
(2002) 05 GAU CK 0021

Gauhati High Court

Case No: Civil Revision No. 253 of 1996

The Indian Institute of Bankers
and Others

APPELLANT

Vs

Jogabrats Deb and Others

RESPONDENT

Date of Decision: May 21, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20

Citation: AIR 2003 Guw 6 : (2002) 2 GLT 27

Hon'ble Judges: A.H. Saikia, J

Bench: Single Bench

Advocate: S.S. Sharma and M.K. Choudhary, for the Appellant; B.R. Dey and J. Deb, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.H. Saikia, J.

Heard Mr. S.S. Sharma, learned counsel for the petitioners and also heard Mr. B.R. Dey, learned counsel for the respondents.

2. This Revision Petition is directed against the impugned order dated 16-2-1996 passed by the learned Munsiff No. 3 at Guwahati in T. S. No. 272/92.

3. The brief facts of the case are that the Respondent No. 1 being a permanent employee of the State Bank of India appeared in the Associate Examination, Part-1 in the year 1987 conducted by the petitioner No. 1, Indian Institute of Bankers. The Petitioner No. 1, being an association of Bankers with its principal object, to encourage study of theory of banking and for this purpose to institute a scheme of examination and award certificate etc. The petitioner No. 1 conducted some examinations from Born-bay, being its Head Office without having any other office

or branch office whatsoever outside Bombay. The examinations of the Institute were conducted on all India basis at about 530 centres all over India, The petitioner No. 1 received certain complaint against the respondent No. 1 while he was taking examination under the Institute of the petitioner No. 1 with the allegation that Respondent No. 1 adopted malpractices in the examination. Consequently, after issuing show cause against the respondent No. 1 and considering the explanation filed by him the petitioner No. 1 being satisfied that he had adopted malpractices, decided to impose upon the respondent No. 1 certain penalties namely (1) to cancel the result of the respondent No. 1 for the May 1988 Associate Examination; and (ii) to debar him from appearing in the examination of the Institute up to 31st May, 1993.

4. Feeling aggrieved by the said imposition of penalties, Respondent No. 1 instituted a Title Suit being T. S. No. 272/92 before the Court of Munsiff-3 (now re-designated as Civil Judge (Jr. Division)) at Guwahati for a decree for declaration and permanent injunction in respect of the said penalties.

5. The petitioner No. 1 contested the suit by filing written statement raising a preliminary objection questioning the territorial jurisdiction of the Civil Court at Guwahati on two counts namely that (a) the petitioner No. 1 had no permanent office at Guwahati and (b) the respondent No. 1 himself by an agreement with the petitioner No. 1 conferred jurisdiction only in Courts at Born-bay at the time of making application for Associate Examination for May, 1988.

6. The matter was brought to the High Court through Civil Revision No. 308/95 for a decision on the issue of territorial jurisdiction and this Court by order dated 22-8-1995 disposed of the matter directing the trial Court to decide the preliminary issue of territorial jurisdiction by adducing evidence. Eventually, the learned Munsiff by order dated 16-2-1996 after taking evidence arrived at a decision that the petitioner No. 1 had a office at Guwahati and as such the Civil Court had the territorial jurisdiction over the matter.

7. Mr. Sarma, learned counsel for the petitioner has contended that the respondent No. 1 by his own agreement conferred the jurisdiction only in the Courts at Bombay and as such the Civil Court at Guwahati had no territorial jurisdiction. He has referred to Annexure-4 to the Revision Petition which is the application Form for May 1988 Associate Examination.

8. I have carefully gone through the prescribed printed form of the said application. On perusal of the same, it transpires that the application form itself carries a declaration to be made by the applicant at the time of filing application seeking to appear in the examination in question. In the said declaration, it is clearly mentioned that the applicant agreed to abide by all the rules and Regulations governing the examination to be conducted by the Institute and in case, the applicant was desirous of instituting any legal proceeding against the Institute, he

also agreed that such legal proceeding would be instituted only in Courts at Bombay within the State of Maharashtra and not any other Courts. The said declaration in the application form is needed to be signed by the applicant. In the instant case, the respondent No. 1 duly put his signature which has not been disputed.

9. Mr. Sharma has also argued that except at Bombay the petitioner No. 1 had not been running any office or branch office of the Institute in any part of the country. According to him the petitioner No. 1 being a Institute for conducting examination, are only holding the respective examination in all the centres by making some temporary arrangement by appointing certain local honorary Secretary, who is entrusted for holding the examination only. There is no permanent office or subordinate office at Guwahati in order to give cause of action to file this suit by attracting the territorial jurisdiction of the Civil Court at Guwahati.

