

(1955) 04 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 47 of 1955

Lalbhai Tricumlal Mills Ltd.

APPELLANT

Vs

Vin D.M. and Others

RESPONDENT

Date of Decision : 06-04-1955

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42(4), 77, 78, 79(3), 81

Citation : AIR 1955 Bom 463 : (1955) 57 BOMLR 907 : (1955) ILR (Bom) 921

Hon'ble Judges : M.C. Chagla, C.J.;Desai, J

Bench : Division Bench

Judgement

Chagla, C.J.—This petition raises a rather interesting question as to the jurisdiction of the labour court to try a certain industrial dispute. The facts are very brief. Opponent 5 was employed by the petitioner mills in their branch office in Bombay and his services were terminated on 27 August 1953, when the branch office was closed. He wrote to the registered office of the mills in Ahmedabad complaining of his dismissal and claiming to be reinstated. No reply was sent to this letter and respondent 5 filed an application before the labour court for reinstatement and compensation. A point was raised by the petitioner that the labour court at Bombay had no jurisdiction to try and dispose of the application made by respondent 5, and the labour court made a reference to the industrial court under S. 81, Bombay Industrial Relation Act, 1946, and the industrial court has held that the Bombay labour court had jurisdiction. It is against that decision that the petitioner has come on this petition.

2. Now, under S. 9 the State Government is empowered to constitute one or more labour courts having jurisdiction in such local areas as may be specified in such notification, and a labour court has been constituted under this section for Bombay, and under S. 77 it is again emphasized that the territorial jurisdiction of labour court shall extend to the local areas for which they are constituted. But neither S. 9 nor S. 77 throws any light as to what is jurisdiction in relation to the subject-matter. Both Ss. 9 and 77 deal with the territorial jurisdiction of the

courts, but what we have to consider is in respect of what matters arising within that territorial jurisdiction the labour court has been empowered to dispose of applications filed before it.

3. What is pointed out by Mr. Bhagwati on behalf of the petitioner is that S. 78 of the Act provides :

(i) "A labour court shall have power to - A - decide -

(a) disputes regarding - [and we are here concerned with Clause (iii)]

(iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Sch. III and matters arising out of such change";

and the "explanation," to that section provides :

"A dispute falling under Clause (a) of Para. A of Sub-section (1) shall be deemed to have arisen if within the period prescribed under the proviso to Sub-section (4) of S. 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso."

4. And when we turn to Sub-section (4) of S. 42, it lays down :

"Any employee or a representative union desiring a change in respect of (i) any order passed by the employer under standing orders, or (ii) any industrial matter arising out of the applications or interpretation of standing orders, or (iii) an industrial matter specified in Sch. III, shall make an application to the labour court."

5. There is a proviso to this sub-section and the proviso is : "Provided that no such application shall lie unless the employee or a representative union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period."

6. What is contended is that an industrial dispute only arises when an employee, dissatisfied by any action on the part of the employer, approaches the employer in the manner laid down in the proviso to S. 42(4) and no agreement has been reached between the employer and the employee after that approach has been made, and Mr. Bhagwati says that till that approach takes place and the approach is found to be futile, there is no industrial dispute, and says, Mr. Bhagwati, in this case the approach was made at Ahmedabad, the approach did not result in an agreement, and therefore the dispute arose in Ahmedabad and only the labour court at Ahmedabad can entertain this application. Turning first to S. 42(4) and the proviso, it is clear that the proviso is procedural and it obliges the employee to comply with the condition precedent laid down in the proviso before he can approach the labour court.

7. The proviso does not deal with the subject-matter of the industrial dispute at all, but it makes it necessary that certain procedure has got to be followed before

the employee becomes entitled to approach the labour court. The arising of the dispute at a particular moment has also been laid down for another reason and that is to provide the starting point of time for limitation because under S. 79(3) an application in respect of a dispute falling under Clause (a) of Para. A of Sub-section (i) of S. 78 shall be made if it is a dispute falling under Sub-clause (iii) of the said clause, within three months of the employee concerned having last approached the employer under the proviso to Sub-section (4) of S. 42. But what we are concerned with to decide is : where did the dispute substantially arise ?

8. 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. 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. What Mr. Bhagwati says is that there is no dispute till an approach is made by the employee under the proviso to S. 42(4).

9. It is true that there would be no industrial dispute till the procedure laid down in the proviso to S. 42(4) is satisfied, but in a more important sense, there would be no dispute at all if there had been no dismissal by the petitioner of respondent 5. In order that there should be an industrial dispute, two ingredients are necessary. One is the fact that the employee should be aggrieved in one of the manners laid down in the Act, and the second is that he must comply with the procedure laid down in S. 42(4). If either ingredient is absent, there would be no dispute. But to suggest that because the industrial dispute will arise provided the second ingredient is complied with, one must completely ignore the first ingredient, is to put forward a contention which is untenable. If, therefore, both the ingredients are necessary, the question that we have to ask is whether the first ingredient is sufficiently important to constitute substantially the subject-matter of the dispute, and that can be no doubt that what the labour court will be considering and deciding would be whether the employee was wrongly dismissed or discharged by the employer.

10. If that is going to be the subject-matter of the inquiry before the labour court, that subject-matter arose in Bombay and not in Ahmedabad. We express no opinion as to whether the Ahmedabad court would equally have jurisdiction or not. We are only concerned with deciding whether on these facts the Bombay labour court has jurisdiction, and in our opinion, if as in this case the employee

was employed in Bombay and dismissed in Bombay and he is making a complaint about his dismissal and wants reinstatement and compensation the Bombay labour court has jurisdiction to decide this application. We, therefore, agree with the industrial court in the view it has taken.

11. The result is that the petition fails and must be dismissed with costs.