

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

% Judgment delivered on 11.05.2012

+ **W.P.(C) 2791/2012**

MUKESH RANI & ORS. ... Petitioners

Versus

MUNICIPAL CORPORATION OF DELHI & ORS. ... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Pardeep Gupta

For the Respondents : Ms Saroj Bidawat

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

1. This writ petition is directed against the orders dated 25.10.2011 and 11.04.2012 in TA No. 51/2010 and TA No. 1429/2009.

2. Originally, the petitioners had filed a writ petition before this Court being W.P.(C) No. 1675/2000 which was disposed of by an order dated 29.01.2004. Subsequent thereto, the petitioners filed a civil suit being suit No. 1593/2007 at the Tis Hazari Courts. During the pendency of the said civil suit, a notification was

issued under Section 29 of the Administrative Tribunals Act, 1985 whereby disputes regarding the employees of the MCD came within the purview of the Central Administrative Tribunal, Principal Bench, New Delhi. As a result, the said suit was transferred to the Central Administrative Tribunal and was numbered as T.A. No.51/2010. T.A. No.1429/2009 is also a proceeding which emanated from the said suit but had travelled to the High Court on the basis of an interim order. That was transferred by the High Court by an order dated 07.08.2009 in CM(M) No.74/2008. Thus, essentially, TA No.1429/2009 also pertains to the same civil suit which was transferred as TA No.51/2010.

3. The stand taken by the petitioners in the civil suit was that their case fell within the jurisdiction of the civil court. However, the stand taken by the MCD in the civil suit was that the cause of action fell within the jurisdiction of the labour court inasmuch as the petitioners were workmen. When the suit got transferred to the Central Administrative Tribunal and was re-numbered as TA No.51/2010, the issue with regard to jurisdiction also stood transferred to the Central Administrative Tribunal. Had the notification under Section 29 not been issued, the suit would have continued before the Tis Hazari Courts and it would have been an issue between the parties as to whether the suit was maintainable or not in view of the opposing stands taken by the parties that the petitioners were or were not workmen

and, therefore, whether the matter was to be adjudicated upon by the labour court or the civil court.

4. The issue was raised in the context of as to whether the MCD fell within the definition of industry or not. Unfortunately, before the Central Administrative Tribunal, when the matter came up for consideration, the Tribunal took the view that since disputed questions of fact were involved, it would be appropriate if the petitioners were relegated to the labour court to re-agitate the grievance regarding termination of their services which was allegedly done on the ground that their appointment letters had been forged and fabricated. While doing so, the Tribunal also noted the following:-

“Even the learned counsel for the petitioners under instructions from the petitioners, who were present in the Court, agrees that the petitioners have no objection if the present paper books are transferred to the labour court to decide the issue regarding termination of services giving liberty to the parties to lead the evidence.”

Consequently, the Central Administrative Tribunal disposed of the said T.A.s and directed the petitioners to raise a dispute under the Industrial Disputes Act, 1947. Thereafter, there is yet another complication and, that is, that the petitioners sought a reference under the Industrial Disputes Act, 1947, which is still pending before the Conciliation Officer.

5. It is, in this backdrop, that the present writ petition has been filed challenging the orders dated 25.10.2011 and 11.04.2012 passed in the said TA. The first question that we put to the learned counsel for the petitioners was that when he had already given his consent to transfer of the matter to the labour Court, how could he have filed the present writ petition. He, of course, immediately answered that, by consent jurisdiction cannot be conferred on any authority or Court which it otherwise does not possess and, therefore, his consent to that extent ought not to be held against him when a clear question of jurisdiction in law is raised. Another answer given by the learned counsel for the petitioners was that the consent that he gave was to the transfer of the paper books to the labour court and not for disposing of the TA coupled with the direction that the petitioners may raise a dispute under the Industrial Disputes Act, 1947. Therefore, it was contended by the learned counsel for the petitioners that he cannot be bound down by the so-called consent given by him before the Tribunal.

6. We have given a great deal of thought to this aspect of matter. It is a settled position in law that by consent two parties cannot confer jurisdiction on a Court or an authority which does not have otherwise jurisdiction and that the issue of lack of jurisdiction can be the subject matter of challenge at subsequent stages also. There is also some merit in the contention of the learned counsel for the petitioners that

the consent he gave was for transfer of the paper books to the labour court and not for disposing of the TA for the purposes of going into the evidence and examining as to whether the appointment letters had been forged or fabricated nor was the consent for disposing of the TA and leaving the petitioners to raise the disputes under the Industrial Disputes Act, 1947 by filing statement of claims before the labour court. Consequently, we feel that the petitioners ought not to be bound down by the said 'consent' which is recorded in the impugned order.

