

(2003) 01 AP CK 0115

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23326 of 2002

Novapan Industries Limited

APPELLANT

Vs

S. Krishna Murthy and Another

RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 24
Industrial Disputes Act, 1947 — Section 10, 2A, 2A(2)

Citation : (2003) 2 ALD 126 : (2003) 97 FLR 342

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Ravindranath, for the Appellant; M.V. Rama Rao and Government Pleader for Labour, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This writ petition is directed against the orders of the Labour Court-II, Hyderabad (hereinafter referred to as "the Labour Court") dated 13-11-2002 in I.D.No.85 of 1999. The Management is the petitioner herein. The impugned order came to be passed under the following facts and circumstances:

2. The 1st respondent (hereinafter referred to as "the workman") was appointed as a Trainee security Guard of the petitioner, which is an industrial company, (hereinafter referred to as "the Management"), through orders dated 1-4-1982. His services were confirmed on 9-2-1985. The relationship between the workman and the Management were not cordial. Right from regularisation of services, there were disputes of one kind or the other. The workman was active in the trade union relatable to the Management. In the year 1995, the workman intended to contest for the post of Vice-President of the Novapan Mazdoor Sangh. The Management filed OS No. 228/95 and obtained an interim injunction against the workman from contesting the said office. This fact is referred only to indicate the absence of normal relation between the workman and the Management.

3. Through orders dated 13-7-1998, the workman was promoted as Security Inspector and was transferred to the Sales Office of the Management at Chennai. The workman submitted a representation dated 3-8-1998 to the Management stating that he may be continued at Hyderabad only, even at the cost of denying promotion to him. The request was turned down on the same day and he was directed to report at Chennai. On the ground that he did not report to duty at Chennai, disciplinary proceedings were initiated and ultimately, through orders dated 3-10-1998, the workman was dismissed from service.

4. Challenging the order of dismissal, the workman raised the Industrial Dispute by filing ID No. 85/99 on the file of the Labour Court, u/s 2-A(2) of the Industrial Disputes Act (for short "the Act"), seeking the relief of reinstatement into service with full back wages.

5. The Management filed counter to the claim of the workman, The Management raised a preliminary objection as to the jurisdiction of the Labour Court to entertain the ID. The objection was as to the territorial jurisdiction. It was contended that since the workman was transferred to Chennai and he was dismissed from service by an officer of the Management at Chennai, the only Forum where the workman can seek redressal is the one at Chennai and the Labour Court has no territorial jurisdiction to entertain the same. Another objection was as to the non-joinder of the Officer, who passed the order of dismissal. The Management requested the Labour Court to decide the preliminary objections before proceeding to decide the main case. The Management has also refuted the various allegations contained in the petition. The Labour Court, through its order dated 13-11-2002, took the view that unless evidence is recorded on various disputed questions of fact, which incidentally touch the question of territorial Jurisdiction also, it is not possible or feasible to decide the preliminary issues and accordingly directed the parties to proceed with the trial of the case. Hence, the writ petition.

6. It is the contention of the Management that the workman was an employee of their branch office at Chennai and the cause of action to the workman can be said to have arisen only at Chennai. It is on this premise that they plead absence of territorial jurisdiction in the Labour Court to entertain the ID.

7. In the counter-affidavit filed in this writ petition by the workman, it is stated that he has been transferred to Chennai only as a measure of victimisation. It is also stated that the Sales Manager at Chennai has no power or jurisdiction to initiate disciplinary proceedings against the workman. It is further submitted that his employer is the petitioner-Management and a workman has every right to raise the industrial dispute at the place where the registered office of the employer is located.

8. Sri S. Ravindranath, learned Counsel for the Management, submits that though the workman was employed by the Management in the year 1982, he was transferred in 1998 to the sales office at Chennai. According to him, on

being transferred, the workman was under the control of the Sales Manager of the Management at Chennai and that officer is competent to initiate disciplinary proceedings against the workman. The learned Counsel submits that even for adjudicating as to whether the Sales Manager had the power and jurisdiction to terminate the services of the workman, the competent Court was the one at Chennai. Another contention of the learned Counsel is that the application filed by the workman u/s 2-A(2) of the Act was not maintainable before the Labour Court, for the reason that G.O. Ms. No. 30 dated 27-1-1986 has conferred jurisdiction on the Labour Court to entertain and adjudicate only the reference u/s 10 of the Act and no such power was conferred to entertain the application u/s 2-A(2) of the Act.

