

1951
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v.
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GAFUR
MIYA
MAHAMAD
Vyas J.

In our opinion, the term "document" as used in s. 292 cl. (c), cannot be extended so as to mean and include a statement of a witness made by him in another Court, in this case, for instance, the Court of the committing Magistrate. The net result, therefore, is that we agree with the submission of the learned Government Pleader that the learned Additional Sessions Judge was wrong in law in allowing the statements of the persons Ramji, Magan and Pancham made by them when they were examined as witnesses in the committing Magistrate's Court to be used as a part of the statement of accused No. 1 himself in the Sessions Court.

[The rest of the judgment is not material to the report.]

Appeal dismissed.

K. B. S.

APPEAL FROM ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar

1951
Dec. 11

THE MADRAS ELECTRIC TRAMWAYS, LTD. APPELLANTS v.
1 M. K. RANGANATHAN 2. THE LABOUR APPELLATE TRIBUNAL
RESPONDENTS.*

Industrial Disputes Act (XIV of 1947), s. 10 (1) (c)—Labour Appellate Tribunal—Office in Bombay—Neither the parties to the dispute nor subject-matter within jurisdiction of the Bombay High Court—Constitution of India, art. 226, 227—Writ of certiorari—No jurisdiction to issue the writ against Labour Appellate Tribunal.

Article 226 of the Constitution confers power upon every High Court to issue writs throughout the territories in relation to which the High Court exercises jurisdiction. The High Court ordinarily exercises territorial jurisdiction when the subject-matter is situated within its jurisdiction or the parties reside within its jurisdiction.

Even under art. 227 the High Courts' power is limited to exercising the power of superintendence over Tribunals situated in a territory in relation to which the High Court can exercise jurisdiction.

The Labour Appellate Tribunal is an All-India Tribunal acting as an appellate authority from the decisions of various Labour Tribunals all over the country. The mere fact that it has an office in Bombay is not sufficient to confer jurisdiction upon the High Court of Bombay to issue a writ of *certiorari*. Where neither the parties to the petition nor the

O. C. J. App. No. 93 of 1951.

* Misc. Application No. 189 of 1951.

subject-matter of the dispute between the parties namely, the Madras Electric Tramways, Ltd. and its employees is within its jurisdiction, and the award made by the Labour Tribunal of Madras is also not capable of being corrected or modified by any order of the High Court of Bombay.

Held, that, as neither the parties to the dispute nor the subject-matter of the dispute was within the territorial jurisdiction of the Bombay High Court, it had no jurisdiction to issue any writ.

Ryots of Garabandho v. Zamindar of Parlakimedi,⁽¹⁾ followed.

On April 10, 1950 the Madras Electric Tramways Co. dismissed the first respondent (petitioner) and other employees from service at Madras.

The order of dismissal was confirmed by the Company on May 22, 1950.

On September 20, 1950 the Madras Government by a notification issued under s. 10 (1) (c) of the Industrial Disputes Act referred the dispute in respect of the re-instatement of the workers to the Industrial Tribunal, Madras.

On December 9, 1950 the Tribunal gave its award and ordered re-instatement of the petitioner.

The Electric Company appealed to the Labour Appellate Tribunal at Bombay which allowed the appeal and reversed the order of re-instatement of the petitioner.

The petitioner thereupon filed this petition for a writ of *certiorari* to quash the order of the Labour Appellate Tribunal.

SHAH J. Who heard the petition held that the Appellate Tribunal had assumed jurisdiction which was not vested in it by law and had entertained the appeal which did not involve any question of law and had erroneously set aside the decision of the Industrial Tribunal, Madras, which it had no jurisdiction to do. His Lordship therefore issued a writ of *certiorari* setting aside the order passed by the Labour Appellate Tribunal in so far as it sought to reverse the order of the Industrial Tribunal, Madras.

The Madras Electric Tramways Ltd. appealed.

Sir Jamshedji Kanga with *N. A. Palkhiwala*, for the appellant.

K. T. Sule, for respondent No. 1.

⁽¹⁾ (1943) L. R. 70 I. A. 129, Sc. 47 Bom. L. R. 525.

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Chagla C. J. This is an appeal from an order made by Mr. Justice Shah on an application for a writ of *certiorari* against the Labour Appellate Tribunal, and the application came to be made under the following circumstances. There was a dispute between the Madras Electric Tramways Co. Ltd. who is the appellant before us, and the petitioner who is an employee and other employees as to an order of dismissal passed by the Madras Electric Tramways Co. on April 10, 1950, which was confirmed by it on May 22, 1950. The contention of the petitioner and other employees was that they had been wrongly dismissed, the contention of the company being that their action was proper. It is unnecessary to go into the merits of that dispute. On September 20, 1950, the Madras Government by a notification issued under s. 10 (1) (c) of the Industrial Disputes Act referred this dispute to the Labour Tribunal and the Labour Tribunal gave its decision on December 9, 1950, by which it ordered the reinstatement of the petitioner. There was an appeal to the Labour Appellate Tribunal, and on June 4, 1951, the Labour Appellate Tribunal, allowed the appeal. It was against this order of the Labour Appellate Tribunal that the petitioner filed a petition for a writ of *certiorari*. Mr. Justice Shah took the view that the order of the Labour Appellate Tribunal was without jurisdiction, quashed the order, and granted the prayer sought by the petitioner. It is from that order of Mr. Justice Shah that the company has come in appeal before us.

