

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6046 of 2016

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Upendra Kumar Singh, son of Late Suresh Prasad Singh, R/o Lal Makan Mainpura,
P.S. Pataliputra, District- Patna. A/p Posted as SSE/Works/Rourkela.

.... Petitioner

Versus

1. The Union of India through the Secretary, Railway Board, Government of India, New Delhi.
2. The General Manager, Southern Eastern Railway, G.RC. Kolkata-43, West Bengal.
3. Sr. Divisional Personal Officer, S.E. Railway, CKP Division, Distt- Singhbhoom Jharkhand.
4. Sr. Divisional Engineer (Cord), CKP, S.E. Railway, CKP, Division, Distt- Singhbhoom, Jharkhand.
5. Sr. Divisional Engineer (West), CKP, S.E. Railway, CKP, Division, Distt- Singhbhoom, Jharkhand.
6. Sri V.V. Singh, Assistant Divisional Engineer, S.E. Rly, Raurkela, Qr. No. D/6, Rly. Colony, Near Bara Park, District- Sundargarh, Orissa.
7. Sri Rajiv Ranjan, JE (Works) Rourkela, S.E. Rly. Raurkela, District Sundargarh, Orissa.
8. Sri Ranvijay Singh Tunna Singh, Proprietor, Singh and sons Pvt. Ltd. Raurkela, R/o Plot No.266 & 267, Sital Nagar, Banda Munda, Dist Sundargarh, Orissa construction.
9. Sri R.K. Sarswat m Sr. Divisional Engineer (West), CKP, S.E. Railway, CKP, Division, Distt- Singhbhoom, Jharkhand.
10. Sri K.C. Sao, Assistant, Divisional Engineer, S.E. Rly. Raurkela, Qr. No. D/SPL, Rly. Colony, Near Bara Park, District- Sundargarh, Orissa.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rewti Kant Raman, Advocate

For the Respondents : Mr. D. K. Sinha, Senior Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C. A. V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 08-08-2016

The challenge in the present writ petition is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as 'the Tribunal') on 21st September, 2015

whereby an Original Application [O.A. No.240/12(R)] filed by the petitioner was dismissed.

2. Initially, the petitioner filed an Original Application before the Patna Bench of the Tribunal. But it was transferred to Ranchi Bench as the Patna Bench did not have jurisdiction over the matter. Before the Tribunal, the grievance of the petitioner was in respect of works carried out in Qr. No.D/6, S. E. Railway, Raurkela, in the State of Jharkhand. As per the petitioner, excessive payment has been made to the contractor. The learned Tribunal held that the grievance of the petitioner that someone should or should not be directed to enter into measurement in MB, that is an operational matter which has nothing to do with the service matter, therefore, the matter does not fall within the purview of the Tribunal. Consequently, the Original Application was dismissed. Aggrieved by the said order, the petitioner has invoked the jurisdiction of this Court.

3. A preliminary objection has been raised by the learned counsel for the respondents that the order impugned is of Ranchi Bench of the Tribunal and in respect of quarters located in the State of Jharkhand. Therefore, this Court will not have any territorial jurisdiction to entertain the writ petition. It is also pointed out that the grievance is against the officers of the Railways posted in the State of Jharkhand, therefore, it is the Jharkhand High Court alone which will entertain the writ petition against the order passed by the Ranchi

Bench. Learned counsel for the respondents relies upon a Division Bench judgment of this Court in CWJC No.13695 of 2011 (Arbind Rajak *Versus* The Union of India & Ors.) decided on 13th February, 2012 in support of his argument that this Court does not have the territorial jurisdiction to entertain the present petition.

4. On the other hand, learned counsel for the petitioner relies upon another Division Bench judgment of this Court reported as The Union of India & Ors. *Versus* Daya Nand Thakur & Anr., 2006(1) PLJR 605 wherein an order passed by the Ranchi Bench was entertained in the writ petition before this Court.

5. We have heard learned counsel for the parties and find that this Court has no territorial jurisdiction to entertain the writ petition.

6. Section 4 of the Administrative Tribunals Act, 1985 deals with establishment of Administrative Tribunals, whereas Section 5 deals with composition of Tribunals. The Central Administrative Tribunal is one and it sits in Benches in terms of Section 5 of the Act. Section 5 (1) (2) read as under:

“5. Composition of Tribunals and Benches thereof.— (1) Each Tribunal shall consist of a Chairman and such number of Judicial and Administrative Members as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.”



7. The “Bench” in Section 3 (e) is defined to mean a Bench of a Tribunal. In terms of Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987, an application before the Tribunal can be filed with the Registrar of the Bench within whose jurisdiction, the applicant is posted for the time being or the cause of action, wholly or in part, has arisen.

