

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE Subrata Talukdar.

THE HON'BLE JUSTICE Kesang Doma Bhutia.

MAT No. 927 of 2021

With

IA No. C.A.N. 1 of 2021

Eldyne Electro Systems Pvt. Ltd. & Anr.

VS.

Union of India & Ors.

For the Appellants	:	Mr. Anindya Mitra, Sr. Advocate Mr. Abhrajit Mitra, Sr. Advocate Mr. Jisnu Chowdhury Mr. Soumya Roy Chowdhury Mr. Arnab Sarkat Mr. Anurag Sardar
For the Respondents	:	Mr. Deepak Kumar Singh Mr. Saptamita Pramanick
Hearing concluded on	:	22.09.2021
Judgment on	:	14.12.2021

Kesang Doma Bhutia, J. - This appeal is directed against the order of dismissal of W.P.A. No. 13026 of 2021, passed by the Hon'ble Single Bench, for want of jurisdiction on 31.08.2021.

Facts relevant for the purpose of disposal of the present appeal in gist are that, Appellant No. 1 is an approved listed vendor of Indian Railways in respect of Multi Section Digital Axle Counter and Single Section Digital Axle Counter since long.

The Appellant, in co-operation with one ALCATAL Germany and later with THALES Germany, used to supply the above equipment to Indian Railways for evaluating Software Embedded Electronic Systems and New/Imported Technology of Products for Railway Signaling, Policy for Cross Acceptance/ Approval was introduced by the Indian Railways in the year 2003, for the purpose of overall safety of the system, for proper installation, testing, commissioning, operation and maintenance. RDSO, Lucknow has been entrusted with the responsibility for giving safety clearance certificate to the approved listed vendors on their fulfilling the terms, requirements and conditions laid down in the cross approval policy.

The RDSO introduced fresh procedure for cross approval of software Embedded Electronic System and new/Improved Technology Products for Railway Signaling with effect from

18.12.2020 and issued a letter dated 04.03.2021 to its listed vendors including Appellant No 1 to furnish:

- a) Execution of a M.O.U between the Original Equipment Manufacturer or his authorized Indian subsidiary or his Authorized Indian Partner.
- b) Subsequent conversion of M.O.U into a proper agreement.
- c) Submission of relevant pages of the agreement by 15.03.2021.

The Appellants/Writ Petitioners having allegedly failed to fulfill the requirements sought vide letter dated 04.03.2021 read with terms and conditions of RDSO's Fresh Cross Approval Policy dated 18.12.2020, a show cause letter dated 21.04.2021 was issued asking the Writ Petitioner to submit documents showing the nature of understanding as legal partnership with the M/s Thales and having a technology transfer agreement to Indigenize and support the Thales system as per cross approval policy within 30 days.

The Appellant No 1 and Thales sent letter dated 21.05.2021, Agreement dated 05.08.2021 and Technical Transfer and Collaboration Agreement dated 29.07.2021, but Respondent No. 4, vide his letter dated 17.08.2021, temporarily delisted the

Respondent/Writ Petitioner No.1, for not being able to establish clear-cut co-relation of materials of source to Jabil Circuit India Limited Pune and materials used in product .

Being aggrieved by such temporary delisting the Writ Petitioners filed W.P.A 13026 of 2021, for issuance of writ of Mandamus commanding the Respondents to set aside the impugned order, not to give effect to such order and not to open the tender dated 13.07.2021, so long the Writ Petitioner No.1 remains temporarily delisted.

Hon'ble Single Bench, after hearing the Ld. Counsel for both sides and after taking into consideration the citations referred by both sides, has been pleased to *inter alia* hold that writ petitioner no. 1 has only received the impugned order at its registered office in Kolkata, while supply of equipment were made by writ petitioners to the RDSO Lucknow, the contract for supply was entered between the parties at Lucknow and payment, if any, towards supply made by the petitioner was at Lucknow. Writ Petitioners have impleaded other respondents having their office at Kolkata and who have nothing to do with the impugned letter of temporary delisting of the Writ Petitioners, only for the purpose of invoking the jurisdiction of this Court.

Hon'ble Single Bench has been further pleased to observe that the mere fact the Writ Petitioner No. 1 has its registered corporate office in Kolkata or, it has obtained finance from Banks in Kolkata and by impleading other authorities of Indian Railways having office in Kolkata, will not *ipso facto* confer jurisdiction to Courts in Calcutta, when substantial, integral and principal cause of action occurred at Lucknow, outside the jurisdiction of the High Court of Calcutta and thereby dismissed Writ Petition No. 13026 of 2021, for want of territorial jurisdiction and without entering into the merits of the matter.

