

GAHC010087772024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2349/2024

DR. RAHMAT ALI LASKAR
SON OF LATE- ABDUL HANNAN, RESIDENT OF VILLAGE-
BORDOLOIPATHAR, POST OFFICE- UDALI TINIALI BAZAR, POLICE
STATION- LANKA, DISTRICT- HOJAI, ASSAM, PIN- 782446

VERSUS

THE STATE OF MAHARASHTRA AND 9 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
MAHARASHTRA, REVENUE AND FOREST DEPARTMENT, MANTRALAYA,
4TH FLOOR, MUMBAI, MAHARASHTRA, PIN- 400032

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
SOCIAL FORESTRY
PUNE MAHARASHTRA
GROUND FLOOR
CENTRAL BUILDING
PUNE MAHARASHTRA
PIN- 411001

3:THE ADDITIONAL PRINCIPAL CHIEF CONSERVATOR OF FOREST
SOCIAL FORESTRY
PUNE MAHARASHTRA
GROUND FLOOR
CENTRAL BUILDING
PUNE MAHARASHTRA
PIN- 411001

4:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
(HEAD OF FOREST FORCE)
MAHARASHTRA STATE
BAN BHAWAN

RAMGIRI ROAD
NAGPUR
PIN- 440001

5:THE CONSERVATOR FOREST
SOCIAL FORESTRY
PUNE
BAN BHAWAN
BAMBURDA BAN VIHAR
GOKHLE NAGAR
PUNE
MAHARASHTRA
PIN- 411016

6:THE CONSERVATOR FOREST
SOCIAL FORESTRY
SAMBHAJI NAGAR
NEW ADMINISTRATIVE BUILDING (FIRST FLOOR)
BEHIND CHUNNILAL PETROL PUMP
NEW USMAN PARA
CHATRAPATI SAMBHAJI NAGAR
MAHARASHTRA
PIN- 431005

7:THE CONSERVATOR FOREST
SOCIAL FORESTRY
NASHIK
MADHYAWATI ADMINISTRATIVE BUILDING
SECOND FLOOR
NASHIK ROAD
MAHARASHTRA
PIN- 422101

8:THE CONSERVATOR FOREST
SOCIAL FORESTRY
NAGPUR CIRCLE
NEW ADMINISTRATIVE BUILDING (BAN BHAWAN) ZERO MILES
NAGPUR
MAHARASHTRA
PIN- 440001

9:THE CONSERVATOR FOREST
SOCIAL FORESTRY
AMRAVATI
ZILA PARISHAD
OPPOSITE DISTRICT COURT
AMRAVATI
MAHARASHTRA

PIN- 444602

10:THE CONSERVATOR FOREST
SOCIAL FORESTRY
THANE CIRCLE
KOPRIGAON ROAD
NEAR KOPRI POLICE STATION
THANE
MAHARASHTRA
PIN- 40060

Advocate for the Petitioner : ALHAJJ I UDDIN, MR R HOQUE,MRS. R MOMTAZ

Advocate for the Respondent : ,

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocates for the petitioner : Mr. A. I. Uddin, Advocate

For the respondents :

Dates of hearing : 08.11.2024

Date of Judgment : 12.11.2024

JUDGMENT AND ORDER (CAV)

1. Heard Mr. A. I. Uddin, learned counsel for the petitioner, who submits that the petitioner submitted his bid in respect of the E-Tender Notice No.06/2023-2024 issued by the Divisional Forest Officer, Social Forestry Division, Pune, Government of Maharashtra, for supply of minimum 4 months old bamboo seedlings from certified seed source in around 4"x5" size polybags.

2. No one appears for the respondents, despite notice having been issued to the respondents on 17.05.2024. The office note dated 09.09.2024 states as follows:-

“Perusal of the track consignment reports (Annexure-A to J) filed by the petitioner confirms delivery of item to respondent Nos. 1 to 8 and 10 on 24.05.24 and to respondent No. 9 on 27.05.24. As such it can be said that service is complete for respondent Nos. 1 to 10.”

3. The petitioner, who is the proprietor of M/s North East Nursery Seeds House, Udali Tiniali Bazar, Nagaon, Assam-782446, submitted his tender in respect of the above said E-Tender Notice for supply of bamboo seedlings to Pune, Maharashtra. The petitioner's bid was selected. Supplies were made by the petitioner. The grievance of the petitioner is that only part payment of the supply bills have been made by the respondents.

4. The petitioner's counsel submits that E-Tender Notice dated 17.11.2023 was issued by the Principal Chief Conservator of Forests, Social Forestry Division, Pune, Maharashtra for supply of 24.88 lakhs bamboo seedlings at a cost of Rs.371.74 lakhs.

5. The petitioner's bid was declared as the successful bid and accordingly, supply order dated 17.11.2023 was issued by the respondent No.2 to the petitioner's firm, i.e., M/s North East Nursery Seeds House, Udali Tiniali Bazar, District Nagaon, Assam.

6. The petitioner thereafter supplied the bamboo seedlings in terms of the work/supply order dated 17.11.2023, which was issued to his firm in the State

of Assam. The petitioner accordingly supplied 24.88 lakhs bamboo seedlings at a cost of Rs.371.74 lakhs from Assam to Pune, Maharashtra. Though part payment of the petitioner's bill had been made by the respondents, the petitioner is still to be paid Rs.3,51,63,722/-.

