
(2010) 02 PAT CK 0083
In the Patna High Court
Case No : C.W.J.C. No. 5587/2006

Hindustan Lever Limited

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Citation : (2010) 02 PAT CK 0083

Final Decision : Allowed

Judgement

Samarendra Pratap Singh, J.—Heard learned Counsel for the Petitioner and the State. The Petitioner prays for setting aside the order dated December 2, 2005 passed by the Respondent No. 2, Presiding Officer, Labour Court, Patna rejecting the application of maintainability of the proceeding under the Bihar Shops and Establishments Act, 1953, before the Labour Court, Patna (hereinafter referred to as B.S.E., Act, 1953).

2. The Petitioner is a registered company under the Companies Act, 1956 having its registered office at Hindustan Lever House, 165/166, Back bay Reclamation, Mumbai and Regional Office at Brooke House, 9, Shakespeare Sarani, Kolkata.

3. The Petitioner Company does the business of manufacturing, sale and distribution of Fast moving Consumer goods including daily necessities.

4. According to the Petitioner, the company is divided into four regions. The Eastern Regional Office controls and monitor the sale and distribution of the Eastern Region comprising of North East West Bengal, whole of Orissa, Jharkhand, Manipur, Sikkim, Assam and State of Bihar. None of these states has any shop establishment or any subordinate office. The entire region is divided into Sales areas, managed by area Sales Manager located at Kolkata, who is assisted by Sales Officers and Territory sales incharge. The employment of persons, sales officers and territory sales incharge is affected from Kolkata and salaries and wages also, paid from Kolkata office. All statutory compliance in terms of Provident Fund, Gratuity and other statutory requirements are

maintained and applied from Kolkata office. The regional office is registered under the West Bengal Shops and Establishments Act, 1963.

5. Respondent No. 3, namely Satya Prakash Verma, was appointed as salesman on August 10, 1976. The appointment letter was issued from Kolkata office (Annexure-1). The letter of confirmation dated April 4, 1977 was also issued from Kolkata office (Annexure-2). The promotion to the post of sales officer and Branch Manager was also made from Kolkata Office (Annexure-5). The leave card of the Petitioner also shows that he is covered by West Bengal Shops and Establishments Act. The contract of the Petitioner was determined in view of terms and conditions vide letter dated July 31, 2002 with three months notice pay, in lieu of notice. A copy of letter dated July 31, 2002 is annexed as Annexure-10. The termination letter was issued from Kolkata office at the Patna address of the Respondent No. 3 alongwith a demand draft for a sum.57,495/- drawn in favour of Respondent No. 3.

6. The Respondent No. -3 filed an application u/s 26(2) of the Bihar Shops Establishments Act, 1953 (hereinafter referred to BSE Act) against his termination, bearing BSE Case No. 4 of 2002.

7. The Petitioner filed a preliminary objection regarding the maintainability of the application before the Labour Court under BSE Act. The Presiding Officer, Labour Court rejected the said objection and held that proceeding under BSE Act was fully maintainable vide its impugned order dated December 2, 2005.

8. On June 28, 2007, this Court issued notice to Respondent No. 3 and stayed the operation of the impugned order dated December 2, 2005. Pursuant to the notice, Respondent No. 3 appeared and filed its counter affidavit. He stated that his termination was bad and the Labour Court, Patna has jurisdiction to try the case under Bihar Shops and Establishment Act.

9. The Petitioner submits that B.S.E. Act, 1953 is a local Act. The object of the Act is enshrined in its preamble which provides for Regulation of conditions of work and employment in shops and other establishments. The Petitioner has No. shop and establishment or even any office in the State of Bihar, as such the Bihar Local Act, 1953 would not be applicable.

10. The Petitioner states that word "establishment" is defined in Section 26 of the B.S.E. Act, 1953 and it pertains to carrying on trade or profession and includes administrative and clerical service appertaining to such establishment. It would also include a shop, retail, hotel, theatre or a place of public amusement. He submits that Rule 21(1) of the B.S.E. Rules, 1955 provides that any employee aggrieved by an order of dismissal or discharge u/s 26(2) of the B.S.E. Act, may also make a complaint to a Labour Court constituted under the Industrial Dispute Act, 1947, which is quoted herein below:

Rule 21(1) of B.S.E. Rules, 1955: Any employee aggrieved by an order of dismissal or discharge u/s 26, may make a complaint to a Labour Court

constituted under the Industrial Disputes Act, 1947 (14 of 1947) or to an officer authorized in this behalf by a notification in the official gazette, either himself or through an officer of a registered trade union. Such Court or officer shall entertain the complaint petition and hear the same in the manner prescribed in Sub-rules (4) to (8).

11. He, thus, submits that an aggrieved person has an alternative choice either to pursue his remedies under the Industrial Dispute Act or the B.S.E. Rules, 1955 provided a "shop" or "establishment" within the meaning of Act 2(6) and 2(16) of B.S.E., Act, 1953 exists within local area. learned Counsel submits that the application under Industrial Dispute Act being a Central Act has a wider application than BSE Act, 1953, which is a local Act.

