

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos.43494 of 2016 and 11802 of 2017

COMMON ORDER:

- 1) With the consent of both the parties, the main writ petitions are being taken up for hearing.
- 2) Since both the writ petitions are inter-connected they are being disposed of by this common order.
- 3) W.P.No.43494 of 2016 is filed seeking issuance of writ of mandamus declaring the action of the first respondent in appointing the third respondent with additional charge of Secretary, Veterinary Council of India (for short "the V.C.I.") by issuing an office order dated 23.09.2016, and the consequential orders and letters issued by him as illegal, improper and contrary to the provisions of Indian Veterinary Act, 1994 (for short "the Act").
- 4) W.P.No.11802 of 2017 is filed to declare the notice issued by the third respondent, in the capacity of Secretary of the second respondent, to all the members of the V.C.I., calling for a meeting to conduct election to the post of Vice President on 06.04.2017 at 11.00 a.m. as illegal and arbitrary.
- 5) The facts in gist are as under:

The V.C.I. comprises of 27 members. Out of which 14 members are nominated by the Central Government and 11

members are elected by the Veterinary Professionals enrolled in IVPR from amongst them. The State Council is headed by a President, who is elected by the members, from amongst the members themselves as per Section 34 of the Act. The petitioner got elected as a member of Veterinary Council of India in July, 2015 and also as a member of Executive Committee of the Council. On 23.09.2016 ie. a day before the 57th meeting of the Council, the Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture and Farmers Welfare, Government of India, Krishi Bhavan, New Delhi, headed by the first respondent, issued the proceedings dated 23.09.2016, under the Signature of Dr.A.J.V.Prasad, Joint Secretary, giving Additional Charge of the Secretary, V.C.I. to Dr.H.K.Mulianappa (third respondent). The said order also advised the V.C.I. to fill up the post of Secretary, VCI, by a regular incumbent.

6) Questioning the appointment of the third respondent as Secretary of the Second Respondent, the petitioner filed W.P.No.43494 of 2016. While admitting the said writ petition no stay was granted by this Court.

7) While things stood thus, the third respondent, in the capacity of Secretary of the second respondent, issued notice to all the members of the second respondent Council through e-mail dated 31.03.2017 vide F.No.29-2/ 2014-VCI/ 7056-79, informing about the election to the post of Vice President, to be held on 06.04.2017 at 11.00 a.m. in the committee room of the second

respondent at New Delhi. Alleging that the said notice came to be issued without any power or authority, W.P.No.11802 of 2017 came to be filed.

8) By an order dated 04.04.2017, this Court while issuing notice before admission passed the following interim order.

“Since the petitioner submitted before this Court that the Regulation relating to the issuance of notice for conducting a meeting is violated while holding election to the post of Vice President and as the said point has to be examined in detail, this court is allowing the election to go on, but the result in relation thereto shall not be declared and nobody should take charge until further orders.”

9) Pursuant thereto, one Dr.Ravindra Chowdhary filed W.P.M.P.No.23784 of 2017 in W.P.No.11802 of 2017 to implead himself as fourth respondent in the writ petition along with vacate stay petition. Likewise, the V.C.I. also filed W.V.M.P.No.1745 of 2017 in W.P.No.11802 of 2017 to vacate the interim order. According to the implead respondent, the High Court has no territorial jurisdiction to entertain the writ petition, as no cause of action arose within the territorial limit of the High Court. It is further stated in the counter that as the election process has already commenced and as the elections are already held to the post of Vice President, this Court cannot interfere with the same under Article 226 of the Constitution of India. According to him, the remedy lies elsewhere. It is said that the writ petitioner, who has actually contested the election and participated in the process

of election cannot question the election on the ground that the process of election is not in accordance with the Rules. It is further stated that in the counter that the Central Government appointed the third respondent as the Secretary of the second respondent for a short period, so as to enable the body to conduct elections to the post of Vice President and as such the same cannot be found fault with.

10) Two different counters came to be filed by respondent Nos.1 to 4 in W.P.No.43494 of 2016 and on behalf of respondent Nos.2 and 3 in W.P.No.11802 of 2017.

11) After referring to various provisions of the Act, VCI (Terms and Conditions of Services of Officers and other employees) Regulations, 2001, V.C.I.General Regulations, 1991, VCI-General (Amendment) Regulation, 2005 and A.P.Civil Services Conduct Rules, the Second respondent in his counter stated that the writ petitioner has no locus to question the same and that there is no illegality or impropriety in the order passed.

