

(1973) 08 KL CK 0013
In the High Court Of Kerala

J. and J. Dechane Distributors

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-08-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 20
Industrial Disputes Act, 1947 — Section 10, 2, 20, 2A, 9A

Citation : (1974) 2 LLJ 9

Hon'ble Judges : V.P. Gopalan Nambiar, J;G. Viswanathan, J

Bench : Division Bench

Judgement

Gopalan Nambiyar, J.—The petitioner is a firm engaged in the manufacture and production of herbo-mineral products, and having its registered office at the Residency Road, Hyderabad in the State of Andhra Pradesh. The 3rd respondent is a medical representative of the petitioner for canvassing orders and promoting sales of its products in the State of Kerala, and in the District of South Kanara in the State of Mysore. The 3rd respondent was transferred to Bangalore by Ext. P1 dated 10-12-1968, with effect from 10-1-69. He refused to join at the said station, whereupon Ext. P2 notice dated 13-1-1969 was issued to him to show cause against suitable action. By Ext. P3 dated 21-1-1969, while informing him that there was no justification for his refusal to proceed to Bangalore, he was given one more chance to join at the place. Meanwhile, the District Labour Officer, Trivandrum, by notice dated 7-1-1969 informed the petitioner of his intention to commence conciliation proceedings in respect of the order of transfer and asked the petitioner to be present for a conference to be held on 18-1-1969. It was stated that the 3rd respondent's cause had been taken up by the 4th respondent, the Kerala Medical Representatives' Association. By its reply dated 13-1-1969 (copy Ext. P4), the petitioner stated that the officer had no jurisdiction to initiate the conciliation proceedings and that the 3rd respondent was not a "workman". Thereafter, the 1st respondent by Ext. P5 order dated 15-4-70 referred the question of termination of service of the 3rd respondent to the Labour Court, Quilon u/s 10(1)(c) of the Industrial Disputes Act. The

petitioner seeks to quash this order.

2. The petitioner's counsel contended that the petitioner has no place of business, nor any office in the Kerala State, and that the 3rd respondent was merely a salesman or a sort of canvassing agent to procure and promote sales of the petitioner's products, that the control over the 3rd respondent and the disbursement of his salary were all from the office at Hyderabad ; and even the orders of transfer to Bangalore and the threatened termination of service were issued from Hyderabad. In the circumstances, it was said that "the appropriate Government", u/s 2(a)(i) of the Industrial Disputes Act to refer the dispute for adjudication was not the Kerala Government, but, if at all, only the Government of Andhra Pradesh. In addition to this, it was said that the 3rd respondent was not a "workman ". A point was raised that the dispute in question was only an individual dispute and not an industrial dispute. But this was not pressed in view of the provisions of Section 2A of the Act.

3. Section 2(a) defines "appropriate Government" as follows:

2(a) "appropriate Government" means-

- (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or...the Central Government ; and
- (ii) in relation to any other industrial dispute the State Government.

The expression "appropriate Government" occurs further in Sections 9-A and 9-B and 10 of the Act. Section 10(1)(c) reads:

10. Reference of disputes to Boards, Courts of Tribunals.

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-

(a) * * * * * (b) * * * * * (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication.

4. 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. But in a case where a concern is shown to be carrying on business within the frontiers of more than one State, or where more than one State is put forward as the ""appropriate Government", how is the question as to which is the "appropriate Government" to be settled ? The Industrial Disputes Act itself contains no provisions on the question. To such a situation, the principle applicable was stated by Chagla, C.J. in Lalbhai Tricumlal Mills Ltd. Vs. Manubhai Motilal Vin and Others, , as follows:

Now the Act does not deal with the causes 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. And, therefore, the correct approach to this question is to ask ourselves -Where did this dispute substantially arise-and in our opinion the only answer to that question can be that the dispute substantially arose in Bombay and not in Ahmedabad, What is the dispute ? The dispute is not as to whether the employee approached the employer in Ahmedabad and no agreement was arrived at. The dispute is whether the employer was justified in dismissing the employee, and inasmuch as the employment was in Bombay and the dismissal was in Bombay, it is difficult to understand how it can possibly be urged that the dispute did not substantially arise in Bombay.

