

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Anwar Zaheer Jamali

Mr. Justice Sarmad Jalal Osmany

Mr. Justice Dost Muhammad Khan

Civil Appeal No.407 of 2013

(On appeal from the judgment of Lahore High Court, Lahore dated 26.11.2012 passed in W.P.No.22454 of 2012)

Pakistan Telecommunication Company Ltd.

...Appellant

Versus

Member NIRC and others

...Respondents

For the Appellant: Syed Naeem Bukhari, ASC

For respondents 1,3-6: Sheikh Riaz ul Haq, ASC

For respondent No.2: Syed Shahid Hussain, ASC

Respondents No.7 & 8: Ex-parte

Date of hearing: 04.02.2014

JUDGEMENT

Dost Muhammad Khan, J.— In this appeal leave was granted by this Court vide order dated 22.04.2013 against the judgment of the Lahore High Court, Lahore dated 26.11.2012, rendered in W.P.No.22454/2012, *inter alia*, on the following grounds: -

"ORDER

Syed Naeem Bokhari, learned ASC for the petitioner has strongly questioned the interpretation of the

relevant provisions of the Industrial Relations Act, 2012, (in short "the IRA") recorded in the impugned judgment. He contends that the view taken in the impugned judgment is, inter alia, result of oversight and non-reading of section 54(h) of the IRA. In support of his submissions he has made reference to another judgment dated 10.1.2013, in writ petition No.25102/2011, passed by the same honourable judge in the Lahore High Court, wherein, according to him, on the same point, contrary view is taken. He has further placed reliance upon a recent order of this Court dated 13.02.2013, passed in Civil Appeal No.1150/2012 and other connected appeals, to show that the judgment impugned before this Court is contrary to the ratio of judgment delivered by this Court on the same point.

2. Contention raised requires consideration. Leave to appeal is, therefore, granted. Interim order passed earlier shall remain operative till further orders."

2. Brief but relevant facts, giving birth to this controversy, are that respondents were employees of the appellant [PTCL], whose services were terminated on 01.09.2010 and 16.09.2010. They filed grievance petition under section 33(8) of the Punjab Industrial Relations Act, 2010 [the PIRA 2010] read with Standing Order No.12(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance VI of 1968 [the ICESO Ordinance 1968] before Labour Court No.4, Faisalabad. The appellant filed written statement. The learned Labour Court after recording evidence, allowed the grievance petition on 22.08.2011. The appellant filed appeal against the said order, which is pending disposal before the learned Punjab Labour Appellate Tribunal, Lahore.

3. In the meantime, the respondents filed contempt petition before the learned Labour Court No.4, Faisalabad under section 33(8) of PIRA 2010 read with sections 3 and 4 of the

Contempt of Court Ordinance, 2003 to implement the Labour Court's order dated 22.08.2011. After receiving notice of contempt petition, the appellant approached the Bench of NIRC at Lahore for withdrawal of the contempt petition before the Labour Court No.4, Faisalabad. The respondent No.1 therein (NIRC) through order dated 26.01.2012 withdrew the contempt proceedings before the Labour Court No.4 and assigned the same to the Bench of NIRC at Lahore. The employees/respondents impugned the said decision of the NIRC dated 26.01.2012 through W.P.No.22454/2012 before the Lahore High Court, Lahore contending therein that NIRC was having no jurisdiction to pass the order, referred to above, as the matter was already decided and concluded by the competent Court, allowing the grievance petition.

4. Learned counsel for the appellant contends that the learned Judge in Chamber held in paras 17/22 of the impugned judgment that the provisions of the PIRA 2010 are applicable to those establishments, which are working exclusively in the Province of Punjab and are not maintaining trans-provincial establishment. However, the learned Judge contrary to the above view in para-3 of the impugned judgment held that the jurisdiction of NIRC comes into play only, where there is allegation of unfair labour practice as defined in section 32 of the IRA 2012, on the part of employer or workers or trade union; thus, the conclusion arrived at para 24 of the impugned judgment, in view of the learned ASC, is clashing with and is contrary to the view expressed by the learned Judge in Chamber of the Lahore High Court given in Paras 17/22 and that the provisions of sections 32, 33 and 34 have been misinterpreted.

