

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 28.03.2024

DELIVERED ON: 28.03.2024

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

**W.P.A. 9078 of 2003
Binode Chandra Bairagi
Vs.
Union of India & Ors.**

Appearance:-

**Mr. Jayanta Samanta
Mr. Dipjyoti Chakraborty
Mr. Karunamoyee Samanta
Mr. Rajdeep Adhikari**

.....for the Petitioner

**Ms. Chandreyi Alam
Mr. Debapriya Gupta**

.....for the respondents

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

- 1.** The petitioner has prayed for issuance of a writ in the nature of mandamus commanding the respondents to forbear from acting upon the order of dismissal dated 8th July, 1997 and the appellate order signed on 18th November, 2002 and for direction upon the respondent authorities to reinstate the petitioner in service as Naik (BSF) with full back wages.
- 2.** Ms. Chandreyi Alam, learned advocate for the respondent authorities raises an objection as to the maintainability of this writ petition on the ground of lack of territorial jurisdiction. She submits that no part of the cause of

action arose within the jurisdiction of the Hon'ble High Court at Calcutta and therefore, this Court should not try and decide this writ petition.

3. Mr. Samanta, learned advocate appearing for the writ petitioner disputes such submission by contending that on an earlier occasion, the writ petitioner approached this Court by filing a writ petition being W.P. 4322(W) of 2000 praying for setting aside the order of dismissal dated 15th April, 1996 and this Hon'ble Court by an order dated 17th July, 2002 allowed the prayer of the writ petitioner to withdraw the said writ petition with liberty to prefer an appeal before the appellate authority in accordance with law.
4. He submits that since on an earlier occasion, this Hon'ble Court granted liberty to the petitioner to prefer an appeal and pursuant to such liberty, the petitioner preferred the appeal and the order of the appellate authority is under challenge in this writ petition, it is not open to the respondent authorities to raise an objection as to the maintainability of this writ petition on the alleged ground of lack of territorial jurisdiction, at this stage.
5. He further submits that he filed the appeal petition by registered post from his place of residence in the district of Nadia within the State of West Bengal and the appellate authority also communicated the final order at his residential address at Nadia. According to him, part of cause of action arose within the territorial jurisdiction of the Hon'ble High Court at Calcutta for which this Court has jurisdiction to decide the writ petition.
6. In support of the aforesaid contentions, Mr. Samanta places reliance upon the decision of the Hon'ble Supreme Court in the case of **Alchemist Ltd. &**

Anr. vs. State Bank of Sikkim and Ors. reported at **(2007) 11 SCC 335** and **Nawal Kishore Sharma vs. Union of India & Ors.** reported at **(2014) 9 SCC 329.**

7. Since an objection as to the maintainability of this writ petition on the ground of lack of territorial jurisdiction of this Court has been raised, this Court invited the learned advocates of the respective parties to advance their arguments with regard to the issue of jurisdiction only and the learned advocates for the respective parties have restricted their submissions only with regard to such issue.
8. Record reveals that the petitioner was attached with 162 Bn., Border Security Force at Phatik Chara, Tripura (West) and was charged under section 14(c), 40 of the Border Security Force Act, 1968. It further appears from the record that the proceedings of the General Security Force Court trial of the petitioner was placed before the competent authority for confirmation of the findings and the sentence of the Court and by an order dated 8th July, 1997, the 4th respondent sentenced the petitioner attached with 16 Bn. BSF to dismissal from service. The order of confirmation was passed by an authority having its seat within the State of Tripura. Thereafter, the petitioner preferred an appeal before the Director General of Border Security Force having his office at New Delhi.
9. The Director General, BSF by an order signed on 18th November, 2002, bearing the order date 21.11.2002 after examining the plea of the petitioner during the personal hearing and the points raised by him and the relevant records, found no substance in his plea on the point raised in the petition

warranting any interference in the findings and sentence of the General Security Force Court and accordingly, rejected such appeal petition.

