

\$~171

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 27th April, 2023*

+ W.P.(C) 560/2019

SH. RAVINDER YADAV Petitioner
Through: Mr. Nikhil Bhardwaj, Advocate

versus

UNION OF INDIA AND ORS. Respondents
Through: Ms. Nidhi Raman, Central
Government Standing Counsel with
Ms. Zubin Singh and Mr. Mayank
Sansanwal, Advocates for R-1.
Mr. Ajay Kumar Jha, Advocate for R-2 to 4.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed seeking the following reliefs:-

“i) issue an appropriate writ, order or direction quashing and setting aside the impugned penalty orders dated 01.07.2015 and 15.07.2015 passed by the department, vide which petitioner was removed from the service of the respondent department; and

ii) issue an appropriate writ, order or direction quashing and setting aside the impugned order dated 01.09.2015 passed by the Appellate Authority, vide which petitioner's mercy petition was rejected; and

iii) issue an appropriate writ, order or direction quashing and setting aside the impugned charge sheet dated 22.07.2013, disciplinary proceedings along with enquiry report dated 23.12.2014; and

iv) issue an appropriate writ, order or direction to reinstate the petitioner as per his capacity with the respondent department; and

v) issue an appropriate writ, order or direction to grant all consequential benefits to the petitioner, after his reinstatement.”

2. Learned counsel for Respondents No.2 to 4 takes a preliminary objection to the maintainability of the writ petition on the ground that

this Court lacks the territorial jurisdiction to entertain the writ petition. It is argued that no cause of action has arisen within the jurisdiction of this Court inasmuch as the charge-sheet was issued by the General Manager (Retail), North at Noida, Uttar Pradesh, Petitioner replied to the charge-sheet giving his own address at Noida and departmental enquiry was held at Mathura, Uttar Pradesh, where the Petitioner was posted/working. Further, order of the Disciplinary Authority was issued by Director (Marketing) from corporate office Mumbai and served through Head Retail (North), Noida through Senior Manager (Operations in Charge, Mathura Installations) and the Appellate order was also passed at Mumbai. Therefore, none of the facts pleaded by the Petitioner fall into the category of 'bundle of facts' which would constitute a cause of action giving rise to a dispute which would confer territorial jurisdiction on the Courts at Delhi. It is argued that no Court can usurp jurisdiction that it does not have and parties by consent cannot confer jurisdiction on a Court. Learned counsel places reliance on a recent judgment of the Supreme Court in *State of Goa v. Summit Online Trade Solutions (P) Ltd. and Others*, 2023 SCC OnLine SC 254, wherein the Supreme Court has held that where clause (2) of Article 226 of the Constitution of India is invoked by the High Court to clothe it with the jurisdiction to entertain a writ petition, the Constitutional mandate of clause (2) is that 'cause of action' referred to therein, must at least arise in part within the territories in relation to which the High Court exercises jurisdiction when writ powers conferred under clause (1) are proposed to be exercised, notwithstanding the seat of the Government or Authority or residence of the person not being within those territories. The Supreme Court further elucidated on the meaning and connotation of the expression 'cause of action'. Relevant paras of the judgment are as follows:-

“16. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. The Constitutional mandate of clause (2) is that the 'cause of action', referred to therein, must at least arise in part within the territories in relation to which the high court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories. The expression 'cause of action' has not been defined in the Constitution. However, the classic definition of 'cause of action' given by Lord Brett in **Cooke vs. Gill**, (1873) 8 CP 107, that "cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court", has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such 'cause of action' is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the high court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the high court to decide the dispute and that, at least, a part of the cause of action to move the high court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.

17. Here, tax has been levied by the Government of Goa in respect of a business that the petitioning company is carrying on within the territory of Goa. Such tax is payable by the petitioning company not in respect of carrying on of any business in the territory of Sikkim. Hence, merely because the petitioning company has its office in Gangtok, Sikkim, the same by itself does not form an integral part of the cause of action authorizing the petitioning company to move the High Court. We hold so in view of the decision of this Court in **National Textile Corporation Ltd. vs. Haribox Swalram**, (2004) 9 SCC 786. The immediate civil or evil consequence, if at all, arising from the impugned notification is that the petitioning company has to pay tax @ 14% to the Government of Goa. The liability arises for the specific nature of business carried on by the petitioning company within the territory of Goa. The pleadings do not reflect that any adverse consequence of the impugned notification has been felt within the jurisdiction of the High Court. At this stage, we are not concerned with the differential

duty as envisaged in Schedule II [@ 6%] vis-a-vis Schedule IV [@ 14%] of the impugned notification. That is a matter having a bearing on the merits of the litigation. The long and short of the matter is that the petitioning company has to bear the liability of paying tax @ 14% levied by the Government of Goa for selling lottery tickets in the State of Goa under Schedule IV of the impugned notification. It does not bear out from the petition memo how the impugned notification levying tax for carrying on business in the State of Goa subjects the petitioning company to a legal wrong within the territory of Sikkim for the writ petition to be entertained by the High Court.