The facts of that case were that the petitioner therein was employed in the branch office of the mills in Bombay and his services were terminated when the branch office was closed. He wrote to the registered office of the mills at Ahmedabad claiming reinstatement. Not receiving any reply, he filed an application before the Bombay Labour Court for reinstatement and compensation. This was found to be proper and valid. The principle thus stated by Chagla, C.J., was approved by the Supreme Court in *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, in the following passage:

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 *Lalbhai Tricumlal Mills Ltd. Vs. Manubhai Motilal Vin and Others*, :

"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.

In *Lipton Limited and Another Vs. Their Employees*, , the Industrial Tribunal, Delhi held that the workmen concerned, whether they worked in Delhi or not, received their salaries from the Delhi office, were controlled from the Delhi Office in the matter of leave, transfer, supervision, etc., and, therefore, the Delhi State Government was the "appropriate Government " within the meaning of Section 2 of the Industrial Disputes Act. The decision of the Industrial Tribunal was affirmed by the Appellate Tribunal. Though the question of jurisdiction was not seriously pressed before the Supreme Court, it was observed by that Court that the Industrial Tribunal had jurisdiction to adjudicate on the dispute between M/s.

Lipton Ltd. and its workmen, Delhi Office.

5. It would now appear that although on the general principles regarding the jurisdiction of Courts to take cognisance of suits, (embodied in Section 20 of the Civil Procedure Code) it is enough to show that the cause of action wholly or in part arose within the jurisdiction of the Court, for the purpose of referring an industrial dispute, it is necessary to show that the dispute "substantially arose" within the cognisance of the "appropriate Government" empowered to make the reference. And the test of residence, or of carrying on business, or personally working for gain, formulated with reference to the defendant u/s 20 of the C.P.C., is stated by Chagla, C.J., differently as "the residence of the parties", and not the defendant alone.

6. We may now refer to a few other decisions to which our attention was drawn. In *Superintending Engineer and Others Vs. Workmen of Machkund Hydro Electric Project and Another*, , the question arose as to which was the "appropriate Government" entitled to refer an industrial dispute relating to the Machkund project for adjudication to the Industrial Tribunal. The project was owned jointly by the Andhra Pradesh and the Orissa Governments. A substantial part of it was located in Orissa. It was that Government which referred the dispute for adjudication. Objection was raised by the Andhra Pradesh Government, on whose behalf it was contended that there should at least have been a joint reference by both the Governments. This contention was negatived holding that a joint reference was not contemplated. It was held that the industry having been located substantially within the territory of the Government of Orissa, that Government was the "appropriate Government" to refer the dispute. In *Association of Medical Representatives (M and V) Vs. The Industrial Tribunal and Others*, , the question arose in regard to the termination of the service of a medical representative of Messrs. Sarabhai Chemicals Ltd. The representative was to contact the members of the medical profession and others in three districts of Madhya Pradesh, and certain Districts of the former Vindhya Pradesh, and book orders for the company which had its head office in Bombay. The representative's work was controlled and supervised from Bombay, and his salary and travelling allowance were also paid from Bombay. It was held by the Madhya Pradesh High Court that that representative who was only a "roving salesman" whose duty was only to canvass for orders and promote sales, was not an "undertaking" within the meaning of Section 2(j) of the Act, if there was no establishment of the company outside its head office. The principle of the Madhya Pradesh ruling was followed by the Punjab High Court in *National Tobacco Co., Employees Union (Regd), Jullundur Vs. Manohar Singh and Another*, . The Orissa and the Madhya Pradesh decisions are before pronouncement of the Supreme Court in the *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, . The Punjab decision, although subsequent to that pronouncement, does not refer to it. The Madhya Pradesh and the Orissa decisions seem to proceed on the basis that a substantial nexus between the industry and the territory of a State