10. It therefore, appears that the charges levelled against the petitioner pertains to an incident, which took place within the territorial jurisdiction of the State of Tripura. The General Security Force Court proceeding was conducted within the State of Tripura, confirmation of sentence was also by an authority within the State of Tripura and the appellate proceeding was conducted within the Union Territory of New Delhi.
11. Now the question that arises is, as to whether filing of the appeal petition from his residential address at Nadia and the communication of the final order passed by the appellate authority at his residential address at Nadia can give rise to a cause of action for filing the writ petition before the Hon'ble High Court at Calcutta.
12. The Hon'ble Supreme Court in *Alchemist Limited (supra)* after considering several decisions held that for the purpose of deciding whether the facts averred by the petitioner would or would not constitute a part of the cause of action, one has to consider whether such fact constitutes a material, essential or integral part of the cause of action. In the said decision the Hon'ble Supreme Court noticed its own decision in the case of **National Textile Corporation Limited vs. Haribox Swalram** reported at **(2004) 9 SCC 786** wherein it was held that mere fact that the writ petitioner carries on business at Calcutta or the reply to the correspondences 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.

13. After going through the said decision, this Court finds that in order to arrive at a finding as to whether a part of the cause of action arose within the jurisdiction of this Hon'ble Court, it has to be considered whether the facts pleaded by the petitioner herein would constitute material, essential or integral part of the cause of action. Learned Advocate for the petitioner would contend that since the appeal petition was despatched from a post office situated within the State of West Bengal and the order of the appellate authority was communicated to the petitioner at his residential address within the State of West Bengal, the same would constitute a part of the cause of action. Since the appeal petition was despatched from the residential address of the petitioner within the district of Nadia, the appellate authority had no other alternative but to communicate its order to the petitioner at his residential address. Therefore, the communication of the order by the appellate authority at the residential address of the petitioner cannot be said to be a material, essential or integral part of the cause of action. Merely because of the fact that the petitioner chose to despatch the appeal petition from a post office situated within the State of West Bengal that alone cannot constitute material, essential or integral part of the cause of action. Therefore, this Court, is not inclined to accept the contention of the learned advocate for the petitioner that a part of the cause of action arose within the State of West Bengal as the relevant facts constituting the cause of action, as observed hereinbefore, all took place outside the State of West Bengal.

14. In *Nawal Kishore Sharma (supra)* the order rejecting the claim for disability compensation was the subject matter of dispute in the writ petition. In the

said case the appellant therein reported sickness on account of various ailments including the difficulty in breathing. He was referred to a hospital and consequently he was signed off for further medical treatment and the respondent authorities permanently declared the appellant therein unfit for sea service on account of heart-muscle diseases. The Hon'ble Supreme Court noted that the copy of the letter cancelling the registration of the appellant therein as seaman was sent to the native place in Bihar where he was staying after he was declared medically unfit. It was further noted that representation claiming disability compensation was sent from Bihar and the reply rejecting the claim was also sent in Bihar. The Hon'ble Supreme Court after noting that the appellant therein was forced to stay at his native place for his serious ailments, made a *prima facie* observation that considering all facts together, a part of the cause of action arose within the jurisdiction of the Patna High Court. The said decision is distinguishable on facts and therefore cannot come to the aid of the petitioner.

15. Now this Court has to examine as to whether merely because of the fact that this Court in W.P. 4322 (W) of 2000 allowed the petitioner to withdraw the writ petition with liberty to approach the appellate forum can confer the jurisdiction upon this Court to decide a writ petition filed subsequently challenging the final order of the appellate authority. It is well settled that consent cannot confer jurisdiction upon the Court. Even assuming that the learned advocate appearing for the respondents did not raise any objection as to the lack of territorial jurisdiction of this Court when the order dated 17th July, 2002 was passed in W.P 4322 (W) of 2000, the same

does not *ipso facto* vests this Court with the territorial jurisdiction to decide this writ petition challenging the final order of the appellate authority.

16. For the reasons as aforesaid, this Court holds that it lacks territorial jurisdiction to decide the instant writ petition. It is made clear that this order shall not prevent the writ petitioner from approaching the appropriate forum in accordance with law on the self-same cause of action.
17. Before parting, it is made clear that this Court has not entered into the merits of the order of the appellate authority as well as the order of confirmation dated 8th July, 1997 or any other orders in connection thereto.
18. There shall be, however, no order as to costs.
19. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)