

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th May, 2011.

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W.P.(C) 12405/2005

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**THE MANAGEMENT OF M/S STERLING
HI-TECH LTD.**

..... Petitioner

Through: Mr. D.K. Malhotra & Mr. Rajesh
Kumar Malhotra, Advocates.

Versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Sachin Chopra with Mr. Amit
Kumar, Advocates for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported
in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The writ petition was filed impugning the Notification/Order dated 21st August, 2001 of the Secretary (Labour) of the Govt. of NCT of Delhi (respondent no.1) made in exercise of powers under Sections 10(1)(c),

10(1)(d) & 12(5) of the Industrial Disputes Act, 1947, referring the dispute as to the termination by the petitioner employer of the services of the respondent no.2 workman to the Industrial Adjudicator at Delhi for decision in accordance with law.

2. It is the case of the petitioner employer that the Govt. of NCT of Delhi is not the “Appropriate Government” to refer the dispute between the petitioner employer and the respondent no.2 workman for adjudication for the reason of the respondent no.2 workman having been appointed as Accountant for the factory/plant of the petitioner employer at Sikandrabad, District-Bulandshahar (U.P.) and further for the reason of respondent no.2 workman throughout his service tenure having been posted at the Sikandrabad Plant of the petitioner employer. It is further the case of the petitioner employer that the termination of the services of the respondent no.2 workman also took place at Sikandrabad Plant where the order of termination was issued and became effective and the respondent no.2 workman himself was also not resident of Delhi but living in Ghaziabad (U.P.) and thus the dispute if any, arose at Sikandrabad where the

establishment of the petitioner employer existed and hence the Govt. of NCT of Delhi could not have made an order of reference of the said dispute.

3. The delay of about 4 years from the date of the Notification/Order impugned, in preferring the present writ petition was explained by pleading that the petitioner employer was not served with the notice from the Industrial Adjudicator to whom the dispute was referred as aforesaid and upon learning of the *ex parte* award dated 9th May, 2003 (published on 22nd September, 2003) applied to the Industrial Adjudicator for setting aside thereof and which was allowed on 2nd May, 2005 and whereafter the present writ petition was preferred.

4. Notice of the writ petition was issued and vide *ex parte* order dated 29th July, 2005 further proceedings before the Industrial Adjudicator stayed. Rule was issued in the writ petition on 11th October, 2006 and the interim order made absolute. The respondent no.2 workman applied under Section 17B of the Act. The matter came up before this Bench on 28th March, 2011 when though dismissing the application under Section 17B as not maintainable since there is no award of reinstatement till now, it was

enquired from the counsel for the petitioner employer as to how the writ petition challenging the reference and which writ petition as well as earlier conduct of the petitioner employer has already delayed the adjudication of the reference for the last 10 years, was maintainable particularly in the light of *National Council for Cement and Building Materials Vs. State of Haryana* (1996) 3 SCC 206. The counsel for the petitioner employer however expressed inability to argue and sought adjournment. Finding the petitioner employer to be abusing the process of the Court, while adjourning the writ petition to 11th November, 2011, the interim order of stay of further proceedings before the Industrial Adjudicator was recalled and the parties were directed to appear before the Industrial Adjudicator on 18th April, 2011.

5. The petitioner employer thereafter applied for recall of the order dated 28th March, 2011 supra. The counsel for the petitioner employer was asked to address on the writ petition itself. Again, adjournment was sought. The counsel for the petitioner employer has today been heard on the writ petition itself. The counsel for the respondent no.2 workman has not appeared. However, need is not felt to issue notice to the respondent no.2 workman.

6. The counsel for the petitioner employer has argued that the petitioner employer had taken objection as to the territorial jurisdiction during the conciliation proceedings itself and notwithstanding the same and without disclosing as to how the respondent no.1 was treating itself to be the appropriate authority qua dispute between the petitioner employer and the respondent no.2 workman for reference thereto to the Industrial Adjudicator at Delhi, had made the reference. It is contended that since the Industrial Adjudicator can adjudicate only what is referred to it and no reference on the aspect of territorial jurisdiction having been made, it is not open to the petitioner employer to set up the plea of territorial jurisdiction before the Industrial Adjudicator; in the circumstances, the only remedy of the petitioner is by way of this writ petition. Reference is made to the judgment of the undersigned in ***Mahipal Singh Vs. Presiding Officer*** 170 (2010) DLT 130 observing that the Industrial Adjudicator cannot go into the question of the validity of the reference and that if the employer says that the workman has made a stale claim then the employer must challenge the reference by way of writ petition on the ground of delay and deny existence of industrial

dispute. It is thus contended that the undersigned having taken a view that the challenge to the reference is maintainable, this writ petition would lie.

