



\$~

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 2414/2011 & CM APPL. 36817/2022****DHARAM PAL DHALL**

..... Petitioner

Through: Mr. Vivek Kumar Tandon,
Ms.Prerna Tandon, Mr.Aman
Dhall and Mr.Nishant Sharma,
Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr. Apoorv Kurup, CGSC with
Mr.Ojaswa Pahtak, Ms.Swati
Bhardwaj and Ms.Aparna Arun,
Advs. for R-1/UOI (Mob.
7434045408)
Mr. E.R. Kumar, Mr.D.P.
Mohanty, Ms. Swati Bhardwaj
and Mr. Ishan Nagar,
Advocates for R-2 (Mob.
9620554900)

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****10.07.2023****MINI PUSHKARNA, J.**

1. The present writ petition has been filed for directions to respondent No.2 to grant the benefit of the *ex gratia* Scheme to the petitioner, with further prayer for quashing and striking down Clauses 6(i), 6(xiv) and 6(xxii) of the said Scheme. Since the petitioner expired in the year 2016, the present petition has now been continued through his legal representative, i.e., wife of the deceased petitioner.

2. The respondent No.2 had introduced a Scheme effective from 01.04.2008, under which a monthly amount is paid to the retired and other ex-employees of respondent No.2. After the death of the



retiree/ex-employee, his/her surviving spouse receives the said payment till his/her death. As per the said *ex gratia* Scheme known as “Bharat Petroleum Corporation Limited Monthly *Ex Gratia* Scheme” (*Ex Gratia* Scheme), the same is applicable to all the ex-employees who have completed minimum 15 years of continued service with the respondent and who had joined the service of the respondent No.2 on or before 31.03.2008.

3. Since the petitioner joined the service of respondent No.2 before 31.03.2008 and had superannuated in the year 2005 on 30.04.2005, the petitioner duly applied for availing benefit of the said *Ex Gratia* Scheme. However, respondent No.2 refused to extend the benefit of the said Scheme to the petitioner and insisted the petitioner to first withdraw the suit filed by the petitioner against respondent No.2, before his application under the said Scheme was considered. The petitioner received an email dated 25.03.2009 from respondent No.2, which reads as under:

नमो भगवते वासुदेवाय



RE: Monthly Ex-Gratia Scheme - Submission of the Application - Yahoo! Mail

Page 1 of 2

YAHOO! MAIL
Classic

ANNEXURE - 8


RE: Monthly Ex-Gratia Scheme - Submission of the Application

Wednesday, March 25, 2009 11:12 AM

From: "nangia m" <nangiam@bharatpetroleum.in>

To: "cpdhat@yahoo.com" <cpdhat@yahoo.com>

Sir,

I have checked up from CO.

Since you have filed a case against BPCL, you need to withdraw it first before your case for payment of Ex Gratia amount under MEGS scheme is processed.

Regards,

Mukesh Nangia [Sr. Manager (Ben. Admin) North

* +91-0120-2474508 | * nangiam@bharatpetroleum.in

Please visit our website: HRS North

4. The aforesaid email message dated 25.03.2009 was recalled by an email message dated 26.03.2009. Later on another email message dated 06.04.2009 was received by the petitioner from respondent No.2, wherein the petitioner was informed that ex-employees who have any litigation against the respondent No.2, are not eligible under the said *Ex Gratia* Scheme. The email dated 06.04.2009 sent by respondent No.2 to the petitioner is reproduced as below:

नित्यमेव जयते



Mon, April 6, 2009 5:19:04 PM

FW: MONTHLY EX-GRATIA SCHEME : YOURSELF

From: nangia m

<nangiam@bharatpetroleum.in>

Add to Contacts

To: dharam dhall <dpdhall@yahoo.com>



Dear Sir,

We are in receipt of your application form filled in by you for the grant of ex-gratia payment under the Monthly Ex Gratia Scheme.

As discussed with you the, the pensioners, who have litigation against the Corporation will not be eligible for the said scheme and they are required to submit an undertaking duly notarised to that effect. We find that you too have submitted an undertaking stating that you have not entered into any litigation with the Corporation which is totally misleading. On checking our records, we found that you have filed a Civil Suit against the Corporation pending with ADJ Delhi, Tis Hazari Court.

