
(1984) 02 PAT CK 0028
In the Patna High Court
Case No : C.W.J.C. No. 179 of 1974

Paritosh Kumar Pal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-02-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19, 20
Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1985) 33 BLJR 150 : (1984) PLJR 377

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.K. Jha, J; L.M. Sharma, J

Bench : Full Bench

Final Decision : Allowed

Judgement

S.S. Sandhawalia, C.J.—Would the situs of employment of the workman determine the locus for the territorial jurisdiction of the Tribunal to entertain a dispute arising from the termination of his services under the Industrial Disputes Act, 1947 is the significant question necessitating this reference to the Full Bench. Equally at issue is the correctness of the ratio in Bihar State Sales Representative v. Shri Krishan Parshad C.W.J.C. No. 993 of 1969 decided on 24th October, 1972.

2. Manifestly the issue aforesaid is a pretend legal one and consequently the matrix of facts giving rise thereto may be noticed with relative brevity: M/s A.K. Distributors Private Ltd., (respondent No. 3) is the sole Distributor in Western India for the medicines of Mac Laboratories having its Head Office at Calcutta. Sri P.K. Pal, writ petitioner, was appointed as a Medical-cumsales Representative of the aforesaid respondent with effect from 6th July, 1962-vide appointment letter (Annexure 1). By a subsequent communication dated 18th December, 1968, the respondent Company instructed the Writ petitioner Sri P.K. Pal to work at Patna proper only and not to visit any interior stations within the State of Bihar. It would appear that certain disputes with regard to both the payment and the rate of commission arose between the employer Company and the writ petitioner. By

a letter dated 9th January, 1969, the respondent employer charge-sheeted Sri P.K. Pal. Thereafter his services were terminated on 1st March, 1969-vide Annexure 5. Aggrieved thereby, the writ petitioner raised an industrial dispute in the State of Bihar in which the conciliation proceedings having failed, the respondent State referred the following matters for adjudication by the Industrial Tribunal:

(1) Whether the termination of services of Sri Paritosh Kumar Pal is proper and justified? If not, is he entitled to reinstatement or any other relief?

(2) Whether the management was justified in not paying Sri Pal commission on sales for the year 1968-69? If not, to what relief and/or compensation is Sri Pal entitled?

3. Before the Industrial Tribunal, two preliminary points were taken by the respondent management on the question of the maintainability of the reference itself. The Tribunal thought it desirable and, specially so in view of the fact that the contestants had expressly agreed to the proposal that these points, which involved the question of the very jurisdiction of the Tribunal should be decided first and directed the parties to lead evidence, inter alia, on the following point:

(a) Whether the reference by the Government is incompetent inasmuch as the management is carrying on its business at and from Calcutta and the establishment is at Calcutta?

The parties led evidence on the point aforesaid and therefrom the Tribunal concluded as under:

In the present case there is no separate establishment in Bihar. The only establishment of Messrs A.K. Distributors is at Calcutta from where the company is carrying on its business in the States of Bihar, Bengal, Assam and Orissa. Though the concerned workman was working in Bihar and his services were terminated but the concerned workman Shri Pal was carrying on business of Messrs A.K. Distributors under direction and supervision of the Calcutta Office of Messrs. A.K. Distributors Private Limited.

On the aforesaid premises and after referring to case law and in particular following the then somewhat recent Division Bench judgment in Bihar State Sales Representative Union's case (supra), the Tribunal concluded that the Bihar State Government was not the appropriate Government within the meaning of Section 10(1)(d) of the Industrial Disputes Act, 1947, to make the reference and the same being invalid in law, the Tribunal itself had no jurisdiction to decide the industrial dispute referred to it. Inevitably, the reference was thus declined. Aggrieved thereby the present writ petition was presented. When the matter came up before the Division Bench, it was directed to be placed before a Bench of three Judges for hearing obviously because of the significance of the question involved.

