

* **HIGH COURT OF DELHI : NEW DELHI**

+ **W.P. (C) No.7585/2007**

% Judgment decided on: March 23, 2011

M/s. Bata India Ltd. Petitioner
Through: Mr. Ashok Desai, Sr. Adv., Mr. Raj
Birbal, Sr. Adv. with Ms. Raavi
Birbal, Adv.

Versus

Union of India & Ors. Respondents
Through : Mr. Sanjay Parikh, Adv. with
Mr. Abinash Mishra, Ms. Mamta
Saxena and Ms. Soumya Roy,
Advocates.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying to quash the reference order dated 05.09.2007 passed by the Joint Secretary, Ministry of Labour, under the provisions of Section 7B of Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”).

2. The facts of the case are that there was a dispute concerning about the termination of more than two hundred of shop managers between the petitioners and the respondent No.2, i.e., All India Bata Shop Managers Union. On 15.06.2007, the president of respondent No.2 wrote

a letter addressed to the Chief Labour Commissioner asking him to refer the dispute to a National Tribunal. Thereafter, the respondent No.1 passed the order dated 05.09.2007 and constituted a National Tribunal for Adjudication of the dispute with its headquarter at Kolkata. The said order reads as under :

“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.”

3. In the reference order, the Government has constituted a National Tribunal for deciding termination cases of All India Bata Shop Managers. The reference was made under the provision of Section 7B (1) of the Act.

4. It appears from the provision of Section 7B(1) of the Act that for a dispute to be referred to National Tribunal two conditions have to be satisfied :

- (i) the issue must question of national importance; or
- (ii) all the questions must be of nature that industrial establishment in more than one States are likely to be interested in or affected by that dispute.

5. The petitioner has challenged the reference order of the Government and mainly argued that :

- Reference to National Tribunal are not called for in the facts of the present case; and
- The shop managers are not workmen under Section 2(s) of Industrial Disputes Act.

6. It is stated by the petitioner 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 workmen in general throughout India or the fate of employers throughout India. The adjudication of individual disputes of different workmen cannot be referred to National Tribunal just because the workmen are spread over in different States. Dismissal of group of workmen cannot be considered an important question of law or a question of national importance. There was no material before the Central Government to refer the matter to the National Tribunal. Thus, it would not be a dispute of national importance.

7. According to the petitioner, the different establishments in different States do not mean that if one establishment has branches in different States then all those branches can be treated as different

establishments in different States. In order dated 05.09.2007, it is demonstrated that the respondent No.1 instead of considering whether the present dispute is of such nature as those wherein several other establishments situated in one or more than one State are likely to be interested or affected, only considered whether the shop managers in more than one State would be affected. It is a settled law that where there are pre-conditions laid down for the exercise of power, it is necessary for the Authority exercising that power to make sure that those pre-conditions have been satisfied. Therefore, the impugned order dated 05.09.2007 is unsustainable in law.

8. The petitioner has strongly relied upon the judgment of **FDC Ltd vs. UOI & Ors: 2007 (1) CLR 706** delivered by the Single Judge of this Court. As per petitioner, the present case is totally covered by the judgment as mentioned above which still remains good law and in para 9 of the judgment, similar propositions have been discussed and decided.

9. The next contention of the petitioner is that the impugned notification is liable to be quashed because the respondent No.1 while passing the said order completely ignored the fact that the terminated managers are not workmen within the meaning of Section 2(s) of the Act as it is clear from the agreement between the shop managers and the company that they are fully responsible for all the managerial functions of the shop including the payment of salaries of the staff from the sale proceedings. They are accountable for the profits incurred and loss

suffered by the shop, they are aware of the sale practice and secrets of the company. They are given the general control of the shop which a workman is never given. The managers apart from their salary which is about Rs.4.5 lac per annum also receive a certain amount of commission which a workman never receives. In support of above referred contention, the petitioner has referred to the case of **Bata (India) Ltd & Ors vs. S.K. Chawla: (2005) III CLR 727** passed by Division Bench of Gujarat High Court.

10. The other reason given by the petitioner is that it has more than one thousand shops, out of which only 220 shop managers have raised the dispute. The shops are located in different places in India and disputes have also arisen on different periods and are of different nature, the record of all these disputes are spread all over India and therefore there is no common issue which can be determined by the National Tribunal in view of the scheme of Section 7B(1) of the Act.

11. In the counter affidavit filed on behalf of respondent No.2, it has been stated that the petitioners had obtained permission of the Government of West Bengal, Karnataka, U.P., Delhi and Maharashtra under the Shops and Establishment Act of the respective States to keep their shops open for extended working hours and observe 7 days week which was opposed by respondent No.2, therefore, it appears that due to this disobedience of their order, the petitioner company terminated the services of 220 employees without even holding any enquiry.

