

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.435 of 2022

Anuja Jena *Petitioner*
-versus-
Chairman, State Bank of India, *Opp. Parties*
Mumbai and Ors.

Advocates appeared in the case:

For Petitioner : *Mr. Satyabrata, Mohanty, Adv.*
Mr. S.S.Mohapatra, Adv.
Mr. A.K.Jena, Adv.
Mr. A.P.Rath, Adv.
Mr. M.Kumar, Adv.
-versus-
For Opp. Parties : *Mr.P.V.Balakrishna, Adv.*
(for O.P.No.2)
Mr. D.Mund, AGA
(for O.P.No.3)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-31.10.2022

DATE OF JUDGMENT:-23.12.2022

Dr. S.K. Panigrahi, J.

1. The petitioner has filed this writ petition challenging the highhanded and arbitrary action of the opposite party i.e. the State Bank of India for freezing her pension account without assigning the reason or any pre intimation.

I. Facts of the Case

2. The petitioner was appointed as Constable under the CRPF on 20.01.1994 through due process of selection. After successful continuance of her service career, she was promoted to the post of Head Constable in the year 2010 and continued as such in different states of India with due diligence. After completion of her 20 years of service with utmost sincerity, due to her ill health, she applied for VRS which was duly considered by the authority and allowed the VRS on 31.03.2015. Accordingly, all her post retiral benefits along with other legal entitlements were also disbursed in her favour in her account in the State Bank of India, Dwaraka Branch Delhi. While the matter stood thus, the petitioner shifted to her native place in Odisha along with the family members and residing at Cuttack as her children are pursuing their study. Since 2015 onwards, she was drawing her monthly pension from Bank through ATM card and all of a sudden her pension account was stopped in the month of May, 2021 by the SBI. On query, the Bank Authority had advised to submit KYC along with other documents to continue the transaction but latter on the same could not be materialized by the Bank and after waiting for quite a long period, the petitioner submitted representation and subsequently issued legal notice on 06.11.2021 for payment of her regular pension which has been

credited in the pension Account by the employer. Finally, in response to the legal notice dated 06.11.2021, the Branch Manager, SBI, Dwarka Branch, New Delhi responded and sent a letter along with a notice under Section 91 Cr.P.C. issued by the Sub-Inspector, Dwarka Police Station, South, New Delhi for production of certain documents and freezing of the pension account with a footnote that non-compliance of the above documents amounts to an offence under Section 175 of I.P.C. After receiving such notice, the Bank authority put petitioner's pension account on hold. Being aggrieved by such highhanded action of the bank authority, the petitioner filed the above mentioned writ petition for release of pensionary benefit by defreezing the Account to save the family from starvation.

II. Submissions Of The Petitioner

3. Learned counsel for the petitioner submitted that when in no such proceeding the petitioner has been found guilty or any order to that effect is available, the police by issuing a notice under Section 91 to the Bank Manager the Account of pension should not have been frozen which is definitely a harassment and clear case of violation of Article 300-A of the Constitution of India. Before any finding of any court, the Bank authority should not withhold the pension by freezing the pension

account which is beyond the scope and ambit of the law, hence, and deserves kind consideration. Be that as it may, the Hon'ble High Court has been pleased to pass an order to add Dwaraka P.S. as a party for the purpose of providing an opportunity to the authority to substantiate its article and threat regarding freezing the petitioner's Account and allow to file the consolidated cause title. Besides that, the Bank also decided to disburse the pension deposited for the time being for withdrawal of the amount. While the matter stood thus, the Bank authority did not release the pension for which on 10.10.2022 the opposite party Bank was directed to accept the withdrawal slip and disburse the pension at main Branch, Cuttack by opening an Account. Accordingly, the Bank has disbursed the pension for the month of September, 2022.

III. Counter Submission Of Opposite Party

4. Learned counsel for the opposite party No.2/Branch Manager, State Bank of India, Sector-12 Dwaraka Branch submits that while filing such writ petition, the petitioner has not added necessary party. Further, since the pension account having been opened at New Delhi and necessary papers to that effect are at New Delhi, the present writ petition filed by the petitioner before this Court is not maintainable, hence the said writ petition should be rejected on the ground of jurisdictional

point. It is further submitted that on receipt of notice, in the first instance was intimated by the concerned officer over the registered mobile number to the petitioner and thereafter immediately the said account was kept on hold. Such an act as has been done, cannot be turned as illegal, arbitrary and highhandedness action by the opposite party No.2. The opposite party Bank has truly complied with the said notice by putting the account on hold with regard to withdrawals. Hence, based on such grounds, the writ petition should be rejected.

