

(2017) 05 DEL CK 0026

In the Delhi High Court

Case No : 331 of 2017

SHOBHA RAM AHIRWAR

APPELLANT

Vs

NTPC LIMITED & ORS

RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

Citation : (2017) 05 DEL CK 0026

Hon'ble Judges : Gita Mittal, Anu Malhotra

Bench : DIVISION BENCH

Advocate : F.S.Chauhan

Judgement

1. The appellant assails the order dated 10th March, 2017 passed by the learned Single Judge rejecting the Writ Petition (Civil) No. 1897/2016 primarily on the ground that this Court does not have the territorial jurisdiction to entertain and adjudicate upon the subject matter thereof. The writ petition was filed seeking the following prayers: "I. to set aside the impugned order dated 06.07.2015 and 30.07.2015

II. to hear the parties and decide that the order dated 04.06.2014 of the respondents is not a re-transfer but an order for recall of the first order of transfer dated 04.10.2013.

III. to pass appropriate order to direct the respondent to release the wages of the petitioner for the period from 15.10.2013 to 26.12.2014 with an interest @ 18% per annum.

IV. to pass appropriate order to direct the respondents to release reimbursement of the medical expenses incurred by the petitioner and his dependent family members during the said period with an interest @ 18% per annum.

V. to pass appropriate order to direct the respondent No. 1 to compensate the petitioner for harassment, mental agony and oppression causing to the petitioner and his family and recover the same from those who are found responsible."

2. We set out herein certain essential facts giving rise to the writ petition. The appellant, an employee of the NTPC Limited, respondent No.1 herein, was served with an order of transfer dated 4th October, 2013 transferring his services from the NTPC, Dadri (U.P.), where he had served for almost 25 years, to NTPC Auraiya (U.P.). The transfer was effected on administrative grounds. Repeated reminders were issued by the respondents.

3. The appellant requested the management vide a letter dated 23rd May, 2014 that he was unable to join his services at Auraiya (U.P.) because of medical/health conditions and prayed for his transfer from Auraiya to Dadri.

4. The respondent-NTPC Limited issued a letter dated 4th June, 2014 transferring the appellant from Auraiya to Dadri. The appellant appears to have addressed the letter as a special case. The appellant was exempted from joining and getting relieved from NTPC Auraiya (U.P.) and was permitted to join at NTPC, Dadri on 27th June, 2014. The appellant made a grievance that his transfer back to Dadri should be treated as a cancellation order or a recall order of the transfer effected by the order dated 4th October, 2013. Inasmuch as the respondents were opposing the same, the appellant filed a Writ Petition (Civil) No. 5334/2015 in this Court.

5. This writ petition was disposed of by an order dated 26th May, 2015 observing as follows: "1. At the request made on behalf of the petitioner, this writ petition is treated as a representation to the employer/respondent no.1 that the employer should treat the order dated 4.6.2014 of the petitioner not as a retransfer but an order for recall of the first order of transfer dated 4.10.2013.

2. Accordingly, let the competent authority of the respondent no.1 consider the petition as a representation so as to consider the order dated 4.6.2014 not as an order of re-transfer but as an order of recall or cancellation of the first order of transfer, and which aspect will be decided by the competent authority of the respondent no.1 in accordance with law and the extant circulars/guidelines/office memorandums etc of the respondent no.1. Competent authority of the respondent no.1 is requested to dispose of the representation of the petitioner as expeditiously as possible and to the extent possible within a period of six weeks of receipt of the copy of the present order. Competent authority may preferably, and if possible, give petitioner a personal hearing before deciding the matter.

3. Writ petition stands disposed of in terms of aforesaid observations."

6. Additionally, the petitioner submitted a representation dated 3rd June, 2015 to the respondents. On a consideration of petitioner's representation dated 3rd June 2015, the respondents passed the following order dated 6th July, 2015 rejecting the appellant's request: " This has reference to the Order dated 26.05.2015 of the Hon'ble High Court of Delhi passed in the captioned Writ Petition which was filed by you. As per the directions of the Hon'ble High Court, the Writ Petition filed by you has been treated as your representations by the competent authority. The Competent authority has gone through all the

averments made by you in the Writ Petition.

