

Oil and Natural Gas Corporation Ltd. - Petitioner @HASH Union of India and Others

Court: Uttarakhand High Court

Date of Decision: Aug. 8, 2016

Acts Referred: Constitution of India, 1950 - Article 226

Citation: (2016) 151 FLR 785

Hon'ble Judges: U.C. Dhyani, J.

Bench: Single Bench

Advocate: Mr. Piyush Garg, Advocate, for the Petitioner; Mr. Sanjay Bhatt, Standing Counsel, Present for the Union of India, for the Respondent Nos. 1 and 2

Final Decision: Disposed Off

Judgement

U.C. Dhyani, J.(Oral) - By means of present writ petition, the petitioner seeks the following relief, among others:

To issue a writ or direction in the nature of certiorari for quashing the order No. L-30012/27/2008/IR (M) dated 06.05.2016 passed by

respondent no.2 directing transfer of Case No. 53 of 2008 from Central Government Industrial Tribunal-cum-Labour Court No. 2 to Central

Government Industrial Tribunal cum-Labour Court No.1.

2. On account of transfer of Case No. 53 of 2008 from Central Government Industrial Tribunal cum-Labour Court No. 2 to Central

Government Industrial Tribunal cum-Labour Court No. 1, the petitioner has insisted the intervention of this Court through this Writ Petition. It

is the submission of learned counsel for the petitioner that the Case No. 53 of 2008, which was made over to Central Government Industrial

Tribunal cum-Labour Court No. 1, on the representation of respondent No. 3, is an utter violation of principal of natural justice and also that no

reasons have been assigned as to why the case is being transferred to respondent No.2 to respondent No. 1. It is the submission of learned

counsel for the parties that the case no. 53 of 2008 has now been listed for final hearing tomorrow, i.e., on 09.08.2016.

3. Learned counsel for the petitioner placed reliance on paras 7 and 25 of the judgment rendered by Hon'ble Apex Court in Management of M/s

M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar and others, reported in 1990 Supreme (SC) 69, in support of his contention.

The said paragraphs are being quoted herein below for ready reference:

7. The Section 33-B provides power to the appropriate Government to withdraw any proceedings pending before a labour court or Tribunal and

transfer it for disposal to another labour court or Tribunal. It could be exercised suo motu or on representations of the parties. The expression

"may" in sub-section (1) of Section 33-B only makes it discretionary in so far as the appropriate Government taking a decision as to whether the

power conferred thereunder has to be exercised or not. But when once a decision is taken to transfer a pending case then the requirement of giving

reasons becomes mandatory. The authority is under legal obligation to record reasons in support of its decision. Reasons would be life of the

decision. Failure to give reasons or giving reasons not germane would be fatal to the decision.

25. The management need not establish particular prejudice for want of such opportunity. In S.L. Kapoor v. Jagrnohan, (1981) 1 SCR 746 at

765 Chinnappa Reddy, J., after referring to the observation of Donaldson, J., in Altco Ltd. v. Sutherland, (1971) 2 Lloyd's Rep. 515 said that

the 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 emphasised 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.

4. Para Nos. 2 and 3 of the judgment rendered by Hon"ble Apex Court in Associated Electrical Industries (India) Private Ltd. Calcutta v.

Its Workmen, reported in 1960 Supreme (SC) 57, which are also relevant in this context are being quoted herein below:

2. Mr. Sanyal, who appears for the appellant, has drawn our attention to the fact that special leave has been limited to the question of jurisdiction,

and it is the question of jurisdiction which he has raised for our decision. This question arises in this way. The present dispute was first referred for

adjudication to the fifth Industrial tribunal on September, 21, 1956. Thereafter the reference in question was withdrawn from the Fifth Industrial

Tribunal and the dispute was referred to the Second Industrial Tribunal on March 9, 1957. That was not the end of this matter. It appears that on

June 10, 1957, the dispute was withdrawn from the Second Industrial Tribunal and was referred to the Fourth Industrial Tribunal which ultimately

dealt with the dispute.