In view of the above, we regret that we will not be in a position to consider your case under this Scheme.

Regards,

Mukesh Nangia | Sr. Manager (Ben. Admin) North

☎ +91-0120-2474508 | ✉ nangiam@bharatpetroleum.in

Please visit our website: HRS North

5. Since the benefit of the Ex Gratia Scheme was not extended to the petitioner, the present writ petition came to be filed.
6. On behalf of the petitioner, it is submitted that the Scheme stipulates that the same would not be applicable to an employee who had entered into litigation for pension or superannuation scheme. It is submitted that the petitioner had not initiated any litigation qua the pension or superannuation against respondent No.2. As such there was no embargo against the petitioner for his entitlement or eligibility for



benefit under the Ex Gratia Scheme.

7. It is submitted that in the year 1994, petitioner was allotted a residential accommodation by respondent No.2 being property No. A-10, First Floor, South Extension – II, New Delhi, wherein the petitioner resided with his family till 25.10.2004. The said property was not owned by the respondent, but the same was taken on lease by respondent No.2 and was being allotted to employees of respondent No.2 from time to time. The respondent No.2 was also deducting occupancy charges from the monthly salary of petitioner in accordance with the Service Rules.

8. It is submitted that wife of the petitioner was a doctor, while son of the petitioner was studying Engineering at that point of time. As a result, nobody stayed in the said accommodation from morning till evening on working days.

9. When the petitioner and his family members returned home on 25.10.2004, they were shocked to see all their household goods strewn and dumped in heaps along the public road outside their residence. On making enquiries, it was revealed that the petitioner had been evicted from the said house under a Court decree of possession. The petitioner had no knowledge or notice of any litigation between the landlord of the said premises and respondent No.2 herein or of any decree directing eviction from the said property.

10. It is contended on behalf of the petitioner that the respondent No.2 failed to inform the petitioner that the property was to be vacated and handed over to the landlord/owner of the said premises. As a result, petitioner was forcibly evicted from his residence, without any



notice, due to gross negligence and apathy of the officers of respondent No.2. Since the petitioner found that cash, jewellery and other valuables were missing, First Information Report (FIR) was lodged with Police Station, Defence Colony, New Delhi. Subsequently, suit for damages was filed by the petitioner in Tis Hazari District Court against respondent No.2 herein, being *Civil Suit No.247/2005*. It is, thus, contended that the suit for recovery of damages filed on behalf of the petitioner can in no manner be linked to his service conditions, and/or superannuation or pensionary benefits. In view thereof, it is submitted that the petitioner is entitled to the benefit of the *ex gratia* payment.

11. It is further submitted that in the said suit for damages, judgment and decree dated 09.06.2017 was passed in favour of the petitioner and against respondent No.2. Respondent No.2 has filed an appeal against the said judgment and decree, being *RFA No. 937/2017*, which is pending adjudication before this Court.

12. It is further submitted that the act of respondent No.2 in refusing to grant the benefits of the *Ex Gratia* Scheme to the petitioner till such time the petitioner withdraws his pending suit for damages against respondent No.2, is perverse and arbitrary. It is submitted that the respondent No.2 is deliberately discriminating against the petitioner by denying monthly benefits thereof to the petitioner.

13. It is further submitted that the stipulation regarding the benefit being available only if no litigation was pending, imposes conditions restraining the exercise of legal rights by the employees, which is unfair.



14. In support of his submissions, Id. Counsel for petitioner has relied upon the following judgments:

- I. Jayaswals Neco Limited versus Union of India and Others***
- II. Oil & Natural Gas Commission versus Utpal Kumar Basu***
- III. Ramana Dayaram Shetty versus The International Airport Authority of India and Others***

15. On the other hand on behalf of the respondent No.2, it is contended that payment of *ex gratia* is discretionary and there is no legal right to claim it. *Ex Gratia* Scheme is not part of the employment, thus, the same cannot be claimed as a matter of right.

