CIVIL MISCELLANEOUS

Before R. S. Narula, J.

THE MANAGEMENT OF TECHNOLOGICAL INSTITUTE OF TEXTILES, BHIWANI,—*Petitioner*

versus

THE LABOUR COURT, JULLUNDUR AND OTHERS,—*Respondents*

Civil Writ No. 608 of 1965.

January 14, 1969

Industrial Disputes Act (XIV of 1947)—Section 33-B—Expression "for reasons to be stated therein"—Construction and scope of—State Government transferring proceedings of reference of an industrial dispute from one Labour Court to another Labour Court—Statement of reasons for such transfer—Whether mandatory—Use of pharase "in the interest of justice" in the order of transfer—Whether satisfies the requirements of section 33-B—Material justifying transfer present before State Government but not stated in the order of transfer—Such order—Whether bad in law—Order of transfer of a reference from one Labour Court to another found invalid—Adjudication by the transferee Court on the reference—Whether without jurisdiction.

Held, that the object of making provisions like section 33-B of Industrial Disputes Act, 1947, requiring the statements of reasons to be incorporated in an order to be passed by the Government is that when such an order is brought before the High Court, or is questioned in any other appropriate proceedings, it should be apparent from the face of the order that the reasons in support of the order of transfer were germane to the content and scope of the power vested in the appropriate Government under section 33-B(1) of the Act. The power vested in the State Government to withdraw a pending case from the file of a Labour Court or a tribunal is indeed and extraordinary power and is a serious departure from the normal procedure and right of litigating parties to have the adjudication of their dispute completed by the Court or tribunal which commenced the trial and in whom the power to adjudicate upon the matter has been once lawfully conferred. The section requires the appropriate Government to pass a speaking order of transfer. The mere use of euphuistic, stereotyped and High Sounding phrases like "interest of administration" "interest of expediency" or "interest of justice" does not satisfy the mandatory requirement of section 33-B(1) of the Act as one cannot, after reading such expressions, alone, become any wiser about the factual reasons which impelled the Government to transfer a particular case. (Para 12)

Held, although the State Government may have before it material which is not only relevant, but is sufficient to justify the transfer of proceedings from one Labour Court to another, yet it is not the presence of the material that is of relevance, but it is the material coupled with the recording of reasons as to why the State Government considers the passing of the order to be necessary that is required by the statute to be contained in the order itself. The Act requires an order of transfer to be a self-contained one. It does not permit an order of transfer being passed for good reasons by withholding the same or keeping them with the Government to be disclosed only if and when the order is questioned or impugned in a Court. The requirement is not confined to the reasons being really present, but is of the reasons being stated in the order of transfer itself. That is the only way to satisfy the requirement of the statutory provision both in letter and in spirit. (Para 13)

Held, that once it is held that an order of transfer passed by the State Government transferring proceedings of reference from one Labour Court to another is invalid and ineffective, the transferee Labour Court is not lawfully vested with jurisdiction to adjudicate upon the industrial dispute and is *coram non judice* in respect of matter originally referred to the first Labour Court. Whole of the award given by the transferee Labour Court is without jurisdiction.

Petition under Articles 226 *and* 227 *of the Constitution of India, praying that a writ in the nature of* certiorari, *or any other appropriate writ, order or direction be issued quashing the award of the Labour Court, Jullundur, dated January* 2, 1965, *directing reinstatement of Hanuman Prasad Seni, respondent No.* 3 *in the service of the petitioner.*

GANGA PARSHAD JAIN, H. L. SIBAL, SENIOR ADVOCATE, G. C. GARG AND S. P. JAIN, ADVOCATES, for the Petitioner.

ANAND SARUP, SENIOR ADVOCATE AND U. S. SAHNI, ADVOCATE, for the Respondents.

JUDGMENT

NARULA, J.—The effect, construction and true scope of the expression—"for reasons to be stated therein"—occurring in sub-section (1) of section 33B of the Industrial Disputes Act (14 of 1947) (as subsequently amended), hereinafter referred to as the Act, calls for decision in this petition under Articles 226 and 227 of the Constitution filed by the management of the Technological Institute of Textiles, Bhiwani, for quashing the award of the Labour Court, Jullundur, dated January 2, 1965 (Annexure 'N'),

directing the reinstatement of Hanuman Prasad Seni (hereinafter called the employee), respondent No. 3, in the service of the petitioner, and further directing payment of back wages to him.

