CASE NO.:
Appeal (civil) 2201 of 2007

PETITIONER:
Bikash Bhushan Ghosh & Ors

RESPONDENT:
M/s. Novartis India Limited & Anr

DATE OF JUDGMENT: 27/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
CIVIL APPEAL NO. 2201 OF 2007
[Arising out of S.L.P. (C) No. 10438 of 2006]

S.B. SINHA, J.

Leave granted

Appellants were workmen of the Respondent company. They were transferred to Siwan (Bihar), Farrukhabad (U.P.) and Karimganj (Assam) by letters of transfer dated 3.10.1994. According to them, the said orders of transfer were violative of the Memorandum of Undertaking dated 18.12.1989 and were issued with an ill-motive of victimizing them for their trade union activities. As despite requests, the purported orders of transfer were not revoked, they sought intervention of the Labour Commissioner, West Bengal by a letter dated 1.3.1995. Allegedly, a conciliation proceeding was initiated, but during the pendency thereof, their services were terminated by Respondent Company by letters dated 15.4.1995. Contending that the said orders of termination were unauthorized, arbitrary and illegal, as no domestic enquiry was held prior thereto, they raised an industrial dispute.

The State of West Bengal, in exercise of its jurisdiction under Section 10(1)(c) read with Section 2A of the Industrial Disputes Act, 1947 referred the following dispute for its adjudication to the Third Industrial Tribunal, West Bengal.

"Whether the termination of service of (1) Shri Bikash Bhusan Ghosh (2) Shri Pradip Kumar Mukherjee and (3) Shri Shyama Charan Mallick is justified? What relief, if any, are they entitled to?"

Before the said Tribunal, inter-alia a contention was raised that the State of West Bengal had no jurisdiction to make the reference. Parties to the reference, however, adduced their respective evidences on merit of the matter.

The question in regard to maintainability of the said reference was determined by the Tribunal in terms of an order dated 30.3.1999 holding the same to be maintainable.

By reason of an Award dated 10.10.2002, the Tribunal opined that the orders of termination passed against the appellants were illegal and they were directed to be re-instated in service with back wages. Aggrieved by and dissatisfied with the said order, Respondent filed a Writ Petition before

the Calcutta High Court which was marked as W.P. No. 2495 of 2002. By a Judgment and Order dated 11.7.2003, the said Writ Petition was dismissed. On an intra-court appeal filed by the Respondents under clause 15 of the Letters Patent of the Calcutta High Court, marked as G.A. No. 3157; a Division Bench of the High Court, however, without going into the merit of the matter held that the State of West Bengal, being not the appropriate Government in respect of the dispute raised by the appellants, had no jurisdiction to make the reference and on that premise allowed the said appeal and consequently set aside the Award made by the Tribunal as also the judgment and order of the learned Single Judge.

Mr. Pradip Ghosh, learned senior counsel appearing on behalf of the appellant, in support of this appeal, inter-alia would submit that the Division Bench of the High Court committed a manifest error in passing the impugned judgment in so far as it proceeded on the basis that no document was brought on records to show that the appellants had raised a dispute in regard to the orders of transfer passed against them which in fact had been done and the same was pending before the conciliation officer. Our attention in this connection has been drawn to a letter dated 23.3.1995 issued by Joint Labour Commissioner, West Bengal to the Personnel Manager of M/s. Sandoz (I) Ltd., pre-decessor of the respondent Company which is in the following terms;

"With reference to the above subject, you are requested to kindly make it convenient to see the undersigned in this office on 12.04.1995 at 3.00 p.m. for a discussion with the concerned representatives."

The learned counsel would contend that in the said conciliation proceeding, the respondents did not participate, which was initiated on the basis of a letter dated 1.3.1995 addressed to the Labour Commissioner, Government of West Bengal by the appellants. It was furthermore submitted that the Division Bench of the High Court, in arriving at the aforementioned decision, failed to consider the decision of this Court in Workmen of Shri Rangavillas Motors (P) Ltd. & Anr. v. Shri Rangavilas Motors (P) Ltd. and Ors. ([1967] 2 S.C.R 528) in its proper perspective.

