

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.10392/2015**

% **Reserved on: 28th November, 2016**
Pronounced on: 1st December, 2016

MR. P K S SHRIVASTAVA Petitioner
Through: Mr. Rahul Gupta, Advocate with Mr.
Shekhar Gupta, Advocate.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Anurag Ahluwalia, CGSC for
respondent No.1.
Mr. Rajesh Kumar Gautam, Advocate
for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed under Article 226 of the Constitution of India by the petitioner questioning the termination of his contractual services with the respondent no.2/Goa Shipyard Ltd. as a Director (Corporate, Planning, Projects & Business Development). The orders of termination of the contractual services in the present case are dated 27.10.2015 and 28.10.2015 and which letters read as under:-

"Letter dated 27.10.2015

Confidential

No.2(10)/2009/GSL/D(SY)
Govt. of India
Ministry of Defence
Department of Defence Production

New Delhi, dated, 27th October, 2015

To

The Chairman & Managing Director,
Goa Shipyard Ltd.

Vasco-da-Gama, Goa-403 802

Sub: Termination of contract of Cmde P.K. Srivastava, Director
(Corporate Planning Project & Business Development), Goa
Shipyard Ltd. (GSL).

Sir,

I am directed to convey the approval of the Competent Authority for termination of contract of Cmde P.K. Srivastava, Director (Corporate Planning Project & Business Development) in Goa Shipyard Ltd. with immediate effect, on payment of three month's salary in lieu of three months' notice.

Yours faithfully

Sd/-

(Sadhna Khanna)
Deputy Secretary (NS)
Tel: 2301 8967

Copy to:-

1. Establishment Officer, DOP&T, North Block, New Delhi
w.r.t. OM No.12/6/2015-EO (ACC) dated 21/10/2015.
2. Secretary, PESB, New Delhi
3. Secretary, DPE, New Delhi
4. Secretary (DP)
5. PS to RM/PS to RRM
6. Cmde P.K. Srivastava, Director (Corporate Planning
Project & Business Development), GSI
7. IF (DP-II)
8. D (Coord/DDP)
9. D (Vigillance)

Letter dated 28.10.2015

CONFIDENTIAL

GSL/04(O)-50537

28 Oct 2015

Cmde P K S Shrivastava,
Director (CPP&BD)
Goa Shipyard Ltd
Goa

Sub: Termination of Services Contract of Cmde PKS Shrivastava, D (CPP&BD)

1. Refer to the following:-

i) MoD letter No. 2(10)/2009-GSL/D (SY) dated 20 Jun 2012 and 21 Aug 2012 regarding appointment of Cmde P K S Shrivastava, as Director (CPP&BD)

ii) MoD letter 2(10)/2009/GSL/D (SY) dated 27 Oct 2015, regarding termination of contract (enclosed)

2. Government has approved termination of your contract with GSL, with payment of three months salary, in lieu of notice period, as per the provisions of the Appointment letter *ibid*. **Accordingly, your contract with the Company is terminated wef 28 Oct 2015.**

3. Cheque No.600303 dated 28 Oct 2015, for three months salary in lieu of notice period for Rs.4,67,775/- (Rs Four Lakh Sixty Seven Thousand Seven Hundred and Seventy Five Only), is enclosed.

4. You are hereby directed to hand over the charge immediately to the respective HoDs and all the items belonging to company be handed over immediately by 1900 hrs to the respective departments/authorities/Mr M Kalaiyarasan, DGM and 'no dues certificate' be obtained. It may be noticed that no official paper concerning the company be taken.

5. The receipt of the letter be acknowledged immediately

Sd/-

**RAadm Shekhar Mital, NM, IN (Retd)
Chairman & Managing Director**

Encl: a/a

CONFIDENTIAL

2. The arguments have been heard in the writ petition with respect to the maintainability on the ground as to whether there exists or does not exist territorial jurisdiction of this Court to decide the writ petition. Petitioner argues that this Court has the territorial jurisdiction whereas the respondent no.2 argues that this Court does not have the territorial jurisdiction. On behalf of the petitioner, to argue that this Court has territorial jurisdiction, reliance was placed upon the letter dated 27.10.2015 issued by the Government of India, Ministry of Defence from New Delhi and copy of which is marked to the petitioner. It is argued on behalf of the petitioner that once the impugned order dated 27.10.2015 is issued at New Delhi, this Court would have territorial jurisdiction although the actual order of termination of services dated 28.10.2015 was served upon him by the respondent no.2 at Goa.

3. Reliance on behalf the petitioner is placed upon a Division Bench judgment of this Court in the case of ***Mukul Gupta Vs. Management Development Institute & Anr. 219 (2015) DLT 321*** to argue that if an order of termination of services of the petitioner has been passed on the file at New Delhi, this Court would have the territorial jurisdiction. The relevant paras of the judgment in the case of ***Mukul Gupta (supra)*** are paras 19 to 27, and which paras read as under:

“19. In Kusum Ingots' case the company, having its registered office at Mumbai obtained and was granted a loan from the Bhopal branch of the State Bank of India. The Bank issued a notice for re-payment of loan from Bhopal, foundation of which notice was the Securitizations and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, vires of which was challenged by the company by filing a writ petition in the Delhi High Court; pleading jurisdiction on the fact that the legislation was promulgated in Delhi. In paragraph 19 of its decision, the Supreme Court held: 'Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefor.' In the next paragraph, para 20, it was observed: 'A distinction between a legislation and executive action should be borne in mind while determining the said question'.