(2) The employee joined the service of the petitioner on June, 6, 1957. In the appointment letter issued to the employee (Exhibit M. 2 before the Labour Court), it was specifically stated that his employment was subject to notice of one calendar month from either side. Under rule 13(1) of the Certified standing orders in respect of the petitioner Institute, it is laid down that the employment of any permanent workman, whether time-rated or piece-rated, may be terminated by thirteen days' notice or by payment of thirteen days' wages in lieu thereof by either side. The employee contracted tuberculosis and therefore, remained on leave on medical grounds from June 28 to October 22, 1960. After working for barely one day on resumption of his duties on October 23 in that year, he again proceeded on thirteen days' leave. He finally resumed work on November 7, 1960. On May 1, 1961, he again applied for leave from the 19th of that month to the 30th of June, 1961, on grounds of health. His application was rejected. Soon thereafter, the petitioner served the employee with a notice, dated May 23, 1961 (Annexure 'B'), wherein it was stated that having been a patient of tuberculosis, the employee's efficiency of work had gone down, and that since the employee was not feeling well in those days. It was not in the interest of his other co-workers that he should continue in service. In the said communication, the employee was, therefore, informed that his services would stand terminated after the expiry of one month from the date of receipt of the letter under standing-order 13(1) applicable to the workmen of the petitioner Institute. After the termination of his services, a request was made on his behalf by respondent No. 2 Union on June 24, 1961 (Annexure 'C') to reconsider the matter, and to allow the employee to continue in service. It was specifically pleaded on behalf of the employee that the management of the petitioner Institute could not state that there were any symptoms of any disease in the employee "in the absence of any medical examination." In the petitioner's reply, dated July 26, 1961 (Annexure 'D') it was stated that the services of the employee had been terminated as he was serving some symptoms of tuberculosis and his efficiency of work had gone down on account of his bad health. It was, however, stated that if the employee was willing to submit to a medical examination, he should approach the

Medical Officer incharge of the Civil Hospital within a week of the receipt of the letter for medical examination at petitioner's expense. It was added by the petitioner in the said letter that in case the employee was found to be fit for duty in the mills, the petitioner would be willing to reconsider the matter, but that if the employee did not submit to medical examination within a week, it would be presumed that he had no intention of getting himself medically examined. The employee admittedly did not submit to medical examination. In letter, dated August 7, 1961 (Annexure 'E'), the second respondent Union stated that the employee had no symptoms of tuberculosis, and as such the question of his undergoing any medical examination did not arise. The petitioner wrote back on August 9, 1961 (Annexure 'F') to respondent No. 2, that the second respondent was now backing out of the suggestion to have the employee medically examined, and that, therefore, the termination of the employee's services under standing order 13(1) of the Institute was legal and justified. After some further correspondence between the petitioner on the one hand and respondent No. 2 on the other, and after an abortive attempt of the Conciliation Officer to have the matter settled, the following dispute between the petitioner and respondents No. 2 and 3 was referred by the Governor of Punjab to the Labour Court, Rohtak, for adjudication :—

> "Whether the action of the management in terminating the services of Shri Hanuman Parshad Seni is justified and in order? If not, to what relief the workman is entitled?

A copy of the notification issued under section 10(1) (c) of the Act in this respect and published in the Punjab Government Gazette, dated November 21, 1961, is Annexure 'H' to the writ petition.

(3) When the Labour Court, Rohtak, had recorded the evidence of both parties, and had fixed the case for hearing of arguments, the staff Union made an application to the Punjab Government for transferring the case from that Labour Court. After calling for the comments of the Presiding officer of the Labour Court, Rohtak; and perusing and considering the same; but without issuing any notice of the application for transfer to the petitioner Institute, the Punjab Government directed the transfer of the case from Labour Court, Rohtak to the Labour Court, Jullundur, by

notificaion, dated August 24, 1962, wherein de novo proceedings were directed to be held by the transferee Court in the following words:—

> "Whereas an industrial dispute between the workmen and the management of Messrs Technological Institute of Textiles, Bhiwani, was referred to the Labour Court, Rohtak,.....for adjudication;
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> And whereas a petition of transfer of the aforesaid reference was received from the workers Union on which comments of the Labour Court, Rohtak, were also invited;
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> And whereas on a careful consideration of the comments of the said Labour Court, the Governor of Punjab is of the opinion that in the interest of justice the proceedings in the aforesaid reference, pending before the Labour Court, be withdrawn and transferred to the Labour Court, Jullundur;
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> Now, therefore, in exercise of the powers conferred by sub-section (1) of section 33-B of the Industrial Disputes Act, 1947 (Act 14 of 1947), the Governor of Punjab is pleased to withdraw the proceedings in respect of the aforesaid industrial dispute from the Labour Court, Rohtak, and transfer the same to the Labour Court, Jullundur, which will proceed with the reference de novo."

