

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE SUNIL THOMAS**

**FRIDAY, THE 26<sup>TH</sup> DAY OF NOVEMBER 2021 / 5TH AGRAHAYANA, 1943**

**WP(C) NO. 23423 OF 2021**

**PETITIONER/S:**

MANGALA A.G., AGED 46 YEARS, D/O.A.K. GOPALAN,  
EX. DEPUTY GENERAL MANAGER FINANCE, HIL (INDIA),  
LTD., RASAYANI UNIT, RESIDING AT G-C, A- BLOCK,  
SOUPARNIKA GARDENS, MARKET ROAD, TRIPUNITHURA,  
ERNKULAM, KERALA 682 301.

BY ADV R.SREEHARI

**RESPONDENT/S:**

- 1 UNION OF INDIA, REP. BY THE SECRETARY,  
DEPARTMENT OF CHEMICALS AND PETROCHEMICALS, MINISTER  
OF CHEMICALS AND FERTILIZERS, NEW DELHI 110 001.
- 2 HIL (INDIA) LIMITED, 2ND FLOOR, CORE-6, SCOPE COMPLEX  
-7, LODHI ROAD, NEW DELHI 110003, REPRESENTED BY ITS  
CHAIRMAN AND MANAGING DIRECTOR.
- 3 CHAIRMAN AND MANAGING DIRECTOR, HIL (INDIA) LIMITED,  
2ND FLOOR, CORE-6, SCOPE COMPLEX -7, LODHI ROAD, NEW  
DELHI 110003.
- 4 HIL (INDIA) LIMITED, RASAYANI UNIT, P.O. RASAYANI,  
RAIGAD DISTRICT, NAVI MUMBAI, MAHARASHTRA 410 207,  
REPRESENTED BY ITS UNIT HEAD.
- 5 HIL (INDIA) LIMITED, UDYOGA MANDAL UNIT, P.O. UDYOGA  
MANDAL, KOCHI, KERALA 683 501, REP. BY ITS UNIT HEAD.

**OTHER PRESENT:**

SC, M.GOPIKRISHNAN NAMBIAR, ASG SRI.MANU.S

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'CR'

**JUDGMENT**

The writ petitioner is a chartered accountant, who joined the service of the second respondent company on 16.08.2010, as Finance Manager. On 10.05.2017, she was posted at the 4<sup>th</sup> respondent unit of the company at Rasayani, Navi Mumbai as Deputy General Manager (Finance). She was given the additional charge of the 5<sup>th</sup> respondent Udyogamandal Unit, by Ext.P3 document, dated 01.06.2020. While so, due to the spread of pandemic COVID 19 in the State of Maharashtra, she was permitted to work from her home at Panvel in Mumbai. Later, due to the increase in the number of COVID cases, petitioner left Maharashtra, came to her native place at Ernakulam and continued to work from home. She resigned her job on 31.10.2020. Claiming that petitioner was not paid one month's salary and the terminal benefits, she has approached this Court seeking reliefs.

2. Respondents 2 to 5 appeared and raised a preliminary objection that the writ petition was not legally sustainable in so far as the petitioner was posted at Navi Mumbai, from where she worked, beyond this Court's jurisdiction. This Court has no territorial jurisdiction to try the matter. Ms.Pooja Menon, learned Counsel for the respondent/company, vehemently contended that, petitioner was not transferred out of her office at Navi Mumbai. Learned counsel further

pointed out that the petitioner remained in the pay roll of the company at Rasayani Unit at Navi Mumbai and was liable to report to that office. She reported online for duty at Navi Mumbai office and received instructions from that office. Her work report was submitted to the office at Navi Mumbai. Considering the peculiar circumstances arising out of the COVID pandemic, as a concession, she was permitted to work from home. Though she worked remotely from home, she continued to be in the pay rolls of the 4<sup>th</sup> respondent at Navi Mumbai. Even her work from home at Ernakulam, can only be considered as a notional extension of her work place. Answering this, Mr.R.Sreehari, learned counsel for the petitioner contended that, she was permitted to work from home at Ernakulam and also held the additional charge of the Unit at Ernakulam, and thereby this Court has territorial jurisdiction to try the matter.