16. It is further submitted that the Scheme was to be extended to any ex-employee subject to fulfilment of the conditions therein. In the absence of fulfilling the conditions as envisaged in the Scheme, the petitioner cannot compel respondent No.2 to extend the benefit of *Ex Gratia* Scheme to him.

17. It is further submitted that the present writ petition is not maintainable as no legal right of the petitioner has been infringed. Since the Scheme introduced by respondent No.2 was purely an *Ex Gratia* Scheme, the payment to be made under the said Scheme is not a matter of right or entitlement by the petitioner.

18. It is further submitted on behalf of respondent No.2 that the writ petition is liable to be dismissed on account of lack of territorial jurisdiction. It is submitted that no part of cause of action has arisen within the jurisdiction of this Court. The memo of parties mentions the



address of the petitioner as Noida, Uttar Pradesh. The address of respondent No.2 has also been shown at Noida, Uttar Pradesh. The *Ex Gratia* Scheme was also floated by the Noida Office of respondent No.2. The application form for availing the Scheme was also signed at Noida by the petitioner. Merely because respondent No.2 has a branch office at Delhi, the same does not confer jurisdiction on this Court. Further, Union of India is impleaded as respondent No.1, but no relief is sought against respondent No.1.

19. It is further submitted that the said Scheme is an ex gratia Scheme which was introduced voluntarily by the respondent No.2. The argument of the petitioner that the Scheme is in restraint of legal proceeding, is erroneous. The Scheme does not prevent or prohibit any person from pursuing any legal proceedings. There is no bar or initiation of any legal proceedings under the Scheme. In such circumstances, the petitioner cannot be permitted to plead the bar of Section 28 of the Contract Act.

20. It is further submitted that the petitioner in his application form undertaking has given a wrong undertaking that the petitioner does not have any litigation individually or collectively or any other service related matter before any court of law. The undertaking given by the petitioner was wrong as he had filed a Civil Suit against respondent No.2. Thus, it is prayed that present writ petition be dismissed.

21. In support of his submissions, Id. Counsel for the respondent No.2 has relied upon the following judgments:

- i. Kusum Ingots & Alloys Ltd. Vs. Union of India reported in (2004) 6 SCC 254*



- ii. *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Ors. reported in 1994 (4) SCC 711*
- iii. *Sterling Agro Industries Ltd. Vs. Union of India reported in AIR 2011 Del 174*
- iv. *Manohar Lal Vs. Union of India and Ors. reported in (2005) 116 DLT 469 (DB)*
- v. *Kensoft Infotech Ltd. Vs. R.S. Krishnaswami and Ors. reported in (2008) 146 DLT 657*
- vi. *Jaspal Singh Sahni Vs. Kuwait International Finance Co. S.A.K. reported in (1998) 71 DLT 740*
- vii. *Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner reported in (2007) 11 SCC 756*
- viii. *DFC Staff Association Vs. BIFR And Anr., reported in 2009 SCC OnLine Del 1885*
- ix. *Coffee Board Employees Association Vs. A.C. Shiva Gowda reported (1992) 1 SCC 500*
- x. *State of M.P. Vs. Mandawar reported in (1955) 1 SCR 599*
- xi. *Union of India and Ors. Vs. C. Krishna Reddy reported in (2003) 12 SCC 627*
- xii. *Union of India Vs. Parma Nanda reported in (1989) 2 SCC 17*



22. In rejoinder, Id. Counsel for the petitioner has contended that this Court has territorial jurisdiction to hear the present matter. It is submitted that at the time of his superannuation, the petitioner was posted on deputation with respondent No.1, i.e., Ministry of Petroleum and Natural Gas, Government of India. It is further submitted that all his salaries and other emoluments including retiral benefits were released by respondents from their office situated in Delhi. It is further submitted that respondent No.1 is the overall in-charge of the functioning of works under the respondent No.2.

23. I have heard Id. Counsels for the parties and have perused the record.

24. Respondent No.2 introduced *Ex Gratia* Scheme with a view to extend monthly benefit to its ex-employees who had completed minimum 15 years of continuous service with the respondent No.2. The said Scheme stipulated that the same shall be available to the ex-employees as well as their spouse, subject to their fulfilling the laid down criteria and complying with the terms and conditions of the Scheme.

