(2005) 08 MAD CK 0159

Madras High Court

Case No: W.A. No. 1550 of 2003 and W.A.M.P. No. 2062 of 2003

Rajan N.S.	APPELLANT
Vs	
Indian Bank and Another	RESPONDENT

Date of Decision: Aug. 16, 2005

Acts Referred:

- Constitution of India, 1950 - Article 136, 226
- Consumer Protection Act, 1986 - Section 14, 2(1)

Citation: (2006) 1 LLJ 942 : (2005) 3 LW 785

Hon'ble Judges: Markandey Katju, C.J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: M. Ramamoorthy, for the Appellant; Dulip Singh, for King and Patridge, for the Respondent

Final Decision: Allowed

Judgement

F.M. Ibrahim Kalifulla, J.
The second respondent in the writ petition, is the appellant before us.

2. The challenge is to the order of the learned single Judge, holding that the complaint preferred by the appellant before the second respondent herein, i.e. District Consumer Disputes Redressal Forum, Chennai North, was without jurisdiction and thereby the second respondent was restrained from proceeding with the complaint by the issuance of a Writ of Prohibition.

3. The brief facts which are required to be stated for the disposal of this Writ Appeal, are that the appellant was an employee of the first respondent bank. Pursuant to the Voluntary Retirement Scheme (in short, VRS) thrown open by the first respondent bank in 2000, the appellant submitted his application expressing his willingness to go under the VRS. The appellant along with 3295 employees, was allowed to go under the VRS. It is stated that for the VRS employees, their pension settlement was made in a duration of three to four months. Out of them, 144

employees filed complaints before the second respondent alleging deficiency in service. The specific allegation of deficiency was stated to have included non addition of five years weightage to the qualifying service, non-including of certain components of wages while calculating the last drawn basic pay, non- settlement of pension immediately after one month from the date of retirement, failure to pay the commuted pension on the relevant due date and non-payment of interest for the delayed payment of pension apart from a reduction made in the pension at the time of its payment.

4. After entering its appearance before the second respondent in the complaint, the first respondent moved the present Writ Petition in W.P. No. 8122 of 2002 Indian Bank Vs. The President, District Consumer Disputes, Redressal Forum and N.S. Rajan, for the issuance of ''Writ of Prohibition'', as against the second respondent on the ground that the claim made by the appellant in his capacity as an ex-employee of the first respondent will not fall within the definition of ''consumer'' as defined u/s 2(1)(d), and the various allegations made therein, will not come within the definition of ''deficiency'' as defined u/s 2(1)(g) of the Consumer Protection Act, 1986.

5. The learned Judge, by placing reliance: upon the decision of the Hon''ble Supreme Court reported in Indian Medical Association Vs. V.P. Shantha and Others, has held that by virtue of the appellant''s previous employment with the first respondent and since the question to be decided in the complaint before the second respondent related to Voluntary Retirement Scheme implemented by the first respondent bank the relationship between the appellant and the first respondent would amount to ''contract of personal service'' which by virtue of the definition clause as contained in Section 2(1)(o) stood excluded and therefore, the second respondent did not have jurisdiction to decide the said complaint.

6. Assailing the order of the learned single Judge, Mr. M. Ramamoorthy, learned Counsel for the appellant, in the first instance, contended that the Court exercising writ jurisdiction, should be slow in issuing a Writ of Prohibition and that as per the dictum of the Hon''ble Supreme Court, only in rarest of rare cases, a Prohibitory Writ can be maintained. The learned Counsel, then after the appellant ceased to be an employee of the first respondent-bank, it will have to be held that the relationship of ''master and servant'' got snapped and therefore, the theory of ''contract of personal service'' cannot be applied to the case of the appellant vis-a-vis the first respondent. It was also contended that while the appellant got out from the service of the first respondent-bank under the VRS, the settlement of the pensionary benefits was carried out by a separate Trust, called "Indian Bank (Employees'') Pension Fund Trust" and therefore whatever principal set out by the Hon''ble Supreme Court in the Judgment reported in Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, would apply to the case on hand consequently, the complaint preferred by the appellant before the second respondent cannot be held to be not maintainable.

7. As against the above submissions, Mr. Duilip Singh, learned Counsel representing King and Patridge, and appearing for the first respondent, would contend that having regard to the decision of the Hon''ble Supreme Court reported in AIR 1996 SC 550 to the effect that "the service rendered by a Medical Officer to his employer under the contract of employment would be outside the purview as defined u/s 2(1)(o) of the Act", in the same analogy, the claim of the appellant as against the first respondent will also get excluded from the said definition of ''service''. The learned Counsel, therefore, contended that when the application of ''Consumer Protection Act'' itself was not available to the appellant, the complaint filed before the second respondent was rightly held to be ''not maintainable'' by the learned single Judge. According to the learned Counsel it is a clear case of ''abuse of process of law'' and therefore, no interference was called for to the order of the learned single Judge. The learned Counsel, then, contended that the issue raised by the first respondent in the Writ Petition was covered by the principal set out by the Hon''ble Supreme Court in relation to the issuance of a ''Writ of Prohibition'' as held by it in the judgment reported in Thirumala Tirupati Devasthanams and Another Vs. Thallappaka Ananthacharyulu and Others, and therefore, the learned Judge was justified in issuing the Writ of Prohibition.

