

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

APPELLATE SIDE

Present :-

**THE HON'BLE JUSTICE Subrata Talukdar.
AND
THE HON'BLE JUSTICE Kesang Doma Bhutia.**

**MAT 566 of 2021
with
I.A. NO. CAN 1 of 2021**

**Utkarsh India Limited &Anr.
Vs
Central Coalfields Limited &Anr.**

For the Appellants : Mr. Jishnu Chowdhury
Mr. Chayan Gupta
Mr. Souryadeep Banerjee
Mr. Dwip Raj Basu

For Central Coalfields Ltd. : Mr. Anuj Singh
Mr. Pronit Bag
Mr. Prodyot Kumar Das
Mr. Debabrata Das

Hearing concluded on : 07.10.2021

Judgment on : 23.12.2021

Kesang Doma Bhutia J:-

This appeal is directed against the order passed by the Hon'ble Single Bench in WPA No.10528 of 2021 on 28.05.2021 and whereby the Hon'ble Single Bench has been pleased to dismiss the Writ Petition for want of territorial jurisdiction and without entering into the merits of the petition.

The factual background in which the question of territorial jurisdiction arises in brief is that a notice inviting tender was published by the Respondent No. 1 from Materials Management Department, Central Coalfields Ltd., Darbanga House, Ranchi, Jharkhand 834001, for procurement of 148 sets High Mast Lightning Tower (Fixed and Mobile) with 8 nos./18 nos. Led Light Fittings with DG sets for different areas of CCL.

The Appellant Company participated in the bid in respect of 4 items out of 7 items mentioned under serial no. 1,2, 3 and 7 of schedule of requirements and its such bid was accepted by the Respondent and was called for e-auction on 1st October 2020. The Appellant made deposit of requisite earnest money amounting to Rs. 23,98,780. The validity of the offer was extended upto 31.05.2021 and, in the meantime, the appellant was requested by the respondents to submit requisite documents as per requirement of the NIT in respect of item no.7 twice, but having failed to

comply, AppellantNo.1's bid in respect of item no.7 was rejected being technically unacceptable. Consequently, the Appellant No. 1 has been declared as a defaulter in respect of item no.7. The earnest money of Rs. 23,98,780 has been forfeited as penalty and the appellant no.1 disqualified from participating in the tender process in respect of item no. 7 of the schedule of NIT, for a period of one year by serving the impugned letter dated 21.05.2021.

The Appellant being aggrieved by the notice of disqualification and penalty dated 21.05.2021, filed the Writ Petition No. 10528 of 2021 and prayed for a Writ in the nature of Mandamus commanding the Respondent Authorities to forthwith desist and/or forebear and/or not to give effect to the letter dated 21.05.2021.

The Hon'ble Single Bench, after considering the submission of the Ld. Counsel for the parties, the decision relied upon by them in support of their submission and on considering the materials on record, *inter alia* held that the integral part of cause of action i.e., floating of tender, scrutinisation of documents and decision to disqualify the Appellants and impose penalty was taken at Ranchi, Jharkhand and thereby held the Calcutta High Court lacked territorial jurisdiction to entertain the Writ Petition, though Appellants have their place of business within the

jurisdiction of this Court and Appellants had received the notice of disqualification at their office at Kolkata.

Ld. Counsel for the Appellants submitted that the entire tendering process was online and the Appellant No. 1 had submitted the bid from its office at Kolkata. The communication with regard to the tender offer was also received by the Appellant No. 1 at its office at Kolkata. The impugned communication of blacklisting and penalty dated 21.05.2021 was also received by the Appellant at its office at Kolkata. Therefore, the impugned notice is a material, essential or integral part of the *lis* connected with the action. Impugned action taken by the Respondents can become effective only upon service of the same upon the Appellants and such service having taken place in Kolkata, a part of the cause-of-action has arisen within the jurisdiction of this Court and, in view of Article 226 of the Constitution of India, a Writ Petition can be filed in the High Court within the territorial jurisdiction of which the cause-of-action in whole or in part arises. Therefore, Ld. Counsel for Appellants has prayed for setting aside the order under challenge.

On the other hand, Ld. Counsel for the Respondents submitted that the place for submission of bid and place of service of notice of blacklisting with penalty do not constitute a cause-of-action as the entire tender process from the very inception till issuance of the impugned

letter of rejection/disqualification with penalty were initiated from the office of Materials Management Department of Central Coalfields Ltd, situated at Ranchi, Jharkhand. The integral part of the cause-of-action for this *lis* has arisen within the jurisdiction of the Court of Jharkhand and not within the jurisdiction of this Court. Thus, he prays for dismissal of the Appeal.

Following decisions have been cited by the parties:

1-MBL Infrastructure Limited vs Rites Limited and Others, reported in AIR2020 Cal 155.

2- PankajPanwar vs. Lalit Kala Academi, reported in AIR 2015 Cal 67.

3-Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, reported in (1994) 4 SCC 711.

