
(1992) 06 KL CK 0074
In the High Court Of Kerala
Case No : O.P. No. 6224/88 H

General Secretary, Fact Employees Association	APPELLANT
Vs	
Marketing Manager and Others	RESPONDENT

Date of Decision : 10-06-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 2

Citation : (1994) 3 LLJ 736

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : M. Ramachandran, for the Appellant; C.M. Devan, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—Petitioner is a registered trade union. It espouses the cause of one of its members, namely Sri T.V. Easo. Sri Easo was recruited by Fertilisers and Chemicals Travancore Limited, first Respondent, which has its Head Office at Udyogamandal. He was working as Projector Operator. He was posted at the Regional Office of the first Respondent at Hyderabad. On account of misconduct, he was charge- sheeted and subsequently dismissed from service. Petitioner union raised an industrial dispute. The third Respondent, State of Kerala, referred the dispute for adjudication by the second Respondent, the Labour Court, Ernakulam. Before the Labour Court, first Respondent raised a preliminary objection to the effect that the reference made by the Government of Kerala is incompetent and without jurisdiction, in as much as Sri Easo was dismissed when he was working at Hyderabad and that the appropriate Government having jurisdiction to settle the dispute is Government of Andhra Pradesh. Second Respondent accepted this objection and held that the reference is invalid and it has no jurisdiction to decide the dispute. This order is under challenge.

2. Facts that Sri Easo was attached to the Regional Office of the first Respondent at Hyderabad, that disciplinary proceedings were initiated against him while he was working at Hyderabad and that the order of dismissal was served on him at

Hyderabad are not in dispute. On these facts can it be considered that the Government of Kerala is the appropriate Government to refer the dispute for adjudication?

3. The learned Counsel representing the Petitioner would contend that first Respondent having its Head Office within the State of Kerala appointed Sri Easo in its service. In the exigencies of service, he was posted at the Regional Office at Hyderabad. While he was working at Hyderabad, he was charge-sheeted on the allegation of having committed misconduct. Even though enquiry into that misconduct was held at Hyderabad, the order of dismissal was issued from the Head Office at Udyogamandal, within the State of Kerala. So, the State of Kerala is the appropriate Government to refer¹ the dispute for adjudication by the second Respondent.

4. First Respondent, filed counter affidavit. It is averred therein that Sri Easo was posted at Madurai in Tamilnadu on his first appointment. He was later transferred to the Regional Office at Hyderabad. He misconducted himself while working in that office. Senior Regional Manager, Hyderabad was the Controlling officer. He was the authority in the matter of sanctioning leave, travelling allowance, daily allowance, for approving tour programmes and also the disciplinary authority empowered to charge sheet Sri Easo. Charge sheet was issued by the Senior Regional Manager, Hyderabad. Enquiry was conducted at Hyderabad on the alleged misconduct. The order of dismissal was served through the Controlling Officer, namely Senior Regional Manager, Hyderabad.

5. Learned Counsel appearing on either side brought to my notice the following decisions for consideration. Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, is the first decision brought to my notice. The facts therein are as follows: A workman working at the Bangalore Branch Office of a company having its Head Office at Krishnagiri in Madras State was transferred by the orders of the Head Office. He did not obey the order of transfer. Subsequently he was removed from service for disobeying the order of transfer. The State of Mysore referred the dispute relating to the transfer for adjudication. Labour Court found that the transfer was unjustified and directed the reinstatement of the workman at Bangalore with back wages. The question that came up before the Supreme Court was whether the reference made by the State of Mysore was proper. Their Lordships quoted with approval the following observation made by Chagla, C.J., in Lalbhai Tricumlal Mills Ltd. v. Vin (D.M.) and Ors. (1956) 1 LL.J. 557.

But what we are concerned with to decide is, where did the dispute substantially arise. Now the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction, upon the labour court. But applying the well-known tests of jurisdiction a court or tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject-matter of the dispute substantially arises within jurisdiction.

According to Their Lordships, the above observations are applicable for deciding which of the States has jurisdiction to make a reference u/s 10 of the Industrial Disputes Act. On the basis of this principle, it was decided in that case that even though the order of transfer and the order of dismissal originated from the Head Office at Krishnagiri in Madras State, the dispute consequent thereto arose within the jurisdiction of the Mysore Government and therefore the reference made by the State of Mysore was proper.

