

CWP No. 17475 of 2022

**101 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No. 17475 of 2022
Date of Decision: 26.09.2022**

Nitin Mittoo

.....Petitioner

Versus

Chief Information Commission and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Sh. Nitin Mittoo-petitioner in person.

MAHABIR SINGH SINDHU. J.

Present writ petition has been filed under Article 226 of the Constitution for quashing of the impugned order dated 14.02.2022 whereby second appeal of petitioner instituted under Section 19(3) of the Right to Information Act, 2005 (for short “the Act”) was disposed off by the Central Information Commission, New Delhi (for short, “the Commission”).

2. Facts are not in dispute.

3. Petitioner submitted an application dated 07.06.2020 (P-2) in the office of Central Public Information Officer, Prime Minister’s office, (for short “CPIO”) seeking certain information and relevant part of the same reads as under:-

“1. Kindly provide me the details of the order or cabinet resolution for establishing PM CARES FUND.

2. Kindly provide me the official order vide which the PM CARE FUND was decided to be advertised on the PMO website.

3. *Kindly provide the amount given by PM CARES FUND to the PMO or Government of India for advertising about PM CARES FUND on official website, National TV, Broadcasting channels, FM, Radio etc.*
4. *Kindly provide me the copy of all the permissions, letter, emails, and office communication or any related document used in by the PMO or the Government of India in regard to providing permission for its advertisement on National TV, FM and other areas of advertisement and communication.*
5. *Kindly provide me the details of the authority which has order the advertisement of PM CARES FUND on TV/National Media and other sources of communication and advertisement.*
6. *Details of the money submitted by PM CARES FUND in the PM RELIEF FUND for fighting war against COVID-19.*
7. *Kindly provide me the details of the donators in the PM CARES FUND along with the amount submitted by them.*
8. *Kindly provide me the details of the total amount allocated to fight against COVID-19 from PM CARES FUND.*
9. *Kindly provide me the details of the total amount spent by the GOVERNMENT OF INDIA in advertising for donating in PM CARES FUND.*
10. *Kindly provide me all the documents which were involved in approval of fund for the advertisement of PM CARES FUND.*
11. *Kindly provide me the copy of all documents which were either office communication, emails and any other document involved in approving the advertisement for donating amount in PM CARES FUND.*
12. *Kindly provide me the details of the fund spent till date in purchasing PPE KITS, or any preventive items*

which can be used in fight against COVID-19 from PM CARES FUND.”

4. In response to aforesaid request, the CPIO, *vide* letter dated 15.06.2020 informed him that “*CARES FUND is not a Public Authority under the ambit of Section 2(h) of the RTI Act, 2005. However, relevant information in respect of PM CARES FUND may be seen on the website- pmcares.gov.in.*”

5. Aggrieved against the above response, petitioner preferred an appeal, which was disposed off by the First Appellate Authority, *inter-alia*, observing as under:-

“4. I have examined the records in the matter. By way of appeal you have reiterated request for information as mentioned in your RTI application. On perusal of records, it is held that information provided in respect of your RTI application suffice as they are as per available records. Since PM CARES FUND is not a Public Authority under the ambit of Section 2(h) of the RTI Act, 2005, no further information could be shared with you. However, as already apprised you, other relevant information in respect of PM CARES FUND is available on the website www.pmcares.gov.in.

5. Based on the reasons given above, no further action is called for on your Appeal and the same is accordingly disposed of.

6. In case you are not satisfied with the given decision, you may prefer 2nd Appeal, before the Central Information Commission, “CIC Bhawan, Baba Gang Nath Marg, Munirka, New Delhi-110067, within 90 days of receipt of this communication by you.”

6. Dissatisfied with the aforesaid order, petitioner preferred second appeal before the Commission, which was disposed off *vide* impugned order, *inter-alia*, in the following manner-

“Perusal of record of the cases reveal that the issue as to

whether the PM Cares Fund falls within the ambit of RTI Act or not has been dealt with previously by this Court in its order dated 02.03.2021, in the following manner:-

“The information sought in the above two cases pertains to a body, viz. the PM Cares Fund. A public interest litigation is pending before the Delhi High Court to decide whether the said organization falls within the ambit of the RTI Act, 2005. Hence at this stage, the queries raised relate to an organization which has not been declared as a public authority under Section 2(h) of the RTI Act, 2005. Thus, no infirmity is found with the replies furnished by the respondent and no interference is warranted in the above two cases, at this stage.”

The ratio of the two above mentioned cases is applicable to the facts of the instant case at hand and no further intervention is warranted in this matter in view of the fact that the matter is under adjudication before the Delhi High Court.”