4. Ere one enters the thicket of the legal controversy, it deserves pointed notice that before us the factual matrix was not at all in dispute. It was common ground

that the situs of employment of the workman was throughout at Patna in the State of Bihar. Equally the firm finding of fact of the tribunal which was not assailed, is that the employer Company of Messrs A.K. Distributors Private Limited did not have a separate establishment in Bihar, its registered office being in Calcutta, the business in the State of Bihar was controlled from the said place.

5. On the aforesaid premises, the primary argument of Mr. D.N. Pandey on behalf of the writ petitioner is that it is the situs of employment of the workman which is relevant for determining the territorial jurisdiction of the Tribunal to entertain the dispute and not the location of the employer industry or the mere factum of having a separate establishment within the State of Bihar. It was argued forcefully that the industrial dispute pertaining to the, termination of the services of the workman indeed arises wholly within the State of Bihar and in any case substantially therein and consequently the Government of the said State was the appropriate Government and the Tribunal within that State was obviously vested with jurisdiction to take cognizance of the same. Primary reliance was placed on Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, and the judgments either following it or of the same tenor.

6. On the other hand, Mr. T.K. Prasad on behalf of the respondent Company primarily urged that the governing factor for the jurisdiction of the Tribunal was the location of the office of the industry alone either at its headquarters or where it had a distinct separate establishment. It was contended that the situs of employment of the workman was wholly irrelevant to the issue. Primary reliance was placed by him on Association of Medical Representatives (M and V) Vs. The Industrial Tribunal and Others, and subsequent judgments taking the same view. However, it deserves pointed notice that Mr. R.B. Mahto, Additional Advocate General, on behalf of the State of Bihar had espoused the stand of the writ petitioner to contend that the place of employment of the workman in the event of the termination of such employment was in any case a material factor, if not the paramount one, in determining the territorial jurisdiction of the appropriate Government as also of the Tribunal.

7. For clarity's sake it perhaps deserves notice at the outset that it was neither disputed before us and indeed seems well-settled that where the situs of the employment of the workman and the existence of a distinct establishment of the industry coincides, the territorial jurisdiction for the industrial dispute would be governed by this twin factors. Consequently the core of the question before us is that in cases where there is no distinct and separate establishment of the industry, would the situs of employment of the workman govern or be relevant to the issue of determining the territorial jurisdiction.

8. Now before examining the rival contentions on this central issue, it seems pertinent to notice that the provisions of the Industrial Disputes Act appear to be singularly silent on the issue of territorial jurisdiction. The Act does not deal either with the causes of action nor does it remotely indicate what factors will

confer jurisdiction on the appropriate Government and equally upon the Tribunal or the Labour Court constituted thereunder. A reference was made by learned Counsel to Section 2(k) of the Industrial Disputes Act, 1947, hereinafter to be called "the Act", and certain other provisions of the Act but even a plain reading thereof would indicate that far from being decisive they seem to be hardly relevant to the point at issue. Indeed the learned Counsel for the parties ultimately virtually agreed that the provisions of the Act hardly throw any light on this foundational question.

9. It seems equally well-settled that the CPC has not in terms been made applicable to the proceedings under the Act, Consequently the specific provisions of the Code pertaining to jurisdiction do not in stricter sense govern the issue. The finer nuances of the relevant sections on the subject of jurisdiction of Civil Courts, therefore, do not call for a precise construction. Though this is so, it is equally elementary that even if the language of the specific section of the Code is not attracted yet the general principles and the value of tests underlying the jurisdiction of Civil Courts are not entirely alien to the issue. This appears to be so both on principle and on binding precedent. The net result, therefore, seems to be that though the sections of the Code on the point of jurisdiction are not applicable with the force of their technical rigor in their absence the broader general principles underlying them would undoubtedly be relevant.

10. It appears to me that the larger question before this Full Bench is not altogether *res Integra* and is governed by way of analogy by precedent both of the final Court and of the High Courts, though somewhat discordant in nature. It would thus be wasteful to examine the issue afresh on principle and it is, therefore, more apt to determine whether the question is governed by the decisions of the final Court, if not directly at least by necessary implication.