Mr. Chander Uday Singh, learned senior counsel appearing on behalf of the respondent, on the other hand, would contend that no conciliation proceeding was pending in regard to the order of transfer as alleged or at all. It was submitted that in fact, the appellants categorically stated before the Industrial Tribunal that they would not question the orders of transfer, but only would question the orders of termination. Having regard to the fact that the orders of transfer dated 3.10.1994 were given effect to by relieving the workmen of the charges they had been holding at Calcutta, they would be deemed to have been attached to their transferred places and as they failed to join, their services were lawfully terminated.

As the Division Bench of the High Court did not enter into the merit of the matter, we do not intend to deal with the questions as to whether any conciliation proceedings was, in relation to the orders of transfer passed as against the appellants, in fact pending before the Deputy Labour Commissioner, West Bengal or not. Appellants, however, in our opinion could not have questioned the orders of transfer in view of the nature of the industrial dispute referred to by the State of West Bengal for determination thereof by the III Industrial Tribunal, West Bengal. The orders of transfer were, thus, not in issue before the learned Tribunal.

It is, however, not disputed that the orders of termination were served upon the appellant at Calcutta. The orders of termination as against them, were passed for not obeying the orders of transfer. The transfer of the appellants, therefore, had some nexus with the order of their termination

from services. It is, therefore, not correct to contend that the State of West Bengal was not the appropriate government.

In Shri Rangavillas Motors (P) Ltd. (supra), the concerned workman was engaged as a foreman. He was transferred from Bangalore to Krishnagiri. He questioned the validity of the said order of transfer. The company initiated disciplinary proceeding against him and he was removed from services. State of Mysore made a reference. The validity of the said reference was questioned. This Court opined;

"....This takes us to the other points. Mr. O.P. Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Krishnagiri, and, that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the head office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is : where did the dispute arise ? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose....."

Referring to a decision of this Court in Indian Cable Co. Ltd. v. Its Workmen [1962 Supp. 3 SCR 589], it was held that the subject matter of the dispute, substantially arose within the jurisdiction of the Mysore Government.

We may notice that in Paritosh Kumar Pal v. State of Bihar and others [1984 LAB. I.C. 1254], a full Bench of the Patna High Court held;

"13. Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clearcut principles or tests for determining jurisdiction emerge, therefrom. For clarity these may be first separately enumerated as under:

(i) Where does the order of the termination of services operate?

(ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?

(iii) That the well-known test of jurisdiction of a civil Court including the residence of the parties and the subject matter of the dispute substantially arising therein would be applicable."

Referring to the provisions of the Code of Civil Procedure, it was held that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the court concerned.

The High Court, however, has relied upon a decision of the said Court in Indian Express Newspaper (Bombay) Pvt. Ltd. v. State of West Bengal [2005-II-LLJ 333], wherein it was held;

"40. The basis of the findings of the learned single Judge in the first writ application and that of the Tribunal thereafter on remand and the subsequent findings of the learned single Judge on the second writ application is that when Mr. Sampat's services were terminated he was stationed in the Calcutta office of the Newspaper company. While Mr. Sampat was no doubt served with the order of termination of his service in Calcutta, we are constrained to say that the same would not vest the State Government in West Bengal with authority under Section 2(a)(ii) of the Industrial Disputes Act to make a reference under Section 10 of the said Act. Firstly, at the said point of time the Calcutta office of the Newspaper company no longer had control over Mr. Sampat whose services had been transferred to Bombay and it was the Bombay office which had control over his services. That Mr. Sampat was in Calcutta and was served with the notice of the order of termination of his service in Calcutta is only because of the fact that he had chosen not to comply with the order transfer dated August 1, 1988, by which he had been transferred to Bombay with effect from August 5, 1988, and had not also challenged the same before any forum. Mr. Sampat may have made representations to the Bombay office with regard to such order of transfer, but the same was never the subject-matter of any judicial or quasi-judicial proceeding and it is only after he was served with the order of termination of his service that Mr. Sampat raised a dispute in respect thereof. In our view, notwithstanding the fact that Mr. Sampat had been served with such order in Calcutta, his situs of employment being Bombay, he ought to have raised an industrial dispute relating to the termination of his services in Bombay and the Government of Maharashtra would have been the appropriate Government to make a reference under Section 10 of the aforesaid Act in respect of such dispute."

