

\$~

\*

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

***Reserved on: 14<sup>th</sup> September, 2021***

***Date of decision: 5<sup>th</sup> October, 2021***

+

**W.P.(C) 1987/2021 & CM APPL. 5794/2021**

**M/S FAIRWOOD INFRA AND SERVICES  
PVT. LTD.**

..... Petitioner

Through: Mr. Ujjwal Jha, Advocate.  
versus

**DEPUTY LABOUR COMMISSIONER AND  
ORS. & ORS.**

..... Respondents

Through: Mr. Gautam Narayan, ASC with Ms.  
Asmita Singh, Advocate for R-2.  
Ms. Yashodhara Burmon Roy and  
Mr. Abdullah Tanveer, Advocates for  
R-3.

**CORAM:  
JUSTICE PRATHIBA M. SINGH  
JUDGMENT**

**Prathiba M. Singh, J.**

1. The present petition has been filed challenging the impugned order dated 27<sup>th</sup> January, 2021 passed by the Respondent No.1/Deputy Labour Commissioner (*hereinafter "Authority"*) under The Delhi Shops and Establishments Act, 1954 (*hereinafter "DSE Act, 1954"*) in ***Ref. No. SE/ED/131/2020/5964*** titled ***Sh. Atif Ali v. M/s. Fairwood Infra & Services Pvt. Ltd. & Anr.*** By the impugned order, the Authority under the Act has held that, in view of the fact that the Claimant/Respondent No.3 herein was drawing his salary from the registered office of the Petitioner Company situated in Delhi, so also considering the Consultancy Agreement dated 18<sup>th</sup> May, 2018, the jurisdiction in the matter would continue with the Authority under the DSE Act, 1954.

2. The Petitioner - M/s Fairwood Infra and Services Pvt. Ltd. (*hereinafter "Petitioner Company"*) is a company having its registered office at M-304, Dharma Apartment, Plot No.2, I.P. Extension, New Delhi-110092, and is engaged in providing architectural services. The case of Respondent No.3/Mr. Atif Ali (*hereinafter "Employee"*) was that he was engaged to render services to the Petitioner Company as a Consultant in respect of Design and Architecture, vide Consultancy Agreement dated 18<sup>th</sup> May, 2015. Under the said Agreement, a monthly fee of Rs.48,000/- was to be paid to the Employee. He was appointed as an architect on 19<sup>th</sup> July, 2015 with the Petitioner Company. His remuneration was fixed at Rs.50,000/- per month. After serving a probationary period of three months, the Employee had secured a permanent position with the Petitioner Company. However, his grievance was that even after he was permanently appointed, the Petitioner Company did not make payments of salary as agreed upon, and kept delaying the same on one pretext or the other. On 16<sup>th</sup> December, 2020, the Respondent No.3/Mr. Atif Ali (*hereinafter "Employee"*) filed an application under Section 21 of the DSE Act, 1954 with the Authority praying for payment of arrears of salary in respect of outstanding dues of Rs.25,49,148/-.

3. In response to the Employee's claim petition, the Petitioner Company took an objection of territorial jurisdiction on the ground that the establishment where the Employee was working is located in Noida, Uttar Pradesh and registered under the Uttar Pradesh Shops and Commercial Establishments Act, 1962. It was averred that the Petitioner Company may have its registered office in Delhi, but since the establishment where the Employee is working is located in Noida, the DSE Act, 1954 would not

apply. It was also further argued that the case of the Employee would not be liable to be entertained by the Authority located in Delhi and the claim has to be rejected. Reliance was placed upon the judgment of this Court in ***Bhandari Builders Pvt. Ltd. v. M.K. Seth & Anr. [(1988) ILR 1 Delhi 64]***. Before the Authority, the Employee relied upon the Governing Law and Dispute Resolution Clause of the Consultancy Agreement dated 18<sup>th</sup> May, 2015 which stipulated that any dispute arising from or in relation to the said Agreement shall be submitted to the jurisdiction of the competent courts in New Delhi. The Authority rejected the Petitioner Company's objection to territorial jurisdiction by holding that since the Consultancy Agreement provides that the jurisdiction shall rest with the competent courts in New Delhi. It is this order dated 27<sup>th</sup> January, 2021 that has been challenged before this Court.

