

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on : **May 6, 2011**
Judgment Delivered on: **May 16, 2011**

+ **LPA No. 425 Of 2011**

M/s. Bata India Ltd. Appellant

Through: Mr.Ashok Desai and Mr. Raj Birbal, Sr.
Advocates with Ms. Raavi Birbal,
Advocate.

Versus

Union of India & Ors. Respondents

Through: Mr.B.V. Niren, Advocate for R-1.
Mr.Sanjay Parikh with Mr. Abhinash
K. Mishra, Advocate for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. | Whether reporters of the local papers be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3 | Whether the judgment should be reported in the Digest? | YES |

DIPAK MISRA, CJ

In this intra-Court appeal, the defensibility of the order dated 23.3.2011 passed by the learned Single Judge in W.P.(C) No.7585/2007 is called in question.

2. The appellant – writ petitioner (hereinafter referred to as ‘the appellant’) has invoked jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for issue of a writ of certiorari for quashment of the order dated 5.9.2007 passed by the Joint Secretary, Ministry of Labour, whereby the Central Government has constituted a National Industrial Tribunal (tribunal for short) as enshrined under Section 7B of the Industrial Disputes Act, 1947 (for brevity ‘the Act’) and referred the dispute to the tribunal for adjudication of the dispute raised by more than 200 shop managers of the appellant-company represented by All India Bata Shop Managers Union, the respondent no.2 herein, on many a ground.

3. Be it noted, the learned Single Judge adverted to a number of facets and came to hold that the decision rendered by the learned Single Judge of this Court in *FDC Ltd. v. UOI & Ors.*, 2007 (1) CLR 706 does not lay down the correct exposition of law and eventually expressed the view that the constitution of the tribunal is valid and there has been no illegal exercise of jurisdiction. It is apt to note that the learned Single Judge felt that the other contentions pertaining to the status of the employees and the other aspects are to be dealt with by the tribunal while answering the reference.

4. Mr. Ashok Desai, learned senior counsel, assailing the legal substantiality of the order passed by the learned Single Judge, has raised the following contentions:

- (a) The learned Single Judge should have followed the principles of judicial discipline and referred the matter to a larger Bench when he did not agree with the view expressed by another learned Single Judge of this Court in *FDC Ltd.* (supra) and should not have proceeded to state that there has been incorrect exposition of law in the earlier decision. That apart, the law laid down in *FDC Ltd.* (supra) has correctly interpreted Section 7B of the Act.
- (b) The interpretation placed by the learned Single Judge on Section 7B of the Act is erroneous as the Central Government could not have taken recourse to the said provision to constitute a tribunal for adjudication of the industrial dispute of the present nature as none of the conditions engrafted under the said provision are satisfied in the case at hand. The intent behind Section 7B of the Act is not to decide individual disputes of a workman/workmen but the fundamental purpose of constitution of a tribunal is to decide cases

of national importance or such nature where establishments in different States are likely to be interested or affected by the disputes, such as pay scales of workers, general service or working conditions, wage disputes, bonus, etc.

- (c) The learned Single Judge has fallen into grave error by expressing the view in certain paragraphs of the decision that their cannot be judicial scrutiny to decide the validity of the reference made by the Government under Article 226 of the Constitution of India, inasmuch as the power of judicial review can be invoked when the reference is made without the authority of law or beyond jurisdiction or when the industrial dispute really does not survive for reference.

5. Mr. Sanjay Parikh, learned counsel for the respondent No.1, in opposition to the aforesaid proponent's submissions, has propounded the following submissions:

- (i) The order of constitution of a tribunal by the Central Government under Section 7B of the Act is absolutely justified inasmuch as similar disputes exist in several States where the regional offices and

retail shoe stores of the appellant company are located and the said stores and offices would constitute separate industrial establishments as envisaged under Section 7B of the Act.

- (ii) The industrial peace and harmony is the quintessence of the industrial jurisprudence and when there is a dispute relating to a particular class in several establishments in various States, a decision rendered by one industrial tribunal in one State is likely to affect the industrial workers in another establishment in the same company and the Central Government has correctly exercised the discretion vested in it and, therefore, the constitution of the tribunal is totally justified.
- (iii) The view expressed by the learned Single Judge with regard to the power of judicial review in the matter of reference under the Act is impregnable and does not warrant any interference in intra-Court appeal.
- (iv) The learned Single Judge has appositely distinguished the decision rendered by another learned Single Judge in *FDC Ltd.* (supra) and no exception can be taken to the said approach.