18. *In our opinion, the High Court ought not to have dismissed the applications of the appellant without considering the petition memo which has no semblance of a case having been made out as to how part of cause of action arose within the territorial limits of the High Court or without any pleading as to how any right has been affected within the territory of Sikkim.*

19. *Even otherwise, the High Court was not justified in dismissing the interim applications. Assuming that a slender part of the cause of action did arise within the State of Sikkim, the concept of forum conveniens ought to have been considered by the High Court. As held by this Court in **Kusum Ingots Vs. Union of India**, (2006) 4 SCC 254 and **Ambica Industries Vs. CCE**, (2007) 6 SCC 769, even if a small part of the cause of action arises within the territorial jurisdiction of a high court, the same by itself could not have been a determinative factor compelling the High Court to keep the writ petitions alive against the appellant to decide the matter *qua* the impugned notification, on merit.*

3. From a reading of the aforesaid paragraphs, it is clear that it is only when the cause of action arises wholly or in part within the territorial jurisdiction of the High Court, power can be exercised under Article 226 of the Constitution, to entertain the writ petition and this would include, as held in **Kusum Ingots & Alloys Ltd. v. Union of India and Another**, (2004) 6 SCC 254, even a small part of cause of action.

4. Tested on the anvil of the binding dictum of the Supreme Court, it is clear from the narrative in the writ petition as well as the documents appended thereto that no part of the cause of action has arisen within the territorial jurisdiction of this Court. As rightly pointed out by learned counsel for Respondents No. 2 to 4 starting

from the charge-sheet to the Appellate order, all have been issued either from Noida or Mumbai and therefore this Court cannot entertain this writ petition. This Court also draws strength from the judgments of two Division Benches of this Court in *Ex. RECT./GD Vinod Kumar v. Union of India and Ors.*, 2006 SCC OnLine Del 1401 and *Manohar Lal v. Union of India & Ors.*, 2004 SCC OnLine Del 1135. In *Manohar Lal (supra)*, the Division Bench was dealing with a writ petition wherein a challenge was laid by the Petitioner to an order of punishment of compulsory retirement from service including the Appellate and Revision order. A preliminary objection was raised by the Respondents contending, *inter alia*, that no part of cause of action had arisen within the territorial jurisdiction of this Court and the writ petition could not be entertained. The defence of the Petitioner to the said objection was that the Court had extra-territorial jurisdiction to entertain the petition in view of provisions of Article 226(2) of the Constitution and also because the office of the Director General, CRPF is located at New Delhi. The Division Bench rejected the contention of the Petitioner in view of the judgment of the Supreme Court in *Kusum Ingots & Alloys Ltd. (supra)* and other judgments on the issue. Relevant passages from the judgment are as under:-

“4. In the light of the aforesaid submissions, we proceed to decide the preliminary issue, which was raised regarding the maintainability of the writ petition. It cannot be disputed that the incident, which was the subject-matter of the departmental proceeding, had taken place at Kanpur. The order of the disciplinary authority was also passed in Kanpur whereas the order of the appellate authority was passed in Allahabad. Therefore, no part of the cause of action in the present writ petition has arisen within the territorial jurisdiction of this Court.

5. The only plea that is taken before us is that this Court shall have extraterritorial jurisdiction to entertain this petition in view of the provisions of Article 226(2) of the Constitution of India and also because the office of the Director General, CRPF is located in Lodhi Colony, New Delhi.

8. *In the decision of National Textile Corporation Ltd. v. Haribox Swalram, JT 2004 (4) SC 508, the Supreme Court has held thus:*

“As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed....””