6. The next decision referred to is Hindustan Aeronautics Ltd. Vs. The Workmen and Others, The main question that was canvassed before the Supreme Court was whether the Government of West Bengal is competent to make reference concerning the Barrackpore branch, which works under the control of the Bangalore Divisional Office of the Company, which is within the jurisdiction of the Karnataka Government. In that case, an industrial dispute between the employees of the Barrackpore branch and the Company was referred for adjudication by the Government of West Bengal. That reference was upheld by the Supreme Court, holding:

It may be assumed that the Barrackpore branch was under the control of the Bangalore division of the company. Yet it was a separate branch engaged in an industry of repairs of air-crafts or the like at Barrackpore. For the purposes of the Act (Industrial Disputes Act) and on the facts of this case, the Barrackpore branch was an industry carried on by the company as a separate unit. The workers were receiving their pay packages at Barrackpore and were under the control of the officers of the company stationed there. If there was any disturbance of Industrial peace at Barrackpore where a considerable number of workmen were working the appropriate Government concerned in the maintenance of the industrial peace was the West Bengal Government.

7. The third decision referred to was one rendered by a Division Bench of this Court in J. and J. Dechane Distributors Vs. State of Kerala and Others, The facts therein are as follows: Petitioner, a manufacturing concern, had no office in Kerala, but had a Sales Representative to canvass customers for the sale of its products. That Sales Representative was transferred from Kerala to join duty at Bangalore. That order of transfer was issued from the Head Office at Hyderabad. The Sales Representative raised an industrial dispute and the Government of Kerala referred that dispute for adjudication. The order passed by the Kerala Government was quashed, holding that the Kerala Government was not the appropriate Government. This view was taken on the ground that the concern was not having any branch office or establishment within the State of Kerala. It was sending representatives occasionally for promoting sales of its products.

8. Another decision that was referred to is Paritosh Kumar v. State of Bihar 1984 Lab. I.C.1254. In that case, a Full Bench of the Patna High Court had to consider the same question. Facts therein are as follows: M/s A.K. Distributors Private Limited is the sole distributor in Western India for the medicines of Mac Laboratories having its Head Office at Calcutta. Sri P.K. Pal, the Petitioner

therein, was appointed as its Sales Representative to work in Patna. Certain disputes arose in regard to the payment and rate of commission between the Petitioner and the employer, Company. The employer raised an industrial dispute in this State of Bihar, on the failure of conciliation proceedings. Consequently, the State of Bihar referred the dispute for adjudication by the Industrial Tribunal. That reference was challenged on the ground that the Government of Bihar was not the appropriate Government within the meaning of Section 10(1)(d) of the Industrial Disputes Act, for he was an employee of the firm having its Head Office in Calcutta. After an exhaustive survey of the entire case law on the point, Full Bench upheld the reference holding that the State of Bihar was the appropriate Government and the reference made by it was consequently valid.

9. In the instant case, first Respondent concern has its Regional Office at Hyderabad. More than 146 employees are attached to that office. Sri Easo was one of the employees attached to that Regional Office. Alleged misconduct was committed by him while he was working at Hyderabad. Charge sheet was issued to him by the Senior Regional Manager at Hyderabad. Enquiry was conducted at Hyderabad for the alleged misconduct. The order of dismissal was served on him at Hyderabad through the controlling officer. Even though the order of dismissal originated from the office of the "first Respondent at Udyogamandal, that is of no consequence for deciding the issue relating to the appropriate Government which has to make reference u/s 10 of the Act. The order of dismissal became effective at Hyderabad, where Mr. Easo was employed. It is within the area of employment that the order of dismissal operates and the workman ceases to be a workman. Mr. Easo was working in the Regional Office of the first Respondent at Hyderabad. The Regional office had more than 140 workers attached to it. So, as a result of the dismissal of Mr. Easo if there was any disturbance of industrial peace, the Government concerned in maintaining the industrial peace was the State of Andhra Pradesh. In these circumstances, I hold that the cause of action substantially arose at Hyderabad. Since the dispute substantially arose within the cognizance of the Government of Andhra Pradesh, that Government alone should have made the reference. The reference made by Government of Kerala in the instant case is not sustainable.