8. In view of the aforesaid provisions, the petitioner filed an Original Application before the Patna Bench of the Tribunal, but the application was transferred to Ranchi Bench probably for the reason that the cause of action, wholly or in part, has arisen within the jurisdiction of the said Tribunal.

9. A perusal of the Act and the Rules shows that there is no provision of a Circuit Bench. There is Principal Bench and the Benches. Therefore, the members of the Ranchi Bench, may also be discharging duties of Patna Bench, but when they discharge the duties at Ranchi, they exercise the powers of a Bench of the Tribunal at Ranchi.

10. In L. Chandra Kumar Versus Union of India and others (1997) 3 SCC 261, the Supreme Court while dealing with the provisions of the Administrative Tribunals Act, 1985 has held that aggrieved against the decision of the Bench, the aggrieved party has to take a recourse to the High Court within whose limits, the Bench is

situated. The Court held to the following effect:

" 99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."(Emphasis supplied)

11. That apart, The Supreme Court in a judgment reported as Ambica Industries Versus Commissioner of Central Excise, (2007) 6 SCC 769 has examined the jurisdiction of the High Court against an order passed by the Central Excise and Service Tax



Appellate Tribunal, New Delhi constituted to exercise the jurisdiction in respect of cases arising within the territorial limits of the State of Uttar Pradesh, National Capital Territory of Delhi and the State of Maharashtra. The Court held that decision of the High Court in an appeal shall be binding only on the authorities which are within its jurisdiction. The binding authority of a High Court does not extend beyond its territorial jurisdiction. It has been further held that though the Code of Civil Procedure is not applicable to the writ proceedings, but since the phraseology used in Section 20 (c) of the Code of Civil Procedure and Clause (2) of Article 226 is *pari materia*, therefore, the decision of the Court rendered on interpretation of Section 20(c) of the Code of Civil Procedure shall apply to the writ proceedings also. The Court held to the following effect:

“13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or courts or tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.

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38. We have noticed hereinbefore that if the decision of the High Court in the aforementioned question is taken to its logical conclusion, the same would lead to a great anomaly. It would also give rise to the problem of forum shopping. We may notice some examples to show that the determination of the appellate forum based upon the situs of the tribunal would lead to an anomalous result. For example, an assessee affected by an assessment order in Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it which may be contrary to judgments of the High Court of Bombay. This cannot be allowed. (See *Suresh Desai and Associates v. CIT*, (1998) 230, ITR 912 ITR at pp. 915-17 and *CCE v. Technological Institute of Textile* (1998) 76 DLT 862 (DB).

41. Keeping in view the expression “cause of action” used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of *forum conveniens* may also have to be considered.”

12. Similar view was further reiterated in a judgment reported as Eastern Coalfields Ltd. and others Versus Kalyan Banerjee, (2008) 3 SCC 456 wherein three-Judge Bench judgment of the Supreme Court in Kusum Ingots & Alloys Ltd. Versus Union of India and another, (2004) 6 SCC 254 was considered. It was held as under:

“7. “Cause of action”, for the purpose of Article 226(2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. It means a bundle of facts which are required to be proved. The entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed.

13. In view of the decision of the Division Bench of the Calcutta High Court that the entire cause of action arose in Mugma area within the

State of Jharkhand, we are of the opinion that only because the head office of the appellant Company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court, particularly when the head office had nothing to do with the order of punishment passed against the respondent.”

13. The three- Judge Bench of the Supreme court in Kusum Ingots and Alloys Ltd case (supra) has held to the following effect:

“27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.”

14. Since the situs of the Tribunal, whose order is subject matter of challenge, is beyond the territorial limits of this Court; the respondents are not within the jurisdiction of this Court; and the subject matter of claim of the petitioner, i.e. Quarter No.D/6, is also beyond the jurisdiction of this Court, therefore, this Court will not have territorial jurisdiction to entertain the present writ petition as no part of cause of action has arisen within the jurisdiction of this Court.

15. It may be noticed that earlier an Original Application was filed by the petitioner before the Tribunal at Patna

which was transferred to Ranchi. Thus assuming that the cause of action in whole or in part arose within the jurisdiction of Ranchi Bench. Since the matter has been dealt with by Ranchi Bench, the jurisdiction would be that of Jharkhand High Court and not of Patna High Court.

16. In Daya Nand Thakur's case (supra), the attention of the Court was not drawn to the provisions of the Act and the Rules which talks about the Tribunal and its Benches. Still further, the order of termination, subject matter of challenge, was passed by the Chief Commissioner of Income Tax, Patna. Therefore, the said judgment is clearly distinguishable and not applicable to the facts of present case.

17. In view thereof, the present writ petition is dismissed. It shall be open to the petitioner to avail the remedy before an appropriate Court in accordance with law.

(Hemant Gupta, J.)

Ahsanuddin Amanullah, J. I agree.

(Ahsanuddin Amanullah, J.)

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