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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-11209-2020 (O&M)

Date of decision : 04.08.2020

Vijay Goverdhandas Kalantri & Another

.....Petitioners

Vs.

Union of India& Others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Mukul Goyal, Advocate, for the petitioners.
Mr. Bhuwan Vats, Standing Counsel for Union of India.

ALKA SARIN, J. (ORAL)

Heard through video conferencing.

This is a civil writ petition under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari for setting aside the impugned action (Annexure P-1) of respondent Nos.1, 2 and 3 disqualifying the petitioners to act as Director from 01.11.2018 under Section 164(2)(a) of the Companies Act, 2013.

It has been contended by learned counsel for the petitioners that the petitioners were disqualified from acting as Directors in a company-respondent no.4. He placed reliance on order dated 08.11.2017 (Annexure P-7) passed in CWP. No.24977 of 2017 'Gurdeep Singh & Ors vs Union of India & Anr.' now fixed for hearing on 18.09.2020.

Mr. Bhuwan Vats, Advocate, has put in appearance for the Union of India through video conferencing. He has pointed out to this Court that both the petitioners are residents of Mumbai and the company-respondent no.4, qua which the petitioners were disqualified to act as Directors, is also registered with the Registrar of Companies, Mumbai. He

further points out that the Registrar of Companies, Punjab and Chandigarh (respondent no.2) has been impleaded as a party only to surreptitiously create jurisdiction of this Court. However, the Registrar of Companies, Punjab and Chandigarh (respondent no.2) has no connection with the present case and this Court has no jurisdiction to entertain the present writ petition.

Faced with this situation, learned counsel for the petitioners contended that since the petitioners wish to invest in a company within the jurisdiction of this Court, hence, the present writ petition has been filed.

In the present case, admittedly, both the petitioners are residents of Mumbai and the company-respondent no.4 itself is registered with the Registrar of Companies, Mumbai (respondent no.3) and has no connection with the Registrar of Companies, Punjab and Chandigarh (respondent no.2). The counsel for the petitioners has been unable to show how the present writ petition was maintainable before this Court.

There is no ground whatsoever made out for invoking the jurisdiction of this Court under Articles 226/227 of the Constitution of India inasmuch as neither the petitioners are residents of Punjab, Haryana or UT Chandigarh nor is the company-respondent no.4, qua which the petitioners were disqualified to act as Directors, registered with the Registrar of Companies, Punjab and Chandigarh (respondent no.2). The jurisdiction of the High Court is limited to the territorial jurisdiction of the State(s) of which it is the High Court. Article 226(1) and (2) of the Constitution of India reads as under :

“226. Power of High Courts to issue certain writs. (1)

Notwithstanding anything in Article 32, every High Court shall

have powers, 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.”

Thus, Article 226 of the Constitution of India, in clear terms, empowers the High Court to entertain a writ petition if the cause of action to file such a writ petition against the respondents of the said writ petition has arisen wholly or in part within the territorial jurisdiction of the High Court. In the case of ONGC vs. Utpal Kumar Basu, (1994) 4 SCC 711, the Apex Court inter-alia held as under :

“5. Clause (1) of Article 226 begins with a non obstante clause – ‘notwithstanding anything in Article 32’ and provides that 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, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court

may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, 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 aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories 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 territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.”

In the present case the counsel for the petitioners has been unable to show as to what part of the cause of action arose within the territorial jurisdiction of this Court. There is also no averment in the present writ petition as to how any part of the cause of action had arisen within the territorial jurisdiction of this Court.

In the same matter referred to above, the Supreme Court further held that :

“It must be remembered that the image and prestige of a court depends on how the members of that institution conduct

themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation.

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15. In the result, we allow this appeal, set aside the order of the High Court and direct that the writ petition will stand disposed of for want of jurisdiction. Since we are satisfied that NICCO had not invoked the jurisdiction of the Calcutta High Court bona fide, we think that this is a fit case for granting exemplary costs to ensure that such abuse of the Court's jurisdiction does not take place in future. We, therefore, direct NICCO to pay Rs 50,000 by way of costs."

In the matter of Aligarh Muslim University & Anr. vs. Vinay Engineering Enterprises Private Limited & Anr., Civil Appeal No.5230-31 of 1993 decided on 27.09.1993 the Supreme Court held :

"We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had

absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable.”

The present writ petition seems to have been filed only to gain benefit of the interim order (Annexure P-7) passed by this Court in CWP. No.24977 of 2017 ‘Gurdeep Singh & Ors. Vs. Union of India & Anr.’ and other similar cases though the initiation of the writ proceedings before this High Court was clearly unsustainable and an abuse of jurisdiction. The filing of the present writ petition before this High Court was not bonafide.

In view of the above, the present writ petition deserves to be dismissed with exemplary costs. Dismissed with costs of Rs.1,00,000/- to be deposited by the petitioners with the PM-CARES Fund.

August 04, 2020
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(ALKA SARIN)
JUDGE

NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO