

(1979) 01 BOM CK 0035

In the Bombay High Court

Case No : Special Civil Application No. 2153 of 1978

Laxman Baburao Bepal

APPELLANT

Vs

Manager, Nagar District Urban Central Co-op. Bank Ltd. and
Another

RESPONDENT

Date of Decision : 18-01-1979

Acts Referred:

Bombay Industrial Disputes Act, 1938 — Section 2(3)
Bombay Industrial Relations Act, 1946 — Section 2(2), 2(3), 2(4), 3(23), 42(4)
Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 226

Citation : (1980) 82 BOMLR 247 : (1979) 38 FLR 279 : (1980) MhLj 597

Hon'ble Judges : V.S. Deshpande, J;N.B. Naik, J

Bench : Division Bench

Advocate : B.S. Kulkarni and I.A. Sayed, for the Appellant; M.A. Rane, for the Respondent

Final Decision : Allowed

Judgement

V.S. Deshpande, J.—The petitioner was employed as a clerk in the Nagar Dist. Urban Central Co-Op. Bank Ltd., Ahmednagar—hereinafter referred to as " the Respondent" with effect from 1-1-1965. He was transferred on 22-2-66 to Parli (Vaijanth) in District Bhir of Marathwada State, respondent opened its new branch there. An enquiry was held against the petitioner in respect of certain acts of misconduct alleged to have been committed by him at Parli in the month of November, 1970. He was discharged from service by an order dated 7-9-1971 by the Board of Directors of respondent , on the said charges being proved in this said enquiry.

2. The petitioner then approached the employer for reinstatement as required under proviso to section 42(4) of the Bombay Industrial Relations Act, 1946--- hereinafter referred to as "the Act"---and on failure of any response, he made an application for reinstatement etc. On 29-11-1971, to the Labour Court at Poona. This application was dismissed on 30-6-1976. The Court firstly held that it had no

jurisdiction to entertain the claim as the Act was not applied to the Banking Industries in the district of Bhir till 15-11-1973, where the petitioner was posted at the relevant time. It secondly held the dismissal to have been justified on merits. On appeal, the Industrial Tribunal upheld the finding as to jurisdiction and dismissed the appeal without recording any finding on the merits. The legality of this order is challenged in this Special Civil Application under Article 226 of the Constitution of India.

3. The contention of Dr. Kulkarni, the learned Advocate appearing for the petitioner is two fold. He firstly contends that with the extension and enforcement of the Act in Bhir district from 2-5-1965, business therein of the branches of the Banks located in the erstwhile State of Bombay, does not require its fresh application by any notification u/s 2(4) of the Act, as section 2(3) of the Act covers the business of their branches in the same manner as that of their head office. He secondly contends that, even after his transfer from Nagar to Parli, the petitioner does not cease to be the member of its establishment at Nagar and consequently does not cease to be governed by the Act.

4. Coming now to the first contention of Dr. Kulkarni, the Act does not apply to any industry unless it is expressly made so applicable by a notification u/s 2(4). Section 2 of the Act contemplates three stages. Firstly section 2(1) of the Act contemplates its extension to the areas in the State. Section 2(2) then contemplates its enforcement. Section 2(4) then contemplates its application to any industry, generally by reference to its location, in any part or the whole State or partially in any local area. The legislature presumably did not intend to cover any industry in its infancy when the employer and the employees may not be strong enough, to bear the burnt, or avail of the beneficial provisions. To facilitate such partial application of the Act, section 3(23) enables the State Government to demarcate such local areas by notification in the Gazettee. The Act, however, does not contemplates its application in addition to the branch business of any Bank once it is so applied to main business.