Therefore, the only issue that requires determination in this appeal is whether the Hon'ble Single Bench was justified in dismissing the Writ Petition for want of jurisdiction?

Ld. Counsel for the appellants challenging the impugned order contended that the Ld. Judge while passing the impugned order failed to appreciate the true intent, purport and scope of Article 226(2) of the Constitution of India.

Ld. Counsel for the appellant has also contended that learned Judge has failed to take into notice that no contract whatsoever was executed in between Railway and the Writ Petitioner in respect of the disputed deal. The Writ Petitioners were to supply Multi Section

Digital Axle Counter (MSDAC) and Single Section Digital Axle Counter (SSDAC) on the basis of RDSO's approval to 18 (Eighteen) Zones of Railways across India including South-Eastern Railway and not in the office of RDSO Lucknow or no payment was made from Lucknow. The Ld. Judge has failed to appreciate the true intent and scope of citations relied upon by the appellants and has come to the wrong finding that substantial and integral part of the principal cause-of-action occurred in Lucknow outside the Jurisdiction of this Court.

The Ld. Counsel for the appellants has further contended that the Ld. Single Judge has failed to appreciate the fact that appellants have corporate registered office in Kolkata, they carry on business from such corporate registered office, that all letters pertaining to new procedure order for cross approval dated 18.12.2012 were served on the Appellant No. 1 at its Registered Office. Therefore, a part of the cause-of-action has arisen within the jurisdiction of this Court and prayed for quashing the impugned order dated 30.08.2021 with a direction to the Ld. Single Judge to decide the Writ Petition in merit.

The Ld. Counsel in support of his oral and written submissions referred to the following citations;

- 1- *UMC Technologies Private Limited vs. Food Corporation of India*
(2021) 2 SCC 551.
- 2- *State of Punjab vs. Amar Singh Harika.*
- 3- *Dulu Devi vs. State of Assam and others.* (2016) 1 SCC 622.
- 4- *Samar Pal Singh vs. Chitranjan Singh* (2016) 1 SCC 626.
- 5- *Krishan Prasad Singhi and others vs. Tax Recovery Officer-II*
(Income Tax and others) (1996) 2 CALLT 115 (HC).
- 6- *Serajuddin and Company vs. the State of Orissa and others* AIR
CAL 414.
- 7- *Community Action for Rural Development vs. Secretary, Ministry*
of Woman and Child Development & Chairman of Rastriyakosh
2015-3-LW-19.
- 8- *Cement Workers' Mandal vs. Global Cements Ltd. and Others* AIR
2019 SC 1163.

9- *Pankaj Panwar vs. Lalit Kala Akademi* AIR 2015 Cal 67.

10- *National Textile Corporation Limited and others vs. Haribox Swalram and others* (2004) 9 SCC 786.

11- *Alchemist Limited and another vs. State Bank of Sikim and others.* AIR 2007 SC 1812.

12- *Bharat Cooking Coal Limited vs. Auroma Coke Limited and others and*

13- *Nawal Kishore Sharma vs. Union of India and others* (2014) 9 SCC 329.

On the other hand, Ld. Counsel for Respondents submitted as no part of cause of action arose within the territorial jurisdiction of Calcutta High Court. The amended Article 226 (2) of the Constitution which also does not confer the territorial jurisdiction within the limit of this Court as application for registration was made by the Petitioner at Lucknow, registration as the vendor of RDSO was also made at Lucknow and all correspondence were made to the petitioners by the Respondent No.3 from Lucknow.

He has also urged that to invoke the jurisdiction of this Court the petitioners have with ill-conceived motive impleaded other Railway authorities having their office at Koilaghat. No cause of action whatsoever arose from the office of those Respondents situated at Koilaghat. Therefore, he submits that the Ld. Single Judge has rightly dismissed the Writ Petition. Learned Counsel in support of such contention has relied upon;

1- National Textile Corporation Limited and others vs. Haribox Swalram and others (2004) 9 SCC 786 and

2-Alchemist Limited and another vs. State Bank of Sikkim and others. AIR 2007 SC 1812.

