

NAGPUR HIGH COURT

Burhanpur National Textile Workers Union

Vs

Labour Appellate Tribunal of India

Misc. Petn. No. 300 of 1953

(Hidayatullah and R. Kaushalendra Rao, JJ.)

29.10.1953

JUDGMENT

Hidayatullah, J.

1. This is a petition for a writ of certiorari or mandamus under Article 226 of the Constitution of India. The petitioner is the Burhanpur National Textile Workers' Union, Burhanpur, district Nimar. The writ is sought against the Labour Appellate Tribunal at Bombay; the Provincial Industrial Court at Nagpur; Shri P.K. Sen, Registrar of Trade Unions, Nagpur; the Burhanpur Tapti Mills, Limited, Burhanpur; Tapti Mill Majdoor Sangh, Burhanpur; and the State of Madhya Pradesh.

2. The petitioner submits that it is a registered union under the Indian Trade Union Act, 1926, in the local area of Burhanpur and is the representative of the employees of the Burhanpur Tapti Mills, Ltd., Burhanpur. On 14-3-1952 the State Government issued a notification fixing the limit of 20 per cent. for recognizing a union as representative of the employees of the Burhanpur Tapti Mills, Ltd. The petitioner thereupon applied to the third respondent on 20-4-1951 for recognition. An enquiry was made and the application was granted.

3. The fifth respondent (The Tapti Mill Majdoor Sangh) thereupon, appealed to the Provincial Industrial Court for setting aside the certificate on the ground that the enquiry was not proper. The Industrial Court dismissed the appeal (Industrial Appeal No.2 of 1951, dated 23-6-1951). No appeal was taken against that decision to the Labour Appellate Tribunal at Bombay.

4. On 24-7-1951 the fifth respondent filed an application under Section 7, Central Provinces and Berar Industrial Disputes Settlement Act, 1947, before the Registrar of Trade Unions, Madhya Pradesh, for cancellation of the recognition. This application was rejected by the third respondent on 27-8-1951. An appeal was taken against the order to the Industrial Court which was also dismissed on 27-10-1951. No appeal was filed against that order before the Appellate Tribunal.

5. The fifth respondent filed yet another application on 30-1-1952 for cancellation of the recognition. The application was rejected by the third respondent on 6-10-1952.

6. An appeal was filed against the order before the Provincial Industrial Court, though it is alleged the order was not then published as required by rule 16 framed under the Act. The appeal was decided by the second respondent on 18-1-1953 in favour of the Tapti Mill Majdoor Sangh and an inquiry was ordered.

7. The petitioner contends that the appeal itself was premature and that the second respondent was not properly appointed as the provincial Industrial Court since no notification was issued by the sixth respondent appointing him as such. The petitioner also contends that the previous orders passed operated as 'res judicata' in the case, but the second respondent interfered with the decision of the Registrar and remanded the case for further inquiry.

8. The petitioner then appealed to the Labour Appellate Tribunal, Bombay, against the order of the Industrial Court. The Appellate Tribunal dismissed the appeal and confirmed the order of the Industrial Court (Appeal (Bom.) No.45 of 1953, decided on 8-9-1953). The petitioner has, therefore, filed the present petition for bringing up the order of the Appellate Tribunal as well as that of the Industrial Court for consideration by this Court and for getting them quashed. I need not mention the other grounds on which this relief is sought because of my decision on the question of jurisdiction.

9. The case was fixed for motion hearing on 28-9-1953 when the Tapti Mill Majdoor Sangh intervened and requested that the petition be taken up immediately and decided by 12 noon as a motion of no-confidence was being moved in the Legislative Assembly and this formed one of the items in the charges leveled against the ministry. It was also urged that the petition was mala fide inasmuch as it was designed to stifle the discussion of the subject on the floor of the Legislative Assembly.

10. We heard learned counsel for the Tapti Mill Majdoor Sangh on the objection to the jurisdiction of this Court to entertain this petition. Though we were inclined to decide the case as expeditiously as possible, we intimated to counsel that the matter required deliberation and could not be disposed of within the time set by the learned counsel for the fifth respondent. We also intimated to him that we were not concerned with the use to which the application or our decision would be put in other spheres. Except for the allegation that the application was not bona fide, there was nothing in the request that an early decision should be given. We cannot be a party to anything which has even the appearance of either furthering or retarding a motion of no-confidence in the Legislative Assembly. We therefore intimated to counsel that we would take time to consider the matter and that we did not consider that the petition had been filed with any ulterior motive, regard being had to the history of the dispute between the rival trade unions. Indeed, the arguments themselves lasted well into the day and there was thus no occasion to pronounce our order the same day.

