

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9645 of 2007

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M/S Bharati Bhawan (Publishers & Distributors), Thakurbari Road, Patna-800003
through its partner Tarit Kumar Bose son of Late Ram Mohan Bose
..... Petitioner.

Versus

1.The State of Bihar through the Secretary, Labour, Employment and Training
Department, Govt. of Bihar, New Secretariat Building. "Vikas Bhawan" Bailey
Road, Patna.
2. Bharati Bhawan Karamchari Sangh, L.I.G. Flat No. 303, Block No. 4, Sector No.
3, Bahadurpur Colony, Patna-800020 through its /General Secretary Siyaram
Thakur.
3. The Presiding Officer, Industrial Tribunal, Labour Department, Bailey Road,
Patna

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. ALOK KUMAR SINHA
Mr. Indrajeet Bhushan
Mr. Manish Kumar
For the Respondent/s : Mr. (AAG1)
Mr. Alok Kumar Sinha
Mr. Siyaram Thakur

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT

This petition under Article-226 of the
Constitution of India has been preferred on behalf of the
petitioner M/S Bharti Bhawan (Publishers and Distributors) for
quashing the interim order dated 24-10-2003 and the
consequent final award dated 22-02-2007, contained at
Annexures-9 & 1 respectively to this petition, passed in
Reference Case No. 14 of 2003 by which and whereunder,
learned Presiding Officer, Industrial Tribunal, Patna found the
demand of pay revision of workmen of M/S Bharti Bhawan
(Publishers and Distributors), proper and accordingly, directed



for revision of pay of workmen of the aforesaid establishment and, furthermore, the demand of city compensatory allowance of workmen of the above-said establishment was also found proper and similarly, the demand of livery to the class-IV employees of the aforesaid establishment was also found proper and accordingly, the reference made by Central Government to the tribunal was allowed to the above-said extent.

2. The brief fact, which lies to file this writ petition, is that the respondent No. 2 being Union of Employees of M/S Bharti Bhawan (Publishers and Distributors) raised a 12 point charter of demand before the management of the petitioner on 07-02-1999 and subsequently, the aforesaid demand was placed before the Deputy Labour Commissioner, Patna, who initiated conciliation proceeding. During conciliation proceeding, the management objected in entertaining the dispute under the provisions of Industrial Disputes Act, 1947 because as per the petitioner/management, the 12 point charter of demand, raised by an unrecognized union not having in representative capacity, did not clarify an industrial dispute. On failure of the conciliation proceeding, the respondent No. 1, the State of Bihar vide Notification No. 7/Shram-D-1607/2001-400 dated 20-10-2001 referred the



above-said charter of demands for adjudication before Labour Court, Patna but subsequently, the State Government vide another Notification dated 21-06-2002 withdrew the reference case from the Labour Court, Patna and transferred it to the Industrial Tribunal, Patna for adjudicating the same terms of reference. In Industrial Tribunal, Patna the reference was registered as Reference Case No. 14 of 2003. The management and the union appeared before the Industrial Tribunal, Patna and filed their written statement. Apart from this, on 29-09-2003, a separate petition was also filed by the management, raising primary issue regarding the maintainability of the aforesaid reference case. The learned tribunal vide order dated 24-10-2013 rejected the aforesaid petition. The parties adduced their oral and documentary evidences. The Industrial Tribunal, having considered the materials, available on the record and the arguments of the parties, passed the impugned award.

3. Learned counsel, appearing for the petitioner challenged the impugned order dated 24-10-2003 as well as impugned award dated 22-02-2007 on the grounds that the tribunal did not consider the legal and factual aspects of the matter in accordance with law and without proper consideration of the legal and factual aspects passed the



impugned award dated 22-02-2007. It was contended by him that the petitioner had challenged the maintainability of the aforesaid reference case on two grounds; firstly; that the respondent No. 2 did not possess the representative capacity and was not competent to raise the general demands, pertaining to all the employees and secondly, that the State Government had no right to transfer a reference from the Labour Court to Industrial Tribunal. It was further contended on behalf of the petitioner that the learned tribunal though decided the second objection raised on behalf of the petitioner but so far as the first objection was concerned; the learned tribunal left the same to be decided at the time of final hearing of the reference but learned tribunal did not give any finding on the above-said first objection at the time of passing the award dated 22-02-2007. It was contended on behalf of the petitioner that wrong consideration of fact is excusable but non-consideration of the fact is fatal and, therefore, the impugned award cannot stand in the eye of law.