**Submissions of the Parties:**

4. Mr. Ujjawal Jha, Id. Counsel appearing for the Petitioner Company has made the following submissions:

- i) That it is clear from a reading of paragraph 3 of Employee's claim petition itself, that after the Consultancy Agreement dated 18<sup>th</sup> May, the Employee was given a permanent job at the post of architect, vide Appointment Letter dated 19<sup>th</sup> July, 2015. Thus, the said Consultancy Agreement was no longer applicable.
- ii) That a cogent reading of provisions under Section 1, Section 2(5) & Section 2(9) of the DSE Act, 1954 makes it clear that that every place where the company would have an office would be a separate establishment. Since the office where the Employee was working was situated in Noida, the DSE Act, 1954 would not have

any applicability, inasmuch as the said Act does not extend beyond the Union Territory of Delhi.

iii) Reliance is heavily placed upon the judgment in *Bhandari Builders (supra)* as also *The Union Cooperative Society Limited vs. R.K. Bahal [(1976) ILR 1 Delhi 862]* to argue that these two cases clearly lay down the principle that though the company may be the same, the establishment would be different, depending upon the place where the Employee is working.

iv) That even if the Consultancy Agreement is taken into consideration, the application of the DSE Act, 1954 cannot be extended to the establishment located in Uttar Pradesh.

v) That since the DSE Act, 1954 is a special Act, the general provisions of law under The Code of Civil Procedure, 1908 or under the Industrial Disputes Act, 1947 would have no applicability.

vi) He concedes to the fact that the salary slips issued to the Employee mention the registered office of the Petitioner Company situated in Delhi, but clarifies that it is merely for the purpose of reporting to tax authorities, and has nothing to do with the Employee or the establishment under the DSE Act, 1954.

5. Mr. Abdullah Tanveer, Id. Counsel appearing for Respondent No.3/Employee submits as under:

i) That Section 2(5) would have to be read with Section 43 of the DSE Act, 1954, which clearly stipulates that the employer in respect of any employee for the purpose of the Act would be the owner of the establishment or the association of individuals or one of the partners. Thus, these two provisions, if read together, would

mean that the employer for the Employee in the present case would be based in Delhi, owing to the fact that the registered office of the Petitioner Company is situated in Delhi.

ii) That the registration of the Noida office of the Petitioner Company under the Uttar Pradesh Shops and Establishments Act, 1962 is irrelevant as the same was granted to the Petitioner only on 1st December, 2016, whereas the Employee had joined the Petitioner Company as a Consultant on 18<sup>th</sup> May, 2015 and, thereafter, as a permanent employee at the post of architect on 19<sup>th</sup> July, 2015 itself, that is, prior to the said registration. Thus, the said registration would be of no avail in this matter.

iii) That the registered office of the Petitioner Company is situated in Delhi, the salary slips issued to the Employee mention the Delhi office, as also the Employer is based in Delhi. Thus, for all the aforementioned reasons, the DSE Act, 1954 would be applicable.

6. Mr. Gautam Narayan, Id. ASC for GNCTD has submitted that, at the outset, the Authority under the DSE Act, 1954 situated in Delhi, would have jurisdiction in the present case. He further submits as under:

i) That the Authority at the place of registration of establishment cannot be the only Authority which can exercise jurisdiction.

ii) Reliance is placed upon Sections 2(5), 2(7), 2(8), 2(9) and 2(17) of the DSE Act, 1954 to emphasise that the definitions of commercial establishment, employee, employer, establishment, and occupier are broad enough to confer jurisdiction upon the

Authority situated in Delhi, over the Petitioner Company which has its registered office in Delhi. He also relies upon Section 5(1) which deals with registration of establishment and Section 34 which provides for furnishing of letter of appointment to employees by the employer.

iii) That the Consultancy Agreement dated 18<sup>th</sup> May, 2015 makes it abundantly clear that the corporate office of the Petitioner Company may be in Noida, but the registered office is in Delhi.

iv) That the Employee was not restrained from rendering services in any particular geographical location.

v) That clause 9 of the Consultancy Agreement, that is, the Governing Law and Dispute Resolution clause, clearly states any dispute arising from or in relation to the said Agreement shall be submitted to the jurisdiction of the competent courts in New Delhi.

