute existing between the management of M/s. Blue Star Engineering Company (Bombay) Private Ltd., and its workman Shri N. R. Sharma was referred for adjudication to the Labour Court, presided over by Shri R. K. Baweja, Tis Hazari, Delhi. 2. And whereas M/s. Blue Star Engineering Workers" Union (Regd.) in their application dated 25-10-69 has sought transfer of case of Shri N. R. Sharma, workman on the ground of alleged "prejudice and in the interest of justice; 3. Now, Therefore, in exercise of the powers conferred by section 33B of the Industrial Disputes Act 1947 (XIV of 1947) read with the Government of India, Ministry of Home Affairs Notification No. 2/2/61- Judl. II, dated the 24th March 1961, and for the aforesaid reasons, the Lt. Governor, Delhi is pleased to withdraw the case together with all other proceed- ing arising out of the said reference from the said Labour Court, presided over by Shri R. K. Baweja, and transfer the same to the Addl. Labour Court presided over by Shri Hans Raj, for adjudication and the Lt. Governor is further pleased to direct that the said case shall be proceeded from the stage at

which it stood at the time of transfer."

(4) The most important aspect about this order, that would strike even a casual observer, is that even though the application for transfer presented by the Union was dated 25th October 1969, the above impugned order transferring the proceeding was passed only on 2nd December 1969; the same was made without any notice to the management or even without asking for the comments of the presiding officer vis-a-vis the allegations of bias made against him. The impugned order itself only mentioned that an application had been made for transfer on the ground of "alleged prejudice" and "in the interest of justice"; in other words, it did not express any opinion on the allegation that was made concerning prejudice. Shri N. R. Sharma, in his return to his writ petition, however, asserted that the officer concerned "had already made up his mind, which besides being contrary to the administration of justice was a ray of partiality and in any case amounted to prejudging the issues", (sic). But the administration did not go so far in the return filed by it : the impugned order was sought to be sustained on the ground that it was only an administrative but not a quasi-judicial order and that since justice had not only to be done but appear to be done, the proceedings were transferred on account of allegations of prejudice which were made in Shri N. R. Sharma's affidavit. No comments were called for from the officer himself since section 33B did not postulate any such comments being called; besides, the officer himself will feel embarrassed to proceed further with the adjudication when such allegations are made against him. The reason expressed in the return for not even calling for the comments of the officer concerned is not one which is likely to promote the cause of justice. If the order of transfer was actuated by a desire to promote the cause of justice and to promote confidence in the officer charged with the task of adjudicating the dispute, this certainly could not be achieved without hearing not only the management (in this case) but also the officer concerned as to what they had to say with reference to the allegations of prejudice made against the officer concerned by the Workers' Union. I shall have something to say, later, on whether the impugned order in this case was a purely administrative or a quasi judicial order. But even taking it to be no higher than an administrative order, as observed by Mr. Justice Hegde in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, with the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power and to prevent the abuse of that power and to see that it does not become a new despotism; courts are gradually evolving the principles to be observed while exercising such powers. His Lordship observed that "the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. The following observations are helpful in the present context:-

"In a 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 quasijudicial power."

(5) His Lordship after quoting the observations of lord Parker, CJ. in Reg. v. Criminal Injuries Compensation Board: Ex. Parte Lain, 1967 2 Qb 864 and after noticing the decision in Reg. v. Manchester Legal Aid Committees Ex Parte R. A. Brand and Co. Ltd. : 1952 2 Qb 313 his Lordship observed as follows :-

" WE have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially."

(6) His Lordship Mr. Justice Gajendragadkar (as his Lordship then was) observed in Associated Electrical Industries (India Private) Ltd. Calcutta v. Its workmen 1061 II LLJ 122. That the requirement, about the statement of reasons, must be complied with "both in substance and in letter". This expression sums up the importance of the need to record reasons before the power of transfer u/s 33B is exercised.

(7) It seems to me that having regard to the stage the proceeding reached before Shri B awe j a, with only one more witness to be examined on behalf of the Management and the evidence, was to be closed, it was not fair to transfer the proceeding from Mr. Baweja at that stage to another officer merely on the basis of the representation of the workers" union without even making an enquiry or being even prima facie about the truth or otherwise of those allegations. The impugned order, it may be recalled, does even not state that the Government was satisfied about the truth of the allegations made by the workers. No such attempt has been made by the administration in the return filed to this petition.

(8) There has been interference with the order of transfer when the stated reasons were not sufficient in law. Mr. Justice P. B. Mukharji of the Calcutta High Court in Shree Shew Sakti Oil Mills Ltd. Vs. Judge, Second Industrial Tribunal and Others, observed though by way of obiter, that merely staling in the order of transfer that "it is expedient that the said reference should be withdrawn and the said dispute; should be referred to the Industrial Tribunal" was not sufficient compliance with the law. Statement of reasons in the order of transfer was mandatory, not merely directory, going to the root of matter. The Punjab High Court, however held in Prabhudayal Himatsingka and Others Vs. The State of Punjab and Others,) that the requirement of stating reasons was only directory and not mandatory. It may be noticed that these cases were decided before Associated Electrical Industries India (Private) Ltd. Calcutta, which laid down categorically that the power u/s 33B of the Act could be exercised only after

complying with the requirement of recording the reasons for transfer, which reasons should not be extraneous but relevant and germane, justifying the transfer made. Even subsequently Mahajan J. of the Punjab High Court in *Workmen of New Egerton Woollen Mills v. State of Punjab* 1967 II LLJ 686 held that an order of transfer of a reference without recording reasons was only a case of erroneous exercise of jurisdiction and can be cured by consent or acquiescence because there was no inherent lack of jurisdiction: but Mahajan J. does not appear to have noticed *Associated Electrical Industries (India) (Private) Ltd.*

