

10.03.2021.
Item no. 26.
Court No.13
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**W.P.A. No. 2111 of 2020
With
CAN 2 of 2021
(Through Video Conference)**

**Debasish Saha
Versus
Union of India & Ors.**

Mr. Sandip Kumar Bhattacharyya,
Mr. Kaustava Chakraborty,
Mr. Gaurav Dutta.

...For the petitioner.

Mr. Debapriya Gupta,
Mr. Sourav Mondal.

..For the respondents.

The writ petition has been filed by a Havaldar of the Indian Army, who last served under the respondent no.5, Commanding Officer, Training Battalion-III, Madras Engineering Group & Centre, Bangalore.

The prayers made in this writ petition are to seek General Court Marshal Proceedings under Section 47 of the Army Act, 1950 against the Commanding Officer one Colonel Kamlesh Singh Bisht, TB III MEG is under the G.O.C. Southern Command.

A writ of prohibition is also sought restraining the respondents from taking action or accepting the local discharge of the petitioner at Bangalore from service.

The brief facts relevant for the purpose of this order are inter alia, that the petitioner while serving as a Havaldar, claims that he was harassed by his superiors. He participated in the selection process to the post of J.C.O. He is stated to have cleared the examination. In course of examination process and with a view to humiliate and victimize the petitioner, his superiors initially formed a Court of Enquiry. Not having found any evidence against the petitioner to commence trial against him, the petitioner claims that he was sent for psychiatric evaluation to the Air Force Hospital at Bangalore. After psychiatric evaluation, the writ petitioner claims that he was forced to sign an application for premature voluntary discharge from Armed Forces for taking care of his aged mother and two little children out of his second marriage.

The writ petitioner claims that he could not have sought discharge since he was found fit to rejoin service by the psychiatrist at the Air Force Hospital at Bangalore.

It is further submitted that after having applied for promotion to the post of J.C.O. and having participated therein, the petitioner could not have applied for discharge.

On facts, Counsel for the Armed Forces submits that the petitioner was, in fact, found guilty in course

of Code of Enquiry and with a view to avoid trial, he had submitted his application for voluntary discharge.

After the aforesaid events, the petitioner moved to Calcutta to stay with his wife and family. While at Calcutta, the petitioner's wife, who is a serving Judicial Officer, addressed a complaint to the General Officer in Command, Eastern Region, Kolkata complaining of gross ill-treatment against her husband and has sought enquiry against the Officials responsible for the same.

The writ petition was filed in February, 2020 but could not be moved in view of the Pandemic. The writ petition was taken up on 24th February, 2021 when the issue of territorial jurisdiction was kept open for being argued today.

The jurisdiction of this High Court is invoked by the petitioner primarily on the ground that the Armed Forces Tribunal where the petitioner's grievance should ordinarily have been agitated, is non-functional at Kolkata.

The Armed Forces Tribunal at Kolkata and the Calcutta High Court, according to the petitioner, would have territorial jurisdiction on the basis of the petitioner's wife's complaint to the G.O.C., Eastern Command, Kolkata as regards her husband's ill-treatment by the Commanding Officer, Training Battalion-III, Madras Engineering Group & Centre,

Bangalore. Rule 6 (2) of the Armed Forces Tribunal (Procedure) Rules 2008 are relied upon in this regard.

Reliance in this regard is placed first by Mr. Sandip Kumar Bhattacharyya on the decision of the Hon'ble Supreme Court in the case of ***Navinchandra N. Majithia - Vs. - State of Maharashtra & Ors.*** reported in (2000) 7 SCC 640. The facts of the said case are that criminal proceedings were instituted in Shillong, Meghalaya were challenged before the Bombay High Court under Article 226 of the Constitution of India where relief or quashing of the same or transfer to Maharashtra were sought. The High Court dismissed the writ application and the same was reversed by the Hon'ble Supreme Court. The Supreme Court found that a large number of events had taken place at Bombay and the registration of the FIR at Shillong was inappropriate. It is in that context that the Hon'ble Supreme Court had held that the writ petition ought to have been entertained in the Bombay High Court.

It is seen in the instant case that the petitioner was last posted at Bangalore under the G.O.C. Southern Command, Commanding Officer, Training Battalion-III, Madras Engineering Group & Centre, Bangalore. The entire cause of action and events narrated in this writ application from posting to psychiatric evaluation to the J.C.O. Examination to

incidents of ill-treatment and purported discharge, all occurred at Bangalore.

Useful reference may be made to the Navinchandra N. Majithia decision (*supra*) at paragraph 38-41 in this regard. The relevant paragraphs are set out hereinafter.

