

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on October 16th, 2008

WP(C)No.9348/2007.

Shaheed Satyavir Singh
Filling Station & Anr.

....

Petitioners

Through : Ms. Radhika Chandrashekhar, Adv.

Versus

Union of India & Ors.

....

Respondents

Through : Mr. Mukesh Anand & Mr. Shailesh
Tiwary, Advs. for respondent
no.1.

Mr. Saran Suri and Mr. Ranjan
Kumar, Advs. for respondent no.2.

Mr. Rajan Narain & Ms. Sneha
Malik, Advs. for respondent no.3.

Mr. Alok Vagreehe, Adv. for
respondent no.5.

CORAM:

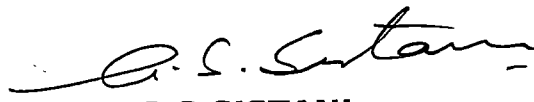
HON'BLE MR. JUSTICE G.S.SISTANI

- 1 Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J :

For Orders see WP(C)No.9629/2007.

October 16th, 2008


**G.S.SISTANI
(JUDGE)**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

(1)

W.P. (C) No. 9629/2007

JUDGMENTS PRONOUNCED ON: October 16th, 2008

Anil Kumar Petitioner
Through : Ms. Radhika Chandrashekhar, Advocate

Versus

Union of India and Others Respondents
Through : Mr. Mukesh Anand & Mr. Shailesh Tiwary,
Advocates for respondent no. 2

(2)

W.P. (C) No. 7910/2007

R.A. Nariman & Co. (P) Ltd. Petitioner
Through : Ms. Radhika Chandrashekhar, Advocate

Versus

Union of India and Others Respondents
Through : Mr. M. M. Kalra, Advocate for R- 2

(3)

W.P. (C) No. 64/2008

Bhinga Petroleum Petitioner
Through : Ms. Radhika Chandrashekhar, Advocate

Versus

Union of India and Others Respondents
Through : Mr. Rajan Narain & Ms. Sudha Malla, Adv.

(4)

W.P. (C) No. 8577/2007

Madhur Filling Station Petitioner
Through : Ms. Radhika Chandrashekhar, Advocate

Versus

Union of India and Others Respondents
Through : Mr. Mukesh Anand & Mr. Shailesh Tiwary,
Advocates for respondents no. 1 & 2

Mr. Rajan Narain & Ms. Sneha Malik,
Advocates for respondent no. 3

Mr. Alok Vagřehe, Advocate for R-5

(5)

W.P. (C) No. 591/2008

Mahalaxmi Filling Station Petitioner
Through : Ms. Radhika Chandrashekhar, Advocate

Versus

Union of India and Others Respondents
Through : Mr. Mukesh Anand & Mr. Shailesh Tiwary,
Advocates for respondents no. 1 & 2

Mr. Rajan Narain & Ms. Sneha Malik,
Advocates for respondent no. 3

Mr. Alok Vagřehe, Advocate for R.- 5

(6)

W.P. (C) No. 9348/2007

Shaheed Satyavir Singh Filling Station Petitioner
Through : Ms. Radhika Chandrashekhar, Advocate

Versus

Union of India and Others Respondents
Through : Mr. Mukesh Anand & Mr. Shailesh Tiwary,
Advocates for respondents no. 1

Mr. Saran Suri and Mr. Ranjan Kumar,
Advocates for respondent no. 2

Mr. Rajan Narain & Ms. Sneha Malik;
Advocates for respondent no. 3

Mr. Alok Vagřehe, Advocate for R-5

(7)

W.P. (C) No. 375/2008

U.P. Petroleum Traders Association (Regd.) Petitioner
Through : Ms. Radhika Chandrashekhar, Advocate

Versus

Union of India and Others Respondents
Through : Mr. Mukesh Anand & Mr. Shailesh Tiwary,
Advocates for respondents no. 1 & 2

(8)

W.P. (C) No. 523/2008Kisan Filling Centre
Through

Petitioner

: Ms. Radhika Chandrashekhar, Advocate

Versus

Union of India and Others

Respondents

Through

: Mr. Mukesh Anand & Mr. Shailesh Tiwary,
Advocates for respondents no. 1

Mr. Anil Kumar Batra, Advocate for R-2

(9)

W.P. (C) No. 102/2008Gokulesh Fuel Point
Through

Petitioner

: Ms. Radhika Chandrashekhar, Advocate

Versus

Union of India and Others

Respondents

Through

: Mr. Dalip Mehra & Mr. Rajiv Ranjan Mishra,
Advocates for respondents no. 1

Mr. Saran Suri, Advocate for R-2

CORAM:**HON'BLE MR. JUSTICE G.S. SISTANI**

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

G.S. SISTANI, J.

1. Whether framing of a delegated legislation or issuance of an executive order or instruction would confer jurisdiction upon a Court only because of the situs of the office of the maker thereof? This question of law, already well-settled by the Apex Court in a catena of decisions, has yet again reverberated in

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this batch of nine writ petitions that shall be disposed off by this common order.