4. It was further contended by him that admittedly, the Government, initially, sent the reference to Labour Court, Patna vide Notification dated 20-10-2001 but subsequently, the aforesaid reference was withdrawn from the Labour Court, Patna and was sent to Industrial Tribunal,



Patna vide Notification dated 21-06-2002. The contention on behalf of the petitioner was that before sending the reference to the Industrial Tribunal, Patna, no opportunity of hearing was given to the petitioner nor any reason was assigned for withdrawal of reference from Labour Court or for sending the same to the Industrial Tribunal, Patna which is apparent violation of mandatory provision of Section-33b of the Industrial Disputes Act, 1947. It was further contended on behalf of the petitioner that the State Government had no right to transfer a reference from a Labour Court to Industrial Tribunal and the State Government under Section-33B of the Industrial Disputes Act, 1947 can only transfer a reference from a labour court to a labour court or from an Industrial Tribunal to Industrial Tribunal or from National Tribunal to National Tribunal and Section-33B of the Industrial Disputes Act does not give any power to the State Government to transfer a reference from labour court to Industrial Tribunal. In support of his above stated contentions, he referred the following cases:

(i) Dalmia Dadri Cement Ltd. Vs. Industrial Tribunal, Patiyala reported in 1961 LLJ(2) 607;

(ii) The management of M/S Ms. Nally Bharat Engineering Company Ltd. Vs The State of Bihar and Ors.

reported in (1990) 2 SCC 48;

(iii) Associated Electrical Industries (India) Private Ltd. Kolkata Vs its workmen reported in AIR 1967 SCC 284

(iv)Neha Arun Jugdar & Anr. Vs. Kumari Pallak Deevanjee reported in AIR 1911 SC 1164.

5. The next contention on behalf of the petitioner was that the respondent No. 2 had no representative capacity on the date, when the demands were raised and as such, the respondent No. 2 was not competent to raise any industrial dispute of general nature and, therefore, there was no industrial dispute at the time of making reference and the reference made by respondent No. 1 was bad in law and the tribunal had got no jurisdiction to proceed with the aforesaid reference. Continuing his submission, learned counsel for the petitioner submitted that the witnesses examined before the tribunal clearly stated that there were 250 employees but the respondent No. 2 had only a few employees numbering 20-25 as its members and that was the reason, the management did not recognize the respondent No. 2 as valid union and its employees. It was further contended by him that the respondent No. 2 having capacity of only 20-25 members was not competent to represent the interest of entire employees

and to raise the demands of general nature.

6. In support of his above-stated contentions, he referred decisions such as; ***Deepak Industries Ltd. And others Vs State of West Bengal & Ors. reported in 1975 LAB IC 153, ITC Ltd. Vs. State of Bihar 1995(2) PLJR 721, Kandan Textiles Ltd. Vs the Industrial Tribunal, Madras & Ors. reported in 1949 LLJ 875 and the Management of Madura Mills Company Ltd and the Presiding Officers Industrial Tribunal, Madras and others reported in 1973(2) LLJ 341.***

7. It was also contended by learned counsel for petitioner that non-recognized union cannot raise disputes of general nature and as a matter of fact, the non-recognized union can only negotiate, discuss and raise the problems of its members of individual nature. In support of his contention, he referred decision of ***Chairman, State Bank of India and another Vs. All Orissa State Bank Officers Association and others reported in 2002 LAB IC 2153.*** The next contention of the petitioner was that the learned Tribunal adjudicated economic demands of the union, without taking note of the settled principle of industries-cum-region basis and failed to take note of even financial capacity of the petitioner. It was further contended that the learned Tribunal also failed to