20. Thus, a reading of para 19 and 20 of the opinion of the Supreme Court in Kusum Ingots' case (supra) makes it clear that the taking of the execution decision/action is the cause of action and the place where the executive decision/action is taken would be the place where cause of action can be said to have arisen.

21. This is apparent from the observations in para 21 of the decision wherein it is held that unless the implementation gave rise to a civil or evil consequences, passing of a legislation is irrelevant. In other words the executive decision/action under a legislation would be a part of a cause of action.

22. Overruling the view taken by an earlier Bench of the Supreme Court in the decision reported as (1995) 4 SCC 738 U.P. Rashtriya Chini Mill Adhikari Parishad Vs. State of U.P. wherein it was held that issuance of an order or notification by the Government would be a part of cause of action arising, in Kusum Ingots's case (supra) the Supreme Court categorically held in para 27 that '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'.

23. The learned Single Judge has referred to the words used by the Supreme Court in Kusum Ingots' case (supra) in paragraph 26 of the decision wherein it is observed by the Court that framing of statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof. The learned Single Judge has therefore excluded the making of the executive order as a part of cause of action and hence the place thereof as where cause of action accrued.

24. The learned Single Judge has overlooked that the observations of the Supreme Court concerning the making of an executive order or instructions and the place where it is made have been referred to in the context of what would constitute law, evidenced by the fact that in the same paragraph the Supreme Court has observed 'In fact, a legislation, it is trite, is not confined to a statute enacted by Parliament or the legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case

where the field is not covered by any statutory rule, executive instructions issued in this behalf shall also come within the purview thereof.' It is only thereafter a reference is made to the situs of the office.

25. In other words, orders and instructions which are in the nature of law would be distinct from decisions and orders which though executive in nature but are not akin to a law.

26. Since the impugned decision on the file, recorded in the minute books of the board of the first respondent, was taken at the registered office of the first respondent at Delhi, it would be a case where part cause of action has arisen in Delhi for the reason the perceived wrong by the appellant is the decision in question and apart from other grounds violation of principles of natural justice while taking the decision has been pleaded. The omission to give the hearing would therefore be required to be treated as an act of omission in Delhi.

27. Though jurisdiction may not be vested in this Court on account of the sole reason that the registered office of the employer i.e. the first respondent is at Delhi, but for the reasons above given and facts above noted, jurisdiction would vest in Delhi because a vital part of the cause of action i.e. the decision to terminate the service of the appellant was taken by the Board of the first respondent at Delhi and minuted in the Minute Book maintained at Delhi.”
(underlining added)

4. The admitted facts are that the petitioner was employed by the respondent no.2/Goa Shipyard Ltd as a Director (CPP&BD) at Goa. Petitioner performed his services at Goa. The termination order dated 28.10.2015 has been served upon the petitioner at Goa. The order dated 27.10.2015 is not served on the petitioner directly and it is served on the petitioner in terms of the subsequent letter dated 28.10.2015 issued to the petitioner. The issue is that whether merely because the Government of India has issued its letter dated 27.10.2015 at Delhi would this *ipso facto* give territorial jurisdiction to this Court although this letter has not been

communicated to the petitioner at Delhi and has in fact been communicated to the petitioner at Goa in terms of the subsequent letter dated 28.10.2015.

5. A Constitution Bench of the Supreme Court way back in the year 1963 in the judgment in the case of ***Bachhittar Singh Vs. The State of Punjab AIR 1963 SC 395*** has held that orders passed in Government files unless communicated would not give a legal right to a person. The ratio of the judgment of the Supreme Court in the case of ***Bachhittar Singh (supra)*** has been consistently followed thereafter and it is the law of the land. One such recent judgment of the Supreme Court following the ratio of the judgment in the case of ***Bachhittar Singh (supra)*** is the case of ***Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others (2009) 1 SCC 180*** wherein the Supreme Court has held that unless and until an order is communicated to a person, without such communication the order does not culminate into an executable order and that the decision becomes the decision only when it is communicated to the concerned person. The relevant paras of the judgment in the case of ***Sethi Auto Service Station and Another (supra)*** are paras 14 to 17 and these paras read as under:-

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the

department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

15. In *Bachhittar Singh v. The State of Punjab* a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to the Article 166(1) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said Article and was then communicated to the party concerned. The court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the "order" of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.

16. To the like effect are the observations of this Court in *Laxminarayan R. Bhattad v. State of Maharashtra*, wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right.

17. In view of the above legal position and in the light of the factual scenario as highlighted in the order of the learned Single Judge, we find it difficult to hold that the recommendation of the Technical Committee of the DDA fructified into an order conferring legal right upon the appellants.”

