



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2021

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P. (MD) No. 9777 of 2012

and

M.P. (MD) .No.1 of 2012

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The Manager,
ICICI Bank Ltd.,
P.Alagapuri Branch,
Madurai.

.. Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Labour & Conciliation Officer,
Madurai 625 020.

3.S.Selvam

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Prohibition, prohibiting the first respondent herein from trying the industrial dispute raised by the third respondent in I.D.No.18 of 2008 on the file of the Labour Court, Madurai, under Section 2A(2)(1) of the Industrial Disputes Act, misquoting the provisions of law against the petitioner Bank as ultra vires and unconstitutional.

For Petitioner : Mr.V.Perumal

For Respondent No.1 : Labour Court

For Respondent No.3: No appearance

O R D E R

This writ petition has been filed for the issue of Writ of Prohibition, prohibiting the first respondent herein from trying the industrial dispute raised by the third respondent in I.D.No.18 of 2008 on the file of the Labour Court, Madurai, under Section 2A(2)(1) of the Industrial Disputes Act, misquoting the provisions of law against the petitioner Bank as ultra vires and unconstitutional.

2. The case of the petitioner is that the petitioner Bank is constituted under the Banking Regulation Act, 1949 and governed by the Reserve Bank of India. The said Act is a Central Act enacted by



the Central Government for the purpose of constitution and formation of banking companies. The Corporate office of the petitioner Bank is situated at Mumbai and the further administration affairs and transactions of the Bank are governed by the provisions of the Act, Rules and as per the procedures notifications issued by the Central Government from time to time. The petitioner Bank has several thousands of branches all over the country and at abroad. The petitioner Bank is not amenable for any action under the provisions of the State Act or Rules or Notifications issued by the respective State Government. Therefore, any action taken by the petitioner Bank or any action initiated against the petitioner Bank are governed under the provisions of the Central Act and Rules framed by the Central Government. While so, challenging the order of dismissal dated 24.5.2006, the third respondent has raised an industrial dispute in I.D.No.8 of 2008 before the Labour Court, Madurai, which is pending as on date. The petitioner Bank filed its counter statement raising preliminary issue regarding the maintainability of the dispute before the Labour Court and questioned the jurisdiction. In these circumstances, the petitioner has filed this present writ petition for issuance of the writ of prohibition, prohibiting the first respondent from trying the industrial dispute raised by the third respondent under Section 2(A)2(1) of the Industrial Disputes Act, 1947.

3. Mr.V.Perumal, learned counsel for the petitioner would submit that the issue arises for consideration in the present case is no longer *res integra*. He would further submit that the issue has already been settled by this Court in W.P.(MD)No.2467 of 2012 on 17.04.2012 and further, he relied on the judgment of the Bombay High Court in the case of **ICICI Bank Ltd., and another v. Surendra Chelawat and others**, reported in **2011 SCC Online Bombay 1821:2012 LLR 290**, wherein the same issue was settled before the Bombay High Court. The learned counsel would further state that the petitioner bank is governed under the provisions of the Central Act and Rules framed by the Central Government. Hence, the third respondent should have raised the industrial dispute before the Tribunal constituted by the Central Government, i.e., Central Government Industrial Tribunals-cum-Labour Court at Chennai, not before the State Law Officer or the Labour Court constituted by the State Government. Accordingly, he prays for allowing this writ petition.

4. Heard the learned counsel appearing on behalf of the petitioner Bank and no one represented the third respondent. This Court has also perused the materials placed before this Court.

5. This Court has considered the submissions made by the learned counsel for the petitioner Bank and perused the decisions referred by the learned counsel for the petitioner in support of his contention. The relevant portions are extracted hereunder:

(i) In the case of **The Management, ICICI Bank Ltd., v. The**

<https://hcservices.ecourts.gov.in/hcservices/>



Presiding Officer and another in **W.P.(MD).No.2467 of 2012** dated 17.04.2012, wherein in paragraphs 4, 5, 6 and 7 it has been held as follows:

"4.It is contended by the learned counsel appearing for the petitioner that the petitioner is a Banking Company and the "appropriate Government" under the industrial Disputes Act is the Central Government in terms of Section 2(a) of the Industrial Disputes Act. Therefore, the second respondent should have raised the dispute before the appropriate Authority under the Ministry of Labour, Government of India, but, he has raised the dispute before the Welfare Officer, who has no jurisdiction to try the case. It is contended on behalf of the petitioner that the claim made before the first respondent under Section 2-A(2) of the industrial Disputes Act is not maintainable. Thus, it is contended that the first respondent has no jurisdiction to entertain the petition.