3. In the light of the rival contentions, the maintainability of the writ petition was heard as a preliminary issue.

4. Essential facts remain undisputed. The only contention of the writ petitioner was that, since the petitioner worked from home at Ernakulam and was holding the additional charge of the Udyogmandal unit at Ernakulam, that would confer territorial jurisdiction to this court. However, Ext.P3 memorandum dated 1/6/2020 issued to the petitioner conferring additional charge of financial department of

Udyogamandal unit, refer to her as the “Deputy General Manager (Finance & Accounts), posted at Rasayani unit”. Even in her affidavit dated 19.11.2020 filed along with Ext.P3, it is affirmed that, petitioner was given additional charge of Udyogmandal unit, while she was working at the Rasayani Unit. In the absence of any thing more, granting of additional charge of Udyogmandal unit while working at Mumbai, cannot by itself confer jurisdiction to this Court. Hence, the question now boils down to whether mere permission to work from home is sufficient to confer jurisdiction on the court, within whose jurisdiction the employee was working.

5. The spread of COVID-19 pandemic has changed the way of functioning of the businesses throughout the world. Remote working, telecommuting, teleconference and work from home have become common under compulsive circumstances. This definitely can generate complex issues relating to jurisdiction, law that is applicable, nature of transactions, binding nature of contracts entered by the employees at distant places and other vexed issues, which need to be addressed by the court. It is a well recognized, long standing jurisdictional principle, that a company or a corporation can be sued at its seat of headquarters. However, if it is accepted that, in the absence of any express or implied clause regarding jurisdiction to the contrary in the contract of employment, an employee is entitled to sue the company in

the court, within whose jurisdiction employee works from home, the company may have to face litigation at various territorial jurisdictions wherever each employee works from home. In the case of a multinational company, which has its work force in different countries, definitely, it will have to face jurisdictions trans-nations. This is likely to create more complex situation, wherein, the entire workforce or a majority of them are permitted to work from their respective homes, spread over within different national borders. This question needs to be answered on the basis of the legal principles.

6. Conventionally, the question as to whether the person claiming jurisdiction on the basis of work from home alone, can be answered with reference the office where he remains in the pay roll, the office where he stood posted, the office to which he reports for duty, receives instructions, reports about duty and the office to which he remain answerable etc. In the case at hand, there is nothing to show that petitioner was given permission, based on any term in the contract of employment enabling her to continue to work from home. There is nothing to show that, contract of employment provided that a permanent or temporary employee would be governed by the territorial jurisdiction from where he or she works. In this situation, if each person who works from home is permitted to raise their objection from his territorial jurisdiction, definitely, it may confer jurisdiction on

umpteen number of Courts and may call upon the employer to face litigation in different jurisdictions.

7. The question of personal jurisdiction based on remote employment is a matter which needs to be considered on a broad based principle. Precedents seems to be less in Indian context, though this has been the subject matter of consideration in other jurisdictions. According to those precedents, based on the conventional principle, just having an employee located in a particular State who works remotely, or enters into transaction with customers in another State, is likely to be insufficient to confer personal jurisdiction over the company. However, that may be different where the company pro-actively encourages the employee to expand the company's business within the territory of the employee or expand their services in that State, wherein the employee is working, as distinct from a case when an employee lives in another jurisdiction, mainly for his convenience or his personal convenience.

8. The question of jurisdiction for legal claims of remote employees, merely because they are permitted to work from home and merely because the employer was aware of the fact that employee was within a different jurisdiction was sufficient to confer jurisdiction, was considered by the Federal Court in Merryland in U.S. in **Melissa Perry v. National Association of Home Builders [2020 WL 5759766]**. In

the above case, Melissa Perry worked as Executive Assistant to the Chief Executive Officer of the employer. CEO functioned from the Head office at Washington. As per contract, Melissa was required to work at all hours due to the regular trips of CEO. She claimed that she worked from home in another State even after usual working time and claimed the right to sue from her jurisdiction. To answer this, the court relied on the principle as to whether the defendant has purposefully established "minimum contact" with the forum state, such that it should reasonably anticipate being haled into court there. According to the court, in addressing whether a court may exercise specific jurisdiction over a non resident employer in a dispute involving remote work by an employee in the forum state, courts may find purposeful availment, where the employer intentionally directed contact with the forum state, such as, through some combination of affirmatively recruiting the employee, while a resident of the forum state; contracting to have the employee work from the forum state; having the employee attend meetings with business prospects within the forum state, and supplying the employee with equipments to do work there etc.

9. Relying on various precedents, the court held that instances of employer entering into contract with employee residing in a different state to start business there; facilitated work by providing office

equipment; where the employer “aggressively sought out” the employee to enter into contracts; providing employee with computer and other equipments to do work; instance of a company with corporate office in one state employing one in another state to provide marketing services from employee's home state; expressly permitting employee to rent in home state and continue to live and work in home state; enlisted him to attend multiple meetings with vendors in home state; instance of employer hiring employee in a different jurisdiction to work out of his home and provided an allowance to support office expenses; were examples which conferred jurisdiction to the home jurisdiction.