7. Reference is also made to:

(i) ***Braham Prakash Vs. Govt. of NCT of Delhi*** 143 (2007) DLT 311 laying down that where the situs of employment of the workman at the time of termination was outside Delhi and the dispute substantially arose outside Delhi, merely because the workman was appointed in Head Office at Delhi and got his ESI / PF contributions in Delhi and resided in Delhi would not vest territorial jurisdiction in Delhi.

It may be noticed that the challenge in the said case was to the award of the Industrial Adjudicator.

(ii) ***Bikash Bhushan Ghosh Vs. Novartis India Ltd.*** (2007) 5 SCC 591 laying down that the situs of employment of the workman would be a relevant factor for determining the appropriate government capable of making reference.

The Supreme Court however further laid down that the State Government within whose jurisdiction a part of the cause of action arose also has the jurisdiction to make the reference. It was further laid down that unless the employer suffered any prejudice, it could not question jurisdiction.

(iii) ***DLF Universal Ltd. Vs. Govt. of National Capital Territory, Delhi*** 96 (2002) DLT 825 holding that where the workman had worked at Gurgaon, situs of employment was Gurgaon, termination letter was issued at Gurgaon, Govt. of NCT of Delhi would not have jurisdiction to make the reference to the Industrial Adjudicator.

(iv) ***Paritosh Kumar Pal Vs. State of Bihar*** 1984 Lab I.C. 1254 (Patna Full Bench) laying down that general principles underlying jurisdiction of Civil Procedure Code would be relevant in determining the appropriate Government competent to make reference and that situs of employment would determine the jurisdiction.

(v) ***Escorts Ltd. Vs. Commissioner of Central Excise, Delhi-II*** (2004) 8 SCC 335-though the said judgment is included in the

compilation of judgments handed over but neither relied upon during the hearing nor found relevant.

(vi) ***Haryana Financial Corporation Vs. M/s Jagdamba Oil Mills*** JT 2002 (1) SC 482 though the said judgment is included in the compilation of judgments handed over but neither relied upon during the hearing nor found relevant.

(vii) ***Lohia Starlinger Limited Vs. Govt. of NCT of Delhi*** 2006 V AD (Delhi) 732 also laying down that dispute can be raised only at situs of employment and merely receipt of order of termination at Delhi would not create jurisdiction in Delhi.

(viii) ***Nedungadi Bank Ltd. Vs. K.P. Madhavankutty*** (2000) 2 SCC 455 holding the reference of a stale dispute for adjudication to be bad and quashing the reference.

(ix) ***National Engineering Industries Ltd. Vs. State of Rajasthan*** (2000) 1 SCC 371 laying down that the High Court can entertain a writ petition impugning a reference on the ground of non-existence of

an actual or apprehended industrial dispute but the Industrial Tribunal cannot examine the validity of the reference.

(x) ***Hindustan Samachar Vs. State of Orissa*** 1979 Lab. I.C. 106 (DB) laying down that Orissa Government has jurisdiction to refer dispute of termination of service of servant attached to Branch Office at Orissa even where the Head Office was at Delhi.

(xi) ***Workmen of Shri Ranga Vilas Motors (P) Ltd. Vs. Sri Ranga Vilas Motors (P) Ltd.*** AIR 1967 SC 1040 laying down that the dispute ordinarily arises at the place where the workman is working and not at the Head Quarter of the industry.

(xii) ***M/s Little Sons and Co. Vs. Amar Nath*** 1978 Lab. I.C. 430 (P&H) laying down that reference of dispute is not to be necessarily made by the State within the territory of which the Head Office of the employer company is situated.