6. First, we shall advert to whether the learned Single Judge should have expressed the view that the decision rendered in *FDC Ltd.* (supra) does not lay down the correct position of law.

7. We may note that though Mr. Parikh has submitted that the learned Single Judge has correctly distinguished the same, yet on a perusal of the impugned order, we find that the learned Judge has actually not distinguished but expressed his disagreement/dissent with the view taken earlier by the coordinate Bench. To appreciate the factual matrix, it is seemly to refer to what was held in *FDC Ltd.* (supra). In the said case, the petitioner challenged the validity of the notification issued by the Government of India under Section 7B of the Act constituting a National Industrial Tribunal with the headquarter at Calcutta. It was contended before the Court that a dispute of national importance only could be referred to a National Industrial Tribunal or the dispute should be of such nature in which the establishments constituted in more than one State are likely to be interested or affected and merely because medical representatives of one establishment are working in more than one State does not entitle the Government to refer the dispute to the National Industrial Tribunal. After referring to Section 7B of the Act and taking

note of the contentions raised by the learned counsel for the parties, the learned Single Judge in *FDC Ltd.* (supra) has expressed his view as follows:

“9. Thus, the only ground which is available to the Central Government for issuance of notification under Section 7B of the I.D. Act is that a dispute involves question of national importance or that the industrial establishment of more than one State were likely to be interested in the dispute. The emphasis is on the nature of dispute only and its important character. It is obvious that if various workmen of one establishment spread over different States have been terminated for different reasons or misconducts and the cluster of disputes raised involve adjudication of the facts in respect of each individual workman, such disputes cannot be considered a single dispute of national importance. A dispute of national importance would be such where some important question of law is involved which is going to affect the fate of the workmen in general throughout India or fate of the employers throughout India. The adjudication of the individual dispute of different workmen cannot be referred to a National Tribunal because the workmen are spread over in different States. Only those questions of law can be referred to the National Tribunal which are of national importance in which either the workmen in general or of the industrial establishments in different States or the employers of the industries in different States, would be interested. Such a dispute may be a dispute which would determine the future course or future service conditions or future relationship of working class in general or the employers in general. Different establishments in different States does not mean that if one establishment has branches in different States, then

all those branches can be treated as different establishment in different States. In fact, that would be one establishment having branches or factories in different States. Here different establishments in different States would mean establishments of the same nature or diverse nature but they must not be of same group or family. Say an issue arises whether a hospital is an industry or not, or the research institute is an industry or not, this would be a dispute of national importance. Similarly, those issues in which the fate of an individual workman is not involved but the fate of large scale of identical or unidentical workmen is involved, such a dispute, would be a dispute of a national importance or a dispute where several establishments would be interested.

10. The Government, in the present case, has referred the dispute of 58 individuals, who were stationed in different States. By the notification, the Government has asked the workmen in different States to approach the Tribunal at one place in India i.e. Calcutta. Each individual MR was allegedly dismissed on different date in a different state for different set of facts. So, the adjudication will have to be done in respect of each individual separately. Asking an individual, who was appointed in Chandigarh to go to Calcutta or any other place in India for fighting his labour dispute, would be too much. Even if one union, represents all the MRs, whose disputes have been referred, the union would have to be totally depended upon the individual workman for representing his case before the Tribunal, since there is no question of law involved. Dismissal of a group of workmen cannot be considered an important question of law or a question of national importance. Moreover, the Government has failed to controvert the facts as stated in para 4 above about Twenty Four MRs not having raise dispute, four resigned and two MRs

still in employment, nine terminated during probation and six during training period when reference was made.”

8. Being of this view, the learned Single Judge allowed the writ petition and quashed the notification. Thus, the decision rendered in *FDC Ltd.* (supra) was a precedent in the field.