11. The objection of the fifth respondent is that in view of the decision of their Lordships of the Supreme Court in - '*Election Commission v. Venkata Rao*¹', read with the decision of their Lordships of the Privy Council in - '*Ryots of Garabandho v. Zamindar of Parlakimedi*²', this Court has no jurisdiction to entertain the present petition for a writ directed against the Appellate Tribunal, Bombay. The objection is based upon the wording of Article 226 of the Constitution and it is contended that since the Appellate Tribunal is not

situate within the territorial jurisdiction of this Court, no writ can go to that Tribunal.

12. The petitioner contends that the decision of their Lordships of the Supreme Court is distinguishable and is not applicable to the present case. The learned counsel refers to a passage at page 214 in which their Lordships observed as follows:

"Our attention has been called to certain decisions of High Courts dealing with the situation where the authority claiming to exercise jurisdiction over a matter at first instance is located in one State and the appellate authority is located in another State. It is not necessary for the purposes of this appeal to decide which High Court would have jurisdiction in such circumstances to issue prerogative writs under Article 226."

Learned counsel for the petitioner argues that this observation clearly leaves over for decision a case of the present description. He contends that the cases to which their Lordships allude are - '*Madras Electric Tramways Ltd. v. M.K. Ranganathan*³', and - '*Ranganathan v. Madras Electric Tramway*⁴' and that in those cases it has been held that the High Court does possess the power to issue writs against the Appellate Tribunal even if the tribunal were situate outside the territorial jurisdiction of that High Court, provided the dispute arose within the High Court's territorial jurisdiction. The learned counsel for the petitioner contends that these cases must be taken to have been left untouched by the decision of their Lordships of the Supreme Court and that these decisions are directly in point here.

13. On the other hand, the objectors claim that even though their Lordships reserved the consideration of these decisions, they cannot be regarded as good law because their Lordships' dictum in - 'The Election Commission Case, clearly covers them and that they cannot stand in the face of the pronouncement of their Lordships of the Supreme Court. Having heard elaborate arguments on both sides, I am of opinion that the objection must be sustained and, on a true interpretation of their Lordships' ruling and its implications, even though their Lordships reserved the consideration of such cases, there can be no other opinion but that the jurisdiction to quash the orders of the Labour Appellate Tribunal does not exist in this Court, even though the dispute originated here.

14. Before dealing with this question, I shall refer to certain provisions of the Act constituting that Court. The Appellate Tribunal is constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950. Under Section 6 it is provided as follows:

"6. Seat of the Appellate Tribunal-

The Appellate Tribunal shall have its principal seat at such place as the Central Government may, by notification in the Official Gazette, appoint."

Section 8 of the Act provides as follows:

"8. Constitution of Benches of the Appellate Tribunal-

(1) The Chairman may constitute as many Benches of the Appellate Tribunal as may be deemed necessary for the purpose of carrying out the functions and exercising the powers of the Appellate Tribunal.

(2) x x x x

(3) A Bench shall sit at such place or places as may be specified by the Chairman by notification in the Official Gazette:

Provided that the Bench may, if it is satisfied that it will tend to the general convenience of the parties or witnesses in any particular case, sit at any other place.

(4) x x x x."

15. It is pertinent to point out here that the Central Government issued a notification on 8-8-1950 constituting the Appellate Tribunal and appointed the principal seat of the Tribunal at Bombay. No notification of the Chairman was brought to our notice and at all material times the Appellate Tribunal was sitting at Bombay for the purpose of this case.

16. It is necessary to refer to certain other sections. Under Section 15 it is provided as follows.

"15. Commencement of decision of the Appellate Tribunal.-

(1) The decision of the Appellate Tribunal shall be enforceable on the expiry of thirty days from the date of its pronouncement:

Provided that where the appropriate Government is of opinion that it would be inexpedient on public grounds to give effect to the whole or any part of the decision, the appropriate Government may, before the expiry of the said period of thirty days, by order in the Official Gazette, either reject the decision or modify it.

