

COCONUT RESEARCH BOARD
v.
FERNANDO

SUPREME COURT.
FERNANDO, J.
PERERA, J.
WIJETUNGA, J.
S.C. APPEAL NO. 2/93
H.C. NEGOMBO NO. 8/91
JUNE 28TH, 1993.

Industrial Dispute – Jurisdiction of the Provincial High Court in Appeals from the L.T. – Constitution, Article 154 P (3) (c) – High Court (Special Provisions) Act, No. 19, of 1990, Section 4.

The Applicant-Respondent filed an application to the Labour Tribunal in July, 1987. The employer-appellant filed the answer in September, 1987. Both documents referred to the "Labour Tribunal" but did not further describe the Labour Tribunal. The parties were resident/situated within the North Western Province. The applicants replication referred to the "Labour Tribunal No. 21, Negombo Circuit Chilaw."

Proceedings were held by the President, Labour Tribunal – Negombo, sitting at Chilaw. In the course of the proceedings an order was made on a preliminary objection and the caption of the order read "In the Labour Tribunal No. 21 – Circuit Chilaw". In the final order made on 26.5.91 it was captioned "Labour Tribunal 21 – Negombo" without reference to circuit Chilaw. On 1.8.1991 the President made a correction to the earlier order but again as "President, Labour Tribunal Negombo."

The employer-appellant appealed from the said order to the High Court of Western Province, and an objection was taken up by an Applicant-Respondent that the High Court of Western Province had no jurisdiction and that an appeal should have been filed in the High Court of North Western Province.

Held:

Under Article 154 P(3) (c) of the Constitution Parliament was empowered to confer additional jurisdictions and powers on the High Court for the Province. Under Act No. 19 of 1990 the High Court for the Province was granted appellate

jurisdiction in respect of orders made by the Labour Tribunals within that Province. Section 4 confers the right on the party aggrieved by an order of the Labour Tribunal to appeal to the High Court for the province within which such Labour Tribunal is situated. Also the Industrial Disputes (Amendment) Act No. 32 of 1990 gives the right of appeal to the High Court for the Province within which the Labour Tribunal concerned was situated. Thus the statutory provision refers to the province within which the tribunal is 'situate'.

'Situation' is far more appropriate to refer to the physical location of the Tribunal rather than to some other place where the President happened to exercise some of his functions on a particular occasion. Further the Tribunal also described itself as the Labour Tribunal, Negombo, in its order.

Therefore the order made in the present case having been made by Labour Tribunal, Negombo, comes within the jurisdiction of the High Court of the Western Province.

Case referred to:

Jafferjee v. Subramaniam (1969) 71 NLR 518

APPEAL from order of the District Court

Asoka de Silva D.S.G. with R. Nawinne S.C. for employer-appellant.

A. D. de Silva with Namal Punchihewa and S. Weerakoon for appellant-respondent.

Cur adv vult.

June 28th, 1993.

FERNANDO, J.

The applicant-respondent filed an application to the Labour Tribunal in July, 1987 and the employer-appellant filed its answer in September, 1987. Both documents referred to the "Labour Tribunal" but did not further describe the Labour Tribunal. The applicant-respondent was resident, and the employer-institution was situated, within the North-Western Province. In the applicant's replication the Labour Tribunal was referred to as "Labour Tribunal No. 21 Negombo-circuit Chilaw." It is the common ground that thereafter proceedings were held by the President, Labour Tribunal-Negombo, sitting at Chilaw. The record of each day's proceedings is headed "Labour Tribunal circuit at Chilaw. In the course of the proceedings

an order was made on a preliminary objection, and the caption to that order reads "In the Labour Tribunal No. 21 – circuit at Chilaw" and was signed by the President as "Labour Tribunal No. 21 – circuit at Chilaw". It was apparently delivered at Chilaw on 9th February, 1988. Parties also filed written submissions. The applicant's written submissions referred to the "Labour Tribunal, Chilaw circuit". The final order made on 25th June, 1991 is captioned "Labour Tribunal 21 Negombo". There is no reference to the circuit at Chilaw. The President gave his designation as "President, Labour Tribunal 21 – Negombo" and the order was signed at Negombo on 25th June, 1991. Again on 1st August 1991, as "President, Labour Tribunal 21 Negombo", he made a correction in respect of his order. The employer-appellant lodged an appeal against that order in the High Court of the Western Province. That appeal was taken up for consideration by the High Court Judge exercising jurisdiction at Negombo. In the course of the submissions, an objection was taken by the applicant that the High Court of the Western Province had no jurisdiction; and that it was only the High Court of the North Western Province (that is, the High Court Judge sitting at Chilaw) which had jurisdiction in respect of an appeal against the order of the Labour Tribunal.

Under Article 154P(3) (C) Parliament was empowered to confer additional jurisdictions and powers on the High Court for the Province. Under the High Court (Special Provisions) Act No. 19 of '90, the High Court for the Province was granted appellate jurisdiction in respect of orders made by the Labour Tribunal within that province. Section 4 conferred the right on the party aggrieved by an order of the Labour Tribunal to appeal to the High Court for the province within which such Labour Tribunal is situated. Similarly by the Industrial Disputes (Amendment) Act No. 32 of 1990 the right of appeal was given to the High Court for the province within which the Labour Tribunal concerned was situated. Mr. A. A. de Silva for the applicant contends that in determining where the Tribunal was situated, for the purpose of these provisions, one has to take into account firstly, the fact that the Labour Tribunal has all-island jurisdiction; (*Jafferjee v. Subramaniam*⁽¹⁾); secondly the place of residence of parties, and thirdly the place where the President functions (and in this case, the fact that all the evidence was

recorded in Chilaw). He further submits that the purpose of Article 154 P was to enable parties to have their dispute finally adjudicated in the Province in which they reside. He therefore submits that the Tribunal whose order is challenged in this case could be regarded as having been situated in Chilaw.

We are unable to uphold that submission. The statutory provisions refer to the Province within which the Tribunal is 'situate'. We must assume that the legislature intended to refer to some definite, easily ascertainable, factor rather than a vague or indeterminate factor. 'Situation' is far more appropriate to refer to the physical location of the Tribunal (and its office) rather than to some other place where the President happened to exercise some of his functions on a particular occasion; it refers to a permanent physical link, rather than to a transient or temporary presence in a place. For instance, if pleadings were filed in one place, and the proceedings took place in two or three other locations, and the order was made in yet another place, there would be a considerable difficulty in determining where the Tribunal was 'situated'; if situation was intended to refer to the place where it exercised its functions.

There is also the important consideration that the Tribunal in its order described itself as the Labour Tribunal Negombo.

In these circumstances it is clear that the order made in the present case was made by the Labour Tribunal at Negombo; that the Tribunal was situated within the Western Province; and that the High Court Western Province functioning at Negombo, had jurisdiction to determine the appeal. The order of the High Court holding that it had no jurisdiction is set aside. Counsel do not wish us to adjudicate upon the merits of the case, on which we therefore express no view. The High Court for the Western Province sitting at Negombo is directed to hear and determine the appeal on the merits as expeditiously as possible. There will be no costs of appeal.

Appeal allowed.