12) The main ground urged by the learned counsel for the second respondent is with regard to the maintainability of the writ petition before this Court. According to him, when no cause of action arose within the jurisdiction of this Court and when the office of the V.C.I. is located in New Delhi, merely because the petitioner is residing in Hyderabad, the Courts in Hyderabad would not get jurisdiction to entertain the writ petition.

13) On the other hand, learned counsel for the petitioner would submit that the jurisdiction of V.C.I. is not limited to Delhi, but it is extended all over the Country. Since the communication with regard to holding of elections to the post of Vice President was sent to the stake holders of the Council including the Telangana State Veterinary Council, Hyderabad and as a copy of the same was communicated to the petitioner through e-mail, he submits that the Court in Hyderabad would get jurisdiction to entertain the writ petition. Number of judgments are placed on record in support of their plea by both the counsel.

14) In order to decide as to whether this Court would get jurisdiction, it would be useful to refer to clauses 1 and 2 of Article 226 of the Constitution of India, which reads as under:

“226. Power of High Courts to issue certain writs. (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises 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 on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.”

15) While interpreting the aforesaid provision, a Constitution Bench of the Apex Court in *Election Commission, India vs. Saka*

*Venkata Rao*¹, 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. The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issued under [Article 226](#) of the Constitution, which makes no reference to any cause of action or where it arises but insist on the presence of the person or authority within the territories in relation to which High Court exercises jurisdiction.

16) In *K.S. Rashid and Sons vs. Income tax Investigation Commission Etc.*² the Apex Court took a similar view and held that the writ court cannot exercise its power under [Article 226](#), beyond its territorial jurisdiction. The Court was of the view that the exercise of power conferred by [Article 226](#) was subject to a two-fold limitation viz., firstly, the power is to be exercised in relation to which it exercises jurisdiction and secondly, the person or authority on whom the High Court is empowered to issue writ must be within those territories.

17) These two Constitution Bench judgments came for consideration before a Bench of seven Judges of the Apex Court in the case of *Lt. Col. Khajoor Singh vs. Union of India and*

¹ AIR 1953 SC 210

² AIR 1954 SC 207

*another*³, wherein the view taken by the two Constitution Benches was approved holding that unless there are clear and compelling reasons, which cannot be denied, writ court cannot exercise jurisdiction under [Article 226](#) of the Constitution beyond its territorial jurisdiction.

18) Later, Clause 1(A) was inserted in [Article 226](#) by the Constitution (15th) [Amendment Act](#), 1963 and subsequently renumbered as Clause (2) by the Constitution (42nd) [Amendment Act](#), 1976. The amended Clause (2) reads as under:-

“226. Power of the High Courts to issue certain writs – (1) Notwithstanding anything in [article 32](#), every High Court shall have power, throughout the territories in relation to which it exercises 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. (3) xxxxx (4) xxxxx”

19) A plain reading of the amended provision in Clause (2), makes it clear that, now the High Court can issue a writ when the person

³ AIR 1961 SC 532

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. Cause of action for the purpose of [Article 226 \(2\)](#) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure.

20) *In Union of India & Ors. v. Oswal Woollen Mills Ltd. & Ors.*,⁴ the registered office of the Company was situated at Ludhiana, but a petition was filed in the High Court of Calcutta on the ground that the Company had its branch office there. The order was challenged by the Union of India. The Apex Court held that since the registered office of the Company was at Ludhiana and the principal respondents against whom the primary relief is sought was at New Delhi, one would have expected the writ petitioner to approach either the High Court of Punjab & Haryana or the High Court of Delhi. The forum chosen by the writ petitioners could not be said to be in accordance with law and the High Court of Calcutta could not have entertained the writ petition.

21) *In State of Rajasthan v. Swaika Properties*⁵ the Apex Court held that "the expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure. The 'cause of action' means every fact which, if traversed, it would be necessary for the

⁴ (1984) 2 SCC 646

⁵ (1985) 3 SCC 217

plaintiff to prove in order to support his right to a judgment of the Court.”