(2) x x x x."

Section 16 provides as follows.

"16. Effect of decision of the Appellate Tribunal.-

Where on appeal from any award or decision of an industrial tribunal, the Appellate Tribunal modifies in any manner whatsoever that award or decision, the decision of the Appellate Tribunal shall, when it becomes enforceable under Section 15, be deemed to be substituted for that award or decision of the industrial tribunal and shall have effect for all purposes in the same manner and in accordance with the same law under which the award or decision of the industrial tribunal was made as if the industrial tribunal made the award or decision as modified by the decision of the Appellate Tribunal."

17. It is also necessary to refer to one more section which gives power to the Appellate Tribunal to punish contempts of itself. Section 30 (3) provides as follows:

"The Appellate Tribunal shall have and exercise the same jurisdiction, power and authority, in accordance with the same procedure and practice, in respect of contempt's of itself and of all the industrial tribunals as the High Courts have and exercise in respect of themselves and Courts subordinate to them under the Contempt of Courts Act, 1926, (XX of 1926)."

18. The contention of the objectors is that the Appellate Tribunal is outside the territorial

jurisdiction of this Court and therefore, on the authority of - 'The Election Commission Case, this Court cannot issue a writ to the Appellate Tribunal. The objectors also contend that inasmuch as the order of the Appellate Tribunal now confirms the order of the Industrial Court, under section 15 of the Act the order of the Tribunal will operate together with the order of the Industrial Court after the expiry of one month. It is contended that, though the Industrial Court is within our jurisdiction, the decision of the dispute by the Appellate Tribunal and the effect which section 15 gives to the Tribunal's order renders it impossible for us to interfere by way of a writ even directed against the Industrial Court. The petitioners, on the other hand, contend that the two cases from Bombay and Madras are clear authority for the proposition that the jurisdiction does exist and nothing decided in the Supreme Court can or does touch those decisions because their Lordships themselves specifically reserved that question for some future discussion.

19. I have, therefore, to see what the decisions in the two cases from Bombay and Madras were. Both these cases concerned a dispute between the Madras Electric Tramways, Ltd., and Shri M.K. Ranganathan and others. The Bombay decision was the first in point of time. The writ was sought against the Labour Appellate Tribunal from the Bombay High Court in respect of a dispute which had arisen in Madras and was the subject-matter of a decision by the Industrial Court at Madras. The head-note in the AIR series accurately represents the gist of the decision and can be quoted here. It reads as follows:

"Although the High Court of Bombay has now the power to issue writs not only within the town and island of Bombay but throughout the territory of the State, that power can only be exercised provided it has jurisdiction either in respect of the subject-matter or in respect of parties.

Where the subject-matter of the industrial dispute and the parties thereto were not within the jurisdiction of the Bombay High Court and the Labour Tribunal which gave the award was also not subject to the jurisdiction of that High Court, then simply because the Labour Appellate Tribunal, to which appeal was preferred from the award, has its office situated in Bombay cannot give jurisdiction to that High Court to issue writ of certiorari against the order of the Appellate Tribunal."

Chagla, C.J., and Gajendragadkar, J. followed the decision of their Lordships of the Privy Council in - '*Ryots of Garabandho v. Zemindar of Parlakimedi* (cit. sup.)' to reach the above conclusion.

20. The learned Judges, however, while dismissing the application, noticed an argument raised by the counsel of the petitioners before them. This is what the learned Chief Justice observed:

"Mr. Sule suggested that there would be difficulty in the petitioner getting any relief from the Madras High Court because of the Tribunal's office being situated in Bombay. It is for the Madras High Court to decide that question, but speaking for ourselves we apprehend no difficulty. Although the Appellate Tribunal is situated in Bombay, the Madras High Court can quash the order and make its decision binding upon the parties who would be before that Court and who are within the jurisdiction of that Court. Our reading of the

decision of the Privy Council is that as far as the question of jurisdiction is concerned, it is the Madras High Court that has jurisdiction to issue a writ of certiorari and not this Court." The learned Judges, therefore, reversed an order made earlier by Shah, J., granting a writ to the petitioner.

