
(2012) 05 CAL CK 0046
In the Calcutta High Court
Case No : Writ Petition No. 400 of 2010

M/s. Ranbaxy Laboratories Limited

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 2, 25(F)

Citation : (2012) 3 CHN 269 : (2012) 134 FLR 590 : (2012) 4 LLJ 453 : (2013) LLR 96 : (2012) LLR 944

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : N.K. Mehta and Mr. Soumya Majumdar, for the Appellant; Jayanta Dasgupta, Advocate and Mr. Balaram Patra, for the Respondent

Judgement

Tapen Sen, J.—In this Writ Petition, the Petitioner (M/s. Ranbaxy Laboratories Limited) challenges the award dated 10.12.2009 as contained in Annexure-P/30 passed by the Industrial Tribunal (5th Court), West Bengal pertaining to Reference No. 222-I.R./IIL-190/04 dated 04/16.3.2005 whereby and whereunder it was held that the management was not justified in drawing an inference that the concerned workman (Respondent No. 3, Subrata Bagchi) had abandoned his job and therefore the management was also not justified in terminating his service which was also bad for non-compliance of Section 25(F) of the Industrial Disputes Act, 1947. Consequently, the Petitioner was directed to pay 50% of the backwages from the date of the absence of the concerned workman till the period of his reinstatement. The Petitioner Company was further directed to reinstate the concerned workman within a period of one month from the date of receipt of the award. The private Respondent No. 3 (concerned workman, Subrata Bagchi), according to the Petitioner, was appointed as a Sales representative on 14.1.1982 by an appointment letter issued from the Office of the Company at New Delhi. Pursuant to the letter of appointment, an Agreement was entered upon containing terms and conditions of service.

2. Mr. Mehta, learned Senior Counsel appearing for the Petitioner and referring to the said Agreement at Clause 13 thereof (Annexure-P/1 at page 45), stated that the said Clause clearly stipulated that any dispute pertaining to appointment, termination or dismissal or any dispute with regard to any claim or payment of damages shall be dealt with or adjudicated upon by Courts within the Territory of Delhi and therefore, the finding of the Tribunal holding that since the cause of action arose within the jurisdiction of the State of West Bengal, the said State had the right to refer the dispute to the said Tribunal for adjudication, is a finding, which is wholly without jurisdiction. Learned Counsel submits that the concerned workman, while deposing before the Tribunal had clearly stated on 21.4.2009 in his cross-examination (at page 159 of the Writ Petition) that he had not raised any dispute at Delhi and at the time of his termination of service, he was at Bhubaneswar but he did not raise any dispute at Bhubaneswar also. Learned Counsel therefore raised the jurisdiction of the Tribunal as a preliminary issue. The same is taken up accordingly as a preliminary issue.

3. According to the Petitioner, the concerned workman was transferred from the Consumer Products Division to the Generics and Hospital Products Division designating him as Hospital Service Representative, with Headquarters at Burdwan. Thereafter, he was again transferred on 1.11.1987 from the said Generics Division to Curadia Division designating him as a Professional Sales Representative with Headquarters at Curadia reportable to the Regional Sales Manager, Curadia east of the Kolkata Office. Thereafter, on 17.6.1991, he was again transferred to the Stancare Division with Headquarters at Malda and reportable to Regional Sales Manager, Kolkata Office.

4. The performance of the Respondent No. 3 was found to be unsatisfactory and a show-cause Notice was issued to him in 2001. He replied on 27.1.2001. The reply was not found to be satisfactory and a domestic enquiry was conducted in which allegations pertaining to negligence and insubordination were enquired into. The Enquiry Officer submitted his Report finding the Respondent No. 3 guilty of the charges. The Disciplinary Proceeding ultimately ended with the imposition of the penalty of warning since the management wanted to give a further opportunity to him. The suspension was revoked on 21.2.2002 but in spite of revocation of suspension, the Respondent No. 3 did not pursue his work diligently and as a result of which, another show-cause Notice was given to him on 1.3.2003. A second letter was also issued on 21.3.2003 vide Annexure-P/4 and P/5. It is stated that when the suspension had been revoked on 21.2.2002, the Petitioner was transferred from Malda to Bhubaneswar. The letter, transferring him from Malda to Bhubaneswar, has been brought on record vide Annexure-P/3. Upon a perusal of the said letter, it is evident that the Petitioner was instructed to operate from Bhubaneswar as his new Headquarters.