5. However, it is contended by the learned counsel appearing for the second respondent that the Labour Court rightly held that the question of jurisdiction is a mixed question of fact and law and hence, the question raised by the petitioner could also be decided along with other issues when the main I.D is taken up.

6. However, when a specific question was put to the learned counsel appearing for the second respondent as to whether the first respondent / Labour Court has got jurisdiction to decide the issue raised by the second respondent, he has answered that the first respondent has no jurisdiction to decide the dispute raised by the second respondent. Thus, in clear terms, he has accepted that the first respondent has no jurisdiction to decide the dispute raised by the second respondent.

7. In such event, there is no rhyme or reason to direct the first respondent to proceed with the matter further by taking evidence and to pass final order. If there is a disputed question of Fact and law, regarding jurisdiction, the Labour Court may be justified in saying that the issue of jurisdiction could be dealt along with other issues while deciding the ID. In the case at hand, as stated already, the learned counsel appearing for the second respondent fairly admitted that the first respondent / Labour Court has no jurisdiction to decide the dispute raised by the second respondent."



Chelawat and others, reported in **2011 SCC Online Bombay 1821:2012 LLR 290**, wherein in paragraphs 2 to 8 it has been held as follows:

"2. Rule. Rule made returnable forthwith. By this petition, under Articles 226 and 227 of the Constitution of India, petitioner-Original respondent challenges the order dated 31st May, 2010 passed by the learned Presiding Officer, 12th Labour Court, Mumbai below Exhibit-C-3, rejecting petitioner's application about preliminary issue. Petitioner-Original respondent has filed application below Exhibit C-3 where the preliminary issue raised In the present case, whether Central Government is appropriate Government and not the State Government. He submits that in view of section 4 of the Industrial Disputes (Banking and Insurance Companies) Act, 1949, Central Government Is appropriate Government. Section 4 reads thus:-

"Section 4 - Prohibition of references by State Governments of certain industrial disputes for adjudication, inquiry or settlement- Notwithstanding anything contained in any other law it shall not be competent for a State Government or any officer or authority subordinate to such Government to refer .an Industrial dispute concering any banking or insurance company, or any matter relating to such dispute to any Tribunal or other authority for adjudication, inquiry or settlement."

3. In support of his submission, he relied on the judgment of this Court in the matter of Prakash Pandurang Sawant v. Punjab & Sindh Bank?. and In the matter of National Building Construction Corporation v. Shri Ram Pal Sin gh.a He submits that In view of the provisions of section 4 of the Banking Act and the two authorities cited, the State Government is not appropriate Government. Therefore, the impugned order passed by the Labour Court dated 31st May, 2010 and the Judgment dated 31st July, 2010 passed by the Industrial Court in Revision Application (ULP) No. 101 of 2010. is liable to be set aside to that extent.

4. On the other hand, the learned Counsel appearing for the respondent. No. 1 vehemently opposes the present application. He submits that the order passed by the Courts below are interlocutory orders and the same cannot be interfered in the present writ petition.

5. I have gone through the provisions of Banking



Acts and both the authorities cited by the learned Counsel appearing for the Petitioner. The Labour Court as well as the Industrial Court dismissed petitioners application below Exhibit-C-3 only on the ground that In view of Apex Court Judgment, all issues raised by the parties to be decided together. It is to be noted that a few preliminary issues framed by the Courts below should be decided first instead of wasting their valuable time.