5. Be it noted that in the aforementioned judgment, the departmental proceedings were conducted at Kanpur and the order of punishment was also issued from the office of the Respondents at Kanpur. The Appellate order was passed at Allahabad and in this view the Division Bench held that since no part of cause of action had arisen within the territorial jurisdiction of this Court, the writ petition was not maintainable for want of territorial jurisdiction. Facts of the present case come close to the facts in **Manohar Lal (supra)** as no part of cause of action has arisen within the territorial jurisdiction of this Court, starting from issue of charge sheet to the passing of the Appellate order.

6. Learned counsel for the Petitioner submits that it is not open to the Respondents No.2 to 4 to raise an objection to the territorial jurisdiction of this Court, at this stage, since it is a settled law that such an objection must be raised by the party at the earliest given occasion. Having failed to object at the initial stage of the filing of the writ petition, Respondents No.2 to 4 will be deemed to have waived their right to object. In this context, reliance is placed on provisions of Section 21(1) of CPC, which provides that no objection as to the place of suing shall be allowed by an Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or

before such settlement and unless there has been a consequent failure of justice. This contention only deserves to be rejected in view of the plain reading of Section 21(1) CPC. It is clear that this provision deals with an objection raised to the territorial jurisdiction of a Court at the Appellate or Revisional stage when the party raising such an objection fails to do so before the Court of first instance and is wholly inapplicable to the present case, which is a writ petition and even assuming that the analogy applies, this is a Court of first instance and not an Appellate Court. Undaunted, Mr. Bhardwaj strenuously further contends that the writ petition has been adjourned on several dates but no objection was taken to the territorial jurisdiction, which is reflected from the various order sheets. He also relies on an order passed in the earlier round of litigation between the parties to urge that, at that stage, no objection was taken on the bar of territorial jurisdiction.

7. Responding to this contention, learned counsel for Respondents No.2 to 4 submits that insofar as the earlier writ petition being W.P.(C) 5651/2018 is concerned, Petitioner had approached this Court challenging the charge sheet, etc. after a delay of three years, concealing the fact that the appeal had been decided by an order dated 01.09.2015 and the Appellate order was not challenged. Writ petition was disposed of on 24.05.2018 with a direction to dispose of the Petitioner's appeal. On receipt of the order of the Court, Respondents No.2 to 4 inspected the Court file and it transpired that Petitioner had obtained the order by concealing that the appeal was already disposed of. Accordingly, an application being CM APPL. 28735/2018 was filed on 23.07.2018 seeking recall of the order dated 24.05.2018. After hearing, the application was disposed of recalling the said order although Petitioner was granted liberty to file a fresh petition to challenge the orders of punishment including the Appellate order

before the appropriate forum in accordance with law. Therefore, in view of the order passed by the Court which was limited to granting liberty to the Petitioner to approach the appropriate forum in a fresh writ petition, there was no occasion or necessity to raise an objection of territorial jurisdiction and pertinently, the Court did not even rule on the said issue. This Court entirely agrees with this contention of Respondents No.2 to 4. Perusal of the order dated 13.11.2018 by which the earlier order was recalled shows that the Court had only granted liberty to the Petitioner to file a fresh petition challenging the orders of the Disciplinary and Appellate Authority before the appropriate forum as per law and therefore this order cannot be considered as an order holding that this Court has territorial jurisdiction to entertain the writ petition and reliance placed by the Petitioner is misplaced.

8. As far as the contention of the Petitioner that the order sheets indicate that no objection was ever taken to the territorial jurisdiction is concerned, the same also merits rejection. Notice was issued in the writ petition on 21.01.2019 and the order sheet reveals that only Union of India was represented on advance copy of the writ petition and therefore, there was no occasion for Respondents No.2 to 4 to have objected to the territorial jurisdiction. The said Respondents appeared on 16.05.2019 and were granted time to file the counter affidavit, which was filed on 16.03.2020 and clearly in the first paragraph under the heading 'Preliminary Objections', objection is taken to the territorial jurisdiction of this Court to entertain the writ petition on the ground that no cause of action has accrued at Delhi as per Petitioner's own pleadings in the writ petition. Therefore, it cannot be said that objection was not taken at the earliest available opportunity.

9. For all the aforesaid reasons, the writ petition is not maintainable for want of territorial jurisdiction of this Court and cannot be entertained. It is, however, left open to the Petitioner to take recourse to appropriate proceedings on the same cause of action in a Court having territorial jurisdiction in the matter, if so advised, and in accordance with law.

10. Writ petition is disposed of accordingly.

APRIL 27, 2023/kks

JYOTI SINGH, J

