

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2184 of 2015

1. Ramendra Kishore Prasad S/o Late Shri Jugal Kishore Prasad
Aged About 73 years R/o A/6 Soneganga Colony Bilaspur
Chhattisgarh 495006

---- Petitioner

Versus

1. S. Bhattacharya, Chairman And Managing Director, Coal India
Limited, 10, Netaji Subhas Road Kolkata 700001 (W.B.)
2. Union Of India, Through Its Secretary, Ministry Of Coal 3rd Floor,
Shastri Bhavan, New Delhi 110001
3. Public Enterprises Selection Board, Through Its Chairman,
Ministry Of Personnel Public Grievance and Pensions Department
Of Personnel & Training Block No. 14, CGO Complex, PE Bhavan,
Lodhi Road, New Delhi 110003
4. Ministry Of Personnel Public Grievance And Pensions Through Its
Secretary, Department Of Personnel & Training North Block New
Delhi 110001

---- Respondents

For Petitioner	Shri A.P. Gera & Shri Gary Mukhopadhyay, Advocates
For Respondent/UOI	Shri N.K. Vyas, Asstt. Solicitor General

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

16/07/2015

1. The petitioner, a resident of Bilaspur (Chhattisgarh), has preferred
this writ of *quo warranto* to oust the respondent No.1 from the

office of Chairman and Managing Director (for short 'CMD') of Coal India Limited (for short 'CIL').

2. The petition was heard on admission, wherein, issue concerning jurisdiction of this Court to entertain a writ petition was also addressed by learned counsel appearing for the petitioner, therefore, before proceeding to deal with the merits of the matter, this Court would first dwell on the issue of its territorial jurisdiction to entertain the writ petition.
3. Indisputably, the order of appointment of respondent No.1 as CMD of CIL has been issued by the Government of India, Ministry of Coal at Shastri Bhawan, New Delhi on 18.12.2014. The respondent No.2 is the Union of India arrayed through the Secretary of Ministry of Coal, which has its office in New Delhi. Similarly, the offices of the respondent No.3 Public Enterprises Selection Board and the respondent No.4 Ministry of Personnel, Public Grievances and Pensions are at New Delhi. The CIL, of which the respondent No.1 has been appointed as CMD, has its headquarter at Kolkatta (West Bengal). Thus, none of the respondents or their offices are located in the State of Chhattisgarh.
4. In course of hearing, learned counsel for the petitioner was confronted as to the jurisdiction of the Court inasmuch as, none of the respondents are located in the State of Chhattisgarh and the impugned order itself has been issued from an office stationed at

New Delhi, learned counsel would submit that the CIL has many subsidiaries, out of which, one subsidiary has its headquarter at Bilaspur (Chhattisgarh), therefore, the place of work of the respondent No.1 would also be at Bilaspur (Chhattisgarh), therefore, the writ petition has been preferred and the High Court of Chhattisgarh has jurisdiction over the matter.

5. The issue concerning the territorial jurisdiction of a High Court under Article 226 of the Constitution of India has fallen for consideration on 'n'-number of occasions before the Supreme Court. Reference to some of them would be necessary to conclude the fate of the present writ petition.
6. In **Election Commission, India v. Saka Venkata Rao**¹, the Constitution Bench of the Supreme Court held that the writ Court would not run beyond the territories subject to its jurisdiction and that the person or the authority affected by the writ must be amenable to Court's jurisdiction either by residence or location within those territories.
7. A similar view was taken by another constitution Bench of the Supreme Court in **K.S. Rashid and Son v. Income Tax Investigation Commission and others**².
8. These two constitution Bench judgments came up for consideration before a larger Bench of seven judges of the Supreme Court in **Lt. Col. Khajoor Singh v. Union of India and**

