IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 05, 2021

\+ W.P.(C) 6773/2020

TULSIDAS T SURYAWANSHI

..... Petitioner

Through: Mr. Himanshu Kaushik, Adv.

versus

BHARAT PETROLEUM CORP LTD

..... Respondent

Through: Mr. Pravin H. Parekh, Sr. Adv. with Mr. Sumit Goel, Mr. Abhiram Naik, Ms. Anwesha Padhi & Mr. Paritosh Arora, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:

> *"It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:*
>
> *a. Quash the impugned order dated 08.09.2020 titled as "NON-ACCEPTANCE OF REQUEST FOR GRANT OF VRS" issued by the respondent rejecting the request for the benefits of Voluntary retirement Scheme and / or;*
>
> *b. Direct the respondent to grant and extend the*

benefits of the Voluntary Retirement Scheme to the petitioner and / or;

c. Provide ad-interim/further protection from any corrosive action by the Respondent and /or;

d. grant any other relief or reliefs as may be deemed fit and proper under the circumstances of the case in the interest of justice."

2. It is the case of the petitioner and so contended by his counsel that the petitioner is aggrieved by the order dated September 08, 2020 whereby the respondent has not accepted the application of the petitioner for grant of voluntary retirement under the Bharat Petroleum Voluntary Retirement Scheme-2020 ('Scheme of 2020', for short).

3. Some of the facts relevant for the purpose of the writ petition are that the petitioner was appointed in the respondent Corporation as a Group A (Officer Trainee) employee on August 01, 1988 and was posted at Mumbai. A perusal of the writ petition would reveal that the petitioner was granted promotions and was also transferred to various locations within the country. The last promotion was granted to the petitioner on April 01, 2016 when he was promoted to Group E of the Management Cadre. He was at the relevant point of time posted in Noida. That on June 05, 2018, he was transferred to Bina (Madhya Pradesh) as Chief Manager OPS (Indl.). Later on May 09, 2019 he was re-designated as Chief OPS, In-charge (INC) Bina. It is his case that on July 23, 2020, the respondent Corporation issued Scheme of 2020 for employees of the Corporation [excluding

active Sportspersons (employees recruited as Sportsperson who are yet to be deployed in mainstream) and Board level Executive], who have completed 45 years of age. On July 24, 2020, the petitioner submitted his application for availing the benefit of Scheme of 2020.

4. According to him, the primary reason for seeking the voluntarily retirement was the health condition of his spouse. Finally on September 08, 2020 the impugned communication was issued whereby his application for seeking voluntary retirement was rejected. The submission of the learned counsel for the petitioner is that the impugned order is at variance with the scheme, inasmuch as the scheme signifies the termination of employer-employee relationship voluntarily by working in exchange of retirement benefits. According to him, the concept of voluntarily retirement does not leave any employer with any right or discretion to cause abrogation of fundamental rights.

5. That apart in order to fulfill his responsibility toward his medically unfit spouse, the petitioner having tendered the application for voluntarily retirement the same could not have been rejected by the respondent. He stated that many applicants in the same grade, age and qualification have been favoured, whereas the petitioner has been denied the benefit of the scheme. According to him, the non-acceptance of the request is also discriminatory, inasmuch as the respondent Corporation has accepted more applications of the employees of the non-management category as compared to the management category employees.

6. A Counter-affidavit has been filed and also contended by Mr. Pravin H. Parekh, learned Senior Counsel appearing for the respondent that the present petition filed by the petitioner is not maintainable in this Court on the ground that it lacks territorial jurisdiction. In other words, it is his submission that the Scheme of 2020 has been floated from the office in Mumbai and the petitioner is working in Bina (Madhya Pradesh), no part of cause of action has arisen in Delhi as, even the impugned communication has been issued from the Mumbai Office to the petitioner working at Bina (Madhya Pradesh). This Court shall not entertain the present writ petition and dismiss the same on this ground. In support of his submission Mr. Parekh has relied upon the judgments of the Supreme Court in the case of ***Oil and Natural Gas Commission v. Utpal Kumar Basu an Ors., (1994) 4 SCC 711, Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254.***

7. Mr. Parekh has also stated that even if the respondent Corporation has a branch office at Delhi would not confer the jurisdiction on this Court in view of the judgment of this Court in the case of ***Kensoft Infotec Ltd. v. R.S. Krishnaswami and Ors., 2007 (35) PTC 627 (Delhi).*** That apart, he contests the plea of the learned counsel for the petitioner that though posted at Bina (Madhya Pradesh) he is a resident of Delhi to confer jurisdiction on this Court to entertain the petition.

