

WPA 17349 of 2024

22.7.2024
Ct. 25,sl.54
Tudu/p.a

Harsh Transport Pvt. Ltd vs. Union of India & ors.

Mr. Saptarshi Roy.
Ms. Kakali Das Chakraborty.

...for the petitioner.

Mr. Sanjit Kumar Ghosh,
Ms. Sarda Sha.
....for the respondent.

In this writ petition, the respondent/Railways have espoused a preliminary point as to the maintainability of the same. Hence, the parties have been heard on the point of maintainability of the writ petition on the previous day. By dint of this order the same is considered and decided.

The writ petitioner has challenged an order of ACM (Goods) Divisional Office, Commercial Branch, Mumbai CSMT /Central Railways dated May 22, 2024, for levy of scanning charges of Rs.2/- per package. The writ petitioner is the registered lease holder of different zonal railways and is a party to the E-auction agreement entered with the South Eastern Railway, dated October 6, 2022, for two years. 23 tonnes of parcel van in VPH on round trip basis by Train No. 18030/18039 (Howrah-Mumbai Express, Ex-Shalimar to LTT), have been leased out to him, for two years, vide the said agreement. The petitioner has complied with all the legal formalities of depositing security deposit,

license fee, development charges and freight charges etc. It has started operating from October 26, 2022, pursuant to the said lease agreement. According to the petitioner, as per PARA 34 of Comprehensive Parcel Leasing Policy (CPLP) No. 06/2014, the lease holder, that is, the petitioner in this case, would be exempted from scanning of each parcel consignment loaded in Leased VP. Further it has stated that according to the Railway Board Circular dated March 31, 2022, (Clause - 6 thereof), the Railway scanning facility is optional for a lease holder and also that scanning can be done by the lease holder himself which would be , however, subject to cross checking by the Railways authority.

On this factual background the writ petitioner has challenged the impugned order dated May 22, 2024, by dint of which it has been directed to mandatorily scan the packages to be loaded in the leased Parcel Vans, originating from CSMT , in lieu of scanning charges at the rate of Rs.2/- per package.

The respondent/Railways is being represented by Mr. Ghosh. He says that the writ petition would not be maintainable in this Court. He has pointed out that the impugned order as above is issued by ACM (Goods) Divisional Office, Commercial Branch, Mumbai CSMT under the Central Railways. In that view of the matter the cause of

action has arisen at a place beyond jurisdiction of this Court. He submits that the order has been issued by an authority, functioning beyond the jurisdictional limits of this High Court. Accordingly, any challenge as to the legality and propriety of the said impugned order would not be amenable to the jurisdiction of this Court.

To further substantiate his submissions as above, Mr. Ghosh has relied on a judgment of the Supreme Court reported in *AIR 2007 SC 1812 [Alchemist Limited vs. State Bank Of Sikkim]*. There the Hon'ble Court has held as follows;

"From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that."

Mr. Ghosh has further attacked maintainability of this case for the reason that the dispute raised is emanating from a lease agreement which is private in nature, involving several disputed questions of fact. The same, possessing no public element and also requirement of determination of various factual questions, would not be amenable to this Court's extraordinary jurisdiction under Article 226 of the Constitution of India. An order of the Hon'ble Coordinate Bench [dated April 5, 2022, in WPA No.

18852 of 2021] has been referred to in furtherance of his contentions that case falling in the realm of private contracts with the Railways and involving questions of fact to be determined, would not be entertainable by the writ Court.

He has urged that the writ petition may be dismissed for the reasons as above.

Mr. Roy, for the writ petitioner has raised strong objections to such contentions and prayer of the respondent/Railways, as above. He has referred to the Constitutional provision of Article 226(2), to submit that the High Court within jurisdiction of which the cause of action of the case arises wholly or in part, would be competent to entertain a writ petition. According to the petitioner, its cause of action has partly arisen within the jurisdictional limits of this High Court. Hence, the present writ petition is maintainable.

Mr Roy has taken this Court to the various documents annexed with the writ petition to elaborate as to how the part cause of action has arisen within its jurisdiction. Mr Roy says that the writ petitioner has entered into a lease agreement with the South Eastern Railway. That, the agreement itself has provided for the rates and charges payable by the lessee/petitioner. The same has been duly complied with by the petitioner and that the agreement has

not provided for payment of any scanning costs. According to the petitioner, the lease agreement covers enroute to and fro journey of the train. Therefore, during the entire, the parties are legally bound to comply with the provisions of the lease agreement. By referring to the various provisions of the Freight Marketing Circular No. 11 of 2022 Mr Roy has shown that the same does not include any scanning cost as a part of it, to mandatorily to be complied by the petitioner. So far as the other charges, as provided therein, according to the writ petitioner the same has been duly remitted by it leaving no scope for any claim thereafter or dispute relating thereto.