With respect to the Division Bench, we do not think that it has posed unto itself a correct question of law. It is not in dispute that the appellants did not join their duties at the transferred places. According to them, as the orders of transfer were illegal, their services were terminated for not complying therewith. The assertion of the respondent that the appellant were relieved from job was unilateral. If the orders of transfer were to be set aside, they would be deemed to be continuing to be posted in Calcutta. The legality of the orders of transfer, thus, had a direct nexus with the orders of termination. What would constitute cause of action, has recently been considered by this Court in Om Prakash Srivastava v. Union of India and Another [(2006) 6 SCC 207] wherein it was held;

"12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not

only the infraction of the right, but also the infraction coupled with he right itself. Compendiously, as noted above, the expression means very fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294])

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit (See Gurdit Singh v. Munsha Singh [(1977) 1 SCC 791])

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra [(2000) 7 SCC 640 : 2001 SCC (Cri) 215]"

Judged in that context also, a part of cause of action arose in Calcutta in respect whereof, the State of West Bengal was the appropriate government. It may be that in a given case, two States may have the requisite jurisdiction in terms of clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act. Assuming that other State Governments had also jurisdiction, it would not mean that although a part of cause of action arose within the territory of the State of West Bengal, it would have no jurisdiction to make the reference.

There is another aspect of the matter which cannot be lost sight off. If the provisions contained in the Code of Civil Procedure are given effect to, even if the Third Industrial Tribunal, West Bengal had no jurisdiction, in view of the provisions contained in Section 21 of the Code of Civil Procedure, unless respondent suffered any prejudice, they could not have questioned the jurisdiction of the Court. In Kiran Singh and others v. Chaman Paswan and others [A.I.R. 1954 SC 340], this Court held;

(6) ... If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was 'coram non judice' and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on

this position.

(7) Section 11 enacts that notwithstanding anything in section 578 of the Code of Civil Procedure an objection that a Court which had no jurisdiction over a suit or appeal had exercised it by reason of over-valuation or under-valuation, should not be entertained by an appellate Court, except as provided in the section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the section has come in \026 and deservedly \026 for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a Court, which would have had no jurisdiction to hear a suit or appeal but for over-valuation or under-valuation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on over-valuation or under-valuation, should be dealt with under that section and not otherwise.

The reference to section 578, now section 99, C.P.C. in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the Courts which passed them lacked jurisdiction as a result of over-valuation or under-valuation. It is with a view to avoid this result that section 11 was enacted. It provides that objections to the jurisdiction of a Court based on over-valuation or under-valuation shall not be entertained by an appellate Court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on over-valuation or under-valuation can be raised otherwise than in accordance with it.

With reference to objections relating to territorial jurisdiction, section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying sections 21 and 99, C.P.C. and section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a

nullity cannot be sustained under section 11 of the Suits Valuation Act."

{See also MD. Army Welfare Housing Organisation v. Sumangal Services (P) Ltd [(2004) 9 SCC 619] }

Yet again appellants being workmen, their services were protected in terms of the Industrial Disputes Act, 1947. If their services were protected, an order of termination was required to be communicated. Communication of an order of termination itself may give rise to a cause of action. An order of termination takes effect from the date of communication of the said order. In State of Punjab v. Amar Singh Harika [A.I.R. 1966 SC 1313], this Court held;

"(11) ... It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed, though it may be communicated to the officer concerned several days thereafter. It is true that in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. We are therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the

appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on the 3rd June 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May 1951."

{See also Ranjit Singh v. Union of India [(2006) 4 SCC 153] }

For the reasons aforementioned, the impugned judgment of the Division Bench of the High Court cannot be sustained. It is set aside accordingly. The matter is remitted back to the High Court for consideration of the Letters Patent Appeal on merit. Appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.