
(2008) 01 MAD CK 0154

In the Madras High Court

Case No : W.A. No. 1494 of 2007 and M.P. No. 1 of 2007

The Management of M.R.F. Ltd.

APPELLANT

Vs

S.N.D. Sampath and Others

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2A

Limitation Act, 1963 — Section 12

Tamil Nadu Shops and Establishments Act, 1947 — Section 1(2), 2(12), 2(3), 2(5), 2(6)

Citation : (2008) 2 CTC 359 : (2008) 117 FLR 751 : (2008) 2 LLJ 162 : (2008) 2 MLJ 161 : (2008) WritLR 515

Hon'ble Judges : A.P. Shah, C.J.; V. Ramasubramanian, J

Bench : Division Bench

Advocate : Sanjay Mohan, for the Appellant; V. Prakash, for the Respondent

Final Decision : Allowed

Judgement

A.P. Shah, C.J.—Admit. Learned Counsel appearing for the first respondent waives service. By consent the appeal is taken up for hearing.

2. Whether the appellate authority/second respondent has jurisdiction to entertain the appeal preferred by the first respondent/employee u/s 41(2)

of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter for brevity"s sake referred to as "the Act") is the short question that falls for

consideration in this appeal filed by the Management of M.R.F Limited against the order passed by the learned single Judge in a writ petition filed

by the first respondent.

3. The facts leading to the appeal are few and may be shortly stated. The first respondent joined the service of the appellant company at its

Registered Office at Chennai on 02.06.1980 as Clerk-cum-Typist, and was

confirmed in service in January, 1981. He was subsequently promoted as junior Assistant in the year 1983, and was transferred to Belgaum. Thereafter, he was promoted as Senior Assistant and transferred to Mangalore in the year 1988 and in the year 1996, he was promoted as Management Assistant (MS-1). From Mangalore, he was transferred to Panaji, Goa in the year 2001. While he was working in Goa, he allegedly tendered resignation letter dated 18.01.2003 in his own writing, and the same was accepted by the appellant company vide letter dated 21.01.2003.

4. However, according to the first respondent, his resignation was not voluntary and while he was attending work in the sales depot on 18.01.2003, the Operations Manager (West)/3rd respondent therein and Mr. Sabu Verghese, Office Manager in the district office, Mumbai/4th respondent herein, came to the depot and asked from him a letter of resignation saying that the company has lost confidence in him and asked him either to resign or to face the consequences. He had no intention to resign, but, however, due to pressure exerted on him, he gave the letter of resignation. On 20.01.2003, he rushed to Chennai, but could meet the General Manager (Marketing) only on 22.01.2003 and told that the resignation letter was obtained under threat and he did not want to resign from service. He also gave a letter to the effect that the resignation letter was obtained from him under coercion and that he was withdrawing the resignation letter. The General Manager (Marketing Operations) read the letter and gave back to the appellant saying that he may forward to the same through his superiors. He then sent the same by fax on 24.01.2003 with a copy to the District Manager - Bombay and also to the Executive Director-Marketing, General Manager-Marketing and Senior General Manager - Human Resources and Services, Chennai. However, despite withdrawal of resignation, he received a telegram from the second appellant on 25.01.2003 accepting the resignation and he was also sent a letter dated 28.01.2003 confirming the acceptance of resignation.

5. Aggrieved, the first respondent preferred an appeal before the second respondent u/s 41(2) of the Act challenging the decision of the appellant management purporting to treat him as having resigned from service. The appellant management filed its preliminary objection on the maintainability of the appeal mainly on the ground that as the first respondent was not

employed in any commercial establishment within the State of Tamil Nadu, the second respondent has no territorial jurisdiction to entertain the appeal. The second respondent upheld the preliminary objection holding inter alia that the first respondent was an employee in the appellant company's depot at Goa, even though his initial appointment was in Chennai and just because the Head Office is in Chennai, he cannot invoke the jurisdiction of the second respondent u/s 41(2) of the Act Aggrieved by this, the first respondent preferred a writ petition praying for a writ of certiorarified mandamus to quash the order of the second respondent. The learned single Judge relying upon the decision of the Supreme Court in Bikash Bhushan Ghosh and Others Vs. Novartis India Limited and Another, held inter alia that in the facts and circumstances of the case, the first respondent has got a cause of action to challenge the order either in Chennai or at Goa under the respective Shops and Establishments Acts, and consequently set aside the order of the second respondent and remitted the matter back to the second respondent for fresh disposal on merits. It is the correctness of this order that is questioned by the appellant company in this writ appeal.

