

(2009) 10 DEL CK 0027

Delhi High Court

Case No: CM (M) 1337 of 2007

Raj Kumar Jaiswal

APPELLANT

Vs

Rangi International Pvt. Ltd.

RESPONDENT

Date of Decision: Oct. 27, 2009**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 20, 21
- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 10(1), 10(4), 11, 14, 2

Hon'ble Judges: Rajiv Sahai Endlaw, J**Bench:** Single Bench**Advocate:** Thakur Virender Pratap Singh Charak, Shubhra Parashar and Pushpender Singh Charak, for the Appellant; J.K. Sharma, for the Respondent**Final Decision:** Allowed

Judgement

Rajiv Sahai Endlaw, J.

This petition under Article 227 of the Constitution of India is preferred by the petitioner/workman with respect to the order dated 22nd March, 2007 of the Presiding Officer, Labour Court-XVI, Karkardooma Courts, Delhi. Vide the impugned order, the additional issue relating to the territorial jurisdiction of the Labour Court to entertain and try the case was decided in favour of the respondent/management and against the petitioner/workman.

2. The undisputed facts are that the petitioner was employed with the respondent company since 4th November, 1997. The respondent company at the time of employment of the petitioner as well as till date has its registered office at Delhi. The petitioner was on 23rd April, 2003 transferred to the works of the respondent company at Gurgaon and it is the case of the petitioner that with effect from 7th June, 2004, the respondent company refused work to the petitioner. The case of the respondent is that the petitioner did not report for duty. The petitioner first initiated

conciliation under the provisions of Industrial Disputes Act and upon the conciliation having failed, the Labour Commissioner, Delhi made a reference to the Government of NCT of Delhi, which referred the dispute to the Labour Court at Delhi which initiated proceedings.

3. It appears that after the intimation of proceedings and after the issues had been framed, the respondent/management applied for framing of an additional issue as under:

Whether this Court has territorial jurisdiction to entertain and try the present case or not?

4. The Labour Court has by the impugned order, decided the aforesaid additional issue, without deciding the other issues. The Labour Court has held that since the petitioner/workman had admittedly last worked for the respondent/management at Gurgaon and since the service of the petitioner/workman was allegedly terminated while the workman was working at Gurgaon, the dispute cannot be adjudicated in the Labour Court at Delhi. The Labour Court in this regard relied upon [D.L.F. Universal Ltd. Vs. Govt. of National Capital Territory, Delhi and Others,](#)

5. The Counsel for the petitioner has contended that since the registered office of the respondent/company is at Delhi, the Labour Court at Delhi, in terms of Section 20 of the CPC, would have jurisdiction. He has also contended that in fact the order of transfer of the petitioner/workman itself was mala fide and with the intent to remove the petitioner from employment. He has further relied upon Section 21 of the CPC to state the challenge to the territorial jurisdiction had to be made prior to the framing of the issues; it is contended that the issues were settled long back and the additional issue as to territorial jurisdiction was got framed belatedly.

6. Without entering into the aforesaid controversy as to the applicability of the provisions of the CPC, in my opinion since the Labour Court came to be seized of the dispute on reference being made thereof in accordance with the provisions of the Act, the scope of enquiry before the Labour Court was confined to the matters referred. Though the reference order has not been filed but both the counsels state that no dispute as to territorial jurisdiction was referred for decision to the Labour Court. The Counsel for the respondent however subsequently states that he is not sure on this aspect and will have to check up. Suffice it is to state that on perusal of the impugned order, the dispute qua jurisdiction does not appear to have been referred.

7. As far as the reliance by the Labour Court on DLF Universal Ltd. (Supra) is concerned; challenge there was by way of a writ petition to the order of reference by the government. It was in that context, that this Court held that since the workman/employee in that case was employed at Gurgaon, the Government of NCT of Delhi had no power to make reference since the dispute had not arisen at Delhi. The Counsel for the petitioner also points out that in that case, the employment of

the workman was throughout at Gurgaon. Faced with the same, the Counsel for the respondent relies upon Ziauddin Ansari v. Presiding Officer, Labour Court in WP(C) No. 2653/2005 decided on 26th September, 2006. In that case, the issue of jurisdiction was framed by the Labour Court after reference and held against the employee for the reason of the employment being at Ghaziabad. However, this Court in that case was swayed more by the factum of the employee not falling within the definition of workman in the ID Act; though it was also said that since the employee was posted at Ghaziabad at the time of termination, the Tribunal/Labour Court of that area only would have jurisdiction; but the said finding was also coloured by the factum of this Court also having found the employee to be not a workman. Moreover, the question raised herein above was not addressed in the said judgment and the same cannot be said to be a precedent for the same.