11. In the light of the above, the authority which deserves pride of place is *Lalbhai Tricumlal Mills Ltd. Vs. Manubhai Motilal Vin and Others*, which has the repeated stamp of approval by the final Court, The facts of this case are closely similar to the present one because therein also substantially the dispute pertained to the termination of employment admittedly at Bombay where the workman was employed whilst the headquarter of the employer industry was in Ahmedabad. The workman had even complained and sought re instatement with the head office of the Mills at Ahmedabad and the same being declined he raised an industrial dispute before the Labour Court in Bombay. On behalf of the employers objection was raised with regard to jurisdiction which was rejected by the Labour Court and the same was again strenuously urged before the High Court. Even the specific point that the approach for reinstatement had been made by the workman at Ahmedabad and the industrial dispute, therefore, arose on declining the same u/s 42(4) of the Act was pointedly urged on behalf of the employer-company. This, however, was categorically rejected by Chief Justice Chagla speaking for the Division Bench with the following observations:

Now, the Act does not deal with the causes 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, And therefore the correct approach to this question is to ask ourselves-Where did this dispute substantially arise-and in our opinion the only answer to that question can be that the dispute substantially arose in Bombay and not in Ahmedabad. What is the dispute? The dispute is not as to whether the employee approached the employer in Ahmedabad and no agreement was arrived at. The dispute is whether justified in dismissing the employee, and inasmuch as the employment was in Bombay and the dismissal was in Bombay, it is difficult to understand how it can possibly be urged that the dispute did not substantially arise in Bombay. What Mr. Bhagwati says is that there is no dispute till an approach is made by the employee under the proviso to Section 42(4).

It is true that there would be no industrial dispute till the procedure laid down in the proviso to Section 42(4) is satisfied, but in a more important sense there would be no dispute at all if there had been no dismissal by the petitioner of respondent No. 5

And again:

If that is going to be the subject-matter of the inquiry before the Labour Court that subject-matter arose in Bombay and not in Ahmedabad We express no opinion as to whether the Ahmedabad Court would equally have jurisdiction or not. We are only concerned with deciding whether on these facts the Bombay Labour Court has jurisdiction, and in our opinion if as in this case the employee was employed in Bombay and dismissed in Bombay and he is making a complaint about his dismissal and wants reinstatement and compensation, the Bombay Labour Court has jurisdiction to decide this application. We therefore, agree with the Industrial Court in the view it has taken.

From the above it would appear that the aforesaid case in a way covers the issue herein on all fours by holding that the subject-matter of the industrial dispute arises at the situs of employment of the workman. However, in the above case the question whether there can also be concurrent jurisdiction at Bombay and Ahmedabad was left open by the Bench.

12. What next calls for notice is the fact that the aforesaid enunciation of the law quoted verbatim and affirmed by the Constitution Bench of the Supreme Court in *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, . This in terms was more explicitly reaffirmed in *Sri Rangavilas Motor's case* (supra) on which, rightly, firm reliance has been placed on behalf of the writ petitioner. Therein also the workman Mabalasingam by name was employed at Bangalore and was aggrieved by the order of his transfer issued by the headquarters of the Company from Krishnagiri in the State of Kerala and even the cause of the workman was also espoused by the Union at Krishnagiri. An objection was raised

that the Tribunal at Bangalore would have no jurisdiction, but rejecting such an objection and upholding its jurisdiction being at the situs of employment, their Lordships observed as follows:

...Mr. O P Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Krishnagiri, and, that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingm was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the Head-office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is where did the dispute arise? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. 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.

13. Now an inclusive analysis of the aforesaid authoritative enunciation of law would indicate that three clear cut principles for determining jurisdiction emerge therefrom. For clarity these may be first separately enumerated as under:

- (i) Where does the order of the termination of services operate?
- (ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?
- (iii) That the well-known test of jurisdiction of a civil court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable.