9. In this context, we may refer with profit to the decision in *Lala Shri Bhagwan and Anr. v. Ram Chand & Anr.*, AIR 1965 SC 1767 wherein a three-Judge Bench of the Apex Court stated thus:

“18. Before we part with this appeal, however, we ought to point out that it would have been appropriate if the learned single Judge had not taken upon himself to consider the question as to whether the earlier decisions of the Division Benches of the High Court needed to be pre-considered and revised. It is plain that the said decisions had not been directly or even by necessary implication overruled by any decision of this Court, indeed, the judgment delivered by the learned single Judge shows that he was persuaded to re-examine the matter himself and in fact he had substantially recorded his conclusion that the earlier decisions were erroneous even before his attention was drawn to the decision of this Court in Laxman Purshottam Pimputkar's case (1964) 1SCR 200 : (AIR 1964 SC 436) (supra). It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single

Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of Judicial decorum and propriety. It is to be regretted that the learned single Judge departed from this traditional way in the present case and chose to examine the question himself.

10. In *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel and others*, AIR 1968 SC 372, it has been held as follows:

“11. ...Judicial decorum, property and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of co-ordinate authority or of superior authority....”

11. In *State of Tripura v. Tripura Bar Association and others* (1998) 5 SCC 637, it has been held thus:

“4. We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Division Bench of the High Court in the case of *Durgadas Purkayastha* (1988) 1 Gau LR 6. If the latter Bench wanted to take a view different than that taken

by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench.”

12. In *Rajasthan Public Service Commission & Anr. v. Harish Kumar Purohit & Ors.*, (2003) 5 SCC 480, the view expressed in *Tripura Bar Association* (supra) was reiterated. After reiterating the principle, their Lordships opined that judicial propriety and decorum warrant for a coordinate Bench, in case of disagreement or dissent, to refer it to a larger Bench.

13. In *Union of India v. S.K. Kapoor* 2011 (3) SCALE 586, it has been held thus:

“13. ...It is well settled that if a subsequent co-ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength.”

14. In view of the aforesaid authorities in the field, there can be no scintilla of doubt that the learned Single Judge should have been well advised to refer the matter to a larger Bench in case he disagreed with the view expressed by the learned Single Judge in the case of *FDC Ltd.* (supra)

as that was a decision squarely covering the lis of similar nature and had a precedential value.

15. Though we have held that the learned Single Judge should have referred the matter to a larger Bench, yet as the controversy has travelled to us in an intra-court appeal, we think it appropriate that the matter should be dealt with on merits. The question raised pertain to a limited issue and, therefore, we shall address ourselves to the issue whether the decision in *FDC Ltd.* (supra) or the impugned decision lays down the correct law.

16. The second aspect that has been highlighted by the learned counsel for the parties and has also been discussed by the learned Single Judge really pertains to the power of judicial scrutiny. The learned Single Judge, as is evincible from the order impugned, has noted the contentions of the learned counsel for the parties with regard to the power of judicial review and the power of the Court to interfere in the matter of reference and expressed the view that while examining the reference under Section 7B read with Section 10A of the Act, the Court should leave the issue relating to settlement, entitlement and other aspects for examination to the

industrial adjudicator. He has also observed that there seems to be a factual dispute and any observation made by the Court may have an impact on the workmen or the management. Thereafter, the learned Single Judge has observed that the appellant herein had failed to point out any illegality in the impugned notification or the reference and, hence, the same does not warrant interference under Article 226 of the Constitution of India. We may note with profit that the learned Single Judge has dealt with the legality of the exercise of power of the Central Government in the constitution of the tribunal and the question that arose with regard to the status of the managers, the rights conferred on them by way of a settlement and various other such ancillary factors. In that context, the learned Single Judge has expressed his opinion. Mr. Desai has placed reliance on the decisions in *Nedungadi Bank Ltd. v. K.P. Madhvan Kutty & Ors.*, (2000) 2 SCC 455, *National Engineering Industries Ltd. v. State of Rajasthan*, (2000) 1 SCC 371 and *Express Newspaper (P) Ltd. v. The Workers*, AIR 1963 SC 569. Mr. Parikh, per contra, has placed reliance on *Madras State v. C.P. Sarthy*, AIR 1953 SC 53, *M/s Western India Match Co. Ltd. v. Western India Match Co. Workers Union & Ors.*, (1970) 1 SCC 225, *Dhanbad Colliery Karamchari Sangh v. Union of India*, 1991 Supp.

