

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3719 OF 2019

Sachin Chhotu Pawar .. Petitioner

Versus

The Collector Raigad and others .. Respondents

Shri Sachin S. Deshmukh, Advocate for the Petitioner.
Mrs. V. N. Patil-Jadhav, A.G.P. for Respondent Nos. 1 and 3.
Shri V. B. Narke, Advocate for the Respondent No. 2.

**WITH
WRIT PETITION NO. 566 OF 2020**

Shashikant Pemraj Changede .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Amol A. Kokad, Advocate for the Petitioner.
Mrs. V. N. Patil-Jadhav, A.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

Closed for Order on : 10.02.2020

Order Pronounced on : 15.05.2020

FINAL ORDER (Per S. V. Gangapurwalaj, J.) :-

. The substratum of the matters :

(I) Whether part of cause of action has arisen within the jurisdiction of this Court.

(II) Whether the Court would exercise territorial jurisdiction.

2. Shorn of necessary details, the facts necessary to decide the matters in issue are as under :

3. So far as Writ Petition No. 3719 of 2019 is concerned, the petitioner had applied seeking appointment on compassionate ground to the respondent No. 2/Municipal Council Roha, Dist. Raigad. The father of the petitioner was in service of the respondent No. 2/Municipal Council, Roha, Dist. Raigad. The said application is not responded. The petitioner resides at Ramboris, Tq. & Dist. Dhule. The respondent Nos. 1 and 2 are within the territorial jurisdiction of the Principal seat at Bombay.

4. In so far as Writ Petition No. 566 of 2020 is concerned, the petitioner applied under the Right to Information Act to respondents demanding the information detailed in the application. The petitioner filed first appeal and, thereafter second appeal. According to the petitioner, the second appeal is allowed. The petitioner seeks directions against respondent Nos. 4 and 5 to provide information as per his application and also seeks directions against the respondent No. 1 to initiate disciplinary action against respondent Nos. 4 and 5. The respondent No. 1 is at Mumbai. The respondent Nos. 3 to 5 are

the offices situated at Pune. These respondents are within territorial jurisdiction of the Principal seat at Bombay.

5. Mr. Deshmukh and Mr. Kokad, the learned advocates for respective petitioners strenuously contend that, the petitioners are residents within the territorial jurisdiction of this Court. They had applied to the respondents from their places of residence within the jurisdiction of this Court. Part of cause of action has arisen within the territorial jurisdiction of this Court. If part of cause of action arises within jurisdiction of this Court, this Court can exercise the jurisdiction even if respondents place of work is beyond territorial jurisdiction of this Court. The petitioners refer to Article 226(2) of the Constitution of India. The learned advocates for petitioners place reliance on the following judgments of the Apex Court and this Court.

- i. Nawal Kishore Sharma Vs. Union of India and others reported in *(2014) 9 SCC 329*.
- ii. Vedica Procon Private Limited Vs. Balleshwar Greens Private Limited and others reported in *(2015) 10 SCC 94*.
- iii. State of Maharashtra Vs. Narayan Puranik and others reported in *(1982) 3 SCC 519*.
- iv. Rajendran Chingaravelu Vs. R. K. Mishra, Additional Commissioner of Income Tax and others reported in *(2010) 1 SCC 457*.
- v. Cement Workers' Mandal Vs. Global Cements Ltd. (HMP Cements Ltd.) and others in Civil Appeal No. 5360 of 2010

decided on 14.02.2019.

vi. Sanjay S/o Baldeo Ramteke Vs. State of Maharashtra and orders in **Writ Petition No. 3253 of 2014 decided on 01.12.2014** by the Division Bench of this Court at Nagpur Bench.

vii. Shri Asif Shakat Qureshi Vs. The State of Maharashtra and another in **Writ Petition No. 4343 of 2016 decided on 22.12.2016** by the Division Bench of this Court at Nagpur Bench.

viii. Rajendran Chingaravelu Vs. R. K. Mishra, Additional Commissioner of Income Tax and others reported in *(2010) 1 SCC 457*.

ix. Haji Abdul Razak Yasim Patel Vs. Bara Imam Masjid Trust and others reported in *2006(1) Mh.L.J. 184*.

