

(2001) 01 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 8819 of 1989

Madhavan N.

APPELLANT

Vs

Deputy Commissioner of Labour and Another

RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Tamil Nadu Shops and Establishments Act, 1947 — Section 41(2)

Citation : (2001) 89 FLR 649 : (2001) 1 LLJ 1290

Hon'ble Judges : V. Kanagarj, J

Bench : Single Bench

Advocate : D. Hariparanthaman, for the Appellant; A. Arumugam and S. Jayaraman, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagarj, J.—The petitioner has filed the writ petition praying to issue a writ of certiorarified mandamus calling for the records from the

first respondent pertaining to his proceedings in TNSE Case No. 5 of 1985 and quash the order dated May 15, 1989, consequently directing the

first respondent to dispose of the appeal in accordance with law and to award costs.

2. In the affidavit filed in support of the writ petition the petitioner would submit that he was employed by the second respondent on October 8,

1985 and posted to work at Coimbatore and on completion of probation, his services were confirmed by order dated April 10, 1987, w.e.f. April

1, 1987; that the second respondent is a manufacturer in pharmaceuticals and has its headquarters at Bombay and has spread its business all over

the country and in Tamil Nadu they are having their Zonal Office at Madras.

3. The further averments of the writ petitioner are that the second respondent

company developing an hostile attitude towards the petitioner, issued order dated June 21, 1988 terminating his services on ground of "loss of confidence" without complying with even the mandatory requirements of law, such as notice or pay in view of notice etc.

4. The petitioner would ascertain that he is a "person employed" within the meaning of Section 2(12) of the Tamil Nadu Shops and Establishments

Act, 1947 (hereinafter referred to as "the Act") and the second respondent is an "establishment" within the meaning of Section 2(6) of the Act and

that the first respondent is the notified Appellate Authority u/s 41(2) of the Act for hearing appeals against the order of termination.

5. The petitioner would further submit that against the said termination order, the petitioner preferred an appeal dated June 30, 1988 before the

first respondent and the first respondent who entertained the same on his file as TNSE Case No. 5 of 1988 issued a notice to the second

respondent preliminarily dealing with the question of jurisdiction. In the counter statement filed by the opposite party/Management before the

Appellate Authority, they would submit that the terms and conditions of the employment are binding on both parties; that Clause 18 of the terms

and conditions provides that the dispute arising out of and/or relate to his employment with the company, subject to Bombay jurisdiction only, and

therefore the Appellate Authority has no jurisdiction to entertain the appeal and also prayed to take up this issue as a preliminary objection and to

pass orders. The Appellate Authority having its own discussions based on the arguments advanced on the part of both sides, has ultimately

concluded that the contractual liability as imposed under Clause 18 of the terms and conditions of employment is binding on parties. Citing the

decision of the Apex Court delivered in Globe Transport Corporation Vs. Triveni Engineering Works and Another, : the Appellate Authority has

ultimately held that the contract is valid and effective and therefore he has no jurisdiction to entertain and try the appeal, thus rejecting the appeal

petition preferred by the petitioner before him on question of jurisdiction.

6. Quoting the said Supreme Court judgment in the order, it has been stated by the Appellate Authority that, "if there are more fora where a suit

can be filed, it is open to the parties by agreement to select a particular forum and exclude the other fora and such a binding clause conferring

exclusive jurisdiction to a particular Court would be valid and effective." According to the above proposition evolved by the Apex Court, the contention of the lower authority is, that in the case in hand the authorities in Bombay and Madras are competent to deal with the appeals under the Act and the parties entered into a contract selecting a particular jurisdiction to try the cases arising out of the employment and therefore as contemplated under Clause 18 of the appointment order, the jurisdiction would lie only to Bombay and not to the Appellate Authority at Coimbatore.

7. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, the short question that falls for consideration in this case is the question of jurisdiction "whether in the circumstances of the case, it is the Appellate Authority or the authority or Court at Bombay as agreed under Clause 18 of the contract entered into between the parties?" The Appellate Authority citing the aforementioned Supreme Court judgment has very easily concluded that it is only the authorities at Bombay as per the terms of contract duly entered into by parties and not the Appellate Authority u/s 41(2) of the Act, having the jurisdiction to decide the subject matter.

8. The Apex Court in the judgment cited in the order of the Appellate Authority dated May 15, 1989 has only held that, it is open to the parties by agreement to select a particular forum excluding the other fora and such a binding clause conferring exclusive jurisdiction to a particular Court would be valid and effective. This holds good where there is no statutory provision specifically providing for the jurisdiction as to who is the Appellate Authority and not otherwise. Here, there is a specific statutory provision in Section 41(2) of the Act and in the light of the availability of such a provision, which is embodied in the Act and which has direct bearing on the case in hand, the question that is to be decided is "whether it is the statutory provision of law that should prevail over the terms and conditions that are entered into in a private contract by parties or on the vice versa?" Needless to mention that it is the statutory provision of law, which always prevails and has the overriding effect on other contractual liabilities.

9. The Hon"ble Apex Court has only said that, "it is open to parties to oust the

jurisdiction of other fora" and choose any one of the jurisdictions

available to them and there is no question of any jurisdiction fixed by law as it is in the case in hand. Therefore, the judgment cited by the lower

Appellate Authority is not applicable to the nature and circumstances of the case in hand since it is the Tamil Nadu Shops and Establishments Act

which has fixed the jurisdiction as to who is the Appellate Authority to deal with such appeals u/s 41(2) of the Act and therefore there is no

question of any other contractual liability to interfere with and hence it is ordered as follows:

In result,

(i) the above writ petition succeeds and the same is allowed.

(ii) the order dated May 15, 1989 of the first respondent in his proceedings in TNSE Case No. 5 of 1985 is hereby quashed.

(iii) it is held that the Appellate Authority, the first respondent designated u/s 41(2) of the Act has jurisdiction to entertain and dispose of such

appeals arising out of such orders, as one in hand, in connection with the petitioner.

(iv) the case is remanded to the first respondent, the Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947 and the

Deputy Commissioner of Labour, Coimbatore-12 shall take it up on its file and conduct a thorough enquiry into the appeal preferred by the

petitioner herein and decide the matter with due opportunity for both to be heard in the light of evidence and in accordance with law.

(v) since it is a long pending matter, a further direction is issued to the first respondent to the effect that he shall take up the matter out of turn and

giving priority to complete the enquiry procedures in an expeditious manner and pass orders at any cost within six months from the date of receipt

of this order; and

(vi) it is also hereby mentioned as reported on the part of the learned counsel for the second respondent/management that the original second

respondent is now amalgamated with the Ranbaxy Laboratories by order dated August 25, 1997 as decided in the Company Petition No. 386 of

1997 on the file of the Bombay High Court and therefore the Appellate Authority shall take note of it and recognise the new company as the

second respondent, provided, necessary papers are placed before it to its

satisfaction.

10. However, in the circumstances of the case, there shall be no order as to costs.