8. Even insofar as the Scheme of 2020 is concerned, Mr. Parekh has submitted that the object of the Scheme of 2020 is to maintain manpower across all cadres and groups and to minimize

the erosion of required talent for the smooth functioning of the Corporation. That apart, according to him, it is not necessary that every application submitted under the Scheme of 2020 need to be accepted.

9. According to him, as per the Scheme, the requests for VRS has to be considered at the discretion of the management, subject to the employee meeting the terms and conditions of the scheme. The scoring five marks were awarded on the basis of age, academic qualifications and performance marks. The above said eligibility score of five marks was defined in a manner so as to retain talent i.e., higher the educational qualification lesser was the score prescribed and similarly higher the performance marks in appraisals lesser will be the score.

10. According to Mr. Parekh, the minimum score of five marks was only one of the eligibility criterion for deciding the applications. The fulfillment of this minimum eligibility score of five marks did not mean that the request of an individual for voluntary retirement would be necessarily accepted. The other factors to be taken into account by the Management were ultimate growth potential of the individual, his / her health conditions, maintenance of adequate manpower, minimization of erosion of required talent in the organization etc.

11. Mr. Parekh submitted that the discretion against the petitioner has been properly and reasonably exercised. In this regard, he has stated that the employees of the BPCL are categorized into cadres of Management and Non-Management Staff. The entry level qualification and roles performed in these

cadres are distinct. The VRS applications were examined on well defined principles in line with the Scheme of 2020. It is submitted that 15 VRS applications of non-management staff were not accepted as those employees did not meet the eligibility score of five marks as required under the Scheme. He further stated that the higher acceptance rate of VRS applications in Non-Management Cadre is owing to several roles being no longer relevant due to technological advancement and changes in Business Models. Hence, their retention was not as critical as that of Management Staff for the smooth functioning of the organization. Even in the Long Term Settlement between the Management and the Unions, workmen roles are being declared as redundant / irrelevant and therefore there was no reason for not accepting the VRS applications of Non-Management Staff.

12. He stated that the VRS Scheme of 2020, in order to retain talent amongst Management staff to ensure smooth functioning of the Corporation, the following talent criteria was laid down and approved.

> *"a) Performance criteria – Five yearly average appraisal rating beyond a cut off mark.*
>
> *b) Employees promoted to the next higher grade during the year 2020 excluding those who got promotion after a period of 7 years*
>
> *c) Potential criteria – Staff meeting the cut off marks in potential assessment score. The Potential Score is a factor of:*
>
> *(i) Competency Score – Competency score is a*

measurement of ability which is arrived through a multi-rater assessment of 12 leadership competencies.

(ii) Engagement / Aspiration score – Aspiration and Engagement is assessed by the Line Manager of the staff, who recommends an Aspiration Score and an Engagement Score for the staff. Aspiration is defined as an individual's propensity to raise his / her bar on standards and Engagement is defined as the level of commitment shown by an individual in his work, which can be seen in the way she / he carries out her / his role responsibilities.

(iii) Talent Review Panel (TRP) Score – Based on the Competency, Engagement and Aspiration Score, the Line Manager presents to a Talent Review Panel (TRP), the strengths, areas of development etc. of his direct reports. The Talent Review Panel discusses each staff in detail basis the Competency, Aspiration and Engagement sores, areas of development proposed by the Line Manager and assigns a TRP score. The TRP panel comprises of senior staff from the respective Business and HR.

d) Staff who have attended company sponsored customized leadership development programs and / or Company Sponsored Executive MBA."

