

Supreme Court of India

Associated Electrical ... vs Its Workmen on 1 March, 1960

Equivalent citations: AIR 1967 SC 284, (1961) IILLJ 122 SC

Author: P Gajendragadkar

Bench: P Gajendragadkar, K Wanchoo

JUDGMENT P.B. Gajendragadkar, J.

1. This appeal by special leave arises from an industrial dispute between the appellant, Associated Electrical Industries (India) Private Ltd., and the respondents, who are its workmen. The dispute was in regard to a claim for bonus made by the respondents for the year 1953-54. The respondents claimed that they should be awarded bonus for the relevant year in the sum equivalent to four months' basic wages. It appears that the appellant had already paid two months' basic wages as bonus to the respondents. As a result of the award the appellant has been directed to pay an additional bonus in the sum of 15 days' basic wages. It is this award which is the subject matter of the present appeal.

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 that 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 Thereafter the reference in question was withdrawn from the Fifth Industrial Tribunal and the dispute was referred to the Second Industrial Tribunal on March 9, 1957.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 It appears that on June 10, 1957, the dispute was withdrawn from the Second Industrial Tribunal and was referred to the Fourth Industrial Tribunal which ultimately dealt with the dispute.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 When we turn to the orders by which the reference was withdrawn from one industrial tribunal and transferred to another, we find that there is no reason mentioned in any of them.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.

4. There is another objection to the validity of the present proceedings before the Fourth Industrial Tribunal. Mr. Sanyal has fairly conceded that since the definition of the word "tribunal" prescribed by Section 2(r) of the Act was amended so as to include an industrial tribunal constituted before March 10, 1957, it may be assumed that the orders passed by the Government subsequent to March 10, 1957, could attract the provisions of Section 33B; but he argued that when the first order was passed by which the proceedings pending before the Fifth Industrial Tribunal were withdrawn on March 9, 1957, the position would be different. On that date the definition of the word "tribunal" had not been amended, and so it would be an additional infirmity in the present proceedings before the Fourth Industrial Tribunal. The effect of the amendment in the definition of the tribunal considered in the light of the provisions of Section 33B has been discussed by this Court in the case of the *Bengal Chemical and Pharmaceutical Works Ltd.*, , where it has been observed that in respect of proceedings pending in a tribunal constituted before March 10, 1957, the Government has the power to transfer them from that date (10-3-1957) to any other tribunal. The impugned transfer in the present case took place on March 9, 1957, and so would not be protected by the definition in question. In that case the withdrawal of the proceedings and their transfer would become invalid as has been held by this Court in *State of Bihar v. D.N. Ganguly*, .

5. In the result the objection raised by the appellant as to the validity of the present proceedings must be affirmed and the award passed by the Fourth Industrial Tribunal must be set aside. As a result of this order the dispute which was originally referred to the Fifth Industrial Tribunal by the notification issued on September 21, 1956, would be revived and the present matter would be sent to the said tribunal for disposal in accordance with law. There will be no order as to cost.