10. The above principle seems to have been evolved through a series of earlier decisions. In **World-Wide Volkswagen Corporation Vs Charles S Woodson, 444 US 286 (1980)**, the issue that came up before the United States, Supreme Court was whether the plaintiff who conducted business on behalf of a Corporation, which had its head office elsewhere, can be sued by the plaintiff from his work place. Relying on the earlier decision in **International Shoe Company Vs Washington [326 US 310]**, the Supreme Court held that the State Court can exercise personal jurisdiction over non resident defendant only so long as there existed “minimum contacts” between the employer and employee. In **Burger King Corporation Vs John Rudzewicz 471**

**US 462 (1985)** also identical issue came up. Reiterating the earlier decisions, it was held that once it has been found that the defendant has purposefully established minimum contacts with the plaintiff working within the forum state, the contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice. It was reiterated by the Supreme Court that 'quality and nature of an interstate transaction may sometimes be so random, fortuitous, or attenuated that it cannot fairly be said that the potential defendant should reasonably anticipate being haled into court in another jurisdiction'. In **listug v. Molina Information System LLC [2014 WL 3887939]**, a decision of an agent to work from home in a foreign State was held not to confer any personal jurisdiction in that State, where the purpose of arrangement was merely for employee's personal convenience. The above view was reiterated in the subsequent decision of the United State court of appeal in **MacDermid Vs Jackie Deiter [702F.3d 725 (2012)]** and similar decisions of other courts in **Andrew Stuart Vs Churn LLC and Van Leeuwen (2019 WL 2342354)** and in **Kevin M Callahan Vs Jeffry WISDOM (2020 WL 2061882)**.

11. However, in remote work cases, the consistent view taken by the US courts was that, mere knowledge of the defendant that an

employee happens to reside in the forum state and conduct some work from home, does not confer jurisdiction on the forum state court. Thus, when the employee was merely permitted to remain at his home station and permitted him to telecommute from his place of residence to the head office situated within another jurisdiction, without anything more, will not confer jurisdiction to the court within her jurisdiction to try the matter. It was also held that plaintiff's decision to work remotely from a different state was a unilateral decision and merely because employer had accommodated, that will not confer jurisdiction to that court.

12. In **Callahan Vs Jeffrey Wisdom (supra)** the court took the view that no purposeful availment was done by the defendant by engaging the plaintiff as a consultant and permitting her to remain at her home place, was purely incidental to the work of the defendant company, and did not confer jurisdiction to her home state court. Similar view was taken in few other cases by the US courts, wherein it was held that merely because the employer knew and facilitated occasional remote work by employees elsewhere, it could only be treated as a mere accommodation and not a purposeful effort to have a work conducted in the forum state.

13. A perusal of the above decisions show that a clear distinction has been drawn between instances wherein the employee was permitted to work from a different jurisdiction and the employer

knowingly facilitated it, promoted the business at that place or conferred benefits for such business. The latter was held to be a instances of positive act, thereby the forum state acquired jurisdiction. On the other hand, if an employee is merely permitted to work from his or her own, without anything more provided by the employer by itself, will not confer jurisdiction to the forum state to adjudicate in case of a dispute between the employer and the employee. This principle can properly to be adopted in Indian context based on the principles of cause of action.

14. However, as the situation changes and telecommuting or work from home becomes a permanent feature, unlike the temporary phase that has arisen at present, wherein, as a part of contract of employment, persons who are freshly recruited are permitted to remain in different stations and work from there, with facilities being provided by the employer or where the employer pro-actively encourage the employee to improve the business there and/or provides facilities, in that jurisdiction, the situation may be different. The employer, in such cases will be free to include appropriate clause relating to jurisdiction in the contract of employment.

15. In the above circumstances, the legal position seems to be very clear that, when a person is permitted to work from home merely as a concession or a convenience, place from where the person so work

is not sufficient to confer any jurisdiction. This squarely applies to the facts of this case. Having considered this, I find no reason to hold that, this Court has jurisdiction to sustain the Writ Petition.

Writ Petition fails and is dismissed. This will not preclude the petitioner from seeking her remedy in appropriate court.

Sd/-

**SUNIL THOMAS**

**JUDGE**

**Sbna/**

**APPENDIX OF WP(C) 23423/2021**

PETITIONER EXHIBITS

Exhibit P1                    COPY OF THE REPRESENTATION DATED 25.09.2021  
SENT BY THE PETITIONER TO THE RESPONDENTS.

Exhibit P2                    COPY OF THE APPLICATION DATED 25.09.2021  
SENT BY THE PETITIONER TO THE 2ND  
RESPONDENT UNDER THE RIGHT TO INFORMATION  
ACT.