13. According to Mr. Parekh, the petitioner being an employee of Management staff, was identified as talent, as his Potential Assessment Score was more than the cutoff marks for

Potential Assessment assessed through the Potential Assessment system followed by the organization. Hence his application was not accepted. He also stated that 43 applications were received from employees in Job Group E (same as that of the petitioner) who were 54 + years of age. Out of these 19 applications were accepted and 24 applications were rejected. It is thus clear that the consideration of VRS applications was on the basis of clearly laid down parameters for identification and retention of talent amongst employees of Management staff and there was no arbitrariness. He relied upon Clause 5(f) of the Scheme of 2020 which reads as under:

> *"(f) Employees of all cadres above the age of 45 who do not secure the minimum eligibility score of 5 (five) for VRS approval and who are facing any severely grave personal circumstances related to Self or Spouse / children which hamper him / her from effectively discharging their duties etc will be provided an additional consideration, subject to a maximum of twenty five persons all India……*
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> *Management will consider employee's eligible for consideration of such circumstances as mentioned above only if the Committee approving the same are satisfied with the evidence submitted to them by such a VRS applicant…… In case any employee has any extenuating reasons for seeking VRS, he / she must mention it clearly in the VRS application and provide documentary evidence for the same……."*

14. According to Mr. Parekh, the provision of consideration of VRS applications under extenuating circumstances was primarily for employees who do not secure the minimum eligibility score of five marks but are facing any severely grave personal circumstances which hamper them for effectively discharging their duties. However, application of any employee who made a mention of extenuating reasons was evaluated even if he / she had secured an eligibility score of five and above. The circumstances wherein VRS would be extended:

(i) Staff is seriously incapacitated;

(ii) Self / spouse / child having serious mental illness of extreme order which necessitates continuous care and looking after;

(iii) Self / spouse / child physically incapacitated by illness / congenital issues of extreme order which necessitates continuous care and looking after.

15. The documents submitted by the applicants along with their VRS applications were verified in consultation with the doctors on the panel of the respondent Corporation.

16. The petitioner had represented the health conditions of his spouse for consideration in his VRS application under severely grave personal circumstances. He stated, in his application that the Spouse is staying alone in Delhi as she works for Siemens at Gurugram and also has health issues like Chronic Hypertension for last 15 years and has recently developed vision related issues making her undergo surgery last year. Son is in Hyderabad and daughter is in Bangalore pursuing their Career. Documentary

evidence on health issues referred above, have already been submitted along with Medical Claims.

17. He stated, the very fact that the petitioner's wife is working in Siemens at Gurugram shows she is neither physically incapacitated nor does she requires continuous care or looking after and thus cannot be classified as a severely grave personal circumstances which hampers him from effectively discharging his duties. Keeping in view the above laid down criteria; the management did not accept the same on the ground of grave personal circumstances. Further, keeping in view the policy of the respondent Corporation of approval, it is not practically possible to post employees as per the posting of their spouses.

18. He relied upon the judgments of the Supreme Court in the case of ***Chairman & M.D. Indian Overseas Bank v. Tribhuwan Nath Srivastava, (2011) 3 SCC 475, C.V. Francis v. Union of India & Ors., (2013) 14 SCC 486*** and ***State of U.P. and Ors. v. Achal Singh, AIR (2018) SC 3940,*** in support of his submission that the voluntary retirement cannot be claimed as a matter of right. He seeks the dismissal of the writ petition.

19. On the other hand, in the rejoinder submissions, Mr. Himanshu Kaushik, learned counsel for petitioner would dispute the submission of Mr. Parekh that this Court does not have jurisdiction to entertain the writ petition in this Court, inasmuch as the petitioner has been regularly visiting Delhi by taking personal leave every month to take care of his family in Delhi. He always continues the work on BPCL System while on leave, from his Delhi address. The respondent Corporation has enjoyed

and accepted the services of the petitioner from his Delhi residence during his absence from his Bina Office without giving any due credit whatsoever for such complete dedication.

20. On the objective and purpose of the Scheme of 2020, he stated the real objective for offering the voluntarily retirement scheme; (i) with a view to enable employees, who are not in a position to continue in service of the corporation due to various personal reasons; (ii) right sizing the manpower considering the impending disinvestment of BPCL; (iii) to reduce the number of non-performer, low performers, employees rendered surplus or redundant in view of change in business process, technological advancement etc. He stated that the case of the petitioner is that the application of the petitioner for VRS need to have been accepted more so under the unprecedented pandemic situation, taking down the entire world with millions of deaths allover; petitioner's spouse staying alone in Delhi, where mortality rate being one of the highest in the world at 65%, in the category of *"patient with comorbid conditions"*. It is a case which clearly falls under the extenuating circumstances. It is precisely for this reason the petitioner has immediately applied on the very next day of VRS, forgoing his five years of service and associated benefits, so as to salvage already deteriorating health condition of family / Spouse. As in life, health matters take precedence over all other matters.