Having considered the submissions made by respective Learned Counsel and, on having gone through the decisions referred by them in support of their respective contentions, it appears whether or not cause of action, wholly or in part, for filing a Writ Petition has arisen within the territorial limit of a particular High Court ought to be decided in the light the facts of this case *qua* the nature and character of proceedings under Article 226 of the Constitution. That is, whether within the limits of the High Court in which a writ application has been filed, any of the facts which would entitle the petitioner to obtain relief under Article 226 of the Constitution have

arisen. In other words, in order to maintain the writ application the petitioner has to establish that within the territorial limits of the Court's jurisdiction, *prima facie* a legal right claimed by him has been either infringed or is threatened by the respondent and such infringement may take place by causing him actual prejudice or loss of his legal rights. Accordingly, when the impugned act of the respondents takes effect within the territorial jurisdiction of a particular High Court, it may entertain the writ petition of the person aggrieved, notwithstanding that the respondents have the offices or residences outside its territorial jurisdiction. Therefore, whether this Court has territorial jurisdiction to entertain the Writ Petition or not has to be decided keeping in view the provision of Article 226(2) of the Constitution.

Profitably, for the benefit of this discussion, the provisions of Article 226 of the Constitution required to be reiterated:

(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 case, 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 enforcement or 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 in those territories.

(3) Where any party against and interim order, whether by way of injunction or stay or in any other manner is made on or in any proceeding relating to a petition under Clause (1), without-(a) furnishing to such party copies of such petition and all documents in support the plea for such interim order ; and (b) giving such party an opportunity of being heard, makes an application to the High Court for vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, of where High Court is closed on the last day of that

period, before the expiry of the next day afterwards on which the High Court is open and if application the application is not disposed of, interim order shall on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The Power conferred on a High Court by this Article shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32.

In view of Article 226 (2) of the Constitution, if a part or fraction of the cause of action arises within the territorial jurisdiction of a High Court, the concerned High Court will have the jurisdiction over the Writ Petition irrespective of the fact the respondents reside outside.

The expression “Cause of Action “ has not been defined either in the Constitution or in the Civil Procedure Code, but by virtue of its interpretation in different case laws now, it means bundle of facts which the petitioner must prove, if traversed to entitle him to a judgement in his favour.

Further, it is settled principle of law that each and every case has to be adjudicated taking into consideration the facts and circumstances as pleaded in the petition. Therefore, whether or not

cause of action in part has arisen within the territorial limit of a particular High Court, has to be exercised having regard to the facts and circumstances of each case pleaded as well as the nature of infringement of the right.

In the present case no contract whatsoever was executed in between the Appellant / Writ Petitioner No. 1 and concerned Railway Authorities or RDSO has come on record or that Appellant No. 1 had to supply the concerned equipment to RDSO Lucknow or payment used to be made from Lucknow as contended by the ld. counsel for respondents.

On the contrary from the records of this Appeal, it is seen that the Appellant No. 1 was required to supply the concerned equipment not at RDSO Lucknow, but to all the 18 zones of Railways situated across the country and was required to maintain the inventory and spare parts support system. Appellant No. 1 was required to install that equipment at the concerned sites of Railways adopting the guidelines laid down by Railways and was required to maintain those equipment by providing trained and competent staff. It is also seen that RDSO will inspect those products supplied by the Appellant No.1 at any premises where it is in use or at the place of manufacture.

The prayer no.(d) of the Appellant No.1 made in the Writ Petition reads as “ A writ of or in the nature of Mandamus do issue commanding the respondents not to take any step or further step against NIT No. 50215240 STORES/NORTH CENTRAL RAILWAY dated 13th July 2021 including opening of tenders so long as the Petitioner No.1 remains temporarily delisted.”

From such facts, it can be safely assumed that Appellant No.1 used to receive purchase orders from tenders pertaining to several Railway Zones at its registered corporate office in Kolkata, from the department concerned of different Zonal offices of Railways who have accepted its tender. Therefore, it cannot be said with certainty that payment for products purchased by different zones of Indian Railways as per the tender called by those zones is paid only by RDSO Lucknow. Thus, it appears the area of work of, Appellant No.1 is not only confined to RDSO Lucknow, but throughout the 18 zones of Railways.

While, the role of RDSO Lucknow, a wing of Indian Railways, is only to see and evaluate Software Embedded Electronic Safety System and New/ Imported Technology Product for Railway Signaling, supplied by approved listed vendors and whether those products are as per its specifications and required to assess the safety of those equipment.

From the above discussed facts it cannot be concluded with certainty that the integral part of the cause of action of the present petition has exclusively arisen at RDSO Lucknow, just because the impugned order dated 17.08.2021 was issued by Respondent No.4.