6. The learned Assistant Government Pleader for respondents/State contends that, the respondents are situated beyond the territorial jurisdiction of this Court. No part of cause of action has arisen within the territorial limits of this Court. This Court may not entertain the writ petitions on the ground of jurisdiction. The learned A. G. P. relies on the following judgments the Apex Court and this Court.

i. *VSP Acqua Mist Fire Private Ltd. Vs. Maharashtra State Electricity Transmission Co. Ltd. And others* reported in **2010 (6) BomC.R.414**.

ii. *Shriram Vs. Union of India and others* in **Writ Petition No. 5734 of 2019 decided on 21.08.2019** by the learned Single Judge of this Court at Nagpur Bench.

7. Jurisdiction connotes authority to decide. A judgment by a Court lacking jurisdiction is *coram non judice*.

8. The issue of jurisdiction in entertaining the writ petition would revolve around Article 226(2) of the Constitution. It would be appropriate to refer to Article 226(2) of the Constitution. The same reads thus.

CONSTITUTION OF INDIA

1.

2.

226. Power of High Courts to issue certain writs.

(1)

(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.

9. Reading Clause (2) of the Article 226 of the Constitution, it is explicit that, the Court exercising power under Article 226 can issue writs contemplated under Clause (1) to the person or authority situated beyond its territorial jurisdiction provided the

cause of action wholly or partly arises within the territorial jurisdiction of the Court entertaining the writ petition.

10. The phraseology/terminology cause of action is broadly construed as bundle of facts necessary for the party to prove before he can succeed. The Apex Court in a case of **Kusum Ingots and Alloys Ltd. Vs. Union of India** reported in (2004) 6 SCC 254 has observed as under :

“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.”

11. The Apex Court in a case of **Nawal Kishore Sharma Vs. Union of India and others** (*supra*) referred to the judgment in a case of **Kusum Ingots and Alloys Ltd. Vs. Union of India** and other judgments of the Apex Court in approval and observed that, “in order to entertain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limits of the Courts jurisdiction.” In the said case the Apex Court has held as under.

“On facts, appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing problem which forced him to move back to his native place in Bihar, wherefrom he had been making all correspondence with regard to his disability compensation allegedly due from SCI, having rendered almost 23 years of service before being declared permanently unfit for service on medical grounds. All replies including rejection of claim for disability pension were addressed to him at his this address. Further, having participated in writ proceedings, respondents instead of raising objection as to territorial jurisdiction at the time of interim order, opposed grant of interim order. Considering all facts together part of fraction of cause of action did arise within jurisdiction of High Court where appellant received letter of refusal disentitling him from disability compensation.”

12. The Nagpur Bench of this Court in Writ Petition No 3253 of 2014 in case of Sanjay Baldeo Ramteke Vs. State of Maharashtra (*supra*) observed that, place of residence of petitioner would not be relevant, but what is relevant is that cause of action wholly or in part arises within the territorial jurisdiction of the Court. In the said case, the petitioner therein had applied pursuant to the advertisement for filling the post at Nagpur, Aurangabad, Jalgaon, etc. on the establishment of MSEDCL. The Court held that, part of cause of action has arisen, because respondents therein acted only on the basis of the letter of Superintendent of Police, Gondia which emanated from Gondia. That was the only reason for cancellation of the

appointment order.

13. The Nagpur Bench in Writ Petition No. 4343 of 2016 in case of Shri Asif Shaukat Qureshi Vs. State of Maharashtra and another (*supra*) held that, part of cause of action has arisen within limits of said Court as the jurisdiction of Bar Council is throughout the State. So also the Wakf Board functioning under the Wakf Act, 1995 is of the entire State. The petitioner issued communication at Nagpur declaring that the petitioner has deemed to have vacated the office of Member of Board w. e. f. 01.12.2015 at Nagpur.

14. In a case of Rajendran Chingaravelu Vs. R. K. Mishra, Additional Commissioner of Income Tax and others (*supra*) the Apex Court has held that, even accrual of fraction of cause of action is sufficient for the Court to exercise the jurisdiction. In that case the entire episode of search, seizure and detention was at Hyderabad Airport (Andhra Pradesh)/Chennai Airport (Tamilnadu). The part of cause of action arose at Hyderabad.

15. The Nagpur Bench in a case of VSP Acqua Mist Fire Private Ltd. Vs. Maharashtra State Electricity Transmission Co. Ltd. And others (*supra*) held that, mere receipt of three communications by petitioner at Nagpur pertaining to corrigendum to the tender notice did not furnish even part of cause of action. In case of Shriram Vs. Union of India and others (*supra*), the Nagpur Bench held that, the Western India Regional Council may have

jurisdiction throughout the State, but the action of the Council is not the subject matter of petition, but setting aside the election as Chairman of the Council. The office of Council is located at Mumbai. Mere communication of the order setting aside the election of the petitioner at Nagpur would not constitute an integral part of cause of action.