21. He also contested the plea of Mr. Parekh regarding the discretion available to the respondent under the Scheme of 2020. He also stated that under the VRS Scheme of 2011, 2014 & 2017

many employees have been considered favourably by lowering their marks for the year in which VRS was floated. Similarly, according to him, the discretion has not been properly and reasonably exercised by the respondent Corporation. Mr. Kaushik reiterated the prayer made in the petition for quashing the order dated September 08, 2020 whereby the request made by the petitioner was rejected.

22. Having heard the learned counsel for the parties, the first issue which arises for consideration is whether this Court has the territorial jurisdiction to entertain the writ petition. I have already reproduced the submissions made by Mr. Kaushik and Mr. Parekh. There is no dispute that the Scheme of 2020 was floated from Mumbai. There is no dispute that the petitioner had submitted his application from Bina in Madhya Pradesh where he is posted. It is also not contested that the document i.e. impugned communication dated September 08, 2020 was sent from Mumbai office to the petitioner posted at Bina (Madhya Pradesh). The grievance of the petitioner is that the respondent Corporation could not have rejected, the application of the petitioner for voluntarily retirement. If that be so, no cause of action has arisen within the territorial jurisdiction of this Court.

23. The plea of Mr. Kaushik that this Court has the territorial jurisdiction is primarily because of the fact that the petitioner is residing in Delhi since 2009. Even after his transfer from Delhi to Bina (Madhya Pradesh) the address of Delhi is the address in the records of the respondent Corporation. Further, he has been regularly visiting Delhi by taking leave every month. Suffice to

state, the submissions made by Mr. Kaushik are not appealing.

24. The issue of territorial jurisdiction of this Court has to be seen from the point of view where exactly the cause of action has arisen in favour of the petitioner to file a petition. Surely, looking at the facts narrated above, no part of cause of action, like the issuance of the VRS / submission of application of VRS / rejection of request of the petitioner for VRS have emanated from Delhi. They have emanated either from Mumbai or in Bina (Madhya Pradesh). Mr. Parekh is justified in relying upon the judgment of the Supreme Court in the case of ***Oil and Natural Gas Commission (supra)*** wherein in paras 5, 6 & 8, the Supreme Court has held as under:

> *"5. xxx xxx 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 impart, 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.

6. xxx xxxx Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition.

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8. xxx xxx Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. 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 to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. xxx"*

(emphasis supplied)

25. In ***Kusum Ingots & Alloys Ltd. (supra)*** the Court has in paras 16, 18 and 30 held as under:

"16. In Union of India and Others v. Adani Exports Ltd. and Another [(2002) 1 SCC 567] it was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction.

xxx xxx xxx

18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the court.

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xxx xxx xxx

30. <u>We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.</u>"

(emphasis supplied)

26. That apart, Mr. Parekh is also justified in relying upon the judgment of this Court in ***Kensoft Infotec Ltd. (supra)*** wherein this Court has in para 61 held as under:

> *"61. xxx In my view, the mere fact that one of the branch offices of the Defendant No. 3 is located at Delhi would not ipso facto confer jurisdiction on this Court. As stated above, no cause of action, much less a substantial or integral part of the cause of action, has arisen within the territorial jurisdiction of this Court. xxx xxx xxx*
>
> *It will be too far-fetched to argue that the location of subordinate offices of one of Defendants, per se, will vest jurisdiction in Courts all over India, particularly in the absence of any specific averment made by the Plaintiff relating to any act of infringing the rights of the Plaintiff."*

27. So, it must be held that the present petition filed by the petitioner is not maintainable in this Court as the cause of action has arisen outsaid the territorial jurisdiction of this Court. In view of my aforesaid conclusion, as this Court lacks territorial jurisdiction to entertain the present petition, I refrain from going into the legality of the impugned communication dated September 08, 2020 by which the respondent has not accepted the request of the petitioner for granting voluntarily retirement under Scheme of 2020. Hence, the present petition is dismissed on the ground that this Court lacks the territorial jurisdiction, as no part of cause of action has arisen in Delhi.

28. Liberty is with the petitioner to approach the Court of proper jurisdiction with regard to his challenge to the impugned communication dated September 08, 2020.

V. KAMESWAR RAO, J

FEBRUARY 05, 2021/*aky*