12. The main submission of the respondents on merit is that the

reference under Section 10 (1A) of the Act to the National Industrial Tribunal has been rightly appointed by the Central Government as it involved termination of huge number of work-men throughout the country on identical grounds with an apprehension that further terminations may take place and may cause industrial dis-harmony in similar industries. The fact that a particular dispute is of national importance is based on the formation of an opinion by the Government and it is not open for the court to probe into the facts/material on the basis of which the subjective satisfaction is arrived at. Facts of the present case clearly show the involvement of question of national importance.

13. It is also stated that the reference to National Tribunal is justified, because each shop(s) in State(s) constitute different “establishment” under Section 2(j) r/w Section 2(ka) of the Act and an opinion was formed by the Government that the issue needed to be adjudicated by the Tribunal and accordingly a National Industrial Tribunal was constituted vide notification dated 05.09.2007 for adjudication in the matter of termination of 220 employees of Bata shop owners.

14. Learned Senior counsel Shri Ashok Desai, appearing on behalf of the petitioner, has made his submissions which can be outlined as under:

(a) Firstly, Mr. Desai, learned Senior counsel, has submitted that the impugned order does not record the reasons as to how the Central Government arrived at the conclusion that the present dispute

warrants the formation of National Tribunal. The said decision making, according to Mr. Desai, lacks requirement of satisfaction of pre-conditions of the Section 7 B of the Act only after which the Central Government can form the National Tribunal in a given case.

- (b) Secondly, Mr. Desai, learned Senior counsel, contended that the two preconditions prescribed under the Section 7 B of the Act are to be satisfied in order to enable the Central Government to arrive at the opinion of formation of National Tribunal. Learned Senior counsel has read the provision of Section 7 B and thus submitted that the said two preconditions are that the dispute involves question of national importance and secondly the industrial establishments in more than one State are likely to be affected by such dispute.

Learned Senior counsel submitted that none of the criterion in the case are met with, as neither any question of national importance emerges in the present matter which ought to have been disclosed in the impugned order, nor the industrial establishments at more than one State are likely to be affected by such dispute.

- (c) Thirdly, learned Senior counsel Mr Desai has argued that the High Court has jurisdiction to entertain a writ petition in view of specific plea raised by the petitioner that there is no industrial dispute and if an administrative order was passed by not taking into consideration statutory requirement. The said order, if passed, is

subject to judicial review. He referred the following decisions in support of his submission :

I. In **Nedungadi Bank Ltd vs. K.P. Madhvan Kutty & Ors.:**

(2000) 2 SCC 455, the Supreme Court held as under:

“8. It was submitted by the respondent that once a reference has been made under Section 10 of the Act a Labour Court has to decide the same and High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. That is not a correct proposition to state. An administrative order which does not take into consideration statutory requirements or travels outside that it is certainly subject to judicial review limited though it might be. High Court can exercise its powers under Article 226 of the Constitution to consider the question of very jurisdiction of the Labour Court. In *National Engineering Industries Ltd. v. State of Rajasthan*: (1999) 9 JT (SC) 377 this Court observed:

“24. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of Jurisdiction of the industrial dispute, which could be examined by the High Court In Its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate Government lacks power to make any reference.”

II. In *National Engineering Industries Ltd vs. State of*

Rajasthan: (2000) 1 SCC 371, the Apex Court held as under:

“24. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of Jurisdiction of the industrial dispute, which could be examined by the High Court In Its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate Government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred.....”

III. In *Management of Express Newspapers (P.) Ltd, Madras vs.*

The Workers and Ors: AIR 1963 SC 569 (V 50 C 89), the

Supreme Court held:

“19. It is hardly necessary to emphasize that since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it under section 10 is limited by S.10 (4) to the points specifically mentioned in the reference and matters incidental there to, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy.....”

- (d) Learned Senior counsel Shri Desai has also submitted that the present case does not involve the industrial establishments in more than one State and it involves only a single establishment which is the petitioner, in these circumstances, the second precondition fails

on this very count, thus, the impugned order was passed completely ignoring this aspect. The said reference is thus bad as it illegal exercise of jurisdiction.

- (e) Learned Senior counsel strenuously argued that the present case is similar to the case decided by this Court reported in **FDC Ltd vs. UOI & Ors** (supra) wherein the learned Single Judge quashed the similar reference on this very basis that no question of national importance had emerged in that case and the industrial establishment in more than one State was not affected in that case. In that situation, the learned Single Judge of this Court while exercising his jurisdiction under Article 226 quashed the impugned order on the ground that the Central Government has completely ignored the provisions of the Section 7 B while referring the dispute to the National Tribunal in the similar situation and thus the present case being based on the same set of facts. The view expressed by the learned Single Judge of this court in **FDC Ltd vs. UOI & Ors** (supra) may be followed by this Court.
- (f) Further, the disputes of the petitioner with its managers are to be dealt with singularly and each case has its own merit and cannot be adjudicated in one shot in the manner of formation of National Tribunal as in each there is a separate grievance and there would be a great inconvenience to the parties if the National Tribunal is formed in the present case. Section 7B of the Act is a provision for special circumstances. On this count also, learned Senior counsel

urged that the present dispute does not warrant the reference which has also been considered by the learned Single Judge of this Court in **FDC Ltd vs. UOI & Ors** (supra).