“38. “Cause of action” is a phenomenon well understood in legal parlance. Mohapatra, J. has well delineated the import of the said expression by referring to the celebrated lexicographies. The collocation of the words “cause of action, wholly or in part, arises” seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the courts. As per that section the suit could be instituted in a court within the legal limits of whose jurisdiction the “cause of action wholly or in part arises”. Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean “the bundle of facts which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court”.

39. In *Read v. Brown* [(1888) 22 QBD 128 : 58 LJQB 120 : 60 LT 250 (CA)] Lord Esher, M.R., adopted the definition for the phrase “cause of action” that it meant

“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. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved”.

40. The Privy Council has noted in *Mohd. Khalil Khan v. Mahbub Ali Mian* [AIR 1949 PC 78 : 75 IA 121] that the aforesaid definition adopted by Lord Esher M.R. had been followed in India. Even thereafter the courts in India have consistently followed the said interpretation without exception for understanding the scope of the expression “cause of action”.

41. Even in the context of Article 226(2) of the Constitution this Court adopted the same interpretation to the expression “cause of action, wholly or in part, arises” vide *State of Rajasthan v. Swaika Properties* [(1985) 3 SCC 217] . A three-Judge Bench of this Court in *Oil and Natural Gas Commission v. Utpal Kumar Basu* [(1994) 4 SCC 711] observed that it is well

settled that the expression “cause of action” means that bundle of facts which the petitioner must prove, if traversed to entitle him to a judgment in his favour. Having given such a wide interpretation to the expression Ahmadi, J. (as the learned Chief Justice then was) speaking for M.N. Venkatachaliah, C.J. and B.P. Jeevan Reddy, J., utilised the opportunity to caution the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. The following are such observations. (SCC p. 722, para 12)

“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.”

Reference in this regard is made to two several decisions of the Hon’ble Supreme Court, namely, ***Morgan Stanely Mutual Fund – Vs. – Kartick Das*** reported in **(1994) 4 SCC 225** particularly paragraphs **43-44** set out hereunder:

“Q. 5 : What is the scope of Section 14 of the Act?

43. The said section reads as under:

“(1) If, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things, namely:

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

(2) Every order made by the District Forum under sub-section (1) shall be signed by all the members constituting it and, if there is any difference of opinion, the order of the majority of the members constituting it shall be the order of the District Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.”

44. A careful reading of the above discloses that there is no power under the Act to grant any interim relief of (*sic* or) even an ad interim relief. Only a final relief could be granted. If the jurisdiction of the Forum to grant relief is confined to the four clauses [**Ed.** : Increased to nine clauses by Amendment Act 50 of 1993 (w.e.f. 18-6-1993).] mentioned under Section 14, it passes our comprehension as to how an interim injunction could ever be granted disregarding even the balance of convenience.”

The case of ***Alchemist Ltd. and Anr. Vs.***

State Bank of Sikkim and Ors. reported in **(2007)**

11 SCC 335 is also relevant. Paragraphs **20-39** of the

said decision are set out hereunder:

“20. 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.

21. The classic definition of the expression “cause of action” is found in *Cooke v. Gill* [(1873) 8 CP 107 : 42 LJCP 98] 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.”

22. For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.

23. Mr Soli J. Sorabjee, Senior Advocate appearing for the appellant Company placed strong reliance on *A.B.C. Laminart (P) Ltd. v. A.P. Agencies* [(1989) 2 SCC 163 : AIR 1989 SC 1239 : JT (1989) 2 SC 38] and submitted that the High Court had committed an error of law and of jurisdiction in holding that no part of cause of action could be said to have arisen within the territorial jurisdiction of the High Court of Punjab and Haryana. He particularly referred to the following observations: (SCC p. 170, para 12)

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But 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.”

24. In our opinion, the High Court was wholly justified in upholding the preliminary objection raised by the respondents and in dismissing the petition on the ground of want of territorial jurisdiction.

25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the *lis* between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.

26. In *Union of India v. Oswal Woollen Mills Ltd.* [(1984) 2 SCC 646 : 1984 SCC (Cri) 348 : AIR 1984 SC 1264 : (1984) 3 SCR 342] 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. And this Court held that since the registered office of the Company was at Ludhiana and the principal respondents against whom primary relief was sought were at New Delhi, one would have expected the writ petitioner to approach either the High Court of Punjab and 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.

27. In *State of Rajasthan v. Swaika Properties* [(1985) 3 SCC 217 : AIR 1985 SC 1289] the Company whose registered office was at Calcutta filed a petition in the High Court of Calcutta challenging the notice issued by the Special Town Planning Officer, Jaipur for acquisition of immovable property situated in Jaipur. Observing that the entire cause of action arose within the territorial jurisdiction of the High Court of Rajasthan at Jaipur Bench, the Supreme Court held that the High Court of Calcutta had no territorial jurisdiction to entertain the writ petition.

