

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6573 OF 2023**

Nitor Infotech Pvt. Ltd.

... Petitioner

versus

Piyush Agarwal

... Respondent

Mr. Nitin Gaware Patil for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 28 JUNE 2023

P.C.

1. This Petition under Article 227 of the Constitution of India takes exception to an order dated 3 January 2023 passed by the learned Judge, Labour Court at Pune on an application (Exhibit C-3) preferred by the Petitioner – first party in Reference IDA 500 of 2021 whereby the learned Judge rejected the said application seeking reference of the dispute between the first party and the second party – employee to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996.

2. The Petitioner – first party is engaged in the business of technology consultation, solution and product engineering. The Respondent was appointed as “Technical Lead”, inter alia, to manage and groom developers and develop small scale projects through his team vide appointment letter dated 20 February 2019, with the Petitioner. On account of non-performance and non-fulfillment of the job responsibilities, despite several opportunities to improve the performance to the

expected level, the Petitioner claimed to have terminated the services of the Respondent vide order dated 25 August 2020.

3. The Respondent raised an industrial dispute. Upon the failure of conciliation, the Appropriate Government referred the industrial dispute for adjudication to the Labour Court at Pune.

4. In the said Reference (IDA) No.500 of 2021, the Petitioner – first party preferred an application for reference of the dispute to arbitration in accordance with clause 12 of the Agreement dated 2 March 2020, between the Petitioner and the Respondent dated 2 March 2020, which provided for resolution of the dispute through arbitration by the Institute of Arbitration and Conciliation (Institute).

5. By the impugned order dated 3 January 2023, the learned Judge, Labour Court, was persuaded to reject the application holding, inter alia, that the validity and existence of the said agreement had yet not been established, and the Petitioner failed to demonstrate as to how the provisions contained in Section 8 of the Act, 1996 were applicable to the said reference. Being aggrieved, the Petitioner – first party has invoked the writ jurisdiction.

6. I have heard Mr. Nitin Gaware Patil, the learned Counsel for the Petitioner. Mr. Gaware submitted that the learned Judge, Labour Court, completely misconstrued the provisions contained in Section 8 of the Act, 1996. In view of the development in law in the matter of reference of the dispute to arbitration to the effect

that “when in doubt do refer” (Vidya Drolia and Ors. V/s. Durga Trading Corporation¹) the learned Judge committed an error in declining to refer the parties to arbitration despite there being an express arbitration clause.

7. The appointment letter dated 20 February 2019 under which the Respondent came to be appointed, does not contain an arbitration clause. But, the arbitration clause is contained in an agreement titled ‘non-disclosure agreement’. It reads as under :

“12. Any disputes arising out of or in the course of employee’s appointment with the Company shall be referred to the arbitration of the Institute of Arbitration and Mediation (Institute). The said Arbitration shall be governed by the Rules of Arbitration of the Institute and be subject to the provisions of Arbitration and Conciliation Act, 3096. The venue of Arbitration shall be at Pune and only the courts at Pune shall be entitled to exercise jurisdiction in respect therewith.”

8. Mr. Gaware submitted that all the conditions requisite for invoking the provisions contained in Section 8(1) of the Act, 1996 have been made out, namely there is an arbitration agreement, the action is brought in a matter which is the subject matter of the arbitration agreement between the employer and employee before the judicial authority, the Petitioner has made an application to refer the dispute to arbitration before the date of submitting its first statement on the substance of the dispute and there is nothing to indicate that, prima facie, there is no valid arbitration

1 (2021) 2 SCC 1

agreement. Reliance was sought to be placed on the judgment of the Supreme Court in the case of **P. Anand Gajapathi Raju and Ors. V/s. P.V.G.Raju (dead) and Ors.**² wherein the conditions required to be satisfied to refer the parties to arbitration were enunciated.

9. I am not inclined to test the legality and correctness of the impugned order on the ground as to whether the learned Judge was justified in rejecting the application on the premise that the existence of the arbitration agreement has not been established. Nor on the count that there is no arbitration clause in the appointment letter. Instead I propose to consider the challenge to the impugned order on the assumption that there is an arbitration agreement.

