

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18041 of 2014

=====

Reliance Communication Limited a company registered under the Companies Act having its registered office at H-Block, 1st Floor, Dhirubahi Ambani Knowledge City, Navi Mumbai and circle office at 7th Floor, Kashi Place, P.S.- Kotwali, Patna through its authorized signatory Indrajit Mukhopadhyay, son of Sri N.C. Mukhopadhyay, 7th Floor, Kashi Place, P.S.- Kotwali, Patna

.... Petitioner

Versus

1. The Union of India through the Secretary, Department of Labour and Employment, New Delhi
2. The Assistant Labour Commissioner (Central), Room No. 6, 16 and 17, 2nd Floor, A Block, Mauryalok Complex, Patna
3. The Presiding Officer, Industrial Tribunal, Muzaffarpur
4. Manoj Kumar, son of Late Awadh Bihari Singh, resident of Mohalla- Hanuman Mandir, Yadav Nagar, P.O.- Bhagwanpur, P.S.- Sadar, District-Muzaffarpur

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan, Advocate

Mr. Shshil Kumar, Advocate

Mr. Dipak Kumar, Advocate

For the Respondent no.4 : Mr. Santosh Kumar, Advocate

For the Respondent-U.O.I.: Mr. Awadesh Kumar Pandey, SCG-2

Mr. Ravender Kumar Sharma, CGC

For the Respondent-State : Mr. Alok Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-03-2017

This writ application has been filed by the petitioner
for quashing of the order dated 04.04.2014 passed by the Presiding



Officer, Industrial Tribunal, Muzaffarpur in I.D. Case No. 01 of 2013 whereby the petitioner's application with preliminary objection on the point of jurisdiction has been dismissed.

2. Mr. Rajesh Ranjan, learned Advocate for the petitioner submitted that telecommunication sector is a controlled industry as notified by the Central Government under the Industrial Disputes Act, 1947 (for short 'I.D. Act') and, therefore, the appropriate Government with respect to constitution of industrial tribunal and entrustment of industrial disputes concerning controlled industry is the Central Government. He submitted that the Industrial Tribunal, Muzaffarpur constituted by the State Government had no jurisdiction to entertain the dispute directly raised by the workman (respondent no.4) before it, as any industrial dispute arising out of employment of a controlled industry can only be entertained by a tribunal constituted by the Central Government.

3. Mr. Rajesh Ranjan, learned Advocate submitted that the workman being an employee of the petitioner-company had already raised industrial dispute before the Central Government and subsequently filed the present case by suppressing the aforesaid fact.

4. He submitted that the workman was initially appointed in the year 2007 as a consultant in one of the group



companies of the petitioner namely, Reliance Next Link Pvt. Ltd. Subsequently, in the year 2009, he was absorbed in the employment of the petitioner-company and was posted at Muzaffarpur. Due to certain business exigency, on 31.08.2012, he was transferred to Aurangabad, Bihar, where he was asked to join by 03.09.2012, but instead of joining his new place of posting, he immediately sent an e-mail that he was unable to join his duties on account of his ill health. He requested the management to allow him to work till his recovery. The management allowed him to continue to work at Muzaffarpur for the next one month. Thereafter, the workman failed to join at Aurangabad. The petitioner company sent another letter to the workman on 05.10.2012 asking him to immediately join at Aurangabad.

5. He submitted that subsequently the workman filed a complaint dated 08.10.2012 before the Deputy Labour Commissioner, Muzaffarpur, alleging therein that when he raised demands before the management regarding his service condition and other legal demands, he was transferred from Muzaffarpur to Aurangabad with unfair motive to harass and torture him mentally. The Deputy Labour Commissioner, Muzaffarpur, subsequently transferred the said complaint to the Labour Enforcement Officer (Central), Muzaffarpur by letter dated 17.10.2012 for necessary



action.

6. It is submitted that when the workman did not pay any heed to the aforesaid letter dated 05.10.2012, the petitioner-company sent another letter dated 11.10.2012 followed by letter dated 18.10.2012 whereby the workman was informed that if he failed to join immediately, it would be deemed that he had voluntarily abandoned his service. Once again, the workman failed to respond to the said letters. When the workman did not respond to the aforesaid notices and also failed to join his duty without any intimation, it was presumed that the workman had voluntarily abandoned his service. Accordingly, a sum of Rs.30,519/- was credited in his account on 12.12.2012 by way of full and final settlement of his dues with the petitioner-company.

