

(2010) 09 DEL CK 0314

In the Delhi High Court

Case No : Writ Petition (C) No. 2587 of 2010

Go Airlines (India) Pvt. Ltd.

APPELLANT

Vs

Manmohan Sharma and Others

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2011) 2 LLJ 57

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Raghav Avasthi and R.N. Karanjawala, for the Appellant; B.V. Niren, for Respondent No. 2, Manvendra Verma and Bankey Bihari, for the Respondent

Judgement

Manmohan Singh, J.—The challenge is laid in this petition under Article 226/227 of the Indian Constitution to the order passed by the learned Labour Commissioner on two preliminary issues vide order dated 8.2.2010. The brief facts of the matter can be enunciated as under:

a) The petitioner Airline Company entered in to an employment agreement with Mr. Harish Solanki Respondent No. 2 appointing him as a pilot. The said agreement contained all the clauses determining the terms of the employment of respondent No. 2 with that of the petitioner.

b) The agreement dated February 8, 2006 also contained a clause relating to the governing law and choice of forum which is relevant here and can be reproduced hereunder:

This agreement shall be governed by and interpreted in accordance with the laws of India and the courts in Mumbai shall have exclusive jurisdiction over any disputes that may arise in connection with this agreement.

c) In the year 2008, the respondent No. 2 sent notice of demand dated

December 12, 2008 calling upon the petitioner to pay the legitimate dues to the respondent as per the computation made by him.

d) Pursuant thereto, the respondent No. 2 filed the petition before Labour Court u/s 33C(2) of the Industrial Dispute Act, 1947 seeking computation of dues against the petitioner. The petitioner opposed the said petition by filing the written statement and raising manifold objections in the objections of territorial jurisdiction and about maintainability of the application made by the respondent No. 2.

e) The learned Labour Court vide order dated 5.6.2009 framed the following issues:

(i) Whether this Court has no jurisdiction to entertain this application ? OPM

(ii) Whether this application is not maintainable u/s 33C(2) I.D. Act ? OPM

(iii) To what relief, if any, is the applicant entitled to receive in terms of money computed on the basis of this application ? OPW

(iv) Relief.

As per order, issue No. (i) and (ii) were treated as preliminary issues.

f) Vide order dated 8.2.10 the learned labour court disposed of the two issues by passing the impugned order.

g) The petitioner is now before this Court aggrieved by the order passed by the Labour Court.

2. At the outset, it was observed that the petitioner has arrayed the Presiding Officer of Labour Court as a party to this proceedings. This was objected by the learned Counsel for the respondent. On the same being pointed to the learned Counsel for the petitioner, he agreed to the deletion of the name of the learned Presiding Officer of Labour Court. Accordingly, I deem it appropriate to delete the name of Mr. Manmohan Sharma from the array of the parties and the petitioner is directed to file amended memo of the parties within two weeks of this order.

3. Learned Counsel for the petitioner has made his submissions which can be outlined as follows:

a) Learned Counsel submitted that the order passed by the Labour Court is erroneous as the Labour Court has assumed jurisdiction which it did not have because of the admitted contract which confers exclusive jurisdiction to the Mumbai court. Thus, the same is the case of wrongly assuming jurisdiction which warrants the interference by this Court.

b) The order of Labour Court was also sought to be challenged on the ground that the concept of estoppel against the statute or agreement beyond statute as employed by the Labour Court was erroneous as there was no such statute which was bypassed by entering into agreement and thus the concept has no

applicability in the present case. This according to the learned Counsel is the legal infirmity besides the other ones.

c) Learned Counsel for the petitioner sought to urge that even the second preliminary issue was wrongly decided by the Labour Court as the mandate of Section 33C(2) was not followed. According to the learned Counsel the appropriate government for the present purpose ought to have been central government and not the state government. Thus, the case of the respondent was not maintainable before the Labour Court as it was not a specified Labour Court by the appropriate government.

d) Learned Counsel submitted that the jurisdiction of the Labour Court is governed by general principles of certain provisions of the Code of Civil Procedure. It was argued that even after satisfaction of the provisions of the Code of Civil Procedure, this Court does not have territorial jurisdiction. The counsel cited the judgment passed by learned single Judge of Bombay High Court in Shri Ganpat K. Sanade Vs. The Managing Director, Nasik Sahakari Sakhar Karkhana Ltd., to state that the provisions of CPC are applicable to the proceedings u/s 33C(2).