8. What has troubled me most in the present case is that the petitioner employer by first being proceeded against *ex parte* before the Industrial Adjudicator, then applying for setting aside of the *ex parte* award and

thereafter by filing the present writ petition has stalled the adjudication of the reference by 10 years as aforesaid. The spirit of the I.D. Act is expeditious disposal of the *lis* by the Industrial Adjudicator. Section 17B of the Act was introduced to provide relief to the workman for delays owing to challenge to the award in favour of the workman during the pendency of the writ petitions before the High Court and the Supreme Court. If challenges to the references to the Industrial Adjudicator are routinely allowed, it will allow an unscrupulous employer to delay the adjudication of the reference indefinitely by first impugning the reference order itself and during the pendency of which challenge the benefit of Section 17B would also not be available to the workman.

9. The Supreme Court in *National Council for Cement & Building Materials* (supra) noticed the appalling situation created due to challenge to the decision of the Industrial Adjudicator on such preliminary issues being challenged in the High Court or the Supreme Court and during which time the reference is stayed and lies dormant. Reference was made to *Cooper Engineering Limited Vs. P.P. Mundhe* (1975) 2 SCC 661 laying down that

there was no justification for a party to stall the final adjudication of the dispute referred to the Industrial Adjudicator by questioning the decision on preliminary issues before the High Court. Reference was also made to ***S.K. Verma Vs. Mahesh Chandra*** (1983) 4 SCC 214 deprecating / disapproving the practice of raising frivolous preliminary issues / objections at the instance of the employer to delay and defeat adjudication on merits. Reference was further made to ***D.P. Maheshwari Vs. Delhi Administration*** (1983) 4 SCC 293 and to ***Workmen Vs. Hindustan Lever Ltd.*** (1984) 4 SCC 292 laying down that all issues whether preliminary or otherwise should be decided together so as to rule out the possibility of any litigation at the interlocutory stage. The Supreme Court thus held that the High Court should refuse to intervene in the proceedings pending before Industrial Adjudicator at an interlocutory stage.

10. Reference at this stage may also be made to the judgment dated 24th September, 2008 of a Single Judge of this Court in W.P.(C) No.12602/2006 titled ***Hongkong and Shanghai Banking Corporation Ltd. Vs. Government of India*** also laying down that the Courts cannot interfere with a reference

order under Section 10(1) of the Act because that order does not affect the rights of the party and the writ petition lies only when the rights of parties have been adversely affected. It was held that a mere reference under Section 10(1) does not affect anybody's rights and hence no writ petition should ordinarily be entertained against a mere reference and the writ petition is liable to be dismissed as premature. It was yet further held that the jurisdiction under Article 226 of the Constitution of India should not be allowed to be exploited by those who can well afford to wait, to the detriment of one who can ill afford to wait. The Intra Court Appeal being LPA No.684/2008, preferred against the aforesaid judgment was dismissed by the Division Bench of this Court on 11th November, 2008.

11. I may notice that another Division Bench of this Court in ***Moolchand Khairati Ram Hospital Karamchari Union Vs. Labour Commissioner*** MANU/DE/1222/1996 held that the High Court can go into the validity of the reference in certain situation, though it is not to sit in appeal over the order of the State Government and is not entitled to consider the propriety or the satisfactory character of the reasons. However, the said observations

came to be made in the context of the reference not addressing the real dispute which had arisen between the workmen and the employer. The Supreme Court in appeal against the aforesaid judgment of the Division Bench, in judgment reported in (2002) 10 SCC 708 also affirmed that in certain situations challenge to the reference itself is maintainable.

12. Another Division Bench of this Court in *Eagle Fashions Vs. Secretary, Labour* (1999) 1 LLJ 232 (Del) also held the challenge to the reference to be maintainable where the reference did not address the real dispute.

13. Mention must also be made of the recent dicta of the Division Bench in judgment dated 16th May, 2011 in LPA No.425/2011 titled *Bata India Ltd. Vs. Union of India* though qua reference under Section 7B of the I.D. Act holding that there is no absolute bar for interference in exercise of power under Article 226 when a matter is referred by a Government to an Industrial Tribunal if the reference suffers from jurisdictional error or no industrial dispute exists and on ancillary grounds. It was further held that if factual disputes are involved, it is advisable that the Industrial Tribunal should

adjudicate the same and the writ Court should not exercise the discretion and refrain from interfering with the order of reference.

