Chandrakant Tukaram Nikam & Ors vs Municipal Corporation Of Ahmedabad & ... on 6 February, 2002

Equivalent citations: AIR 2002 SUPREME COURT 997, 2002 (2) SCC 542, 2002 AIR SCW 710, 2002 LAB. I. C. 794, 2002 LAB IC (NOC) 60 (MAD), 2002 (2) SERVLJ 389 SC, 2002 (2) SCALE 77, 2002 (3) SRJ 145, (2002) 2 ALLMR 257 (SC), (2002) 2 SERVLJ 389, (2002) 1 CGLJ 248, 2002 (2) ALL MR 257, 2002 LAB LR 498, 2002 (1) UJ (SC) 525, (2002) 1 JT 578 (SC), 2002 (1) JT 578, 2002 (1) SLT 697, 2002 (2) UPLBEC 1001, (2002) 1 CURLR 926, (2002) 2 LABLJ 1149, (2002) 3 LAB LN 563, 2002 LABLR 773, (2002) 2 JLJR 18, (2002) 100 FJR 519, (2002) 1 ESC 139, (2002) 2 GUJ LR 1257, (2002) 92 FACLR 1159, (2002) 1 LABLJ 842, (2002) 1 LAB LN 1153, (2002) 2 MAD LJ 106, (2002) 3 MAD LW 243, (2002) 2 MAHLR 823, (2002) 2 PAT LJR 22, (2002) 2 SCT 367, (2002) 1 SCJ 633, (2002) 2 UPLBEC 1001, (2002) 5 ANDHLD 92, (2002) 1 SUPREME 529, (2002) 2 SCALE 77, (2003) 1 GCD 215 (SC), (2002) 2 CURLR 466, 2002 SCC (L&S) 317

Bench: R.P. Sethi, Bisheshwar Prasad Singh

CASE NO.:
Appeal (civil) 4849-4854 of 1992

PETITIONER:
CHANDRAKANT TUKARAM NIKAM & ORS.

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF AHMEDABAD & ANR.

DATE OF JUDGMENT: 06/02/2002

BENCH:
G.B. Pattanaik, R.P. Sethi & Bisheshwar Prasad Singh

JUDGMENT:

PATTANAIK, J.

These appeals are directed against the judgment of the Division Bench of Gujarat High Court in Letters Patent Appeals filed against a common judgment of a learned Single Judge dated 22nd September, 1990. The workmen of Ahmedabad Municipal Corporation challenged the orders of dismissal/removal from service, by filing a Civil Suit. The City Civil Court framed four issues, one of which is whether the suit is bad for want of jurisdiction. On the said issue it came to the conclusion that the Civil Court had no jurisdiction to entertain and try the suit, accordingly the suit was dismissed. Identical suits filed by different employees against the order of termination having been dismissed by the City Civil Court, individual appeals had been preferred and all those appeals, six in number, stood disposed of by a common judgment of the learned Single Judge of Gujarat High Court. The Single Judge came to the conclusion that the Civil Court will have the jurisdiction to go into the question, as to whether the orders of termination of services were null and void, having been passed by an authority who had no competence to pass the same, but it had no jurisdiction to examine the alleged lacuna in the procedural part of disciplinary inquiry which is governed by Standing orders and the jurisdiction of the Civil Court to enter into such question must be held to be impliedly barred. With this conclusion the learned Single Judge having set aside the judgment of the City Civil Court and having remitted the matter for adjudication, as to whether the order of termination could be interfered with on the ground of want of competence on the part of the authority, who had passed the order, the plaintiff/workman assailed the same by filing Letters Patent Appeal contending inter alia that the City Civil Court will have no jurisdiction to go into the procedural irregularities because the provisions of Industrial Disputes Act and implied ouster of jurisdiction of Civil Court is not correct. Ahmedabad Municipal Corporation filed cross- objection in the Letters Patent Appealss challenging that part of the judgment and decree of the learned Single Judge whereunder the Single Judge had quashed the decree of the City Civil Court and remanded the matter to City Civil Court for deciding as to whether declaration prayed for by each of the workman can be granted on the ground of want of competence on the part of the authority who had passed the order of dismissal/removal. All these Letters Patent Appeals as well as the corss-objections were disposed of by a common judgment, which is the subject matter of consideration in these appeals. The Division Bench of the High Court was of the opinion that the City Civil Court was right in holding that it has no jurisdiction to hear the suits instituted by the employees/plaintiffs and the learned Single Judge was not right in holding that the question of competence of the authority, who had passed order of dismissal or who had passed the order to initiate disciplinary proceedings could be decided by the Civil Court. According to the Division Bench even that question about the competence of the authority who passed the order can be gone into by the Labour Court or Industrial Tribunal, and therefore, Civil Court's jurisdiction to entertain a suit has to be held to have been impliedly barred. The Letters Patent Appeals having been dismissed and cross-objections filed by the Corporation having been allowed, the present appeals have been preferred. When these appeals were listed before a bench of this Court, by order dated 13th October, 1993, Bench referred the cases to a Constitution Bench of 5 Hon'ble Judges. When the appeals were listed before a Constitution Bench it was represented by the counsel that the matter has been resolved by a judgment of this Court in Rajasthan State Road Transport Corporation and another vs. Krishna Kant and others (1995) 5 SCC 75, and therefore, the Constitution Bench thought it fit to direct that the Civil Appeals should be placed before a Bench of three learned Judges, and that is why these appeals came before us.