compare wage scales, prevailing in similar comparable concerns in the region. It was further contended by him that the onus was upon the union to produce concrete evidence to show that the comparable similar concern in the same region, was giving same wages/pay revision to their employees, as demanded by the union. It was also contended that though the union failed to produce the evidence to show the above-said comparison, yet the petitioner adduced concrete evidence on the above-said point to show that the demands, as raised by the union, were not fit nor liable to be allowed, because the petitioner has no financial capacity to bear the demands, as raised by the union. It was further contended by him that the learned Tribunal passed the award, allowing the demands of the union after comparing the pay scales/pay revisions with the employees of Bihar Government, without assigning any cogent reason though the tribunal had to take note of pay scales/pay revisions of similar concern. It was further contended by him that learned tribunal failed to adhere the principle of industry-cum-region basis. It was further contended on behalf of the petitioner that the tribunal failed to take notice of this fact that the petitioner (management) increased the wages of employees time-to-time and furthermore, the tribunal extended the benefit of city



compensatory allowance to non-workmen though the reference was only in respect of workmen and, therefore, the tribunal went beyond the reference, which is not in accordance with law. Learned counsel for the petitioner referred a number of decisions to fortify the above-said points, such as; **2004 LIC 2791 SC, 2001(2) LLJ 4121, 1969(2) LLJ 782, SC, 1972(1) LLJ 576(SC), 1962(1) LLJ 271, 1961(1) LLJ 663, 1978 LIC 828, AIR 1966 (SC) 497, 1979(2) LLJ 383, AIR 1958(SC) 578, AIR 1963 SC 1332, AIR 1977 SC 878.**

8. Learned counsel for the petitioner also took me through the evidences, available on the lower court record and submitted that the learned tribunal did not appreciate the evidences in its right perspective and passed the impugned award in arbitrary manner and therefore, the award in question, cannot sustain in the eye of law and accordingly, he prayed for quashing the impugned award.

9. The then Secretary of Bharti Bhawan Karmchari Sangh (respondent No. 2) appeared in person and refuted the submissions, advanced on behalf of the petitioner. It was argued by him that admittedly, the union raised demand of general nature. It was further argued that the Bharti Bhawan Karmchari Sangh was formed in the year, 1997 and there was only one union in the establishment and the aforesaid union

was a registered union. It was also argued that since there was no union of the employees of Bharti Bhawan Karmchari Sangh and this was the only union of the employees of the aforesaid establishment to represent the interest of entire employees. Therefore, it cannot be said that the respondent No. 2 had no representative capacity.

10. The next contention on behalf of the union was that after 1981, the pay of employees of Bharti Bhawan was never revised and, therefore, for the first time, the union raised the demand of pay revision of the employees of Bharti Bhawan. It was argued that the dispute was not for fixation of wages rather it was for pay revision and in case of pay revision, the theory of industry-cum-region basis is inapplicable and therefore, the decisions cited on behalf of the petitioner are not applicable in the present case as all the above-said decisions relate to dispute of fixation of pay revision. It was also argued that the government rightly withdrew first reference, which was sent to Labour Court for adjudication as the Labour Court had no jurisdiction to adjudicate the reference in accordance with rule and, therefore, the government withdrew the reference from the Labour Court and sent it to the Industrial Tribunal. It was argued that since there was no defect or illegality in the reference in question, there was no



reason to send a new reference to the Industrial Tribunal because the first reference was transferred to the Industrial Tribunal as the Labour Court had got no jurisdiction to adjudicate the aforesaid reference. It was also argued that the State Government was fully empowered u/S 33b of Industrial Disputes Act to transfer the reference in question from Labour Court to Industrial Tribunal and, therefore, the decisions, cited on behalf of the petitioner are not applicable in the present case. It was also argued that moreover, the petitioner did neither raise any objection nor challenge the order of transfer and therefore, at this stage, he has no right to challenge the order of transfer.

11. The next contention on behalf of the union was that the management revised the pay scale of its employees till 1981 and, therefore, it is an admitted fact that the management did the pay revision till 1981 but after 1981, the pay of employees was never revised though the management gave increments to its employees but it is well-known fact that pay revision and increments are not synonymous and, therefore, mere giving increments to employees does not amount to their pay revision.