3. The orders of transfer have been made under Section 33B of the Industrial Disputes Act, 1947. This section has been enacted in 1956 and it

provides inter alia that the appropriate Government may by order in writing and for reasons to be stated therein withdraw any proceedings under

this Act, pending before an industrial tribunal and transfer it for disposal to another industrial tribunal. The argument is that though the appropriate

Government was competent to transfer the proceedings it could exercise its power only after complying with the requirements of Section 33B, and

one of the requirements of the said section is that before making the order of transfer the appropriate Government must record reasons for the

same. When we turn to the orders by which the reference was withdrawn from one industrial tribunal and transferred to another, we find that there

is no reason mentioned in any of them. All that the orders purport to say is that it is expedient to withdraw the reference from one tribunal and

transfer it to another. In our opinion, the said bare statement made in the orders by which the proceedings are withdrawn from one tribunal and

transferred to another does not amount to a statement of reasons as required by Section 33B(1). It is quite clear that the requirement about the

statement of the reason must be complied with both in substance and in letter. To say that it is expedient to withdraw a case from one tribunal and

transfer it to another repeatedly on three occasions in respect of the same proceedings is not to give any reason as required by the section.

Normally, when an industrial dispute is referred to an industrial Court or tribunal, it should be tried before the said Court or tribunal, and so the

power of transfer can be exercised only for sufficient reasons. In the circumstances of this case we are not prepared to hold that any reasons have

been stated as required by the section, and so the orders of transfer cannot be held to be justified under Section 33B(1). In view of this infirmity in

the orders it is conceded that the decision of this Court in *Bengal Chemical and Pharmaceutical Works Ltd. v. Their Employees*, would not assist

the respondents.

5. Learned counsel for the appearing respondents/Union of India wanted time from this Court to seek instructions in the matter, but the Court has

not given him such time in view of the fact that 09.08.2016 has been fixed for final disposal of the Case No. 53 of 2008.

6. A perusal of Annexure-5 to this writ petition is also important in the context of this case. Relevant portion of which says as follows:

Now, therefore, in exercise of the powers conferred by Section 7A read with sub-section (1) of Section 33-B of the I.D. Act, 1947 (14 of 1947,

the Central Government hereby withdraws the proceedings in relation to some of the old complaint cases pending before CGIT-cum-Labour

Court No.2, New Delhi as per schedule hereto annexed, and transfer the same to CGIT-cum-Labour Court no.1, New Delhi with the direction

that the said Tribunal-cum-Labour Court shall proceed with the proceedings from the stage at which they are transferred to it and dispose of the

same according to law.

7. Since the Case No. 53 of 2008 has been transferred from Central Government Industrial Tribunal-Â½cum-Labour Court No. 2 to Central

Government Industrial Tribunal-cum-Labour Court No. 1, therefore, it was a duty incumbent upon respondent no.2 to have given an opportunity

of hearing to the petitioner also in view of the aforesaid decisions of Hon"ble Apex Court. It is made clear that the aforesaid decisions will not be

applicable to the present case, if respondent no.2 has exercised power of transfer suo motu. The reasons have already been assigned in Annexure-

5 that the old cases are being transferred to other courts.

8. It is, accordingly, provided that if the transfer has been done on the representation of respondent no. 3, then the order of transfer shall be kept in

abeyance, leaving open to the respondent no.2 to pass a fresh order in accordance with law, only after hearing the petitioner by a reasoned order.

Needless to say that no final order shall be passed by CGLT-cum-Labour Court No. 1, New Delhi in Case Crime No. 160 of 2016 (Old No. 53

of 2008) Anjana Devi Mittal v. ONGC until the directions made herein above are complied with by the respondent no.1 and a fresh reasoned

order is passed after grant of opportunity of hearing to the petitioner.

9. This disposes of the writ petition.

10. Let a copy of this Order be supplied to the learned counsel for the petitioner within 48 hours on payment of usual charges.