14. Applying the above, one of the primary tests is as to where the impugned order of the termination of service of a workman in effect operates. In Rattgavilas Motor's case (supra) the Supreme Court in terms noticed that though the original order of transfer and the subsequent order of termination of the services of the workman were passed at Krishnagiri in Kerala yet in effect it operated at Bangalore where the workman was employed Consequently the situs of the workman's employment in the case of the termination of his services is patently a paramount factor if not being wholly conclusive. It is within the area of employment that the order of termination operates and the workman ceases to be a workman and loses his right to hold the post and receive wages therefor. Therefore on the anvil of the principle of where the impugned order operates the situs of employment of the workman is patently significant. Can it possibly be said that the order of termination of a workman does not operate within the area of his employment? The answer, therefore, has to be in favour of the Tribunal

having territorial jurisdiction over the place of work or the situs of employment.

15. Again on the second principle attached to the industrial disputes having some nexus with the territory of the State, the situs of employment of the workman assumes signal importance. Once a firm finding is arrived at that the workman was employed within a specific territory or State, the termination of his services therein has an obvious and direct nexus with such territory or such State. Consequently on the nexus test also the situs of employment of the workman has a direct connection with the territory where such employment is terminated. To put it in the converse, where the industrial dispute pertains to the termination of the employment of a workman, can it possibly be said that the situs of such employment would not have a direct nexus with the territory and the dispute? It calls for a pointed notice that in Rangavilas Motor's case (supra) their Lordships in terms approved the High Court's view that this nexus has to be between [he industrial dispute and the territory of the State and not necessarily with the industry or its headquarters as such.

16 Coming now to the third principle, it appears to me that by binding precedent it is now well-established that the well-known test of jurisdiction of the Civil Courts would be equally attracted to the situation in the absence of any provision in the Act on the point. Apart from the repeated affirmance of Lalbhai Tricumlal Mills" case (supra)(which specifically held that the well-known test of jurisdiction would be alphabet) by the final Court in Indian Cable Co's case (supra), it was expressly observed therein as follows:

...The Act contains no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings.

And again:

In our opinion, these principles are applicable for deciding which of the State has jurisdiction to make a reference u/s 10 of the Act.

Now, in applying the above, one may either assume fictionally that there is no Industrial Disputes Act in force or that the workman in terms elects (where it is permissible so in law to resort to the ordinary civil remedy for the wrongful termination of his services and prefers a suit for damages therefor. Obviously in such a situation the territorial jurisdiction would undoubtedly be of the Courts within whose territory the workman was employed and as in the present case it would be at Patna and in any case in the State of Bihar, Reference in this context may be made to Section 19 of the CPC which provides for the territorial jurisdiction for suits, for compensation, for wrongs to persons or movables. In particular, Clause (c) of Section 20 of the Code provides that a suit shall be instituted in the Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It is axiomatic that the territory within which the services of an employee are wrongfully terminated would be the territory where the cause of action substantially arises and in a case if not wholly but a part of

the cause of action so arises. On this acid test also the situs of employment of the workman would forthwith give jurisdiction to the Civil Courts and a fortiori to the Tribunals and the Labour Courts under the Act.

17. To close this aspect it would appear that the three principles of the test indicated in Rangavilas Motor's case (supra) would all individually seem to be amply satisfied in a case of the present kind and, therefore, it appears to me that the issue is governed by way of analogy by the enunciation of the law by the final Court itself.

18. However, in fairness to Mr. T.K. Prasad, learned Counsel appearing for respondent No. 3, one must notice his lucid submissions even though they do not find favour with me. On larger principle Mr. Prasad had first attempted to contend that the concept of a cause of action under the Code and that of the Industrial Disputes Act are radically different and, therefore, Section 20 of the Code and in particular Clause (c) thereof with regard to the cause of action arising wholly or in part to confer jurisdiction would be totally alien in the arena of jurisdiction for industrial disputes. Even though the learned Counsel was somewhat dogmatic in his stand on the point, I am unable to see any totally exclusionary line between a cause of action under the Code and an industrial dispute under the Act. It has been repeatedly held authoritatively that no exhaustive definition of the cause of action is perhaps possible yet genetically it constitutes all that bundle of facts which entitle the plaintiff to claim the legal reliefs sought for. Broadly speaking, those very considerations would be attracted in the case of an industrial dispute which would equally compass all that bundle of facts on the basis of which the workman invokes the provisions of the said Act. Without being hyper technical or going to the abstruse length of saying that the cause of action in a civil case and an industrial dispute under the Act are in any way synonymous, it must be held that in any case there is no totally sharp or exclusionary line of division between the two. This result seems to flow from the binding precedent of the final Court, already noticed above, to the effect that the well-known principle of territorial jurisdiction governing the Civil Courts (rested as they are on the concept of the cause of action) would be equally applicable to determine jurisdiction under the Industrial Disputes Act as well.

