
(2003) 03 CAL CK 0018
In the Calcutta High Court
Case No : F.M.A. No. 581 of 1999

General Manager, Eastern Coalfields Ltd. APPELLANT
Vs
Gopal Chandra Mondal RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Constitution of India, 1950 — Article 21
Industrial Disputes Act, 1947 — Section 25F

Citation : (2003) 3 CALLT 318 : (2004) 2 LLJ 539

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : Alok Banerjee and Prodyut Kr. Das, for the Appellant; A.K. Mazumder, U.S. Agarwal and K.D. Das, for the Respondent

Judgement

A.K. Mathur, C.J.—This is an appeal directed against the order passed by the learned single Judge dated 28th February, 1997 whereby the learned single Judge has allowed the writ petition and held that the termination of the writ petitioner is in utter violation of Article 21 of the Constitution because the provisions of Section 25F of the Industrial Disputes Act, 1947, admittedly, not complied with while terminating the service of the petitioner. Hence the learned single Judge allowed the writ petition and set aside the order dated 19th August, 1994 issued by the General Manager, Mugma Area (annexure "B" of the writ petition). The learned single Judge directed the respondents to pay the petitioner within six weeks from the date of the judgment, all arrear salaries and allowances from the date of termination of his service till the date of the judgment, which the petitioner would have been entitled to had his service not been terminated.

2. For convenient disposal of this appeal, brief facts may be taken note of. On 10th July, 1972 the petitioner joined the service of the Eastern Coalfields Limited. Thereafter, by reason of the enactment Coal Mines (Nationalisation) Act, 1972, the right, title and interest of the collieries mentioned in the schedule to the Act

were transferred and vested in the Central Government. By virtue of the aforesaid notification a company known as "Coal India Limited" came into existence. The respondent No. 2, Eastern Coalfields Limited is a subsidiary of Coal India Limited and manages various collieries including Badjna Colliery under Mugma area in the Eastern Region, Dhanbad which were nationalised by the said Act. After nationalisation with effect from 1st May, 1973, the petitioner became the employee of Coal India Limited. The petitioner stood surety by executing indemnity bond in the year 1991 in connection with the employment of one Mahesh Kora on the ground of death of his sister Dingle Kora who was working in Badjna Colliery under Mugma area of Eastern Coalfields Limited, Dhanbad. This lady was in employment of the Badjna Colliery, Mugma area, Dhanbad as wagon loader. After her death, Mahesh Kora claimed himself to be a dependent of the deceased and sought employment in terms of provisions contained in Clause 9.4.0 of NCWA-IV and he was given employment in terms of the aforesaid clause. Both the petitioner and Punu Mudi jointly declared and stood as sureties of Mahesh Kora with a declaration that if the relationship between the deceased employee and the claimant is found false they would be summarily dismissed from employment. After inquiry by the Vigilance Department it was found that Mahesh Kora is not the brother of the deceased, Dingle Kora and the declaration made by him that Mahesh Kora is the brother of deceased, Dingle Kora was found to be false. On the basis of this finding of the vigilance department the service of Mahesh Kora was terminated. Likewise, the service of the petitioner was also terminated on whose surety and indemnity bond Mahesh Kora was given employment. The declaration of the petitioner was found to be false and as per the indemnity bond the service of the petitioner was terminated. This order of termination came to be first challenged by the petitioner by filing a writ petition which was allowed and against that an appeal was preferred and the Division Bench of this Court set aside the order of the learned single Judge and held that the petitioner has alternative remedy of agitating the matter before the forum created under the Industrial Disputes Act, 1947. Therefore, the Division Bench held that the trial Judge should not have entertained the writ petition and should have directed the petitioner to resort to the alternative remedy created under the Industrial Disputes Act, 1947. Aggrieved against this order a SLP was filed and the Hon'ble Supreme Court set aside the order of the Division Bench by the order dated 18th August, 2000 and held that the question whether the termination of the appellant is invalid or not ought to have been examined by the Court and ought not to have relegated the petitioner to an alternative remedy particularly when the writ petition had been allowed on merits. Their Lordships held that when a writ petition is entertained and kept pending it is not appropriate to ask the parties to work out their rights in an alternative proceeding. Their Lordships further held that the termination of the petitioner is in violation of Article 21 of the Constitution. Therefore, the Apex Court set aside the order of the Division Bench and remitted the matter back to this High Court for decision. Hence the matter has come up before us.

