

(2006) 08 MAD CK 0171

In the Madras High Court

Case No : Second Appeal No. 273 of 1995

M/s. Indian Rare Earths Ltd., Manavalakurichi Plant,
Manavalakurichi - 629252

APPELLANT

Vs

C. Sukumaran and V. Subramanian

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(k)

Citation : (2006) 08 MAD CK 0171

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : Sanjay Mohan for M/s. S. Ramasubramaniam and Associates, for the Appellant; Moin for M/s. Aiyar and Dolia, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—Appellant is the defendant in the suit filed by the respondents for a declaration that they are retrenched workers of the appellant/Company, entitled to get re-employment in the appellant-Company and also for a mandatory injunction directing the appellant to provide them employment in the appellant-Company and for costs. The same was contested by the defendants. The trial Court after considering the oral and documentary evidence adduced by both sides, decreed the suit as prayed for. Against which the appellant herein preferred an appeal in A.S. No. 1 of 1991 on the file of the Subordinate Judge, Padmanabhapuram. The first appellate Court confirmed the decree and judgment passed by the trial Court and dismissed the appeal. Against which the above Second Appeal has been preferred. The Second Appeal was admitted on the following substantial question of law:

Whether both the Courts below were right and justified in law in holding that the Civil Courts had jurisdiction to try and decide the suit.?

2. The short point that arose for consideration in this Second Appeal is that

whether the Civil court has got jurisdiction to try and decide the suit, which relates to an Industrial dispute.

3. Mr. Sanjay Moahn, learned counsel appearing for the appellant contended that the subject matter relates to an industrial dispute and hence the competent Court is only the Labour Court and also drew the attention of this Court to paragraph No. 9 of the written statement filed by the appellant herein which is as follows:-

This is purely an industrial dispute for which the proper forum is the Labour Court as provided in the Industrial Disputes Act. Without exhausting the remedies available under that statute the plaintiff cannot invoke the jurisdiction of Civil Court. Therefore, this Court has no jurisdiction to entertain the suit.

Though the appellant herein had raised his objection with regard to the jurisdiction of Civil Court, the same was negated by the courts below.

4. Mr. Moin learned counsel appearing on behalf of M/s. Aiyar & Dolia for the respondents would contend that the appellant herein had denied that respondents were the retrenched workers of the appellant-Company and therefore, the necessity arose for declaratory prayer, hence the respondents herein had filed the suit before the Civil Court viz., District Munsif, Padmanabhapuram. The following catena of judgments were cited on the legal aspect of jurisdiction of the Civil Court with regard to the case relating to the Industrial Dispute:-

- (i) Rajasthan SRTC v Zakir Hussain (2005 (7) S.C.C., 447)
- (ii) Rajasthan State Road Transpt. Corpn. v. Krishna Kant (1995 (5) S.C.C., 75).
- (iii) Premier Automobiles Ltd. v. K.S. Wadke (1975 (II) L.L.J., 445).
- (iv) Rajasthan SRTC and another v. Ugma Ram Choudhry (2006 (1) S.C.C., 61.)
- (v) Karnataka Bank Ltd. v. A.L. Mohan Rao (2006 (I) S.C.C., 63).
- (vi) Vaish Degree College v. Lakshmi Narain (1976(2) S.C.C., 58.)
- (vii) Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad (2002 (2) S.C.C., 542 = 2002-3-L.W. 243).
- (viii) Pearlite Liners (P) Ltd. v. Monorama Sirsi (2004(3) S.C.C., 172.
- (ix) Range Forest Officer v. S.T. Hadimani (S.C.) (2002 Vol. 100 FJR., 397).

5. The respondents herein have stated in the plaint that they were employees of the appellant-Company, a Government undertaking in mining plant and stores division, under identity card Nos. 1289 and 1385 for about two years. The appellant has not admitted that the respondents were retrenched workers of the appellant-Company. But on the other hand, appellant has stated in this written statement filed before the trial Court that they (respondents) cannot be

employed unless they prove their identity as stated in their pleadings.

6. In this Second Appeal, the substantial question to be decided is whether the Civil Courts below were right and justified in law in holding that the Civil Court had jurisdiction to try and decide the suit. The Hon''ble Apex Court in a decision reported in 2005 (7) S.C.C., 447 (supra) has categorically ruled that a dispute between the parties being an industrial dispute, the Civil Court has no jurisdiction to entertain and try the suit. After elaborate discussion, the Supreme Court of India has held in a decision reported in 1976 (I) S.C.C., 496 (supra), as follows:-

The principles applicable to the jurisdiction of the civil courts in relation to an industrial dispute may be stated thus:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

7. It is well settled that where the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the Industrial Disputes Act. As contended by learned counsel for the appellant, the Industrial Disputes Act not only confers right on any worker for reinstatement and backwages but also provides a detailed procedure and machinery for getting appropriate relief, if the order of termination or dismissal are not in accordance with the Standing Order and the law. In Jitendra Nath Biswas case (1989 (3) S.C.C., 582, the Supreme Court has held as follows:-

The scheme of the Industrial Disputes Act clearly excludes the jurisdiction of the civil court by implication in respect of remedies which are available under this Act and for which a complete procedure and machinery has been provided this Act.

