

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 552 OF 2016

M/s. Sachee Agro Trading Pvt. Ltd.,
Bardana Market, Nehru Putla, Itwari,
Nagpur. ::

PETITIONER

.. Versus ..

The Union of India,
represented by Secretary,
Deptt. of Revenue, Ministry of Finance,
New Delhi & 3 others. ::

RESPONDENTS

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Shri A. M. Gordey, Senior Counsel with Shri S. V. Bhutada, Advocate for the
petitioner.
Shri Rohit Deo, A.S.G.I. for the respondents.
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CORAM : B. R. GAVAI & P. N. DESHMUKH, JJ.
DATE : 29th JANUARY, 2016.

P. C.

Heard.

2. By way of the present petition, the petitioner has prayed for calling of the records of public notice No.PS-7/2015 from File No.XVI/13/13/N/PS/CC/2015 dated 14/9/2015 issued by respondent No.4 and after perusing the same quashed and set aside the same as it has been issued contrary to the public policy and constitutional guarantee of equality.

3. The petitioner deals in the business of poppy seeds. The petitioner imports the poppy seeds for its business from various countries including Turkey. Since the business of import of poppy seeds is controlled by respondent No.4-The Narcotics Commissioner, respondent No.4, in exercise of his powers, has issued a public notice dated 14/9/2015. The said public notice, which concerns the import from Turkey, provides that the applicants, who are in category 'A' and have imported poppy seeds from Turkey to India at least for three financial years during the last five financial years, will be allotted a quantity from the provisional country cap of Turkey on the basis of average ratio of the import. It further provides that the importers, who are categorized under category 'B', shall be given the balance amount of provisional quota after allocation is done as per clause-(a) of the said notice. It is the submission of the petitioner that the categorization in two categories; category 'A' and category 'B', is violative of mandate of Article-14 of the Constitution of India in as much as it discriminates between the traders and importers.

4. However, when the matter was listed yesterday, we were prima facie of the view that Nagpur Bench of Bombay High Court will not be having territorial jurisdiction to entertain this petition in as much as no part of cause of action arises within the territorial jurisdiction of this Bench. As such, we requested Shri Gordey, learned

Senior Counsel and Shri Deo, learned A.S.G.I. to enlighten us on the issue.

5. Shri Gordey, learned Senior Counsel, relying on the judgment of the Hon'ble Apex Court in the cases of Navinchandra N. Majithia Vs. State of Maharashtra – AIR 2000 SC 2966 and Alchemist Limited & another Vs. State Bank of Sikkim and others – AIR 2007 SC 1812, submitted that even if a little fact, which forms the part of facts for cause of action, arises within the territorial jurisdiction of this Court, this Bench will have a territorial jurisdiction to entertain the petition under Article 226 of the Constitution. He submitted that the petitioner conducts its business at Nagpur. He submitted that the perusal of registration granted by respondent No.4 would reveal that the registration is granted to the petitioner on the address of the petitioner at Nagpur. He further submitted that on account of the illegal circular/notice issued by respondent No.4, the business of the petitioner is adversely affected at Nagpur and as such these facts, which form a part of facts for the cause of action, will enable the petitioner to file the petition at Nagpur and this Court will have a territorial jurisdiction to entertain the same.

6. On the contrary, Shri Deo, learned A.S.G.I. appearing on behalf of the respondents-Union of India, relying on the various cases right from the case of State of Rajasthan & others Vs. M/s Swaika

Properties & another – (1985) 3 SCC 217, submitted that no part of cause of action has arisen within the territorial jurisdiction of this Bench and as such this Court will not have any territorial jurisdiction to entertain the present petition.

7. The law, by now, is well settled right from the judgment of the Hon'ble Apex Court in the case of *State of Rajasthan & others Vs. M/s Swaika Properties & another* (cited supra). Even if the part of cause of action arises within the territorial jurisdiction of this Bench, then this Bench will have a territorial jurisdiction to entertain the petition. We find that various judgments of the Hon'ble Apex Court are on the same line. Though the judgments are in plenty, we would not like to quote all of them in order to avoid the order being bulky and we will restrict us only to two judgments, which are cited by Shri Gordey.

8. The term, “*ratio decidendi*” is very well explained by the Apex Court in the case of The Regional Manager and another Vs. Pawan Kumar Dubey -(1976) 3 SCC 334, wherein Their Lordships have observed thus:

“We think that the principles involved in applying Article 311(2) having been sufficiently explained in *Shamsher Singh's* case it should no longer be possible to urge that *Sughar Singh's* case could give rise to some misapprehension of the law. Indeed, we do not think

that the principles of law declared and applied so often have really changed. But, the application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.”

Thus, it can be seen that what is “ratio decidendi” in the case has to be considered by applying the law to the facts of the said case. As held by the Hon'ble Apex Court, a little difference in the facts would give divergent result. No doubt, in the case of *Navinchandra N. Majitha* (supra), Their Lordships have held that even if a part of cause of action arose within the territorial jurisdiction of the High Court, the said Court will have a territorial jurisdiction to entertain the petition under Article 226 of the Constitution. It will be relevant to quote paragraphs-33 and 34 of the said judgment.