28. This Court held that mere service of notice on the petitioner at Calcutta under the Rajasthan Urban Improvement Act, 1959 could not give rise to a cause of action unless such notice was “an integral part of the cause of action”.

29. In *ONGC v. Utpal Kumar Basu* [(1994) 4 SCC 711 : JT (1994) 6 SC 1] this Court held that when the Head Office of ONGC was not located at Calcutta, nor the execution of contract work was to be carried out in West Bengal, territorial jurisdiction cannot be conferred on the High Court of Calcutta on the ground that an advertisement had appeared in a daily (*The Times of India*), published from Calcutta, or the petitioner submitted his bid from Calcutta, or subsequent representations were made from Calcutta, or fax message as to the final decision taken by ONGC was received at Calcutta inasmuch as neither of them would constitute an “integral part” of the cause of action so as to confer territorial jurisdiction on the High Court of Calcutta under Article 226(2) of the Constitution.

30. In *CBI, Anti-Corruption Branch v. Narayan Diwakar* [(1999) 4 SCC 656 : 1999 SCC (Cri) 619 : AIR 1999 SC 2362 : JT (1999) 3 SC 635] , 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, A moved the High Court of Guwahati for quashing FIR filed against him by 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, however, upheld the objection that Gauhati High Court could not have entertained the petition.

31. In *Union of India v. Adani Exports Ltd.* [(2002) 1 SCC 567 : AIR 2002 SC 126 : JT (2001) 9 SC 162] a question of territorial jurisdiction came up for consideration. 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 the authorities at Chennai. None of the respondents was stationed within the State of Gujarat. It was, therefore, contended that the Gujarat High Court had no territorial jurisdiction to entertain the petition. The contention, however, was negatived and the petition was allowed. The respondents approached the Supreme Court.

32. The judgment of the High Court was sought to be supported inter alia on the grounds that (i) A was carrying on business at Ahmedabad; (ii) orders were placed from and executed at Ahmedabad; (iii) documents were sent and payment was made at Ahmedabad; (iv) credit of duty was claimed for export handled from Ahmedabad; (v) denial of benefit adversely affected the petitioner at Ahmedabad; (vi) A had furnished bank guarantee and executed a bond at Ahmedabad, etc.

33. Allowing the appeal and setting aside the order of the High Court, the Supreme Court held that none of the facts pleaded by A constituted a cause of action.

“Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned.” (*Adani Exports Ltd. case* [(2002) 1 SCC 567 : AIR 2002 SC 126 : JT (2001) 9 SC 162] , SCC pp. 573-74, para 17.)

34. In *Kusum Ingots & Alloys Ltd. v. Union of India* [(2004) 6 SCC 254 : JT (2004) Supp 1 SC 475] the appellant was a Company registered under the Companies Act having its head office at Mumbai. It obtained a loan from the Bhopal Branch of State Bank of India. The Bank issued a notice for repayment of loan from Bhopal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The appellant Company filed a writ petition in the High Court of Delhi which was dismissed on the ground of lack of territorial

jurisdiction. The Company approached this Court and contended that as the constitutionality of a parliamentary legislation was questioned, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition.

35. Negating the contention and upholding the order passed by the High Court, this Court ruled that passing of a legislation by itself does not confer any such right to file a writ petition in any court unless a cause of action arises therefor. The Court stated: (*Kusum Ingots case* [(2004) 6 SCC 254 : JT (2004) Supp 1 SC 475] , SCC p. 261, para 20)

“20. A distinction between a legislation and executive action should be borne in mind while determining the said question.”

Referring to *ONGC* [(1994) 4 SCC 711 : JT (1994) 6 SC 1] , it was held that all necessary facts must form an “integral part” of the cause of action. The fact which is neither material nor essential nor integral part of the cause of action would not constitute a part of cause of action within the meaning of Clause (2) of Article 226 of the Constitution.

36. In *National Textile Corpn. Ltd. v. Haribox Swalram* [(2004) 9 SCC 786 : JT (2004) 4 SC 508] referring to earlier cases, this Court stated that: (SCC p. 797, para 12.1)

“12.1 ... the 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, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained.”

37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a *material, essential, or integral* part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a “part of cause of action”, nothing less than that.

38. In the present case, the facts which have been pleaded by the appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of “cause of action” within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition.

39. For the foregoing reasons, we see no infirmity in the order passed by the High Court dismissing the petition on the ground of want of territorial jurisdiction. The appeal, therefore, deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, we leave the parties to bear their own costs.”