Further, as per the directions of Hon''ble High Court, the competent authority has called you for personal hearing on 04.07.2015 at 2.00 pm in his office located at Core-6, 7th Floor, Scope Complex, Lodi Road, New Delhi. However, you did not come for the personal hearing and the competent authority waited for almost 01 hour.

The Competent authority has carefully considered all your averments made in the Writ Petition and also taken your representation for treating the transfer order dated 04.06.2014 as a recall or cancellation of transfer order dated 04.10.2013.

After considering all the aspects and submission made by you in your representation dated 03.06.2015 and Writ Petition No. W.P. (C) 5334/2015, the competent authority has now decided and advised undersigned to inform you as under:-

1. you have rendered service in NTPC Dadri for almost 25 years and vide transfer order dated 4.10.2013, you were transferred to NTPC Auraiya. Your transfer was purely on administrative grounds. After being released from NTPC Dadri, you did not join at Auraiya within stipulated period. Repeated reminders were issued to you for reporting and join duty at Auraiya but you failed to join at transferred place. Your salary therefore could not be processed for the period of unauthorized absence.
2. You submitted and requested the management that you were unable to join at Auraiya because of your medical/health and requested vide your letter dated 23.05.2014 for transfer from Auraiya to Dadri. Considering your request, you were transferred from Auraiya to Dadri.
3. After the issuance of transfer order dated 4.6.2014 from Auraiya to Dadri, you were advised to get released from Auraiya to facilitate your joining at Dadri as per the rules and procedure of the Company. However, you did not do so.
4. Subsequently, vide your letter dated 26.12.2014, you requested that you were not in a condition to join at Auraiya due to health related issues and may not be allowed to join at Dadri as a special case. Considering your request, you were exempted from joining & getting released from NTPC Auraiya as special case and you joined on 27.12.2014 at Dadri.
5. Thus the transfer Order dated 04.06.2014 has been issued only on your request which is mentioned in the aforesaid Order. Therefore, the Transfer Order dated 04.06.2014 is neither a cancellation order nor a recall order. It is a transfer order that too on your request. So far as your salary for the period of your absence from 15.10.2013 to 26.12.2014 is concerned, as stated above, since you are allowed to join at Dadri exempting the normal procedure of joining and getting released from transferred place as special case considering your request on medical ground, you are directed to apply for leave to regularize the period in

which you did not report and perform the duty vide our letters dated 27.04.2015 & 28.04.2015. The above is issued in compliance with the Order of Hon"ble High Court."

7. It is evident from the above, that the competent authority of the respondent/ NTPC not only considered the writ petition/representation as well as the submissions made in the appellant's representation but before passing the above the respondent also afforded an opportunity of personal hearing to the appellant, which the appellant did not avail.

8. The examination of the material on record would show that the appellant superannuated from services on 31st July, 2015.

9. The order dated 6th July, 2015 was duly communicated to the appellant who was still serving at the NTPC Dadri. The matter did not end here. Despite the above consideration by the respondent, the appellant filed a Cont. Cas (C) No. 710/2015 on 21st July, 2015 alleging disobedience by the Management, arraying Mr.Arup Roy Choudhary, Chairman and Managing Director, NTPC Limited, Mr.A.K.Ahuja, Regional Executive Director (NC) and Mr.A.K.Ojha, AGM(HR), NTPC, as respondents/contemnors. It appears that notice was issued to the respondents, all senior officials in the Management of the NTPC Limited, who were compelled to contest the contempt petition. This contempt petition was disposed of by the learned Single Judge by the order dated 8th September, 2015 noting as follows: "It is the petitioner's case that respondents have deliberately disobeyed the order dated 26th May, 2015 by not considering the facts and grounds set out in the writ petition and documents annexed therein and by citing new allegations have held the order dated 4th June, 2014 reverting the posting of the petitioner to Dadri as an order of retransfer.