(2) SCC 10, *Telco Convoy Drivers Mazdoor Sangh v. State of Bihar*, AIR 1989 SC 1565, *Sharad Kumar v. Government of NCT of Delhi*, (2002) 4 SCC 490 and *Ramesh Kumar & Ors. v. Union of India & Ors.*, 2007 DLT 398 (DB).

17. We need not dwell upon the said decisions as Mr. Desai, learned senior counsel, has fairly stated that his stand would be limited to the issue that has been raised in this intra-court appeal, i.e., whether the exercise of power under Section 7B in constituting the tribunal is justified or not. That being a jurisdictional issue, in our considered opinion, the same can be scrutinized in exercise of power under Article 226 of the Constitution of India.

18. Presently, we shall proceed to deal with the submission whether the reference made by the Central Government under Section 7B of the Act is without jurisdiction. To appreciate the submission in entirety, it is necessary to reproduce the order of reference:

“Whereas the Central Government is of the opinion that an Industrial Dispute exists between the management of M/s Bata India Ltd. & their workmen represented by All India Bata Shop Managers Union in respect of the matters prescribed in the Schedule hereto annexed and that the dispute involves question of national importance and also is of such nature that the

establishments of M/s Bata India Ltd. are situated in more than one State are likely to be interested in or affected by such dispute.”

It was further stated in the said order which read as under:

“NOW, THEREFORE, the Central Government, in exercise of the powers conferred by Section 7B of the ID Act, 1947 (14 of 1947), hereby constitute a National Tribunal with head quarters at Kolkata and appoints Justice C.P. Mishra as the Presiding Officer, and he exercise the powers conferred by Sub Section (A) of Section 10 of the said Act, hereby refers the said industrial dispute to the National Tribunal for Adjudication.”

On a perusal of the said reference, it is clear that the same pertains to a dispute of all India level between the management and the “workmen” of the company spread all over India.

19. Keeping the same in view, one has to scan the anatomy of Section 7B of the Act. The said provision reads as follows:

“7B National Tribunals – (1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal [unless he is, or has been, a Judge of a High Court.]

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it."

20. The submission of Mr. Desai, learned senior counsel, is that the power under Section 7B of the Act can be invoked when there is an opinion formed by the Central Government that the disputes involve question of national importance or are of such nature that the industrial establishments situated in more than one State are likely to be interested in, or affected by such disputes but in the case at hand, when the disputes relate to the termination of services of alleged employees by the appellant company and this cannot be given the status of a dispute of national importance. It is urged by him that whenever there is a need for constituting a tribunal to deal with national issues, the disputes should pertain to general service conditions of workers in different factories and industries and then the matter is referred to the tribunal. He has given certain examples like "Bachawat Award", "Palekar Award", "Shastri Award", etc. The learned counsel would submit that when questions

arose with regard to economic justice concerning non-journalist employees, a National Industrial Tribunal was constituted. He has invited our attention to the decision in *The Indian Express Newspapers (Bombay) Pvt. Ltd. V. Employees' Union*, AIR 1978 SC 1137. He has also drawn inspiration from *Calcutta Port Shramik Union v. Calcutta River Transport Association*, AIR 1988 SC 2168.

21. The learned counsel would further submit that the learned Single Judge has erred by opining that certain issues are involved are of national importance. He has drawn our attention to paragraphs 44 to 46 of the order passed by the learned Single Judge. We think it appropriate to reproduce the same:

“44. The following questions which will decide the fate of respondents arise for consideration before the National Tribunal as they will affect the employees of the petitioners on all India level, they are questions of law of national importance as the petitioner being an important organization contributing to the economy of the country. The questions at least on prima facie view are as under:

1. Whether the manager of the petitioner company working on all India level can be regarded as workmen within the meaning of Section 2(s) of Industrial Disputes Act?

2. Whether the managers of the petitioner company are all performing managerial functions or are merely nomenclatured as managers?

3. Whether the dispute raised by the respondent can be regarded as industrial dispute?

4. Whether the petitioner has treated the respondent/managers by their conduct as workmen?

45. All these questions are of vital importance and are questions of law as well as that of the facts which are to be determined by the National Tribunal. As it has the far reaching impact upon the petitioner organization throughout India, it is also not correct to hold that they are not of national importance.