6. Mr. Sanjay Mohan, learned Counsel appearing for the appellant strenuously contended that the subsistence of the relationship between master and servant while working in an establishment in the State of Tamil Nadu was necessary to clothe the second respondent under the Tamil Nadu Act with jurisdiction to entertain the appeal. In support of this submission, he placed strong reliance on the decision of a Division Bench of this Court in The Management of Punjab National Bank Vs. S.C. Gupta and Another, and also on the judgment of a learned single Judge (N.V. Balasubramaniam, J.) of this Court in S.Ravirajan Vs. Deputy Commissioner of Labour,(Appeal), D.M.S. Compound, Teyanampet, Madras-6 and another, . Learned Counsel submitted that the last location of employment of the employee was in an establishment in Goa and it was not in dispute, as admitted by the first respondent himself, that the letter of resignation dated 13.01.2003 was submitted while he was an employee of the Goa establishment to the Mumbai office of the Company. He submitted that the Tamil Nadu Shops and Establishments Act would apply to establishment in the State of Tamil Nadu alone and to employees employed to

work in such establishment, and it would not be open to the employee to maintain proceedings under the Act merely because the Senior Manager - Human Resources and Services, who sits in the Corporate Office situated in the State of Tamil Nadu (in Chennai), issued letter accepting his resignation. He lastly submitted that merely because the Corporate Office was in Chennai or because the resignation was accepted in Chennai would not confer jurisdiction on the second respondent u/s 41(2) of the Act.

7. In reply, Mr. V. Prakash, learned senior Counsel appearing for the first respondent submitted that the second respondent u/s 41(2) of the Act has jurisdiction to entertain the appeal as the Corporate Office of the appellant company is situated in Chennai. He submitted that there is a clear nexus between the dispute arising from the termination of the service of the first respondent and the territory of the State, and the well-known test of jurisdiction of Civil Court including the residence of the parties and the subject matter of the dispute substantially arising therein would be applicable. He submitted that in any event the letter of resignation was accepted by the Corporate Office at Chennai and thus, a part of cause of action arose in Chennai, and hence the appeal was maintainable. He relied upon the decisions of the Supreme Court in *Bikash Bhushan Ghosh v. Novartis India Limited* (supra) and *Om Prakash Srivastava Vs. Union of India (UOI) and Another*, to substantiate his contention that it is immaterial as to whether the employee is working in an establishment in the State of Tamil Nadu. According to him, the decision of the Division Bench in *Punjab National Bank's* case does not lay down the law correctly and requires reconsideration in the light of the above decision in *Bikash Bhushan Ghosh v. Novartis India Limited* (supra)

8. Before proceeding to consider the rival submissions, it would be necessary to refer to the relevant provisions of the Act Section 1(2) of the Act extends the provisions of the Act to the whole of the State of Tamil Nadu u/s 2(3) of the Act, a "commercial establishment" has been defined as follows:

"commercial establishment" means an establishment which is not a shop but which carries on the business of advertising commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial

undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishment as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.

Section 2(5) of the Act defines the expression "employer" as follows:

"employer" means a person owning or having charge of the business of an establishment and includes the manager, agent or other person acting in the general management or control of an establishment

Under Section 2(6), the expression "establishment" is defined as under:

"establishment" means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the (State) Government may by notification declare to be an establishment for the purposes of this Act.

The expression "person employed" is defined in Section 2(12) of the Act. Section 2(12)(iii), which is relevant for the purpose of this Act, reads as under:

(iii) in the case of a commercial establishment other than a clerical department of a factory or an industrial undertaking a person wholly or principally employed in connection with the business of the establishment, and includes a peon.