2. Inasmuch as this judgment shall address only the preliminary challenge of territorial jurisdiction made by the respondents, the specific facts leading to each of the present nine petitions need not be delved upon *in extenso*. Suffice for us to know that the petitioners herein are dealers of leading public sector oil companies and are running retail outlet/petrol pumps in various districts of Uttar Pradesh. The petitioners are primarily aggrieved by the suspension of sale and supply by the respondent oil companies pursuant to an inspection carried out by the respondents at the respective petrol pumps/retail outlets of the petitioners. *Inter alia*, it is alleged that the respondents carried out the inspection without conforming to the sampling procedure as prescribed in the Marketing Discipline Guidelines 2005. The collective grievance of the petitioners is also that their retail outlets/ petrol pumps have been suspended without serving a show cause notice and without verifying the true and correct facts.
3. *Per contra*, learned counsel for the respondents, in their preliminary challenge to the present petitions, have stoutly argued that no cause of action has arisen within the territorial jurisdiction of this Court. It is contended that all petitioners herein have been carrying out their business of running their respective retail outlets/petrol pumps in the various districts of Uttar Pradesh, the impugned inspections were carried out at the petitioners' retail outlets/petrol pumps in Uttar Pradesh,

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which falls beyond the territorial jurisdiction of this Court and the impugned orders suspending sale and supply were also issued by the respondents from Uttar Pradesh. It is thus the case of the respondents that inasmuch as not a single part of the cause of action arose in Delhi, this Court has no territorial jurisdiction to try and entertain this petition.

4. Learned counsel for the respondent has relied upon the counter affidavit filed. Relevant portion with regard to the issue of jurisdiction reads as under:

"It has been held by the Hon'ble Supreme Court in ***Union of India and Others Vs. Adani Exports Ltd. and Anr. AIR 2002 SC 126*** that the facts pleaded in the writ petition clearly show that no cause of action has arisen within the territorial jurisdiction of this Hon'ble Court and the facts which have no bearing with the lis of the dispute involved in the case do not give rise to cause of action so as to confirm the territorial jurisdiction on the Court concerned. Article 226(2) of the Constitution of India which speaks of the territorial jurisdiction of the High Court reads :-

"The power conferred by clause (1) to issue directions, orders or writs to any government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories."

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It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action wholly or in part, arises. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this regard, it would suffice for us to refer to the observations of this Court in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Ors. {1994 4 SCC 711 at 713} wherein it was held:

"Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression "cause of action" means that bundle of facts the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial."

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It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the list that is involved in the case. Facts that have no bearing with the list or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. If we apply this principle then we see that none of the facts pleaded in paragraph 16 of the petitioner, in our opinion, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which would confer territorial jurisdiction on the courts at New Delhi."

5. In response to the challenge made by the respondents to the maintainability of the present petition before this Court, it is vehemently argued by learned counsel for the petitioners that the cause of action for filing the present petition has arisen in Delhi inasmuch as the respondent oil companies are contemplating their decision to terminate the dealerships of petitioners on the basis of two orders [Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and

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Prevention of Malpractices) Amendment Order of 2005, and The Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Amendment Order of 2007] which were issued at Delhi. It is thus contended that inasmuch as the orders in question have been issued at Delhi, this Court has territorial jurisdiction to try and entertain this matter.

6. I have heard learned counsel for both parties at length who have taken me through the various documents filed on record.
7. Let us first look at how the present petitions justify this Court having jurisdiction to entertain the present petitions. For felicity of reference, the relevant paragraphs of the writ petition bearing W.P. (C) No. are culled out as under:

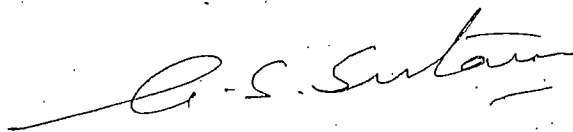
"55. That the Hon'ble court has the jurisdiction to entertain the present petition as both the control orders namely The Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Amendment Order of 2005 and the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Amendment Order of 2007 have been issued/notified/gazetted by respondent no. 1/Ministry at New Delhi.

56. That the petitioner is challenging the action, inspection, search and seizure being carried out by the respondents no. 2 & 3 on the basis of the control orders namely, The Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Amendment Order of 2005 and the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Amendment Order of

2007, therefore also this Hon'ble court has the jurisdiction to entertain the present matter."

8. It is no longer *res integra* that for the purpose of deciding whether the facts averred by the petitioner would or would not constitute a cause of action, one has to consider whether such facts constitute a material or integral part of the cause of action. Indisputedly, all petitioners herein have been carrying out their respective retail outlet/petrol pump business in Uttar Pradesh. It is also not in dispute that the impugned inspection was carried out by the respondents at the petitioners' respective outlets in Uttar Pradesh. Consequently, the suspension order of the Sale and Supply was passed by the respondents and the respective replies thereto by the petitioners were both made in Uttar Pradesh. In view of the undisputed factual matrix leading to the present petition, it would not be incorrect for this Court to assume that a substantial portion of the cause of action in the present case has arisen in Uttar Pradesh which is beyond the jurisdiction of this Court. Merely by stating that an action by the respondents is likely to be taken on the basis of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Amendment Order of 2005, and the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Amendment Order of 2007, which have been issued at Delhi, by itself cannot confer jurisdiction to this Court.

9. The Apex Court in the leading case of **Kusum Ingots and Alloys Ltd. v. Union of India and Anr**¹ and in a catena of decisions thereafter has unequivocally opined that "[s]itus of office of the Parliament, Legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action"². In view of the settled position of law, the stand taken by the petitioners cannot be countenanced. Merely because the impugned Motor Spirit and High Speed Diesel have been issued at Delhi, cannot by itself clothe this Court with jurisdiction to entertain the present petitions on merits; when all events leading to filing of the present petitions, that is, the impugned inspections and the suspension orders passed thereafter, and also the retail outlets/petrol pumps of the petitioners being situate in Uttar Pradesh, are outside the territorial jurisdiction of this Court.
10. Thus, in view of the settled position of law, at least insofar as the present petitions are concerned, I decline to entertain the present petitions, leaving it to the petitioners to approach the jurisdictional High Court.


G.S. SISTANI, J.

October 16th 2008
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¹ AIR 2004 SC 2321

² *id.* at para 26