7. Having said that, the next question which arises is - what do we do with this matter? We must also point out that earlier the petitioners were aggrieved by two orders both dated 16.07.2011 passed by the Central Administrative Tribunal in the same T.A.s. The orders were to the effect that the T.A.s were not maintainable inasmuch as the High Court by its orders dated 29.01.2004 while disposing of the writ petition had not granted permission to the petitioners to file a civil suit and, therefore, the civil suit itself was not maintainable. Consequently, since the civil suit had become the Transfer Application 51/2010, the same was also not maintainable. These issues were the subject matter of W.P.(C) 6013/2011 which was disposed of by a Division Bench of this Court on 19.08.2011. The entire order

of the Division Bench is material and consequently, the same is reproduced hereinbelow:-

“Heard Mr Pradeep Gupta, learned counsel for the petitioner and Mr. Shanker Raju, learned counsel for the respondent.

2. Assailing the two orders dated 16th July, 2011 passed by the Central Administrative Tribunal, Principal Bench (for short, the tribunal) in T.A. No. 1429/2009 and T.A. No.51/2010, the present writ petition has been preferred. Mr Pradeep Gupta, learned counsel for the petitioner contended that the tribunal has erroneously dismissed the application on the ground that the High Court had dismissed the writ petition by a detailed judgment on 29th January, 2004, though this Court had really not entertained the writ petition on the ground that disputed questions of facts were involved. He has drawn inspiration from the clarificatory order passed by the learned single Judge in the contempt petition. On a perusal of the order passed by the writ Court as well as the clarification given in the contempt petition, we are of the considered opinion that this Court had not adverted to the lis on merits and, therefore, the petitioners had filed the civil suit. In these circumstances, the civil suit was maintainable and after the MCD came under the jurisdiction of the tribunal under Section 29 of the Administrative Tribunals Act, 1985, both the suits as well as the miscellaneous application were transferred to the tribunal and they are re-numbered as transfer applications. Thus, it was incumbent on the part of the tribunal to advert to the merits of the case keeping in view the averments and the decisions in

the field, but it threw it over board on the ground that the suit was not maintainable.

3. Mr. Raju, learned counsel for the respondent-MCD upon perusal of the order passed by this Court could not really and rightly so apprise us why the writ petition was not dealt with on merits.

4. In view of the aforesaid, we have no other option, but to set aside the impugned orders passed by the tribunal and direct it to advert to the lis on merits. Needless to emphasize, we have not expressed any opinion on merits of the case. The writ petition is allowed to the extent indicated above without any order as to costs.”

(underlining added)

8. A reading of the said order dated 19.08.2011 makes it clear that it was incumbent on the Tribunal to advert to the merits of the case keeping in view the averments and the decisions in the field. The Division Bench of this Court noted that the Tribunal was in error in throwing out the TAs on the ground that the suit was not maintainable. Of course, the Division Bench had not expressed any opinion on the merits of the case.

9. Consequently, the position that emerges now is that the Central Administrative Tribunal has to decide the *lis* between the parties. One issue in the *lis* between the parties is whether the matter is to be adjudicated upon by the Central Administrative Tribunal or by the Labour Court. There is no finding on

this aspect by the Tribunal. We feel that merely because the Tribunal felt since the evidence had to be led in the matter, the petitioners should be relegated to the labour court, is not a correct approach. By virtue of Section 29 of the said Act, suits are liable to be transferred to the Central Administrative Tribunal where the causes of action whereupon such suits are based are such that if they had arisen after the establishment of the Central Administrative Tribunal, the same would have been within the jurisdiction of the said Tribunal. Thus, the Central Administrative Tribunal has to return a finding with regard to its jurisdiction. This is all the more so because there was a pending lis between the petitioners on the one hand and MCD on the other with regard to the jurisdiction of the civil court and, now, of the Central Administrative Tribunal, with regard to the maintainability of the cause before the Tribunal.

10. As a result, the impugned orders are set aside. The T.As stand restored to the Central Administrative Tribunal which shall decide all the issues on merits.

BADAR DURREZ AHMED, J

V.K.JAIN, J

MAY 11,2012
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