5. Learned ASC further contends that in trans-provincial establishment like PTCL, all disputes including unfair practices, whether on the part of employer or employees/workmen, the

jurisdiction of the NIRC is overriding and exclusive in nature, not only because it is created and empowered by Federal Law, having super imposing effect over provincial law but also because if trans-provincial establishments, companies or their employees bring grievance petition with regard to the disputes, referred to above, in different Labour Courts of the Provinces, the same would create multiplicity and end result would be giving conflicting judgments by different Labour Courts and Appellate Tribunals and there will be no end to the litigation. The NIRC is a single forum at national level, upon which such jurisdiction has been expressly conferred by the provision of section 33 of the IRA 2012, whether the dispute is individual one or of collective nature and whether it is to be brought by the workers or through shop-steward or collective bargaining agents.

6. The learned ASC also contends that the learned Judge in Chamber of the Lahore High Court, ignoring the above legal position, misinterpreted and misconstrued the provision of section 33(8) of the PIRA 2010 and Standing Order 12(3) of the ICESO Ordinance, 1968, as in his view the power of contempt given to the Appellate Tribunal itself or that of Labour Court is confined and is only relevant if the Labour Court of a particular Province has the jurisdiction to decide a grievance petition of a local company/undertaking/enterprise, having no extra provincial activities, establishments, industrial units or industrial activities.

7. Learned ASC for the private respondents/employees, however, was of the firm view that the plain reading of the provision of sections 32 and 33 of the PIRA 2010 is a condition *Sine qua non* for the assumption of the jurisdiction by the local/provincial Labour Court and whenever unfair labour practice element is involved, the Labour Court of a particular Province, where a dispute arises, would have exclusive jurisdiction. Thus, in his view, the impugned judgment of the Lahore High Court

does not suffer from any jurisdictional effect nor it is a result of misreading or misinterpreting the relevant provisions of law, both Provincial and Federal, on the subject.

8. We have fairly attended to the legal propositions and have carefully read all the provisions of above law.

9. There is no denial of fact that through Eighteenth Constitutional Amendment, the Concurrent Legislative List was done away with and some Federal Ministries including Labour Ministry were devolved upon the Provinces. However, the Federal Government confronted with the anomaly that there are certain companies or groups of companies having trans-provincial industrial activities, where many people have been employed as workers or workmen, thus, if any industrial dispute including unfair labour practice arises, a single forum was needed to be provided for the settlement of such disputes so that class of companies having trans-provincial industrial units and their employers are not dragged into endless litigation on the question of jurisdiction as to whether the grievance petition in that case be taken cognizance by the Labour Court of the Province or by one single forum like NIRC, which has been established and constituted under the provision of section 53 of the Act X [the IRA 2012]. The phrase, "trans-provincial" has been defined in clause (xxxiv) of section 2 of the Act X of 2012, which means, "any establishment, group of establishments, industry having its branches in more than one Provinces."

10. Under the provision of section 53, the NIRC has been constituted by the Federal Government but its functions and jurisdiction has been explained and elaborated in the provision of section 54 of the IRA, 2012. According to clause (e), the NIRC has the powers and jurisdiction to deal with the cases of unfair labour practices specified in sections 31 and 32 of the Act on the part of employers, workers, trade unions, either of them or

persons acting on behalf of any of them, whether committed individually or collectively, in the manner laid down under section 33 or sub-section (9) of section 33 or in such other way as may be prescribed, and to take, in such manner as may be prescribed by regulations under section 66, measures calculated to prevent an employer or workman from committing an unfair labour practice. In addition to above powers and jurisdiction, the NIRC has been conferred upon additional powers under the provision of section 57 of the Act (ibid), which includes the powers to punish for contempt of court and may award simple imprisonment which may extend to six months or with fine, which may extend to Rs.50000/- or with both.