12. It was also contended on behalf of the union that the rocketsky prices of all commodities of daily uses are well



known factor and, therefore, it was incumbent duty upon the management to revise the pay scale of the employees and when the management failed to do so, the union raised genuine demands and moreover, the tribunal did not accede the entire demands of the union and nominally increased in the pay of employees. It was also argued that in cases of pay revision, the financial capacity of the establishment is irrelevant though it has come in evidence that there was more than 25 crores annual turnover of the petitioner and the petitioner has a very sound economic position and is in condition to fulfill the demands of the employees and therefore, there is no scope for this court to interfere into the impugned award, which has been passed by the learned tribunal in accordance with law.

13. Certain facts are admitted in this matter. It is an admitted position that the petitioner is an industrial unit having strength of about 250 workmen. It is also an admitted position that Bharti Bhawan Karmchari Sangh is a registered union and on 07-12-1999, a 12 point charter of demand was placed by the union before the management and almost all the demands were related with economic demands. The 12 point charter of demand has been annexed as Annexure-2 to this petition. From very perusal of Annexure-2 to this petition, it would

appear that the demand of union was in respect of pay revision because the very opening of charter of demand, says that the pay revision of employees had not been done after 1982 and accordingly, the demand was made for pay revision of the employees. It is admitted position that after failure of conciliation, the matter went to the State Government and the State Government framed following reference which runs as follows:-

“Whether the 12 point charter of demand, raised before the management, Bharti Bhawan (Publisher and Distributors), Thakurwari Road, Patna by Bharti Bhawan Karmchari Sangh, Patna is proper? If yes, what relief the workmen are entitled to?”

14. It is also an admitted position that the aforesaid reference was referred to Labour Court, Patna vide notification dated 20-10-2001 which has been annexed as Annexure-3 to this writ petition. It is also an admitted position that vide notification dated 21-06-2002, the aforesaid reference was withdrawn from the Labour Court, Patna and it was sent to Industrial Dispute, Patna for adjudication.

15. No doubt, no reason has been assigned in notification dated 21-06-2002 for withdrawal of notification dated 20-10-2001 and for sending the same to the Industrial



Tribunal, Patna for adjudication nor any opportunity of hearing was given to the petitioner before withdrawal and sending the notification dated 20-10-2001 to industrial tribunal, Patna vide notification dated 21-06-2002 but admittedly, the above-said reference was transferred to Industrial Tribunal, Patna under Section-33B of the Industrial Disputes Act which says that the appropriate government may by order, in writing and for reasons to be stated therein, withdraw any proceeding under the Act pending before a Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which, the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which, it was so transferred provided that where a proceeding u/S 33 or Section-33A is pending before a tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court.

16. It has been argued on behalf of the petitioner that the State Government had got no power to transfer the reference from Labour Court to Industrial Tribunal as it has been done by the State Government in the present matter and furthermore, it has been argued on behalf of the petitioner that



Annexure-4 does not contain any reason for withdrawal and transfer of the reference in question and admittedly, no opportunity of hearing was given to the petitioner before transferring the reference from Labour Court to Industrial Tribunal. On the contrary, it has been argued on behalf of the union that the Labour Court had got no jurisdiction to adjudicate the reference, made to it and that was the reason, the reference was withdrawn and it was transferred to the Industrial Tribunal purely on technical ground and therefore, there was no occasion to assign the reasons or to give an opportunity of hearing to the petitioner.

17. On the above stated dispute, several decisions have been referred on behalf of the petitioner as I have already stated. In the case of ***Dalmia Dadri Cement Ltd. And Industrial Dispute, Patiyala and others reported in 1961 Vol. II LLJ 607***, the Government of Punjab made a reference to Labour Court but later on, it came to the notice of the government that the dispute referred by the Government was beyond the jurisdiction of the Labour Court and some of the items of the reference fell within the ambit of schedule-III of the Industrial Disputes Act, 1947 and were exclusively triable by an Industrial Tribunal, the government by issuance of another notification withdrew the aforesaid reference from Labour