Applying the aforesaid dicta to the facts of the writ petitioner was in fact serving in Bangalore. The only event pleaded in this writ application to invoke the jurisdiction of the Calcutta High Court and the Armed Forces Tribunal at Kolkata is a letter addressed by the petitioner’s wife to the G.O.C., Eastern Command. The said single event cannot, in my view, suffice to confer jurisdiction on the Calcutta High Court or the Armed Forces Tribunal at Kolkata to entertain the grievance of the writ petitioner.

On the question of alternative remedy as pleaded by the Counsel for the petitioner orally as also in paragraph 3 of the writ application, the Army has filed an application seeking recall of the order dated 24th February, 2021. Recall is sought on the ground that this Court has no jurisdiction to entertain the writ application and that the Armed Forces Tribunal at Kolkata is fully functional. The reason for filing this application is wholly ununderstood and to say the least, the application is ridiculous.

The Court, on 24th February, 2021 had kept the issue of maintainability of the writ application on account of territorial jurisdiction open. The issue of alternative remedy must also be deemed to have been

kept open since the writ application has not been admitted till date.

Be that as it may, the documents annexed to CAN 2 of 2021 are the cause list of the Armed Forces Tribunal at Kolkata to indicate that the same is functioning.

This Court finds that the cause list of the Registrar has been annexed to the application. Admittedly in terms of Section 5 of the Armed Forces Tribunal Act, 2007 read with Rule 2 (xiii) of the Armed Forces Tribunal Procedural Rules, 2008 clearly do not confer any adjudicatory powers on the Registrar of the Tribunal, while there is no clear evidence before this Court that the Presiding Officer of such Tribunal has not been appointed for a long period of time, this Court cannot accept that the Tribunal is functioning merely on the basis of cause list of the Registrar, who appears to be giving dates to applications that are listed before him. There is no adjudication admittedly occurring at the Armed Forces Tribunal, Kolkata.

The above are not as relevant as a moot point that this Court had noticed in course of submission by the Counsel for the petitioner.

On a specific query raised, Mr. Sandip Kumar Bhattacharyya, learned Senior Advocate for the petitioner, has submitted that the purported certificate of discharge dated 5th November, 2019 was never

served on the petitioner. It is submitted that an order of discharge can only take effect upon compliance of the provisions of Section 23 of the Army Act, 1950 and Rules 12 Sub-Rule (2) of the Army Rules of 1954.

Applying the principles of Order VII, Rule 11 of the Code of Civil Procedure, 1908, the statements made in a plaint and in the instant case, the writ application must be taken to be true and correct. Hence as per the petitioner he is still on service of the Army as Havildar. Hence in terms of Rule 6 of the Armed Forces Tribunal (Procedure) Rules 2008, the petitioner's remedy would have ordinarily been before the Armed Forces Tribunal at Chennai having jurisdiction over his Commanding Officer and place of Command located at Bangalore. The jurisdiction of the Principal Bench always be available to the petitioner under any circumstances. The petitioner, therefore, cannot invoke the provisions of Rule 6, Sub-Rule (2) of the Armed Forces Tribunal (Procedure) Rules, 2008, which is set out hereinbelow.

“Rule 6: Place of filing application :- (1) *An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction –*

- (i) *the applicant is posted for the time being, or was last posted or attached; or*
- (ii) *where the cause of action, wholly or in part, has arisen:*

Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 14 or section 15 of the Act, such application shall be heard and disposed of by

the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.”

This Court even otherwise is unable to accept Mr. Bhattacharyya's submissions that prayer 'a' made in the writ application can be entertained by this Court in the light of Section 124 of the Army Act, 1950. The said Commanding Officer Colonel Bhist, TB III MEG is under the G.O.C. Southern Command. Any relief or grievance against him must and should be agitated by the petitioner before the Armed Forces Tribunal at Chennai and in the absence of any functional Tribunal thereat as in Kolkata, the High Courts of Karnataka or Madras would have jurisdiction to deal with the grievances and not the High Court at Calcutta.

The other decisions cited by Mr. Bhattacharyya namely **T. Arivandandam V. T. V. Satyapal and Anr.** reported in **(1977) 4 SCC 467**, **Kalabharati Advertising V. Hemant Vimalnath Narichania and Ors.** reported in **(2010) 9 SCC 437**, **Manohar Lal V. Vinesh Anand And Ors.** reported in **(2001) 5 SCC 407** and **Balkrishna Ram V. UOI and Anr.** reported in **(2020) 2 SCC 442** need not be referred to or elaborated upon.

For the reasons stated hereinabove, the writ petition shall stand dismissed.

The dismissal of the above writ petition shall not prevent the writ petitioner from approaching the appropriate forum to agitate his grievances and seek remedies available to him in law.

In view of the dismissal of the main writ application, the connected application being CAN 2 of 2021 shall also stand dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(*Rajasekhar Mantha, J.*)