When in pursuance of the above quoted order of transfer of proceedings the parties appeared before respondent No. 1, an additional written statement, dated October 29, 1962, was filed by the petitioner challenging the validity and legality of the order of transfer. From the pleadings of the parties, respondent No. 1 originally framed the following two issues:—

> "(1) Whether the order of the Government in transferring this case to this Court is invalid and opposed to law for any of the reasons stated in paragraph 6 of the written statement? If so, what is its effect?
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> (2) Whether the action of the management in terminating the services of Shri Hanuman Parshad Seni is justified

and in order? If not, to what relief the workman is entitled?

Subsequently the petitioner made an application, dated November 19, 1962, alleging that the dispute in question was not an industrial dispute. This led to the framing of an additional issue which was issue No. (3) and was in the following terms:—

"Whether the dispute raised is not an industrial dispute?"

By his impugned award, dated January 2, 1965 (Annexure 'N') Shri Manohar Singh, Presiding Officer, Labour Court, Jullundur, decided all the three issues against the petitioner and ordered the petitioner to reinstate the employee on the job he was holding when his services were terminated, and also awarded full back wages to him from the date of the termination of his services, i. e., from June 24, 1961, to the date on which he might be reinstated by the petitioner Institute. The employee was further allowed the benefit of continued service. The award, dated January 2, 1965 was published in the official gazette, dated January 15, 1965.

(4) This writ petition which was filed on March 5, 1965, for the issuance of a writ in the nature of certiorari to quash the impugned award, was admitted by the Motion Bench (S. B. Capoor and I. D. Dua, JJ.) on March 8, 1965. The petition has been contested by respondents Nos. 2 and 3 who have filed a joint return to the rule issued in the case. Though the findings of the Labour Court on all the three issues had been impugned and assailed in the writ petition, the attack on the findings on issue No. 3 was expressly abandoned by Mr. Ganga Parshad Jain, the learned counsel for the petitioner at the hearing of this writ petition

(5) The impugned order of transfer of the proceedings from the Labour Court, Rohtak, to respondent No. 1 (the Labour Court, Jullundur), was admittedly passed under section 33B(1) of the Act. The said provision reads as follows:—

"The appropriate Government may by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal, or National Tribunal and 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 under section 33 or section 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court."

The only ground on which the validity of the order of transfer has been questioned before me is that the State Government (which is the appropriate Government in this case) did not, in its order in writing state the reasons for withdrawing the proceedings from the Labour Court, Rohtak. The view enunciated by a learned Single Judge of this Court in *Aeron Steel Rolling Mills* v. *State of Punjab and others* (1), and upheld by a Letters Patent Bench of this Court in *M/s. Aeron Steel Rolling Mills, Jullundur* v. *State of Punjab and another* (2), to the effect that the provision requiring the Government to state the reasons on which an order of transfer is based does not relate to the essence of the thing to be performed and compliance with its terms is a matter of convenience rather than of substance, is no longer good law in view of the authoritative pronouncement of their Lordships of the Supreme Court in *Associated Electrical Industries (India) (Private) Ltd., Calcutta* v. *Its Workmen* (3). In the abovesaid judgment of the Supreme Court, it has been unequivocally held that the requirement of supporting the order of transfer under section 33B(1) of the Act by reasons is not merely directory but mandatory. Gajendragadkar, J., who prepared the judgment of the Court observed and held:—

"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 expendient 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

(1) (1959) 1 L.L.J. 73=A.I.R. 1959 Pb. 386.
(2) A.I.R. 1960 Pb. 55.
(3) (1961) II L.L.J. 122=A.I.R. 1967 S.C. 284.

proceedings are withdrawn from one tribunal and transferred to another does not amount to a statement of reasons as required by section 33 B(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 reasons 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)."

(6) *In Collector of Monghyr and others, etc.* v. *Keshav Prasad Goenka and others, etc.* (4) the question whether section 5-A of the the Bihar Private Irrigation Works Act, 1922, as amended by Bihar Act 10 of 1939, requiring that reasons should be recorded by the Collector was mandatory or not was answered by the Supreme Court in the affirmative. It was observed that section 5-A of the Bihar Act constituted a departure from the normal procedure and that though the question whether the circumstances recited in section 5-A(1) existed or not is entirely for the Collector to decide in his discretion, it is the recording of the reasons which is the only protection afforded to the persons affected to ensure that reasons which impelled the Collector "were those germane to the content and scope of the power vested in him." Their Lordships of the Supreme Court observed that it could not be disputed that if the reason recorded by the Collector was to be totally irrelevant as a justification for considering that an emergency had arisen or for dispensing with notice and enquiry under sections 3 to 5 of the Bihar Act, the exercise of the power under section 5-A would be void as not justified by the Statute. Ayyangar, J., who prepared the judgment of the Court, held in this connection, *inter alia*, as below:—

"In those circumstances the section requires what might be termed a 'speaking order' before persons are saddled with

(4) A.I.R. 1962 S.C. 1664.

liability, then the object with which the provision is inserted will be wholly defeated and the protection afforded nullified, if it were held that the requirement is anything but mandatory.