25. Accordingly, upon his superannuation the petitioner also applied under the said Scheme for release of the *ex gratia* amount to him. However, since the petitioner after his superannuation on 30.04.2005 had filed a suit bearing *Suit No.247/2005* on 18.10.2005 against the respondent No.2 herein seeking damages, the said benefit of *ex gratia* amounts was denied to him. The relevant portions of the Scheme are reproduced herein below:



“3. NON-APPLICABILITY OF ‘MEGS’

A) *The scheme shall not apply to ex-employees who:*

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii)

(viii) *had/have entered into any litigation for Pension or Superannuation Scheme individually or collectively against the Company/Corporation before any Court of Law/ Forum/ authority and such case(s) is still pending. This clause is also applicable to spouse of such ex-employee.*

B) *The scheme shall not apply to employees who joined/ will join Corporation on or after 1/4/2008.*

4. AMOUNT OF MONTHLY EX-GRATIA:

Category-wise rates of Ex-Gratia payment which is effective from 1.4.2008 are as under:

<i>Category of Employee</i>	<i>Ex-Gratia Amount per month</i>
<i>Non-Management Staff</i>	<i>Rs.3,000/-</i>
<i>Management Staff</i>	<i>Rs.3,500/-</i>

The above payment will be a lump sum payment and will not attract any consequential benefits either by way of Dearness Allowance relief or any periodic time-scale revision.

All the eligible ex-employees separated on or before 31/3/2008, will be eligible for payment under the Scheme from 1/4/2008 and arrears as applicable will be paid along with the first disbursal.



In case of deceased ex-employee, his/her spouse will be paid Ex-Gratia as applicable to ex-employee.

... ..

5. HOW TO APPLY:

a.

b.

c.

d. *The ex-employees/surviving spouse, who are eligible for Ex-Gratia shall be required to execute an undertaking as per **Annexure V** to the effect that (i) this benefit is being given not because of any right or entitlement, but entirely as an Ex-Gratia; (ii) he/she will not enter into any litigation individually/collectively in this regard and/or any other service related matters before any Court of Law/Forum/Authority; (iii) if any case pertaining to Burmah Shell pension Scheme and/ or Superannuation Scheme/ any service related matter is pending before any Court of Law/Forum/Authority, if he/she was a party to any such case shall withdraw the same forthwith. The eligibility of such applicant shall be verified and application will be processed only after withdrawal of such case/petition or litigation before any Court of Law/Forum/Authority where the applicant is a sole/joint petitioner.*

6) GENERAL:

(i) Payment under the Scheme is subject to the Ex-employee's (including spouse) withdrawing all litigations pending before any Court of law/Forum/authority.

... .. ”

26. Perusal of the aforesaid Scheme shows that such Scheme shall be applicable to all the ex-employees who joined on or before



31.03.2008, and fixed amount was payable as *ex gratia* amount to Non-Management Staff as well as Management Staff, as per the rate as mentioned in the Scheme.

27. The aforesaid *Ex Gratia* Scheme of respondent No.2 stipulates in clear terms that the Scheme shall not apply to ex-employees who had/have entered into any litigation against respondent No.2 before any court of law. Further, the Scheme stipulates that the payment under the said Scheme is subject to the ex-employee, including the spouse, withdrawing all litigations against respondent No.2 pending before any court of law/forum/authority.

28. The aforesaid conditions, as imposed by respondent No.2 before payment under the *Ex Gratia* Scheme was to be released, clearly restrict and impose restraints on the employees to enforce their rights before a court of law.

29. The aforesaid stipulation is not only arbitrary and perverse, but also contrary to the settled principles of law and the fundamental rights as enshrined in the Constitution of India. By virtue of the said condition, respondent No.2 has literally scuttled the legal rights of its employees, who would be forced not to initiate any legal proceedings for enforcement of their legal rights in a court of law, if they were to obtain the benefit under the *Ex Gratia* Scheme. The condition that an ex-employee shall be entitled to payment under the said Scheme, subject to withdrawing all litigation, clearly restricts and impedes the right of such ex-employee to pursue his/her legal rights in proceedings before a court of law. Such conditions as imposed by respondent No.2 are clearly unlawful, unfair and against the law.