21. This brings us to the decision reported in the Madras case. The petition was made to the High Court at Madras for a writ and the matter went before Subbarao J., for decision. The learned Judge disposed of the question of jurisdiction in these words:

"It is said that the Tribunal is not within the territory in relation to which the High Court exercises jurisdiction. Before I consider this argument, some relevant facts may be stated. The Appellate Labour Tribunal, though it has its head office in Bombay, is itinerant and holds its sittings in different parts of the country. It also held a sitting within the jurisdiction of this Court in connection with an appeal filed by the first respondent and also disposed of some interlocutory applications in connection with that appeal. Further, the dispute arose in the territory within the jurisdiction of this Court and all the parties to the dispute reside within such a territory. In AIR 1943 PC 164 the Judicial Committee had elaborately considered the question whether the Madras High Court could issue a writ of Certiorari quashing the order of the Revenue Board fixing fair and equitable rent in respect of lands in three villages belonging to the Zemindar of Parlakimedi in Ganjam district.

At page 178 their Lordships observed:

'The question is whether the principle of that case can be applied in the present case to the settlement of rent for land in Ganjam merely upon the basis of the location of the Board of Revenue as a body which is ordinarily resident or located within the town of Madras or on the basis that the order complained of was made within the town. If so, it would seem to follow that the jurisdiction of the High Court would be avoided by the removal of the Board of Revenue beyond the outskirts of the town and that it would never attach but for the circumstances that an appeal is brought to or proceedings in revision taken by the Board of Revenue. Their Lordships think that the question of jurisdiction must be regarded as one of substance and that it would not have been within the competence of the Supreme Court to claim jurisdiction over such a matter as the present by issuing certiorari to the Board of Revenue on the strength of its location in the town. Such a view would give jurisdiction to the Supreme Court in the matter of the settlement of rents for ryoti holdings in Ganjam between the parties not otherwise subject to its jurisdiction which it would not have had over the revenue officer who dealt with the matter at first instance.'

"The above passage indicates that the jurisdiction to issue a writ does not depend upon the mere location of a tribunal but depends upon the subject-matter and the parties to the dispute in regard to which such a tribunal purports to exercise jurisdiction. To put in other

words, though the tribunal is situated outside the territorial jurisdiction of the High Court if it purports to exercise jurisdiction in regard to the parties or the subject-matter which are within the territorial jurisdiction of the High Court, the tribunal must be deemed to have functioned within the jurisdiction of the High Court."

22. The learned Judge stated that the question of jurisdiction being one of substance, his view received support from the Privy Council case. He also observed that if a tribunal or authority exercised jurisdiction within the territories affecting such rights, it may reasonably be construed that the authority or the tribunal functioned within the territorial jurisdiction of the High Court and that the tribunal was amenable to its jurisdiction. The learned Judge was of opinion that it was not necessary to invoke any fiction as the Appellate Tribunal, though it had its office at Bombay, was an itinerant body functioning in different parts of the country and had functioned during some part of the inquiry in that case within the jurisdiction of the Madras High Court. He, therefore, held that the Madras High Court had jurisdiction to issue a writ of certiorari against the order of the Labour Appellate Tribunal.

23. The question that arises is whether the decision of Subbarao, J., as also the observations of the Division Bench in the Bombay case, can now stand in view of the pronouncement of their Lordships of the Supreme Court in - 'The Election Commission case'. In that case, which was an appeal from an order of a single Judge of the High Court of Madras issuing a writ of prohibition restraining the Election Commission, it was held that the High Court of Madras had no jurisdiction to bind or restrain the Election Commission, a statutory authority constituted by the President and having its office permanently located at New Delhi. The learned Judges of the Supreme Court took into consideration the decision of their Lordships of the Privy Council in - 'The Parlakimedi case' and held that the writs issued by the High Court cannot on that decision as well as Article 226 of the Constitution run beyond the territories subject to its jurisdiction. They also held that the person or authority to whom the High Court is empowered to issue such writs must be within those territories, which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories. Their Lordships then observed as follows:

"These characteristics of the special form of remedy ('certiorari') render it necessary for its effective use that the persons or authorities to whom the Court was asked issue these writs should be within the limits of its territorial jurisdiction. We are unable to agree with the learned Judge below that if a tribunal or authority "permanently located and normally carrying on its activities elsewhere" exercises jurisdiction within those territorial limits so as to affect the rights of parties therein, such tribunal or authority must be regarded as functioning within the territorial limits of the High Court and being therefore amenable to its jurisdiction under Article 226."

