
(2012) 01 MAD CK 0139
In the Madras High Court
Case No : Writ Petition No's. 7071

Management of Biddle Sawyer Private Limited
15/3, Valliammal Street, Vepery, Chennai-600007

APPELLANT

Vs

The Presiding Officer, The 1st Additional Labour Court,
Chennai and R. Sridhar

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Constitution of India, 1950 — Article 142
Industrial Disputes Act, 1947 — Section 10(1), 17(B)

Citation : (2012) 01 MAD CK 0139

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ravindran for M/s. T.S. Gopalan and Co, for the Appellant; K. Elango for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner in both the writ petitions is one and the same Management. In the first writ petition (W.P.No. 7071 of 2009), the challenge is to

the Award passed by the first respondent First Additional Labour Court, Chennai in I.D.No. 228 of 1998 dated 24.10.2008. In the second writ

petition, the challenge is to the Award passed by the very same Labour Court in I.D.No. 227 of 1998 dated 24.10.2008.

2. The two writ petitions were admitted on 20.04.2009. Pending the writ petitions, an interim stay was granted in both the writ petitions.

3. On notice from this Court, the contesting respondents M/s. R. Sridhar and S. Sukumar filed M.P.Nos. 2 of 2009 for vacating the interim order

of stay and filed M.P.Nos. 3 of 2009, seeking for payment of last drawn wages in

terms of Section 17-B of the I.D. Act in each of the writ

petitions. This Court after hearing the applications for stay as well as direction by an order dated 10.11.2009 directed the petitioner Management

to pay the last drawn salary to the contesting respondents in each of the writ petitions with effect from 17.04.2009 till 19.09.2009, on which date

the employees were taken into service. A further direction was also given to the Management to deposit 50% of the back wages in terms of the

Award and on such deposit, the contesting respondents were permitted to withdraw 25% of the amount. The balance amount was directed to be

invested in any one of the Nationalised Banks for a period of three years with a renewable clause.

4. Thereafter, the contesting respondents filed M.P.Nos. 1 of 2010 for grant of interim injunction restraining the Management from initiating any

action pursuant to the letter dated 15.12.2009 and 07.01.2010 respectively. By those two letters, the contesting respondents were informed that

they were not showing interest in fulfilling the production norms and unnecessarily absenting themselves and if they do not change their style of

functioning, appropriate action will be taken.

5. In M.P.No. 2 of 2010 filed by the contesting respondent in W.P.No. 7071 of 2009, he sought for payment of full wages. The complaint made

by the contesting respondent was subsequent to the order passed directing payment of wages u/s 17-B, the workman was asked to report for duty

at Pali H.Q., State of Rajasthan. Accordingly, he reported for duty at Jodhpur on 20.09.2009. He also stated that the work in that place was new

to him and without the basic understanding of the new drugs, it will be impossible to promote those drugs. His basic pay fixed at Rs. 170/- per

month was very low when compared to his juniors, who continue to work under the present management whose basic salary was Rs. 540/- per

month. He was also not given the ticket fare for his joining at Pali from Chennai. Therefore, he wanted the actual salary paid to the workmen

commensurate with the status to be given to them.

6. In M.P.No. 2 of 2010 in W.P.No. 7072 of 2009, (S. Sukumar), he was directed to report for duty at Anantnag Head Quarters, State of

Jammu and Kashmir. Accordingly, he reported at Jammu on 20.09.2009 and worked at Jammu. His basic pay was also fixed at Rs. 170/-

whereas his juniors who continue to work under the present management were paid Rs. 540/- per month. His juniors were drawing salary of Rs.

30,440/- per month whereas he was paid Rs. 16,332/-. In these two applications, no orders were passed.

7. The Management took out applications in M.P.Nos. 3 of 2010 for fixing an early date of hearing. Accordingly, the two writ petitions were

directed to be posted for final disposal on 27.07.2010. From that date, the matters are yet to be disposed of.

8. The contesting respondents were employed as Medical Representatives in the petitioner company and they have been working from 1980

onwards and they were permanent workers. Their services were illegally terminated on 20.11.1995.

9. The contesting respondent R. Sridhar in W.P.No. 7071 of 2009 was initially appointed at Thanjavur and thereafter, he was transferred to

Madurai and again he was transferred to Chennai. He became an active member of Tamil Nadu Medical and Sales Representatives Association

which is affiliated to the Federation of Medical and Sales Representatives Association of India (FMRAI). The contesting respondent and others

formed a Trade Union and became members of FMRAI. The Union presented a charter of demands to the Management in the year 1982. Due to

their persistent pressure, a settlement was reached between FMRAI Union and the Management. The first settlement was signed on 15.01.1983.