Court and transferred the same under Section-33b of the Industrial Disputes Act, 1947 to the Industrial Tribunal for adjudication, assigning reasons that the dispute falls within the jurisdiction of Industrial Tribunal. The matter went to Industrial Tribunal but an objection was raised before the tribunal that the Government was not competent to transfer the reference from Labour Court to Industrial Tribunal and the Government could only transfer reference from a Labour Court to a Labour Court, from an Industrial Tribunal to an Industrial Tribunal and from a National Tribunal to a National Tribunal. The Presiding Officer of the Industrial Tribunal found force in the aforesaid objection. However, in the meantime, the Government issued a fresh notification, making a fresh reference to the Industrial Tribunal. The fresh notification was challenged but the Hon'ble High Court found the fresh notification valid. By placing the aforesaid decision, the learned counsel for the petitioner has made an attempt to convince this court that the Government is not competent to recall a reference from the Labour Court and transfer the same to Industrial Tribunal and the Government can only transfer the reference from Labour Court to Labour Court, from Industrial Tribunal to Industrial Tribunal and from National Tribunal to National Tribunal u/S 33B of the Industrial Disputes Act.



18. In the above-referred decision, it is apparent that the dispute was before the court to decide as to whether the Government had power to issue a fresh reference or not and the aforesaid point was decided by the Court in affirmative. In the said decision, the Court never decided this point as to whether a reference could have been transferred from Labour Court to Industrial Tribunal or not and, therefore, in my view, the above-said decision is of no help to the petitioner.

19. Here I would like to refer Section-33B of the Industrial Disputes Act, 1947 which runs as follows:-

33-B: Power to Transfer certain

proceedings:- *“The appropriate government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred”.*

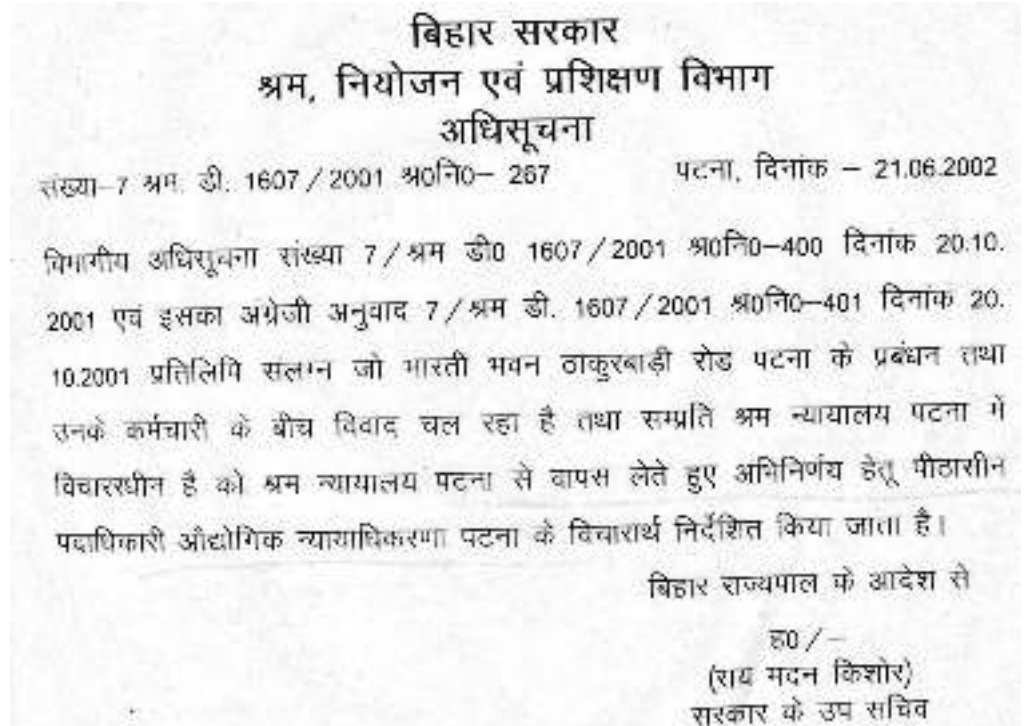
20. From perusal of the aforesaid provision, it is obvious that the Government has right to withdraw any proceeding pending before Labour Court, Tribunal or National Tribunal and transfer the same to any Labour Court, Tribunal or National Tribunal for disposal of the proceeding but before withdrawing

and transferring the proceeding, the Government should record order in writing giving reasons for withdrawal and transfer of the proceeding. In the present case, admittedly, the Government did not mention any reason in its notification for withdrawal and transfer of the reference.