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To suggest that by a recital of the nature of the repairs required to be carried out and employed the language of section 5-A(1) the officer has recorded his reasons for invoking section 5-A is to confuse the recording of the conclusions of the officer with the reason for which he arrived at that conclusion. * * * * * *

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It is not, therefore, the presence of the material that is of sole relevance or the only criterion but the Collector's opinion as to the urgency coupled with his recording his reasons why he considers that the procedure under sections 3 to 5 should not be gone through."

(7) A somewhat similar question as the one that faces in the instant case, arose before Harbans Singh, J., in *Workmen of Punjab Worsted Spinning Mills, Chheharta* v. *State of Punjab and others,* (5) In that case an application had been made by the employer for the transfer of proceedings under section 33-B of the Act from one industrial tribunal to another. The application was supported by an affidavit in which loss of confidence reposed in the Presiding Officer of the industrial tribunal was urged. No notice of the application was given to the union representing the workmen. The award of the tribunal was then impugned by the union of the workmen in a petition under Art. 226 of the Constitution on the ground that the order of transfer which merely stated that the case was being transferred "for administrative reasons and in the public interest" was invalid.. The learned Judge held that such requirement as the one contained in section 33B(1) of the Act must be complied with both in substance and in letter. It was then observed:—

"There was a dispute between the employer on one side and the workmen on the other and if the State Government was going to act on the allegations made against the impartiality of the industrial tribunal for ordering transfer of

(5) (1965) II L.L.J. 218.

proceedings at the instance of the employer, it was incumbent on it to give a reasonable opportunity to the other party to be heard before passing the impugned order which had serious effects on their rights."

The order of transfer which was impugned by the workmen of Punjab Worsted Spinning Mills, Chheharta, was set aside by the learned Judge on both the grounds, viz. (i) that it was not supported by reasons required by the statutory provision to be stated therein and (ii) it had been passed in violation of the principles of natural justice, inasmuch as the transfer had been ordered on the application of one of the parties without affording the other party an opportunity of refuting the allegations made by the party praying for transfer. Letters Patent Appeal No. 60 of 1963 preferred by the management of the Punjab Worsted Spinning Mills, Chheharata, against the judgment of Harbans Singh, J., was dismissed by a Division Bench of this Court (Dulat and Grover, JJ.) on February, 19, 1965. The learned Judges constituting the Division Bench repelled the argument of the counsel for the appellant to the effect that the order passed in that case was different from the one passed in the *case of Associated Electrical Industries* (supra.). (3) inasmuch as the appropriate Government had in case before the Supreme Court merely stated that it was expedient to transfer the case, which was merely stating a 'conclusion', the State Government had in the Chheharata case mentioned a reason, however brief the reason be, i.e., public interest which according to the counsel for the employer was not a conclusion but the statement of reason. Dulat, J., held that the distinction sought to be made was somewhat subtle, but was not real. The learned Judge observed:—

"The Supreme Court, when holding that the statement, that 'it was expedient to transfer the case from one 'Tribunal to another, was not enough for the purposes of section 33B of the Act, 'did not say that the appropriate Government had merely stated its 'conclusion' but emphasised on the other hand its insufficiency, and, therefore, observed that the statement of reasons must be substantial, and also said that sufficient reasons should be stated, the obvious meaning being that the statement of reasons ought not to be so vague as to leave everything to conjecture. It is in one sense as legitimate to say that an assertion, that public interest demands the transfer of a case, is merely the statement of a conclusion, as it is to say that expediency