5. It is stated that thereafter on 10.4.2003, the Respondent No. 3 came to Kolkata from Bhubaneswar to attend a meeting but did not report back to his place of posting at Bhubaneswar. On the contrary, he sent a Telegram on

14.4.2003 addressed to the Regional Manager and the District Manager saying "Fallen sick stop doctor advised THREE WEEKS REST STOP LETTER FOLLOWS". On 25.4.2003, the concerned workman sent a letter to the Regional Manager, Kolkata vide Annexure-P/7 contending that the said letter be treated as a confirmation of his Telegram sent earlier on 14.4.2003. He also stated that he could not inform earlier about his absence because of various medical "Paraphernalia" and that he was not in a position to resume duty. He also stated he would inform as to when would he be able to join duty. Subsequently and upon expiry of the period of three weeks, another Telegram was sent on 5.5.2003 informing that the leave was being extended as per Doctor's advice. The said Telegram was followed by a letter once again reiterating that he was not in a position to resume work and that intimation in that regard would be sent upon his becoming fit to join field work. On 27.5.2003, the Petitioner sent a letter contending that his doctor had told him that he was not in a position to undertake field work and therefore he could not join. Subsequently, on 16.6.2003 (Annexure-P/13), the Senior Manager Human Resources sent a letter to the Petitioner in his addresses at Bhubaneswar as well as in Kolkata informing him that his leave from 14.4.2003 was unauthorized and that he was required to report to him at New Delhi immediately but not later than 25th June, 2003 with an explanation and in the event he failed to do so, it would be presumed that he was no longer interested and that he had abandoned his service on his own accord.

6. It is stated that the concerned workman went to the Office of the Senior Manager Human Resources on 25.6.2003 but he also sent a Telegram from New Delhi alleging that he had met Mr. Jumrani, Senior Human Resources Manager but had to leave New Delhi due to his wife's serious condition. According to the Petitioner, such a stand was absolutely abnormal and contrary to ordinary human behaviour inasmuch as he was in Delhi and he did meet Mr. Jumrani but immediately thereafter, he sent the said Telegram. It is stated that subsequently, the concerned workman received a Certificate from the doctor on 22.6.2003 certifying that he was under his treatment since 14.4.2003 due to acute depression, hypertension and stress and that he had been advised by one Dr. D. Bhattacharya (Md. Phych) on 17.4.2003 that he was under bed rest. It was also mentioned in the said Certificate that considering his illness, he deserved sympathetic consideration and regular follow up and that he was fit to join. This Certificate is at Page 66 of the Writ Petition. It appears that thereafter on 25.6.2003, the Senior Manager wrote a letter to all the three addresses of the concerned workman wherein he stated as follows:-

June 25, 2003

Regd./U.P.C.

Mr. Subrata Bagchi 17, Badheswari Colony BHUBANESAR

Mr. Subrata Bagchi Monidipa Apartment 46/1 Raja S.C. Mallick Road KOLKATA-

700032

Mr. Subrata Bagchi OSRU Rest House 686, Routhray Colony BHUBANESHWAR
ORISSA- 6

Dear Sir,

This has reference to our letter dated 16.6.2003 wherein you were advised to report to the undersigned at Ranbaxy Laboratories Limited, 11th Floor, Devika Tower, Nehru Place, New Delhi immediately but not later than 25.6.2003.