Mr. Ahmadi, learned counsel appearing for the appellants contended, that under Section 9 of the Code of Civil Procedure the Civil Courts have the jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In view of language of Section 9, the counsel urged that there should be presumption in favour of the jurisdiction of a Civil Court and exclusion of the jurisdiction should not be readily inferred unless such exclusion is either explicitly expressed or clearly implied. According to Mr. Ahmadi, a law ousting the jurisdiction of a Civil Court should be strictly construed and the onus lies on the party who seeks to oust the jurisdiction of the Civil Court, to establish the same. According to the learned counsel a litigant having a grievance of a civil nature has, independently of any statute, a right to institute a suit in a Civil Court and that right cannot be taken away unless the same is either expressly barred or impliedly inferred. According to the learned counsel the suits filed in the case in hand and the relief sought for, being civil in nature the jurisdiction of the Civil Court ought not to be held to be impliedly barred merely because the Industrial Tribunal or Labour Court can entertain the dispute and grant the relief in question. It is also urged that the Industrial Disputes Act does not contain any provision barring the jurisdiction of a Civil Court. That being the position, the High Court committed error in holding that the jurisdiction of the Civil Court must be impliedly held to have been barred. According to Mr. Ahmadi, if the right claimed is not purely a creature of the Industrial Disputes Act, but is a common law right and the Industrial Disputes Act entrusts to a special Tribunal for adjudication of such right and at the same time does not expressly oust the jurisdiction of the Civil Court, the intention of the legislature must be held to be that the jurisdiction of the Civil Court is not barred and in such a case it would be open to the party concerned to elect one of the forum for the remedies, which he is seeking for. The learned counsel for the respondent Mr. Anand, on the other hand contended, that the Parliament having enacted the provisions of Industrial Disputes Act for speedy, inexpensive and efficacious remedies in relation to a dispute between the employer and the employee, it must be held that the jurisdiction of the Civil Court is barred if the relief sought for could be properly given by a forum under the Industrial Law. According to Mr. Anand the very purpose of the enactment would be frustrated if it is held that the Civil Court still retains the jurisdiction over a dispute which could be otherwise adjudicated upon by a forum under the Industrial Disputes Act.

In view of the rival submissions at the bar, the question that arises for consideration is whether the relief sought for by the plaintiffs in these suits can come within the ambit of an industrial dispute under the Industrial Disputes Act, and if the answer is in affirmative then whether the conclusion of the High Court that the jurisdiction of the Civil Court is barred is correct or not?