requires that the case should be transferred. What is really common in both the cases is that a person reading the order is wholly unable to make out what led the appropriate Government to make the transfer order; the ground of public interest is no more illuminating than the ground of expediency, and the Supreme Court was, in my opinion, referring to this insufficiency in the contents of the order, when it struck down the order in *Associated Electrical Industries' case* (3), Mr. Misra urges that 'Public Interest' is a well understood concept, but so is 'expediency' and so may be 'administrative ground'. There is, however, no denying that a person, who learns that a transfer has been made in 'the public interest' or for 'administrative reasons' or in the 'interest of expediency' learns really nothing about the reason for transfer, and if full effect is to be given to the observtions of the Supreme Court that the requirement about the statement of the reason must be complied with both in substance and in letter, then it must be insisted that when a transfer order is made under section 33B of the Industrial Disputes Act, the facts ought to be stated, which induced the State Government to exercise its power. In the present case such facts have not been stated. I am not saying that the State Government has, under section 33B of the Act, to write a long or reasoned judgment, but there is no doubt, in view of the Supreme Court decision, that a clear indication of the particular reason requiring the transfer has to be given. I am not, therefore, able to agree that the present case is distinguishable from the case before the Supreme Court in *Associated Electrical Industries (India) (Private) Ltd.*, v. *Its Workmen* (3), and the learned Single Judge was, in my opinion, justified in holding that the order of transfer in the present case was illegal and could not be permitted to stand."

In view of the finding of the Letters Patent Bench on the first point which had found favour with the learned Single Judge, the appellate Bench held that it was unnecessary to go into the more controversial question whether the order of transfer was in the circumstances of that case quasi-judicial or not.

(8) Mr. Ganga Parshad Jain, the learned counsel for the petitioner, then referred in this connection to the judgment of a Division

Bench of this Court in the *Municipal Committee, Kharar, District Ambala, and others* v. *The State of Punjab and others* (6), wherein while dealing with a somewhat similar question relating to the requirement of recording reasons in support of an order under section 238 of the Punjab Municipal Act (3 of 1911) for superseding a Municipal Committee, I held as follows:—

> The first question that calls for determination in the above circumstances is whether merely repeating the words of the section amounts to giving reasons for superseding the Municipality or not. On behalf of the Municipality it is contended that the impugned notification merely contains the conclusions of the Government requisite for superseding it but not the reasons for arriving at those conclusions. It appears to me that the reasons and the conclusion arrived at on account of a consideration of those reasons are two distinct matters. The repeating of the conclusion necessary to supersede a Municipality under section 238 of the Act cannot possibly be equated to the reasons impelling such a decision. The scheme of the section itself shows that the Legislature has specifically provided that a Municipal Committee should be allowed to be superseded only if and when the appropriate Government comes to the conclusion that the committee is incompetent to perform or has made persistent default in the performance of its duties under the Act or has exceeded or abused its powers. There must always exist reasons for the Government to come to that conclusion. A statutory safeguard aganist abuse of the powers conferred on the State Government under section 238 of the Act has been provided by making it necessary for the Government to state the reasons for coming to the requisite conclusion in the notification itself. The decision of the State Government is not subject to any appeal. As a result of a notification under section 238 of the Act drastic consequences ensue."

It was further observed by me in the *case of Kharar Municipality* (6):—

> "It is open to this Court in exercise of its writ jurisdiction to see whether in a given case the notified reasons are at

(6) A.I.R. 1967 Pb. 430.

all germane to the exercise of power vested in the State Government for superseding a Municipality. The requirement to give reasons can also be supported on the ground that a mere reading of the notification should be able to help the Court in determining the *bona fides* of the State Government or its appropriate authorities if any order superseding a Municipality is challenged on the ground of *mala fides*. The orders of the State Government are subject to scrutiny by this Court in exercise of its writ jurisdiction within certain limits. The moment the reasons impelling the Government to take the impugned action are available to the Court it can be found out whether the same are extraneous or germane to the action taken. I would, therefore, hold that the mere copying of the word of the section into the notification amounts only to notifying the conclusions of the Government and is no substitute whatever for the statutory requirement of notifying the reasons leading the Government to take the action in question."

(9) Dua, J., (as the learned Chief Justice of the Delhi High Court then was) while agreeing with my judgment on the above-mentioned points further observed as below:—

"It is, however, necessary for the notification superseding the Committee to contain reasons for the supersession. This requirement is expressed in mandatory language and nothing cogent convincing has been brought to our notice to persuade us to construe the requirement as merely optional or permissive. Indeed, it has not even been canvassed on behalf of the respondents that reasons can without entailing invalidation be dispensed with or that a notification even without stating the reasons is legally sustainable. The broad contention pressed before us is that the reasons for superseding the Municipal Committee, as contemplated by section 238, are actually stated in the impugned notification.

The reasons for supersession, according to the respondents, are found in the following words of the notification:—

"Whereas the Municipal Committee, Kharar * * * is incompetent to perform and has persistently made defaults in the performance of duties imposed on it by or under the Punjab Municipal Act, 1911.'