You came here and met the undersigned on 25.6.2003 and you were advised to give an explanation for your unauthorised absence from 14.4.2003 onwards, which you failed to do. It is a matter of regret that on 25.6.2003 you disappeared without any information. This leads us to assume that you are neither interested to work nor give any explanation for your absence in the past.

Please note that your absence from work remains unauthorised from 14.4.2003 onwards and you are given last opportunity to report to Ms. Charu Mittra, Manager-Human Resources at Ranbaxy Laboratories Limited, 11th Floor, Devika Tower, Nehru Place, New Delhi immediately but not later than 10.7.2003 along with an explanation for your unauthorised absence.

In the event of your failing to do so it may be assumed that you are no longer interested to serve us any longer and that you have abandoned your job of your own accord. Accordingly your name may be struck off the rolls of the company without any further reference to you, which please note.

Yours faithfully, For RANBAXY LABORATORIES LIMITED

DINESH JUMRANI SENIOR MANAGER HUMAN RESOURCES

(Quoted)

7. It was thereafter on 28.6.2003 that the Petitioner wrote a letter informing the circumstances in which he had to leave Delhi after discussions with the Senior Manager. He also stated and assured that he would put his best efforts so as to reach the objectives month after month. This letter is Annexure-P/17. Thereafter on 18.7.2003, the Manager, Human Resources, again sent a letter to the Petitioner stating that he had failed to give any explanation with regard to his unauthorised absence and that although he had also assured that he would meet the Manager, Human Resources on 11.7.2003 along with an explanation, yet he did not turn up. He was given a last opportunity to report to the Manager, Human Resources latest by 31.7.2003 along with an explanation. The Petitioner sent a reply vide Annexure-P/20 wherein he also submitted his explanation. It appears that the matter went on and the Petitioner was again sent with a similar letter by the Manager informing him that he had not presented himself for a medical examination by their doctor. Finally, by letter dated 11.8.2003, the Petitioner's name was struck off from the rolls of the Company on the assumption that he was not interested to serve and that he had abandoned his job on his own accord.

8. It appears from the facts narrated above that by an Order dated 21.2.2002 as contained in Annexure-P/3, the Petitioner was transferred from Malda to Bhubaneswar. Learned Counsel for the concerned workman has very vehemently stated and submitted that since the Order of termination was received at Kolkata therefore, the State of West Bengal had the jurisdiction to refer the dispute. He has submitted, with reference to the page 149 being the further cross-examination of the concerned workman, that it would show that the termination letter was received firstly at the address of the concerned workman at Kolkata. In his cross examination, he has also stated that his service was terminated when he was posted at Bhubaneswar. Learned Counsel has submitted, with reference to Section 2 (a) (ii) of the I.D. Act, 1947, that in view of the fact that the dispute related to a dispute of termination of service, it was "any other industrial dispute" and therefore, the State Government had the jurisdiction. He has submitted, with reference to a judgment of the Hon"ble Supreme Court passed in the case of Bikash Bhushan Ghosh and Others Vs. Novartis India Limited and Another, that a part of the cause of action took place in the State of West Bengal since the Order of termination became effective on communication at Kolkata.

9. It is evident that the Order of termination of the Petitioner was served at Kolkata. Upon a perusal of the written statement filed by the workman it will also be evident that the concerned workman took a specific plea that the management had sent its letters to him at his Kolkata address where, he had received all of them and in his letter dated 24.7.2003 (Annexure-P/20) he had specifically stated that he had received the letter terminating his service at Kolkata.

10. The letter terminating his service has been brought on record vide Annexure-P/23 and it shows that it was sent to the Kolkata address as well. This letter establishes that the immediate cause for his name being struck off, was the assumption that he had allegedly "abandoned" his job. In Novaratis's case which was cited by the learned Counsel appearing for the concerned workman, it has been held that the Order of termination was passed for not obeying an Order of transfer and therefore, that Order of transfer had some nexus with the Order of termination of service.

