

Samarjit Ghosh

Vs

M/S Bennett Coleman and Co. and Another

Civil Appeal No. 2794 of 1986

(CJI R. S. Pathak, V. Khalid JJ)

29.06.1987

JUDGMENT

PATHAK, C.J. -

1. This appeal is directed against judgment and order of a Division Bench of the Calcutta High Court affirming on appeal the judgment and order of a learned Single Judge of the High Court declaring that the reference made by the Government of West Bengal in the dispute raised by the appellant is incompetent and invalid.
2. The appellant is a working journalist employed by the respondents, Messrs. Bennett Coleman and Company Limited. The registered office of the company is at Bombay and its press is located in Calcutta. The sales office of the company is situated in Calcutta. On November 1, 1961, the appellant was appointed a staff correspondent in the Calcutta Office of the company. The letter of appointment dated November 9, 1961 was issued by the company from its registered office at Bombay. Subsequently, the appellant was promoted to the post of Industrial Correspondent, Pune and was transferred from Calcutta to Pune from February 16, 1976. Upon transfer to Pune the appellant received his remuneration and allowance from the Pune office of the company, and he was under the direct control and supervision of the registered office of the company situated in Bombay.
3. While the appellant was in Calcutta and before his transfer on promotion to Pune the appellant applied to the Labour Department, Government of West Bengal, on April 29, 1975 under sub-section (1) of Section 17 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as "the Act") for recovery of the unpaid portions of his wages relating to the period April, 1968 to February, 1973 from the employer company. On May 14, 1975 the Government of West Bengal initiated conciliation proceedings. The employer company participated in the conciliation proceedings and a joint conciliation meeting was held before the Conciliation Officer, Calcutta. The appellant was transferred to Pune while the report of the conciliation proceedings was still awaited. On November 16, 1976 the Conciliation officer reported failure of the conciliation proceedings and recommended that the dispute be referred to the Labour Court under sub-section (2) of Section 17 of the Act. Accordingly the Government of West Bengal made a reference on August 23, 1977 to the First Labour Court, West Bengal for the adjudication of the dispute between the parties. An objection was raised by the employer company before the First Labour Court that the reference was incompetent as the Government of West Bengal had no power to make the reference. On July 11, 1980 the First Labour Court rejected the objection. The order was challenged by the employer company by a writ petition filed in the High Court. By his judgment and order dated August 5, 1982, the learned Single Judge held that the reference was incompetent. The view was affirmed by a Division Bench of the

High Court in appeal. And now this appeal by special leave.

4. The question whether the Government of West Bengal was empowered to make a reference of the dispute between the appellant and the employer company must be determined by the provisions of the Act in their application to the facts of this case. Section 17 of the Act makes provisions for the recovery of money due to a newspaper employee from his employer. Sub-section (1) requires that an application by the newspaper employee complaining that an amount due to him has remained unpaid by the employer should be made to the State Government, and provides that if the State Government is satisfied that any amount is so due it is empowered to issue a certificate for that amount to the Collector, and thereupon the Collector must proceed to recover that amount in the same manner as an arrear of land revenue. Which is the State Government to which such application lies is indicated by Rule 36 of the Rules made under the Act. Rule 36 provides that an application under Section 17 of the Act shall be made to the government of the State where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed is situated. It is the location of the Central Office or the Branch Office in which the newspaper employee is employed which determines which State Government it will be. The rule works in favour of the convenience of the newspaper employees.

5. Sub-section (2) and (3) of Section 17 provides :

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the questions so referred were a matter referred to the Labour Court for adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).

6. When all the provisions of Section 17 are considered together it is apparent that they constitute a single scheme. In simple terms the scheme is this. A newspaper employee, who claims that an amount due to him has not been paid by his employer, can apply to the State Government for recovery of the amount. If no dispute arises as to the amount due, the Collector will recover the amount from the employer and pay it over to the newspaper employee. If a question arises as to the amount due, it is a question which arises on the application made by the newspaper employee, and the application having been made before the appropriate State Government it is that State Government which will call for an adjudication of the dispute by referring the question to a Labour Court. When the Labour Court has decided the question, it will forward its decision to the State Government which made the reference, and thereafter the State Government will direct that recovery proceedings shall be taken. In other words the State Government before whom the application for recovery is made is the State Government which will refer the question as to the amount due to a Labour Court, and the Labour Court upon reaching its decision will forward the decision to the State Government, which will then direct recovery of the amount.

7. Turning to the facts of the present case, it is clear that the application under sub-section (1) of

Section 17 was made on April 29, 1975 when the appellant was employed at the Calcutta Branch of the employer company. He made the application to the Labour Department of the Government of West Bengal for recovery of the unpaid portion of his wages. When the question arose as to the amount due to the appellant, the Government of West Bengal made the reference for adjudication to the First Labour Court, West Bengal. Upon the construction of sub-section (2) of Section 17 which has found favour with us, it is beyond dispute, we think, that the Government of West Bengal is competent to make the reference. In our opinion the High Court erred in holding that the reference was without jurisdiction and that it was the State of Maharashtra which was competent to make the reference. The application for recovery was rightly made by the appellant before the Government of West Bengal because he was then employed by the Branch Office of the employer company, Calcutta. Once we hold that the application was rightly made before the government of West Bengal, the further conclusion must necessarily follow that it was the Government of West Bengal which possessed the power to refer the question for adjudication. It seems to us that the High Court omitted to appreciate the inter-relationship between the different provisions of Section 17 and the fact that if the proceeding under sub-section (1) of Section 17 was commenced rightly before a State Government it was that State Government alone which should make a reference to a Labour Court for adjudication.

8. A number of cases have been placed before us, but we do not consider it necessary to refer to them having regard to the view taken by us upon a plain analysis of the statutory provisions.

9. We may note that the fundamental question before us is whether the Government of West Bengal was competent to make the reference. We do not consider it appropriate to decide any other questions arising upon the reference since the reference must, pursuant to this judgment, be considered to be pending still and those questions can be raised there. Our attention has been drawn by learned counsel for the employer company to an award of the Labour Court of West Bengal where, it is said, the question covered by the impugned reference has already been concluded on its merits. That is a submission which is open to the employer company during the proceedings before the Labour Court upon the impugned reference. We are concerned with a limited point and we need go no further.

10. In the result the appeal is allowed, the judgment and order dated January 18, 1985 of the division Bench of the High Court and the judgment and order dated October 5, 1982 of the learned Single Judge of the High Court are set aside and the writ petition filed by the employer company is dismissed. The Labour Court will now proceed to dispose of the reference expeditiously. The appellant is entitled to his costs of this appeal and of the entire proceedings before the High Court.

</html