30. It may be noted herein that respondent No.2 is a company incorporated under The Companies Act, 2013. It is Government of India Undertaking under the aegis of the Ministry of Petroleum and Natural Gas, Government of India, respondent No.1. Thus, respondent No.2 is an instrumentality of the State, as the same works under the control and supervision of respondent No.1.

31. Restrictions which are sought to be imposed by the respondent No.2 in the said Scheme, are unjustifiable and inconsistent with the Rule of Law, wherein full opportunity is available to every citizen of the country to enforce his or her legal rights in a court of law. Thus, the said conditions enjoining an ex-employee to withdraw the litigation before considering his case for payment under the *Ex Gratia* Scheme, is clearly illegal and unacceptable.

32. Section 28 of the Indian Contract Act, 1872 clearly stipulates that any agreement by which any party is restricted absolutely from enforcing his rights by usual legal proceedings or extinguishes the rights of any party thereto, would be void to that extent. Thus, Section 28 of the Indian Contract Act, 1872 reads as under:

“28. Agreements in restraint of legal proceedings void.—¹⁹[Every agreement,—

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto from any



liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,

is void to that extent.]”

33. Respondent No.2 being a Government of India Undertaking is expected to act in a fair, reasonable and impartial manner. The act of respondent No.2 in denying the benefit of the *Ex Gratia* Scheme solely on the ground of the pending litigation initiated on behalf of the petitioner, is totally unjust and arbitrary. The respondent No.2 being an instrumentality of the State cannot be allowed to act in such high-handed manner and impose conditions that restrain the exercise of legal rights and recourse to legal remedies by the petitioner. Such restrictions as imposed by respondent No.2 in its Scheme, are clearly in violation of Principles of Reasonableness, Justness, Fairness and Equity, which ought to govern the actions of the State or any of its instrumentality. Thus, Clauses 3(vii), 5(d) and 6(i) of the *Ex Gratia* Scheme of respondent No.2, i.e., “Bharat Petroleum Corporation Limited Monthly Ex Gratia Scheme”, are liable to be struck down. The same are in violation and in restriction of the rights conferred upon the petitioner by the Constitution of India. Existence of such conditions would severely prejudice the cause of justice and cannot be sustained in law.



34. Supreme Court in the case of *Comptroller and Auditor-General of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan And Another*¹, has held that High Courts in India while exercising their jurisdiction under Article 226 of the Constitution of India have the power to give directions, where the discretion exercised under a policy decision of the Government or its instrumentalities, are based on irrelevant considerations, or exercised in a manner so as to frustrate the object of conferring such discretion. Thus, it has been held as follows:

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself

¹ (1986) 2 SCC 679



pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

35. Likewise, Supreme Court in the case of ***Brij Mohan Lal Vs. Union of India and Others***², has held that when the actions pertaining to the matters relating to general policy decision of the State, are arbitrary, mala fide or contrary to the law of the land, then the courts will step in to interfere with such policy decision. Thus, it has been held as follows:

“100. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:

(I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.

(II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.

(III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.

(IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.

(V) It is dehors the provisions of the Act or legislations.

(VI) If the delegate has acted beyond its power of delegation.

101. Cases of this nature can be classified into two main classes: one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former

² (2012) 6 SCC 502



class of cases, the courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the courts will step in to interfere with government policy.

xxx xxx xxx”

36. In view of the aforesaid, this Court certainly has the power to interfere with the policy decision of respondent No.2, when the same has been found to be arbitrary, unreasonable and contrary to the law of the land.

37. As regards the contention on behalf of respondent No.2 that payment of ex gratia is discretionary and there is no legal right to claim it, there is no quarrel with the said proposition. Indeed *ex gratia* payments cannot be claimed as a matter of right, being a matter of grace. However, where a Scheme of *ex gratia* has been introduced by an employer and an employee is covered by such Scheme, but for the arbitrary and unreasonable conditions imposed therein, then the court can certainly adjudicate upon the rights of such an employee under the *ex gratia* Scheme of the employer, especially when such employee has been denied the benefits in an unreasonable and arbitrary manner.