I am wholly unable to accede to this contention. The reasons required as a condition precedent by section 238 to be stated in a valid notifications superseding a committee, in my view, are those necessary facts which may have weighed with the State Government in arriving at the conclusion that the Committee is incompetent to perform and has persistently made defaults in the performance of statutory duties. The notification in order to be valid must accordingly set out all the necessary facts precisely so that all those who read the notification may be able to know what those facts are on which the above conclusion has been founded. The object and purpose of this requirement appears to me to be traceable to a desire on the part of the Legislature to guarantee that the State Government does not act arbitrarily and does not abuse or misuse the drastic power conferred on it by the Statute. This desire has apparently roots in the conscious realisation that the exercise of power, if it is to be something better than infliction of wanton injustice, must be hedged round by safeguards of law and entrusted to those who are closely supervised by the eye of the public in the interests of those subjected to it. The party against whom this power is exercised has, according to the fundamental concept of the traditional democratic principles of justice a right to know that action has been taken to its prejudice in accordance with the law of the land and this has, in my view, been assured by the mandatory provisions requiring the reasons for the action to be stated in the notification as an essential pre-requisite for its validity. For my part, I consider this right to be basic in a set-up like ours where a citizen has been assured equal justice according to law and where the Courts are not ordinarily deprived of their jurisdiction to adjudicate on citizens' rights even against the State. In any event, the right to know the reasons indisputably tends to promote in the minds of the citizens a feeling of democratic satisfaction with the legal character of our State: a satisfaction on which alone can be founded a stable and healthy democratic set-up. If I may so put it, it is because of this law that a citizen primarily feels content with a truly democratic State and it is this contentment alone which basically sustains such a State. The impugned notication is

accordingly invalid as it does not contain reasons for the supersession."

(10) A learned Single Judge of the Calcutta High Court (P. B. Mukharji, J.), held in *Shree Shew Sakti Oil Mills Ltd.* v. *Judge, Second Industrial Tribunal, West Bengal and others* (7), that the reasons required to be recorded by section 33B(1) have to be stated so that they may be known to the parties concerned. The learned Judge observed in this respect as follows:—

"To say that for reason of expediency a pending reference is withdrawn from one Tribunal and transferred to another may be a good reason provided it is stated what the reason is. What is the ground of expediency, must have to be disclosed or otherwise it will not satisfy the requirements of section 33-B. This is not one of those sections where the Authority making the order of transfer, can withhold reasons on the ground of expediency. It is not one of those sections where the Authority, making the order of transfer, is given the power to keep the reasons undisclosed. If the reasons are to be stated in the order as required by the Statute, it will not do to say that the reason is an undisclosed ground of expediency for that will be plain evasion of the Statute. If it is a reason of expediency, then what that expediency is, has got to be declared and stated as a reason in writing in the order of transfer. Power in the executive Government to interfere with pending judicial or quasi-judicial proceedings by transfer from one Tribunal to another, is an extraordinary power striking at the very root of independence of such Tribunals and, therefore, is to be rarely and sparingly used and even then for reasons disclosed in writing. Because it is a power peculiarly susceptible to abuse this Court will always be vigilant to examine the exercise of such power and prevent its abuse."

To the same effect is the judgment of the learned Single Judge of the Calcutta High Court in *Shree Shew Sakti Oil Mills Ltd.* v. *Judge, Second Industrial Tribunal and others* (8).

(7) A.I.R. 1959 Cal. 690.
(8) A.I.R. 1961 Cal. 227.

(11) The Labour Court, Jullundur, has in the instant case upheld the validity of the impugned order of transfer on the ground that the order specifically mentioned:—

(i) that an application for transfer of the reference had been received from the workers' union;

(ii) that the comments of the Labour Court, Rohtak, had also been invited by the Government and considered; and

(iii) that it was on a careful consideration of the same that the Governor of Punjab had arrived at the conclusion that it was necessary in the interest of justice that the proceedings for the aforesaid reference be withdrawn and transferred to the Labour Court, Jullundur.