5. Before this Act of 1947, the Bombay Industrial Disputes Act, 1938 regulated the relations between the employer and employees in an industry. Sections 2(2) and 2(3) thereof also enabled the Government to apply the Act to any or all industries, located anywhere in the whole or in any part of the State (Province) by specification in the Gazette. By a notification dated 26-12-1947, u/s 2(3) of the said Act, the said Act was made applicable "to the business" of Banking Companies" in the whole of the then Bombay State. It is not disputed that business of Banking is an industry within the meaning of the said Act. Section 2(3) of this Act made it applicable "to the industries" to which the repealed Act of 1938 was already applied. In other words, the Banking business carried on then in any part of erstwhile Bombay State including the one of the respondent's at Ahmednagar, governed earlier by the repealed Act continued to be governed by the provisions of this Act by the force of section 2(3) thereof.

6. The Vidarbha and Marathwada areas were merged in the erstwhile Bombay

State with effect from 1st November, 1956 by virtue of the States Reorganisation Act of 1956. These areas continued to be the parts of State of Maharashtra on the bifurcation of the Bombay State in 1960. However, the Act continued to apply only to the area of erstwhile Bombay State till it was extended to the areas of Vidarbha and Marathwada on its amendment by Maharashtra Act No. 22 of 1965.

7. By notification u/s 2(2) of the Act, the Act so amended was then brought into force in the Marathwada and Vidarbha regions with effect from 2-5-1965. Thus the Act stood extended and enforced in the entire State of Maharashtra from 2-5-1965 including in Parli (Vajinath) in Marathwada region. It is not disputed before us by Dr. Kulkarni though so disputed by the petitioner before the courts below, that mere such extension and enforcement of the Act in the entire State cannot result in its application to the Banking business in these areas without such express application u/s 2(4) of the Act. We have already seen how section 2(4) enables the State Government to apply the Act, so extended and enforced by a notification in the Gazette, "to all or any other industries" either "generally" or in a local area" so demarcated by earlier notification to that effect u/s 3(23) of the Act. Thus the Act contemplates its application u/s 2(4) to an industry in the areas specified and not to the areas in which any industry is spread over.

8. By a notification dated 2-11-1973, u/s 2(4) read with another notification dated 30-10-1973 u/s 3(23) of the Act, was made so applicable to be the Banking business in certain districts in Marathwada including the one in Bhir District in which Parli is situated with effect from 15-11-1973. The Act thus now indisputably applies to Banking business in all such districts from 15-11-1973.

9. Dr. Kulkarni however, contends that though the Act would not apply to the Banking business of the Banks set up exclusively and independently in all these districts of Marathwada till 2-11-1973, the cases of the branches of the Banks set up in erstwhile State of Bombay such as the respondent Bank, stand on different footing. According to Dr. Kulkarni the notification dated 26-12-1947 under the repealed Act of 1938 read with section 2(3) of the Act, would cover the business of such branches also, carried on in any part of the State and the Act would apply to such branches at any rate from 2-5-1965.

10. The contention appears to us to be formidable. The notification dated 26-12-1947 reads as follows :

"Banking Industry, Political and Services Department, Bombay Castles, 26th February, 1947, Bombay Industrial Disputes Act, 1938 No. 396.46.1---In exercise of the powers conferred by sub-section (3) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bom. XXV of 1938), and supersession of Government Notification in the Political and Services Department No. 396-46-1, dated 20th September, 1946, the Government of Bombay is pleased to direct that all the provisions of the said Act shall apply to the business of Banking companies registered under any of the enactments relating to companies for the time being in force in any part of His Majesty's dominions or elsewhere or

incorporated by an Act of Parliament or by an Indian Law or by Royal Charter or by Letters Patent."