12. Counsel for the Respondent No. 3 submits that the appointment letter would show that citus of his employment was within the territorial jurisdiction of Labour Court, Patna. The appointment letter was issued in his Patna address. The other communications are also made on his Patna address. His wages and salaries are being sent and paid at Patna. He submits that the termination letter was also served upon him at Patna.

13. Learned Counsel submits that it is well settled that in absence of any specific provision regarding territorial jurisdiction in the Act or Statute, the citus of employment, and the well known test of jurisdiction of Civil Court including the residence of the parties, as provided u/s 20 of the CPC would determine the jurisdiction. In support of his submission, learned Counsel has relied upon decisions in the case of Paritosh Kumar Pal v. State of Bihar and Ors. (1984) Lab I.C. 1254 (FB), Neslin Joseph Prim Vs. The Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, Chennai and Another, Pritam Singh Vs. Presiding Officer, Labour Court and Another, and Novapan Industries Limited v. S. Krishna Murthy and Another 2003 IV LLJ Sup 312 : 2003 Lab I.C. 1613.

14. Respondent No. 3 submits that the Courts have held that where the Act or Statute is silent on the issue of territorial jurisdiction there are three clear cut principles of test for determining the jurisdiction of Industrial Tribunal, which are as follows:

- (i) Where does the order of the termination of services operate,
- (ii) Is there some nexus between the Industrial Dispute arising from termination of services of the workman and the territory of State,
- (iii) Well known test of jurisdiction of a Civil Court including the residence of the parties and the subject-matter of the dispute substantially arising therein.

15. Learned Counsel submits that the yardstick laid down in cases determining jurisdiction in Industrial Dispute Act would also be applicable for determining jurisdiction in cases arising out of B.S.E. Act.

16. It would appear from the pleadings of the parties that Petitioner has its

registered office at Mumbai and a Regional Office at Kolkata, which controls and monitor sales and distributions in Eastern Region including State of Bihar. Sales officers have been appointed for distributing the products of the company in different areas. The Respondent No. 3 has not been able to controvert the submission of the Petitioner that it has No. establishment or office of the company in the State of Bihar. In my view, the B.S.E. Act, 1953 would be applicable in cases of establishments or shops established in the State of Bihar, as provided u/s 2(6) and 2(16) respectively. The Respondents have brought nothing on record to show that the company has any establishment or premises where goods are being sold either in retail or wholesale by Company's office. It is the case of the Petitioner that the goods are being distributed through distributors, who may have their own premises, but so far as company is concerned, it does not have any establishment, shop or premises of its own as defined u/s 2(6) and 2(16) of the Act. An establishment, shop or office of a distributor distinct from the company or firm cannot be deemed to be its Establishment, shop or office. All the decisions cited by the learned Counsel for the Respondents are in respect of cases under Industrial Dispute Act, and principles which would govern its territorial jurisdiction. The I.D. Act has a wider application than the B.S.E. Act, which is a local Act and limited to Shop and Establishment established in State of Bihar. A case under B.S.E. Act would be maintainable only if the "shops" and "establishments", in which a person is working, has an establishment in the State of Bihar. The position in respect of Industrial Dispute Act, being a Central Act would be different because of its wider application. The Industrial Dispute Act is not circumscribed by conditions laid down in local Act, which stipulates existence of an establishment and shop in the State of Bihar.

17. The Industrial Dispute Act does not provide any specific provision, albeit, it is singularly silent on the issue of territorial jurisdiction. The Industrial Dispute Act does deal neither with the causes of action nor does it even distantly indicate the factors which would confer jurisdiction on the appropriate Government and equally upon the Tribunal or Labour Court constituted thereunder.

18. Thus, the Courts have held that the principles or test, which would determine the jurisdiction of the Industrial Tribunal would be citus of employment, the area in which the order of termination would operate and the well known jurisdiction of test of civil Court including the residence of the parties. The Courts have further observed that though the CPC has not been specifically made applicable to the Industrial Tribunal Act, still the general principle and value of the tests underlying the jurisdiction of the civil Court would be relevant, in absence of specific provisions in the statute.

19. Thus, I am of the view, though application under Industrial Dispute Act would be maintainable before the Labour Court/Tribunal in Patna under the Industrial Dispute Act, the application under B.S.E. Act, 1953 would not be maintainable before the Labour Court, Patna. The admitted activities of the Company in State

of Bihar would bring it within the purview of Section 2(j) of the Industrial Dispute Act, 1947. Termination of Respondent No. 3 would be equally come within the purview of Industrial Dispute Act as defined u/s 2(k) of the Industrial Dispute Act, 1947. Furthermore, Rule 21 of the B.S.E. Act, 1953 also provides for complaint under Sub-Section 2 of Section 26 before a Labour Court constituted under the Industrial Act, 1947.

20. Thus, Respondent No. 3 would be still having an option either to prefer a case under Bengal Shops and Establishment Act in Bengal or under the Industrial Dispute Act even before the Labour Court/Tribunal at Patna.

21. In the result, this application is allowed and the impugned order dated December 2, 2005 passed by the Presiding Officer, Labour" Court, holding a proceeding under B.S.E. Act, 1953, as maintainable, is set aside.