11. The question therefore is as to whether the State of West Bengal had the authority to refer the dispute for adjudication in the face of Clause 13 of the Agreement of service entered upon between the parties on 25.1.1982. Mr. Mehta, learned Counsel for the Petitioner has referred to a judgment of the Hon"ble Supreme Court passed in the case of M/s. Shriram City Union Finance Corporation Ltd. vs. Rama Mishra reported in (2002) AIR SCW 2617 in support of his contention that when the parties had expressly agreed between themselves that any Suit, Application or other legal Proceeding shall be filed in the Courts of New Delhi, then they are bound under the terms of the said Agreement and therefore, in the instant case also, the Petitioner could only have moved a Court

at New Delhi or at Bhubaneswar.

12. The aforesaid decision of the Supreme Court passed in M/s. Shriram City Union Finance Corporation Ltd.'s case will not apply because that case related to an Order passed by the District Judge allowing the refund and confirming an Order passed by a Lower Court in a plain and simple civil dispute.

13. The instant case pertains to "service" and therefore, in matters of service, this Court must also examine as to whether a term of an Agreement is so unreasonable that in giving effect to the same, it causes injustice and inequality before law and is therefore, in violation of the Article 14 of the Constitution of India.

14. In the instant case, the Agreement which was signed was an Agreement to employ the concerned workman. Clause 13 was a Clause which, unless signed by the employee, would not have given him the benefit of employment and therefore, for all practical purposes, the concerned workman was deprived of all his choice. He had no option but to sign on the Agreement containing such a Clause which, on the face of it, must be held to be an unreasonable term in the contract of service. A person working in Bhubaneswar being terminated and the Order of termination being served at Kolkata and then to expect that the employee would go to Delhi to fight out his case, is an absolutely absurd proposition and therefore, it is arbitrary. Such a clause therefore must be struck down as being illegal. In the case of Central Inland Water Transport Corpn. Ltd. and Anr. vs. Brojo Nath Ganguly and Anr. it has been very aptly summarized in para 92 that:-

Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to make the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conform to the mandate of the great equality clause in Art. 14. This principle is that the courts will not enforce and will, when called upon to do so strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to file an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to file some illustrations. For instance, the

above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.

(Quoted but emphasis by bold fonts and underlining is by this Court)

15. That leads us to look into the other aspect of the case for purposes of consideration as to whether the State of West Bengal had the authority to refer the dispute. Upon a perusal of the "further Examination-in-chief" of the concerned workman resumed on 20.2.2007 (see page 149), it is evident that a letter dated 9.8.2003 had been sent by one N.K. Tandon, Senior Manager, Accounts and Commercial, Delhi addressed to the Respondent No. 3 at Kolkata asking him to deposit his bag and baggage at his Kolkata address and take payment of full and final settlements. That letter was marked Exhibit 19 before the Court below and the letter of termination was also received by the concerned workman at his Kolkata address as it was also sent to the Kolkata address. Thus, it is evident upon a perusal of these facts and circumstances, that part of cause of action of the dispute arose in Kolkata. It is also evident, upon reading the "Examination-in-chief" of the concerned workman, which was taken up on 8.3.2007 (See page 145 of the Writ Petition), that his leave record was controlled and maintained by the Kolkata Office and that the Regional Sales Manager, Kolkata was also the Approving authority of the itinerary of the concerned workman and the said Authority used to approve his tour programme when he was posted at Bhubaneswar. This would also be evident from the "further Examinations/Cross Examinations" (see page 141 to 142 of the Writ Petition).

16. From the aforementioned facts and circumstances, therefore, this Court is satisfied that the State of West Bengal had the necessary authority to refer the dispute to the 5th Industrial Tribunal West Bengal to adjudicate. Consequently,

the preliminary objection/issue raised by Mr. Mehta to the effect that the 5th Industrial Tribunal did not have the authority to adjudicate is held to be an objection which is not sustainable. The award was well within its jurisdiction. The preliminary point is accordingly decided.

Let the Writ Petition now be listed before the appropriate Bench for hearing on the merits of the case. Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.