11. In the same provision, vide clause (2)(b), the Commission has been empowered to withdraw from a Labour Court of a Province any applications, proceedings or appeals relating to unfair labour practice, which fall within its jurisdiction; and (c) grant such relief as it may deem fit including interim injunction.

A proviso has been added to the above provision, to following effect: -

“Provided that no Court, including Labour Court shall take any action or entertain any application or proceedings in respect of a case of unfair labour practice, which is being dealt with by the Commission.

12. After combined reading of the scheme of new labour laws, both Provincial and Federal, it may be concluded without any fear of rebuttal that two parallel forums have been created, one on a provincial basis whereas latter is federal level forum, called NIRC. Both these forums are having jurisdiction to deal with industrial disputes and unfair labour practice and other allied matters either attributable to the employer or the workers/workmen, however, the Federal Law has drawn a clear

demarcation line of jurisdiction of these two different forums, i.e. Labour Courts in the Provinces and the other NIRC at the Federal Level. It is not the nature of dispute, particularly, unfair labour practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the NIRC. To be more clear on the point we have no hesitation to hold that once it is established though any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive in nature and of overriding and super imposing effects over the Provincial Labour Court for resolving industrial dispute including unfair labour practice, etc. related to the employer, having its establishment or branches or industrial units in more than one Province and re-course has to be made by the aggrieved party to the NIRC and not to the Provincial Labour Court.

13. Even otherwise under the provision of Article 143 of the Constitution of Pakistan, 1973, laws enacted by the Parliament have been given overriding and super imposing effects over the laws enacted by a Provincial Assembly of any of the Provinces and in case of any clash or repugnancy between the two, the laws enacted by the Parliament shall prevail. Thus, on the touchstone of the provision of Article 143 of the Constitution, the Act of Parliament has been placed on the high pedestal and any Provincial Law enacted by the Provincial Assembly shall give way to the Federal Law, enacted by the Parliament, if the former is inconsistent or repugnant to the latter. Therefore, it is held that the provision of Act X of 2012 (the IRA 2012) has overriding effect on all Provincial Labour Laws. Judged from this angle, we are of the firm view that in the present case, the learned Judge in Chamber of the Lahore High

Court, Lahore while drawing the impugned judgment dated 26.11.2012 could not properly comprehend the intents and objects of the above provisions of law, rather misconstrued and misinterpreted the same, resulting into miscarriage of justice, the impugned judgment being not sustainable in the eye of law is liable to be set at naught.

14. During hearing of this appeal, a question arose, as to whether the Parliament could enact any law relating to industrial relations/disputes, regulating the conduct of employers and workers or workmen and to establish an exclusive forum for such disputes at Federal Level without the express consent or requisition of the four Provincial Governments. After Eighteenth Amendment, doing away with the Concurrent Legislative List, by abolishing the same and when the Ministry of Labour and its all affairs have devolved upon the Provinces, whether such express consent of the Provincial Governments at any level or at the forum of CCI was not essential to give validity to the Federal Law on the subject, however, before us neither in the petition nor during the course of arguments addressed at the bar, the *vires* of the Federal Law, referred to above, was brought under challenge, therefore, we would leave it open to determine this question of law in some other appropriate case, where the *vires* of the Federal Laws are expressly challenged.

15. Accordingly, this appeal is allowed. The impugned judgment dated 26.11.2012 passed by the learned Judge in Chamber of the Lahore High Court, Lahore is set aside and the order of NIRC dated 24.01.2012 withdrawing the contempt petition from Labour Court No.4, Faisalabad to itself is hereby upheld and further proceedings in the matter be taken up by the NIRC and shall be decided positively within two months.

16. In view of the above judgment, allowing the appeal, Civil Miscellaneous Applications No.2265/2013 and 35 of 2014 are also disposed of accordingly.

Judge

Judge

Judge

Announced in open Court on 17.02.2014 at Islamabad

Judge