Subsequent to that there were two other settlements. The said R. Sridhar was a Committee Member since 1989 and also the Zonal Convener,

South Zone of the FMRAI. Since previous settlements came to an end, a fresh charter of demands were placed by the FMRAI Union during June

1993. Instead of discussing with the FMRAI Union, the Management clandestinely entered into a settlement with one Biddle Sawyer Medical

Representatives Association which was formed by a splinter group, which was not even in the picture at that time. The said Association was

sponsored by the Management. Since the FMRAI was resisting the said settlement, the Management started to initiate vindictive action against the

office bearers of the Union. The said R. Sridhar was given a memo dated 11.10.1995 stating that his performance was not up to the mark and there

was a drop in performance. Subsequently, his services were terminated vide order dated 20.11.1995. The cheque issued by the Management for

one month salary in lieu of notice was also returned by the workman by letter dated 09.12.1995. Thereafter, a dispute was raised before the

Labour Officer at Chennai. The Conciliation Officer could not proceed with the matter on the plea that the workman is not a worker. Hence, the

matter was taken before the Deputy Commissioner of Labour II, Chennai. At his intervention, conciliation proceedings was initiated. Finally, it

ended in failure on 08.11.1996. On the strength of the failure report, he filed a claim statement before the Labour Court on 19.06.1998. The

Labour Court registered the dispute raised by R. Sridar as I.D.No. 228 of 1998 and issued notice to the Management.

10. In the case of S. Sukumar, he joined the Management as Medical Representative on 10.12.1980. He was initially posted at Chennai and

continued to work there till November 1995. He is also a Committee Member of FMRAI and All India Convener of the said Federation. The

facts set out in the case of Sridhar also applies to the case of S. Sukumar and he was also terminated with a payment of one month salary. Finally

on the strength of the failure report dated 08.11.1996, he filed a claim statement dated 19.06.1998. The said dispute was registered as I.D.No.

227 of 1998 and notice was issued to the Management. The Management filed identical counter statements dated 01.02.1999 in both IDs.

11. Before the Labour Court, in respect of two IDs separate trial was conducted. In I.D.No. 228 of 1998 (W.P.No. 7071/2009), the workman

R. Sridar examined himself as W.W.1. On the side of the Management, one Madhukar Damodar Joshi was examined as M.W.1. The workman

filed as many as 19 documents and they were marked as Exs.W1 to W19. On the side of the Management, 17 documents were filed and marked

as Exs.M1 to M17.

12. Similarly, in I.D.No. 227 of 1998 (W.P.No. 7072/2009), the workman S. Sukumar examined himself as W.W.1 and marked 17 documents

and they were marked as Exs.W1 to W17. On the side of the Management, the same Madhukar Damodar Joshi was examined as M.W.1 and on

their side, 16 documents were filed and marked as Exs.M1 to M16.

13. The Labour Court on an analysis of documents both oral and documentary framed three issues in both the IDs: i) Whether the order of

termination made by the Management was arbitrary, illegal and opposed to the

principles of natural justice? ii) Whether the workmen are entitled for the relief claimed? and iii) If so what relief should be given to the workmen?

14. The CGIT held that Ex.W8 will clearly show that the Management has set up a new Association to break the originally recognized Trade Union FMRAI and the termination of the two contesting respondents was clearly an attempt to intimidate the members of the FMRAI. No reasons were adduced for passing Exs.W11 and Ex.W14 which were termination orders issued to the workmen. Even the Management witness in his cross examination stated that no enquiry was conducted for the misconduct alleged against the workmen viz., constantly remaining absent, taking frequent leave, not attending weekly meetings and not submitting daily report. They were terminated with a termination simplicitor. The CGIT held that having alleged several misconducts, it was wrong on the part of the Management in not conducting an enquiry and therefore, the order of termination was against principles of natural justice.

15. With reference to offer of re-employment for the contesting respondents, the Management contended that in a meeting between the Management representatives and the Union representatives on 7th and 8th August 1996 at Nagpur, the Management agreed to reinstate the workman in I.D.No. 227 of 1998. The Minutes of the meeting was marked as Ex.M11. But however their reinstatement was not ordered because there was no vacancy at Chennai. But later after prolonged negotiation, the Management agreed to create two new Head quarters at Virudhunagar and Kariakudi. But the Union insisted for a fair treatment. However, a reading of Ex.M15 viz., the Circular issued by the Management, nothing can be inferred to hold that the Management was ready to absorb the contesting respondents. The CGIT rejected the stand taken by the Management in respect of the offer of re-employment.