22) This provision was again considered by the Apex Court in the case of *Oil and Natural Gas Commission vs. Utpal Kumar Basu and others*⁶. In the said case the petitioner Oil and Natural Gas Commission (ONGC) through its consultant Engineers India Limited (EIL) issued an advertisement in the newspaper inviting tenders for setting up of Kerosene Recovery Processing Unit in Gujarat, mentioning that the tenders containing offers were to be communicated to EIL, New Delhi. After the final decision was taken by the Steering Committee at New Delhi, the respondent NIOCCO moved the Calcutta High Court praying that ONGC be restrained from awarding the contract to any other party. It was pleaded in the petition that NIOCCO came to know of the tender from the publication in the “Times of India” within the jurisdiction of the Calcutta High Court. The Court while setting aside the order passed by the Calcutta High Court came to the following conclusion :-

“6. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it

⁶ (1994) 4 SCC 711

differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.”

23) *C.B.I., Anti-corruption Branch, Mumbai v. Narayan Diwakar*⁷, was a case, where ‘A’ was posted in Arunachal Pradesh. On receiving a wireless message through Chief Secretary of the State asking him to appear before CBI Inspector in Bombay, he moved the High Court of Guwahati for quashing of FIR filed against him by the CBI. An objection was raised by the department that the High Court of Guwahati had no territorial jurisdiction to entertain the writ petition. But it was turned down. The Supreme Court, upheld the objection stating that the Guwahati High Court could not have entertained the petition.

24) *In Union of India v. Adani Exports Ltd.*⁸ the question of territorial jurisdiction came up for consideration before the Apex Court. ‘A’ filed a petition under [Article 226](#) of the Constitution in the High Court of Gujarat claiming benefit of the Passport Scheme under the EXIM policy. Passport was issued by Chennai Office. Entries in the Passport were made by authorities at Chennai. None of the respondents were stationed within the State of Gujarat. It was, therefore, contended that Gujarat High Court had no

⁷ (1999) 4 SCC 656

⁸ (2002) 1 SCC 567

territorial jurisdiction to entertain the petition. The contention, however, was negated and the petition was allowed. The respondents approached the Supreme Court but the Apex Court held that the Gujarat High Court had no jurisdiction to entertain the writ petition and set aside the High Court order.

25) *In Kusum Ingots & Alloys Ltd. vs. Union of India and Another*⁹, this Court elaborately discussed Clause (2) of [Article 226](#) of the Constitution, particularly the meaning of the word 'cause of action' with reference to [Section 20\(c\)](#) and Section 141 of the Code of Civil Procedure and observed:-

“9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, 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) 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.”

26) Their Lordships further observed as under:-

⁹ (2004) 6 SCC 254

In view of clause (2) of [Article 226](#) of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ.

27) In *National Textile Corporation v. Haribox Swalram and others*¹⁰ the Apex Court dealt with a situation, where the textile mills were situated in Bombay and the supply of cloth was to be made by them, ex-factory at Bombay. According to the writ petitioners, the money was paid to the mills at Bombay. After a detailed discussion, a learned Single Judge of Calcutta High Court held that the Calcutta High Court had no jurisdiction to entertain the writ petition. The Division Bench has reversed this finding on the ground that concluded contract had come into existence which could be cancelled only after giving an opportunity of hearing and consequently the question of revocation of the contract, at its Calcutta address, would constitute a cause of action. The Apex Court did not agree with the view expressed by the Division Bench since it nowhere pleaded in the writ petition that the appellant herein had initiated any action under Section 11 of the Act by issuing any notice to the writ petitioner for cancellation of the contract. It was held that mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta, is not an integral part of the cause of action and, therefore, held that the Calcutta High Court had no jurisdiction to entertain the writ

¹⁰ (2004) 9 SCC 786

petition. However, on merits the Apex Court agreed with the view taken by the Division Bench of the Calcutta High Court.

28) *In Om Prakash Srivastava vs. Union of India and Another*¹¹, answering a similar question, the Apex Court observed that on a plain reading of Clause(2) of [Article 226](#), it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose, if the cause of action in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territory. In para 7 the Apex Court observed as under:-

“7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under [Article 226](#) of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court’s jurisdiction and such infringement may take place by causing him actual injury or threat thereof.”

29) In *Alchemist Ltd. And another v. State Bank of Sikkim and others*¹² the Apex Court dealt with the meaning of the word “cause of action” as referred to in Article 226 (2) of the

¹¹ (2006) 6 SCC 207

¹² (2007) 11 SCC 335

Constitution of India. After referring to the said provision, the Court held as under:

“The question for our consideration is as to whether the assertion of the appellant is well founded that a part of cause of action can be said to have arisen within the territorial jurisdiction of the High Court of Punjab & Haryana. Whereas, the appellant-Company submits that a part of cause of action had arisen within the territorial jurisdiction of that Court, the respondents contend otherwise.