7. It is submitted that on the basis of the complaint filed by the workman, a conciliation proceeding was initiated by the Assistant Labour Commissioner (Central), wherein the petitioner-company had submitted its reply. The Conciliation Officer by letter dated 14.03.2013 submitted his report, wherein he declared that the proceeding ended in failure of conciliation.

8. It is submitted by Mr. Rajesh Ranjan, learned Advocate that the petitioner appeared in the I.D. Case No. 01 of 2013 filed directly by the workman suppressing the fact that his



complain was entertained by the Conciliation Officer and raised a preliminary objection with regard to jurisdiction of the tribunal to entertain the dispute.

9. He submitted that respondent no.4 was not a workman as defined under **Section 2(s)** of the **I.D. Act**. He was discharging duty, which was managerial in nature and was drawing salary of Rs.13, 500/- per month.

10. He submitted that the tribunal erred in law in rejecting the preliminary objection filed on behalf of the petitioner-company vide impugned order dated 04.04.2014.

11. He submitted that since the petitioner-company is a telecommunication provider having received licenses from the Department of Telecommunication under Section 4 of the Indian Telegraph Act, 1885, the provisions of the I.D. Act accord jurisdiction upon the labour courts/tribunals constituted by the Central Government and, therefore, the workman could not have invoked the jurisdiction of the industrial tribunal constituted by the State Government.

12. The stand of the petitioner has been supported both by the Union of India and the State of Bihar in their respective counter affidavits filed before this Court.

13. In the counter affidavit filed on behalf of the



respondent-Union of India, it is stated that the Central Government is the “appropriate Government” in respect of the establishment of the petitioner. It is further stated that the action of the respondent-workman in filing of his dispute before the Industrial Tribunal, Muzaffarpur is not correct as the Central Government is the “appropriate Government” in respect of the petitioner’s establishment.

14. Similarly, in counter affidavit filed on behalf of the respondent-State of Bihar, it is stated that the petitioner-company comes under the Schedule of employment of Central Government and in view of **Section 2(a)(i)** of the **I.D. Act**, the “appropriate Government” in case of the petitioner is the Central Government.

15. Learned Advocate for the State of Bihar and the learned Advocate appearing for the Union of India submitted that while passing the impugned order the tribunal erred in law, as it arrogated upon itself the jurisdiction, which was not at all vested in it.

16. On the other hand, learned Advocate appearing for the workman submitted that in terms of the **3rd proviso** to **Section 10(1)(d)** and **Section 2-A(2)** of the **I.D. Act** a worker is entitled to approach the tribunal constituted by the State



Government even in the cases under which the employment of the worker is in a controlled industry. He submitted that the findings of the tribunal in the order passed on the point of jurisdiction to entertain the dispute are based on correct appreciation of facts and law and, hence, the same do not require any interference by this Court.

17. Having heard the parties and perused the record, the issue, which arise for consideration, in the present application is as under:

“Whether the Industrial Tribunal at Muzaffarpur has jurisdiction to entertain the dispute raised by the workman, who was employed in a company providing telecommunication service on the strength of having received license from the Department of Telecommunication under Section 4 of the Telegraph Act, 1885, which is notified as a controlled industry?”

18. In order to appreciate the aforesaid issue, it would be necessary to refer to the relevant provisions of the I.D. Act, which are Sections **2(a)(i), 2-A(2), 7 (1), 7-A (1) and 10(1)(d)** of the **I.D. Act**. They read as under:-

“2. Definition.- In this Act, unless there is anything repugnant in the subject or context,-



(a) “appropriate Government” means-

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956), or the Employees’ State Insurance Corporation established under Section 3 of the Employees’ State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit



Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), Export Credit and Guarantee Corporation Ltd. or the Industrial Reconstruction Bank of India Limited, the National Housing Bank established under section 4 of the National Housing Bank Act, 1987 (53 of 1987), or an air transport service, or a banking or an insurance company, a mine, an oil-field a Cantonment Board, or a major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established



by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-

(1) xxx xxx xxx

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

7. Labour Courts.-(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for



the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

7-A. Tribunals.-(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule, and for performing such other functions as may be assigned to them under this Act.

10. Reference of dispute to Boards, Courts or Tribunals.-(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it



so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.”

19. Having noticed the aforesaid provision of the I.D. Act, when I look to the facts of the present case, I find that there is no dispute to the fact that the telecommunication industry is a controlled industry notified by the Central Government under the I.D. Act. Hence, in view of the definition of the term “appropriate Government” given in **Section 2(a)(i)** of the **I.D. Act**, the “appropriate Government “in case of the petitioner-company is the Central Government, which is competent to deal with the matter arising out of the I.D. Act.