vi) Insofar as the subsequent Appointment Letter dated 19<sup>th</sup> July, 2015 is concerned, the same not being on record and Clause 9 of the Consultancy Agreement having not been challenged in any manner, the jurisdiction rests with the competent courts in New Delhi.

vii) That the TDS certificates and the salary slips also clearly mention the Delhi office of the Petitioner Company.

viii) That the Board Resolution dated 2<sup>nd</sup> July, 2020 mentions that the registered office of the Petitioner Company is admittedly in Delhi.

ix) That the registration of the Noida office under the Uttar Pradesh Shops and Establishments Act, 1962 on 15<sup>th</sup> June, 2019 would not in any manner take away the fact that the Petitioner Company would be subject to the jurisdiction of the competent courts in Delhi.

x) That in the reply to the Petitioner Company's application for rejection of the Employee's claim before the Authority, the categorical stand of the Employee was that he had not been hired merely for the Noida office, and various addresses of the Company having been mentioned including Noida, Mumbai etc. Since the Petitioner Company is carrying on projects in various jurisdictions, as also has its offices and establishments in different jurisdictions, the Authorities in all these jurisdictions would be entitled to pass orders in respect of the Petitioner Company.

xi) That the facts in the present case are completely distinguishable from ***Bhandari Builders (supra)***. In the said case, the employee was specifically recruited only to work in Iraq. Various facts in the said judgment are referred to, in order to emphasise that there was a categorical clause to the effect that the employee was not in employment in India.

xii) Reliance is also placed upon the principles as laid down in ***ABC Laminart Pvt Ltd v. AP Agencies, Salem, (1989) 2 SCC 16*** and ***Morgan Stanley Mutual Fund v Kartick Das, (1994) 4 SCC 225*** to contend that the Authority under DSE Act, 1954 would have jurisdiction.

7. Ms. Roy, Id. Counsel appearing for the Employee submits that the

intention of the parties was always was to submit any disputes arising between the parties from or in relation to the Consultancy Agreement to the courts of competent jurisdiction in New Delhi, inasmuch as the same is contained in Clause 9 of the Consultancy Agreement. Reliance is placed upon *M/s. Swastik Gases Pvt. Ltd. v. Indian Oil Corp. Ltd. [2013] 7 S.C.R. 581* to contend that even if the word “exclusive” is not used in the Dispute Resolution clause, the intent of the parties has to be seen. She also emphasises that, vide Letter dated 30<sup>th</sup> September, 2020, the amount of unpaid salary is admitted to the extent of Rs.12,11,934/-.

8. In rejoinder, Mr. Ujjwal Jha, Id. Counsel for the Petitioner Company, relies upon paragraph (g) at page 49 of the reply to the Petitioner Company’s application for rejection of the employee’s claim before the Authority, to argue that the Employee has admitted that he is working at the Noida office, and the registered office is in Delhi. He further submits that all shops and establishments have to adhere to the provisions of the respective Acts, which are applicable to them in their respective jurisdictions. Thus, the registration of the establishment is not a *sine qua non* for filing claims, and what would be relevant is the place where the Employee is working.

**Analysis and Findings:**

9. The short question that has been arisen in this matter is whether the Authority under the Delhi Shops and Establishments Act, 1954 can exercise the jurisdiction to decide the claim of the Employee.

10. The Employee was engaged as a Consultant in respect of Design and Architecture, vide Consultancy Agreement dated 18<sup>th</sup> May, 2015 entered into between the Employee, who was shown to be a resident of Delhi, and the Petitioner Company, whose Corporate office is shown to be located at 7<sup>th</sup>

Floor, Tower-D, Logix Techno Park, Sector-127, Noida (U.P.) – 201301,  
Certain clauses of this agreement are relevant in the present case, and are set  
out below:

**“RECITALS:**

*The Consultant is engaged in providing various consultancy services and has proposed to provide his/her services to the Company and the Company has agreed to avail services of the Consultant.*

*The parties therefore wish to execute this Agreement in order to record their respective rules and responsibilities relating to the above.*