19. Secondly Mr. Prasad had taken the stand that for the purposes of the Act it is insufficient that a part of industrial dispute arose within one territory and to confer jurisdiction such a dispute must arise wholly or substantially within the said territory. In the limited context of the termination of the services of a workman it seems unnecessary to enter into this controversy. Even if it is assumed entirely for argument's sake (without holding so) that the governing test is as to whether tree dispute substantially arises there it appears to me that in cases of termination of employment of a workman the industrial dispute with regard thereto substantially, if not wholly, arises in the territory within which workman loses his employment. Indeed, the meat of the matter being the termination of employment it would substantially and primarily arise in the situs

of such employment where in essence it would operate. Consequently at least the industrial dispute springing from the termination of the services of a workman arises substantially or wholly within the territory or the situs of employment and, therefore, confers territorial jurisdiction on the Industrial Tribunal having a way over the same. Considerations like the place where the workman was receiving his salary or the modus and manner of termination cannot be conclusive because (he core of the matter is not where and how the workman gets his salary but for what he gets the same. The answer obviously is that he is entitled to it for working at the situs of employment and if consequent upon the termination of services a loss of wages occurs therefrom the industrial dispute therefore cannot but be held to have arisen at the spot of work itself rather than elsewhere on fortuitous considerations.

20. Thirdly, Mr. Prasad for respondent No. 3 had then attempted to argue that the industrial dispute only arises at the place where the challenge to the termination is made or a demand for reinstatement is raised by the workman. It was contended that the refusal of such a demand or claim alone gives rise to the industrial dispute and consequently is conclusive on the point of territorial jurisdiction. This somewhat technical argument was specifically raised on behalf of the employer industry by their learned Counsel in Lalbhai Tricumlal Mills Ltd's case (supra)(see para 4 of the report) expressly relying on Section 42(4) of the Act but was categorically rejected by the Division Bench. As has already been noticed, the aforesaid judgment has been repeatedly affirmed by the final Court, Therefore, this line of argument is no longer tenable in face of the binding precedent. Even on principle, I am unable to agree that matter of substance like territorial jurisdiction is to be superficially confined to the spot where the alleged refusal of the demand may fortuitously come to be made To put it in the celebrated words of the Privy Council, it would be piling unreason upon technicality.

21. Lastly, in line with the tenor of the aforesaid contentions, Mr. Prasad took up the stand that the jurisdiction under the Act must exclusively the within one State and there cannot be any concurrent jurisdiction in different States. I am unable to accede to this extreme stand. The concept of concurrent jurisdiction far from being alien is well recognised and sanctified by the law under the Code as also under other jurisdiction. I am firmly of the view that as in the civil jurisdiction so under this Act there may well be cases of concurrent jurisdiction where parties may fairly have the option to choose the forum. This indeed seems to follow by the repeated observations in Lalbhai Tricumlal Mills Ltd's case (supra) and its affirmance by final Court in Indian Cable Co's case (supra) and Inter in Rangavilas Motors (P) Ltd's case (supra) that larger consideration governing the civil jurisdiction are equally attracted under the Act. If that be so, then their inevitable corollary of concurrent jurisdiction would, in my view, be equally applicable. It is well to remember that in Lalbhai Tricumlal Mills Ltd's case (supra) the contention was considered plausible and debatable but was left open. By necessary implication it seems to be now answered in favour of the