7. Hence, the present writ petition.
8. Petitioner who is appearing in person vehemently contended that impugned order passed by the Commission is not legally sustainable.
9. Upon hearing the petitioner at length, this Court was not inclined to entertain his prayer due to lack of territorial jurisdiction. Therefore, he was given an option to withdraw the writ petition with liberty to approach the Court of competent jurisdiction in accordance with law; but, insisted to decide the matter while making following submissions:-

(i) On earlier occasion, when his second appeal was not being decided by the Commission, petitioner filed CWP No. 24042 of 2021 before this Court in which notice of motion was issued for 06.02.2022 and reply was also filed by the respondents. Further submitted that during pendency of earlier writ petition, second appeal of petitioner was decided by the Commission, *vide* impugned order, and as a result thereof,

aforesaid writ petition was disposed off as having been rendered infructuous.

(ii) The order impugned was conveyed to the petitioner at Phagwara, in the State of Punjab, thus, in terms of clause (2) of the Constitution, partly, the cause of action has arisen within the territorial jurisdiction of this Court.

10. Heard and case file perused.

11. Paper-book reveals that on earlier occasion while dealing with CWP No. 24042 of 2021, the point of jurisdiction was neither canvassed; nor decided; and it would be so discernible from the following orders:-

(1)

“Present: Petitioner in person.

Case taken up through video conferencing.

Notice of motion be issued to the respondents.

At this stage, Mr. Satya Pal Jain, Senior Advocate with Mr. Dheeraj Jain, Advocate has accepted notice on behalf of all the respondents. He seeks some time to get the necessary instructions and then to file written response to the petition. Allowed.

Adjourned to 6.1.2022.

26.11.2022

***Sd/-
JUDGE”***

(2)

“Present: Petitioner in person.

*Mr. Satya Pal Jain, Sr. Advocate with
Mr. Dheeraj Jain, Advocate for the
respondents.*

Case taken up through video conferencing.

Short reply on behalf of respondent No.1 has been filed.

The petitioner states that he has not received copy of the reply.

Learned counsel representing the respondents states that though copy of the short reply has been sent to the petitioner through Email yesterday, nevertheless, another copy would be supplied to him shortly. Let it be so done.

For arguments to come up on 17.03.2022.

06.01.2022

***Sd/-
JUDGE"***

(3)

"Present: Nitin Mittoo, Advocate (petitioner in person).

Present petition has been filed under Article 226 of the Constitution, inter alia, for issuance of a writ in the nature of mandamus directing respondent No.1 to decide the second appeal of the petitioner, filed under the Right to Information Act, 2005.

At the outset, petitioner submits that appeal has already been decided, thus, present petition is rendered infructuous.

Ordered accordingly.

March 17th, 2022

***Sd/-
JUDGE"***

A perusal of aforesaid orders nowhere reveals that point of jurisdiction was ever raised or considered while deciding the earlier writ petition; thus, mere issuance of notice of motion and disposal of that writ petition as infructuous, will not amount to an expression of opinion that this Court has territorial jurisdiction to adjudicate the matter in controversy.

12. The submission made by petitioner regarding receipt of impugned order at Phagwara in the State of Punjab, will also not give any cause of action; either wholly or in part. It is well settled that cause of action is a bundle of facts which gives right to a party for claiming relief against the opposite side.

13. In the present case, action was initiated by the petitioner on the basis of his request dated 07.06.2020 submitted in the office of CPIO, which concededly, is situated at New Delhi. It is also not in dispute that first appeal of the petitioner was decided by the Authority situated at New Delhi. Again,

there is no dispute that the Commission, which has passed the impugned order, is also situated at New Delhi. Thus, there can be no quarrel that none of the above three authorities is/are situated within the territorial jurisdiction of this Court. In such a scenario, mere receipt of the impugned order by the petitioner at Phagwara, cannot be construed as giving rise to cause of action either in part or wholly for the purpose of territorial jurisdiction to adjudicate the matter in controversy by this Court.

14. In support of the above conclusion, reference can be made to the judgment of Division Bench of this Court in ***Harvinder Singh vs. Food Corporation of India and others, 2003(2) SCT 706*** wherein the point for consideration was as under:-

“The question that requires to be considered in the present case is whether receipt of communication of the order by the petitioner at Kapurthala would mean that cause of action in part has accrued in his favour within the territorial jurisdiction of this Court.”