20. Further, **section 7(1)** of the **I.D. Act** empowers the “appropriate Government” to constitute one or more labour courts in a State by notification in the Official Gazette for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the I.D. Act. Thus, the provision is wide enough to enable the “appropriate Government” to constitute more than one labour court. Consequently, the Central Government may constitute labour courts in any State for adjudication of the matters in respect of which it is the “appropriate Government” whereas the State Government may constitute labour courts in its territories for adjudication of the matter in relation to which it is “appropriate Government”.

21. Similarly, the “appropriate Government” as defined **under Section 2(a)(i)** of the **I.D. Act** has been empowered by **Section 7-A(1)** of the **I.D. Act** to constitute one or more industrial tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under the I.D. Act.

22. Thus, it would be evident that the Central Government can appoint tribunals for any State for adjudication of



the industrial disputes in relation to which it is the “appropriate Government” whereas the State Government may constitute one or more tribunals in its territory for adjudicating the matter in respect to which it is the “appropriate Government”. The appointment of the industrial tribunals has to be made by “appropriate Government” by means of a notification in its Official Gazette.

23. From perusal of the aforesaid provisions prescribed under **Sections 7(1) and 7-A(1)** of the **I.D. Act**, it would be evident that the intent of the legislature is that the dispute should be adjudicated by the concerned labour courts/ tribunals constituted by the “appropriate Government” only.

24. Further, from perusal of **Section 10(1)(d)** of the **I.D. Act**, it would be evident that it vests an absolute and discretionary power on the appropriate Government to refer or not to refer for adjudication an industrial dispute. This power is absolute as no other body or authority can refer an industrial dispute for adjudication under the I.D. Act. In exercise of its power under **Section 10** of the **I.D. Act**, the Government has the discretion to refer not only existing and apprehended industrial disputes, but also the power to refer those disputes which has earlier refused to refer upon considering the failure report of the Conciliation Officer.

25. The **3rd proviso** to **Section 10(1)(d)** of the **I.D.**



Act has been inserted by the **Amending Act 46 of 1982**. It empowers the Central Government to refer the industrial disputes in relations to which it is the “appropriate Government” to constitute a labour court or an industrial tribunal, as the case may be, by the State Government. It would, thus, mean that now it is not necessary that the Central Government where it is the appropriate Government, must refer the disputes only to the labour court or industrial tribunals constituted by the Central Government.

26. From perusal of the 3rd proviso of Section 10(1)(d) of the I.D. Act, by no stretch of imagination, it can be said that a workman can directly approach a labour court or an industrial tribunal constituted by the State Government in respect of an industrial dispute in relation to which the Central Government is the “appropriate Government”. Under the said provision, it is the Government alone, who is vested with the discretion to choose anyone of the authorities, as specified for the purpose of investigation and settlement of industrial disputes.

27. So far as **Section 2-A(2)** of the **I.D. Act** is concerned, it was incorporated in **section 2-A** by virtue of **Amendment Act, 24 of 2010**, which came into force with effect from 15.09.2010. **Sub-section (2)** stipulates that notwithstanding anything contained in **Section 10**, a workman may make an



application direct to the labour court or tribunal for adjudication of the dispute after expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and on receipt of such application, the labour court or tribunal shall have powers and jurisdiction to adjudicate upon the dispute as if it was a dispute referred to it by the “appropriate Government”. The aforesaid provision confers discretion to a workman, who has made conciliation application to directly invoke the jurisdiction of the labour court/tribunal, if conciliation proceedings are not concluded within forty-five days.

28. The provision prescribed under Section 2-A(2) of the I.D. Act cannot be interpreted to mean that it gives a discretion to a workman engaged in a controlled industry as notified by the Central Government to approach directly to an industrial tribunal or labour court constituted by the State Government rather the workman in the given circumstance may directly invoke jurisdiction of the appropriate labour court/tribunal.

29. In view of the discussions made above, I am of the considered opinion that the Industrial Tribunal, Muzaffarpur completely lacked jurisdiction to entertain and adjudicate the dispute directly raised by the workman in the present case.



30. Accordingly, the impugned order dated 04.04.2014 passed by the Presiding Officer, Industrial Tribunal, Muzaffarpur in I.D. Case No. 01 of 2013 cannot be sustained. It is set aside, accordingly.

31. The writ application stands allowed. No costs.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.04.2017
Transmission Date	NA