One of the leading authorities on the point is the case of Dhulabhai and others vs. The State of Madhya Pradesh and another - (1968) 3 SCR 662. A Constitution Bench of this Court after examining the diverse views expressed in several earlier decisions came to hold that an exclusion of jurisdiction of Civil Court is not readily to be inferred unless the statute gives a finality to the orders of the special Tribunals and the Tribunals would be entitled to confer adequate remedy what the Civil Courts would normally do in a suit and only in such circumstance the Civil Courts' jurisdiction can be inferred to be excluded, but the Court hasten to add that even in such cases also the Civil Courts' jurisdiction cannot be said to be excluded, if it is alleged that the provisions of particular Act had not been complied with or that the statutory Tribunal have not acted in conformity with the

fundamental principles of judicial procedure. Mr. Ahmadi, no doubt placed reliance on the decisions of this Court in Sirsi Municipality by its President, Sirsi vs. Cecelia Kom Francis Tellis - (1973) 1 SCC 409 and Ram Kumar vs. State of Haryana 1987 (Supp.) SCC 582, but in both these aforesaid cases the question of implied ouster of the jurisdiction of Civil Court where an Industrial Court can grant relief sought for was not the subject matter for consideration. The consideration in both the cases was whether the dismissal of a workman being assailed, can the Civil Court entertain and try the suit and the answer was in affirmative. Nobody disputes with the aforesaid proposition. The point in issue in the case in hand was not before this Court in the aforesaid two cases. In the case of The Premier Automobiles Ltd. etc. vs. Kamlekar Shantaram Wadke of Bombay and others etc. etc,. (1976) 1 SCC 496 the question of ouster of jurisdiction of the Civil Court in relation to a labour dispute came up for consideration directly. The Court held in the aforesaid case that if a statute confers a right and in the same breath provides for a remedy for enforcement of such right the remedy provided by the statute is an exclusive one. It further held that under Section 9 of the Code, the Courts have subject to certain restrictions, jurisdiction to try suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The Court examined the provisions of the Industrial Disputes Act and came to the conclusion that the Act envisages collective bargaining, contracts between union representing the workmen and the management and such a matter was held to be outside the realm of the common law or Indian Law of Contract. The Court also held that the powers of the authorities deciding industrial disputes under the Industrial Disputes Act are very extensive, much wider than the powers of a civil court while adjudicating a dispute which may be an industrial dispute. But under the provisions of the Industrial Disputes Act since the workman cannot approach the labour court or tribunal directly and the government can refuse to make a reference even on grounds of expediency, such handicap would lead to the conclusion that for adjudication of an industrial dispute in connection with a right or obligation under the general or common law and not created under the Act, the remedy is not exclusive, and on the other hand is alternative, and therefore, the Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act and not otherwise. In other words it was held that if the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court. But if the dispute is an industrial dispute arising out of the right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy. It was also held that if the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act. Mr. Ahmadi, learned counsel appearing for the appellants strongly relied upon the aforesaid observations for his contention that the dispute in the case in hand cannot be held to be dispute arising out of a right or liability under the Act, and on the other hand, is a dispute arising out of a right or liability under the common law, and as such, the jurisdiction of the Civil Court could not have been held to have been barred. This decision of the Court was considered by this Court in Rajasthan State Road Transport Corporation & Anr. vs. Krishna Kant and others. (1995) 5 SCC 75. After quoting the principles enunciated by the Court in The Premier Automobiles' case (supra) and on consideration of a large number of decisions, it was held :-

"Para 28. Now, coming back to Principle No.2 and its qualification in para 24, we must say that para 24 must be read harmoniously with the said principle and not in derogation of it- not so as to nullify it altogether. Indeed, Principle No.2 is a reiteration of the principle affirmed in several decisions on the subject including Dhulabhai. Principle No.2 is clear whereas para 24 is more in the nature of a statement of fact. It says that most of the industrial disputes will be disputes involving the rights and obligations created by the Act. It, therefore, says that there will hardly be any industrial dispute which will fall under Principle No.2 and that almost all of them will fall under Principle No.3. This statement cannot be understood as saying that no industrial dispute can ever be entertained by or adjudicated upon by the civil courts. Such an understanding would not only make the statement of law in Principle No.2 wholly meaningless but would also run counter to the well-established principles on the subject. It must accordingly be held that the effect of Principle No.2 is in no manner whittled down by para 24. At the same time, we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the workmen made by Parliament and State Legislatures. The whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlements, wage structures and what not . Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them.

Para 29. Now let us examine the facts of the appeals before us in the light of the principles adumbrated Premier Automobiles. The first thing to be noticed is the basis upon which the plaintiffs-respondents have claimed the several reliefs in the suit. The basis is the violation of the certified Standing Orders in force in the appellant-establishment. The basis is not the violation of any terms of contract of service entered into between the parties governed by the law of contract. At the same time, it must be said, no right or obligation created by the Industrial Disputes Act is sought to

be enforced in the suit. Yet another circumstances is that the Standing Orders Act does not itself provide any forum for the enforcement of rights and liabilities created by the Standing Orders. The question that arises is whether such a suit falls under Principle No.3 of Premier Automobiles or under Principle No. 2? We are of the opinion that it falls under Principle No.3. The words "under the Act" in Principle No.3 must, in our considered opinion, be understood as referring not only to Industrial Disputes Act but also to all sister enactments-[like Industrial Employment (Standing Orders) Act] which do not provide a special forum of their own for enforcement of the rights and liabilities created by them. Thus a dispute involving the enforcement of the rights and liabilities created by the certified Standing Orders has necessarily got to be adjudicated only in the forums created by the Industrial Disputes Act provided, of course, that such a dispute amounts to an industrial dispute within the meaning of Section 2(k) and 2- A of Industrial Dispsutes Act or such enactment says that such dispute shall be either treated as an industrial dispute or shall be adjudicated by any of the forums created by the Industrial Disputes Act. The civil courts have no jurisdiction to entertain such suits. In other words, a dispute arising between the employer and the workman/workmen under, or for the enforcement of the Industrial Employment Standing Orders is an industrial dispute, if it satisfies the requirements of Section 2(k) and/or Section 2-A of the Industrial Disputes Act and must be adjudicated in the forums created by the Industrial Disputes Act alone. This would be so, even if the dispute raised or relief claimed is based partly upon certified Standing Orders and partly on general law of contract."

The Three Judge Bench in Rajasthan State Road Transport Corporation (supra) summarised the principles as below:-

"(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 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 Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called "sister enactments" to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be

adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly -- i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(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."

It may be borne in mind that the Industrial Disputes Act was enacted by the Parliament to provide speedy, inexpensive and effective forum for resolution of disputes arising between workmen and the employers, the underlying idea being to ensure that the workmen does not get caught in the labyrinth of civil courts which the workmen can ill afford, as has been stated by this Court in Rajasthan State Road Transport Corpn. case(supra). It cannot be disputed that the procedure followed by Civil Courts are too lengthy and consequently, is not an efficacious forum for resolving Industrial Disputes speedily. The power of Industrial Courts also is wide and such forums are empowered to grant adequate relief as they think just and appropriate. It is in the interest of the

workmen that their disputes, including the dispute of illegal termination are adjudicated upon by an industrial forum. To our query Mr. Ahmadi, learned counsel appearing for the appellants was not in a position to tell that the relief sought for in the cases in hand, cannot be given by a forum under the Industrial Disputes Act. The legality of order of termination passed by the employer will be an industrial dispute within the meaning of Section 2(k) and under Section 17 of the Industrial Disputes Act, every Award of Labour Court, Industrial Tribunal or National Tribunal is required to be published by the appropriate government within a period of thirty days from the date of its receipt and such Award published under sub-section (1) of Section 17 is held to be final.

In the aforesaid premises and having regard to the relief sought for in the suits filed in the Civil Court, we have no manner of hesitation to come to the conclusion that in such cases the jurisdiction of the Civil Court must be held to have been impliedly barred and the appropriate forum for resolution of such dispute is the forum constituted under the Industrial Disputes Act. We, therefore, do not find any infirmity with the impugned judgment of the High Court requiring our interference. The appeals accordingly fail and are dismissed. We would however observe that it would be open for the appellants-workmen to approach the appropriate industrial forum and such forum if approached, will dispose of the matter on its own merits. There will be no order as to costs.

.....J. (G.B. PATTANAIK) .....J. (R.P. SETHI) .....J. (BISHESHWAR PRASAD SINGH) February 06, 2002.