- (g) The learned Senior counsel has referred the decision of the Division Bench of the Gujarat High Court in **Bata (India) Ltd & Ors vs. S.K. Chawla** (supra), wherein it was held that the Bata Shop Managers are not the workmen. Further, it was held as under:

“12. All these duties, which were ascribed to him and were also discharged by him, by no stretch of imagination can be said to be of clerical nature. Where a person is given authority to take independent decision in a particular manner in a particular matter, then, it cannot be said that he continues to be a clerical person and had no independent authority to take a decision. In the present matter, the respondent was appointed in the managerial cadre, was assigned duties of supervision and management and in fact, was discharging the said duties. At this stage, we would also be justified in referring to a judgment of the Supreme Court in the matter between *S.K. Maini v. Carona Sahu Co. Ltd., reported in 1994 II CLR 359 S.C.....*”

It further held:

“We have no hesitation in holding that the reference at the instance of the respondent, who was not a workman, was not maintainable.”

15. Learned Senior counsel, thus, summarized that no question of national importance is involved in the present case and therefore, in view of the same, the impugned order passed is bad and liable to be quashed as the Central Government/ respondent has exceeded its jurisdiction. The High Court has the power to consider the jurisdiction of Central

Government and can quash the reference by allowing the present writ-petition.

16. Per contra, Mr. Sanjay Parikh, learned counsel appearing on behalf of the respondents, has made his submissions which can be enumerated as under:

- a) Learned counsel firstly argued that the impugned order passed by the Central Government under Section 7B of the Act is the administrative function and the petitioner's case before this Court that the Central Government has not considered that the managers are not workmen or that the petitioner's shops are not industrial establishments which are likely to be affected, is going into the merits of the controversy which is not warranted at the time of making the reference under Section 10 read with Section 7B of the Act. Thus, this Court should not interfere under Article 226 of the Constitution of India to make the enquiries which even the Central Government is not entitled to take into the material as suggested by the petitioner while referring the reference.

Learned counsel relied upon the decision of **Ramesh Kumar & Others versus Union of India: 144 (2007) DLT 394 (DB)**, wherein Division Bench of this Court held that at the time of deciding the question as to whether or not a reference is to be made, the appropriate government acts in the light of provisions of Section 10. Para 3 of the said judgment as under:

“At the time of deciding the question as to whether or not a reference is to be made, the

appropriate Government acts in the light of provisions of Section 10 of the Industrial Disputes Act. It is settled law that whether or not a reference case could be made out is an administrative decision and at that stage, no final opinion on the *lis* of the parties could be decided by the appropriate Government. In the present case, the appropriate Government has proceeded to decide the *lis* between the parties, as if they are vested with the judicial or quasi-judicial power. In our opinion, therefore, the rejection of the prayer of the workmen to make reference of the disputes is illegal and without jurisdiction. In this connection, we may refer to the decision of the Supreme Court in ***Telco Convoy Drivers' Mazdoor Sangh and Another v. State of Bihar and Others***, reported in AIR 1989 SC 1565. In paragraph 13 of the said judgment it has been held that while exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing the said administrative function the Government cannot delve into merits of the dispute/claims and take upon itself the task of determining the *lis*, which would certainly be beyond the power and the scope of Section 10 of the Act. The same proposition of law has been reiterated in other subsequent decisions of the Supreme Court like ***Dhanbad Colliery Karamchari Sangh v. Union of India and Others***, reported in 1991 SUPP.(2) SCC 10; ***V. Veeraranjan and Others v. Government of Tamil Nadu***, reported in AIR 1987 SC 695; ***Ram Avtar Sharma v. State of Haryana***, reported in AIR 1985 SC 915; ***Air India Limited v. Jagesh Dutt Sharma***, reported in 133 (2006) DLT 93 (DB), and ***ITDC v. Delhi Administration***, reported in 1982 Lab. I.C. 1309 (FB).”

- b) Learned counsel for the respondents refuted the contentions of the petitioners by stating that in the present case, the reference to the National Tribunal is called for as it involves termination of a huge number of workmen throughout the country on identical grounds.

Thus, the grounds on which workmen are removed are not uncommon. The fact that a large number of workmen has been removed on all India basis makes it a question of national importance.

- c) Learned counsel for the respondents submitted in alternative, that the petitioner's shops, branches at several States constitute different establishment under Section 2(j) read with Section 2(ka) of the Act, thus, the argument of the petitioner that the different industrial establishment are not likely to be affected is completely baseless.

Learned counsel relied upon the judgment of **Food Corporation of India workers union Vs. Food Corporation of India and Others: (1985) 2 SCC 294** and **SAIL & Others versus National Union Waterfront Workers & others: 2001 (7) SCC 1** wherein the said proposition has been laid down.