In so far as the appellant is concerned, the Industrial Disputes Act not only confers the right on a worker for reinstatement and back wages if the order of termination or dismissal is not in accordance with the Standing Orders but also provides a detailed procedure and machinery for getting this relief. Under these circumstances therefore there is an apparent implied exclusion of the jurisdiction of the civil court.

The Industrial Disputes Act envisages collective bargaining of contracts between Union representing the workmen and the management, and the matter which is outside realm to common law or Indian Law of Contract for which the proper law

applicable is the Industrial Disputes Act. The object of the Industrial Disputes Act as per its preamble is to make provisions for investigation and settlement of disputes, for adjudication of such disputes and the expression "Industrial Dispute" is defined in Section 2(k) as under:

2.(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

8. It is well settled proposition of law that where an Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner, other than the manner specified in the Act. The respondents as plaintiffs have stated that the cause of action for the suit arose on 19.4.1969 being the date of retrenchment of the plaintiffs and subsequently on 3.1.1991 when a notice for fresh recruitment was issued by the appellant-company. Therefore, it is clear that retrenchment that was effected on 19.4.1969 and the notice calling for fresh recruitment, issued on 3.1.1991 were the alleged cause of action for filing the suit by the respondents herein. Retrenchment made by the appellant-company and the right claimed by the plaintiffs for re-employment could be a right under the industrial dispute and as such it comes under the provisions of Section 2(k) of the Industrial Disputes Act which is not in dispute in this Second Appeal. Learned counsel appearing for the respondents would contend that as the appellant/defendant had not admitted the status of the respondents as retrenched workers of the appellant-company, the necessity arose to seek the remedy of declaration before the Civil Court. As held by the Hon'ble Apex Court in 2005 (7) S.C.C., 447, supra, at page 459, it is well settled proposition of law that if the Court has no jurisdiction, the jurisdiction cannot be conferred by any order of the Court. In the case of A.R. Antulay v. R.S. Nayak (1988 (2) S.C.C., 602), the Apex Court inter alia held and observed as under:

38(40).... This Court, by its directions could not confer jurisdiction on the High Court of Bombay to try any case which it did not possess such jurisdiction. ...

39(41) ...The power to create or enlarge jurisdiction is legislative in character... Parliament alone can do it by law and no court, whether superior or inferior or both combined can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal.....

40(42) ... But the superior court can always correct its own error brought to its notice either by way of petition or ex debito justitiae.

9. In the instance case, it is clear that the respondents herein had filed the suit only on the basis of the alleged cause of action that arose on 19.4.1969 being the date of retrenchment of the respondents by the appellant-company and subsequently due to the notice dated 3.1.1991 calling for fresh recruitment only on the ground of violation of their right conferred under the Industrial Disputes Act and therefore, as rightly contended by learned counsel for the appellant the

alleged cause of action for filing the suit could only be construed an Industrial Dispute as defined u/s 2(k) of the Industrial Disputes Act. Therefore, the only remedy available to the respondents would be by way of reference under the provisions of the Industrial Disputes Act. Since the Industrial Disputes Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner by way of seeking the remedy through the civil court. The argument advanced by learned counsel for the respondents that the suit was filed by the respondents since the appellant had not admitted that the respondents were retrenched workers of the appellant-company, cannot be accepted as a ground to maintain the suit before the District Munsif Court.

10. Under the Industrial Disputes Act, the Labour Court is competent to decide whether any person is a retrenched worker or not and award the relief. Therefore, jurisdiction cannot be conferred on the civil Court on the ground of denial of status of retrenched workmen by management, as held by the Apex Court. It is well settled proposition of law as laid down by the Supreme Court of India that if the Court has no jurisdiction, jurisdiction cannot be conferred by any order of the Court. Though the alleged cause of action attracts the provision of the Industrial Disputes Act, as it comes under the purview of Section 2(k) of the Industrial Disputes Act, the respondents had chosen the Civil Court, namely, the District Munsif for seeking relief which is available under the Industrial Disputes Act. It is not in dispute that the appellant herein as defendant before the trial Court by way of written statement, has categorically disputed the jurisdiction of the Civil Court on the ground that the alleged cause of action, as purely an industrial dispute, for which the proper forum was the Labour Court as provided in the Industrial Disputes Act and without exhausting the remedies available under that statute the respondents/plaintiffs could not have invoked the jurisdiction of the Civil Court. But it was not considered by the Courts below. In the light of various judgments rendered by the Hon''ble Apex Court and the High Courts in spite of the plea raised by the appellant herein that the Civil Court has no jurisdiction to try the suit, the first appellate Court has also failed to consider the legal plea.

11. As the impugned judgment and decree passed by the Courts below are without jurisdiction in the light of the judgments rendered by the Hon''ble Supreme Court of India referred to above, I am of the view, that the Second Appeal has to be allowed. In the result, the Second Appeal is allowed and the impugned judgment and decree passed by the first appellate Court are set aside. However, if the respondents are so advised, they are at liberty to approach the Labour Court for appropriate remedy which would be available under the Industrial Disputes Act. There is no order as to costs.