10. Learned Counsel representing the Petitioner raised a contention that more than one Government may be appropriate Government for making reference u/s 10 of the Act. According to counsel, on the facts of this case even though Easo was working at the Regional Office at Hyderabad, since the order of dismissal originated from the Head Office of the first Respondent at Udyogamandal, a portion of the dispute should be deemed to have arisen within the State of Kerala and so the reference made by Government of Kerala is proper. According to counsel, in a given situation there may be more than one State which satisfy the definition of "appropriate Government" under the Industrial Disputes Act. Since a part of the dispute has arisen within the State of Kerala, it is contended that the reference made by the Government of Kerala has to be upheld. This argument appears to be quite attractive. But, I find it difficult to agree with the same, in

view of the Division Bench decision in *J. and J. Dechane v. State of Kerala* (1974) 2 LL. J. 9. V.P. Gopalan Nambiar, J., (as he then was) speaking for the Bench observed:

It seems reasonable, and fairly clear, that there can be only one Government, which can be regarded as the "appropriate Government" for the purpose of making a reference u/s 10(1)(c). The consequences of holding that more than one Government can refer the same industrial dispute for adjudication appear to us to be startling.

A Division Bench of the Bombay High Court in *General Superintendence Company of India Ltd. Vs. General Secretary, Goa Dock Labour Union and others*, had to consider the same issue. In that case, the employers challenged an order of reference made by the Central Government u/s 10 of the Industrial Disputes Act relating to an industrial dispute between the Ore suppliers and its employers working in Goa. According to the management, the Central Government was incompetent to make the reference. It was contended that State Government for the territory of Goa is the appropriate Government. This contention was repelled observing:

It may also be stated that if we accept that the Central Government, apart from the administrator, is also the State Government for the Union Territory, it will be repugnant in the subject as well as the context. Under the Industrial Disputes Act, several functions are to be performed by the appropriate Government. Two Governments cannot be the appropriate Governments operating in the same field in respect of the same subject matter. If the Central Government is also the State Government for the Union Territory and is thus to act as the appropriate Government u/s 2(a)(ii) of the Industrial Disputes Act, the question will arise as to which Industrial Tribunal will it refer an industrial dispute. Apart from this, if the administrator, who is the State Government for the Union Territory, deals with a dispute, there will be two authorities operating in the same field at the same level which is not envisaged under the Industrial Disputes Act. On the other hand, there are indications available in the Industrial Disputes Act itself to show that if one Government is acting, Anr. Government cannot act in the same field in respect of the same subject matter. There are several authorities functioning under the Industrial Disputes Act. They are subject to either the Central Government or the State Government depending upon which is the appropriate Government in respect of the matters handled by them. It will create utter confusion and chaos if it is held that two Governments can be the appropriate Governments for a State or for a Union Territory. It is our considered opinion, therefore, that the Central Government cannot be the State Government for the Union Territory of Goa, Daman and Diu and, therefore, it cannot be appropriate Government for the said Union Territory u/s 2(a)(iii) of the Industrial Disputes Act.

(emphasis added)

I am in respectful agreement with these observations. In the instant case, the industrial dispute which had arisen out of the dismissal of Easo from service, substantially arose within the State of Andhra Pradesh at Hyderabad. So, the Government of Andhra Pradesh and that Government alone could have made the reference u/s 10 of the Industrial Disputes Act. The view taken by the Labour Court that the reference made to it by the Government of Kerala is incompetent calls for no interference.

11. Exhibit P-1 award declining the reference was passed by the Labour Court by its order dated 19th November 1985. That award was published in the Gazette dated 2nd December, 1985. This original petition challenging that award was filed on 24th June 1988. The reason for the delay was stated by the Petitioner in the affidavit filed in support of this Original Petition as:

After the matter was heard by the Tribunal, nothing was heard for a long while, and the workman had unfortunately missed the Gazette, in which the award appeared. It escaped notice of the counsel as well. It was only when enquiries were made at Government Press, Trivandrum, during May 1988, that the fact of publication was found. There was no deliberate laches, and irreparable loss and injury is likely to result if delay in filing the O.P. is not condoned, and the original Petition entertained.

This ground, to say the least, is hardly sufficient to condone the inordinate delay in challenging Ext. P-1 award.

In the circumstances detailed above, I find no merit in this Original Petition. It is accordingly dismissed.