46. In view of this, I find that the impugned notification or reference is not passed in violation of the provisions of Section 7B of the Act and it satisfies clearly both the threshold requirements (although the satisfaction of one is sufficient) for formation of the opinion by Central Government for the reference."

22. After referring to the said paragraphs, the learned senior counsel would submit that the learned Single Judge has observed that both conditions of Section 7B of the Act have been satisfied, though one is sufficient, but the decision clearly lays down the proposition that in a case of this nature, the disputes are of national importance.

23. Mr. Parikh, learned counsel appearing for the respondent No. 2, per contra, submitted that even if the issue is not of national importance, it

would be covered within the second limb of the provision and, therefore, assail to the said findings is of no consequence.

24. At this juncture, we may refer with profit to Section 10 of the Act which deals with reference of dispute to Boards, Courts or Tribunals.

Section 10(1A), being relevant, is reproduced below:

“10(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.”

25. In *The Management of Indian Cable Co., Ltd., Calcutta v. Its Workmen*, (1962) 1 LLJ 409 SC, the Constitution Bench was dealing with an appeal by special leave against the award of the tribunal, Punjab, passed in Reference No.5/1959. The reference was in these terms:

“Whether the retrenchment of the following workmen of Ambala Branch of the Indian Cable Company Ltd., is justified and legal under the provisions of section 25G of the Industrial Disputes Act, 1947, and whether the seniority of workmen in all the branches of the

company was pooled for the purpose of effecting retrenchment? If not, to what relief are the following workmen entitled.”

The appellant company had raised certain preliminary objections before the tribunal including the maintainability of the reference. The tribunal had overruled the objections and passed an award in favour of the workmen. Before the Apex Court, apart from other contentions, two vital contentions were whether the disputes of the workmen were individual disputes and not industrial disputes as defined in the Act and that, in consequence, the Government had no power to refer the same for adjudication and secondly whether the branch at Ambala was an industrial establishment within Section 25G and that having been closed, no relief could be granted to the workmen under that section. While dealing with the concept of industrial establishment, their Lordships expressed the view as follows:

“11. Now what is an industrial establishment? There is a definition of it given in the Explanation to S.25A(2) but that is limited to Ss. 25C, 25D and 25E. There being no definition of the expression in that Act applicable to S.25G, we must construct it in its ordinary sense, guided by such indications as the context might furnish. In *Pravat Kumar Kar v. W.T.C. Parker* [(1949) 1 F.J.R. 245], Harries, CJ, observed that the words “industrial

establishment” meant the place at which the workmen were employed, and that accordingly S.23 of the Act which imposes a prohibition against strikes by any “workman who is employed in any industrial establishment”, “could not cover a case of workmen in Bombay striking against an employer with whom employees in Calcutta have a dispute”. According to this view, it is of the essence of the concept of an industrial establishment that it is local in its set-up. This is also implicit in the Explanation to the definition of “lay-off” in S.2(kkk) of the Act, that “every workman whose name is borne on the muster-rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal workings hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause”.

12. If this be the correct connotation of the words “industrial establishment”, then the branches of a company located in different places must be held to be distinct “industrial establishment”, for purposes of S.25G. This question came up directly for decision before the Madras High Court in *India Tyre and Rubber Company v. Their Workmen*, [(1957) II LLJ 506]. In that case, a company whose business was to manufacture and sell tyres had its head office in Bombay and a branch office at Madras. There were sub-depots at Ernakulam, Bangalore and Vijayawada within the jurisdiction of the Madras branch. The company retrenched some of the workmen at the Madras office as surplus, and on that a dispute was raised by them that as the retrenchment had been made without pooling all the depots as one unit, Section 25G had been infringed. The Tribunal accepted that contention and held that the retrenchment was bad. The correctness of this decision

having been questioned in a petition under Art. 226, the Madras High Court held on an examination of the scheme of the Act and on a review of the authorities, that if an industry had establishments located in different places, each of them would be a separate industrial establishment within S.25G of the Act, and that accordingly the office at Madras was one industrial establishment and that the sub-depots in the different States were separate industrial establishments. On the facts, this decision is very near the present case and is strongly relied on for the appellant.

13. We should, in this connexion, refer also to S.10(1A) of the Act, wherein it is provided that when the dispute relates to industrial establishments in more than one State, the Central Government might refer it for adjudication to a National Tribunal. This provision is based on the notion that the industrial establishments of a concern situated in different States are distinct establishments.