6. On the face of both the authorities cited above, it is clear that the Central Government is the appropriate Government in Banking Companies. In the matter of Prakash P. Sawant (supra) this Court held that in case of Banking Companies, the Central Government is the appropriate Government. Para 17 of the said judgment reads as thus:

"Para 17 - Before concluding the discussion on this aspect of the matter, it would also be necessary to note that for the purposes of the Industrial Disputes Act, 1947, the expression 'appropriate Government' has been defined in section 2(a)(i) to mean the Central Government in respect of an Industrial dispute concerning a banking company. Banking companies are defined in section 2(b) to include a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Parliament also enacted the Industrial Disputes (Banking and Insurance Companies) Act, 1949, section 4 whereof inter alia provides that notwithstanding anything contained in any other law, it shall not be competent for a State Government or any authority of the State Government to refer an industrial dispute concerning a bank or insurance company for adjudication to any tribunal or authority."

7. In the case of National Building Construction Corporation (supra) similar view is taken by this Court.

"From the aforesaid principles it would be seen that though no single test is decisive to reach the conclusion whether particular industry is carried on by or under the authority of Central Government yet, totality of circumstances in the light of the aforesaid principles



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may provide firm basis for conclusion. A company floated from public exchequer and owned wholly by Central Government is indicative of the fact that it is controlled by or under the authority of the Central Government. The Government and entire share capital has been contributed by It. Though the commercial activity is carried on by the employer industry in accordance with its bye-laws and Memorandum of Association yet the employer undertaking is nothing but an extended arm of Government and it apparently is an instrumentality or agency of the 'State' and is 'State' within the meaning of Article 12 of Constitution of India. Its acts, values, regulations and governance power are subject to constitutional obligations and have to be in conformity with public law principles. The existence of deep and pervasive state control depends upon the facts and circumstances in a given situation, in the present case, it would be seen that the entire share capital of the employer was contributed by Central Government and it belongs to the Central Government. The Chairman, Managing Directors and other Directors are appointed by the President of India. The number of Directors, the salary and allowances of the Chairman, the Managing Director and Directors are determined by President of India. The directions are issued by President of India from time to time in regard to the conduct of business and affairs of the employer industry. It would thus, be seen that for all practical purposes, it is the Central Government which exercises control and supervision over the working and function of the employer industry and the employer industry is virtually the agency and instrumentality of the Government of India. In relation to the employer industry, unhesitatingly, the appropriate Government is Central Government under section 2 (a) (i) of the I.D. Act."

8. Therefore, on the face of it, it is seen that both the Courts below failed to consider the preliminary issue raised about the maintainability of



the complaint on the ground that the appropriate Government is the Central Government and not the State Government in respect of industrial dispute concerning the Banking Companies constituted under section 3 of the Banking Companies Act, 1970. Therefore, both the orders passed by the Labour Court below Exhibit-C-3 dated 31st May, 2010 and the Industrial Court dated 31st July, 2010 in Revision Application (ULP) No. 101 of 2010 in respect of Exhibit-C-3 are set aside and the matter is remanded to the Industrial Court to decide the preliminary issue raised in the application Exhibit-C-3 filed by petitioner to be decided by the 12th Labour Court at Mumbai within four months from the receipt of the writ of this Court. Writ petition is disposed off with the above directions."

6. The above decisions referred by the learned counsel for the petitioner is squarely applicable for the case on hand. Since the preliminary issue was raised before the Labour court with regard to the jurisdiction in view of the fact that the petitioner bank is governed under the provisions of the Central Act and Rules framed by the Central Government, the Labour Court has no jurisdiction to decide the dispute. Therefore, the third respondent should have raised the industrial dispute before the Tribunal constituted by the Central Government, ie., Central Government Industrial Tribunals-cum-Labour Court at Chennai, not before the State Law Officer or the Labour Court constituted by the State Government. Hence, the industrial dispute raised by the third respondent is not maintainable.

7. Accordingly, the writ petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed. However, liberty is granted to the third respondent to raise the industrial dispute before the appropriate Labour Court, constituted by the Central Government, to work out his remedy in the manner known to law.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



TO

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Labour & Conciliation Officer,
Madurai 625 020.

+1 CC to M/s.V.PERUMAL, Advocate (SR-9766[F] dated 10/03/2021)

W.P. (MD) .No.9777 of 2012
08.03.2021

KB(23.06.2021) 8P 4C