(1990) 60 FLR 681 : (1990) 1 LLJ 44

Calcutta High Court

Case No: F.M.A.T. No. 1256 of 1986

Eastern Coalfields Ltd. and Others		APPELLANT
	Vs	
Khan Mazdoor Karmachari Union and Others		RESPONDENT

Date of Decision: July 19, 1989

Citation: (1990) 60 FLR 681 : (1990) 1 LLJ 44

Hon'ble Judges: Sudhansu Sekhar Ganguly, J; Manash Nath Roy, J

Bench: Division Bench

Advocate: T.K. Basu, S.K. Garai and S. Sil, for the Appellant;Asoke Ganguly, for the Respondent

Final Decision: Allowed

Judgement

Roy, J.
This appeal by the Eastern Coalfields Ltd. and Ors. is directed against the judgment and order dated April 17, 1986 made by a learned Single Judge in C.O.No. 2266(W) of 1984.

2. The writ petitioners-respondents challenged two orders of transfers which have been disclosed from paragraph 40 onwards and on a reference to those transfer orders, it will appear, without any doubt, that exigencies of circumstances as involved, for such transfer, have not been mentioned disclosed.

3. The transfer orders were admittedly made in or about 1982 and this Court was moved on February 28, 1984. On that basis, Mr. Garai wanted to submit that because of such delay, the order, as made, should not have been passed.

4. On a reference to the order as impeached, it appeared that the learned Judge has recorded that the same was made on the suggestions of the parties. This fact, of course, was denied before us by Mr.Basu, who was leading Mr. Garai. On a consideration of the

intrinsic evidence as available from the applications filed in this proceeding, we are not satisfied that the order in question was obtained on suggestion of the parties.

5. Mr. Garai was fair enough to take us through paragraph 9 at page 8 of the writ petition, which is a model Rule and Rule 16 of the same, deals with transfer and the same is to the following effect:-

"16. Transfers:- Workmen may be transferred due to exigencies of work from one department to another or from one station to another or from one coal mine to another under the same ownership provided that the pay, grade, continuity and other conditions of service of the workmen are not adversely affected by such transfer and provided also that if a workman is transferred from one job to another, that job should be of similar nature and such as he is capable of doing and provided further that (i) reasonable notice is given of such transfers and (ii) reasonable joining time is allowed in case of transfers from one station to another. The workman concerned shall be paid the actual transport charges and 50 per cent, thereof to meet incidental charges."

6. On a reference to the said Rule, it appears to us that though it permits transfer of a workman only on the ground of exigencies of work, it does not require that the ground must also be mentioned in the order of transfer itself.

7. Mr. Basu, of course, after the submissions made by Mr. Garai, submitted that the real challenge against the orders of transfers was that under the erstwhile set-up, transfer of service was not a condition of service, but under the nationalised set-up i.e., the present set-up, although transfer is known, but in practice no one from the concerned Tilabony Colliery, where the respondent employees were employed, were ever transferred and such being the real grievance and there was practically no serious challenge regarding the non-mentioning of the exigencies of circumstances, such ground was not required to be disclosed in the impugned transfer orders. He of course claimed that transfer orders were really required to be made (1) in exigencies of circumstances, (2) administrative reasons and (3) public interest and in case of no actual and real challenge on those grounds or any one of them, reasons were not required to be disclosed. In support of such submissions, reference was made by Mr. Basu to the Bench decision of this Court in the case of Mrs. Mukul Mitra v. Union of India and Ors. 1982(2) CHN 157, in which case, the appellant was at the material time a Grade IV Superintendent in the Regional Passport and Emigration Office, Calcutta. In November, 1980 she was informed by the Regional Passport Officer that she was transferred from Calcutta to Lucknow. Thereupon the appellant made a representation to the Joint Secretary and Chief Passport Officer, Government of India, praying that the order be re-called and explaining how her family will be disrupted if she was to leave Calcutta. She also applied for leave on the ground that she had got cardiac attack and had been under investigation and treatment. At the instance of the Ministry of External Affairs, she was examined by a medical board consisting of some eminent doctors. The doctors reported that she was suffering from various ailments and were of opinion that the emergency arising out of her disease may

risk her life and that such treatment was not available in Lucknow. As this order of transfer was not recalled, she applied for and obtained a Rule. During the trial, she again appeared before a medical board as directed by the learned trial Judge and this time also the Board submitted a report similar to the one submitted by the medical board earlier constituted. On behalf of the respondents it was stated in the affidavit-in-opposition that the appellant was to be transferred to Lucknow in public interest and this was done on the basis of the report of the Staff Study Team for reduction of the number of posts in Calcutta. The learned trial Judge accepted the medical report and believed that the appellant was suffering from various ailments. But the Rule was discharged in the view that the High Court should not interfere with an order of transfer which has been made for administrative reasons, public interest or due to exigencies of service and in appeal, it has been held that the order of transfer is dated November 24, 1980, i.e., before the number of posts in the Calcutta Office was reduced by virtue of the acceptance by the Union of India on December 1, 1980, of the Staff Inspection Report. The ground as alleged in the affidavit-in-opposition could not therefore be the ground of transfer of the appellant from Calcutta to Lucknow, apart from holding that the respondents have not been able to make out any ground justifying the order of transfer. It is true that the appellant is liable to be transferred anywhere in India under the conditions of her service, but that is no ground to transfer the appellant without any reasons. A person cannot be transferred from one place to another without any reason whatsoever. There must be some ground, be it in the interest of public service or for administrative reasons or any other reason. But if the order of transfer does not disclose any reason, either in the order itself or in the affidavit-in-opposition, such order cannot be sustained. The instant case is worse for the ground that has been alleged in the affidavit- in-opposition in support of the order of transfer has been found to be not true. The said determination was made on consideration and application of the principles as laid down in the case of Shanti Kumari Vs. Regional Deputy Director, Health Services, Patna Division, Patna and Others, .