14. Then again on the terms of S.25G, the relief provided therein is to be granted within the category of workmen who are proposed to be discharged. This posits that there is one code governing the grades of workmen and their scales of wages and that is ordinarily possible only when the establishment is functioning at a given place. If there are different branches in different places and there are different scales of wages, the rule laid down in S.25G would be incapable of compliance unless all the branches have one scale of wages and the rules provide for automatic transfer from place to place having regard to the seniority and grades. Thus whether we have regard to the popular sense of the words 'industrial establishment', or to the limitation of relief under Section 25G to workmen in the same category, the conclusion would appear to be inescapable that each

branch of a company should normally be regarded as a distinct industrial establishment.

[Underlining is ours]

26. From the aforesaid decision, it is luculent that their Lordships have interpreted the term 'industrial establishment' in Section 10(1A) of the Act on a broader canvass. This was keeping in mind object and purpose behind the provision.

27. Mr. Desai, learned senior counsel, would submit that the said decision was rendered in the context of Section 25G of the Act and, hence, distinguishable. The learned senior counsel would further submit that it is not a precedent on the term "industrial establishments" to mean establishments run by one company situate in more than one State and the same would come within the ambit and sweep of the term 'industrial establishments' as used or mentioned in Section 7B of the Act. In this context, we may refer with profit to the definition of "industrial establishment or undertaking" as defined under Section 2(ka). It reads as follows:

"(ka) "Industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then

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(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment, or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;”

28. The aforesaid definition has been inserted by the Industrial Disputes (Amendment) Act, 1982 (46 of 1982) and it came into effect from 21.8.1964. On a plain reading of the said provision, we find that it has a broader canvass and should not be construed narrowly. In fact, the proviso is on a broader contour. What is urged by Mr. Desai is that the case at hand relates to individual disputes of termination of “Shop Managers” and depends upon individual events and facts. But on a perusal of the

pleadings, it is found that a charter of demands was submitted to the company by the Union relating to service conditions and when no settlement could be arrived at, strike was taken resort to and the management terminated the services of the “workers/Shop Managers”. Thus, it is manifest that the dispute had not arisen because of different situations or different events or cause of action or initiation of departmental proceedings for different charges against the “workmen”. The cluster of disputes that have arisen has a singular relevant issue. Once a definitive meaning is conferred on the term “industrial establishment” on a broader spectrum and the dictionary clause is taken recourse to, we are of the considered opinion that the industrial disputes are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes. To give an example, if a dispute is adjudicated in one State either in favour of the management or employee, the same is likely to affect another employee as he has an inseparable interest in it.

29. As evincible, the reference refers to disputes that had arisen at all India level in various States. Thus, an employee working in an establishment of the company situated in any State would be interested in

or affected by the adjudication. We are inclined to think so as a broader meaning has to be given to the term “industrial establishment”, in Section 7B in consonance with dictionary clause 2(ka) of the Act regard being had to the purpose of settlement / adjudication of industrial dispute and principle of industrial harmony. One cannot be oblivious of the fact that the Act is a beneficial legislation and, hence, are to be interpreted in favour of the beneficiaries when it is possible to take two views of the provision. In this regard, we may profitably refer to the decision rendered by the two-Judge Bench of the Apex Court in *Bharat Singh v. Management of New Delhi Tuberculosis Centre, New Delhi and others*, (1986) 2 SCC 614 wherein it has been held as follows:

“11. In interpretation of statutes, courts have steered clear of the rigid stand of looking into the words of the section alone but have attempted to make the object of the enactment effective and to render its benefits into the person in whose favour it is made. The legislators are entrusted with the task of only making laws. Interpretation has to come from the courts.
Now, it is trite to say that acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the

have-nots and the underdog and which would leave to injustice should always be avoided....”

30. In *S.M. Nilajkar and others v. Telecom District Manager, Karnataka*, (2003) 4 SCC 27, it has been ruled thus:

“12 ...It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision...”