(9) Speaking of the requirement of recording reasons u/s 5A of the Bihar Private Irrigation Works Act. enabling the Collector to deviate from the normal procedure of an order based on enquiry the Supreme Court observed in *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, that even if making such an order was purely administrative and not quasi judicial and the matter to be decided was one entirely within his subjective satisfaction and discretion still the requirement of recording reason was mandatory since the recording of reasons is the only protection afforded to the persons affected thereby to ensure that the reasons which impelled the Collector were those germane to the content and scope of the power vested in him.

(10) In the present case, no reasons at all have been mentioned in the impugned order except to record that an application had been made by the workers' union on 25th October 1969, seeking transfer of this case on the ground of "alleged prejudice and in the interest of justice". No other reason for making the order was even mentioned; it was not even stated that the Government was satisfied with the allegations of prejudice made. The mere fact that one side had applied for transfer would not at all be sufficient, even without going into the truth or otherwise of those allegations. That the order was felt to be in the "interest of justice" could not justify it. That would be too vague; it will hardly be a reason by itself. It is a conclusion to be reached on the basis of reasons which exist and which have to be recorded. On this sole ground the impugned order has to be struck down.

(11) In *Workmen of Punjab Worsted Spinning Mills v. State of Punjab* 1965 II LLJ 218 Harbans Singh J. of the Punjab High Court pointed out that an order passed u/s 33B is a quasi-judicial order and that it is incumbent on the State to give a reasonable opportunity to the affected party to be heard before passing the order of transfer. It was held in that case that an order of transfer made on the allegation by one party alleging prejudice on the part of the presiding officer without giving a reasonable opportunity to the other party violated the principles of natural justice. But on this question, Shri Sikri for the Workers' Union drew my attention to section 24 of the Civil Procedure Code, section 526 of the Criminal Procedure Code and section 127 of the Indian Income Tax Act which provide for notice being given before a transfer is made and contrasted section 33B with those provisions as not requiring such notice to be given. It seems to

me that in a matter like this, it will be pointless to compare section 33B of the Act with other provision in any other Act expressly providing for notice being given as a condition precedent to the exercise of power to transfer proceedings from one officer to another. The question, in essence ,is whether the power exercised in the given context is a quasi-judicial power or not. If it is not a quasi-judicial power it could be sustained if the stated reasons are sufficient in law to support the transfer. But, if it is a quasi-judicial power even the more recording of the reasons, may be sufficient reasons, would not support the order since the power has to be exercised after notice to the affected party.

(12) When the true position is, as stated above, even in respect of administrative orders, where the administrative order has evil consequence (vide *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*,) which was referred to by Hegde J. in *Kraipak*). The requirement in this regard could not be less, in a case of quasi-judicial order, than in the case of an administrative order simpliciter.

(13) Orders u/s 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 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, therefore. it would be better not to ask for his comments would be to take away from such quasi-judicial proceedings much of their solemnity and effectiveness. It seems, Therefore, 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.

(14) The aim of the rule of natural justice has been explained as being "to secure justice" or ""to put it negatively to prevent miscarriage of justice". These rules, Hegde J. further observed. "can operate only in area not covered by any law validly made. In oilier words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet esse judex propria cause*)and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partum*).Very soon thereafter a third rule was envisage and that is that quasi-judicial enquiries must be held in

good faith, without bias and not arbitrarily or unreasonably.

(15) But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the court that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice." His Lordship extended the rules of natural justice to administrative enquiries also in the following terms :-

"If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George Vs. University of Kerala and Others*, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

(16) A feeble attempt was made to urge that the management had taken part in the proceedings before Shri Baweja to whose file the said case was transferred. A copy of the proceedings of Shri Baweja pertaining to this case is Annexure 2 to the return filed by the Workers' Union. It is seen there from that "after issue of notice to the parties on 12th December 1969 (for appearance on 13th December 1969, the date which was already fixed) it was adjourned to 2nd January 1970 on the ground that the Presiding Officer was on leave. On 2nd January 1970 the management wanted time to produce, the remaining witness and it was adjourned for that purpose to 17th January 1970, before which date the present writ petition was filed. It cannot, Therefore, be stated, even as a fact, that there had been any acquiescence in the order of transfer in this case. Besides the requirement of having to state reasons, and those reasons having to be sufficient in law to support the order of transfer, is mandatory and not merely directory.

(17) In any view of the matter, Therefore, the impugned order is liable to be set aside and it is accordingly set aside. The writ petition is accepted.

(18) It is needless to add that the Delhi Administration is free to consider the prayer of Workers' Union for transfer afresh and dispose of the same according

to law.

(19) The petitioner is entitled to the costs of this writ petition from the Delhi Administration. Counsel fee Rs. 150.00.