

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 30381 of 2014

Industries Commerce & Association & Ors.

Versus

Coal India Limited & Ors.

For the petitioner	:	Ms. Vineeta Meharia Mr. Kanishk Kejriwal Mr. Amit Meharia Ms. Paramita Banerjee Ms. Subika Paul Ms. Amrita Das Advocates
For the Coal India Ltd.	:	Mr. Pradipta Basu Advocate
For the respondent nos. 5 to 9 (BCCL)	:	Mr. Saikat Roy Chowdhury Mr. Aritra Ghosh
Heard lastly on	:	10.11.2022
Judgment on	:	16.12.2022

Jay Sengupta, J.:

1. An initial point of demur has been raised by the respondents 5 to 9. It is contended by them that this Court lacks territorial jurisdiction to decide the instant writ petition.
2. Therefore, at the outset this Court is inclined to decide the question of maintainability of the writ petition on the question of territorial jurisdiction.
3. Mr. Saikat Roy Chowdhury along with Mr. Aritra Ghosh, learned counsels for the respondent nos. 5 to 9, submitted as follows. The writ petition was not properly affirmed. The instant writ petition was filed by 91 petitioners challenging the wireless message dated 13.06.2008 issued by the respondent Bharat Coking Coal Limited (BCCL) imposing Washery Recovery Charges on NLW (Non-Linked to Washery) Coking Coal. The writ petitioners alleged that under several and distinct Fuel Supply Agreements (FSA) they received NLW Coking Coal from the BCCL under the system of linkage of various grades. As the very generic name of Coking Coal suggested that the same was non-linked to washery, the imposed Washery Recovery Charges were ex facie illegal. However, this Court lacked territorial jurisdiction to hear and decide the instant writ petition. First, all the 91 FSAs were signed and executed at Dhanbad within the State of Jharkhand. The stamp papers used belonged to the State of Jharkhand. The address of the BCCL given in the company was of Dhanbad. On the other hand, the Coal India Limited (CIL) being the parent company of the BCCL was not a party to the contract (FSA) although the FSA provided that the price of coal and the grade of coal was to be determined by the CIL or the BCCL. In the said contract, the

BCCL was the seller and the CIL had no role to play. Clause 19.3 of the governing law stipulated that the Courts of Dhanbad should have exclusive jurisdiction in all matters under the agreement. In the present case, the petitioners' companies challenged the imposition of levy, which was very much the subject matter of the contract itself. In fact, there was no averment or prayer that the writ petitioners wanted to quash the alleged policy decision of the CIL. Merely because the BCCL was a subsidiary of the CIL and the head office of the CIL was in West Bengal, the same would not confer jurisdiction on this Court to entertain the writ. On same facts and circumstances arising out of self-same causes, the writ petitioners nos. 18, 21, 38, 48, 52 and 55 had earlier approached the Hon'ble High Court at Jharkhand for appropriate relief. Earlier, in *Kala Coke Pvt. Ltd. Versus CIL and others*, WP No. 8055(W) of 2016, the writ petitioners therein challenged the self-same wireless message issued by the BCCL and this Court, by an order dated 19.01.2017, dismissed the writ petition on the ground of lack of territorial jurisdiction. Reliance was placed on *Eastern Coalfields Ltd. Versus Kalyan Banerjee*, (2008) 3 SCC 456 where it was held that only because the head office of the parent company was situated in West Bengal, the same by itself would not confer any jurisdiction upon the Calcutta High Court, particularly when the head office had nothing to do with the order of punishment passed against the respondent. Reliance was also placed on the decisions in *M/s Kaizan Industries Ltd. Versus BSNL and others*, WP No. 23220(W) of 2009 and *Nawal Kishore Sharma versus Union of India*, 2014 9 SCC 329. Reliance was placed on *Sonic Surgical versus National Insurance*

Company Ltd., (2010) 1 SCC 135 where it was held that to substantiate that location of branch offices simplicitor did not confer territorial jurisdiction without ascertaining accrual of cause of action. Here, no part of cause of action arose within the territorial jurisdiction of this Court nor were there any other reason available for this Court to entertain the writ petition. In view of the above, the writ petition ought to be dismissed on the ground of maintainability alone.