3. At the outset learned counsel for the appellant/management placed an objection with regard to territorial jurisdiction of this Court to entertain this writ petition. It is pointed out that the petitioner was working in Badjna Colliery, Mugma area of Eastern Coalfields Limited which is situated in the District of Dhanbad in the State of Bihar and in that context learned counsel for the appellant invited our attention to the termination order and the affidavit filed by the writ petitioner. The termination order passed by the General Manager, Mugma area, Dhanbad reads as under:

"Eastern Coalfields Limited

Office of the General Manager

Mugma Area, P.O. Mugma

Dhanbad

Ref.ECL/GM/MA/94/2120 Dated 19.8.94 To

Sri Gopal Chandra

Mondal, Electrical Supervisor,

Badjna Colliery.

TERMINATION OF SERVICE

It has been established during the course of enquiry that Sri Mahesh Kora who has submitted claim for employment against the death of late Dingle Kora, Ex. Wagon Loader of Badjna Colliery is not actually Sri Mahesh Kora, but Sri Mahesh Mudi, S/o. Sri Punu Mudi. In indemnity bond submitted along with employment papers it has been observed that you have stand surety before Notary Dhanbad that if the relationship between late Dingle Kora and Sri Mahesh Kora is found to be false/ incorrect, you are liable for dismissed/termination from the service of the company.

Since relationship between late Dingle Kora and Sri Mahesh Kora is found false/ incorrect, the management has directed to terminate your service from the company with immediate effect.

Accordingly, your service is hereby terminated from the service of the company with immediate effect.

Sd/- Illegible 19.9.94

General Manager Mugma Area."

4. A bare reading of this order of termination makes it abundantly clear that the service of the petitioner was terminated at Mugma area which is in Dhanbad, in the State of Bihar. It is nowhere disputed that Badjna Colliery, Mugma area is not within the territorial jurisdiction of West Bengal. Since the termination order was issued by the General Manager from Dhanbad in the State of Bihar, there was no

occasion for the petitioner to approach this Court by filing the present writ petition because the cause of action of the petition arose to him in Magma Area, Dhanbad, Bihar and he resides in Mugma area in Dhanbad, which is also apparent from the affidavit filed by the writ petitioner. The relevant extract of the affidavit of the present writ petition reads as under:

"AFFIDAVIT

I. Sri Gopal Chandra Mondal, son of Sri Nepal Chandra Mondal, by faith Hindu, by occupation dismissed employee aged about 42 years, residing at Badjna Colliery, P.O. Nirsa Chatti, P.S. Nisra, District-Dhanbad (Bihar), do hereby solemnly affirm and say as follows:"

5. In this connection learned counsel for the appellant submitted before us that this Court has no territorial jurisdiction to entertain the matter and in support thereof learned counsel for the appellant has drawn our attention to various decisions of the Apex Court.

6. In the case of Union of India and Others Vs. Adani Exports Ltd. and Another, , the Apex Court had held:

"In order to confer jurisdiction on a High Court to entertain a writ petition or special civil application, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the Court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear that each and every fact pleaded in the application does not ipso facto lead to the conclusion that those facts given rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned."

7. In the case of State of Rajasthan and Others Vs. Swaika Properties and Another, similar question arose that the land was at Jaipur and the registered office of the company was in Calcutta. Therefore, writ petition was filed in Calcutta High Court challenging the acquisition proceeding of the land at Jaipur on the basis that the company has registered office at Calcutta. It was held by the Apex Court that the writ petition is not maintainable as the Calcutta High Court had no territorial jurisdiction as because the cause of action has arisen in Rajasthan and writ petition is only maintainable in Rajasthan.

8. Similarly, in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, it was held that mere fact that the petitioner company having its registered office at Calcutta. Calcutta newspaper carried the ONGC's advertisement inviting tenders at Delhi for works to be executed in Gujarat and in response to that the petitioner sent its tender to Delhi address from Calcutta and also made representation from Calcutta against non-consideration of its offer

on the ground of ineligibility because of its failure to fulfill the experience criterion. It was held that failure to fulfill the experience criterion would not constitute integral part of the cause of action so as to invoke the jurisdiction of Calcutta High Court. It was held that the Calcutta High Court had no jurisdiction to entertain the writ petition.