21. In the case of ***Management of M/S Nally Bharat Engineering Company Ltd. (supra)*** the Hon'ble Supreme Court has held as follows:

“The power conferred on the appropriate government to transfer proceedings under Section-33b (i) can be exercised suo motu or on representation of the parties, the expression “may” in sub Section (1) of Section-33B only makes its discretionary in so far as the appropriate government taking a decision as to whether the powers conferred therein has to be exercised or not. But when once a decision is taken to transfer a pending case other than the requirement of giving reasons becomes mandatory. The authority is under legal obligation to record reasons in support of its decision. Reasons would be life of the decision. Failure to give reasons or giving reasons not germane would be fatal to the decision.

22. Here, I would like to reproduce the notification No. 267 dated 21-06-2002 which runs as follows:



23. From a bare perusal of the aforesaid notification, it is obvious that without assigning any reason, the government withdrew the notification No. 1607/2001 dated 20-10-2001 from Labour Court, Patna and transferred the same to Industrial Tribunal, Patna. It is also an admitted position that before withdrawing and transferring the notification No. 1607/2001 dated 20-10-2001, neither any notice nor any opportunity of hearing was given to the petitioner. It is pertinent to note here that the Hon'ble Apex Court of this country has held in several decisions that the Government may withdraw any industrial dispute from the Labour Court, Industrial Tribunal, or National Tribunal and transfer the same to Labour Court, Industrial



Tribunal and National Tribunal suo motu or on the representation of the parties and the aforesaid power of the government is discretionary in nature but no sooner the government decides to withdraw or transfer any Industrial Dispute from one court to another court, it is mandatory for the government to give reasons in the order of withdrawal and transfer. Admittedly, in the present case, the Government has not given any reason for withdrawal of the reference referred to Labour Court, Patna in Notification No. 267 dated 21-06-2002. According to Section-33B of the Industrial Disputes Act, 1947, it was mandatory upon the Government to assign reason in the order of withdrawal and transfer a reference from one court to another court and if the Government fails to do so, the order of withdrawal and transfer cannot be treated as valid order. Therefore, in my view, there was no valid reference before Industrial Tribunal, Patna. It is settled principle of law that the Industrial Tribunal gets jurisdiction to decide any dispute when it is referred to it under the provision of Section-10(1) of Industrial Disputes Act, 1947. In the aforesaid situation, it is obvious that there was no valid reference before the Industrial Tribunal, Patna and therefore, the Industrial Tribunal, Patna was not empowered to pass impugned award. No doubt, in impugned award, learned Industrial Tribunal, Patna discussed



the above-said point vide its interim order dated 24-10-2003 and rejected the objection of the petitioner at the very initial stage of the proceeding and furthermore, the aforesaid interim order dated 24-10-2003 was never challenged by the petitioner but in my view, if there is violation of any mandatory provision of law, the same can be raised at any stage and mere not challenging the order dated 24-10-2003 by the petitioner does not amount to acceptance of the findings of the learned tribunal and the aforesaid finding will not work as res judicata against the petitioner.

24. No doubt, the Labour Court, Patna had no jurisdiction to entertain the reference in question because the referred dispute was related to IIIrd Schedule of Industrial Disputes Act, 1947 and it was only Industrial Tribunal who could have adjudicate the dispute referred under reference but even then, the Government was duty bound to give reason for withdrawal and transfer of the reference from Labour Court, Patna to Industrial Tribunal, Patna.

25. The withdrawal and transfer of the reference has been challenged by the petitioner on this ground also that the Government before issuance of notification for withdrawal and transfer of reference from Labour Court, Patna to Industrial Tribunal, Patna did not give any notice or any opportunity of



hearing to the petitioner but as I have already stated that Section-33B of Industrial Disputes Act 1947 gives power to the Government to withdraw any reference from Labour Court, Industrial Tribunal or National Tribunal and transfer the same to Labour Court, Industrial Tribunal or National Tribunal and the above-said power of the Government is discretionary in nature, and therefore, except in extraordinary situation, it is not mandatory for government to give notice to the parties before exercise of power vested under Section-33B of Industrial Disputes Act 1947.