4. Ms. Vineeta Meharia, learned counsel appearing on behalf of the petitioners, submitted as follows. The writ petitioner no. 1 was an association within the meaning of Section 8 of the Companies Act, 2013. It was formed for protecting and agitating the grievances of its members including the writ petitioners 2 to 91. The writ petitioner no. 1 had made written representations to the CIL agitating the grievances of petitioners 2 to 91. In fact, the BCCL had recognised the writ petitioner no. 1 and issued notices to it. Besides, the deponent verified the writ petition as the Joint Secretary of the writ petitioner no. 1 and the constituted attorney of petitioner nos. 2 to 91. Moreover, there was no defect regarding specification of those parts that were within the knowledge of the deponent. The CIL was the parent company and the BCCL was a wholly own subsidiary of the CIL. The CIL controlled the BCCL. It was the decision making authority. The policy guidelines issued by the CIL were binding on the BCCL. This would be evident from a plain reading of the Articles of the Association of the BCCL. On the point that policy decisions of the CIL were binding on its subsidiaries, reliance was placed on the case of SJ Coke, (1997) 1 CHN 67.

In matters pertaining to grading and pricing of coal, the CIL was the competent authority without whose sanction the BCCL could not levy any charge. This would be evident from the price notification issued by the BCCL. As the CIL permitted the BCCL to levy their charges in question illegally, it failed in its duty to ensure that its grade/price notifications were followed by the BCCL. Thus, both the CIL and the BCCL were guilty of such violation. Prayers were directed even against the CIL. Clause 19.3 of the FSA that dealt with courts of Dhanbad having exclusive jurisdiction in all matters under the agreement had no application in the instant case as the subject matter of dispute was the violation of policy of the CIL, which was not a matter under the FSA. In any event, the expression Courts of Dhanbad was vague and no writ petition could be filed in the Courts of Dhanbad. A right under Article 226 of the Constitution could not be contracted out by reason of a forum selection Clause. Reliance was placed on Ashok Kumar Saboo, (2007) 3 CHN 533. On the contrary, the unreported decision in M/s Kaizen Industries Ltd. (supra) was passed by a Single Judge. As regards the issue of lack of territorial jurisdiction, it might be germane to mention that prior to the Constitution (15th) Amendment Act, 1963, a High Court had jurisdiction to entertain a writ petition only if the respondent authority had a seat/office within its territory. After insertion of Clause (1-A) in Article 226 which was subsequently renumbered as Clause (2) by the Amendment of 1976, a High Court had got jurisdiction to entertain a writ petition also if part/whole of cause of action arose within its territory. Therefore, a writ under Article 226 was now maintainable even if part/whole of the cause of

action arose within its territory. On this, reliance was placed on the decisions in Pottery Mazdoor, (1989) 1 CHN 369, Jharia Talkies, (1992) 2 CHN 80, Navin Chandra N. Majithia, (2000) 7 SCC 640, Indradeo Yavav, (2005) 2 CHN 542, Alchemist, (2007) 11 SCC 335, Ashok Kumar Saboo (2007) 3 CHN 533, Zafar Khan (2009) 2 CHN 1, New India Assurance, AIR 2010 Del 43 (FB) Hanimal Laboratory, 2015 SCC Online Cal 4448 and Manis Kumar. Mishra, AIR 2020 ALL 97(FB). Even in the decision of Kalyan Banerjee as relied upon by the respondent, it recognised that Articles 226 (1) and 226 (2) were independent grounds for conferring territorial jurisdiction. In ONGC Case (supra), obviously 'head office of the company' referred to the head office of the writ petitioner company and not the respondent company. The decision in Kalyan Banerjee was distinguished by a Division Bench of this Court in Zafar Khan (supra). The decision in Navinchandra N. Majithia Alchemist ought to be preferred over the decision in Kalyan Banerjee's Case. The Kala Coke Case (supra) was distinguishable from the present facts in as much as the office of the BCCL was a party respondent there and unlike some of the writ petitioners in the present case, the petitioner in Kala Coke did not have its office within jurisdiction of the Court and in Kala Coke, no representation was made by the petitioner to the CIL within jurisdiction unlike here. Although the case of Alchemist (supra) was distinguishable on facts, it supported the case of the writ petitioners in as much as it recognised the two independent grounds for invocation of jurisdiction under Article 226. In the light of the foregoing decisions, the petitioners sought to invoke jurisdiction of this Court on the following grounds. CIL was the

parent company of the BCCL and was controlling it. CIL was to ensure that its policy decision was not violated by its decision. CIL had an office within jurisdiction. BCCL too had an administrative office within jurisdiction. On this count alone, this High Court had jurisdiction to entertain the writ petition under Article 226 (1). The petitioners could also fairly invoke this Court's jurisdiction on the ground that part of cause of action arose here. After all the policy decision of CIL regarding levy was taken within jurisdiction the grade/grade and price notifications were issued by CIL within jurisdiction. Violation of the policy decisions of CIL took place within jurisdiction. BCCL wrote letter to CIL requesting to it alter definition of NLW coal at the office of CIL within jurisdiction. Representations were made by petitioners to CIL requesting it to intervene and direct BCCL to withdraw the levy. Reliance was also claimed against the CIL. That apart, the writ petitioners 13, 14, 15, 16, 25, 36, 37, 44, 79 and 81 had their offices within jurisdiction. Therefore, the preliminary objection of the respondents should be rejected and the writ petition should be heard on merits.