In the opinion of this Court the mandate of learned Single Judge while disposing of the writ petition was that the petitioner's writ petition should be treated as a representation and the petitioner's submission that the order dated 4th June, 2014 should be treated as an order for recall of first order of transfer instead of retransfer should be considered by the respondents. By the order dated 6th July, 2015 the said averment of the petitioner has been conclusively dealt with by the respondent- NTPC. The relevant portion of the order dated 6th July, 2015 is reproduced hereinbelow:-

"2. xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx

5. xxxx xxxx xxxx xxxx ."

In the opinion of this Court, the rightness or wrongness of the order cannot be gone into in the present proceedings. Since the mandate of the order disposing of the writ petition has been complied with, this Court is of the view that no case of contempt is made out. Accordingly, present contempt petition is dismissed. However, the petitioner is given liberty to raise its grievances in accordance with

law. The rights and contentions of all parties are left open."

10. We may also consider the order dated 30th July, 2015 which was issued to the appellant with regard to his various absences from duty despite repeated reminders by the respondents:

"Order dated 30.07.2015

REF.NO.:08/HR/EB/080344

DATE: 30.07.2015

Sh. Shobha Ram Ahirwar

Dy Manager (Th-EM)

E.No.080344

Through: AGM(Th-EM)I/c

Dear Sir,

Please refer to our letters dated 07.01.2015, 29.01.2015, 17.02.2015, 10.03.2015, 02.04.2015, 27.04.2015, 28.04.2015 and 15.06.2015 advising you to apply for leaves to regularize the period of unauthorized absence from 15.10.2013 to 26.12.2014 (438 days). It is observed that despite repeated reminders you have failed to regularize the said period of unauthorized absence.

Since you are about to superannuate on 31.07.2015, we have been left with no other option but to regularize the 438 days of unauthorized absence by way of applying the HPLs (425 days) and ELs (13 days) to your credit. This shall facilitate in settlement of your terminated dues on your superannuation.

This is for your information please.

Thanking you,

Yours faithfully,

Sd/-

(Sudha Rao)

Sr.Mgr. (HR)"

11. Even the dismissal of the contempt petition has not satisfied the appellant. Long after he had superannuated on 31st July, 2015, on 25th February, 2016, the appellant filed a Writ Petition (C) No.1897/2016 seeking the following prayers: "I. to set aside the impugned order dated 06.07.2015 and 30.07.2015

II. to hear the parties and decide that the order dated 04.06.2014 of the respondents is not a re-transfer but an order for recall of the first order of transfer dated 04.10.2013.

III. to pass appropriate order to direct the respondent to release the wages of the petitioner for the period from 15.10.2013 to 26.12.2014 with an interest @ 18% per annum.

IV. to pass appropriate order to direct the respondents to release reimbursement of the medical expenses incurred by the petitioner and his dependent family members during the said period with an interest @ 18% per annum.

V. to pass appropriate order to direct the respondent No. 1 to compensate the petitioner for harassment, mental agony and oppression causing to the petitioner and his family and recover the same from those who are found responsible. "

12. In this writ petition, the Court passed a detailed order on 25th January, 2017 making the following observations that the Court being forum non-convenience, therefore, this Court lacked territorial jurisdiction to entertain and adjudicate on the writ petition: "1. It is seen that this Court would not have territorial jurisdiction to entertain this writ petition because petitioner's services were not at Delhi but were at Dadri, Uttar Pradesh. Petitioner was posted from Dadri, Uttar Pradesh to Auraiya, Uttar Pradesh and again back to Dadri, Uttar Pradesh. Even the impugned letters which the petitioner is challenging, dated 6.7.2015 and 30.7.2015, have been issued by the employer/NTPC Limited from its Dadri office. There is also an issue of forum convenience and forum non-convenience and this court is forum non-convenience in view of the Full Bench judgment of this Court in the case of Sterling Agro Industries Ltd. etc. etc. Vs. Union of India (UOI) and Ors. etc. etc., AIR 2011 (Delhi) 174, and the relevant paragraph of the same reads as under:-

"33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra)

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may

refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the facts in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in *Ambica Industries (supra)* and *Adani Exports Ltd. (supra)*

(g) The conclusion of the earlier decision of the Full Bench in *New India Assurance Company Limited (supra)* "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."