9. Sri M.V. Rama Rao, learned Counsel for the workman, on the other hand, submits that the petitioner-Management, with its registered and Head Office at Hyderabad, was the employer of the workman and the proper forum to adjudicate upon the legality or otherwise of the order of dismissal is the Labour Court, within whose jurisdiction, the registered office of the employer is located. From this point of view, it is the 2nd respondent-Court, which is competent to adjudicate the dispute. He submits that the workman did not accept the transfer and from the inception he has been protesting against the same. According to him, even if the workman can be said to have been validly transferred to Chennai, the Sales Manager at Chennai does not become his employer and he has no power or jurisdiction to dismiss the workman. As regards conferment of power under G.O. Ms. No. 30 dated 27-1-1986, the learned Counsel submits that there are no separate orders or proceedings conferring jurisdiction on the Labour Courts in the State of Andhra Pradesh, especially, conferring the power to decide the disputes brought before them u/s 2-A(2) of the Act. He submits that in view of the provision u/s 2-A(2) of the Act, any dispute raised thereunder is deemed to be a reference u/s 10 and that, at any rate, this contention was not raised before the Labour Court.

10. The workman was employed by the Management at the Head Office at Hyderabad. He was transferred to the Sales Office at Chennai. On the ground that he did not join the office at Chennai, disciplinary proceedings were initiated against the workman and ultimately he was dismissed from service. In this writ petition, we are not concerned with the circumstances that led to the transfer of the workman to Chennai, nor with the validity or otherwise of the order of dismissal.

11. An application was filed by the workman u/s 2-A(2) of the Act before the Labour Court. The Management raised a preliminary objection as to the maintainability of the application filed by the petitioner before the Labour Court. As noted in the preceding paragraphs, the basis of the objection was that the Workman stood transferred to Chennai, was dismissed from service by the Sales Manager at Chennai and the Labour Court at Hyderabad did not have the jurisdiction. The 2nd objection was as to the extent of conferment of the power

on the Labour Court under G.O. Ms. No. 30 dated 27-1-1986. Though it is a matter of fact that the 2nd ground was not raised before the Labour Court, since it is a pure question of law, the same is being considered notwithstanding the objection raised on behalf of the workman.

12. The Labour Court refused to decide the preliminary issue and directed the parties to proceed with the trial.

13. The Industrial Disputes Act is a comprehensive enactment providing for resolution of industrial disputes through various mechanisms, such as, conciliation, arbitration, adjudication, etc. The respective agencies are created for undertaking the various categories of resolution of disputes. Special importance shown in this regard is on account of the fact that an industrial dispute has a wider ramification than the difference of opinion between the workman and the Management. It is in the interest of the country's economy and industry that industrial peace has to emerge. It is for this reason that all possible measures are required to be taken for resolution of the disputes. Rarely, we come across such a broad based and versatile mechanism of resolution of disputes in any other field or activity.

14. Before proceeding to decide as to whether the Labour Court was justified in refusing to accede to the request of the Management, the extent of conferment of power under G.O. Ms. No. 30 dated 27-1-1986 needs to be considered. Through this G.O., various powers under different provisions of the Act are conferred on the Labour Courts in the State of Andhra Pradesh, duly delineating the territorial jurisdiction of the respective Labour Courts. The learned Counsel for the petitioner submits that while enlisting matters which can be decided by the respective Labour Courts, no reference is made to the matters initiated u/s 2-A(2) of the Act insofar as the Labour Court is concerned where the Workman had filed the ID.

15. The objection raised on behalf of the Management in this regard cannot be sustained for two reasons. Firstly, it needs to be noted that G.O. Ms. No. 30 dated 27-1-1986 stipulates the kinds of proceedings that can be adjudicated by the respective Labour Courts, In respect of no other Labour Court there is any reference to the proceedings u/s 2-A(2) of the Act under the G.O. The contention of the learned Counsel could have held water, had he placed before this Court any orders or proceedings under which the Government had conferred powers separately u/s 2-A(2). The type of conferment of powers on Labour Court-II at Hyderabad is similar to the one on any other Labour Court in the State. If the contention of the learned Counsel for the Management is to be accepted, no proceedings initiated u/s 2-A(2) can be entertained by any Labour Court in the State of Andhra Pradesh. Such a result would be rather disastrous.