26. The learned counsel for petitioner has referred decision of **Neha Arun Jagadar & Anrs. (supra)** to convince this court that the Labour Court, Patna had no power to transfer the said reference to Industrial Tribunal, Patna but in my view, the aforesaid decision is not applicable in the present case because it was not the Labour Court, Patna rather it was the Government who exercised the power of withdrawal and transfer vested u/S 33B of Industrial Disputes Act and therefore, the above-said decision of **Neha Arun Jagadar & Anr. (supra)** is inapplicable in the present case.

27. The order of withdrawal and transfer of the reference from the court of Labour Court, Patna to Industrial Tribunal, Patna has also been challenged by the petitioner on the ground



that a reference can only be transferred to Labour Court from Labour Court, to Industrial Tribunal from Industrial Tribunal and to National Tribunal from National Tribunal but I am not at all convinced with this submission because Section-33B of Industrial Disputes Act, 1947 does not restrict the Government from transferring a proceeding from Labour Court to Industrial Tribunal or from industrial Tribunal to Labour Court.

28. Here, I would like to refer Section-10(i)(d) of Industrial Disputes Act which runs as follows:

“ Where an appropriate government is of opinion that industrial dispute exists or is apprehended, it may on 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 Tribunal for adjudication.”

29. From bare perusal of aforesaid provision, it is obvious that if the dispute relates to schedule-II or schedule-III, the same shall be referred to industrial tribunal provided that where the dispute relates to any matter specified in the IIIrd schedule and it is not equally to effect more than 100 workmen, the appropriate government may make the reference to a Labour Court. In the present case, admittedly, the employees of petitioner were near about 250 and initially, the



reference was made to Labour Court. The Labour Court Patna was not competent to entertain the aforesaid reference and thereafter, the Government decided to refer the dispute to Industrial Tribunal, Patna. Although the government was competent to withdraw and transfer a reference from one court to another court but government is bound to give reason in writing for withdrawal and transfer of reference. In the instant case, admittedly, the Government without giving any reason in writing withdrew and transferred the reference. Therefore, in my view, the Government has not acted in accordance with law and violated the mandatory provision of law. As I have already stated that in the present case, the Government failed to comply with the mandatory provision of Section-33B of Industrial Disputes Act and, therefore, I am of the opinion that there was no valid reference before the Industrial Tribunal, Patna.

30. It has also been argued on behalf of the petitioner that the learned tribunal failed to take note of settled principle of industry-cum-region basis and also failed to take note of financial capacity of the petitioner. On contrary to the above-said contention, it has been argued on behalf of respondent No. 2 that the dispute relates to pay revision and the principle of industry-cum-region basis comes into play in fixation of wages

and not in pay revision.

31. In series of cases, it has been held by Apex Court of this country that fixation of wages and dearness allowance has to be done on industry-cum-region basis having regard to the financial capacity of the industry. No doubt, in the present case, the demands raised by the respondent No. 2 were of pay revision including the certain other demands but pay revision also includes fixation of scale of new wages and therefore, even if, pay of employees of an industry is revised, then also, theory of industry-cum-region basis shall apply. The Industrial Tribunal which has to adjudicate upon a reference made under Section-10 of the Industrial Disputes Act, 1947 has to perform a function and duty which is both delicate and complex because often times a person needs to revise wages and the service conditions of workmen so as to protect their livelihood from an erosion in the real value of pay pocket the law has to protect the just aspiration of the working class and the function of the industrial adjudicator has to necessarily go beyond protecting any minimum or subsistence level of wages equally. The industrial adjudicator has to take due note of the position of the employer per se and in relation to other comparable concerns, the nature of the business of the employer, the financial capacity of the employer, the financial and economic conditions





in which the business is operating and its future prospect, the extent of capital employed, the turnover, sales, resources and profits must to weigh in the balance and in principle of region-cum-industry, the industrial adjudicator has to assess the pattern and conditions prevalent in comparable concerns in the reason and industry.