15. The Division Bench while answering the above question held as under:-

“(30) As already noticed above, the petitioner had not served within the territorial jurisdiction of this Court during his service of about two years with the FCI and remained posted in North East Zone of Food Corporation of India at Gangtok (Sikkim) or Siliguri etc. The impugned order dated 4th April, 2002 of his discharge from respondent-Corporation was issued from New Delhi and was addressed to the petitioner through the Zonal Manager, (NE), FCI, Guwahati. The order, therefore, is deemed to have been communicated to the petitioner at Guwahati inasmuch as it was out of the reach of the Managing Director, FCI, Headquarters New

Delhi, after it was sent out and whatever action that was required to be taken by the petitioner was at the office of Zonal Manager, FCI, Guwahati. Even the relinquishment of charge and handing over the same was to be done by the petitioner at Guwahati. In these circumstances, the addressing of letter dated 12th April, 2002 Annexure P-6/A by the District Office of FCI, Kapurthala does not per se confer any cause of action on the petitioner within the territorial jurisdiction of this Court. It would at the most only confer a right of action. The right of action is a right to enforce cause of action. It is a remedial right for affording redress for the infringement of a legal right. The right of action is a right which gives rise to enforce a cause of action. The actual service of notice is only a mode of conveying the order.

(31) In the case in hand, the order has been served at the address of the employee where he was on LTC. This would, therefore, only confer a right of action. In the circumstances of the case, we are clearly of the view that this Court has no territorial jurisdiction to entertain the writ petition.”

16. Still further, reference can be made to an unreported decision by larger Bench of this Court in **CWP No. 12420 of 2008 titled as M/s Vijay K. Jairath and Co. Vs. Union of India and another**. In that case, initially, the matter was listed before Division Bench and point in issue was as under:-

“However, learned counsel for the respondents have raised a preliminary objection that order, Annexure P-9, challenged by the petitioner in the present writ petition has been passed by the Commissioner of Customs (Import) at Mumbai, therefore, the writ petition filed by the petitioner invoking jurisdiction of this Court is not maintainable. It is further contended that order passed on 18.03.2008 is an appealable order, therefore, invocation of writ jurisdiction of this Court without availing the remedy of appeal is clearly untenable.”

16.1 One Hon’ble Judge (Hon’ble Mr. Justice Hemant Gupta) while

delivering the judgment observed as under:-

“..Therefore, it cannot be said that the petitioner will have territorial jurisdiction to invoke the jurisdiction of this Court only on the basis of receipt of show cause notice within the jurisdiction of this Court. The process of order imposing penalty in respect of evasion of duty started and culminated beyond the jurisdiction of this Court.

In view of the above, I am of the opinion that this Court does not have territorial jurisdiction to entertain the present writ petition. Consequently, the same is dismissed with liberty to the petitioner to take its remedy in accordance with law.”

16.2 On the other hand, Hon’ble Mr. Justice Rajesh Bindal, opined as under:-

...Keeping in view the facts of the present case, where from a perusal of show cause notice dated 29.11.2004, it is evident that the same is addressed to the petitioner at his Ludhiana address. Even subsequent notices for affording opportunity to the petitioner for personal hearing were also addressed to the petitioner at his Ludhiana address and served there. Copy of order dated 24.03.2008 also mentions the address of the petitioner of Ludhiana where the same was served, in my opinion, this Court will have territorial jurisdiction to entertain the petition filed by the petitioner.

16.3 Since there was a difference of opinion between two Hon’ble Judges; therefore, the matter was referred to third Judge (Hon’ble Mr. Justice Ajay Kumar Mittal) and ultimately, he agreed with the opinion of Hon’ble Mr. Justice Hemant Gupta in the following manner:-

“At motion stage, learned counsel for the respondents raised an objection regarding the territorial jurisdiction of this Court for entertaining the writ petition on the ground that order dated 18.03.2008 (Annexure P-9) had been passed by the Commissioner of Customs (Import) at Mumbai and therefore, territorial jurisdiction of the Court

at Mumbai would be there to adjudicate the dispute. It was also urged that the order was an appealable order.”

“28. Now, taking up the facts in the present case, herein the impugned order dated 18.03.2008 (Annexure P-9) has been passed by the Commissioner of Customs (Import), Mumbai imposing penalty of Rs.50,00,000/-. It was the Directorate of Revenue Intelligence (DRI), Surat, Gujarat who had initiated its investigation against the petitioner. The entire proceedings relating to the sale of the goods by the petitioner and the evasion of duty had occurred outside the limits of this Court. A show cause notice was issued by DRI on 29.11.2004 in pursuance to which penalty was imposed by authorities at Mumbai. The respondents who had taken action against the petitioner, do not fall within the territorial jurisdiction of this Court. Thus, taking totality of facts and circumstances and also the averments made in the writ petition, it cannot be said that an integral part of cause of action arose within the territorial jurisdiction of this Court.”

17. In view of the facts and circumstances discussed here-in-above, this Court is of the considered opinion that mere disposal of earlier writ petition, *vide* order dated 17.03.2022 as infructuous and receipt of the impugned notice by the petitioner at Phagwara, shall not give any cause of action in his favour (either partly or wholly) in terms of the clause (2) of Article 226 of the Constitution to entertain the present petition. As a result thereof, there is no option except to dismiss the petition.

20. Ordered accordingly.

26.09.2022
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable: Yes/No