11. The repealed Act of 1938 thus was applied to the "Banking business" as such and not to any particular local area in which any such business is carried on. That is not the what repealed or the present Act contemplates. What the State Government has to decide under the Act is whether to extend the application of the Act to all the Banks in the State or restrict its application to the few Banks located in any particular local area. Once the Act is applied to the Banking business of any bank in either of the two ways, its Banking business carried by it at its head office or at its branch office anywhere in the State gets automatically governed by it, provided however, the Act is enforced therein. Section 2(3) of the present Act applied the Act to the Banking business of all the then existing banks. Mr. Rane, the learned Advocate for respondent does not dispute that the Act applied to its Banking business at Ahmednagar by virtue of this notification. The business of the branch at Parli is as much the Banking business of the said bank as such business of the head office is and does not cease to be the business of the head office, merely because it is carried on at Parli or at a place beyond the territorial limits of erstwhile Bombay State. In the absence of any limits on such applications contemplated under the Act, application of the Act to the Banking business of Ahmednagar bank must necessarily cover application to its extend business at branches at place where the Act is in force. The Act has been in force in Parli from 2-5-1965 even before the Branch was opened. The above notification dated 16-2-1947 as saved by section 2(3) of the Act would be wide enough to cover branch business of the Ahmednagar Bank at Parli.

12. Mr. Rane however contends that Marathwada region was not the part of the Bombay State on 26-2-1947 and the notification could not have been intended to cover any Banking business in this region. It is precisely in this context that, the distinction between the Banking business of the branches of the Bank of erstwhile Bombay State and the independent Banking business set up in Marathwada and Vidarbha areas, is relevant and assumes importance. While Government could never have intended to cover by this notification any independent Banking business set up outside the erstwhile State of Bombay, it had no reason to think of restricting its operation to its business at its head office only or excluding the business of its branches. The notification is clearly intended to cover the Banking business of such Banks without any territorial limits thereon. Ordinarily law of any State can never claim to have any extra territorial operation. But the Act could be intended to apply to the Banking business of such Banks at places where the Act happens to be in force then. It is unnecessary to consider in this case the case of a branch where the Act is not in force. The merger of Marathwada and Vidarbha areas with the parts of erstwhile Bombay State has enabled the extension and the enforcement of the Act therein. The wording of the notification does not admit of any suggested limitations as far as the extended. Banking business of the Bank covered by such notification is concerned. Such limitation cannot be inferred merely from the Marathwada area

not being the part of the State in 1947. What is required to be emphasised is that the Act contemplates application thereof to any industry located in a given area and not to an area in which any particular industry is located. Dr. Kulkarni thus appears to us to be right in contending that, the Act covers the Banking business of the branches including the branch at Parli once its business at the head office is found to have been so covered.

13. Second contention of Dr. Kulkarni is also well founded. It is nobody's case that Banking business at Parli Branch is an independent unit in terms of the tests laid down by the Supreme Court in the case of *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, in a slightly different context. The ownership and management of the Parli business entirely vests in its establishment at Ahmednagar head office. The accounts of the Parli Branch though separately audited are ultimately integrated with the accounts of the head office and one integrated Balance Sheet of the head office and all the branches, is prepared every year. This financial integrality between the two militates against Parli Branch being an independent unit.

14. The Manager of the Respondent Bank whom, it examined in support of its case, has expressly admitted that the services of all the employees of the bank including those recruited locally at branches are liable to be transferred from one office to the other. The fact that, the petitioner was transferred on his request, cannot affect the implications of such transferability. This assumes that an employee in the branch belongs to the same cadre to which his counter part in the head office belongs, for the purpose of seniority and promotions. His liability to retransfer to head office fortifies this view. The establishment at the branch office is thus the part and parcel of its establishment at the head office. By mere transfer, no employee ceases to be the employee of the Bank nor his connection with the head office gets snapped. It is not disputed that, establishment at the head office is governed by the Act. It is not possible to exclude its extended Banking business establishment at its branch at Parli from its operation when it is part of the head office. The transfer can never operate to the detriment of the employees particularly when they are liable to be transferred back to the head office. Not their place of work but being the part of the same establishment at the head office is determinative and decisive of the application of the Act.

15. We have thus no hesitation in holding that the relations between the petitioner and the other employees of the Ahmednagar branch without regard to whether they were actually discharging their duties at Ahmednagar or its branch in the Marathwada region, were governed by the provisions of this Act even before 2-11-1973 and the dispute raised by the petitioner, is liable to be disposed of in accordance with the provisions of the Act.