1 AIR 1953 SC 210

2 AIR 1954 SC 207

another³. Approving the two previous constitution Bench judgments, their Lordships of the Supreme Court held that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Their Lordships further held that the effect of an order by whomsoever it is passed can have no relevance in determining the jurisdiction of the High Court which can take action under Article 226. Functioning of a Government is really nothing other than giving effect to the orders passed by it. Therefore, it would not be right to introduce in Article 226 the concept of the functioning of Government when determining the meaning of the words 'any person or authority within those territories'. By introducing the concept of functioning in these words we shall be creating the same conflict which would arise if the concept of the place where the order is to have effect is introduced in Article 226. It further said, Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Article 226 are

not suits; they provide for extra ordinary remedies by a special procedure and give powers of correction to the High Courts over persons and authorities and these special powers have to be exercised within the limits set for them.

9. After the judgment in **Lt. Col. Khajoor Singh** (supra), the Parliament introduced clause (1-A) in Article 226 by the Constitution (Fifteenth) Amendment Act, 1963 and subsequently, renumbered as clause (2) by the Constitution (Forty-Second) Amendment Act, 1976. The present provision contained in Article 226, clause (1) (2) are reproduced hereunder :

“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, prohibitions, 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.”

10. Thus, after insertion of clause (2) , the High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the Court's territorial jurisdiction.
11. I would not refer to the other judgments because I have the advantage of more recent judgments on the issue.
12. In **Alchemist Ltd. and Another v. State Bank of Sikkim and others**⁴ the Supreme Court held that the expression 'cause of action' has neither been defined in the Constitution nor in CPC, however, it may be described as a bundle of necessary facts to prove before he can succeed. It held, for the purpose of deciding whether facts averred by the petitioner would or would not constitute a part of cause of action, one has to consider whether such facts constitute a material, essential, or integral part of the cause of action. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. In determining the said question, the substance of the matter and not the form thereof has to be considered.
13. In a very recent judgment, the Supreme Court in **Nawal Kishore Sharma v. Union of India and others**⁵, had an occasion to deal with the issue and having referred to its previous judgments rendered in the matters of **State of Rajasthan and Others v.**

4 (2007) 11 SCC 335

5 (2014) 9 SCC 329

Swaiika Properties and Another⁶, Oil and Natural Gas Commission v. Utpal Kumar Basu and Others⁷, Kusum Ingots & Alloys Ltd. v. Union of India and Another⁸, Union of India and Others v. Adani Exports Ltd. and Another⁹, Om Prakash Srivastava v. Union of India and Another¹⁰ and Rajendran Chingaravelu v. R.K. Mishra, Additional Commissioner of Income Tax and Others¹¹, held that the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction. In the case at hand, the *lis* brought before the Court is not about infringement of any of the legal right of the petitioner, but he seems to agitate the issue concerning of appointment of respondent No.1, who according to the petitioner is an usurper of the office and needs to be ousted by issuance of writ of *quo warranto*.

14. While issuing such a writ, the locus of the petitioner or other technical objections which are normally attached to a petition seeking writ of mandamus or certiorari are not attracted yet in such a matter, the principles enunciated by the larger Bench decision in **Lt. Col. Khajoor Singh** (supra) would apply inasmuch as, if none of the respondents reside or located within the jurisdiction of the

6 (1985) 3 SCC 217

7 (1994) 4 SCC 711

8 (2004) 6 SCC 254

9 (2002) 1 SCC 567

10 (2006) 6 SCC 207

11 (2010) 1 SCC 457

High Court and the petitioner has no legal right of him to be protected, the petition has to be presented before the High Court within whose jurisdiction, the respondents have their offices or where from the impugned order has been passed. Merely because the respondent No.1 would have control over all the subsidiaries of CIL and coincidentally headquarter of one such subsidiary is located in the State of Chhattisgarh that would not confer jurisdiction on this Court to entertain this writ petition.

15. In view of the aforesaid facts and circumstances of the case, this Court is of the considered opinion that this Court has no jurisdiction to entertain the writ petition.
16. Ex-consequenti, the writ petition is dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Gowri