(Underlined (here in " ") by me). Their Lordships repelled the argument based upon the passage quoted above from the decision in - 'The Parlakimedi Case (B)' that a cause of action attracts jurisdiction. Their Lordships observed as follows:

"The rule that cause of action attracts jurisdiction in suits is based on statutory enactment

and cannot apply to writs issuable under Article 226 "which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority 'within the territories' in relation to which the High Court exercises" jurisdiction. Nor is much assistance to be derived from the observations quoted above."

(Underlined (here in " ") by me).

Their Lordships, after quoting from the Parlakimedi Case, observed as follows:

"It will thus be seen that the decision is no authority for dispensing with the necessity of the presence or location, within the local limits of the Court's jurisdiction, of the person or authority to whom the writ is to be issued, as the basis of its power to issue it."

24. These observations, if I may respectfully point out, are sufficient to cover the case of the Labour Appellate Tribunal, even though their Lordships reserved that question for a future consideration. It is no doubt true that a case is an authority for what it decides and not for what might be deduced from it. But this case did decide, and conclusively, that Article 226 makes no reference to the cause of action or where it arises but insists that the presence of the person or authority should be within the territory in relation to which the High Court exercises the jurisdiction conferred by that Article. This dictum is not dependent on any facts in controversy in that case. Further, their Lordships have clearly held that an authority or tribunal, though casually present within the territories of the High Court, cannot be said to be functioning there if its 'permanent and normal location' is outside the jurisdiction of the High Court. This observation also, if I may point out with respect, does not depend upon any factual basis beyond that the office of the Election Commission is permanently and normally situated at Delhi.

25. The observations of their Lordships are, therefore, conclusive. It is true that their Lordships reserved for future consideration a case where an appellate tribunal considers an order passed by another tribunal situated within the jurisdiction of the High Court, though the appellate tribunal is not. If the authority sought to be bound is the appellate authority, then the decision in - 'The Election Commission Case (A)' must apply. The learned counsel for the objectors concedes that the Industrial Court is certainly subject to the jurisdiction of the High Court but he argues that, inasmuch as the order of the Industrial Court is now confirmed by the Appellate Tribunal, the order of the Appellate Tribunal becomes effective on the expiry of thirty days under section 15 and to interfere with the order of the Industrial Court is tantamount to disturbing the order of the Appellate Tribunal.

26. There can be no doubt that the writ of 'certiorari' is, as their Lordships of the Privy Council have pointed out in 'the Parlakimedi Case, to order an inferior tribunal to certify its record so that the High Court may cause that to be done in the case which, on its face, the law requires to be done. The power to compel an inferior tribunal so to certify its record must of necessity be territorial in extent and has been rendered more so by the manner in which Article 226 has been framed in the Constitution. If we cannot make our writ run to the Appellate Tribunal at Bombay so as to compel it to certify its record to us or to bind it with our consequent order, we have no jurisdiction to interfere with its decision at all. To interfere with the order of the Industrial Court

in such circumstances would be improper. I regret I have to refer to my decision given when sitting with Choudhuri, J., in - '*Ramkrishna v. Daoosingh*⁵', that the Court does not do indirectly what it cannot do directly and this Court should be loath to quash an intermediate order so as to set rid of a subsequent order by implication. Further, our action in quashing the order of the Industrial Court would place that Court and the Registrar on the horns of a dilemma. Under the Act they would be bound by the order of the Appellate Tribunal, and equally bound to give effect to our order. If we do not quash the order of the Appellate Tribunal and leave it operative, we indirectly compel the Industrial Court to disobey that order. The Industrial Court and the Registrar are thus exposed to a commitment for contempt at the instance of the Appellate Tribunal and equally at our instance, if they disobey our writ. Such a situation cannot be allowed to arise and is against the practice of Courts.