16. It was contended by the Management that as per Clause 14 in Ex.W1 appointment order, it was agreed between the parties to settle their dispute before the Courts at Mumbai and therefore, the dispute is not maintainable in the Labour Court at Chennai. This argument was rejected on the ground that the cause of action is a place where a dispute can be raised. Since the workmen were employed in Tamilnadu, the Courts at Tamil Nadu are entitled to have jurisdiction.

17. The other contention that Management was taken over by Glaxo India Limited and hence the question of reinstatement will not arise was rejected by referring to the cross examination of M.W.1, where he admitted that inspite of the taking over by Glaxo, the petitioner Management was functioning independently. Even after the taking over, the workmen are continued to be employees of the petitioner Management. It was in that view of the matter, the Labour court held that non-employment was not justified as it is arbitrary, illegal and against the principles of natural justice.

18. However, the CGIT held that after receiving the conciliation failure report dated 08.11.1996, the workman filed claim statement only in June 1998 after a period of 1 = years. Therefore, they cannot be given full back wages and hence, it denied 50% of the back wages and ordered reinstatement with continuity of service and 50% back wages.

19. The contention raised by the Management was that the Courts at Mumbai alone will have jurisdiction in terms of Ex.W1. Therefore, the CGIT was wrong in holding that it has jurisdiction to deal with the matters. The CGIT also failed to note that under Ex.M6 Minutes of the Meeting, it was agreed that the terminated 7 Medical Representatives including the contesting respondents will be entitled to be re-instated but without backwages, implying the denial of backwages will be the punishment. The termination was due to their non-performance. Therefore, the Labour Court was wrong in stating that the termination was arbitrary. The Management had expressed their willingness to reemploy the workman. The said proposal was rejected by the workman and they insisted reinstatement only in Chennai City. Since Glaxo India Limited has taken over the company, there is no work for the petitioner company. What M.W.1 in his cross examination stated that even after the taking over by Glaxo, two companies were functioning as separate entities. Out of 167 Medical Representatives, 114 of them opted for voluntary separation. The remaining 53 have accepted their cessation of employment with the petitioner and on their request, they were given fresh employment by M/s. Glaxo Smith Kline Pharmaceuticals Limited. The petitioner company has no establishment or office of its own nor any employee on its rolls and hence, it is not possible to reinstate the workmen.

20. But in the cross examination of M.W.1, he had admitted that the Management will create new headquarters at Karaikudi and Virudhunagar and reinstate the contesting respondents. The stand of the Management that what M.W.1 stated in cross examination that M/s. Glaxo India Limited and petitioner company are two different entities and it does not mean that the workman are continued to be the workman of the petitioner company. But whereas in the cross examination of M.W.1, he has clearly stated that even after the taking over by Glaxo, the workmen are the employees of the petitioner Management and there is no ambiguity. It was the admission of the M.W.1 that the petitioner company is still continuing, then their services can only be dispensed with by complying with the provisions of Chapter V-A of the I.D. Act and not by any other method.

21. Mr. K. Elango, learned counsel appearing for the contesting respondents placed reliance on the judgment of a Division Bench in W.A.No. 49 of 1995 dated 05.11.1996 The Management of the Lakshmi Mills Ltd., Coimbatore v. The Presiding Officer, Labour Court, Coimbatore, for the purpose of contending that if the order of termination is held to be illegal, then the workmen are entitled to work in the same place before the date of termination and not at the place which has been now posted due to the interim order passed. In that case, the Court rejected the contention that they had implied power of transfer. Therefore a direction was given to the Management to reinstate the workman in the same show room in which they were working before termination and such a direction was sought for in these writ petitions also.

22. In the light of the rival contentions, it has to be seen whether the impugned Award passed by the CGIT calls for any interference.

23. With reference to the contract providing for dispute to be raised at Mumbai, the CGIT has correctly rejected it. In so far as the I.D Act is concerned, jurisdiction arise based upon the cause of action where the employment continues and which state the termination arose.

24. The Supreme Court in dealing with more or less identical contention in Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, , held as follows in the following paragraphs:-

5. As stated above, the Company filed a writ petition challenging the award. The High Court formulated the points which arose out of the

arguments addressed before it thus:

1. Whether the dispute referred by the State Government to the Labour Court is an industrial dispute?

2. If it is such a dispute

(a) Whether the State Government of Mysore was not the appropriate Government to make the reference? and

7. On the first part of the second point, the High Court held that the State Government of Mysore was the appropriate Government to make the

reference. On the second part it held that it was for the Central Government to decide to refer or not to refer the dispute but the State Government

which is the appropriate Government in relation to the dispute does not lose its power of making a reference.

14. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily

between the territory of the State and the industry concerning which the dispute arose. This Court in *Indian Cable Co. Ltd. v. Workmen*¹ held as

follows: "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 *Lalbahai Tricumlal Mills Ltd. v. Vin*²:

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." Applying the above

principles to the facts of this case it is quite clear that the subject-matter of the dispute in this case substantially arose within the jurisdiction of the

Mysore Government.

25. Even in similar case relating to Medical Representatives in Andhra Pradesh,

the Supreme court in SPIC Pharmaceuticals Division v. Authority

u/s 48(1) of SPIC Pharmaceuticals Division Vs. Authority Under Section 48(1) of A.P. and Another, held as follows:-

5. The High Court accepted that the Act which makes the provisions of the ID Act applicable providing remedy to sales promotion employees is a

special enactment dealing with service conditions of sales promotion employees employed in the establishment engaged in pharmaceutical

industries. The Shops Act deals with specific rights created under that Act and it has been indicated that these provisions provided for some more

measures for protecting interest of the employees. They are beneficial in nature. The High Court held that the jurisdiction conferred under the

Shops Act cannot be said to have been taken away in respect to enforcement of rights conferred under the Act. We think it is unnecessary to go

into these broader issues. We find that the forums created under the ID Act, on the facts of the case can more effectively deal with the issues

raised. It is not to be understood that we have said that the Appellate Authorities under the Shops Act do not have jurisdiction.....In the peculiar

circumstances, therefore, we direct that the State Governments concerned i.e. Karnataka, Tamil Nadu and Maharashtra shall make reference to

the appropriate forum under the ID Act within a month from today.

26. The Supreme Court once again reiterated the validity of Industrial Dispute vide its judgment in Rhone-Poulenc (India) Ltd. Vs. State of U.P.

and Others, . In paragraph 5, the Supreme Court held as follows:

5. The contention of the learned counsel is that assuming the aforesaid provision is applicable, it still does not extend the deeming fiction to any

State enactment including the U.P. Industrial Disputes Act as it is apparent on reading of the section that sales promotion employees, within the

meaning of Central enactment of the Industrial Disputes Act, 1947 (14 of 1947) have been treated as "workman". Reliance has been placed by

the learned counsel on a Constitution Bench decision of this Court in H.R. Adyanthaya v. Sandoz (India) Ltd.¹ The Bench has held that since the

medical representatives are not workmen within the meaning of the Maharashtra Act, the complaint made to the Industrial Court under the

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was not maintainable. The acceptance of the

contention of Mr Reddy that Respondent 3 in view of Sandoz case¹ is not a "workman" within the meaning of the U.P. Industrial Disputes Act,

however, does not help the appellant in substance as in the present case we propose to adopt the same course as was adopted in Sandoz case¹

by treating the complaint to be an industrial dispute under the Industrial Disputes Act, 1947 in exercise of the powers of this Court under Article

142 of the Constitution. More than 12 years have passed since the reference was made to the Industrial Court and in the facts and circumstances

of the case, we think it appropriate to adopt the course as was adopted in Sandoz case¹. Thus, we treat the reference in question to be one u/s

10(1)(d) of the Industrial Disputes Act, 1947.

Therefore, the preliminary objection raised by the Management must necessarily fail.

27. In the present case, admittedly, no enquiry was held before their services were dispensed with. Even though it was alleged that termination was

due to their inefficiency in work and dereliction of duty and before the CGIT, no doubt evidence was let in by the Management, but the CGIT was

competent to appreciate the evidence and it recorded a finding of fact on the basis of the evidence. In this case, the CGIT did not agree with the

submission made by the Management and hence rejected their stand that the termination was justified. On the take over of the business of the

petitioner company by Glaxo, the CGIT correctly relied upon the evidence given by M.W.1 by stating that notwithstanding the taking over by

Glaxo some of the business of the petitioner company, the petitioner company is still in existence and M.W.1 himself has stated their Factory at

Mumbai still inconclusive.

28. Under the said circumstances, this Court did not find any case is made out to interfere with the impugned Awards. In the light of the judgment

of the Division Bench relied on by the learned counsel for the contesting respondents, the contesting respondents should be placed to work in any

of the business of the petitioner Management at Tamil Nadu and not in any other State.

29. With these directions, both the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.