(underlining added)

6. A cause of action in law means that an enforceable right in law accrues. When a right accrues simultaneously a liability also arises against a person. If an enforceable right arises only on communication of the order, then, a cause of action arises and is complete only when the communication

of the order to the person concerned is complete. Without such communication of an order to the concerned person, the cause of action is not complete for filing of a case in a court of law. In fact in the last line of para 15 of the judgment in the case of ***Sethi Auto Service Station and Another (supra)*** it is clearly observed by the Supreme Court that the decision in a file is only an 'opinion' and which becomes a 'decision' only when a communication is made. To clarify further, for example, can the Government contend that an order exists in its file which was not communicated to the concerned person and yet that person's services are terminated merely because such order of termination of services exists in the file? The answer is obviously in negative because unless a person knows about an order of termination of services being passed, and an employee will only know about an order of termination of services only when it is communicated to him, and therefore, since communication is a compulsory link and a *sine qua non* for arising of the cause of action, therefore it is when the order in the Government file is communicated to the aggrieved person at a particular place, then, at that place where the communication is done, a cause of action can be said to have arisen and not at the place where the order is passed on the file because a non-communicated order passed at a place where such order is lying in the file is not an actionable order creating a right or liability. The order dated 27.10.2015 has not been

directly communicated to the petitioner because the order which is communicated to the petitioner is the order dated 28.10.2015 and which has been issued to the petitioner at Goa and where he performed his services with the respondent no.2/Goa Shipyard Ltd. Therefore, it is held that if without communication of an order to the concerned person no right arises in favour of the Government and no liability accrues against an employee that his services stand terminated, and hence cause of action will only be therefore complete for filing of judicial proceedings on communication and therefore the place where the communication is made would be the place where the territorial jurisdiction would exist, although the order of may have been passed elsewhere i.e Delhi in the present case.

7. The Division Bench judgment of this Court in the case of ***Mukul Gupta (supra)*** does not consider the binding ratio of the judgment of the Constitution Bench of the Supreme Court in the case of ***Bachhittar Singh (supra)*** or as elaborated in ***Sethi Auto Service Station and Another (supra)*** and therefore, this Court will have to act as per the ratios of the judgments of the Supreme Court and not as per the decision of the Division Bench judgment in the case of ***Mukul Gupta (supra)*** which neither refers to the decisions of the Supreme Court in the cases of ***Bachhittar Singh (supra)*** or ***Sethi Auto Service Station and Another (supra)*** and nor could the

Division Bench have laid down a ratio which will violate the ratios of the said two Supreme Court's judgments which holds that an order becomes an executable order or the order is an enforceable order creating rights and/or liabilities or the order becomes a 'decision' from an 'opinion' only after communication thereof is complete. Thus a mere existence of an order in the Government file does not result in a binding order for creating legal rights, and therefore, when legal rights are created only on communication and a legal cause of action is complete only on such communication, thus accordingly it is the place where the order of termination of services is communicated that would be the place where the territorial jurisdiction arises, and which is Goa in the facts of the present case.

8. Finally, I may note that learned counsel for the petitioner sought to take some help from the Full Bench judgment of five Judges of this Court in the case of *Sterling Agro Industries Ltd. etc. etc. Vs. Union of India (UOI) and Ors. etc. etc.* decided on 1.8.2011, however, it is seen that in the said case there was no issue which was decided as regards the territorial jurisdiction when there is an order of termination of services of an employee. In the case of *Sterling Agro Industries Ltd. etc. etc.(supra)*, the issue of territorial jurisdiction arose with respect to passing of an order by the Assistant Commissioner of Customs ICD, Malanpur in

Madhya Pradesh, and which order was challenged at Delhi, and accordingly, the Full Bench of this Court laid down the ratio in para 33 of the Judgment and which ratio reads as under :-

“33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in ***New India Assurance Company Limited*** (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of *forum conveniens*.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of ***Alchemist Ltd.*** (supra)

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of *forum conveniens* as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of *forum conveniens* and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in ***Ambica Industries*** (supra) and ***Adani Exports Ltd.*** (supra)

(g) The conclusion of the earlier decision of the Full Bench in *New India Assurance Company Limited* (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."

9. Therefore, the ratio of the judgment in the case of *Sterling Agro Industries Ltd. etc. etc.* (supra) will have no application and will not help the petitioner for holding that this Court has territorial jurisdiction. Even as per the case of *Sterling Agro Industries Ltd. etc. etc.* (supra) at least a part of cause of action has to arise in Delhi for this Court to have territorial jurisdiction to file a case, and no part of cause of action has arisen in Delhi in the present case because simply existence of an order in the file of the Government at Delhi does not create any right or liability, and which right or liability is created only on communication of the order, and which order dated 28.10.2015 in the present case was communicated to the petitioner at Goa.

10. In view of the above, this Court has no territorial jurisdiction and the writ petition is therefore dismissed, and the petitioner can always approach the competent court of territorial jurisdiction in accordance with law.

DECEMBER 1, 2016/ Ne/ib

VALMIKI J. MEHTA, J