Government would determine the "appropriate Government" which is competent to make the reference. This is what the Madhya Pradesh High Court observed in the decision noticed, after referring to the principle stated by Chagla, C.J.:

This test only effectuates that which is contemplated by Section 10(1), namely, that it is the Government in whose jurisdiction the industry is situated that is competent to make a reference. Applying this test here, there can be no doubt that the Madhya Pradesh Government had no jurisdiction to make the reference. The petitioner was no doubt residing in Madhya Pradesh. The residence of the parties necessary to give jurisdiction must be in relation to the existence of the industry. The company was not carrying on business anywhere in Madhya Pradesh on the date of the reference. The dispute whether the company was justified in dismissing D" Silva arose in Bombay inasmuch as the petitioner was employed by the Bombay Office of the company; he was paid by that office and his work was controlled and supervised by that office ; and the dismissal order was also passed by the Bombay office.

7. This may not probably be a correct test, having regard to the observations made by the Supreme Court in *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, , that the nexus should be between the industrial dispute and the territory of the State, and not necessarily between the industry and the State concerned.

8. Going by the test propounded by the Supreme Court, could it be said, on the facts of this case, that the cause of action substantially arose within the frontiers of this State so as to empower the Kerala Government to make a reference? Counsel for the respondent could rely only on two facts, namely, that the order of termination was served in Quilon within the State, and that the 3rd respondent himself was carrying on business of the petitioner in the Kerala State with Quilon as his headquarters. But there is nothing to show that the petitioner was having either a branch office or an establishment in Quilon or elsewhere in this State. The 3rd respondent was only a representative, who used occasionally to be sent out for promoting sales of the petitioner's products. We are unable to hold that the petitioner could be said to be carrying on business within the State.

9. The fact that the order of termination was served on the petitioner within the Kerala State appears to us, in the circumstances, to be too slender a ground to hold, in the language of Chagla, C.J., that "the subject-matter of the dispute substantially arises " within this State.

9. Our attention was called to the decision of a learned Judge of the Andhra Pradesh High Court in Writ Petition No. 4788 of 1968 (unreported). The learned Judge, after noticing the decision of the Supreme Court in *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, and the *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, , formulated the test as to whether there is nexus between the territories of the State concerned, and the dispute, and not whether such nexus exists

between the territories of the State and the industry concerned. Applying the test, the learned Judge was satisfied that the workmen concerned worked and received salary within the State of Andhra Pradesh, and the order of termination was also received by him within that State. As noticed already, we are not prepared to hold that the 3rd respondent in this case carried on business of the petitioner within the Kerala State. His salary was from Hyderabad.

10. The petitioner is also well founded in his contention that the 3rd respondent was not a "workman" as defined in the Industrial Disputes Act. In D.S. Nagaraj v. The Labour Officer, Kurnool and Anr. (1972) 2 AP W.R. 126 , a Division Bench of the Andhra Pradesh High Court ruled that a medical representative whose duty consisted of advertising and canvassing for sales of the products manufactured by Sandoz (India) Ltd. could not be regarded as a workman under the Industrial Disputes Act. It relied on the decision in *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, , where the Supreme Court ruled that a district sales representative was not a "workman". His main work was to do canvassing for the purpose of promoting sales. It was true that in the course of his functions, he had to carry on some correspondence, but this was merely incidental to his main work of pushing up the sales. It was held, therefore, that his work was not either manual, clerical, technical or supervisory, and he was, therefore, not a "workman". On the same principle, we feel that the medical representative in this case cannot be regarded as a "workman."

11. For these reasons we are of the opinion, that the reference was incompetent. We, therefore, allow this writ petition and quash Ext. P5 order. There will be no order as to costs.