8. If the respondent/management in the present case had any grievance about the petitioner having approached the Labour Commissioner at Delhi and/or about the reference to the Labour Court being made by the Government of NCT of Delhi or if it was the case of the respondent/management that the jurisdiction if any was of the Government of Haryana, the stage for the respondent/management to take the said plea was at the time of reference or by way of challenge thereto. No such plea was taken by the respondent/management at that time and which proceeding before Labour Commissioner and reference to Labour Court at Delhi has attained finality. In my view, under Sections 10(4), 11 and 14 of the Industrial Disputes Act, the Labour Court to whom the dispute had been referred was not entitled to take a plea that it lacked territorial jurisdiction or to refuse the adjudication referred to it on that ground.

9. In [Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited](#), the Supreme Court held that Section 10(1) of the Act confers power on the appropriate government to refer an existing dispute amongst others to, inter alia, the Labour Court for adjudication; the dispute therefore which can be referred for adjudication necessarily has to be an industrial dispute which would clothe the appropriate government with power to make the reference and the Labour Court to adjudicate it; it will thus be seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that the government from which reference is sought or which has referred the dispute was not clothed with the powers to refer the same or lacked the power to make the reference. The respondent in the present case did not challenge the authority of the government of NCT of Delhi which could refer the dispute to the Labour Court within its jurisdiction only, to make such reference.

10. A three judge Bench of the Supreme Court in [National Engineering Industries Ltd. Vs. State of Rajasthan and Others](#), has held that an Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference, it cannot go into the question of validity of reference. Similarly in [State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma](#), also it was held that the jurisdiction of Labour Court

emanates from order of reference, it could not have passed an order going beyond the term of reference and if the Labour Court exceeds its jurisdiction the order suffers from a jurisdictional error capable of being corrected by the High Court.

11. Besides the aforesaid, I am otherwise also of the view that the industrial dispute arises at the place where the employer is exercising effective control. The state government having jurisdiction over the place from which the employer exercises effective control would have jurisdiction to make the reference u/s 2 of the Industrial Disputes Act. In the present case, the registered office of the respondent company is at Delhi and prima facie the effective control would be at Delhi. Nothing has been shown otherwise that there was a separate establishment at Gurgaon; only if a separate establishment had been proved could the dispute be said to have arisen at Gurgaon. Reliance in this regard can be placed on [Workmen of Shri Rangavilas Motors \(P.\) Ltd. and Another Vs. Shri Rangavilas Motors \(P\) Ltd. and Others](#), The Supreme Court again in [Bikash Bhushan Ghosh and Others Vs. Novartis India Limited and Another](#), has also laid down the test of part of the cause of action and held that even if a part of cause of action in the industrial dispute arises within the state, than that state will have jurisdiction to make a reference despite the fact that other states also have jurisdiction to make a reference. The petitioner in the present case has spent major time of his employment with the respondent at Delhi and for this reason also I am of the view that the reference was correctly made to the Labour Court at Delhi.

12. Above all, the Industrial Dispute Act is a social welfare legislation. Today the boundaries between Delhi and Gurgaon have disappeared. No prejudice has been shown to be caused to the respondent company by continuation of the proceedings in the Labour Court at Delhi. On the contrary, if the proceedings which have been underway for long and in which the respondent has participated without objection, are terminated and the petitioner directed to approach the authorities at Gurgaon, his sufferance would be insurmountable.

13. The Counsel for the respondent at this stage states that the petition is bad for non-joinder of necessary parties; it is contended that the Government of NCT of Delhi ought to have been impleaded as a party to this petition. I do not find any merit in the said plea also which appears to have been taken by way of a last straw. No such plea has been taken in the written reply to the petition filed by the respondent. Moreover, it is not the petitioner/workman who is challenging any order of the Government of NCT of Delhi and I do not find it necessary for the petitioner to have impleaded the Government of NCT of Delhi as a party to the present petition. The Counsel for the respondent/management, after the order has been dictated, contends that the petition under Article 227 of the Constitution of India does not lie and the remedy if any of the petitioner was by way of petition under Article 226 of the Constitution of India. No such plea also has been taken in the written reply filed to the petition. This Court in the exercise of its supervisory

jurisdiction under Article 227 is empowered to correct such errors of the Courts/Tribunals within its jurisdiction. The Supreme Court in [State of Andhra Pradesh Vs. P.V. Hanumantha Rao \(D\) thr. Lrs. and Another](#), has held that if in the decision making process the Court deciding the case has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power of the High Court under Articles 226 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining. The petition is thus found to be maintainable.

14. The petition succeeds. The impugned order is set aside. The Labour Court, to proceed and deal with the reference in accordance with law.