32. Now I have to see as to whether the tribunal has followed the principle of region-cum-industry basis theory or not. The region-cum-industry basis theory means that while examining the economic demands of the union, the tribunal must look into and examine the fact as to what is the service conditions in relation to economic demands under adjudication prevalent in a similar other industry of the similar size in the similar region and tribunal/adjudicator is also duty bound to examine the financial capacity of the employer to meet the demands and it is upon the concerned union to produce material before the court to demonstrate that the similar industry in the same region is also giving the same benefits as what has been demanded by the union through its charter of demands and if union fails to bring on record material to show adequate financial capacity of the employer, then the union will have to suffer on that account and in such circumstances, the

tribunal would be left with no option than to reject the terms of reference by holding that the demands, raised in the charter of demand are unrealistic and unreasonable.

33. In the present case, the union (respondent No. 2) failed to produce any evidence/material to show the financial capacity of the petitioner No. 1 though the petitioner himself brought the material before the tribunal to demonstrate that petitioner has no financial capacity to meet the demands of respondent No. 2 and furthermore, to demonstrate that the employees of petitioner are getting more financial benefits than the other industries of similar nature in the region.

34. Admittedly, in the present case, learned Industrial Tribunal compared the pay of employees of State Government with the proposed pay revision and other amenities to the employees of the petitioner and the Learned Industrial Tribunal did not follow the principle of region-cum-industry basis theory. The status of private establishment cannot be compared with the status of government and, therefore, in my view, the impugned award cannot sustain in the eye of law.

35. It has also been argued on behalf of the petitioner that the respondent No. 2 was never recognized by the management as the respondent No. 2 had no representative capacity and unless the respondent No. 2 has representative

capacity, the respondent No. 2 was not competent to raise the demand of general nature.

36. It has come in evidence adduced on behalf of the parties that there were 250 employees in petitioner's establishment and only few employees numbering 20-25 were members of the respondent No. 2. It is well settled principle of law that an unrecognized union cannot raise the demands of general nature and at best, an unrecognized union can only negotiate, discuss and raise the individual problems of its members of individual nature. It has been argued on behalf of the union that except the respondent No. 2, there was no any other union in the M/S Bharti Bhawan and therefore, even if, the respondent No. 2 was not recognized by the management, then also, respondent No. 2 had every right to raise the demands of general nature. There cannot be dispute in respect of settled principle of law because in several decisions, the Apex Court of this country has already set at rest that an unrecognized union cannot raise demand of general nature. It is an admitted position that except respondent No. 2, there was no any other union in Bharti Bhawan Private Limited. The respondent No. 2 was a registered union though not recognized by the management but admittedly, except respondent No. 2, there was no any other union to raise the problems of employees of



the petitioner. No doubt, number of employees of the petitioner were near about 250 and the number of members of respondent No. 2 were 20-25 but only on this ground that the number of members of respondent No. 2 were less, it cannot be said that the respondent No. 2 had got no representative capacity because in absence of any other union, it was respondent No. 2 who was representing the employees of the petitioner.

37. It has also been argued that when the respondent No. 2 had no representative capacity, there was no Industrial dispute which could have been referred u/S 10 of Industrial Disputes Act, 1947 but in my view; the aforesaid submission does not stand on its leg because I have already stated that in absence of any other union, it was respondent No. 2 who was representing the employees of petitioner and hence, the respondent No. 2 in the representative capacity, was competent to raise the demands of general nature of employees of petitioner and therefore, the dispute referred by the government for adjudication was of the nature of Industrial dispute.

38. No doubt, the above-said point was not decided by the learned tribunal but only on this ground, the award in question cannot be quashed. Moreover, as I have already observed that the respondent No. 2 had representative capacity

and was competent to raise the demand of general nature of the employees of petitioner and therefore, in my view, the above-stated objection raised by the petitioner in respect of jurisdiction of Industrial Tribunal is not sustainable and liable to be rejected.

39. On the basis of aforesaid discussions, this writ petition stands allowed and accordingly, the impugned award dated 22-02-2007 (Annexure-9) stands quashed.

40. However, it is made clear that the State Government may refer the dispute to a proper forum by issuance of fresh notification in accordance with law.

Patna High
Court,
Dated/ Patna,
the 29th day of
July, 2015
A.K.V./-

(Hemant Kumar Srivastava, J)

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