8. In addition to the above and in support of the submissions on delay, as put forward by Mr. Garai, Mr. Basu indicated further that since the transfer orders were issued between 1st and 10th of December, 1982 and this Court was moved against those orders in 1984, so the writ petition should have been dismissed, if not on other grounds, atleast on the ground of delay. It was further claimed by him that the allegations of mala fide have not been proved satisfactorily or at all and in the facts of the case, it will appear clear that there has been no irregularity and/or incongruity with the provisions of Clause 16 of the Model Rules as quoted earlier, in the matter of transferring the Respondent employees and when such transfers to their place of postings to the collieries in which they were posted, were really for exigencies of service of the Appellants. He further claimed that in effecting the transfers, all the essential formalities for the concerned transfers were duly complied with by the Appellants and according to him, that under the said Clause 16, reasonable joining time is required to be given in case of transfers from one station to another under the same ownership and since in this case, the employee Respondents Nos. 2-7 were not transferred outside, but such transfers were under the same

ownership, the question of affording them such time did not and could not arise. Mr. Basu of course indicated that employee Respondent No. 8 has been transferred in accordance to the provisions of the said Clause 16, in a job of similar nature, without any adverse effect on his pay or contrary to his terms of employment or conditions of service.

9. Mr. Basu also took us through the records and more particularly through letter No. MGR/TB/82 dated 18th November, 1982, addressed to the Officer-in-Charge, Andal Police Station, Andal by the Manager, Tilabony Colliery, which showed and established great and indiscipline conduct of the employees, which, in our view cannot be accepted to be bona fide. Mr. Basu stated that the Respondent employees were also involved in such in disciplined conduct or were supporting the same and thus, to bring about peace and normalcy or normal workings in the Collieries, their transfers as made, were found and determined by the Administration to be necessary and needed and that too in exigencies of circumstances.

10. Above being the position, Mr. Basu reiterated that even though exigencies of circumstances were not pleaded/indicated in the notices, such exigencies can be, in terms of the Bench determinations of this Court, as indicated earlier, established through the affidavit as filed and also on production of the records. He contended further that disclosure of exigencies of circumstances in terms of the Clause 16 as mentioned earlier, were directory and not mandatory.

11. In his reply to the above submissions of Mr. Basu, Mr. Ganguli appearing for the Respondent employees, claimed and contended that in view of the decision of the Hon"ble Supreme Court of India in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , which has been made on consideration of the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and where it has been observed that, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out, neither the submissions of Mr. Basu nor the Bench determinations of this Court would help the Appellants. Mr. Ganguly also referred to the determinations in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , where it has been observed amongst others, that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do, public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself, apart from indicating further that public authorities cannot play fast and loose with the powers vested in them and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly

what authority is making the order. Mr. Ganguly further stated that prior to Nationalisation, transfer was never a condition of service of the employees concerned and even after the Nationalisation, no one from Tilabony Colliery, where the respondent employees were employed, has been transferred.

12. In view of the Supreme Court decisions as mentioned earlier, Mr. Ganguly claimed that the Appellants being either a State or an Authority or Instrumentality of the same, could not act otherwise than disclosing the exigencies of circumstances in the order of transfers and in any event, the existence of the exigencies of service could not be established on the basis of the statements as made now on affidavits or on production of records at this stage and the Bench determinations of this Court would not really apply in the facts of this case. Mr. Basu also claimed the decisions cited by Mr. Ganguly to be inapplicable in this case.

13. We have already seen that Clause 16 of the Model Rules does not require mention of the reasons of the transfer in the order of the transfer itself and we do not think that non-mention of the reason in the orders of transfer in this case has made the orders bad. The decisions cited by Mr. Ganguly refer to public orders addressed by public or statutory authorities to the public at large and meant to have public effect. The orders in the present case were issued by a statutory body to its own servants for the proper running of a public concern. It cannot be said, therefore, that the orders of transfer involved in this case were public orders meant for the public. The decisions cited by Mr. Ganguly cannot therefore, have any application to the facts and circumstances of this case. We are of the view on the other hand, that applying the law as laid down in Mrs. Mukul Mitra''s case (supra), the validity of the impugned orders in this case may be upheld fully.

14. We thus do not agree with the order as proposed by the learned Judge, in so far as the same relates to the setting aside of the impugned order of transfers and as such, we cannot also agree with the other portions of the order as proposed by him. On the basis of the records as produced, it appeared to us that the conduct of the employees represented by the respondent Union, was highly condemnable and we condemn such act or action.

15. It is an admitted fact that the respondent employees have already received Rs. 2,500.000P each, under orders made by this Court and perhaps they would be entitled to some more or extra payment, if they continue to work in terms of the order of transfers. We expressed our intention that the respondent employees be paid a further sum of Rs. 2,500.00P each, in addition to that they have received earlier and to that, the learned Advocate for the respondent employees on instructions, agreed.

16. Thus, we allow this appeal. We further direct that in modification of the other part or portion of the order, the respondent employees, in full and final settlement of their claims, will get the additional payments as indicated, in addition to what they have received already. There will be no order as to costs.

As prayed for, liberty is given to the respondents employees to join the transferred posts by four weeks form date.

Ganguli, J.

17. I agree.