- d) Learned counsel for the respondents has further submitted that the petitioner and the respondents have entered into the settlement agreement on 25.09.1998 within the meaning of Section 18 of the Act. The said settlement between the management and the managers/ workmen is binding which clearly show the status of the managers as workmen who have been given due acknowledgement as workmen by the management. In Clause 12 of the said settlement, it was mentioned that the necessary changes and/or amendments made in the settlement shall be incorporated in the

standing orders and rules will remain in force until the time the same are revised by mutual discussions. According to the learned counsel for the respondents, the settlement has a legal force as an award and is binding and Section 9A of the Act curtails the management's right to change the conditions of service of workman which are arrived at the settlement and even after the term of the settlement is over, its binding effect continues. He referred the judgment of the Apex Court in the case of LIC vs. D.J. Bahadur: (1981) 1 SCC 315, in support of his submissions. The standing orders issued by the petitioners to the managers of the petitioner also treat the shop managers/respondents as employees and not supervisors. The standing orders, thus, become a part of the settlement. The very fact that the petitioner had entered into a settlement with the respondents, therefore, their service conditions were governed by the standing orders conclusively shows the status of the Bata Shop Managers as workmen.

- e) It is averred that along with the counter affidavit, the respondent had enclosed the settlement as well as the standing orders though, in the rejoinder it was stated by the petitioner that the termination of services of individual managers was done as per the agreements and standing orders applicable to the managers. However, in the additional affidavit, it was stated that the standing orders do not exist any more as the settlement, as pointed out by the respondents, was terminated.

17. Learned counsel thus submitted that all the disputed questions raised by the petitioner are to be decided by the Industrial Tribunal by passing an order in accordance with law and in view of his submissions above, the impugned order and reference made by the Central Government is justified on all counts and the interference of this court is not warranted.

18. I have gone through the submissions made by the learned counsel for the parties at the bar and also petition, counter affidavit and other documents filed along with the same. I shall now deal with the rival contentions of the parties pointwise.

19. Some relevant and important dates pertaining to the present case are as under:

1979	Standing Orders
25.09.1998	Settlement between the Employees of Bata Shop Managers in which the working hours from 8 a.m. to 8 p.m.
August, 2006	Change in working hours, which were increased from 8 p.m. to 9 p.m. on all 7 days in view of notifications issued by various State Government under Shop and Establishment Act.
01.09.2006	Strike notice for 16.09.2006 and 28.09.2006 by the Union.
16.09.2006	One day strike observed.
26.09.2006	Talks about settlement.
28.09.2006	Strike withdrawn.
18.02.2007	Termination letters in Calcutta.
23.02.2007	Termination letters in Bombay.

24.02.2007	Strike in protest of the terminators, call given for 5 th 6 th and 7 th March 07 was withdrawn.
March, 2007 May, 2007	Maximum termination letters on the ground of participation in strike.
05.09.2009	Dispute referred to the National Industrial Tribunal by the order of the Joint Secretary, Ministry of Labour, Government of India.

20. Section 7B of Act empowers the Central Government to constitute National Industrial Tribunal. The said Tribunal can be formed by the Central Government if in the opinion of the Central Government, the said dispute warrants the reference to the Central Government. The said section is reproduced hereinafter:

“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.”

21. A careful reading of Section 7B of the Act reveals that the Central Government’s power to refer the industrial dispute to the National

Tribunal is based on its sole opinion that the said dispute involves a question of national importance or are of such a nature that the industrial establishments situated in more than one State are likely to be interested or affected by such disputes. Thus, the said opinion has to be the opinion of the Central Government which indicates that the said reference is dependent upon the satisfaction of the opinion of the Central Government. Resultantly, the said decision of the Central Government is not a judicial decision but is an administrative action.

Further, the opening wording of the section begins with the expression “may” again indicates that the said matter of reference is a matter of discretion and it is not incumbent upon the Central Government to refer all disputes but only those which in its discretion fulfills the requirement of the section and in its opinion are those which warrants the formation of the National Tribunal may be referred to the National Tribunal. In this way, the said reference is not merely an administrative act but is also a matter of administrative discretion vested on the Central Government to refer the dispute to the National Tribunal in the given cases.

22. The next thing which immediately comes to attention after reading Section 7B of the Act, is that the Central Government can exercise its administrative discretion even upon satisfaction of one of the condition prescribed in the section. This is so because the opinion of the government can be formed if the disputes 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.

The use of the word “or” between the two conditions makes them disjunctive in nature as against conjunctive ones. It is a well settled principle of construction that ordinarily the expression “or” is to be read as disjunctive one and not be read as “and “ unless the context otherwise in the compelling circumstances requires so and reading plainly leads to absurdity.