8. Having heard the learned Counsel for" either parties, the scope of controversies that would arise for consideration in the complaint preferred by the appellant before the second respondent can be categorized as under:

(i) Whether the appellant would come within the definition of ''consumer'' and the allegations based on which, the claim made before the second respondent Forum would fall within the definition of ''deficiency of'' service'' as defined under the provisions of the said Act?

(iii) Whether the theory of ''contract of personal service'' as between the appellant and the first respondent would still apply after the appellant''s voluntary retirement? and

(iv) Whether the settlement of pensionary benefits by the Trust, called "Indian Bank (Employees'') Pension Fund Trust managed by the first respondent, would enable the appellant to seek the assistance of the ratio of the decision of the Hon''ble Supreme Court reported in 2000 I LLJ 552 (supra).

9. As far as the details of the claims made by the appellant are concerned, the same have been set out in detail by the learned single Judge in Para 6 of the impugned order. Therefore, we do not propose to repeat the same in this order. A reading of the said paragraph disclose that such controversies de hors the defence of want of jurisdiction of the second respondent would be a matter which is to be examined by the second respondent in detail to ascertain whether or not those controversies would give scope for bringing it under the definition of ''deficiency of service''. We also find that contention, namely, whether the appellant would fall under the

definition of ''consumer'' would also require a detailed examination. In the light of stand of the appellant that after permitting the employee to go under the VRS, the disbursement of pensionary benefits have been entrusted by the first respondent with the Trust constituted by it, the further question that would arise for consideration would be, whether the past relationship between the appellant and the first respondent would continue to remain, in order to invoke the principles of ''contract of personal service'' and thereby exclude the jurisdiction of the second respondent from dealing with the complaint preferred by the appellant.

10. On a reading of the decision of the Hon''ble Supreme Court reported in Indian Medical Association Vs. V.P. Shantha and Others, as well as the subsequent decision of the Hon''ble Supreme Court in 2000 I LLJ 552 (supra) we are of the view that it will be a matter for considerable debate as to which of the decisions could be applied to the facts pleaded by either of the parties before the second respondent. We are of the confirmed view that in the facts and circumstances pleaded and submissions made before us, we should refrain ourselves from entering into any discussion to reach a conclusion for holding that there was total lack of jurisdiction on the part of the second respondent in order to issue a Writ of Prohibition as against the second respondent. If we delve ourselves into such an exercise, we would be exceeding our limits and enter into an arena which has been statutorily left to be carried out by the second respondent who alone is fully competent to undertake such an exercise. Therefore, we are of the considered opinion that the various points raised should be allowed to be considered by the second respondent itself for the purpose of deciding the different issues that arise for consideration in the complaint including the issue relating to want of jurisdiction of the second respondent. In this context, the decision of the Hon''ble Supreme Court reported in Thirumala Tirupati Devasthanams and Another Vs. Thallappaka Ananthacharyulu and Others, can be usefully referred to wherein, in paragraph 14, the Hon''ble Supreme Court has held as under as regards the "Issuance of Writ of Prohibition":

14. On the basis of the authorities it is clear'' that the Supreme Court and the High Court have power to issue writs, including a writ of prohibition. A writ of prohibition is normally issued only when the inferior. Court or Tribunal (a) proceeds to act'' without or in excess of jurisdiction, (b) proceeds to act in violation of rules of natural justice, (c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act in contravention of fundamental right. The principal which govern exercise of such power must be strictly observed. A Writ of Prohibition must be issued only in rarest of rare cases. Judicial disciplines of the highest order has to be exercised whilst issuing such writs. It must be remembered that the writ jurisdiction is original jurisdiction distinct from appellate jurisdiction. An appeal cannot be allowed to be disguised in the form of a writ. In other words, this power cannot be allowed to be used ''''as a cloak of an appeal disguise''''. Lax use of such a power would impair the dignity and integrity of the subordinate Court and could also lead to chaotic consequence. It would undermine the confidence of the

subordinate Court. It was not even argued that there was total lack of jurisdiction in t this civil Court. It could not be denied that" the civil Court before which the suit was pending, had powers to decide on the maintainability of the suit and to decide on question of its jurisdiction. The civil Court had jurisdiction to decide whether the suit was barred by Section 14 of the said Act or on principles of res judicata/estoppel. Thus unless there was some very cogent or strong reason the High Court should not have prevented the Court of competent jurisdiction from deciding these questions. In other words the High Court should not usurp the jurisdiction of the civil Court to decide these questions. In the impugned Judgment no reason, much less a cogent or strong reason, has been given as to why civil Court could not be allowed to decide these questions. The impugned judgment does not state that the civil Court had either proceeded to act without or in excess of jurisdiction or that it had acted in violation of rules of natural justice or that it had proceeded to act under law which was ultra vires or unconstitutional or proceeded to act in contravention of fundamental rights. The impugned judgment does not indicate as to why the High Court did not consider it expedient to allow the civil Court to decide on questions of maintainability of the suit or its own jurisdiction. The impugned judgment does not indicate why the civil Court be not allowed to decide whether the suit was barred by virtue of Section 14 of the said Act or on principal of res judicata/estoppel. To be remembered that no fundamental right is being violated when a Court of competent jurisdiction is deciding rightly or wrongly matters before it.
(Italicising is ours)

