
(2008) 07 AP CK 0129

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 19330 and 19331 of 2006

S. Padmanabham and Another

APPELLANT

Vs

Industrial Tribunal-II and Others

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Industrial Disputes Act, 1947 — Section 7(1), 7A

Citation : (2009) 1 ALD 133 : (2009) 2 ALT 65

Hon'ble Judges : Ghulam Mohammed, J; C.V. Ramulu, J

Bench : Division Bench

Advocate : A.K. Jayaprakash Rao, for the Appellant; G.P. for Labour for Respondent No. 1 and Vedula Srinivas, for the Respondent

Judgement

Ghulam Mohammed, J.—The writ petitions are listed before us by way of reference by a learned single Judge of this Court to answer the following questions:

1. Whether the Court, within whose territorial jurisdiction, the Head Office of a company is situated, will also have territorial jurisdiction to entertain the I.D., apart from the Court where cause of action has arisen, irrespective of whether any part of cause of action had arisen within the jurisdiction of the Court where the Head Office is located?

2. Whether the provisions of Section 20 C.P.C. are applicable to the IDs filed under the Industrial Disputes Act, 1947?

3. Whether the Court within whose jurisdiction the Branch Office of a company is located and where the cause of action has arisen, has to be taken as the relevant place for the purpose of raising an Industrial Dispute under the provisions of Industrial Disputes Act, 1947?

2. The above questions are said to have arisen in view of the two conflicting decisions of this Court in Siemens Ltd. Vs. Presiding Officer, Additional Industrial

Tribunal-cum-Additional Labour Court and Another, and Novapan Industries Limited Vs. S. Krishna Murthy and Another, . It is relevant to notice the views expressed in the said judgments. In Siemens Limited, a learned single Judge of this Court, relying upon a Full Bench decision of the Patna High Court in Paritosh Kumar Pal v. State of Bihar 1985 (5) FLR 213 (Patna) (F.B.) held that the situs of employment would be of paramount consideration for raising the industrial dispute. Whereas, another learned single Judge in Novapan Industries Limited, had taken a different view that the location of the Head Office would determine the jurisdiction.

3. The facts relevant and necessary for answering the reference may be stated thus: The petitioners were working with the respondent-M/s Sirpur Paper Mills Limited at Sirpur, Kagaznagar, and they were dismissed from service on the ground of misconduct. Aggrieved by the dismissal, they have raised industrial disputes vide I.D. Nos. 109 and 110 of 2002, which were re-numbered as I.D. Nos. 137 and 138 of 2004 on the file of the Labour Court-II, Hyderabad. The Labour Court, Hyderabad, upon considering the rival contentions, held that it had no territorial jurisdiction to entertain the IDs and accordingly refused to pass any award.

4. We have heard Sri A.K. Jayaprakash Rao, learned Counsel appearing for petitioners and Sri Vedula Srinivas, learned Counsel appearing for the respondent -management. Both the counsel agreed for disposal of the writ petitions itself on merits.

5. Learned Counsel for the petitioners-workmen contended that the order of dismissal was passed by the respondent -company at Sirpur Kagaznagar, and a copy of it was marked to the Head Office at Hyderabad, along with other relevant material, therefore the workmen have raised industrial dispute before the Labour Court at Hyderabad as the Head Office of the company is situated in Hyderabad. Learned Counsel further contended that when once the Tribunal has entertained I.Ds without raising the preliminary issue with regard to territorial jurisdiction and ultimately held that the domestic enquiry is valid, it ought not to have dismissed IDs on mere technicalities. He also contended that no prejudice would be caused to the management if the Tribunal at Hyderabad decides the matter on merits.

6. Learned Counsel for the petitioners -workmen relied upon the decision of this Court in Novopan Industries Limited (2 supra) in support of the contention that the place where head office is situated, would be relevant for determination of jurisdiction, on the ground that administrative instructions are given by the Head Office to its subsidiary companies.

7. On the other hand, learned Counsel appearing for the respondent -management contended that since the petitioners reside at Sirpur-Kagaznagar, Godavarikhani, and the charges were framed, domestic enquiry held and the termination orders emanated at Kagaznagar, the Labour Court/Industrial Tribunal

at Godavarikhani, would have the jurisdiction to entertain I.D. He also contended that no part of cause of action had arisen at Hyderabad and merely because the Head Office is located at Hyderabad, the petitioners cannot raise industrial dispute before the Labour Court/Industrial Tribunal at Hyderabad. He further contended that the parties by consent, cannot confer jurisdiction.

8. Learned Counsel appearing for the management relied upon the decision of the Supreme Court in *Bikash Bhushan Ghosh and Others Vs. Novartis India Limited and Another*, wherein it was held that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the court concerned. He has also drawn our attention to the decision of the Apex Court in *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, , wherein it is observed that the dispute ordinarily arises at the place where the workman is working and not at the headquarters of the industry.