23. The reference is invited to the often quoted passage of Scrutton, L.J which lays down the said proposition. You do sometimes read ‘or’ as ‘and’ in a statute. But you do not do it unless you are obliged because ‘or’ does not generally mean ‘and’ and ‘and’ does not generally mean ‘or’....” [**Green v. Premier Glynrhonwy Slate Co.: (1928) 1 KB 561**].

Lord Halsbury points out, the reading of ‘or’ as ‘and’ is not to be resorted to, "unless some other part of the same statute or the clear intention of it requires that to be done." [**Mersey Docks and Harbour Board v. Henderson Bros.: (1888) 13 AC 603**].

24. The Hon’ble Supreme Court adopted with approval Lord Halsbury's principle and in fact went further by cautioning against substitution of conjunctions in the case of **Municipal Corporation of Delhi v. Tek Chand Bhatia: (1980) 1 SCC 158**, where the Court held as under:-

“11. ...As Lord Halsbury L.C. observed in Mersey Docks & Harbour Board v. Henderson

LR (1888) 13 AC 603, the reading of “or” as “and” is not to be resorted to "unless some other part of the same statute or the clear intention of it requires that to be done". The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of the cases of turning "or" into "and" and vice versa have not gone to the extreme limit of interpretation.”

25. In the present case, the plain reading itself makes it sensible and apparent that the said two conditions are disjunctive and thus departure from the plain rule of construction is impermissible.

26. Let me now examine as to whether any of the conditions prescribed in the section can be said to have been attracted in order to enable the Central Government to exercise such discretion.

27. Learned Senior counsel for the petitioner argued that in the present case, no question of law of national importance has arisen. The question of law which will decide the fate of either workmen in general or of future course of employment in particular or likely to affect the relationship between the employers and employees etc.

28. To substantiate this submission, a great stress is laid on the judgment passed by the learned Single Judge of this court in **FDC Ltd vs. UOI & Ors** (supra) wherein the learned Single Judge in paras 9 and 10 observed as under :

“9. Thus, the only ground which is available to the Central Government for issuance of notification under Section 7-B 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 un-identical 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.”

29. The decision passed by this court in *FDC Ltd vs. UOI & Ors* (supra) does not lay down the correct exposition of law and the scheme of Section 7B (1) of the Act and the law laid down by the Hon’ble Supreme Court. The following are the reasons which I feel are relevant for my disagreement:-

a) Firstly, the learned Single Judge in *FDC Ltd vs. UOI & Ors* (supra) finds that the “only ground” available to the Central Government for issuance of notification under Section 7B of the Act is the 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. The learned Single Judge reads both the pre

conditions mentioned in the section together to find that there is a single ground available to the Central Government for reference of dispute to the National Tribunal by reading the same as together and giving the finding that “ the emphasis is on the nature of the dispute only and its important character”. The said finding itself presupposes that both the conditions are to be read together although I find that the same are disjunctive in nature. Resultantly, the fact that the dispute involves question of national importance has no co-relation with the second part of the condition that is the dispute is of such a nature in which industrial establishments situated in more than one State are likely to be affected. The said nature of dispute which falls in the second pre condition may be of national importance or not becomes immaterial for attracting the said precondition.

- b) Secondly, once the learned Single Judge in *FDC Ltd vs. UOI & Ors* (supra) has read both the conditions together and carved out that the relation between first and second condition by finding that the question of national importance is to be involved which affects the employees in general and industrial establishments situated in different States. The learned Single Judge proceeds on the very same basis to arrive at its finding:

“A dispute of national importance would be such where some important question of law is involved which is going to effect 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 State.”

The said finding may be correct to the extent that it defines the question of national importance. But to read the second part of the condition which is disjunctive with the first one to find that the dispute of national importance is one which will determine the fate of the employers throughout India leading to introduction of the second condition into the first one and is preventing it from operating it independently. This can be seen further when the Hon’ble Judge observes that 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.

However, the plain reading of the section denotes otherwise than the finding. The positioning of the expression “or” in the section is in between the first condition and the second one to distinguish the two from each other. The said “or” is positioned after the sentence relating to question of national importance ends. However, the learned single Judge finds that only those questions of law can be referred to which are of national importance in which either workmen in general or industrial establishments in different State would be affected.

I find that the said observation would be virtually reframing of the section itself which is in fact not there. Firstly, it seeks to

change the positioning of the expression “or” and secondly it add words in to section which are in fact not there.

It is well settled that the courts cannot add words into the statute unless the plain reading leads to absurdity, hardship or inconvenience. It is equally well settled that the construction must be accepted which renders each part of the section or enactment workable and does not render any part as otiose or in effective.

Thus, the view taken by the learned Single Judge in relation to question of national importance and importing the second condition into the first by reading them together renders the second condition totally unworkable or in effective. The said view, thus, in my view is not in consonance with the legislative intent and the clear wordings of section.

- c) Thirdly, the learned Single Judge in *FDC Ltd vs. UOI & Ors* (supra) also comes to the finding that the industrial establishments situated in more than one State must necessarily mean different establishments in different States.