5. In order to rebut the submissions of the Opposite Party, learned counsel for the petitioner submitted that so far as the jurisdiction is concerned, the petitioner along with her family residing at Odisha since 2015 onwards and also withdrawing her pension at Odisha and the part of the cause of action has arisen in the State of Odisha. In this respect, the judgment pronounced by the Apex Court in the case of *Shanti Devi @ Shanti Mishra vs. UOI*¹, wherein His Lordship has decided that in 226(2) of the Constitution of India-territorial jurisdiction of this Hon'ble High Court could be attracted. Even if part of the cause of action arises within the State of Odisha, the petitioner can invoke the writ jurisdiction of this Court. The principle of Forum convenience while deciding the

¹(2020) 10 SCC 766

said aspect, the Supreme Court have also taken care of the judgment of *Kusum Ingots alloys Ltd. vs. UOI*², wherein the Apex Court has decided the meaning of “cause of action” in Para-6 and reiterated that even if a small fraction of the cause of action arose within the jurisdiction of the court, the court will have jurisdiction in the matter. In *Nawal Kishore Sharma vs. UOI*,³ the Apex Court have decided that the High Court has got the ample jurisdiction clarifying the expression of cause of action and in plain reading of clause-2 of Article 226, it is manifestly clear that the High Court can exercise power to issue direction, order or writ for enforcement of any of the fundamental rights or for any other purpose. If the cause of action in relation to which it exercises jurisdiction notwithstanding that the site of the Government or the Authority or the residence of the person against whom the direction/order, or writ issued is not within the said territory. It is needless to submit here that in the case of *Shanti Devi* cited *supra* it has been held that the High Court has got the jurisdiction to adjudicate the same as the part of cause of action has arisen within the territorial jurisdiction. In the instant case, so far as the release of pension is concerned, it is coming within the purview of this Court and it has got the

²(2004) 6 SCC 254

³(2014) 9 SCC 329

jurisdiction to adjudicate the same and accordingly order has been passed to release the pension in favour of the petitioner for their sustenance which she is legally entitled to. Further in her additional affidavit, the petitioner has reiterated by affirming that after her retirement, she is residing in Odisha with her family and the children are also studying at Cuttack and besides that the pension amount as credited to her account is being withdrawn at Cuttack since 2015 till the date of freezing of her pension account.

IV. Court's Reasoning and Analysis

6. This Court concurs the contention of the petitioner that the jurisdiction of the present case lies within the territorial jurisdiction of the Odisha High Court considering the fact that the cause of action arose in Cuttack. While deciding on the principle of forum convenience, the Supreme Court in the case of *Kusum Ingots alloys Ltd. vs. UOI (supra)*, decided the meaning of cause of action in Para-6 and reiterated that even if a small fraction of cause of arose within the jurisdiction of the court, the court will have jurisdiction in the matter. In *Nawal Kishore Sharma vs. UOI (supra)*, the Apex Court decided that the High Court has got the ample jurisdiction clarifying the expression of cause of action and in plain reading of clause-2 of Article 226, it is manifestly clear that the

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7. Additionally, it has been well established that in the summons issued under Section 91 of Cr.P.C., the investigation officer summons the person to produce the document or other things. On the summons issued under Section 91 of Cr.P.C., account cannot be frozen. In the case of *Sahil Raj vs The State Of Tamil Nadu*⁴, it was held by the Madras High Court that:

"7. Thus, it is clear that the first respondent has no jurisdiction. In the summons issued under Section 91 of Cr.P.C., the investigation officer summons the person to produce the document or other things. On the summons issued under Section 91 of Cr.P.C., account cannot be frozen. That apart, the first respondent failed to comply with the procedure as contemplated under Section 102(3) of Cr.P.C. Admittedly the first respondent failed to inform the freezing of the petitioner's account to the concerned jurisdictional Magistrate even till now. However, the petitioner himself admitted that he placed order of purchase

⁴W.P.No.21344 of 2022 (Madras High Court)

of USDT (virtual digital asset in the form of crypto currency) from a user named Raj Ghosh on 21.10.2021. He also had made a payment of Rs.89,000/- to his HDFC Bank current account."

8. Additionally, it has to be noted that Banks can't freeze accounts if KYC documents have not been supplied. In this regard, Gujarat High Court in the case of *State vs Ashvin*⁵ held that:

"If the documents of KYC are not supplied by the account holder, such account cannot be freezed nor the facility available of the cheque book or ATM can be stopped by the Bank.

However, if the requisite documents of KYC are not supplied as per the RBI instructions/guidelines or the circular issued by SBI to all its branches, the account can be closed, but such closure of the account shall be by the competent authority of a higher level as per the RBI instructions and that too after due notice to the account holder that in spite of intimation and repeated efforts the documents are not supplied."

9. The Gujarat High Court further iterated that if the bank continues to insist for exercise of power of freezing in a case where KYC documents could not be supplied by any account holder for one reason or another, it may be a case for exercise of power by the Bank without there being any authority under the law and the Court may consider the question of referring the matter to RBI for appropriate action against the Bank. The

⁵Criminal Misc. Application No. 5100 of 2012 (Gujarat High Court)

Court can also refer the matter to the Banking Ombudsman for examining the case and for suitable directions, which may include appropriate measures to be ordered by the Banking Ombudsman to the Bank in order to have better functioning of the banking business in accordance with law by safeguarding the interest of all account holders.

10. Considering the facts of the case and the precedents cited hereinabove, this Court is of the opinion that the aforesaid Bank should defreeze the account of the Petitioner with immediate effect.

11. Accordingly, this Writ Petition is disposed of. No order as to cost.

(*Dr. S.K. Panigrahi*)
Judge

*Orissa High Court, Cuttack,
Dated the 23rd Dec. 2022/B. Jhankar*