view for concurrent jurisdiction in *Hindustan Aeronautics Ltd. Vs. The Workmen and Others*, . Therein admittedly the Divisional Office of M/s Hindustan Aeronautics Ltd., was at Bangalore which controlled its operations in the Barrackpore Branch in West Bengal. Even though it was factually held that Barrackpore Branch was under the control of the Divisional Office at Bangalore yet the Industrial Tribunal in West Bengal was held to have jurisdiction despite strenuous objection being raised thereto. A refreshing consideration was also noticed that, in such case if there was any disturbance of industrial peace consequent on the dispute it would arise at Barrackpore and therefore, the concerned Government. Consequently it was held that the industrial dispute arose at Barrackpore and the reference by the West Bengal Government was valid and legal. This judgment, therefore, gives significant importance to the situs at employment where the industrial dispute and the consequential disturbance arise. It calls for a pointed notice that in *Hindustan Aeronautics case (supra)* the earlier case of *Lipton Limited and Another Vs. Their Employees*, was expressly relied upon by the management but distinguished. In the latter case it had been held that the place where office of the industry was located would have jurisdiction even though the workman was not employed within the State where such office was located. However, this case is no warrant for the canvassed proposition that either there can be no concurrent jurisdiction or that the place or the situs of employment of a workman would be denuded of such jurisdiction, indeed, *Hindustan Aeronautics case (supra)* gives a correct clue to the answer to this question. The Bench did not in any way differ from the ratio of *Lipton's case (supra)* yet it obviously held that though the Divisional Office at Bangalore would plainly have jurisdiction because it controlled the workmen at Barrackpore who were employed beyond the State of Karnataka, still it was held that the State of West Bengal, which had jurisdiction over the situs of employment, would also have jurisdiction to take cognizance of the Industrial dispute. Consequently *Hindustan Aeronautics case (supra)* appears to me a warrant for the proposition that there may be concurrent jurisdiction despite the ratio of *Upton's case (supra)* which is confined to the point that the Tribunal at the head office would have such jurisdiction but not for the converse that the situs of employment would not also have the same.

22. The judgment directly governing the point is that of Kerala High Court in *Emerald Valley Estates v Estate and Staff's Union*, South India 1979 L.L.C. 86 wherein it has been observed as under:

It might also be noticed that to confer jurisdiction for reference on the State Government concerned, it is not absolutely necessary that the cause of action wholly or exclusively should arise in that State. There may be cases where part of the cause of action arose in two or more States. In such cases, two or more States may have concurrent jurisdiction. When the question regarding the territorial jurisdiction crosses up, what is to be asked and answered is whether the cause of action substantially arose in the State, the Government of which referred the dispute for adjudication.

It is true that in an earlier judgment of the same High Court in *J. & J Dechane Distributor v. State of Kerala* 1974 L.L.J. 9 there is a passing observation to the effect that startling results would follow if there was concurrent jurisdiction in different Governments to make a reference to the industrial Tribunal. However, this observation seems to have been made merely as a dictum without the matter being agitated or canvassed before the Bench and without ration able or precedent behind the same. I am unable to see how a concurrent jurisdiction which is the rule in civil jurisdiction would necessarily become inordinately startling with regard to industrial disputes under the Act. I see no anomalous or disastrous results flowing therefrom and would, therefore, firmly hold that if the general principles underlying the determination of territorial jurisdiction for civil courts are attracted then the cone ambient of concurrent jurisdiction would also inevitably follow and indeed would be a wholesome provision giving a fair option to the parties to elect their forum.

23. It now remains to advert to the direct precedent relied upon on behalf of the respondent management. As stands already noticed, basic reliance was placed on the judgment of the Madhya Pradesh High Court in *Association of Medical Representatives*" case (supra). There is no gainsaying the fact that the said judgment wholly lends support to the contention of Mr. Prasad that it is the Government in whose jurisdiction the Industry or its head office is situated which alone is competent to make a reference. With the greatest deference, I am unable to agree with this view. With the greatest respect, the conclusion arrived at seems to be based on some misapprehension of the ratio in *Lalbhai Tricumlal Mitt*'s case (supra) and the *Indian Cable Co* 's case (supra). Neither of these cases is any warrant for the proposition that the situs of the industry alone is conclusive for the territorial jurisdiction of the Madhya Pradesh High Court after referring to these judgments seem to have missed the point to arrive at their conclusions. A later Division Bench of the Kerala High Court in *J. & J. Dchane Distributors* (supra) after quoting the observations in Madhya Pradesh case had observed as follows:

This may not probably be a correct test, having regard to the observations made by the Supreme Court in *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, that the nexus should be between the industrial disputes and the territory of the State, and not necessarily between the industry and the State concerned.