5. I heard the learned counsels for the parties and perused the writ petition, the affidavits filed and the written notes of submissions on the ground of maintainability.

6. First, it does not appear that there is any defect in the manner in which the writ petition was affirmed. I agree with the submissions of the learned counsel for the petitioners in this regard.

7. It appears that the petitioners have primarily challenged a wireless message dated 13.06.2008 issued by the BCCL imposing Washery Recovery

Charges on NLW coking coal. The petitioners alleged that under the respective Fuel Supply Agreements (FSAs), they received NLW coking coal from the BCCL. The same was not linked to washery. However, the respondents contended that these points ought to be taken up before the High Court at Jharkhand and not here.

8. In this context it may be germane to cull out the admitted facts as under -

- (a) All the 91 FSAs were signed at executed at Dhanbad.
- (b) Stamp papers used belonged to the State of Jharkhand.
- (c) The address of the BCCL was given as that of Dhanbad.
- (d) The CIL, the parent company of the BCCL was not a party to the contract (FSA).
- (e) Clause 91.3 of the governing law stipulated that the Courts at Dhanbad shall be exclusive jurisdiction in all matters under the agreement.
- (f) There was a representation made to the CIL as well.

9. Clause 91.3 of the FSA provided that the Courts of Dhanbad would have exclusive jurisdiction in matters under the agreement. First, there is no High Court at Dhanbad. Secondly, no policy decision of the CIL, albeit having effect on the business or the FSA, was purportedly taken within the jurisdiction of Dhanbad. In fact, a policy decision like that is also not a subject matter of the FSA. Clause 91.3 is thus not a capable of contracting out jurisdiction of this Court to entertain a writ petition if the same is otherwise entertainable.

10. However, there is no averment or prayer in the writ petition that the petitioners wanted to quash the alleged policy decision of the CIL.

11. It is settled law that Article 226 of the Constitution of India confers jurisdiction on a High Court to act in two different modes. Clause (1) of Article 226 allows the Court to act if the respondent authority had a seat/office within its territory while Clause (2) permits a High Court to entertain a writ petition if a part of the cause of action takes place in its jurisdiction. Even the decision in *Kalyan Banerjee (supra)* recognises that Article 226 (1) and 226 (2) were independent grounds for conferring territorial jurisdiction.

12. One has to see, quite independently, whether this Court can entertain the instant petition either in terms of Clause (1) or Clause (2) of Article 226 of the Constitution.

13. First, the policy decision of the CIL does not seem to have a direct bearing on the main prayer in the writ petition. Nor was the CIL a party to the FSA. Only by giving a notice or representation to the CIL, such entity cannot be dragged into the present lis. Thus, it will be too far-fetched to link the policy decision of the CIL to the present dispute that has cropped up between the petitioners and the BCCL. The prayers made by the petitioners in this petition could very well be there in a litigation between the petitioners and the BCCL, without even involving the CIL. Therefore, regardless of whether there is a residuary prayer made in the petition or not, the cause of action alleged in the writ petition does not directly bring within its ambit the

policy decision of the CIL and thus, is not capable of providing a reason for this Court to interfere into the matter on such an application.

14. Now, let us see whether Clause (1) of Article 226 can provide any reason for this Court to interfere. As the CIL was not a party to the FSA and as no specific prayer has been made challenging the policy decisions of the CIL in this writ petition, the CIL can at best be treated as a proforma respondent herein. Merely because the CIL also has an address within the jurisdiction of this Court, it would not be just and proper for this Court to entertain the litigation as the petitioners do not have a subsisting jural relationship with the CIL. This is more so when several other writ petitions on connected issues have already been entertained by the High Court at Jharkhand and this Court in Kala Coke (supra) has refused to entertain the writ petition on the ground of lack of jurisdiction.

15. Therefore, I find no reason to depart from the view taken by this Court in Kala Coke (supra).

16. In view of the above, I find that this Court cannot entertain this writ petition because it lacks the territorial jurisdiction to do so.

17. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs.

18. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)