14. I have in *Radhey Lal Pradeep Kumar Vs. Sh. Shyam Lal* MANU/DE/1670/2010 held that if it were to be held as a general rule that the challenge to reference on ground of the dispute being stale, should be by impugning the order of the appropriate government of reference and the employer would not be entitled to impugn the ultimate award on such ground, even if a defence before the Industrial Adjudicator, for the reason of having not challenged the order of reference, the same is likely to delay considerably the adjudication by the Industrial Adjudicator. It was thus held that such challenge can be made at the time of challenge to the award also. I am similarly of the view that a challenge to the reference on the ground of the territorial jurisdiction of the appropriate government as in this case is also permissible at the time of challenge to the award and ought not to be permitted to be raised by challenging the reference.

15. The counsel for the respondent no.1 has also drawn attention to the documents in the present case to show that there is no error on the part of the

respondent no.1 in exercising the jurisdiction to refer the dispute. Reference is made to the letters of appointment of the respondent no.2 workman issued by the petitioner employer at Delhi; to the factum of Head Office and Registered Office of the petitioner employer being at Delhi; to the termination letter also issued from Delhi. The respondent no.2 workman in his counter affidavit and to which no rejoinder has been filed has also stated that he used to collect his salary/wages from Delhi.

16. I have in *Raj Kumar Jaiswal Vs. Rangi International Pvt. Ltd.* 2009 (113) DRJ 620 held that industrial dispute arises at the place where the employer is exercising effective control and the State Government having jurisdiction over the place from which the employer exercises effective control would have jurisdiction to make the reference. It was also observed that in the absence of any prejudice being shown to be suffered by the employer in contesting the proceedings at Delhi, the plea of territorial jurisdiction cannot be permitted to be taken especially in matters relating to Industrial Disputes Act which is social welfare legislation. The counsel for

the petitioner employer herein has also been unable to show the prejudice which would be suffered by the petitioner in contesting the dispute at Delhi.

17. In the present case not only was the letter of termination issued by the petitioner at Delhi but a copy thereof was also forwarded by the petitioner employer to the Assistant Labour Commissioner at Kalkaji, Delhi also. The petitioner employer thus, at the time of termination appears to have been of the view that the jurisdiction over the dispute likely to arise from termination would be of the authorities at Delhi and the plea of territorial jurisdiction has been taken mischievously as an afterthought, to delay adjudication of the industrial dispute.

18. There is thus no merit in the writ petition; the same is dismissed. Costs of litigation of only ₹7,500/- were paid under interim orders to the respondent no.2 workman. Having found the writ petition to be *mala fide* and in the abuse of the process of Court and the petitioner having delayed the adjudication of the dispute by six years and to the prejudice of the respondent no.2 workman, it was enquired from the counsel for the petitioner employer as to what should be the measure of compensation to

balance the equities arising from the interim orders obtained by the petitioner employer. The Supreme Court in *Abhimanyoo Ram Vs. State of U.P.* (2008) 17 SCC 73 and in *Ramesh Chandra Sankla Vs. Vikram Cement* (2008) 14 SCC 58 has held that the Court, at the time of final decision, must balance the equities arising from the interim orders. It was enquired as to what would be the amount which the petitioner employer would have been liable to pay if Section 17B had applied. This Court is of the opinion that the same would be the best measure for compensating the respondent no.2 workman. Neither was the counsel for the petitioner employer able to tell the last drawn wages of the respondent no.2 workman nor are the same borne out from the paper book. However, considering the fact that the respondent no.2 workman was appointed in the year 1996 at a monthly basic salary of ₹3075/- besides HRA, conveyance allowances etc., the last drawn salary in 2001 can safely be presumed to be minimum ₹6,000/- per month i.e. ₹72,000/- per annum and for approximately six years for which the proceedings have been delayed, the payment under Section 17B would have been above ₹4 lacs. However, I am confining the amount

payable by the petitioner to the respondent no.2 workman to ₹1 lac only. I feel that imposition of such a condition is also necessary to send a message to the Bar to desist in future from such frivolous litigation in abuse of the process of the Court.

19. The petitioner employer is accordingly directed to within six weeks of today and as a condition for contesting the dispute before the Industrial Adjudicator, pay the said sum of ₹1 lac to the respondent no.2 workman.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 10, 2011

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(corrected and released on 26th May, 2011)