The Labour Court observed in its impugned award that the mere fact that the order of transfer does not specify in what way the interest of justice required the transfer of the proceedings does not necessarily lead to the conclusion that no reasons have been stated therein. The non-stating of the reasons has been justified by the Labour Court on the ground that the Government might not have thought it fit to disclose the exact circumstances either in public interest or for any other valid reason, but it did mention explicitly that an application for transfer had been made and the comments offered by the Presiding Officer concerned had also been taken into consideration and fully weighed, and that the interest of justice required that the proceedings be transferred. These, held the Labour Court, are certainly reasons for the transfer of the proceedings. Mr. Anand Swarup, the learned counsel for the contesting respondents (the employee and the Union of workers, respondents Nos. 3 and 2, respectively), also sought to support the order of transfer on the ground that if it is read along with the application of the Union, dated July 31, 1962, for transfer of the case (copy Annexure R-1 to the written statement), it would be seen that serious allegations had been made against the Presiding Officer of the Labour Court, Rohtak, inasmuch as it had been stated in the application for transfer that the said Presiding Officer had not been holding the proceedings and conducting the case in an impartial manner and in a judicial way. Mr. Anand Swarup specifically referred to the allegation made in the application for transfer to the effect that the Presiding Officer of the Labour Court, Rohtak, had been helping the employer in a number

of ways even by going out of the way. Certain instances were cited in the said application in support of the abovesaid allegation. According to Mr. Anand Swarup, the Governor of Punjab was satisfied after going through the allegations of the Union of workmen, and the comments of the Presiding Officer of the Labour Court, Rohtak, that there was truth in the allegations made against the Presiding Officer of the Labour Court, Rohtak, and it was in order to avoid a disparaging statement to the said Presiding Officer that the State Government did not give any better reasons for its impugned order of transfer than those which have, according to Mr. Anand Swarup, been given.

(12) After carefully considering the matter I am finally of the opinion that the impugned order of the State Government transferring the proceedings of the reference in question from the Labour Court, Rohtak, to the Labour Court, Jullundur, did not satisfy the mandatory requirement of section 33-B(1) of the Act, and did not, therefore, confer any jurisdiction on the transferee Court, i.e., on the Labour Court, Jullundur, to adjudicate upon the reference. The object of making a provision like the one with which we are concerned requiring the statement of reasons to be incorporated in an order to be passed by the Government is that when such an order is brought before this Court, or is questioned in any other appropriate proceedings, it should be apparent from the face of the order that the reasons in support of the order of transfer were germane to the content and scope of the power vested in the appropriate Government under section 33-B(1) of the Act. The power vested in the State Government to withdraw a pending case from the file of a Labour Court or a tribunal is indeed an extraordinary power and is a serious departure from the normal procedure and right of litigating parties to have the adjudication of their dispute completed by the Court or tribunal which commenced the trial and in whom the power to adjudicate upon the matter has been once lawfully conferred and if I were to hold that the expression used in the impugned order which according to Mr. Anand Swarup constitutes the statement of reasons, i.e., "in the interest of justice" to transfer the case, satisfied the requirements of section 33-B(1), it would be impossible to find out from any order in which the transfer is justified on the abovesaid ground as to what in fact weighed with the appropriate Government for transferring the case and whether what weighed with the Government was or was not a totally irrelevant or unjustifiable consideration for directing

the transfer. In short, the section requires the appropriate Government to pass a speaking order of transfer. The mere use of euphuistic, stereotyped and high sounding phrases like "interest of administration", "interest of expediency" or "interest of justice" does not in my opinion satisfy the mandatory requirement of section 33-B(1) of the Act as one cannot, after reading such expressions alone, become any wiser about the factual reasons which impelled the Government to transfer a particular case. Any person who is told that a case has been transferred "in the interest of justice" learns nothing at all about the reasons of transfer and is left as much guessing about the same as someone who is told nothing beyond this that the case has been actually transferred. The crucial test appears to me to be that on reading a valid order under section 33-B(1), anyone should be able to make out clearly as to what led the appropriate Government to transfer the case.

(13) It may no doubt be true in the instant case that State Government had before it material which was not only relevant, but was sufficient to justify the transfer of the proceedings, but as observed by the Supreme Court in the *case of Collector of Monghyr* (supra.) (4) it is not the presence of the material that is of relevance, but it is the material coupled with the recording of reasons as to why the State Government considers the passing of the order to be necessary that is required by the statute to be contained in the order itself. The Act requires an order of transfer to be a self-contained one. It does not permit an order of transfer being passed for good reasons by withholding the same or keeping them with the Government to be disclosed only if and when the order is questioned or impugned in a Court. The requirement is not confined to the reasons being really present, but is of the reasons being stated in the order of transfer itself. That is the only way to satisfy the requirement of the statutory provision both in letter and in spirit. Keeping in view the dictum of the Supreme Court in the case of *Associated Electrical Industries (India) (Private) Ltd.* (3) to the effect that the requirement about the Statement of reasons must be complied with "both in substance and in letter", I am unable to hold that in this case the requirement was complied with either in substance or in letter. I am unable to see any distinction between a case in which it is stated that it is expedient to withdraw a case from one tribunal and to transfer it to another, and the case in which it is stated that it is in the interest of justice to do so. Howsoever well-known expressions like "expediency" or "interest of justice" may be, they are in my opinion extremely