16. Taking stock of the aforesaid judgments and Article 226(2) of the Constitution, it is explicit that, place of residence or work of petitioner and/or respondent may not be much relevant in determining the jurisdictional aspect. The determinative fact is the place of accrual of cause of action or part of cause of action. This Court can issue directions against the respondents situated beyond the territorial jurisdiction of this Court provided part of cause of action has arisen within the jurisdiction of this Court.

17. The Apex Court in case of Election Commission Vs. Venkat reported in *AIR 1953 SC 210* and subsequent judgments took a view that it was location or residence of the litigant which gave territorial jurisdiction to the High Court under Article 226. The situs of the cause of action being immaterial. It appears that, judgment of the Apex Court propelled, the parliament to amend Article 226 and insert clause 1A by the 15th Amendment 1967 and subsequently renumbered clause 2 of Article 226 of the Constitution by Constitution's (Forty Second) Amendment Act. The said amendment provided that the High Court within which the cause of action arise wholly or in part would also have

jurisdiction to entertain the petition under Article 226 of the Constitution.

18. The extraordinary jurisdiction of this Court under Article 226 of the Constitution is sky high, but also has a regulation coming along under Article 226(2). The powers of this Court under Article 226 is sacrosanct. No statute or legislature can limit the powers of this Court under Article 226 of the Constitution. The constitution does not place fetter on exercise of extraordinary jurisdiction. This Court would exercise its authority, power or jurisdiction within its territorial realm. This Court normally would not travel beyond its limits.

19. Reading Article 226 (1) and (2) of the Constitution, a petition under Article 226 can be entertained before any of the High Court :

- i) Within whose territorial jurisdiction the person or authority against whom relief is sought resides or is situated.
- ii) The cause of action in respect of which relief is sought under Article 226 is wholly or in part arisen.

20. A distinction shall have to be drawn between cause of action and right of action. The petitioners may possess a right of action to institute the proceedings. To file a proceeding before a particular Court at least fraction of cause of action ought to have arisen within the precincts of that Court.

21. The terminology cause of action has been subject matter of large number of judicial pronouncements by Apex Court and this Court. One of us sitting singly (S. V. Gangapurwala, J.) has discussed the term cause of action and observed as under :

“25. The terminology "cause of action" has been a subject matter of various judicial pronouncements. The said concept now has acquired a settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the action including not only the infraction of the right but also the infraction coupled with the right itself. Compendiously the expression means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. In other words a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit. It has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action or in other words to the media upon which the plaintiff asks the Court to arrive at the conclusion in his favour. The cause of action has to be real and not illusory one.”

22. The Aurangabad Bench can entertain and dispose of matters arising within Marathwada region in accordance with initial notification issued by the Chief Justice dated 27th August,

1981 and pursuant to the subsequent notifications bringing the districts of Dhule, Nandurbar, Jalgaon and Ahmednagar within the jurisdiction of this bench. The reference can also be had to the judgment of the Apex Court in case of **State of Maharashtra Vs. Narayan Puranik and others** (*supra*).

23. In Writ Petition No. 3719 of 2019, the petitioner seeks employment with Municipal Council, Roha, Dist. Raigad on compassionate ground. The area of operation of Municipal Council, Roha is limited to Roha taluka. It does not extent beyond Roha taluka. Roha Taluka is beyond the territorial jurisdiction of this Court. No part of cause of action arose within the territorial jurisdiction of this Court. As even small fraction of cause of action has not arisen within the jurisdiction of this Court, this Court would not exercise its territorial jurisdiction.

24. In Writ Petition No. 566 of 2020, the petitioner had filed application seeking information under the Right to Information Act with respondent Nos.4 and 5. The office of the respondent Nos. 4 and 5 is situated at Pune. The appeal filed before the respondent No. 3 is allowed. The same is also situated at Pune. The petitioner seeks directions against respondent Nos. 4 and 5 to provide for the information. In the said writ petition also no part of cause of action has arisen within the territorial jurisdiction of this Court.

25. In the light of the above, we are not inclined to entertain

the writ petitions. The petitioners are at liberty to file appropriate proceedings for the same cause of action before appropriate forum possessing territorial jurisdiction.

26. In view of the above, the writ petitions are disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

bsb/May 20