From the decision of the Hon'ble Supreme Court passed in *State of Punjab vs. Amar Singh Harika and Dulu Devi vs. State of Assam* and others and followed by this Hon'ble Court at Calcutta in *Krishna Prasad Singh and others vs. Tax Recovery Officer-II (Income Tax and others)*, *Serajuddin & Co. vs. The State of Orissa and Ors.* and *Pankaj Panwar Vs. Lalit Kala Akademi* and the Hon'ble Madras High Court in *Community Action for Rural Development vs. the Secretary, Ministry of Women and Child Development and Chairmen of Rashtriya Kosh*, it is clear that for the purpose of deciding whether facts averred by the Writ Petitioner would or would not constitute a part of the cause of action, it has to considered whether such facts constitute material essential and integral part of the cause of action. In order to maintain a Writ Application the petitioner has to establish within the territorial limits of the Court's jurisdiction *prima facie* a legal right claimed by him has been either infringed or is threatened to be infringed by the Respondents. Such infringement may take place by causing him actual injury or threat thereof. For giving rise to a cause of action for filing Writ Petition what is material is whether or not within the

territorial limits of the said High Court there has been any proximate or direct effect upon the petitioner.

In the present case the Respondent No. 4 has issued the order of temporary delisting of the Appellant No. 1, one of its approved vendors on 17.08.2021 and which has compelled the Appellant no.1 to file the writ petition. The Appellant No.1 was served with such order affecting its legal right and having its effect on its business run from Kolkata at its registered corporate office at Kolkata.

In view of ratio of above decisions, order of temporary delisting of the Appellant No.1 has become effective only when it was communicated and served on the Appellant No.1. A part of cause of action has therefore arisen when the impugned order is implemented. Therefore, cause of action for assailing such impugned order would arise at the place of communication that is within the limits of this Court.

Ld. Counsel for the Respondents has referred to In Re: *National Textile Corporation Ltd.* and urged that merely because the petitioners carry on business in Kolkata, all correspondence were made from Kolkata and tender was filed from Kolkata, do not give rise to integral part of cause of action as such facts have no nexus with the dispute involved in the case.

It is true that in *National Textiles* (supra), the writ petitioners have their place of business at Kolkata and from where they used to place orders to the textile mills situated in Bombay (Management of which was undertaken by Central Govt. before those mills could fully discharge their liabilities to the Petitioners, in respect of the orders which they had accepted from petitioners prior to take over), supply was made from Bombay and payment was also made in Bombay. The petitioners had filed the said case against National Textiles Corporation, the Custodian of those Mills with which the petitioners had actual business dealings. More so, the petitioners had failed to produce the vouchers to substantiate their claim over undelivered consignment.

But, in the present case the petitioner has alleged that the impugned order of temporary delisting affecting its legal right and having adverse effect on its business was served to it at its registered office in Kolkata and as such a part of cause of action has arisen within the limits of this court, where the order of delisting has taken effects.

The Ld. Counsel for the respondents has also referred to *In Re: Alchemist* and urged that the facts of the present case and that of the *In Re: Alchemist* are almost *pari materia and therefore*, that the very fact the petitioners have their registered corporate office in Kolkata or

it carries on business in Kolkata or it is financed by banks in Kolkata or it has received the impugned order in Kolkata do not *ipso facto* lead to the conclusion that those facts give rise to a cause-of-action within the limits of this Court and those facts have no bearing with the dispute involved in this case as each and every matter relating to the products of the petitioner no.1 was controlled by RDSO Lucknow.

In Re: Alchemist the Govt. of Sikkim was desirous of dis-investing 49% of its Equity Capital in State Bank Of Sikkim to a strategic partner with transfer of management and made advertisement in newspaper inviting offer, but the facts of the present case as discussed above is totally different from the *Alchemist* and we cannot put both the cases on the same footing. Therefore, this Court is unable to accept the submission made by the Ld. Counsel for the Respondents.

Since the impugned order of temporary delisting affecting the Appellant no.1 would be effective only upon communication to the Appellant No1 and cause of action for assailing such would arise at the place where it was communicated for such reason, this Court holds that the integral part of cause-of-action for this *lis* having arisen within the territorial limits of this Court, the Appeal succeeds and is hereby allowed.

The impugned order of the Hon'ble Single Bench dated 30.08.21 stands accordingly set aside.

W.P.A. No.13026 of 2021 is accordingly remanded to the Hon'ble Single Bench for a decision now on merits. This Court clarifies that it has only decided the issue of territorial jurisdiction and not beyond.

The protection already granted by this Court at the interim stage and thereafter extended in favour of the appellants shall continue till appropriate orders are passed by Hon'ble Single Bench.

MAT No.927 of 2021 with **CAN NO.1 of 2021** stand accordingly **disposed of**.

There will be no order as to costs.

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.)