16. The 2nd reason for which the contention advanced by the learned Counsel for Management cannot be accepted is that Section 2-A(2) of the Act, which is inserted by State Amendment, in terms, equates the proceedings initiated

thereunder with a reference u/s 10 or any other provision. Sub-Section (2) of Section 2-A reads as under:--

"Notwithstanding anything in Section 10, any such workman as is specified in Sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein, and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute."

17. Once a statutory fiction is created; that the proceedings u/s 2-A(2) of the Act shall be treated on par with a dispute referred to or pending before the Labour Court, absence of reference to Section 2-A(2) in G.O. Ms. No. 30 dated 27-1-1986 is without any consequence.

18. The principal objection was as to the territorial jurisdiction of the Labour Court to entertain the dispute raised by the workman. The Management wanted this question to be decided as preliminary issue. Deciding any question as a preliminary issue is a matter of procedure. The Tribunal or the Court can undertake the same if only the power is specifically conferred in this regard. The civil Courts are entitled to decide preliminary questions only by virtue of the powers conferred upon them under Order XIV of CPC. Such a power is not vested in the Tribunals constituted under the Act. Rule 24 of the Industrial Disputes (Central) Rules, 1957 (for short "the Rules") framed under the Act extends to the Boards, Courts, Labour Courts, Tribunals and National Tribunals constituted under the Act, the powers vested in a civil Court under CPC only insofar as they relate to-

- (a) discovery and inspection;
- (b) granting adjournment; and
- (c) reception of evidence taken on affidavit;

Therefore, the very request by the Management to decide the question of maintainability was incompatible with the Scheme under the Act and the Rules.

19. The Act lays special emphasis on disposal of the matters by the Labour Courts, Industrial Tribunals, etc., with utmost expedition. One can gather this impression when reference is made to Sections 10(2-A) and 14 and 15 of the Act. Section 10(2-A) of the Act, which was inserted through amendment in the year 1982, reads as under:

"An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months;"

(remaining part omitted since not relevant)

Sections 14 and 15 of the Act read as under;

"14. Duties of Courts. :--A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

15. Duties of Labour Courts, Tribunals and National Tribunals :--Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to Sub-section (2-A) of Section 10, submit its award to the appropriate Government."

Wherever the dispute relates to an individual workman, the Courts are required to dispose of the same at a faster pace. In the context of these provisions and in the absence of any provision like Order XIV of CPC dealing with framing of issues or adjudication of preliminary issues, it is rather difficult to comprehend that the Act contemplates raising of preliminary issues and decisions thereon in the proceedings before the Labour Courts. Every objection as to question of fact or law is required to be decided comprehensively resulting in an Award.

20. Even assuming that such a power exists with the Labour Courts; it needs to be seen as to whether the objection is maintainable on merits. The contention of the Management was that the Labour Court did not have the territorial jurisdiction to entertain the ID. Broadly speaking, the territorial jurisdiction of a Court is to be decided with reference to the place of residence of the defendant/respondent, the place where the subject matter of the dispute is located wholly or in part, and the place where the cause of action has arisen. In majority of the cases, more Courts than one may have territorial jurisdiction to decide the same cause. In such cases, law accords freedom to the parties. For example, "A" residing at Hyderabad, enters into a contract at Delhi with "B", a resident of Nagpur in respect of the subject matter situated at Bangalore. "A" can institute the suit at Delhi, Nagpur or at Bangalore. However, as regards the jurisdiction with reference to the subject matter, different things altogether ensue. If a particularly category of Tribunals or Courts are conferred with the power to decide a category of dispute, it is such Courts or Tribunals alone and not others even if located in the same place, that can have jurisdiction.

21. In cases of companies, the place of residence is invariably its registered office. It is not in dispute that the registered office of the Management is at Hyderabad. It is the Management that has appointed the workman and it continue to be the employer till the dismissal. Any termination of services should be by the employer. The question as to whether the Sales Manager at Chennai

had the jurisdiction to dismiss the workman, needs to be decided in the Industrial Dispute. For the purpose of deciding the territorial jurisdiction in cases where Companies figure as respondents, one of the enquiry should be as to where the registered office of the company is located. In the present case, it is at Hyderabad that the registered office of the Management is located. That being the situation, it cannot be said that the Labour Court at Hyderabad did not have the territorial jurisdiction. It may be that the labour Court at Chennai may also have the territorial jurisdiction to decide the dispute. That fact by itself does not render the Labour Court at Hyderabad lacking such jurisdiction.