*NOW, THEREFORE, in consideration of the activities undertaken and services rendered by the parties as stated hereinabove, the Parties agree and these present witnesses as follows:*

**“Scope of work-** *The Consultant shall provide various services in respect of Design and Architecture.*

**Monthly fee-** *The Company shall pay to the Consultant a fix monthly fee of Rs. 48000/- Rupees per month only) plus applicable Service Tax. The fee shall be paid within 10 days of receipt of invoice.*

**Withholding tax-** *All payments to the Consultant shall be subject to deduction of withholding tax as per applicable laws.*

**Governing law and dispute resolution-** *This agreement shall be governed by the laws of India. Any dispute arising from or in relation to this Agreement shall be submitted to the jurisdiction of the competent court in New Delhi.*

**Tenure –** *This agreement shall be effective for a period of one month from the effective date and may be renewed for such further period and on such terms as mutually agreed between the parties.”*

11. After the Consultancy Agreement was entered into on 18<sup>th</sup> May, 2015, an Appointment Letter dated 19<sup>th</sup> July, 2015 was also issued to the Employee appointing him at the post of Architect with the Petitioner Company. It is the case of the Petitioner Company that after the Agreement engaging him as a Consultant, he became a regular employee w.e.f. 19<sup>th</sup> July, 2015. It is averred that the Consultancy Agreement stands superseded by the Appointment Letter dated 19<sup>th</sup> July, 2015, and therefore, the Dispute Resolution Clause contained in the former would have no bearing upon this matter. However, the said Appointment Letter has not been placed on record. Thus, for all practical purposes the only agreement which is on record is the Consultancy Agreement.

12. There is, thus, no other agreement between the Employee and the Petitioner company. The term of the Consultancy Agreement was extendible by mutual agreement of parties. The said Agreement was not terminated and would continue to govern the parties in the absence of any further agreement to the contrary. The jurisdiction clause in the agreement is clear and categorical i.e., the competent court located in Delhi was to decide any dispute arising under the agreement. The services of the Employee were to be rendered to the '*Company*' and the Agreement did not stipulate any specific place of work.

13. It is also the admitted position on record that the Petitioner Company has its registered office in Delhi. TDS certificates which were issued to the Employee were issued with the Delhi address of the company. The salary slips of the Employee also bear the Delhi address of the registered office.

14. The Petitioner Company has challenged the jurisdiction of the Authority under the Delhi Shops and Establishments Act, 1954 on the

ground that the Employee worked only for the Noida office. However, there is no evidence on record to this effect. Considering that the Petitioner is a company which is engaged in a large number of real estate projects, and the Consultancy Agreement clearly states that the Employee has proposed to provide services to the 'Company' and the 'Company' has agreed to avail services of the Consultant, the logical corollary would be that the Employee was rendering services across various offices of the Company. There is also no clause in the Consultancy Agreement which restricts his employment to the Noida office.

15. The judgment in ***Bhandari Builders (supra)*** is clear to the effect that the Delhi Shops and Establishments Act, 1954 is a social welfare legislation which was meant to provide a quick remedy to those employees who may be wishing to seek outstanding wages from their employers. The observations of the Court in ***Bhandari Builders (supra)*** are as under:

“5. The Delhi Shops and Establishments Act, 1954 is a socialistic piece of legislation for ameliorating the service conditions of the employees working in shops, commercial establishments, places of public entertainment or amusement or other such establishments. This piece of legislation is enforced to stop the exploitation of the weaker sections of the society. In this highly competitive world, where there is a huge unemployment, the weaker section of the people who clamor for employment to earn their livelihood was prone to be exploited by the employers and in order to provide succor to such employees so that they should have decent working hours and also decent wages this particular Act was brought into existence for its application to the establishments in Delhi. Similar types of legislations have been promulgated in the different States as the subject is covered by the