4-National Textile Corpn. Ltd. And Others vs. Haribox Swalram And Others, reported in (2004) 9 SCC 786.

5-Alchemist Ltd. And Another Vs. State Bank of Sikkim and Others, reported in (2007) SCC 335.

6-Union of India and Others Vs Adani Exports Ltd. And Another, reported in (2002) 1 SCC 567.

7-Kusum Ingots & Alloys Ltd. Vs. Union of India and Another, reported in (2004) 6 SCC 254.

8-Eastern Coalfields Ltd. And Others vs Kalyan Banerjee , reported in (2008) 3 SCC 456.

9-S.S. Jain & Co. & Anr. Vs Union of India & Ors, reported in (1994) 1CHN 445.

Perused the above decisions.

In this appeal this Court has confined itself on the Jurisdictional issue and restrains itself from entering into the merits of the writ petition. Therefore, this Court does not find any requirement of discussing the decision of this Hon'ble Court passed in *MBL Infrastructure Ltd. Vs. Rites Limited and Others* reported in *AIR2020 Cal 155*, where question of enforceability of a forfeiture clause in NIT was in issue.

In the rest of the cases referred above matters in issue was the territorial jurisdiction of a writ Court.

In *PankajPanwar vs. Lalit Kala Academy*, reported in *AIR 2015 Cal 67*, the Hon'ble Single Bench of this Court held that whether or not cause of action in part has arisen within the territorial limits of a particular High Court has to be examined having regard to the facts and circumstance of the case as well as what is pleaded in support of the claim, irrespective of what defence the adversary adopts. Each case must be decided on its peculiar facts and the nature of infringement of right

that the aggrieved voices in the writ petition. That service of an order or a notice on the addressee would never give rise to a cause of action to move the court within whose territorial limits the order/notice is received, may not be reasonably sound. If service of an order or a notice is an event of substance, that is an event which is a material, essential or integral part of the *lis* connected with the action that is impugned in writ petition, there is no plausible reason as why the same should not be construed as constituting a material, essential or integral part of the cause of action. The plea of affectation of right or interest by reason of such order/ notice being served, if based on substantial facts forming a part of the bundle of facts constituting the cause of action, would indeed be relevant for determination of the question as to whether writ petition ought to be entertained or not.

In the said case, the Writ petitioner a Professor of the Department of Sculpture, Kala Bhawan, Viswabharati University, Santiniketan, District Birbhum, West Bengal, who was conferred with National Award by Lalit Kala Academy was surprised to find his name in a public notice published in a Daily English National Newspaper having Bengal Circulation by the Kala Academy, Delhi about withdrawal of the National Award including plaque from him along with recovery of reward money, without prior notice to him before such decision taken by the Academy,

the same allegedly being taken behind the back of the petitioner such action affected and damaged the reputation and respect which the petitioner has earned over the years. The Hon'ble Single Judge held that the prejudice caused having taken place in Santiniketan, where the petitioner came to know about public notice against him on reading the newspaper, held the integral, essential and material part of the *lis* constituting the cause-of-action arose within limits of this High Court. The Hon'ble Single Judge has been pleased to take such view after thoroughly discussing the decisions of the Hon'ble Apex Court passed in *In Re: National Textile Corporation Ltd.(supra)*, *Alchemist (supra)*, *Oil and Natural Gas Commission (supra)*, *State of Rajasthan V. Swaika Properties*, reported in (1985)3 SCC 217, among others.

The Hon'ble Supreme Court in *OIL AND NATURAL GAS COMMISSION VS UTPAL KUMAR BASU*, held that merely because writ petitioner reads the advertisement at Kolkata and submitted the offer from Kolkata and revised the rates subsequently, when it learnt that it was considered ineligible it send representations, including fax messages from Kolkata would not constitute facts forming an integral part of the cause-of-action. So also the mere fact that it sent fax messages from Kolkata and received a reply thereto at Kolkata would not constitute an integral part of the cause of action.

Even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause-of-action arose within the jurisdiction of the Calcutta High Court. When the advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract in the tender would be taken at New Delhi and the execution of the contract work was to be carried out at Hazira in Gujarat. Facts which have no proximate impact on the *lis* or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned.

Similar view was taken by the Hon'ble Apex Court in *NATIONAL TEXTILE CORPN. LTD AND ORS. VS HARIBOX SWALRAM AND OTHERS*, *inter alia*, holding that the mere fact that the writ petitioner carries on business at Kolkata or that the reply to the correspondence made by it was received at Kolkata is not an integral part of the cause of action, when mill in question is located in Mumbai, payment is to be made in Mumbai and delivery is to be made from Mumbai. Such facts pleaded in the writ petition does not *ipso facto* lead to the conclusion that those facts give rise to a cause of action within the Calcutta High Court to invoke jurisdiction to entertain the writ petition.