4. Per Contra Learned Counsel for the respondent has made his submissions in support of the impugned order which can be summarized as under:

a) That the Labour Court has correctly held that this Court has jurisdiction after considering that the respondent has performed his duties in Delhi after being posted in Delhi, He received his salary in Delhi. Learned Counsel relied upon Clause 4.1.1 to state that the agreement itself states so about the respondent's posting in Delhi. Para 1 of the counter affidavit filed by the respondent also states the same.

b) Learned Counsel for the respondent submitted that the exclusion clause stated in the agreement does not bind the Labour Court as the same. To substantiate the same, learned Counsel relied upon the judgment in Rohtas Industries Ltd. Vs. Brijnandan Pandey, which was cited in the impugned order also.

c) Learned Counsel stated that the writ petition is premature in as much as the order of the Labour Court does not determine the issue of the jurisdiction and rather the Labour Court has kept the same pending by arriving at the finding which records as follows:

17. From the material on record and the submission made I am of the prima facie view that this Court has territorial jurisdiction. However, it cannot be ignored that territorial jurisdiction is a mixed question of law and fact. The parties can establish in evidence the existence or non existence of territorial jurisdiction. In that view of the matter, there is prima facie sufficient material to presume that this Court has territorial jurisdiction to proceed with this application. However, the issue is left open and shall be subject to the evidence led by the parties and would be considered at the time of final adjudication. This

issue is answered accordingly but not finally disposed of.

The learned Counsel thus submitted that the writ petition at this stage cannot be entertained on the issue which is yet to be determined.

d) The learned Counsel for the respondent also urged before this Court that the issue of the appropriate government cannot be raised as the same is not raised before the court of first instance. Thus, this Court under Article 226 should not entertain fresh pleas which were not raised earlier.

5. This Court has considered the rival contentions of the parties and shall now proceed to deal with the same. Firstly, it is seen from the impugned order that the Labour Court has proceeded to frame issues on 5.6.2009 wherein issue (i) and (ii) were treated to be preliminary issue.

6. Thereafter the Labour Court proceeded to dispose of the issues number wise. It is also argued by the respondent itself that this writ petition should not be entertained as the issue of jurisdiction has not been adjudicated upon by the Labour Court by relegating the parties to trial. Order 14 Rule 2 of CPC empowers the court to frame preliminary issues.

7. From the reading of Order 14 Rule 2, CPC it is discernible that the court can try the issue of jurisdiction or the issue relating to bar created by the law to the suit as preliminary issue and postpone the settlement of other issue till the time that issue is determined. The court's power to frame preliminary issues is circumscribed by the discretion which is worded as "may" which means that the court has a choice while framing an issue either to treat it as preliminary issue or to treat the issue as an ordinary issue. Once the said choice is exercised, the court may proceed to either try the preliminary issue impending the decision of the other issues or proceed for trial if no preliminary issue is framed respectively. In the present case, the protest was raised qua territorial jurisdiction of the court as well as the maintainability of the proceedings in which the court has chosen to frame it as a preliminary issue and thereafter proceeding further for adjudication on these two issues.

8. Once the said option of framing of 2 preliminary issues was exercised and also the law relating to the jurisdiction had been discussed by the court, the learned Labour Court should have decided the two preliminary issues conclusively. This Court is of the opinion that while discussing extensively the law relating to jurisdiction of the court from para 6 to 16 of the impugned order, the learned Labour Court ought not to have come to the finding which is recorded in para 17 that the learned Labour Court is of prima facie view that this Court has territorial jurisdiction and there after also holding that the jurisdiction is mixed question of fact as well as law and thus necessitated trial. If that was the conclusion which the learned Labour Court was about to arrive, then there was no necessity to frame and treat the issue of the jurisdiction as a preliminary issue. Thus, the impugned order when it proceeds to dispose of first preliminary issue and yet does not dispose of the same completely and rather relegate the parties to trial

postponing its determination along with final adjudication suffers from procedural irregularity which can be a good ground for interference under Article 226 of the Indian Constitution.