entry in the concurrent list on which both the States and Centre could legislate. Before I refer to the different provisions of this statute in order to understand as to whether the provisions of this Act are applicable to respondent No. 2 and the petitioner, it is necessary to keep the facts of this case in view. Annexure I-A is the copy of the application given by respondent No. 2 which makes it clear that respondent No. 2 wanted service only in a Gulf country. Annexure II is the letter dated 1st October 1982, issued by the petitioner offering the employment to respondent No. 2 to the post of Accounts Manager (Iraq Works). On that very date, employment contract was executed between the parties which is Annexure III. The perusal of this contract shows that respondent No. 2 was employed by the petitioner for its project at Iraq as 800 residential houses at Najaf in Iraq were to be constructed and which contract was to remain in force for a period of 12 to 15 months. Respondent No. 2 was put on a probation for three months and the contract was initially for 12 months. He was to be paid salary in Iraq Dinar I.D. 300 per mensem. He was to be provided free passage for going to Iraq and also for his return thereafter on completion of his service as per terms of the agreement. The contract could be terminated by either party by giving one month's notice or salary in lieu thereof. It was mentioned in the contract that respondent No. 2 is not in employment of the employer in India. It has also come out in the statement of respondent No. 2, copy of which is Annexure IX, that he had worked with the management of the petitioner at Iraq. It would show that there was regular office being maintained by the petitioner at Iraq which was being managed there by the officers of the petitioner. Counsel for respondent No. 2 also did not dispute the fact that the petitioner was having an office in Iraq to look after the project of construction of houses at that place. The admitted case of the parties is

*that respondent No. 2 was employed by the petitioner for being posted at the petitioner's office in Iraq for the performance of the petitioner's business. i.e. the construction of houses. The lower authority has gone wrong in giving the finding that respondent No. 2 had rendered any service at the head office of the petitioner at Delhi for a few days of September, 1982. He has misinterpreted the letter, copy of which is Annexure I-B, which was issued by the petitioner to Embassy of Iraq for getting the visa endorsed on the passports of his employees who were to be sent to Iraq for their construction project. This step was taken by the petitioner in connection with giving employment to respondent No. 2 in Iraq. It does not mean that respondent No. 2 was employed by the petitioner for working in its office at Delhi for any period. That finding of the lower authority being in conflict with the documentary evidence has to be set aside.*

*6. Now, coming to the vital point whether the provisions of the Delhi Shops and Establishments Act, 1954 were applicable to the case of respondent No. 2 we have to see various provisions of the Act. Section 1 clearly lays down that this particular Act applies to Union Territory of Delhi. Accordingly, the commercial establishment defined in Section 2(5) pertains to any premises wherein any trade, business or profession of any work in connection with or incidental or ancillary thereto is carried on. So there has to be a particular premises before the same could be termed as commercial establishment. Section 2(7) defines the employee as a person wholly or principally employed whether directly or otherwise and whether for wages (payable on permanent periodical contract, piece rate or commission basis) or other consideration, about the business of an establishment. Section 5 requires the registration of a particular establishment with the Chief Inspector. The registration certificate has to be permanently displayed at the establishment which will*

*contain all the particulars mentioned in that Section. Section 8 deals with the hours of work to be performed by the employees of the establishment. It also mentions that at least 3 days' notice must be given to the Chief Inspector if any person employed on overtime is to be entitled to any remuneration calculated by the hour. Then there are provisions for rest and meals, prohibition of employment of children and any employment of women beyond 9.00 p.m. in Sections 10 to 14 and closing hours of the establishments and close days in Sections 15 and 16. Sections 18 to 20 pertain to wages. Then Section 36 gives power to the Government to appoint Chief Inspector and other Inspectors. Section 37 enables the Chief Inspector or the Inspectors to inspect the establishments or their accounts in order to see that compliance with the provisions of the Act is being made. In case the establishment is not in Delhi it is not understood how the Chief Inspector or Inspector could perform his duties. Moreover, if an employee is working in a foreign country in an office of a particular person, obviously, the Chief Inspector or the Inspectors cannot have any supervision over that office and the employees working therein. There could be no intimation to the Chief Inspector in case any overtime work is to be taken from any employee.*

*7. The provisions of the Act leave no room for doubt that they are to apply to the establishments located in Delhi and not to any establishments working outside Delhi. Counsel for respondent No. 2 has vehemently argued that in order to term any particular office as an establishment it must be shown that the said office had its own independent business. I am afraid that no such ingredient is to be established. Only thing to be seen is whether a particular office is an establishment or not and in case that particular establishment is not in Delhi the provisions of this Act would not apply. The office which the petitioner was having in Iraq by itself*