27. I am of opinion that this Court does not possess jurisdiction to interfere with the decision of the Appellate Tribunal so long as its principal seat is Bombay or, to use the words of their Lordships of the Supreme Court, "it is permanently located and normally carries on its activities elsewhere". The result is anomalous and unfortunate. The High Court of Bombay appears to possess the power to quash by its writs the order of the Labour Appellate Tribunal at Bombay passed in disputes arising within that State, but no other High Court has that power even though the dispute relates to matters which have arisen within the jurisdiction of that Court. It is a lacuna for the Legislature to fill up, and not for the Judges to make good who must interpret the law as they find it. I accordingly hold that this Court has no jurisdiction to entertain the present petition, which is therefore dismissed. There shall be no order about costs as

the objectors intervened and there was no notice to them. I certify under Article 152 (1) that the case involves a substantial question of law as to the interpretation of the Constitution.

R. Kaushalendra Rao, J.

28. I agree to the order proposed by my learned brother Hidayatullah. No other conclusion than that reached by him is possible in the case after the pronouncement of their Lordships of the Supreme Court in the Election Commission Case (A). Though their Lordships expressly reserved the question as to which High Court would have jurisdiction in a case where an authority claiming to exercise jurisdiction in the first instance is located in one State and the Appellate Authority is located in another State, they pointed out in unmistakable terms "a twofold limitation" placed upon the wide powers conferred upon the High Court under Article 226. The limitations are: firstly the writs issued by the Court cannot run beyond the territories subject to its jurisdiction and secondly the person or authority to whom the High Court is empowered to issue such writs must be amenable to its jurisdiction either by residence or location within those territories. The petitioner prays for an order quashing the order of the Industrial Court at Nagpur and the order in appeal by the Appellate Tribunal at Bombay. I do not see how that can be done without transgressing the limitations pointed out by their Lordships of the Supreme Court. The Appellate Tribunal is not amenable to the jurisdiction of this Court either by residence or location within the territories in respect to which the Court exercises jurisdiction. An order of this Court quashing the order of the Appellate Tribunal would be lacking the essential sanction for enforcement by attachment for contempt, in case the Appellate Tribunal chooses to ignore the former order as it might well do. That such a situation is not inconceivable is indicated by the case which came up for decision before the Full Bench in -

'*Sultan Ali. v. Nur Hussain*'⁶, In that case a learned Single Judge of the High Court called for the record of a case pending before the Election Commission and ordered stay of further proceedings before the Commission. The Commissioners, however, refused to stay the proceedings on the ground that the Civil Courts had no jurisdiction to interfere with their proceedings. In proceedings for contempt against the Commissioners for willful refusal to obey the order of the High Court the Full Bench ruled that there was no contempt because the order of stay was without jurisdiction and void.

29. The suggestion of the petitioner, that the order of the Industrial Court which is amenable to our jurisdiction may be quashed even though the order of the Appellate Tribunal may not be touched is fallacious and cannot bear scrutiny. The powers of prohibition, correction and direction which this Court undoubtedly possesses under Article 226 are primarily intended to ensure that public authorities observe the law and do not trample on the rights of the citizen. An order of this Court quashing the order of the Industrial Court while leaving untouched the order of the Appellate Tribunal is not conducive to the observance of the law but on the contrary renders the law itself uncertain by giving rise to two conflicting orders claiming apparently equal obedience from the Registrar. In such an event the Registrar who is empowered under

Section 7 of the Act to cancel the certificate of recognition of a union would not know whether he should or should not make a further enquiry into the question of cancellation of the certificate granted to the petitioner. The Registrar cannot comply with either the order of this Court or that of the Appellate Tribunal without at the same time flouting the other. In view of Section 30 (3) of the Act, if the submission of the petitioner be correct the Registrar would be liable to be committed for contempt whether he disobeys one order or the other. It is not right for this Court to pass an order, which whether obeyed or flouted places a public authority in inevitable jeopardy. The petition is dismissed with a certificate for appeal under Article 132 (1) of the Constitution.

Petition dismissed.

Cases Referred.

¹ AIR 1953 SC 210

² AIR 1943 PC 164

⁴(1904) Ltd.', AIR 1952 Mad 659

³ AIR 1952 Bom 449

⁵ AIR 1953 Nag 357

⁶ AIR 1949 Lah 131 (FB)