9. The reference may be invited to the decision in D.P. Maheshwari Vs. Delhi Administration and Others, wherein the employer before the Industrial Adjudicator contended that D.P. Maheshwari was not a workman. The Industrial Adjudicator decided the said preliminary objection first. The said decision of the Industrial Adjudicator was carried to the High Court under Article 226 of the Constitution and thereafter to the Supreme Court, thereby delaying the decision of the real dispute for years, as in the present case. The Supreme Court observed that there was a time when it was thought prudent and wise to decide preliminary objections first but held that the time has come for a reversal of that policy. It was laid down that tribunals, particularly those entrusted with the task of adjudicating labour disputes, where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues.

10. Therefore, ordinarily the approach of the Labour Court trying labour disputes to treat some issue as preliminary issue and postponing the main issue is itself depreciated by the courts as held by the Supreme Court of India in D.P. Maheshwaris case (Supra). However, in this case the learned Labour Court has gone a step further while framing some issues as preliminary issues and proceeding to decide the same and yet not determining it and directing trial. The said approach thus suffers from procedural irregularity which is required to be corrected by interference of this Court and requesting the labour to adjudicate all the issues completely after evidence in order to avoid delay and piece meal adjudication. Secondly, the learned Labour Court was correct when it said that the consent cannot confer jurisdiction which the court otherwise does not possess at the time of examination of issue of jurisdiction. But the learned Labour Court has subsequently not applied the said test while examining that whether the Mumbai court can be one of the courts which can possess jurisdiction and thereby the same can be chosen by the parties as exclusive court.

11. It is trite law that the consent cannot confer jurisdiction which the court otherwise does not possess. The same means that the agreement which tries to confer jurisdiction on the court which otherwise does not vest is void being against the public policy. On the other hand, the agreement choosing one of the courts of the competent jurisdiction as a forum of choice by way of agreement cannot be termed as against public policy. This view has been taken consistently from A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem,

12. The learned Labour Court proceeded to examine the question by assuming that Mumbai court does not have jurisdiction which should not be done in the case involving choice of forum. The jurisdiction of the court has to be evaluated as per the principles envisaged under the CPC and on the basis of cause of action in the matter.

13. What would constitute cause of action, the same has been considered by the Apex Court in the case of *Om Parkash Srivastava v. UOI* reported in (2006) 6 SCC 2007 at page Nos. 211-212 in paras 12, 13 and 14 which read as under:

12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See *Rajasthan High Court Advocates' Assn. v. Union of India*.)

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See *Gurdit Singh v. Munsha Singh*.)

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see *Black's Law Dictionary*). In *Stroud's Judicial Dictionary* a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In *Words and Phrases* (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See *Navinchandra N. Majithia v. State of Maharashtra*.)

14. Thus, the aspects like petitioner's registered office at Mumbai, the petitioner carrying on business in Mumbai, the agreement signed in Mumbai, the salary was paid from Mumbai gives some part of cause of action in Mumbai also in addition to Delhi.

15. The enquiry in these circumstances by the learned Labour Court if it proposed to examine the issue of jurisdiction should have been as to whether Delhi or Mumbai courts would ordinarily have jurisdiction to entertain and try the proceedings and thereafter it could have examined the question as to whether by agreement the parties can limit the jurisdiction into one court having jurisdiction

or not. The learned Labour Court did not advert into these aspects in detail at all. Rather, the learned Labour Court impliedly excluded Mumbai court at the outset only by stating that the same would amount to estoppel against the statute. Further, there were submissions made by the parties regarding the appropriate government appointing the Labour Court. The said aspect has not been discussed in the impugned order nor the said submissions were made before the learned Labour Court. As I find that there is a case made out for the interference of this Court under Article 226 on the ground of procedural irregularity and legal infirmity, the parties are at liberty to raise these pleas before the learned labour court which shall determine the issue while deciding the issue of maintainability.

16. Lastly, With respect to correctness of the issue pertaining to maintainability, the same shall be examined along with the other issues which are to be answered by the learned Labour Court.

17. In view of this discussion, the position which emerges is that the present case is a fit case for exercising the jurisdiction under Article 226 as the impugned order suffers from procedural irregularity as well as error of law. Accordingly, this Court deems it fit to quash the order dated 8th February, 2010 passed by the learned Labour Court and directs the Labour Court to answer all the issues together in order to avoid any further delay and piece meal adjudication. The parties are directed to appear before the Labour Court on 18th October, 2010. The Labour Court is also directed to make endeavor to decide the issues as expeditiously as possible.