I find that the same is also not in consistence with the clear wordings of the section. The wording used in the section is ‘industrial establishments situated in more than one State’ and are not qualified by the word different. Thus, the addition of the word different attributes a separate meaning to it. The said qualification again changes the meaning of the section and tantamount to adding word to it as discussed in the previous paragraphs. If that be so,

then there is no hesitation to hold that the single industrial establishment having its branches spilled over in different States which are operating distinctly are industrial establishments situated in more than one State.

The same view has been taken by the learned single Judge of Gujarat High Court in *All India Bajaj Electricals Employees Federation vs. Chief Labour Commissioner & Others: (1998) III LLJ 251 (Gujarat,)* wherein the learned Single Judge observed:

“In light of the backdrop of facts, prima facie, it cannot be said that the industrial establishments of the Respondent-company which are situated in 13 States are not likely to be affected by such industrial dispute. Needless to mention that the admitted aspects which are highlighted hereinbefore clearly go to show that the petitioner federation has 13 different unions which are having their respective membership in 13 States and the petitioner federation is a registered union under the Indian Trade Unions Act and is recognised for the purpose of settling industrial disputes regarding wages and other service conditions and pursuant to that, it had also made settlement with the employer on June 28, 1992. Such method of recording settlement by the petitioner federation with the employer has been in vogue since 1975. The industrial dispute between the petitioner federation and the Respondent-company would obviously affect 20 branches of the Respondent-company throughout the country of many employees. It is in this context that, prima facie, it cannot be contended that industrial dispute under consideration is of such nature that the industrial establishment situated in more than 13 States having 20 branches are not likely to be interested in or affected by such dispute. Therefore, the contention that there is no merit in the present petition is required to be rejected being meritless itself.”

d) Fourthly, again in *FDC Ltd vs. UOI & Ors* (supra) due to establishing the inter connectivity between the first condition and the second one, learned Single Judge has given the finding that the dismissal of group of workmen working in different States does not involve a question of national importance and hence the reference was held to be bad.

30. However, the learned Single Judge in *FDC Ltd vs. UOI & Ors* (supra) has confined the finding to the question of national importance only and has not considered the said dispute on the touchstone of alternative threshold as the learned Judge could not have done so due to reading of the provision conjunctively at that time.

31. I am of the opinion, that the alternative second condition in Section 7 B of the Act which provides that the dispute is of such a nature in which industrial establishments situated in more than one State are likely to be interested or affected gives very wide powers to the Central Government to constitute National Tribunal. The said condition has to be construed unconditionally. The language of the same cannot be controlled by the disjunctive previous portion and the same has to operate independently of the previous requirement.

32. Further, the wordings of the Section that the dispute is of such a nature that industrial establishments situated in more than one State are affected are self evident of the legislative intent behind the Section which is, to refer the disputes which are spilled over in more than one State and are concerned with industrial establishments situated in more than one

State. This can be the legislative intent behind constitution of National Tribunal for easy and quick disposal of disputes which are relating to industrial establishment situated in more than one State.

33. In the case of *The Management of Indian Cable Co., Ltd., Calcutta vs. Its Workmen: (1962) ILLJ 409 SC*, Venkatarama Ayyar J., as his lordship then was speaking for Constitutional Bench while analysing the expression “industrial establishment”, observed as under :

“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 Co. v. Their workmen: (1957) IILLJ506Mad* . 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, s. 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 connection, 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 s. 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.”

34. Once the Supreme Court has held that Section 10 (1A) for reference to the National Tribunal is based on the notion that the industrial establishments of a concern in different States are distinct establishment, the same meaning has to be accorded to the Section 7 B and it cannot be given different meaning.

35. Thus, in my considered view the cluster of disputes relating to the employees of the organization having its branches is situated in different States is no different from the second alternative situation prescribed in the section. If the several disputes in the establishments

situated in different States cannot be clubbed for the purpose of the adjudication (although they may be decided on their own merits) by operation of Section 7B of the Act, then the purpose of providing such power to the Central Government for the constitution of National Tribunal is defeated.

Therefore, I find it difficult to accept the submission of the petitioner that both the conditions are to be satisfied together before the Central Government while referring the dispute to the National Tribunal and I am of the opinion, that even if one of the condition is satisfied due to its disjunctive nature, the Central Government's opinion to refer the dispute to the National Tribunal cannot be faulted with.

36. The consolidation and collective adjudication are basic reasons and ingredients for the formation of Tribunal. The national level Tribunals are formed for the same purposes only so that the disputes of like nature in which the industrial establishments situated in more than one State is affected must be decided in one go so that the multiplicity of litigation could be avoided.

37. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person (s) for whom the Act was made, should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. vs. The Workmen: (1961) ILLJ328SC, Jeewanlal Ltd. V. Appellate Authority:*

1984 II LLJ 464 SC.

38. Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

“A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction).

39. In **S.M. Nilajkar vs. Telecom District Manager:(2003) ILLJ 359 SC**, the Supreme Court has held that 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.