10. Mr. Sharma, referring to a decision rendered in [A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem](#), has further contended that the agreement between the parties conferring jurisdiction at a particular Court is not contrary to the public policy and such agreement did not contravene Sections 23 and 28 of the Contract Act inasmuch as where there may be two or more competent Court which can entertain a suit consequent upon a part of the cause of action having arisen therewithin, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves, the agreement would be void.

11. Refuting the impugned order, Mr. Dey, learned counsel for the respondent No. 1 has vehemently argued that by an agreement no jurisdiction can be conferred upon one particular Court and as such the agreement itself is void and contrary to the provision of law. He has trenchantly contended that the trial Court found that the petitioner No. 1 had office at Guwahati and as such, the Civil Court at Guwahati had the territorial jurisdiction to try the suit.

12. I have given my anxious consideration to the rival contentions advanced on behalf of the parties and also gone through the impugned order dated 16-2-1996. On perusal of the impugned order it is seen that the learned trial Court has observed as follows :--

"Defendants Nos. 1, 2 and 3 on the score adduced evidence of Sri L.C.C. Kenabar, Asstt. Secretary of the II B from their Bombay office and Sri J.B. Sarmah, the present local honorary Secretary of the defendant institute for Guwahati Sub-Centre. But both of them although deposed that there is no local or any office of the defendant institute at Guwahati witness Sri Kanabar in his one line cross-examination admitted that defendant No. 4 local honorary Secretary's office is at Guwahati. Sri B.J. Sarmah who is Chief Manager (Advance) of State Bank's Zonal Office at Guwahati stated that at present he is the local honorary Secretary of the Institute for Guwahati sub-centre and is getting honorarium for his secretarial job for the defendant institute. Hence

although there is no any branch office or institute at Guwahati in name and style. Witness Sri Sarmah of the State Bank is presently officiating honorary Secretary of the institute who is also made a party to the suit (defendant No. 4)."

13. After going through the said observation, it is found that the trial court merely on the basis of one line cross-examination of Defendant No. 4, the local honour secretary of the Institute at Guwahati, held that the Institute had an office at Guwahati when the Court itself held that the said officer stated that at present he was the local honour Secretary of the Institute of the Guwahati Sub-centre and was getting honorarium for his Secretariat job for the defendant Institute. On such admission of the Defendant No. 4 that he was the local honorary Secretary of the Institute of the Guwahati Sub-centre, I am disinclined to hold that the Institute had an office at Guwahati, "office" means, as per Black's Law" Dictionary. 6th Edition, a place for regular transaction of business or performance of a particular service. Considering the definition of office and also referring to the expression "Guwahati Sub-centre" as stated by Defendant No. 4. I feel safe to hold that the Institute was not running an office at Guwahati. Mr. Sharma has fairly stated that except; Bombay, the Institute is not having any office whatsoever in any part of the country. Merely having a local honorary Secretary's office or sub-centre at Guwahati it cannot be said to have a subordinate or Branch office at Guwahati, I fully approve the submissions advanced by Mr. Sharma that the Institute being responsible for running the concerned examination from Bombay is not having an office of permanent nature at Guwahati in order to attract the territorial jurisdiction of the Court at Guwahati.

14. In that view of the matter, I am of the considered view that the learned Munsiff committed grave illegality and irregularity in arriving at the finding that the Institute had an office at Guwahati in order to vest jurisdiction to the Civil Court at Guwahati.

15. Consequently, the impugned order dated 16-2-1996 is hereby quashed and set aside holding that the Civil Court at Guwahati had no territorial jurisdiction to entertain the present suit in question.

16. Before parting with the records, I would like to make it clear that since the matter relates to the examination for 1988 and the respondent No. 1 is also a permanent employee of the State Bank of India and also considering the fact that penalty imposed upon the respondent No. 1 has already become infructuous, no disciplinary action whatsoever needs be taken against the respondent No. 1 in view of the penalties imposed upon him by the petitioner No. 1. At this stage, Mr. Sharma, learned counsel for the petitioner has fairly indicated that no such action shall be taken against him as the entire matter involved in the Title Suit as noted above, has already become infructuous.

17. With the observations, reasons and discussions indicated above, this revision petition is allowed.

No costs.