

(1997) 05 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 12819 of 1988

Godrej Soaps Limited, Bombay	Vs	APPELLANT
State of Karnataka and others		RESPONDENT

Date of Decision : 26-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10 (1) (c)

Citation : (1997) 05 KAR CK 0018

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : B.C. Prabhakar, for the Appellant; S.S. Guttal, for the Respondent

Judgement

1. Chemical Employees" Association, of which the 3rd respondent Narayanan is a member, has raised an industrial dispute in respect of the termination of the services of respondent 3 by the petitioner. The Government of Karnataka, by the order at Annexure-A dated November 13, 1987, in exercise of the powers u/s 10(1)(c) of the Industrial Disputes Act, 1947, made a reference to the Labour Court, Bangalore. On several grounds, one of which being that the Government of Karnataka is not the appropriate Government to make that reference, the petitioner seeks quashing of the said reference under Article 226 of the Constitution.

2. The petitioner had appointed respondent 3 Narayanan as Sales Supervisor, and he was assigned the territory of part of Karnataka vested with the powers of supervision and control of a number of Salesmen working under him. The services of respondent 3 came to be terminated vide Annexure-D dated August 14, 1985 which was passed at Bombay and communicated at Bombay . Certain other factors relating to respondent 3 staying at Bombay at the time Annexure-D came to be served on him, need to be stated.

Respondent 3 had been earlier stationed at Anoti. Sri B. C. Prabhakar, learned Counsel for the petitioner clarified that even this place is not in the State of

Karnataka. Respondent 3 sought for change of headquarters from Anoti to Bombay as per Annexure-B-1 dated August 12, 1982. He even undertook that the said transfer or shifting would be at his own cost and expenses. As per Annexure-B-2, the petitioner communicated that, with effect from October 1, 1982, the headquarters of respondent 3 would be Bombay. In turn, respondent 3 wrote as per Annexure B-3 thanking the petitioner for having shifted his headquarters to Bombay as per his request. He even intimated that he would charge the allowances accordingly. It was thus clear that respondent 3 was serving at Bombay and he was served with the termination order as per Annexure-D at Bombay, though the petitioner itself states in Annexure-D that respondent 3 was assigned a part of State of Karnataka as his area of operation.

3. The question, therefore, is whether the fact that respondent 3 had been assigned Supervisory work over a part of State of Karnataka would render the Government of Karnataka as the "appropriate Government" to make reference u/s 10(1)(c) of the I.D. Act.

4. Sri B. C. Prabhakar, learned Counsel for the petitioner, urges that the "appropriate Government" in the circumstances would be the Government of Maharashtra and not the Government of Karnataka for the purpose of making reference. The Counsel makes a categorical submission that in no part of State of Karnataka the petitioner has got either a branch or administrative office. When his attention is drawn to the address of the petitioner given in the order of reference at Annexure-A as "No.6, East End Road, Basavanagudi, Bangalore", the learned Counsel submits that there is no such office of the petitioner in that address and that nowhere has it been made clear as to how this address has been ascertained and made part of order of reference. To call it as a "disputed fact", the other side does not even whisper as to whether the petitioner has any branch or administrative office in any part of the State of Karnataka much less at the aforementioned address. In the circumstances, therefore, in the light of the factual position stated earlier, it is to be taken that, right from October 1, 1982 as referred to in Annexure B-2, the 3rd respondent-Narayanan had been stationed at Bombay and had been working at Bombay. This, and the fact that the petitioner has got neither a branch office nor administrative office in any part of State of Karnataka; must really be the criteria to decide as to whether the Government of Karnataka would be the "appropriate Government" to make reference u/s 10(1)(c) of the I.D. Act. In the factual position, it must be concluded that no nexus has been established between the territory of the State of Karnataka and the dispute that has been raised.

5. In Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, , the Supreme Court was dealing with an employer having Head Office at Krishnagiri and a separate establishment at Bangalore. This is what the Supreme Court has observed on the aspect of jurisdiction :

"14. x x x x x x x x x x Mr. O. P. Malhotra strongly urges that the State

Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Krishnagiri, and, that the proper test to be applied in the case of individual dispute is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the Head-office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is : where did the dispute arise ? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. This Court in *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, , held as follows :

"The Act contained no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C.J. observed in *Labhai Tricumlal Mills Limited v. Vin* (1956 I LLJ 557) at p. 558 :

"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".

In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference u/s 10 of the Act".

Applying the above principles to the facts of this case it is quite clear that the subject-matter of the dispute in this case substantially arose within the jurisdiction of the Mysore Government".

Learned Counsel for the petitioner also refers to a decision of the Kerala High Court in *J. and J. Dechane Distributors Vs. State of Kerala and Others*, . That was a case concerning an employer who had neither a branch office nor an establishment anywhere in the State of Kerala and the concerned workman being only a representative was occasionally used to be sent for promoting the sales of his employer. In the circumstances, the Kerala High Court held that merely because the order of termination of the services of the workman concerned therein was served within Kerala State, was too slender a ground to hold that the subject matter of the dispute substantially arose within the State of Kerala.

6. As noted earlier, a submission having been made at the Bar that the petitioner

has neither a branch nor an administrative office in any place in the State of Karnataka and it having been found as an undisputed fact that respondent 3-Narayanan, right from October 1, 1982, had been stationed at Bombay itself and had been served with the order of termination of his service at Bombay, merely because he had been entrusted with the duty of supervising sales in some parts of Karnataka would not render the dispute relating to termination of his service as a substantial dispute arising in the State of Karnataka so as to enable the Government of Karnataka to make a reference u/s 10(1)(c) of the Industrial Disputes Act. The reference at Annexure-A is incompetent and without jurisdiction. Having so concluded, it would be unnecessary to deal with the other grounds urged in the writ petition.

7. The writ petition is allowed and the order of reference at Annexure-A dated November 13, 1987 made u/s 10(1)(c) of the Industrial Disputes Act is quashed.