It is manifest that the judgment in *Association of Medical Representatives** case (supra) was rendered before the judgment of the Supreme Court in *Rangavilas Motor*'s case (supra) and its ratio seems to run directly contrary thereto. It is significant to remember that a later Division Bench of the Madhya Pradesh High Court itself in *S.N. Suderson & Co v. Presiding Officer Labour Court No 1* 1973 L. & I.C. 991 took the view that where the situs of the employment of the workman was within Madhya Pradesh, even though the head office and the entire control of the factory was at Delhi, the jurisdiction of the Madhya Pradesh Tribunal would

not be ousted. In holding so they followed the view of a Division Bench of the Punjab High Court in *Ram Kishan Vs. Shambu Nath Vaid and Others*, wherein it was held that because the workman was employed at America the Tribunal in Punjab would have jurisdiction despite the fact that the head office of the industry was located at Missouri. A similar view has been expressed by a Division Bench of the Punjab and Haryana High Court in *Ms. Little & Sons v. Amar Nath* 1978 Lab I.C. 450 (while overruling the contrary view in *National Tobacco Co., Employees Union (Regd), Jullundur Vs. Manohar Singh and Another*, to hold that where the workman was employed at Pathankot the Tribunal in Punjab would have jurisdiction in spite of the fact that the head office of the employer industry was in the State of Jammu and Kashmir. For the reasons recorded above and the contrary precedents, I would wish to record respectful dissent from *Association of medical Representatives" I case (supra)*. It is now unnecessary to individually advert to these judgments which have followed the same and for identical reasons I would wish to dissent from *Superintending Engineer and Others Vs. Workmen of Machkund Hydro Electric Project and Another*, which had earlier taken a somewhat similar view.

24 One must now come to the Division Bench judgment of this Court in *Bihar State Sales Representative Union v. Sri Krishnadeo Prasad and Ors. (supra)* upon which the Tribunal has basically relied and presumably the doubts about the correctness of the same had necessitated this reference to the larger Bench. A close perusal of the judgment indicates that the learned Judges in substance followed the view of the Madhya Pradesh High Court in *Association of medical Representatives" case (supra)* despite the fact that this judgment was assailed before the Division Bench on the basis of a later judgment of the Supreme Court in *Rangavilas Motors (P) Ltd's case (supra)*. It was observed that the said judgment could not be deemed as impliedly overruled. It would also appear that the matter was not exhaustively canvassed before the Bench on principle nor all the relevant authorities cited before it. Consequently it was observed that since the facts of the case were similar to those of the Madhya Pradesh case, it must be held that the Bihar Government had no jurisdiction despite the fact that the workman was admittedly employed within the State of Bihar. I would with great deference hold that *Bihar State Sales Representative Union's case (supra)* does not lay down the law correctly and is hereby overruled.

25. In the ultimate analysis it would appear from the somewhat discordant precedent on the point that herein perhaps two views are possible. Consequently the well-known canons of construction and the true approach to the interpretation of beneficial social legislation are at once attracted. There appears to be no manner of doubt that the Industrial Disputes Act is a social legislation enacted largely in the beneficial interest of workmen as defined therein. Therefore in the larger prospect where either interpretation is reasonably open, it perhaps must be construed in a manner so as to advance the objects and purposes of the Act and not to frustrate the same. Mr. Prasad, learned Counsel for the respondent industry, faced with this situation advanced what

appears to me as a somewhat hyper technical argument that the preamble of the Act did not in any way declare that it was a beneficial statute. So far as I am aware, the preamble of a statute is neither intended to nor in terms declares that it is either beneficial or a legislation for social engineering. That is a matter for the assessment of the Court itself from the larger scheme of the statute or from the objects and reasons of its enactment and the mischief which it seeks to remedy. Customary draftsmanship has always made the preamble somewhat factual and brief and not in any way high-sounding. I am inclined to firmly hold that the Act must be viewed as beneficial social legislation in the larger interest of industrial workers. Once that is so, then beneficial welfare legislation like the one with which we are now concerned must be interpreted in the light of the illuminating observation in *Moti Ram and Others Vs. State of Madhya Pradesh*, :

Where doubts arise the Gandhian talisman becomes a tool of interpretation: "Whenever you are in doubt...apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him". Law, at the service of life, must respond inter-privately to raw realities and make for liberties.

