

(2006) 08 OHC CK 0008
In the Orissa High Court
Case No : OJC No. 12826 of 1998

OTTO India Limited

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33B, 33B(1)

Citation : (2006) 08 OHC CK 0008

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : R.B. Mohapatra, for the Appellant; Addl. Standing Counsel for O. Ps. 1 to 3 and D. Bhuyan, for O.P. No. 4, for the Respondent

Judgement

A.S. Naidu, J.—The order dated 28th April, 1998 (Annexure-4) passed by the Government of Orissa, Labour and Employment Department exercising the powers conferred on it under Sub-section (1) of Section 33-B of the Industrial Disputes Act, 1947 is assailed in this case by the Petitioner-management of M/s. OTTO India Ltd.

2. Opposite party No. 4 was a workman under the Petitioner-management. Certain disputes arose between him and the management concerning his service and conciliation having failed, the Government of Orissa referred the dispute for adjudication to the Labour Court at Sambalpur, vide order dated 12th December, 1996. Subsequently on the basis of a representation filed by opposite party No. 4, the Government of Orissa transferred the aforesaid reference from the Court of the Labour Court, Sambalpur to the Labour Court at Bhubaneswar. The Petitioner-management challenges the said transfer order (Annexure-4) mainly on the ground that the same was in violation of natural justice and equity, and was issued without affording any opportunity to it to put forth its convenience or inconvenience.

3. The averments of the Petitioner-management are strongly repudiated by the workman-opposite party No. 4. According to him he is a poor person and having

no financial capacity to frequently travel to Sambalpur and contest the case, he filed a representation before the Government of Orissa for transfer of the reference. Considering his difficulties, the Government allowed his representation exercising power conferred upon it under Sub-section (1) of Section 33-B of the Industrial Disputes Act. It is submitted by him that Government having passed the order Annexure-4 in consonance with law, the same may not be interfered with by this Court.

4. The moot questions that need consideration of this Court in this Writ application are whether the Government before allowing the representation of opposite party No. 4 workman and transferring the case from the Labour Court, Sambalpur to the Labour Court at Bhubaneswar ought to have given opportunity to the management; and whether there were valid reasons for transferring the reference, as has been done vide Annexure-4. Yet again exercising power to transfer by Government u/s 33-B in a pending reference cannot be treated to be an administrative act. The same can be construed to be exercise of quasi judicial power and, as such, Government without affording opportunity to both parties should not transfer a case on the basis of representation filed by one party, however valid the reasons be. The authority before passing any order must have to be satisfied as to whether valid reasons in fact exist and/or the same have any relevance for a transfer and such examination can only be made after affording opportunity to the other party by issuing notice.

5. The Supreme Court in the case of Management of Nally Bharat Engineering Co. Ltd. v. State of Bihar and Ors. 1990 (60) (SC) FLR 785, held:

What is important in the modern administration is the fairness of procedure with elimination of element of arbitrariness.

Law is well settled that even in absence of a specific provision in an Act, the principles of natural justice and equity being inbuilt should be adhered to while exercising quasi-judicial power. The doctrine of natural justice applicable to administrative bodies has been well explained in a leading English case, i.e. Ridge v. Baldwin 1964 AC 40, and also in the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, It was held in the said decisions that for application of rules of natural justice the classification of functions as "judicial" or "administrative" is not necessary. Lord Reid in Ridge case (supra) observed:

The duty to act judicially may arise from the very nature of the function intended to be performed and it need not be shown to be super added.

Hegde, J. in Kraipak case (supra) observed:

Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. 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 just and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decisions.

In the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, at 434, Krishna Iyer, J. commented:

Natural justice though varying is the soul of the rule as fair play in action. It extends to both the fields of judicial and administrative. The administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Good administration demands fair play in action and this simple desideratum is the fount of natural justice. Fairness is flexible and it is intended for improving the quality of Government by injecting fair play into its wheels.

In the case of Swadeshi Cotton Mills v. Union of India 1981 (42) FLR 225, the Supreme Court held:

Irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied.

Citations to elucidate the legal position can be multiplied since there are fairly abundant case law with regard to natural justice vis-a-vis administrative power. But then, as has been observed in the case of M.S. Nally Bharat Engineering Col. Ltd. (supra), "no man or no man's rights should be affected without an opportunity to ventilate his views. The justice is psychological earning in which men seek acceptance of their view point by having an opportunity before the forum or the authority enjoined or obliged to take a decision affecting their right."

6. In the case at hand, the State has withdrawn a pending reference from the Labour Court, Sambalpur and has transferred the same to the Labour Court at Bhubaneswar on the basis of a representation filed by opposite party No. 4-workman without getting the facts averred verified from the management. The State in all fairness ought to have got it verified by affording opportunity to the management which was a party to the pending reference. Denial of that opportunity was a fatal flaw in the decision of the State. This view of mine is fortified by the observations made by the Supreme Court in the decision reported in 1990 (60) (SC) FLR 785 (supra).

7. The second question for consideration is with regard to the reasons given by the State Government in support of its order Annexure-4. It was stated therein that due to financial hardship of the workman to attend the Labour Court at Sambalpur which was away from the place of his residence, the order was passed. But then the said ground is not supported by any material. The Petitioner-management strongly repudiates the said ground. According to Mr. Mohapatra, learned Counsel for the Petitioner-management, the workman was

residing at Rourkela and Sambalpur was closer to Rourkela than Bhubaneswar. The financial condition of the workman was also disputed. It is submitted by him that due to transfer of the reference to Bhubaneswar, the management would face great difficulty in deputing its officers and witnesses to attend the Court at Bhubaneswar as it does not have an office there, and this fact could not be placed before the State by the management as it was not afforded any opportunity to do so and that aspect was also not visualized by the State.

8. Considering the facts and circumstances of the case and looking at the law governing the field, this Court has no hesitation to quash the impugned order dated 28.4.1998 (Annexure-4) transferring the reference by the State Government from the Labour Court, Bhubaneswar to the Labour Court at Bhubaneswar, and orders accordingly. This Court remands the matter to the State Government for taking a decision afresh after giving opportunity to the Petitioner management. As the dispute is pending for the last about ten years, this Court directs the State Government to dispose of the representation filed before it by the workman-opposite party No. 4 as expeditiously as possible in consonance with law.

The Writ application is disposed of.