“33. From the provision in clause (2) of Art. 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

34. In legal parlance the expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person. (Black's Law Dictionary).”

9. Now, let us consider the facts of the said case. In the said case (*Navinchandra N. Majitha*), the petitioner was Managing Director of one company at Mumbai. The said company had entered into a business transaction with the respondent (first informant) at Mumbai and there was business dispute between the petitioner and the respondent-complainant. A civil suit with regard to the business dispute between the parties was filed in the original side of the High Court at Bombay. Thereafter, the first informant lodged the first information report at Shillong. Contending that though all the transactions between the parties had at Mumbai, only in order to harass the petitioner, the first information report was lodged at Shilong in the State of Meghalaya, the petition came to be filed under Article 226 of the Constitution at Mumbai. In this background, the

Hon'ble Apex Court, considered as to what is meant by the term, "cause of action". It has been held by Their Lordships that while considering as to whether the part of cause of action arises within the territorial jurisdiction of the Court, the Court will have to look into the pleadings made in the petition and the relief sought in the petition. Their Lordships in unequivocal terms observed that though the entire transactions between the parties had taken place at Mumbai, only in order to harass the petitioner, the first information report was lodged at Shilong. In this background, the Apex Court held that the Bombay High Court erred in holding that it had no territorial jurisdiction to entertain the petition.

10. Insofar as the judgment in the case of *Alchemist Limited & another Vs. State Bank of Sikkim and others* (cited supra) is concerned, Their Lordships, after taking into consideration the effect of Constitution (Forty-second Amendment) Act, 1976, observed in paragraph-19 thus:

"The effect of the amendment was that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under Article 226 of the Constitution."

Their Lordships also considered all the judgments of the Apex Court till the said date.

11. In the said case the appellant before the Apex Court had his Corporate Office at Chandigarh. The State Bank of Sikkim was respondent No.1 and the State of Sikkim was respondent No.2 before the Hon'ble Supreme Court. Respondent No.2 was desirous of disinvesting 49% of its equity capital in the State Bank of Sikkim. Accordingly, an advertisement was issued in "Economic Times" inviting offers for strategic partnership. The appellant before the Hon'ble Supreme Court submitted its formal proposal. The State Bank of Sikkim shortlisted two entities, i.e. the appellant before the Apex Court and another company at Calcutta from the various proposals. In pursuance to the proposal submitted by the appellant, even the officers of the Bank had visited Chandigarh for further negotiation. In pursuance to the negotiation, the amount was deposited with the State Bank of India at Chandigarh. The proposal of the appellant was also accepted in principle, subject to consideration and approval of the Government of Sikkim. However, thereafter, the Government of Sikkim did not accept the proposal and as such the State Bank of Sikkim sent communication to the appellant informing disapproval of the Government of Sikkim, which communication was received by the appellant at Chandigarh.

12. Challenging the said communication, a petition came to be filed before the High Court of Punjab and Harayana. A preliminary

objection was taken with regard to the territorial jurisdiction of the Punjab and Harayana High Court to entertain the writ petition. The Punjab and Harayana High Court upheld the objection. Being aggrieved thereby, a Special Leave Petition was preferred before the Hon'ble Supreme Court. Even, in this factual background, Their Lordships of the Apex Court have observed in paragraph-42 as under.:

“In the present case, the facts which have been pleaded by the Appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of 'cause of action' within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition”.

13. Now, let us take the facts of the present case. The Hon'ble Apex Court has held in the case of *Navinchandra N. Majithia* that while considering as to whether the Court has cause of action or not, only pleadings in the petition are required to be looked into. Unfortunately, there are no pleadings in the present petition to show as to how this Court is of territorial jurisdiction and as to how the cause of action or a part of cause of action arose within the territorial jurisdiction of this Court. In spite of that, we have permitted Shri Gordey, learned senior Counsel to take us to averments made in the petition so as to examine as to whether any part of cause of action arises within the territorial

jurisdiction of this Court.

14. The only contention is that the petitioner conducts its business at Nagpur and the registration, which has been given to it by respondent No.4 is on the address at Nagpur, and because of the impugned public notice the business of the petitioner would be adversely affected and it would have an adverse effect on its right to live.

15. We make it clear that since we are only considering the question regarding territorial jurisdiction of this Court, we refrain ourselves from going into the merits of the matter.

16. Apart from the aforesaid pleadings, there is nothing in the petition so as to reveal the facts that form part of cause of action regarding territorial jurisdiction to entertain the present petition by this Court. On comparing the facts of the present petition with the facts of the afore-cited case of *Alchemist Ltd. & another*, it would reveal that in the said case though some of the things had happened in Chandigarh, viz. the officers of the Bank visited Chandigarh for negotiation and deposited the amount in the State Bank at Chandigarh pursuant to the negotiation, however, in the present case any such cause event has not taken place within the territorial jurisdiction of this Bench.

17. Though the reliance placed by the learned senior Counsel for the petitioner before us is well merited, however, in the factual scenario, as appearing in the present petition, none of the judgments cited would come to the rescue of the petitioner. In that view of the matter, we are of the considered view that no part of cause of action arises within the territorial jurisdiction to entertain this petition by this Bench and as such the writ petition is rejected on the sole ground of territorial jurisdiction.

JUDGE

JUDGE