9. Chapter III of the said Act deals with establishments other than shops and Chapter VI deals with holidays with wages for a person employed in

any establishment. Chapter VII deals with payment of wages fixation of wage-period, etc. In exercise of power conferred u/s 49 of the Act, Rules

have been framed, viz., the Tamil Nadu Shops and Establishments Rules, 1948 and several forms have been prescribed for due compliance with

the provisions of the Act. Under the said Rules, no employer should require any person employed to work in his establishment without exhibiting

notice in Form-A and without sending a copy of the same to the Inspector of Labour concerned and the employee is not required or allowed to

work on weekly holidays. There are other rules also wherein the employer is required to exhibit notices containing relevant extracts. It is in the light

of the statutory scheme, the provision of Section 41 has to be construed. Section

41(1) of the Act reads as under:

No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable

cause and without giving such person at least one month's notice or wage in lieu of such notice, provided however, that such notice shall not be

necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfaction evidence recorded at an

enquiry held for the purpose.

Under Section 41(2) of the Act, the person employed shall have a right to appeal to such authority within the time that may be prescribed either on

the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held

by the employer.

10. In *The Management of Punjab National Bank v. S.C. Gupta and Anr.* (supra), the first respondent therein, who was employed in the appellant

bank at its Madras Branch, was transferred to the Central Office at Kanpur and pursuant to the order of transfer, the employee handed over the

charge to the Manager of the Madras Branch and reported for duty at Kanpur and there he was served with the order, of termination of service.

Against the order of termination, the first respondent preferred an appeal u/s 41(2) of the Act claiming that he would be governed by the provisions

of Tamil Nadu Shops and Establishments Act. The Appellate Authority found that the cause of action with reference to termination of service of

the first respondent arose at Kanpur, to which place he was transferred and not within the State of Tamil Nadu and therefore, it had no jurisdiction

to entertain the appeal. Accordingly, the Appellate authority dismissed the appeal. Aggrieved by this, the first respondent preferred a writ petition,

which came to be allowed by the learned single Judge. Allowing the writ appeal, the Division Bench observed:

Applying the aforesaid definitions, there cannot be any doubt that for purposes of the Act, the bank would be a commercial establishment as well

as an establishment. u/s 41(1) of the Act., an employer cannot dispense with the services of a "person employed" continuously for a period of not

less than six months, except for a reasonable cause and without giving at least one month's notice or one month's wages in lieu of such notice,

barring cases where such service is dispensed with on proof of misconduct established by evidence at an enquiry held for that purpose. The essential requisite for a dismissal contemplated by Section 41(1) of the Act is the subsistence of the relationship of employer or commercial establishment in Tamil Nadu. u/s 2(12)(iii) of the Act, before a person can be a "person employed", such person should be wholly or principally employed in connection with the business of the establishment. u/s 41(2) of the Act, the person employed is conferred on the right of appeal to the appellate authority against the order of termination of service on the ground that there was no reasonable cause for dispensing with his services or that he had not been guilty of misconduct. A careful consideration of the aforesaid provisions in the Act clearly establishes that the relationship of employer and employee in a business or commercial establishment in Tamil Nadu is a pre-requisite for the termination of the services of the employee and for the employee to complain about it by preferring an appeal u/s 41(2) of the Act.

(emphasis supplied)

The Bench held that when the termination order was served on the employee at Kanpur, the relationship of employer and employee was not subsisting between the appellant and the first respondent with reference to an establishment situate in Tamil Nadu, and therefore the appeal was not maintainable in law.

11. The above decision in Punjab National Bank's case was followed by the learned single Judge (N.V. Balasubramaniam, J) in Ravirajan, S v.

Deputy Commissioner of Labour (supra), where the learned single Judge held as follows:

In my view, when there is no employer-employee relationship subsisting with reference to an establishment situate in the State of Tamil Nadu on the date when the order of termination was passed, the mere fact of service of order of termination on an employee in the State of Tamil Nadu would not be enough or sufficient to clothe the appellate authority with the jurisdiction to decide the validity of the order of termination of the employment. Therefore, in my view, the decision of the Division Bench of this Court in The Management of Punjab National Bank Vs. S.C. Gupta and Another, would squarely apply to the facts of the case and I hold that there

is no infirmity in the view of the first respondent holding that he has no jurisdiction to entertain the appeal preferred u/s 41 of the Shops and Establishments Act. Consequently, the writ petition fails and accordingly, it is dismissed. However, there may be no order as to costs. Consequently, W.M.P. No. 26359 of 1990 is dismissed.