9. In the case of Navinchandra N. Majithia Vs. State of Maharashtra and Others, it was held that a writ petition was filed in Bombay High Court for quashing of a criminal complaint filed at Shillong on the ground that it was false and had been filed with malafide intention of causing harassment and putting pressure on the petitioner to reverse the transaction relating to transfer of company shares which had entirely taken place at Mumbai. Their Lordships held in peculiar circumstances of the case that there was alternative prayer in petition for change of investigation from Meghalaya to Mumbai Police and the harassment and malafide nature of complaint; Bombay High Court had jurisdiction.

10. Therefore, the question of territorial jurisdiction is always first and foremost to be decided in such cases. The aforesaid decisions of the Apex Court clearly laid down that cause of action is a bundle of facts which constitute the cause of action. Unless some cause of action has arisen within the territorial limits of the High Court, that High Court will not have jurisdiction to entertain the petition.

11. As against this learned counsel for the writ petitioner/respondent invited our attention to a Division Bench decision of this High Court in the case of Pottery Mazdoor Panchayat v. Union of India, reported in 1989(1) CLJ 324. This case is distinguishable on facts. In this case a Division Bench of this Court held that when the respondent public sector company has its head office within territorial jurisdiction of Calcutta High Court, the forum of the petition can be the High Court at Calcutta. Their Lordships held that dismissal of the writ petition on the ground of lack of territorial jurisdiction to entertain the writ petition is not correct and their Lordships overruled the objection. But this decision runs counter to the decision given by the Apex Court State of Rajasthan and Ors. v. Swaika Properties (supra) and Oil and Natural Gas Commission v. Utpal Kumar Basu (supra) where their Lordships of the Apex Court have held that having head office at Calcutta is not decisive of the matter so as to entertain the writ petition. Therefore the decision of the Division Bench of this Court do not appear to be good law.

12. Learned counsel for the writ petitioner/respondent has also invited our attention to another Division Bench decision of this Court in the case of Eastern Coalfields Limited v. Sri Khogen Bouri, reported in 2002(1) CLR 884. This decision is also distinguishable on facts. In this case the Division Bench relying on an observation of the learned single Judge held that since the registered office of Eastern Coalfields Ltd. is situated at Sanctoria, Burdwan within the territorial jurisdiction of this Hon'ble Court which is a necessary party and also the order of approval for dismissal was ultimately obtained from the Director, Personnel of the Eastern Coalfields Ltd., whose office is at the said registered office, the writ

petition can be maintained before the Calcutta High Court. Therefore, this case was essentially decided on facts, but there is no such averments in the petition that the order of termination, passed by the General Manager, Badjna Colliery, Mugma Area, Dhanbad had obtained any prior approval from the head office at Calcutta. Therefore, this decision of the Division Bench of this Court does not help the writ petitioner/respondent in this case.

13. As per the three Apex Court decisions, referred to above, cause of action is decisive of the matter for acquiring territorial jurisdiction to decide the matter. Simply because the head office of the company is at Calcutta is not decisive of the matter as held in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu (supra) because that would not give a cause of action to the party. Cause of action is a bundle of facts which decides the territorial jurisdiction of the Court, if any of the cause of action has arisen to the party within the jurisdiction of Calcutta High Court then the High Court at Calcutta will have jurisdiction to decide the matter. Simply because a head office of the company is within the territorial limits of the Calcutta High Court, that will not give jurisdiction to the Calcutta High Court unless cause of action arises within the territorial jurisdiction of Calcutta High Court.

14. Therefore, as far as the present case is concerned we have no option but to uphold the objection of the learned counsel for the appellant that this Court has no jurisdiction to entertain the present writ petition. Accordingly, we uphold the objection of the learned counsel for the appellant and set aside the order of the learned single Judge on this ground alone. We have gone through the merit of the matter and leave it open for the parties to agitate the same before the appropriate forum. The writ petition is dismissed with no order as to costs.

J.K. Biswas, J.

15. I agree.