It may be stated that the expression 'cause of action' has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit. The classic definition of the expression 'cause of action' is found in *Cooke v. Gill*¹³, wherein Lord Brett observed:

"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".

30) In *Rajendran Chingaravelu vs. R.K. Mishra, Additional Commissioner of Income Tax and Others*¹⁴, the Apex Court while considering the scope of [Article 226\(2\)](#) of the Constitution, particularly in relation to cause of action in maintaining a writ petition, held as under:

“9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil

¹³ (1873) 8 CP 107

¹⁴ (2010) 1 SCC 457

Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of [Article 226](#) makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.”

31) Referring to all the judgments extracted above, the Apex Court in *Alchemist* case (12 supra) held that, for the purpose of deciding the case, whether facts averred by the petitioner/appellant, would or would not constitute a part of cause of action, one has to consider whether such facts constitutes material, essential, or integral part of the cause of action. It is no doubt true that even if there is a small fraction of the cause of action within the jurisdiction of the said Court, that Court would have territorial jurisdiction to entertain the suit/ petition.

32) From the judgments referred to above, it is clear that even if part of cause of action or a fraction of cause of action arises within the jurisdiction of the High Court, the writ petition can be maintained before the said Court.

33) The word “cause of action” is not defined either in the Civil Procedure Code or in the Constitution of India. As per the Judgment of the Apex Court in *Naval Kishore Sharma v. Union of*

*India*¹⁵ “the cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed”.

34) As stated above, the word “cause of action” has to be understood in terms of the ratio laid down by the Apex Court in Alchemist case (12 supra), wherein it was described as a bundle of essential facts, necessary for the plaintiff to prove that case. It was further held by the Apex Court that one has to consider whether such facts constitutes a material, essential, or integral part of the cause of action.

35) Keeping in view the law laid down, I shall now proceed to deal with the case on hand.

36) It is to be noted here that the V.C.I. is situated in New Delhi. The office of the body is also situated in New Delhi. The Secretary, whose appointment is subject matter of challenge was appointed by the Central Government. The office of Dr.A.J.V.Prasad, Joint Secretary to the Government of India, Ministry of Agriculture and Farmers Welfare, Department of Animal Husbandry, Dairying and Fisheries, who appointed the third respondent, as Additional Charge Secretary to V.C.I., is also stationed in New Delhi. The circumstances which made the petitioner to file the writ petition before the High Court appear to be that he is resident of Hyderabad; is an executive committee member of the VCI and has received an e-mail said to have been sent by the Secretary.

¹⁵ (2014) 9 SCC 329

37) Merely, because the petitioner is a resident of Hyderabad and that he is executive committee member of the V.C.I. by itself would not confer jurisdiction to entertain the writ petition. Since staying in Hyderabad and being a Executive Committee member of the V.C.I. does not come to material, essential or integral part of cause of action.

38) The other circumstance which is sought to be relied upon is the letter addressed by the petitioner to the President, V.C.I., New Delhi, questioning the appointment of the third respondent as Secretary. Writing a letter on the letterhead of the petitioner showing his address at Hyderabad, does not confer jurisdiction on the Court at Hyderabad. The said letter was addressed expressing his anguish/ mode of appointment of Secretary to the V.C.I., which does not also constitute material, essential or integral part of the cause of action.

39) The last circumstance which is strongly relied upon by the learned counsel for the petitioner is the alleged e-mail sent by the Secretary to the petitioner informing the date of election to the post of Vice-President. The affidavit filed in support of the writ petition does not anywhere indicate that the e-mail was received by the petitioner or read by the petitioner while he was in Hyderabad. In the absence of any such specific averments in the affidavit, it cannot be said that the Court in Hyderabad would get jurisdiction to decide the matter. Even otherwise, receipt of e-mail and reading of e-mail while being at a particular place could

not by itself confer jurisdiction on the Courts of that region to entertain the case. If the said analogy, as contended by the petitioner is accepted, then the petitioner will give a free hand to file a writ petition anywhere in the Country alleging that he has read the e-mail while he was in 'X', 'Y' or 'Z' place.

40) Having regard to the above and taking into consideration the judgments referred to above, I am of the view that this Court has no jurisdiction to entertain the writ petitions.

41) Accordingly, both the writ petitions are dismissed on the ground that this Court lacks jurisdiction. However, the petitioner, if so, advised to move before the Court having jurisdiction. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

23.08.2017
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JUSTICE C. PRAVEEN KUMAR