

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

Date of Order: November 28, 2018

- (i) + W.P.(C) 3167/2015
- (ii) + W.P.(C) 6294/2016 & C.M. 25790/2016
- (iii)+ W.P.(C) 6295/2016 & C.M. 25792/2016
- (iv)+ W.P.(C) 6296/2016 & C.M. 25794/2016 & C.M. 25078/2017
- (v) + W.P.(C) 6297/2016 & C.M. 25796/2016
- (vi)+ W.P.(C) 6298/2016 & C.M. 25798/2016
- (vii)+ W.P.(C) 6300/2016 & C.M. 25802/2016
- (viii)+ W.P.(C) 6301/2016 & C.M. 25804/2016
- (ix)+ W.P.(C) 6302/2016 & C.M. 25806/2016
- (x) + W.P.(C) 6303/2016 & C.M. 25808/2016

M/S. LIVING MEDIA INDIA LTD. & ANR. Petitioners

Through: Mr. Puneet Kumar Verma,
Advocate

Versus

- (i) GOVERNMENT OF NATIONAL CAPITAL OF TERRITORY OF DELHI & ORS.
- (ii) SANJAY KUMAR AND ORS.
- (iii) CHANDAN KUAMR AND ORS.
- (iv) PRITHVIRAJ AND ORS.
- (v) RAJU CHAUHAN AND ORS.
- (vi) SHASHIKANT MISHRA AND ORS.
- (vii) RAM KUMAR AND ORS.
- (viii) RAMESH PRASAD AND ORS.
- (ix) RAJENDER SINGH AND ORS.
- (x) RAGHUBIR SINGH THAKUR AND ORS. Respondents

Through: Mr. K. Viswanath, Advocate
for respondent No.1 (*except in W.P.(C) 6296/2016*)

Mr. Fidel Sebastian, Advocate for
respondent No.1 in W.P.(C) 6296/2016

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. With the consent of learned counsel for the parties, the above captioned petitions have been heard together and are being decided by this common order, while treating W.P.(C) 3167/2015 as the lead matter.
2. Reference (*Annexure P-1*) made by Government of NCT of Delhi to the concerned Labour Court regarding respondent-workmen being illegally retrenched/ terminated is being challenged in these petitions on the ground that respondent- Government of NCT of Delhi has no jurisdiction to make the Reference, as respondents-workmen are located beyond the territorial jurisdiction of Delhi Courts.
3. Learned counsel for petitioners submits that respondent-workmen working in petitioner-Company have been re-located to Noida in September, 2012 and since then, Corporate office of petitioner-Company located in Delhi, is running in one room only, whereas the impugned Reference has been made in November, 2013.
4. According to petitioners' counsel, situs of employment of respondent-workmen was in the State of Uttar Pradesh, as petitioners' General Manager, Human Resource, who had terminated the services of respondents-workmen, was located in petitioner's establishment at FC-8, Sector 16A, Film City, Noida, Uttar Pradesh. Attention of this Court is

drawn by petitioners' counsel to respondents-workmen's retrenchment/ termination letter of 2nd July, 2013 to point out that it was issued by petitioner from Noida. It is also pointed out that the Demand Notice has been served by respondents-workmen to petitioner-Company at its Noida office only. Reliance is placed upon Division Bench decisions in *Dharambir Singh Vs. Hindustan Unilever Ltd & Ors.* 2015 LawSuit (Del) 4171 and *V.G. Jagdishan Vs. Indofos Industries Limited & Anr.* 2015 LawSuit (Del) 2881 to submit that since workmen were working in Noida and services were terminated/ retrenched in Noida, therefore, the Labour Courts at Noida would have the territorial jurisdiction to entertain the Reference and Government of Uttar Pradesh would have the jurisdiction to make the Reference and not Government of NCT of Delhi.

5. On the contrary, counsel for respondents-workmen support the impugned Reference and submit that the question of territorial jurisdiction was never raised before the Conciliation Officer and respondents-workmen had attended petitioner's work place at Noida as well as at Delhi office simultaneously and since respondents-workmen are residing in Delhi, therefore, territorial jurisdiction to make the Reference is of Government of NCT of Delhi. Reliance is placed upon Supreme Court's decision in *Bikash Bhushan Ghosh & Ors. Vs. M/S Novartis India Limited & Anr.* (2007) 5 SCC 591 and decision of Division Bench of this Court in *University of Kashmir Srinagar & Anr. Vs. H.L.Warikoo & Ors.* 2006 VII AD (Delhi) 123. Reliance is also placed upon decisions of Coordinate Bench of this Court in *Raj Kumar Jaiswal Vs. Rangi International Pvt. Ltd.* 2009 (113) DRJ 620; *Mahipal*

Singh Vs. Presiding Officer, Industrial Tribunal-III 2010 (117) DRJ 201 and *Indra Deo Paswan Vs. Union of India & Ors.* 125 (2005) DLT 763 in support of above submissions.

6. Upon hearing and on perusal of impugned Reference, material on record and the decisions cited, I find that reliance placed by petitioners' counsel upon decisions of Division Bench and Coordinate Bench of this Court, are of no avail, as Supreme Court in *Bikash Bhushan Ghosh (Supra)* has clearly reiterated that although well known test of jurisdiction of civil court including the residence of party and the subject matter of dispute substantially arising therein, would be applicable but has clarified that the objection to jurisdiction, both territorial and pecuniary, are technical and not open to consideration by an Appellate Court, unless there has been prejudice on the merits. Supreme Court's decision in *Bikash Bhushan Ghosh (Supra)* has been subsequently followed in *Mantoo Sarkar Vs. Oriental Insurance Co. Ltd.* (2009) 2 SCC 244 and *Malati Sardar Vs. National Insurance Co. Ltd* (2016) 3 SCC 43. The ratio of above decisions is that unless there is consequent failure of justice, question of territorial jurisdiction ought to be raised before the Court to which reference is made. In the peculiar facts and circumstances of the case, it is deemed appropriate to leave the issue of territorial jurisdiction open to be considered by the concerned Labour Court to whom Reference is made, as the question as to whether substantial part of cause of action has arisen in U.P. or Delhi is required to be determined by the Court of first instance. Such a view is taken because petitioners suffer no prejudice if the impugned Reference is dealt with by the concerned Labour Court in

Delhi, as respondents-workmen are residing in Delhi and so, it will be in fitness of things that issue of territorial jurisdiction is dealt with by the concerned Labour Court in Delhi itself. It is so said as corporate office of petitioner is functional in Delhi. To facilitate expeditious disposal of proceedings, let the parties appear before the concerned Labour Court in Delhi on 7th December, 2018 for proceeding further in accordance with the law.

7. With aforesaid directions, these petitions and applications are disposed of, while leaving the question of territorial jurisdiction open to be considered by the concerned Labour Court.

(SUNIL GAUR)
JUDGE

NOVEMBER 28, 2018

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