(emphasis supplied)

12. We are in respectful agreement with the view taken by the Division Bench in Punjab National Bank's case that the relationship of employer

and employee with reference to a commercial establishment in Tamil Nadu is a prerequisite for preferring an appeal u/s 41(2) of the Tamil Nadu

Shops and Establishments Act. The Tamil Nadu Shops and Establishments Act is expected to apply to establishments in the State of Tamil Nadu

alone and to employees employed to work in such establishments. In the case at hand, there is no dispute that the first respondent was employed in

the Goa establishment of the Company, an establishment governed by the Goa Shops and Establishments Act. It is also not in dispute that while

working at Goa, the first respondent submitted his resignation letter dated 18.01.2007. The first respondent in his resignation letter has given his

temporary address as residing at Goa, while his permanent address is at Kolar Gold Fields, which is in the State of Karnataka. On receiving the

said resignation letter, the Senior General Manager - Human Resources and Services, Chennai relieved him vide his letter dated 21.1.2003 and the

acceptance of resignation was despatched on 24.01.2003. The acceptance letter was sent to the first respondent to his Goa address as well as to

his permanent address at Karnataka. The acceptance letter was received by him at both the addresses on 31.01.2003, as evident from the postal

acknowledgments produced by the management. When there is no employer employee relationship subsisting with regard to an establishment

situate in the State of Tamil Nadu, the mere fact that the resignation letter was accepted at Chennai would not be enough or sufficient to clothe the

appellate authority u/s 41(2) of the Act to entertain the appeal filed by the first respondent. We are unable to agree with the view taken by the

learned single Judge that both the authorities namely, the authority under the Goa Shops and Establishments Act and the authority under the Tamil

Nadu Shops and Establishments Act had concurrent jurisdiction to deal with the

case of the first respondent.

13. We are unable to agree with the argument of the learned senior Counsel Mr. Prakash based on the cause of action having arisen at Chennai, at

least in part, owing to the acceptance of the resignation letter of the first respondent by the Head Office at Chennai. The reliance placed by Mr.

Prakash on the decision of the Supreme Court in *Bikash Bhushan Ghosh v. Novartis India Limited* (supra), is completely misconceived. In that

case, the appellants were workmen of the respondent company. They were transferred to Siwan (Bihar), Farukhabad (U.P.) and Karimganj

(Assam) by issuing separate orders of transfer. According to the workmen, the said orders of transfer were violative of the memorandum of

undertaking signed by the company and the union, and were issued with an ill-motive of victimizing them for their trade union activities. As despite

requests, the purported orders of transfer were not revoked, they sought intervention of the Labour Commissioner, West Bengal. Allegedly, a

conciliation proceeding was initiated, but during the pendency thereof, their services were terminated by the respondent company. Contending that

the said orders of terminations were unauthorized, arbitrary and illegal, as no cosmetic enquiry was held prior thereto, they raised an industrial

dispute. The State of West Bengal, in exercise of jurisdiction u/s 10(1)(c) read with Section 2A of the Industrial Disputes Act, 1947, referred the

dispute to the Third Industrial Tribunal, West Bengal. Before the said Tribunal, inter alia, a contention was raised that the State of West Bengal had

no jurisdiction to make a reference. The question in regard to the maintainability was determined by the Tribunal in favour of the workmen holding

the same to be maintainable. By its award, the Tribunal held that the orders of termination passed against the appellants/workmen were illegal and

they were directed to be reinstated in service with backwages. Aggrieved by the said order, the respondents filed a writ petition before the

Calcutta High Court which came to be dismissed by the learned single Judge. On an intra-court appeal filed by the respondents under Clause 15 of

the Letters Patent, the Division Bench, however, without going into the merit of the matter, held that the State of West Bengal, being not the

appropriate government in respect of the dispute raised by the appellants, had no jurisdiction to make the reference and on that premise allowed

the said appeal and consequently, set aside the award made by the Tribunal, as also confirming the order of the learned single Judge. Allowing the appeal, the Supreme Court held as follows: (SCC pp 596-599)

11. It is, however, not disputed that the orders of termination were served upon the appellants at Calcutta. The orders of termination as against them were passed for not obeying the orders of transfer. The transfer of the appellants, therefore, had some nexus with the order of their termination from services. It is, therefore, not correct to contend that the State of West Bengal was not the appropriate Government.