16. It is true that till the express application of the Act to the Banking business in Marathwada on 2-11-1973 several officers required to discharge certain functions under the Act do not appear to have been invested with powers to do the needful. Even the Labour Court was not appointed for this region till then. Mr.

Rane relies on this and contends that the very absence of any machinery should militate against the correctness of our view. The contentions entirely misconceived. Firstly such absence of machinery is never determinative of the interpretation. Secondly, on the above interpretation, business and the establishment shall be deemed to be of Ahmednagar and not of Parli, notwithstanding its operation being at Parli. We do not see any reason why the machinery meant for enforcement of the Act, at Ahmednagar should not be available for the purpose.

17. Mr. Rane then contends that the local area of Ahmednagar is not included within the jurisdiction of Poona Labour Court but place of posting and employment of the petitioner, the acts of misconduct, and effect of the order, all happened in Parli beyond the local area of Ahmednagar. Poona Court, therefore, according to Mr. Rane, has no jurisdiction. In support of his contention Mr. Rane relied on the judgment of a Division Bench of this Court in this case of Lalbhai Tricumlal Mills Ltd. v. Dhanubhai Motilal Vin, 57 BomLR 907.

18. Now the petitioner therein was employed at Bombay branch of a concern having its head office at Ahmedabad, and the closure of the branch had resulted in his dismissal. On employee's claiming relief in the Labour Court at Bombay the employer challenged its jurisdiction, contending that the dispute as to his reinstatement must be deemed to have been arisen at Ahmedabad and not in Bombay. This Court rejected the contention and held that the dispute in the circumstances must be deemed to have arisen in Bombay. This gives an impressions as if the place of petitioner's employment was held by the Court to be decisive. Close perusal of the judgment however, believes this impression. Firstly the question whether it could also be said to have arisen at Ahmednagar is expressly left open. Secondly the following passage from the judgment, constituting the core of the ratio, support the petitioner better than the respondent :

"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."

19. This statement of law is approved by the Supreme Court in several cases including the case of Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, and is applied to the question of jurisdiction as to where the dispute raised by the workman can be said to have arisen.

20. This test thus requires ascertaining where substantially the dispute arose and not where the petitioner was employed or dismissed, as assumed by Mr. Rane. Firstly such a test can never be inflexible and must necessarily depend on facts

of each case. The head office at Ahmednagar cannot be excluded from the place of dispute when the disciplinary control vested with management at Ahmednagar where the decision to hold enquiry and dismiss the petitioner was taken, and when the petitioner was required to approach in compliance with the proviso to section 42(4) of the Act. Dispute substantially, if not wholly, shall have to be held as having arisen at Ahmednagar. This would be so notwithstanding that on the facts and circumstances before it, this Court held the same to have arisen substantially in Bombay in the above case though the head office was located at Ahmedabad itself. Even section 20 of the Civil Procedure Code, contemplates accrual of cause of action of a given case at more than place. Second alternative requirement for jurisdiction, namely the residence of the defendant as conceived under the above ratio, which was not available in that case, is satisfied in the present case. Underlying approach appears to be the test of enforceability of the order in the event of claimant's claim being upheld. The order in the present case can be effectively enforced at Ahmednagar within the jurisdiction of the Poona Labour Court. Looked at from any point of view the Poona Labour Court appear to be competent to try and dispose of the dispute.

21 It shall have to be borne in mind that the Act is essentially a remedial piece of legislation. The provisions thereof have to be interpreted as liberally as possible so as to achieve the object namely to enable the employees to seek redress of their grievances. We are thus unable to uphold the view of the lower courts on the question of jurisdiction. The order of the Tribunal is liable to be quashed.

22. As the Industrial Court has dismissed the appeal on this preliminary point, the application deserves to be allowed and is liable to be remanded to the Industrial Tribunal to enables of on merits.

23. We accordingly make the rule absolute, allow the application, set aside the order of Industrial Tribunal and remand the case to the Industrial Tribunal for disposing of the appeal in accordance with the law. Costs will abide the result of the case.