38. Undoubtedly, payment of ex gratia is discretionary, however, discretion vested in the Government has to be exercised in consonance with principles of reasonableness, fairness and for the public good. Thus, Supreme Court in the case of ***Ramana Dayaram Shetty Vs.***



*International Airport Authority of India and Others*³, held as follows:

“21.

It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non discriminatory ground.”

39. As regards the objection of respondent No.2 with respect to territorial jurisdiction of this Court, the same is found without any merits. The petitioner superannuated on 30.04.2005. At the time of his superannuation, the petitioner was posted with the respondent No.1 and was attached to the Ministry of Petroleum and Natural Gas, Government of India, at its New Delhi office. As per the pleadings on record, all his salaries and other emoluments including retiral benefits of the petitioner were released by the respondent from their office situated in Delhi. It is also pertinent to note that the litigation on the basis of which the petitioner was denied the benefits under the *Ex Gratia* Scheme, is also qua residence provided to the petitioner by respondents at Delhi and the said litigation is also pending in Delhi. Therefore, it is clear that part of the cause of action arose in Delhi.

³ (1979) 3 SCC 489



40. With regard to territorial jurisdiction, Supreme Court in the case of *Oil and Natural Gas Commission vs. Utpal Kumar Basu and Others*⁴, held as follows:

“5. Clause (1) of Article 226 begins with a non obstante clause — notwithstanding anything in Article 32 — and provides that every High Court shall have power “throughout the territories in relation to which it exercises jurisdiction”, to issue to any person or authority, including in appropriate cases, any Government, “within those territories” directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

⁴ (1994) 4 SCC 711



6. It is well settled that the expression “cause of action” means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kour v. Partab Singh* [ILR (1889) 16 Cal 98, 102 : 15 IA 156] Lord Watson said:

“... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.”

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition.....”

41. Supreme Court has laid down that the question whether or not, cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court, has to be decided in the light of nature and character of the proceedings under Article 226 of the Constitution. Thus, in the case of ***Om Prakash Srivastava Vs. Union of India and Another***⁵, Supreme Court has held as follows:

“7. The question whether or not cause of action wholly

⁵ 2006 SCC OnLine SC 758



or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. 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 Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

8. *Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. (See ONGC v. Utpal Kumar Basu [(1994) 4 SCC 711] .)*

9. *By “cause of action” it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See Bloom Dekor Ltd. v. Subhash Himatlal Desai [(1994) 6 SCC 322] .)*

10. *In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) “cause of action” means every fact, which it is necessary to establish to support a right to obtain a judgment. (See Sadanandan Bhadran v. Madhavan Sunil Kumar [(1998) 6 SCC 514 : 1998 SCC (Cri) 1471] .)*



11. It is settled law that “cause of action” consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. [See South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd. [(1996) 3 SCC 443]]

12. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression 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. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in “cause of action”. (See Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294] .)

xxx xxx xxx”

42. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum, (*Kusum Ingots & Alloys Ltd. Vs. Union of India and Another; 2004 (6) SCC 254*).

43. In view of the aforesaid, it is held that this Court has the



territorial jurisdiction to hear the present matter.

44. Considering the detailed discussion herein above, it is held that the petitioner, and after his demise, his wife, is entitled to receipt of benefits under the *Ex Gratia* Scheme as formulated by respondent No.2. Thus, respondent No.2 is directed to release the amounts under its scheme, “Bharat Petroleum Corporation Limited Monthly *Ex Gratia* Scheme” to the wife of the deceased petitioner forthwith, payable w.e.f. 01.04.2008 in terms of the Scheme. The amount of *ex gratia* payable to the petitioner w.e.f. 01.04.2008 along with interest calculated @6% per annum from 01.04.2008 till the date of payment, shall be released to the wife of the deceased petitioner forthwith. It is further directed that respondent No.2 shall continue to release monthly amounts under the *Ex Gratia* Scheme to the wife of the deceased petitioner till her lifetime in terms of the said Scheme, during the continuance of the said Scheme.

45. The present writ petition is allowed in the aforesaid terms.

(MINI PUSHKARNA)
JUDGE

JULY 10, 2023/au