vague to constitute reasons of the kind envisaged by section 33-B(1) without being supported by relevant facts leading to such conclusions. It may be considered to be in the interest of justice or to be expedient to pass a particular order, but why it is expedient to do so or in what respect and for what reasons it is in the interest of justice to so direct are matters of detail which must be incorporated in the order of transfer at least to such an extent as to enable a Court to see if the reasons that weighed with the Government were really relevant or merely extraneous. The reasons required to be stated in support of an order under section 33-B(1) have to be clear and understandable, and should neither amount to mere surmises or conjestures, nor merely confined to vague and sophisticated expressions like "interest of justice or expediency". As observed by Dulat, J. in the Letters Patent Bench Judgment in the *Chheharta case* (supra) (5) it is necessary in order to comply with the requirement of section 33-B(1) to state the facts which induced the appropriate Government to exercise its powers. No such facts have been stated in the impugned order. Neither it has been stated in the order of transfer as to what were the contents of the application of the workmen's Union nor it has been indicated as to what were the comments of the Presiding Officer of the Labour Court, Rohtak, which led the appropriate Government to hold that it was in the interest of justice to transfer the case. I, therefore, hold that the impugned order of transfer of the proceedings of the disputed reference from the Labour Court, Rohtak, to the Labour Court, Jullundur, was invalid, inasmuch as it did not fulfil the mandatory requirement of section 33-B(1) of the Act, and was, therefore, wholly ineffective. Errors of law in the find ing of the Labour Court, Jullundur, on issue No. 1 in this respect are apparent on the face of the order. Once it is held that the order of transfer was ineffective, it must follow that the Labour Court, Jullundur was never awfully vested with the jurisdiction to adjudicate upon the instant dispute, and was *coram non judice* in respect of the matter originally referred to the Labour Court, Rohtak. Whole of the impugned award of respondent No. 1 was, therefore, without jurisdiction and has to be set aside on that ground.

(14) In the view I have taken on the first point urged by Mr. Ganga Parshad Jain, it is unnecessary to deal with his second submission to the effect that the finding of respondent No. 1 on issue No. 2 is also contrary to law and is vitiated by the apparent errors of law. Mr. Anand Swarup, the learned counsel for the contesting respondents, tried to persuade me to agree to record a finding on that point also. His submission was that if I hold that the

order of respondent No 1 is good on merits, I should not interfere in this case on technical grounds. At the same time he submitted that if I hold that the finding of the Labour Court, Jullundur, on issue No. 2 is either vitiated or is otherwise liable to be set aside, I should say so in order to save the parties from unnecessary further proceedings before the Labour Court, Rohtak. I am unable to agree with Mr. Anand Swarup in this respect. Once I hold that the Labour Court, Jullundur, had no jurisdiction to adjudicate upon the reference, there is no award in the eye of law before me into the question of correctness of which on merits I can go. To hold, as Mr. Anand Swarup wants me to do, that the award is good on merits, would be to uphold the order made by a tribunal without jurisdiction. Similarly if I were to hold that the finding on issue No. 2 is bad on merits it would amount to beating a dead horse, and would unnecessarily preclude the employee from his right to have the reference dealt with by a Labour Court having jurisdiction to do so on fresh and additional material, if he so desires. I, therefore, refrain from expressing any opinion on the merits of the controversy.

(15) For the foregoing reasons this writ petition is allowed, the impugned order of the State Government transferring the reference from the Labour Court, Rohtak, to the Labour Court, Jullundur, as well as the impugned award of respondent No. 1 are hereby set aside, the reference originally made by the Governor of Punjab is revived, and would now be dealt with and disposed of by the Labour Court, Rohtak, in accordance with law. As the contesting respondent is an employee, I make no order as to costs of the proceedings in this Court.

K. S. K.

FULL BENCH

Before Harbans Singh, Jindra Lal and A. D. Koshal, JJ.

AJIT SINGH,—*Appellant*

versus

THE STATE OF PUNJAB,—*Respondent*

Criminal Appeal No. 1215 of 1968.

Murder Reference No. 3 of 1969

January 28, 1970

Code of Criminal Procedure (V of 1898)—Section 549—Air Force Act (XLV of 1950)—Sections 124, 125 and 126—Trial of an Air Force personnel for