40. Thus, even if applying the principle of purposive construction on beneficial legislation which the Industrial Disputes Act is, the view which upholds the benefit intended to be given, be preferred over and above the view which takes away the same. In that light too, it would be unjust to give restrictive meaning to the expression industrial establishments situated in more than one State or curtailing the language of the condition prescribed in Section 7B of the Act.

41. As already discussed and observed by the Gujarat High Court

in the case of *All India Bajaj Electricals Employees Federation vs. Chief Labour Commissioner & Others* (supra), it is true that the purpose behind having adjudication by the National Tribunal to be constituted by the Central Government under Section 7B of the Act for making a reference in a case with respect to inter-State establishments, like one on hand, the discretion of the Central Government is very wide, either the industrial dispute involving a question of national importance or industrial dispute 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. Needless to state that existence of even one condition of them would empower the Central Government for making a reference to the National Tribunal. It cannot be contended that both national importance and inter-State establishments' involvement must co-exist.

Admittedly in the present case, the proposed industrial dispute is attributable and relatable to the interest of larger section of employees working in the industrial establishments of the petitioner company. For exercise of power under Section 10(1A) by the Central Government, it is not necessary that inter-State establishments should be affected as such, but, it is sufficient even if they are 'likely to be interested' in the dispute proposed to be referred to the National Tribunal. The expression 'interested' or 'affected' cannot be equated. There is a difference between the connotation and its import in so far as the words 'interested' and 'affected' are concerned. In short, it can safely be concluded that the discretionary powers of the Central Government for making a reference to

the National Tribunal are very wide and exercise of such powers should be made liberally so as to advance the cause of uniformity, discipline and welfare of the affected or likely-to-be affected employees or workers.”

42. In view of the above, I find that once the present case is tested on the second requirement of the Section 7B, the conclusion is inescapable, which is, the petitioner is operating through its various shops all over India. It has its regional offices in different States controlling the said shops and also its head office in Calcutta. The said branches of the petitioner company can be stated to be industrial establishments situated in more than one State and the reference of the dispute to the National Tribunal by the Central Government is not bad at least on the count of non applicability of the provision envisaged under Section 7B of the Act.

So far as it relates to whether any question of law of national importance arises or not, which although becomes immaterial in view of my discussion in the earlier paragraphs of this judgment that even the satisfaction of one condition is sufficient to empower the Central Government to form the opinion of reference. I feel that when the question relates to dispute between the managers’ union of the petitioner’s organization on all India level, the question of law of national importance would arise.

43. With great respect, I express my disagreement with the views of the learned Single Judge in *FDC Ltd vs. UOI & Ors* (supra).

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 7 B 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.

47. The submission of the learned Senior counsel for the petitioner about the inconvenience caused to the petitioner if the National Tribunal is formed in Kolkata is also without any force. This is so as at the first place, the Central Government has appointed the National Tribunal at the place where the head office of the petitioner is situated and thus the inconvenience argument is not impressive in nature and is rather an attempt to avoid the National Tribunal. Secondly, most of the disputes are also concerned with the Kolkata branch of the petitioner and thus it is really not inconvenient to the petitioner if the reference is accepted. Thirdly, the law does not prescribe any requirement of inconvenience as a ground for consideration of non reference of dispute to the National Tribunal.

48. Lastly, the submission has been made by the learned Senior counsel for the petitioner that the respondents are not workmen under Section 2 (s) of the Act and thus the said reference ought to be interfered with by this court. Learned Senior counsel for the petitioner relies upon the judgment passed in **Bata (India) Ltd & Ors vs. S.K. Chawla** (supra) wherein the Division Bench of the Gujarat High Court has held after examining the award passed by the labour court and the challenge made before the labour court by the management that the said manager is not workmen under the act as the duties assigned to him are managerial in nature. The petitioner has also challenged the validity of agreement dated 25.09.1998 on several grounds.

49. Learned counsel for the respondents in response to these

submissions has made the following submissions:

- a) The said judgment relates to the agreements which were entered into by management in 1976 and not the events thereafter. The events thereafter like the settlement agreement, standing order which was the part and parcel of the settlement agreement. From the same, when the managers are subjected to the standing orders, when the remedy is provided under the standing orders against the misconduct by the managers and the same is part of the agreement, the management has itself entered into settlement with the respondent union. All these factors were not available when the Gujarat High Court gave its decision which is also confirmed by the Apex Court.
- b) The said judgment was passed by the learned division bench considering the single dispute of person/ manager who has not been represented properly before the industrial tribunal. Thus, the respondent union must be given an opportunity to present its case that they are workmen under the act and at the preliminary stage itself they should not be debarred.
- c) Learned counsel for the respondents relies upon the judgment of **S.A. Sarang vs. W.G. Forge & Allied Industries Ltd., Thane and Ors: (1996) ILLJ 67 Bom.** to support the proposition that if an employer continuously and consistently proposes and takes action against its employee on the footing that he is covered by the Model Standing Orders (thereby implying that the employee is a