In the wake of the above, the raw reality which is to be faced is whether the situs of the employment of a poor workman should determine the jurisdiction or exclusively the registered head office or the distinct business establishments of the employer industry. It would be patent that any stringent construction to the contrary would force the workman, whose services have been terminated, to seek redress at a remote head office of the industry even with regard to the dispute arising right at his door steps on the place of work. As in the present case, the employer industry is located at Calcutta and the workman at Patna. However, if the matter is carried to its logical end, a case may be visualized where the workman was even further away in south Kerala. Would it then be fair to compel him to seek his remedy not where he is actually employed and working but necessarily where the head office of the industry may be located, and, as in the present case, or away in Calcutta. I feel sure that the till, therein must necessarily be in favour of the workman on the firm foundation of the situs of employment rather than on the technicalities of the registered office of the industry which may well even be a multi-national company.

26. Thus to finally conclude, both on principle and precedents, the answer to the question posed at the very outset has to be rendered in the affirmative and it is held that the situs of the employment of the workman would determine the territorial jurisdiction of the Tribunal in case of industrial disputes arising from the termination of such employment. Consequently the Division Bench judgment in *Bihar State Sales Representative Union's case (supra)* is not good law in view of the reasons earlier recorded and has to be necessarily overruled.

27. In the light of the above, the finding of the Tribunal on the point of territorial jurisdiction is hereby reversed and it is held that the State of Bihar was the appropriate Government and the reference made by it was consequently valid.

The matter is, therefore, remitted back to the Tribunal for determination at the case on merits.

28. In the result, this writ application is allowed but, in the circumstances, without costs.

Sd/- S.S. Sandhawalia

LALIT MOHAN SHARMA, J.

I agree that the order passed by the Industrial Tribunal, as contained in Annexure 8, should be quashed, the reference by the State Government should be held to have been Valicily made and the matter should be remitted back to the Tribunal for determination of the case on merits.

2. In the present case, the petitioner-workman was appointed under the letter, Annexure 1, sent to him at Patna as a medical-cum-sales representative for South Bihar with Patna as headquarters. The terms of his services were communicated to him by the letter, Annexure 2, sent to his Gaya address in Bihar. He was paid his salary and allowances in Bihar. The letter, Annexure 3, levelling certain charges against him was sent to Patna. The petitioner sent his reply, Annexure 4, from Patna, refuting the allegations, and thus raising an industrial dispute which was crystalised by the Management's letter, Annexure 5, again sent to Patna, terminating the petitioner's services. The dispute, therefore, clearly arose within Bihar.

3. If an industrial dispute arises within the territory of a State, its Government must be held to be the appropriate Government for making a reference under the Industrial Disputes Act. This proposition is fully established by the express language of the Supreme Court in *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, In Paragaph 14 of the judgment, the Court observed:

In our view the High Court was right in holding that the proper question to raise is: where did the dispute arise?

Proceeding further, the following observation of the Bombay High Court in *Lalbhai Tricumlal Mills Ltd. Vs. Manubhai Motilal Vin and Others*, was approved.

But what we are concerned with to decide is: where did dispute substantially arises?

4. This position was reiterated in the *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, .

5. It has, therefore, to be held that the State of Bihar made a valid reference in the present case and the Tribunal was in error in holding otherwise. The writ application must, therefore, be allowed, but, in the circumstances, without costs.

Sd/- Lalit Mohan Sharma

S.K. Jha, J.

I entirely concur in the judgment of my hand the Chief Justice.

Sd/- Sushil Kumar Jha

Patna High Court, The 15th February, 1984.