Thus, the Hon''ble Supreme Court has cautioned that unless there are some very cogent or strong reasons, the High Court should not prevent the competent Forum from deciding the various questions raised before it including the question of ''want of jurisdiction''. It is also stated that allowing a Court of competent jurisdiction to proceed with the case and decide the same rightly or wrongly, would not result in violation of any Fundamental Rights.

11. In the case on hand, we are of the view that the various points raised by the appellant are all matters for which a detailed analysis has to be made by the second respondent itself even to find out as to whether such facts would clothe the second respondent with the necessary jurisdiction to decide the issues raised before it on merits. Based on the above ruling of the Hon''ble Supreme Court, when we pose a question to ourselves as to instead of issuing a Writ of Prohibition as asked for by the first respondent, if by permitting the second respondent, whether any serious prejudice would be caused? We find that by adopting the said course, while no prejudice would be caused to the first respondent, by issuing a Writ as asked for, there is likelihood of a serious injustice being caused to the appellant by preventing a statutory forum from exercising the powers conferred on it by law without there being a strong or convincing grounds for issuing such a prohibition. Therefore, it would be wholly inappropriate at this stage to interfere with the complaint

preferred by the appellant before the second respondent by issuing a Writ of Prohibition.

12. As far as the decision relied upon by the learned single Judge reported in AIR 1996 SC 550 (supra), that case arose between a. patient and a hospital wherein, the incidental which came up for consideration was as to the relationship between the Medical Practitioner and the Hospital and in that context, the Hon''ble Supreme Court held that would amount to ''contract for service'' between the Hospital and the Medical Practitioner and such a contract will be covered by the exclusionary part of the definition of ''service'' contained in Section 2(1)(o) of the Act. What was held by the Hon''ble Supreme Court in paragraph 56(4) which has been referred to by the learned single Judge was in regard to the relationship of said medical officer vis-a-vis the hospital, where services were performed by him and that would fall outside the purview of ''service'' as defined u/s 2(1)(o) of the Act. Therefore, with due respect to the learned single Judge, we are of the opinion that by solely relying upon the above decision, it would be travesty of justice to throw the appellant''s complaint from the file of the second respondent by issuing a Writ of Prohibition.

13. On the other hand, in our considered view, the second respondent may have to examine the question whether after the appellant''s retirement under VRS, the past relationship Will continue to exist between the appellant and the first respondent and whether the existence of Indian Bank (Employees'') Pension Fund Trust managing the said Fund would enable the appellant to maintain the complaint as against the first respondent in order to find out whether the merits of the complaint can be examined for granting any relief to the appellant. We are, therefore, not in a position to agree with the view of the learned single Judge in issuing the Writ of Prohibition as against the second respondents, instead we hold that even the said question as regards the jurisdiction of the second respondent to deal with the complaint of the appellant itself should be allowed to be examined by the second respondent itself while dealing with the merits of the appellant''s complaint preferred before it. We, however, hasten to add that we are not directing the second respondent to decide any preliminary issue, namely, want of jurisdiction. We only hold that even the question as regards the jurisdiction can also be decided by the second respondent itself while dealing with the complaint on merits. In this context, the decision of the Hon''ble Supreme Court reported in D.P. Maheshwari Vs. Delhi Administration and Others, can be usefully referred. In the very opening paragraph, the Hon''ble Supreme Court has held as under at pp. 426&427 of LLJ:

There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their

jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a Preliminary issue may be decided by them. Neither the jurisdiction of the High Court Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision or issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunal and Court who are requested to decide preliminary questions must therefore ask themselves whether such threshold part adjudication, is really necessary and whether it will not lead to other woeful consequences. After all Tribunal like Industrial Tribunal are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not be stifled by all manner of preliminary objections and journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues.

14. Having regard to our above said conclusion, we set aside the order of the learned single Judge dated February 21, 2003 2003 II LLJ 972 (Mad) (supra) and dismiss the Writ Petition preferred by the first respondent. Consequently, the second respondent is directed to deal with the complaint of the appellant made in O.P. No. 309 of 2001, adjudicate the same based on the points raised before it including the question relating to its jurisdiction. Inasmuch as four years have gone by due to the pendency of the Writ Petition and the Writ Appeal in this Court, we only direct the second respondent to adjudicate the complaint expeditiously preferably within a period of three months from the date of receipt of copy of this order. Accordingly, the Writ Appeal is allowed. No costs. Consequently, WAMP is closed.