

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B.RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT**

WRIT APPEAL No.1430 of 2018

JUDGMENT : *(Per Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.V.S.R.Anjaneyulu for appellant and Mr.Vikram, learned Standing counsel for 1st respondent.

2. Writ petitioner is the appellant. The appellant challenges order dated 22.10.2018 in W.P.No.37244 of 2018 in holding that the writ petition is not maintainable in view of Clause 4.15.1 of Tender No.AAI/BZ/COMML/CAR PARKING/18-19 confining jurisdiction only on the Courts at Delhi. The operative portion of the order under appeal reads thus;

“At the hearing, it is submitted by the learned Standing Counsel that, as per the request of empanelment (RFE) of agencies for vehicle parking management services at AAI managed Airports, i.e. condition No.4.15.1, the Courts at Delhi shall have jurisdiction over all the disputes arising under, pursuant to and/or in connection with the process. The said clause reads as under :

“4.15.1: The empanelment process shall be governed by, and construed in accordance with, the laws of India and only the Courts at Delhi shall have jurisdiction over all the disputes arising under, pursuant to and/or in connection with the process.”

It is contended by the learned counsel for the petitioner that this Court has jurisdiction to entertain Writ Petition, despite the above clause. Having applied for empanelment in terms of the above RFE the said contention cannot be sustained.

In view of the above clause, and since the petitioner herein already made a request for his empanelment, in terms of the same, this Court is not inclined to entertain the present Writ Petition. However, it is open for the petitioner herein to file appropriate Writ Petition as per condition No.4.15.1.”

3. Mr.Anjaneyulu contends that the finding recorded by the order under appeal is unsustainable and against Article 226 (2) of Constitution of India. Firstly, in the case on hand, the tender is invited to empanel operators for Airports under the administrative control of respondent No.1, secondly that, by operation of Article 226 (2) of the Constitution of India, this Court has jurisdiction to consider the grievance of appellant on merits and for challenging the communication dated 01.08.2018, the appellant need not invoke the jurisdiction of Courts in Delhi. Further, he argues that the dismissal of writ petition just by referring to Clause 4.15.1 is erroneous, for a writ petition in this Court is maintainable even if a small portion of cause of action arises within the territorial jurisdiction of this Court. Appellant relies on *Nawal Kishore Sharma v. Union of India & others*¹.

4. Mr.Vikram, *per contra*, places reliance on *Swastik Gases Private Limited v. Indian Oil Corporation Limited*² and contends that the Clause now relied on by the learned Judge confers exclusive jurisdiction only on the Courts at Delhi. According to him, if the parties have agreed to limit the jurisdiction to a particular Court, filing writ petition in this Court is untenable and he supports the findings recorded in the order under appeal.

5. We have noted the rival submissions and perused the record.

6. The writ petition, as already noticed, has been dismissed at the stage of admission on the preliminary objection taken by respondent

¹ (2014) 9 SCC 329

² (2013) 9 SCC 32

No.1. The objection is that the writ petition before this Court is not maintainable in view of Clause 4.15.1.

7. The Apex Court in *Nawal Kishore Sharma* case (supra 1), after exhaustively taking note of binding precedents on Article 226(2) of Constitution of India, has held that if part or fraction of cause of action arises within the territorial jurisdiction of High Court, then, the writ petition is maintainable before the High Court where the fraction of cause of action has arisen. The Apex Court in *Nawal Kishore Sharma* case (supra 1), was dealing with a fact situation where the rejection order was received by the petitioner, where he was residing at the time of communication. The operative portion of the judgment reads thus;

“The interpretation given by this Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke writ jurisdiction. As a result, 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) now 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 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.

On a plain reading of the amended provisions in Clause (2), it is clear that now 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. 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. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed. The term 'cause of action' as appearing in Clause (2) came for consideration time and again before this Court".

[In Kusum Ingots & Alloys Ltd. vs. Union of India and Another](#), (2004) 6 SCC 254, 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.”

Their Lordships further observed as under:-

“29. 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. The decision in Khajoor Singh has, thus, no application.

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.”

8. In the case on hand, the petitioner received letter dated 01.08.2018 within the territorial jurisdiction of this Court and hence it cannot be held that only the Courts in Delhi have jurisdiction to entertain the writ petition. The decision relied on by 1st respondent is distinguishable on fact and the legal principles considered and decided by the Apex Court.

9. For the aforesaid reasons, the writ appeal is allowed and the order under appeal is set aside. The writ petition is restored to file to be considered by the learned Single Judge.

Pending miscellaneous applications, if any, shall stand closed.

Registry is directed to list the writ petition for admission in Motion List before the learned Single Judge having the subject roster on 29.10.2018.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

25th October, 2018

Note: CC forthwith B/o ajr
LR copy to be marked.