31. In *Usha Breco Mazdoor Sangh v. Management of Usha Breco Limited and another*, (2008) 5 SCC 554, their Lordships have opined as follows:

“26. It may not be a correct approach for a superior court to proceed on the premise that an Act is a beneficent legislation in favour of the management or the workmen. The provisions of the statute must be construed having regard to the tenor of the terms used by Parliament. The court must construe the statutory provision with a view to uphold the object and purport of Parliament. It is only in a case where there exists a grey area and the court feels difficulty in interpreting or in construing and applying the statute, the doctrine of beneficent construction can be taken recourse to. Even in cases where such a principle is resorted to, the same would not mean that the statute should be interpreted in a manner which would take it beyond the object and purport thereof.”

32. In *Edukanti Kistamma (Dead) Through LRs and others v. S. Venkatareddy (Dead) Through LRs. And others*, (2010) 1 SCC 756, it has been held thus:

“26. ...Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose....”

33. We have referred to the aforesaid decisions only to highlight how a beneficent legislation is to be interpreted by a court regard being had to the objects and reasons and also not to efface the basic purpose for which the legislation has been enacted and under what circumstances the court can lean in favour of the beneficiaries. It is profitable to note that the basic purpose of the Act is to provide inexpensive and effective dispute

resolution forum. It has been so held in *Rajasthan State Road Transport Corporation & Anr. v. Krishan Kant & Ors.*, (1995)5 SCC 75. In the case at hand, as we perceive, the Central Government thought it appropriate to bring all the disputes under one umbrella by constituting a tribunal. The power vests with the Central Government. It is a discretionary power but the discretionary power can never be exercised without jurisdiction. As we find, the term 'industrial establishment' has to be conferred a broader meaning in the context of Section 7B of the Act. In view of the language employed in the dictionary clause, we find the discretion has been correctly exercised and, hence, the constitution of the tribunal cannot be said to be fallacious inviting the jurisdictional error for exercise of power of judicial review.

34. At this juncture, we may note with profit that the learned Single Judge has held that the reference satisfies both the aspects, namely, that the issues involved are of national importance and, hence, it is covered by the first limb of Section 7B of the Act and it also satisfied the second limb of the said provision. But as we find that the second limb is satisfied, we do not think it appropriate to address whether the dispute of national importance or not as the same, in our considered opinion, becomes

absolutely academic. The learned Single Judge in *FDC Ltd.* (supra) has read both the first limb and the second limb in a conjoint and cumulative manner. In *FDC Ltd.* (supra), the learned Single Judge has misconstrued the provision and held that a dispute of national importance would be such where some important question of law is involved which is going to affect the fate of the workmen in general throughout India. In the said case, it was wrongly understood that the issue raised must touch large number of identical or unidentical workmen and a question of law of national importance must be involved. A very restricted meaning, scope and ambit of Section 7B has been given and, hence, the said decision does not lay down the law correctly and, accordingly, we overrule the decision rendered in *FDC Ltd.* (supra). Object and purpose to expedite and ensure quick and effective decision of industrial dispute so that industrial harmony is maintained. Section 7B also ensures that the possibility of conflicting decision and confusion arising therefrom is avoided.

35. In view of the aforesaid analysis, we proceed to enumerate our conclusions in seriatum:

- (a) The learned Single Judge should have, as a matter of judicial discipline, referred the matter to a larger Bench when he noted his disagreement with the decision rendered in *FDC Ltd.* (supra).
- (b) There is no absolute bar for interference in exercise of power under Article 226 of the Constitution of India when a matter referred is by a Government to an Industrial Tribunal if the reference suffers from jurisdictional error or no industrial dispute exists and certain ancillary grounds.
- (c) If factual disputes are involved, it is advisable that the Industrial Tribunal should adjudicate the same and the writ court should not exercise the discretion and refrain from interfering with the order of reference.
- (d) The reference made by the Central Government to the National Industrial Tribunal in respect of the disputes arisen in the obtaining factual matrix cannot be found fault with and, hence, the view expressed by the learned Single Judge on that score cannot be flawed.
- (e) The decision rendered in *FDC Ltd.* (supra) does not lay down the law correctly as the interpretation placed on Section 7B of the Act is

basically erroneous as both the limbs have been treated to be conjoint and insegregable.

36. Consequently, the appeal, being devoid of merit, stands dismissed leaving the parties to bear their own costs.

CHIEF JUSTICE

MAY 16, 2011
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SANJIV KHANNA, J.