*can be termed as an establishment. It cannot be held that the mere fact that the business of the petitioner is being carried on from that office, so that the petitioner's office in Delhi could be treated as an establishment and not the petitioner's office at Iraq. It is evident that respondent No. 2 definitely worked in connection with the business of the petitioner which the petitioner is having in Iraq. The provisions of this Act came up for consideration in a case reported as Union Cooperative Society Ltd. v. R. K. Behl, 2nd (1976) 1 Delhi 862. In this case, a person was employed and was attached to head office of the employer at Delhi. He was transferred to Kanpur branch. Considering the provisions of the Act, this Court gave the finding that the branch office at Kanpur is to be taken to be an independent establishment and the provisions of the Delhi Act would not apply to such employee who had been transferred to the branch office in Kanpur. Counsel for respondent No. 2 tried to distinguish this case by pointing out that a branch office may be having a separate business and so could be treated as an independent establishment. I do not think that this judgment can be distinguished on such a point. After all, the overall business is of a particular company which may have different offices at different places for running that business. It cannot be argued that each office where the business of the company is being run is not separate establishment for the purposes of legislation like the Delhi Shops and Establishments Act. Each premises where commercial activity of the nature given in the definition is carried on is to be treated as a separate establishment."*

16. The facts in ***Bhandari Builders (supra)*** are completely distinguishable from the facts of the present case, on the following grounds:

- i) The employee was hired specifically to work at the company's establishment in Iraq.
- ii) In the said case, right from the initial advertisement till the entire

tenure of the services being rendered, the employee was located only in Iraq. He never rendered any services with any company's establishment in Delhi.

iii) The employee was paid his wages in Iraq's currency from the independent establishment in Iraq.

iv) The employee was appointed on a contractual basis solely for a project based in Iraq.

v) The company had a separate establishment at Iraq which was being managed by the officers of the company.

17. The Petitioner Company has also placed reliance upon the judgment in *The Union Cooperative Society Limited (supra)*. In the said case, the employee was initially appointed in Delhi but was transferred to Kanpur. Therefore, when the claim petition was filed by the employee therein, the transfer orders had already been issued in the rolls of the company. The observations in the said judgment that, insofar as the claim for wages is concerned, the establishment would, therefore, be the Kanpur office was peculiar to the facts of the said case, wherein a transfer order had already been issued.

18. However, under the facts and circumstances of the present case, the registered office of the Company is in Delhi. There is not a single document on record to show that the Employee was working exclusively at the corporate office of the Petitioner Company in Noida, Uttar Pradesh. In fact, it is the Employee's case that he was neither hired for a specific place nor working under a different management, but was governed by the management of the Petitioner Company at the Delhi office. Moreover, the Petitioner Company is offering its services throughout India, including

Delhi, and the Employee claims to have worked on several projects of the Company, including in Delhi. All the documents which have been placed on record also show that the salary was being paid from the registered office of the Petitioner Company in Delhi, to the Employee who was also located in Delhi. The Appointment Letter dated 19<sup>th</sup> July, 2015 relied upon by the Petitioner Company and stated to have superseded the Consultancy Agreement dated 18<sup>th</sup> May, 2015, is not on record. The Consultancy Agreement clearly reflects the intention of parties to vest jurisdiction with the Courts in Delhi.

19. As per Section 1(2) of the Delhi Shops and Establishments Act, 1954, the Act extends to the whole of the Union Territory of Delhi. Since the registered office of the Petitioner Company situated in Delhi falls within the definition of a “commercial establishment” in terms of Section 2(5) of the Act, claims related to wages under Section 21 of the Act can, therefore, be entertained in the facts of this case by the Authority which is located in Delhi, under the Delhi Shops and Establishments Act, 1954.

20. In light of the above observations, this Court is of the opinion that there is no cause for interference in the present petition. The Authority under the Delhi Shops and Establishments Act, 1954 would proceed further to adjudicate upon the claims of the Employee, and decide the same on merits.

21. Accordingly, the present petition, along with all pending applications, is disposed of in the above terms.

**PRATHIBA M. SINGH**  
**JUDGE**

**OCTOBER 05, 2021**

*mw/AD*