10. The Court is required to pose unto itself the core question as to whether the industrial dispute referred by the Appropriate Government under the Industrial Disputes Act, 1947, is arbitrable.

11. The aforesaid question was considered by a learned Single Judge of this Court in the case of **Kingfisher Airlines Ltd. V/s. Capt. Prithvi Malhotra, Instructor and Ors.**³ and, after an elaborate analysis, the learned Single Judge ruled that the adjudication of industrial disputes is reserved by the legislature exclusively for the authorities established under the I.D.Act as a matter of public policy. Therefore, by necessary implication, the same stands excluded from the purview of the private

² (2004) 4 SCC 539

³ 2011 SCC Online Bom 1999

fora of the arbitrator. Consequently, the industrial dispute is rendered inarbitrable outside the I.D.Act. I do not find any reason to take a different view of the matter.

12. An answer to the controversy sought to be raised in the Petition can also be found by a conjoint reading of the provisions of Section 10 and 10-A of the Act, 1947. Since the issue arises in the context of a reference of the industrial dispute for adjudication to an industrial adjudicator by the Appropriate Government under Section 10 of the Act, 1947, it is necessary to examine whether the industrial adjudicator is competent to refer the parties to arbitration. It would be contextually relevant to note that Section 10-A of the Act, 1947 incorporates a mechanism of voluntary reference of dispute to arbitration. The stage is of material significance. Sub-Section (1) of Section 10-A of the Act provides that the parties may agree to refer the dispute to arbitration at any time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal. Arbitration under Section 10-A of the Act can thus be resorted to before the reference is made to an industrial adjudicator under Section 10 of the Act, 1947.

13. In the case of **Jai Bhagwan V/s. Management of the Ambala Central Co-op. Bank Ltd. And Anr.**⁴ a three Judge Bench of the Supreme Court has held as under :

“Raising an industrial dispute is a well recognized and legitimate mode of redress available to a workmen, which has achieved statutory recognition

⁴ (1983) 4 SCC 611

under the Industrial Disputes Act and we fail to see why the statute recognized mode of redress should be denied to a workman because of the existence or availability of another remedy. Nor are we able to understand how an Industrial Tribunal to whom a dispute has been referred for adjudication can refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly has to some other authority. While the Government may exercise their discretion in deciding whether to refer or not to refer a dispute for adjudication, the Tribunal to whom the dispute has been referred has no discretion to decide whether to adjudicate or not. Once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by the Industrial Tribunal. Resolution of the dispute cannot be avoided by the Tribunal on the ground that the workman had failed to pursue some other remedy.”

14. The matter can be looked at from another perspective. The resolution of the industrial dispute under the Industrial Dispute Act, 1947 cannot be equated with adjudication of disputes by the civil court. The Industrial Disputes Act and the allied legislations have been construed to provide, in themselves, an alternative dispute resolution mechanism. In the case of **Rajasthan State Road Transport Corporation and Anr. V/s. Krishna Kant and Ors.**⁵ while resolving the controversy as to the availability of an alternate jurisdiction of civil court, a three Judge Bench of the Supreme Court expounded, inter alia, the following propositions :

“35. We may now summarise the principles flowing from the above discussion :

(1) Where the dispute arises from general law of contract i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil

5 (1995) 5 SCC 75

court cannot be said to be not maintainable, even though such a dispute may also constitute an “industrial dispute” within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Dispute Act, the only remedy is to approach the forums created by the said Act.

.....

(7) The Policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.”

15. In view of the aforesaid enunciation of law, the industrial dispute is not arbitrable especially after a reference has been lawfully made under Section 10 of the Act, 1947 to the Court or Tribunal. In that event, the industrial adjudicator is enjoined to adjudicate the reference. The Petition, therefore, does not deserve to be entertained.

16. Hence, the Writ Petition stands dismissed.

(N.J.JAMADAR, J.)