22. Reliance was placed by the learned Counsel for the Management, on the judgment reported in *Pawan Kumar Singh v. UOI* 1995 (1) ALD 464. That was a case where a Sepoy in the Indian Army, who was working at Pune, was charge sheeted, Court-Martialed and dismissed from service. He filed a writ petition in the High Court of Andhra Pradesh challenging the same. On recording a finding that no part of cause of action relating to the impugned action has taken place in the State of Andhra Pradesh, the writ petition was dismissed on the ground of lack of territorial jurisdiction.

23. In *Naslin Joshep Prim v, PO, Central Government Industrial Tribunal-cum-Labour Court, Chennai* 2003 LLR 52, the workman was appointed by the Management with its Head Office at Delhi. He was posted at various places in the State of Gujarat. His services were "dehired" in terms of Clause 19 of the appointment order. The workman raised industrial dispute at the Tribunal at Chennai. He has chosen that forum on the ground that he was residing at that place and that the order of dehiring his services were served upon him thereat. The Industrial Tribunal took the view that it has no territorial jurisdiction to adjudicate the dispute, inasmuch as the registered office of the Management was at Delhi and the place of work of the workman was in Gujarat. The Madras High Court took the view that having regard to the Scheme of the Industrial Disputes Act, not only the Courts within whose jurisdiction the registered office or place of work are situated, but also the one in whose jurisdiction either of the parties were residing at, shall be competent to adjudicate the dispute. The same is evident from the following observation made by it:

"The Industrial Disputes Act must be viewed as a beneficial legislation in the larger interest of industrial workers. I am also satisfied that by applying the well-known test of jurisdiction, namely, that a Court or Tribunal would have jurisdiction if the parties reside within the jurisdiction or if the subject matter of the dispute substantially arose within the jurisdictional part of cause of action has arisen at Chennai. It is demonstrated before me that the petitioner is residing at Chennai and the same is found in the records of the second respondent. In such a circumstance, the dispute can be filed either in the place of the petitioner or the 2nd respondent is residing or working (sic) or where the cause of action has arisen wholly or in part."

24. With great respect to the learned Judge, I fail to subscribe to such a view.

The place of residence of the petitioner/plaintiff hardly constitutes the basis to decide the territorial jurisdiction. The principles governing the territorial jurisdiction are broadly contained in Sections 19 and 20 of the CPC. So far as the residence aspect is concerned, the emphasis is invariably on that of the defendant/respondent. The place of residence of plaintiff/petitioner hardly finds any mention. The Madras High Court relied upon the judgment of the Supreme Court in *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, which in turn, had referred to the observations of Chief Justice Chagla of the Bombay High Court in *Lalbhai Tricumlal Mills Ltd. Vin* (1996 (1) LLJ 558). The following is the passage in *Lalbhai Tricumlal Mills Ltd*'s case:

"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 that 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".

The words "parties residing within jurisdiction" has to be read in the context of the residence of both the parties or, that of the defendant/respondent. It cannot be that of the plaintiff/petitioner alone. To decide the territorial jurisdiction of a Court solely with reference to the residence of the petitioner does not fit into the general principles of territorial jurisdiction.

25. The Management also relied upon the judgment of this Court in WP No. 28776/ 97. In that case, the Head Office of the Management was located at Chennai and it had branch offices at Hyderabad and Bangalore. The workman was transferred to Manipal from Hyderabad. The workman therein was terminated from service by the authorities at Bangalore. The workman challenged the order of termination before the labour Court at Hyderabad. In view of the fact that Hyderabad was neither a place of registered office nor the place where the order of termination had emanated from, this Court took the view that the Labour Court at Hyderabad did not have the jurisdiction. The present case stands on a different footing. Admittedly, the registered office of the Management is at Hyderabad and the workman continued to be employed under it till termination. His last place of working is also Hyderabad.

26. Viewed from any angle, the order of the Labour Court cannot be found fault with. The writ petition is accordingly dismissed. There shall be no order as to costs.