2. Merely because the head office of the employer is in Delhi will not confer this Court's territorial jurisdiction once the entire cause of action is outside Delhi.

3. Though, counsel for the petitioner also argued that the impugned letters have been communicated at Delhi, I, prima facie, do not find that the impugned letters dated 6.7.2015 and 30.7.2015 have been communicated to the petitioner at Delhi because the letter dated 6.7.2015 shows that the same was communicated to the petitioner at his office at Dadri and the same would also be the position of the letter dated 30.7.2015.

4. Though, the respondents have not taken up a plea of territorial jurisdiction or the issue of forum nonconvenience, but since this issue goes to the root of the matter, I have put counsel for the petitioner to notice of this aspect.

5. List on 10th March, 2017."

(Emphasis supplied)

13. It is not disputed before us that these communications are concerned with the services of the appellant at Dadri in U.P. and posting to Auraiya, U.P. which are beyond the territorial jurisdiction of this Court.

14. The learned Single Judge placed reliance on the pronouncement of Supreme Court in 2009 (1) SCC 180; *Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others* ; in concluding that this Court did not have

the territorial jurisdiction because no part of the cause of action had arisen at Delhi and, therefore, the contempt petition was liable to be so rejected.

15. Learned counsel for the appellant would contend that this Court in W.P.(C) No.5334/2015 had passed an order dated 26th May, 2015 directing the respondents to consider the writ petition as representation by the appellant. It is contended that the failure of respondent to do so renders them liable for orders and directions in the writ petition which was filed before the Court.

16. It may be noted that while summarily disposing of the writ petition on the 26th Of May, 2015, the learned Single Judge had no opportunity to consider any aspect on merits or objection regarding lack of the territorial jurisdiction of this Court. It cannot be denied that the record relating to the service of the appellant would be available in Dadri or Auraiya, which are in the State of Uttar Pradesh.

17. We have extracted above the orders passed by the respondents. The order dated 6th July, 2015, was passed by the respondent upon a consideration of the writ petition of the appellant as a representation as well as the additional representation dated 3rd June, 2015 submitted by the appellant.

18. It is also not disputed before us that the consideration before passing the order dated 6th July, 2015 was effected in Dadri, U.P. and that the order dated 6th July, 2015 had been received when the appellant was based at Dadri, U.P.

19. The appellant does not assail the order dated 8th September, 2015, passed in Contempt Case (C) No.710/2015 wherein the Court has held that the respondent had considered the representation of the appellant.

20. Learned counsel for the appellant would contend that this Court had jurisdiction by virtue of Sub-Clause 2 of Article 226 and placed reliance on the pronouncement of the Supreme Court in the judgment reported as AIR 1994 SUPREME COURT 647, Madan Lal v. State of Punjab and Others. Learned counsel would further contend that, even if it could be held that the order dated 26th May, 2015 (in W.P.(C) No.5334/2015) was passed by Court which did not have territorial jurisdiction, even then respondents were bound to comply with the same.

21. We find from the order dated 6th July, 2016, the respondents have actually considered the writ petition as a representation. They have also considered the additional submission made by the appellant in his representation dated 3rd June, 2015 and afforded opportunity of personal hearing to the appellant which he did not avail. It has also been so held in the order dated 8th September, 2015.

22. In this background, the finding of the learned Single Judge that this Court does not have the jurisdiction and also that, even assuming that any part of the cause of action had arisen at Delhi, by the application of principle of forum non-conveniens, this Court is not the Court closest to the place of accrual of cause of action so as to enable it to effectively and conveniently adjudicate upon the subject matters pressed by way of the writ petition.

23. We find no merit in the appeal. We may also note that litigation being pressed by the appellant is completely frivolous and misconceived. In view thereof, we were inclined to impose heavy costs. However, in view of the prayer made by the appellant that he is a retired person while, dismissing this appeal, we impose notional costs of Rs.2,500/- to be deposited with the Delhi High Court Legal Services Committee.

24. The appeal is hereby dismissed with costs as above.