

05.01.2022
Item 29
Court No.1.
S. De

Through Video Conference

Circuit Bench of Calcutta High Court at Jalpaiguri.

W.P.A. 1014 of 2021

Bhabhesh Chandra Barman.

Vs

The Union of India & Others

Mr. Kumar Shantanu,
Mr. Sourav Kundu,
...for the petitioner.

Mr. Sudipto Kumar Mazumder, Ld. AASG,
Mr. Ajoy Kumar Singhenia,
...for the Union of India.

The petitioner was a Constable (GD). He was posted at 22 Bn. SSB, Maharajganj, Uttar Pradesh. He was charge-sheeted for having committed alleged irregularities. Disciplinary proceedings were initiated. Such proceedings were held at Maharajganj. Pursuant to such proceedings, his service was terminated by the competent authority from its office at 22 Bn. SSB at Maharajganj. He preferred a statutory appeal which was dismissed by the appellate authority located in Lucknow, Uttar Pradesh. He preferred a second appeal although there was no provision therefor. Such second appeal was also dismissed by the Inspector General of SSB at New Delhi. The writ petitioner has challenged all these orders in this writ application.

Learned Assistant Solicitor General appearing for the Union of India has raised a preliminary objection as regards the jurisdiction of this Court to entertain this writ petition. I am inclined to uphold such objection for the reasons stated hereinafter.

As would be evident from what I have recorded above, the entire cause of action of the writ petitioner arose in the State of Uttar Pradesh.

Learned advocate for the petitioner says that the order of SSB, New Delhi dismissing the petitioner's second appeal was received by the petitioner at his residence in Cooch Behar. This would give territorial jurisdiction to the Calcutta High Court to entertain this writ application.

I am unable to agree with learned advocate for the petitioner. The law as I understand is that unless the whole or part of the petitioner's cause of action has arisen within the territorial jurisdiction of a High Court, that High Court ordinarily ought not to exercise jurisdiction under Article 226 of the Constitution of India.

The petitioner has impleaded the Deputy Inspector General, State Headquarters, SSB, Jalpaiguri as one of the respondents. The State Headquarters of SSB has nothing to do with the alleged cause of action of the petitioner. The expression 'cause of action' has not been defined in

the Constitution of India. Generally speaking, 'cause of action' may be described as a bundle of material facts necessary for the plaintiff/petitioner to prove before he can succeed. As observed by the Hon'ble Supreme Court in the case of ***Alchemist Ltd. & Anr. v. State Bank of Sikkim & Ors. (2007) 11 SCC 335***, for the purpose of deciding whether the facts averred by the petitioner would or would not constitute a part of cause of action, one has to consider whether such facts constitute a material, essential or integral part of the cause of action. 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. The entire bundle of facts pleaded may not constitute the cause of action as what are required to be proved are material facts.

In the case of ***Om Prakash Srivastava v. Union of India, (2006) 6 SCC 207*** the Hon'ble Apex court observed that in order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the concerned High Courts' jurisdiction.

In the case of ***State of Rajasthan v. Swaika Properties, (1985) 3 SCR 598***, the petitioner had challenged proceedings for acquisition of land situated in the State of Rajasthan, in the Calcutta High Court.

The jurisdiction of the Calcutta High Court was invoked on the basis that the petitioner received the notice of acquisition in Calcutta. The matter was ultimately carried to the Supreme Court and it was held that the receipt of notice of the acquisition proceedings by the petitioner in Calcutta did not constitute an integral part of the cause of action. All that the petitioner was required to prove in the writ petition was that the land belonged to him and that the same was being wrongfully taken away by the Government. This was sought to be done in the State of Rajasthan.

In the case of ***Oil and Natural Gas Commission v. Utpal Kumar Basu, (1994) 4 SCC 711***, the Supreme Court held on facts that the petitioner's reading of the advertisement for submitting tenders in relation to a contract, in Calcutta, did not constitute part of cause of action and hence the Calcutta High Court had no jurisdiction to entertain the writ petition. Reading a tender notice in relation to the action of inviting tenders for entering into a contract is not an integral part of the cause of action since, proof of the factum of reading of the tender notice is not required for the petitioner to succeed.

In the present case, as recorded above, the only thing that happened in the State of West Bengal is that the petitioner received a copy of the order of

dismissal of his second appeal at his residence in Cooch Behar. In order to succeed in the writ petition, it would not be necessary for the petitioner to prove this factum. It is irrelevant as to where he received copy of the said order. His alleged cause of action may have arisen in Maharajganj (where he was posted and where the disciplinary proceedings were held and from where his termination letter was issued), or at Lucknow (where his statutory appeal was dismissed) or at New Delhi (where his second appeal was dismissed).

Even assuming that the SSB has an all India presence including in the State of West Bengal, the State Headquarters of SSB have no nexus at all with the alleged cause of action of the petitioner. Hence, even assuming that on an interpretation of Article 226(1) of the Constitution, technically this Court has jurisdiction to entertain the writ petition, I am of the view that as per the principle of *forum non conveniens*, this Court is not the convenient forum for adjudication of the issues involved in this writ petition. The facts in this case are intricately connected with the State of Uttar Pradesh and the entirety of the petitioner's alleged cause of action arose within the territory of Uttar Pradesh.

Learned advocate for the petitioner says that the petitioner is financially extremely weak. He is not in a

position to approach the High Court at Uttar Pradesh for ventilating his grievance. Although I have full sympathy for the petitioner, sympathy cannot be the basis for passing an order. Needless to say, it will be open to the writ petitioner to approach the competent Court having jurisdiction to entertain his grievance.

W.P.A. 1014 of 2021 is dismissed accordingly.

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

(Arijit Banerjee, J.)