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15. With respect to the Division Bench, we do not think that it has posed unto itself a correct question of law. It is not in dispute that the appellants did not join their duties at the transferred places. According to them, as the orders of transfer were illegal, their services were terminated for not complying therewith. The assertion of the respondent that the appellants were relieved from job was unilateral. If the orders of transfer were to be set aside they would be deemed to be continuing to be posted in Calcutta, The legality of the orders of transfer thus, had a direct nexus with the orders of termination. What would constitute cause of action, has recently been considered by this Court in *Om Pmkash Srivastava v. Union of India* 5 wherein it was held: (SCC pp. 211-12, paras 12-14)

12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". See *Rajasthan High Court Advocates' Assn. v. Union of India* 2001 (2) SCC 294.

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. See *Gurdit Singh and Others Vs. Munsha Singh and Others*, .

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see *Black's Law Dictionary*). In *Stroud's Judicial Dictionary* a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff - must prove in order to obtain judgment. In *Words and Phrases* (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. See *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, .

16. Judged in that context also, a part of cause faction arose in Calcutta in respect whereof the State of West Bengal was the appropriate Government. It may be that in a given case, two States may have the requisite jurisdiction in terms of Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, Assuming that other State Governments had also jurisdiction, it would not mean that although apart of cause of action arose within the territory of the State of West Bengal it would have no jurisdiction to make the reference.

(emphasis supplied)

14. In our view, the above decision in *Bikash Bhushan Ghosh's* case was tendered in the context of the Industrial Disputes Act, which is a Central Act, and the ratio of this case is clearly inapplicable to the instant case. In that case the workmen were employed in company established in West Bengal and they were transferred to different States, but they did not join the duty at the respective transferred places. According to them, as the orders of transfer were illegal, their services were terminated for not complying

there with. The assertion of the company that the workmen were relieved from job was unilateral and if the orders of transfer were to be set aside, they would be deemed to be continuing to be posted in Calcutta.

Consequently, the Court held that the legality of the orders of transfer had direct nexus with the orders of termination and a part of cause of action arose in Calcutta in respect where of the State of West Bengal is the appropriate government. The facts of the present case are clearly distinguishable. Though the first respondent herein was initially employed in the State of Tamil Nadu, he was later transferred to the State of Karnataka and then to Goa. The first respondent tendered his resignation letter while working in the sales depot at Goa, which was forwarded to the Mumbai Office and from there to the Company's Corporate Office at Chennai where it was accepted by the Senior General Manager - Human Resources and Services. In our view, notwithstanding the fact that the resignation letter of the first respondent was accepted in Chennai, his situs of employment being at Goa, he ought to have approached the appellate authority under the Goa Shops and Establishments Act and the appellate authority under the Tamil Nadu Shops and Establishments Act had no jurisdiction to entertain the appeal preferred by the first respondent.

When a person is employed to work in an establishment in Goa, it must be held that he was employed wholly in connection with the business of Goa establishment. Merely because, the Corporate Office was in Chennai or because the resignation letter has been accepted in Chennai would not confer jurisdiction on the appellate authority u/s 41(2) of the Act.

15. In view of the foregoing discussion, we hold that the appellate authority u/s 41(2) of the Act has no jurisdiction to entertain the appeal preferred by the first respondent.

16. In the result, the appeal is allowed and the order of the learned single Judge is set aside and that of the appellate authority/second respondent is restored. However, we add that if the first respondent files an appeal before the appellate authority under the Goa Shops and Establishments Act, the authority may consider the question of delay in the light of the fact that the present proceedings were pending under the Tamil Nadu Act and the provision of Section 12 of the Limitation Act. No costs. Consequently miscellaneous petition is closed.