Sir Jamshedji has raised a question *in limine* which was not urged before the Court below, and in our opinion that point must prevail in favour of the appellant, and the point urged is that this Court has no jurisdiction to issue a writ in this matter. The jurisdiction of the Court was sought on the ground that the office of the Labour Appellate Tribunal is in Bombay. This is an all-India Tribunal acting as an appellate authority from the decisions of various Labour Tribunals all over the country. Although its office is situated in Bombay it also sits at other places in India like Madras, Calcutta and Allahabad, and the contention of the petitioner is that inasmuch as this judicial authority has passed an order without jurisdiction it is competent to the petitioner to come to this Court for a writ for quashing that order. On the other hand it must be observed that both the Madras Electric Co. and the petitioner are not within the jurisdiction of this Court. The subject-matter of the dispute between the company and its

employee is also not within the jurisdiction of this Court, and the award made by the Labour Tribunal of Madras is also not capable of being corrected or modified by any order of this Court. The question that arises for our determination is whether the mere fact that the Labour Appellate Tribunal has its office in Bombay is sufficient to confer jurisdiction upon this Court to issue a writ of *certiorari*. It is pointed out that after our Constitution came into force the power of this Court to issue writs has been enhanced and art. 226 confers the power upon every High Court to issue writs throughout the territories in relation to which it exercises jurisdiction. Therefore, it will be noticed that art. 226, while conferring the power upon the High Court to issue writs, qualifies that power by limiting its exercise to the territories in relation to which the High Court exercises jurisdiction. Now, the High Court ordinarily exercises territorial jurisdiction when the subject-matter is situated within its jurisdiction or the parties reside within it. Therefore, although we now have the power to issue a writ of *certiorari* not only within the town and island of Bombay but throughout the territory of the State, that power can only be exercised provided we have jurisdiction either in respect of the subject-matter or in respect of parties. Mr. Sule contends that as the Tribunal is situated in Bombay we have the power under art. 226 to correct its order. It is also pointed out that under art. 227 we have the power of superintendence over this Tribunal. But even under art. 227 our power is limited to exercising the power of superintendence over Tribunals situated in a territory in relation to which we can exercise jurisdiction. Therefore, it is not sufficient to have the power to issue a writ against the Labour Appellate Tribunal. We must also have the jurisdiction to issue that writ. The question is whether on the facts of this case we have the necessary jurisdiction to correct the order made by the Labour Appellate Tribunal.

Now, an identical question came up for consideration before the Privy Council in the well known case of *Ryots of Garabandho v. Zemindar of Parlakimedi*.⁽¹⁾ In that case their Lordships of the Privy Council were considering two questions that arose before them. The first question was whether the Madras High Court had jurisdiction to issue a writ of *certiorari* outside the limits of the local jurisdiction of the town of Madras. The second question was whether the Madras High

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Court had jurisdiction to issue a writ of *certiorari* against the Board of Revenue which was situated within the town of Madras and whose order was sought to be quashed by the petitioner. On the first question their Lordships came to the conclusion that the jurisdiction of the High Court of Madras to issue writs of *certiorari* was confined to the ordinary original jurisdiction of the Madras High Court. But that did not dispose of the matter because the Board of Revenue was situated within the town of Madras, and if a writ of *certiorari* could be issued merely on the ground of the location of the Board of Revenue, then the Madras High Court, even on this view of the Privy Council, would undoubtedly have jurisdiction to issue the writ. Then the Privy Council went on to consider the question of jurisdiction and it was pointed out by Lord Simon in the judgment he delivered on behalf of the Board that the question of jurisdiction was one of substance and not of form, and in considering the question of substance their Lordships came to the conclusion that in substance although the Board of Revenue was situated within the town of Madras, the High Court of Madras had no jurisdiction to issue the writ, and the question of substance was decided by the Privy Council in the following way. Their Lordships took the view that the subject-matter of the dispute was not within the original civil jurisdiction of the Madras High Court. Their Lordships also took the view that the parties to the dispute were not subject to the original civil jurisdiction of the Madras High Court and therefore the Privy Council came to the conclusion that the mere location of the Revenue Tribunal within the town of Madras did not confer jurisdiction upon the High Court. Here the position is exactly identical. The subject-matter of the dispute is not within the jurisdiction of this Court. It is a dispute with regard to the dismissal by the Madras Electric Tramways Co. of one of its employees and if the dispute had to be agitated in any Court, it could certainly not have been in this High Court. The parties to the dispute, the company and the petitioner, are also not within the jurisdiction of this Court, and the Court of first instance which gave its award is also not subject to the jurisdiction of this Court either under art. 226 or under art. 227. Therefore, our jurisdiction is sought simply on the ground that the final Court of appeal happens to have its office situated within jurisdiction. If jurisdiction is a matter of substance, as it should be in a case of a high prerogative writ,

then it could not be said that we should interfere in a matter in respect of the subject-matter of which we have no jurisdiction and in respect of the parties to the dispute we have also no jurisdiction. 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.

In view of our decision on the question of jurisdiction, it is unnecessary to consider whether the learned Judge below was right on merits in coming to the conclusion that he did. The result is that the appeal succeeds. We will set aside the order passed by Mr. Justice Shah. No order as to costs throughout. Cross-objections fail and are dismissed. No order as to costs of the cross-objections.

Attorneys for appellant: *Crawford, Bailey, & Co.*

Attorneys for respondent: *Gokhale, Kale & Co.*

Appeal allowed.

A. J. P.

APPELLATE CRIMINAL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

STATE *v.* RANGARAO BALA MANE AND OTHERS (ORIGINAL ACCUSED).
 Bombay Prohibition Act (XXV of 1949) s. 66 (b)—'Consume liquor'—
 Whether mere drinking is consuming—Burden of proving that liquor
 consumed is not prohibited liquor, whether on the accused.

There is nothing in the language of s. 66 (b) or in the language of any other section in the Bombay Prohibition Act, 1949, to suggest that the term "consume" is used in the Act in the sense of use for commercial purposes or use on a large scale. Under s. 66 (b) an individual

* Criminal Appeal No. 1064 of 1951.

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