"workman" within the meaning of the Act), then such an employer must be estopped from denying the said fact when the dispute regarding the dismissal of the employees finally lands up before an industrial adjudicator. This aspect as per the learned counsel for the respondents needs consideration which has not been considered by Gujarat Division Bench in *Bata (India) Ltd & Ors vs. S.K. Chawla* (supra). Learned counsel for the respondents also relied upon *George Thomas Thakkeyil vs. Sci - Tech Centre, G.G. Hulsure, XIIth Labour Court, Labour Court and Shri J.P. Limaye, Industrial Court, 2007(4) MhLJ 200*, to support the same.

- d) The learned counsel for the respondents also cited the clause relating to strike which is in the standing orders which provides that the right to strike is available to the managers subject to the provisions of the Industrial Disputes Act.

In view of the same, learned counsel for the respondent urged before this Court that this Court while examining the reference under Section 7B read with Section 10A should leave this issue to the industrial adjudicator to examine.

50. I find merit in the submission of the learned counsel for the respondents as the said decision was not concerned with standing orders which are subsequent events in the present matter and have been referred to in the settlement dated 25.09.1998 and have also been relied upon in the letters of termination. The settlement arrived at between the parties

still continues unless it is substituted by another settlement. Clause 12 of the settlement reads as under:

“12. Status and scope of the agreement.
Necessary changes and/or amendment will be incorporated in the Standing Orders and Rules for shop managers but the existing Standing Orders and Rules otherwise will remain in force until the same is revised by mutual discussions. Other terms and conditions of the service which are not specifically governed under this agreement or which are not being revised will continue to be binding upon the parties during the operations period of this Agreement.”

Neither the settlement nor the standing orders have been discussed in the judgment of Gujarat High Court.

51. In this case, this Court is concerned with merely a notification forming the National Tribunal and is not concerned with any adjudication or finding to the effect that the managers are not workmen or are workmen under the Act. There seems to be a factual dispute on this on several counts and a new set of events which have been pointed out by the learned counsel for the respondent may impact the finding of declaring the managers as workmen either way. The impact of such events need to be examined and adjudicated by the fact finding court which is the Tribunal. This Court is examining a limited aspect whether the Central Government has rightly referred the matter to the National Industrial Tribunal under Section 7B(1) of the Act and in these proceedings, this Court is not inclined to decide the matter on merit on the basis of facts pleaded by the parties.

52. It is well settled now that the writ court cannot assume itself to be a fact finding court when the fact finding court is available to the parties.

53. In **Bombay Union of Journalists and Ors vs. State of Bombay: (1964) ILLJ 351 SC**, the Hon'ble Supreme Court has held:

".....Similarly on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal.....".

54. A Division Bench of Bombay High Court (Bharucha and Tipnis JJ.) while dealing with a similar point in Appeal No. 627 of 1981, arising from Writ Petition No. 451 of 1981, decided on 27th August, 1987 held :

"The appropriate Government has an extremely limited administrative discretion in deciding whether or not to make a reference. In no case whatever can it perform an adjudicatory function. It cannot go into the merits of the dispute. That is squarely the preserve of the Labour Court or Industrial Tribunal. The discretion that the Government has is confined to determining whether, as a result of making a reference, there will be industrial unrest and whether the application for reference is frivolous or grossly delayed".

55. In view of the same, I feel that it would be improper to adjudicate the question of workmen at this stage which is not even to be considered by the Central Government at the time of forming of an opinion of reference. Thus, the contentions raised by the petitioner cannot be accepted.

56. It is rather more appropriate to leave this question open to be

decided by the National Tribunal to consider all the events urged by the respondents including the validity of the settlement agreement raised by the petitioner. The petitioner is at the liberty to challenge the same before the National Tribunal as has been done by it in decision of Gujarat before the labour court.

57. No further contention is left unanswered.

58. It is well settled, that the courts will be loath to interfere when it comes to administrative discretion unless the said discretion is exercised without jurisdiction or is perverse, suffers from illegality or against the settled principles of law.

59. The extent of judicial scurrility in cases of administrative discretion is extremely limited. In the present case, the petitioner has failed to point out any illegality in the impugned notification or the reference. Rather, the above discussion reveals that the said reference is made as per the legal provision envisaged under Section 7 B(1) of the Act.

60. Thus, the impugned decision making or formation of opinion by Central Government cannot be faulted with as it does not suffer from any illegality.

61. Consequently, the present case does not call for interference under Article 226 of the Constitution. Accordingly, the petition is dismissed. The interim order issued on 12.10.2007 is vacated.

62. Both the parties shall appeal before National Tribunal on 13.05.2011. Copy of this order be sent to the Presiding Tribunal for

information.

63. No costs.

MARCH 23, 2011
jk/sa/dp

MANMOHAN SINGH, J.