7. The petitioner's counsel submits that a direction should be issued to the respondents to pay to the petitioner the above outstanding dues of Rs. 3,51,63,722/-.

8. On a perusal of the writ petition, it is seen that all the respondents are from the State of Maharashtra and all of them are working for the Government of Maharashtra. The E-Tender Notice was also issued by the Divisional Forest Officer, Social Forestry Division, Pune. The bamboo seedlings that were also supplied were also supplied to the Social Forestry Division, Pune, Maharashtra. The payment for the supplied bamboo seedlings are also to be paid by the Government of Maharashtra. The petitioner has however filed this writ petition in this Court, praying for his contractual dues, only on the ground that besides the supply having been made from the State of Assam and delivered in the State of Maharashtra, the work/supply order dated 17.11.2023 had been issued to the petitioner's office in Assam, which was within the jurisdiction of this Court.

9. The question is whether this Court has the jurisdiction to decide the present case, when there is nothing to show that any part of the cause of action for payment of the petitioner's bill, has arisen within the territorial jurisdiction of this Court.

10. Article 226 (1) & (2) of the Constitution of India states as follows:-

“226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]

(2) 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.”

11. In the case of ***Jayaswals Neco Limited vs. Union of India & Others***, reported in ***2007 SCC OnLine Del 2094***, the Delhi High Court has held that while Article 226(1) empowers a High Court to issue writs to a person, authority or government within its territorial limits de hors the question of where the cause of action arose, Article 226(2) enables High Courts to issue writs to persons, authorities or governments located beyond its territorial limits, provided a cause of action arises (in whole or in part) within the territorial extent of the said High Court. Thus, what Article 226(2) has done is to extend the jurisdiction of the High Courts beyond their territories in cases where part of the cause of action arises within its territories.

12. For guidance, Section 20 of the CPC is reproduced hereinbelow, as

follows :

“20. Other suits to be instituted where defendants reside or cause of action arises-Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c)The cause of action, wholly or in part, arises.”

13. In the case of ***Kusum Ingots & Alloys Ltd. vs. Union of India & Another***, reported in **(2004) 6 SCC 254**, the Supreme Court discussed Article 226 of the Constitution with reference to Section 20(c) and Section 141 of the CPC and observed in Para 9 & 10 as follows:-

“9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to a writ proceeding, the phraseology used in Section 20(c) of the Code of Civil Procedure and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

10. Keeping in view the expressions used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action

accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.”

The Supreme Court further held that we must however remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*.

14. In the case of ***State of Goa vs. Summit Online Trade Solutions Private Limited & Others***, reported in ***(2023) 7 SCC 791***, the Supreme Court has held that the constitutional mandate of clause (2) of Article 226 is that the cause of action must at least arise in part, within the territories in relation to which the High Court exercises jurisdiction where writ powers conferred by Clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories. It further held that without the cause, there cannot be any action. Further, determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution would necessarily involve an exercise by the High Court to ascertain whether the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant.

15. In the case of *State of Goa VS Summit Online Trade Solutions (P) Ltd. (supra)*, tax had been levied by the Government of Goa in respect of a business that the petitioning company was carrying on within the territory of Goa. As such, tax was

payable by the petitioning company not in respect of carrying on of business in the territory of Sikkim. The Supreme Court held that merely because the petitioning company has its office in Gangtok, Sikkim, the same by itself does not form an integral part of the cause of action authorizing the petitioning company to move the Sikkim High Court, inasmuch as, the liability had arisen for the specific nature of business carried on by the petitioning company within the territory of Goa. The Supreme Court further held that even assuming that a slender part of the cause of action did arise in the State of Sikkim, the concept of forum conveniens ought to have been considered by the High Court.

16. On considering all the above judgments, it is clear that Article 226(2) of the Constitution can be invoked by this High Court, only if the whole or part of the cause of action arises within the territorial jurisdiction of this High Court. Though cause of action has not been defined in the Constitution, the classic definition of cause of action given by *Lord Brett in Cooke vs. Gill, (1873) 8 CP 107* is that "cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court"

17. In the present case, the only ground taken by the petitioner in filing the present writ petition for payment of his bills by the State of Maharashtra in this Court, is due to the fact that the work/supply order had been issued to the petitioner's firm in the address given within the State of Assam. It is not disputed by the parties that the tender notice was issued by the respondents, who are within the State of Maharashtra and that the supplies had been made within the state of Maharashtra. The payments were also to be made by the respondents from the State of Maharashtra. On considering the above facts, this Court is of the view that no part of the cause of action has arisen within the

State of Assam, i.e., within the territorial jurisdiction of this Court. This Court thus holds that just because the work/supply order was addressed to the petitioner's firm in Assam and just because the supply was made from Assam to Maharashtra, the same does not mean that the cause of action arose in the State of Assam. In any event, even if it is assumed that a slender part of the cause of action has arisen within the State of Assam, the execution of any order would have to be made through the Court/Forum in the State of Maharashtra. Keeping in view the above facts and in terms of the judgment of the Supreme Court in ***Kusum Ingots & Alloys Ltd. (supra)***, this Court is of the view that the petitioner would have to agitate his grievance before the appropriate Courts/Forums within the State of Maharashtra. Further, by applying the concept of *forum conveniens*, this Court is not inclined to exercise its discretion in this case.

18. The writ petition is accordingly dismissed, with liberty being given to the petitioner to approach the appropriate Court/Forum within the State of Maharashtra.

JUDGE

Comparing Assistant