9. We have considered the submissions made by learned Counsel appearing for both sides for answering the reference and deciding the writ petitions.

10. In the instant case, there is no necessity of going into all the details. Suffice to state that the petitioners have been discharging the duties at the Sirpur Paper Mills Limited, Sirpur-Kaghaznagar, Adilabad district, and on the ground of allegedly proved misconduct, they were dismissed from service vide orders passed by the third respondent - company, and the orders of dismissal were served on the petitioners at Sirpur-Kagaznagar, where they were residing. It appears that IDs raised were initially taken on file by the Labour Court-I, Hyderabad, in the year 2002 and later on transferred in the year 2004 to Industrial Tribunal-II, Hyderabad.

11. It is pertinent to extract the relevant provision of Section 7A of the Industrial Disputes Act, 1947, which reads:

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of the industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

A reading of the above provision makes it clear that the Government is empowered to constitute one or more Industrial Tribunals for adjudication of industrial disputes. In exercise of the powers u/s 7(1) of the Act, the Governor of Andhra Pradesh had constituted the Industrial Tribunals/Additional Industrial Tribunals/Labour Courts vide G.O.Ms. No. 30, Labour, Employment, Nutrition and Technical Education (Lab.IV), dated 27th January, 1986 for adjudication of industrial disputes and the details of the names of the courts and their jurisdiction had been prescribed in the Table therein. It is seen from the said Table that the Industrial Tribunal-cum-Labour Court, Godavari Khani, has jurisdiction over Adilabad and Karimnagar Districts, which was constituted vide

G.O.Ms. No. 120 dated 19-12-1990.

12. It is relevant to notice here itself the recent decision of the Supreme Court in *Bikash Bhushan Ghosh v. Novartis India Limited* (supra) wherein it was held that the principles for determining jurisdiction are as follows:

(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) 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.

The Supreme Court further observed that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the court concerned.

13. Admittedly, the petitioners have been discharging the duties at Sirpur Paper Mills Limited, Sirpur-Kaghaznagar, Adilabad district, and the orders of dismissal were served on the petitioners at Sirpur-Kaghaznagar, where the company is situated, though its Head Office is located at Hyderabad.

14. Apart from the above, the Apex Court in *Workmen of Shri Ranga Vilas Motors (P) Ltd. v. Shri Ranga Vilas Motors (P) Ltd.* (supra) as long back as in the year 1967 observed as follows:

Therefore, the appeal must succeed unless the company can satisfy us that the points decided against it should have been decided in its favour. This takes us to the other points. 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 Mahalingam 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.

15. Applying the principles laid down by the Supreme Court in the above decisions, and having regard to the situs of employment and the fact that

dismissal orders emanated at Sirpur-Kaghnagar, we are of the considered opinion that the situs of employment of the workman would be the criterion for raising ID and as such, Industrial Tribunal-cum-Labour Court, Godavari Khani, has jurisdiction to adjudicate the industrial dispute, but not the Industrial Tribunal/Labour Court at Hyderabad.

16. Further, it is to be noticed that the Industrial Tribunal has already held that the domestic enquiry is valid probably with the consent of both the parties, which in our view is not correct, as the consent of both parties does not confer any jurisdiction on the court concerned.

17. In view of the above discussion, and having considered the conflicting judgments and the ratio laid down in the decisions of the Apex Court, we answer the reference as follows:

(1) The territorial jurisdiction to entertain the I.D. has to be decided on the basis of the place where the workman is working and the adverse order is operating, and I.D. has to be raised before the Labour Court/Industrial Tribunal having jurisdiction over that place, but not at the place of Head Office of a company or its registered office is located.

(2) The provisions of Section 20 of CPC would be taken as guiding factor, where the provisions of Industrial Disputes Act, 1947 in order to determine the point of jurisdiction, would give rise to divergent views.

(3) The cause of action shall be deemed to have arisen at the place where the workman had been discharging the duties, received termination/dismissal order and where such order operates.

While answering the reference in the above terms and having regard to the fact that I.Ds had been raised in the year 2002 and they are still undecided and in view of the peculiar circumstances of the case, we are inclined to dispose of the writ petitions on merits holding that the Labour Court/Industrial Tribunal at Hyderabad has no jurisdiction to decide IDs and the finding on the preliminary issue that the domestic enquiry is valid is liable to be and accordingly set aside. The Labour Court/Industrial Tribunal at Hyderabad is directed to transfer the IDs to the Industrial Tribunal-cum-Labour Court, Godavarikhani, for disposal of the matters on merits afresh, in accordance with law, after giving opportunity to both the parties, expeditiously, preferably within six months from the date of receipt of this order, uninfluenced by any of the observations of the Tribunal or this Court hereinabove.

18. Accordingly, the reference is answered as above and the writ petitions are accordingly disposed of. No order as to costs.