A similar question was examined in *State of Rajasthan v. Swaika Properties*. Here certain properties belonging to a company which had its registered office in Kolkata were sought to be acquired in Jaipur and a notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Kolkata. The question which arose for consideration was whether the service of notice to the head of the company at Kolkata could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause-of-action culminating in the acquisition of the land under section 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Kolkata for grant of appropriate writ, order, or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52 of the Act. It was thus held that the Calcutta High Court had no jurisdiction to entertain the writ petition.

In *ALCHEMIST LTD. V STATE BANK OF SIKKIM* reported in (2007) 11 SCC 335 and *Election Commission V. Saka Venkata Rao*, reported in *AIR 1953 SC 210* was discussed and where it was observed the High Court has wide powers while issuing orders, directions or writs for

enforcement of fundamental rights which is subject to two-fold limitations upon their exercise. In the first place, the power is to be exercised ‘throughout the territories in relation to which it exercises jurisdiction’, that is, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be ‘within those territories’, which clearly implies that they must be amenable to its jurisdiction either by residence, location within those territories.

Similar view was taken by the Apex Court in *In Re :Khajoor Singh* and held that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court’s jurisdiction.

In *Union of India v Adani Exports Limited and another*, reported in (2002)1 SCC 567, and *Kusum Ingots &Alloys Ltd. V. Union of India*, reported in (2004) 6 SCC 254 held that each and every fact pleaded in the application must lead to the conclusion that those facts give rise to a cause-of-action within the Court’s territorial jurisdiction and which have a nexus or relevance with the *lis* that is involved in the case. 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.

It is true 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.

In the present Appeal from the averments made in the writ petition and from the materials on record, it appear the NIT was issued by the Materials Management Department of Central Coalfields Limited, Ranchi, Jharkhand, for procurement of 148 sets of Fixed and Mobile High Mast Lighting towers with Led Lights and DG sets on 08.09.20. The prospective bidders were required to submit their bids to the above mentioned office by 30.09.20. The tender was to be opened in the above office on 01.10.20 and technically qualified bidders were called to participate in reverse auction on 01.10.20 from the above office. The date for extension of offer too was issued to the Appellants from the above office by email and reply thereto was sent by the Appellants to the above office. The appellants were requested to submit or upload the documents

as per NIT in respect of tender schedule item no 7 twice by the respondents from their above office and lastly the impugned letter of rejection of the bid of the Appellant in respect of item no.7 was issued by the Respondent on the failure of the Appellants to upload the documents called for finalisation of technically qualified offer of the Appellants within stipulated time from their office at Ranchi, Jharkhand.

It is the case of the Appellants that tendering process was online and they submitted their bid online from its office in Kolkata, deposited earnest money from Kolkata and received all communication relating to the impugned tender from the very inception of tender process till receipt of the impugned letter of disqualification with penalty dated 21.05.2021 at its office. They have also alleged that service of the impugned letter has caused injury to their business and right to livelihood and thereby infringed their right to trade and business guaranteed under Article 19 (1) (g) and right to livelihood guaranteed under Article 21 of the Constitution. Their such rights being infringed within the territorial limits of this High Court, this Court has jurisdiction to hear the matter.

Further, Clause 32 of the General Conditions of Contract as contained in the NIT, clearly provides that in case of dispute arising out of the contract entered into with suppliers will be subject to the jurisdiction of the competent court of law. The courts in whose territorial

jurisdiction from where contract is being issued is located, i.e. Ranchi, Jharkhand shall be competent to deal with any matter arising out of this purchase order/contract.

The Hon'ble Apex Court in *Shriram City Union Finance Corporation Ltd. V. Ram Mishra*, reported in AIR 2002 SC 2402 has held that, in case parties under their own agreement expressly agree that their dispute shall be tried in one jurisdiction, then the party can only file a suit in that court alone to which they have agreed. Once parties bind themselves as such it is not open to them to choose a different jurisdiction in violation the terms of agreement.

In the present case by virtue of clause 32 of the General Conditions of Contract contained in the NIT, any dispute that arises out of any order or purchase made as per NIT between the purchaser and technically qualified vendor, is subject to the jurisdiction of the Courts of Ranchi, Jharkhand and not the High Court of Calcutta, under whose jurisdiction Appellants reside and carry on business.

That apart, in view of the decisions of the Hon'ble Supreme Court discussed through the above referred cases and the entire process of the impugned tender having emanated from Materials and Management Department of Central Coalfields, Head Office at Ranchi, Jharkhand including the impugned notice of disqualification and penalty, constitute

facts forming the integral part of cause-of-action for the *lis* have arisen within the territorial jurisdiction of Ranchi and, not within the Jurisdiction of the Calcutta High Court,

For the foregoing reasons, **MAT 566 of 2021** with **CAN 1 of 2021** stands dismissed as not maintainable.

It is made clear that the merits of the dispute have not been touched and it would be open to the parties to agitate merit before the Competent Court/Forum.

The order of the Hon'ble Single Bench impugned in this appeal dated 28.05.2021 stands affirmed.

Interim order, if any, stands vacated.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Subrata Talukdar, J.)

(Kesang Doma Bhutia, J.)