The Railway Board Circular dated March 21, 2022, has also been referred to. That is, with reference to *clause (6)* thereof in particular. The same may be extracted as herein below:

“ 6. For leased parcel space, the lease-holder may have the facility of scanning at their depot, and affix seal /stamp/tag on packages after scanning, which shall be cross-checked before loading. Alternatively, the lease holder may use the facility provided at the station for scanning of consignments. The responsibility of genuineness of such consignments shall lie with the lease holders, and violation of any penal section of criminal law in force may also result in prosecution under the concerned Criminal Act.”

With reference to as above, it has been argued that the impugned order by the concerned authority at Mumbai, is violative of the lease agreement as well as the Railway Board Circular as mentioned above. The same is

devoid of any legal force and the same would not be maintainable.

So far as the preliminary point of maintainability of this writ petition on the ground of lack of jurisdiction is concerned, the petitioner has argued firstly that the provisions under the Railway Board Circular as mentioned above, is equally applicable for the entire railway operations throughout the country. In such view of the fact, it is stated that violation of the same can be challenged irrespective of any particular jurisdictional Court and the point of lack of jurisdiction of any Court, in that event, would not be sustainable. It is submitted that as the impugned order as above has rendered the Railway Board Circular dated March 31, 2022 as well as the terms of agreement between the parties as nugatory, the writ petition before this Court filed by the present petitioner, who has his place of business within jurisdiction of this Court, and entered into the lease agreement and operated pursuant to the same, would be maintainable. Mr Roy has submitted that irrespective as to the seat of the issuing authority of the impugned order, the same has violated the provisions of the Circular, applicable countrywide and also that of the agreement, entered into between the parties, at a place within the jurisdictional limits of this Court. Accordingly, he

says, the part cause of action of this case has arisen within jurisdiction of this Court and the writ petition would be thus maintainable.

Certain judgments have been referred to on behalf of the writ petitioner, in this regard, which are as follows:

- i. (2006) 6 SCC 207 [Om Prakash Srivastava vs Union of India & Ors]*
- ii. (2014) 9 SCC 329 [Nawal Kishore Sharma vs Union of India & Ors]*
- iii. 2022 SCC Online Cal 683 [Radhey Shyam Pandey vs Union of India & Ors].*

In *Om Prakash*, the Court has held that in order to maintain a writ petition, the 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. Also, that the High Court can exercise power to issue writ if the cause of action wholly or in part has 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 writ is issued is not within the said territories.

In *Nawal Kishore*, the Court has relied on the finding in the earlier judgment of *Om Prakash*. It has also relied on the finding of the other case *Rajendran*

Chingaravelu vs CIT [reported in (2010) 1 SCC 457] that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) having accrued within such limits, would bestow jurisdiction to the Court.

In *Radhey Shyam Pandey*, a Coordinate Bench of this Court has taken into consideration the findings of both the judgments, as above. Alongside that, the Court has taken into consideration that the place of business of the petitioner was within jurisdiction and the agreement, termination of which was challenged in the said case, has been executed here only. Therefore, the Court has held that the writ petition was maintainable.

The relevant question is whether part cause of action of the writ petitioner lies within the territorial limits of jurisdiction of this writ Court or not. Cause of action, as the Supreme Court has said in *Rajendran's case (supra)*, is that bundle of facts which gives a petitioner, a right to sue. Whether a particular fact constitutes a cause of action or not, must be decided on the basis of the facts and circumstances of each case.

A person's right to sue can be invoked, on the specific fact of violation of his rights. In this case the alleged violation of the rights of the writ petitioner is germane to the impugned order dated dated May 22, 2024, of ACM (Goods)

Divisional Office, Commercial Branch, Mumbai CSMT /Central Railways.

The facts, which according to the writ petitioner would be relevant to ascertain the part cause of action of it, are firstly, the fact of execution of the lease agreement, which is entered into at a place, within the jurisdiction of this Court and alleged violation of the stipulations therein. Next is the alleged violation of the provision of Railway Board Circular, which is applicable throughout the country, with respect to functioning of the railway administration.

The lease agreement and the said Circular of the Railway Board dated March 31, 2022, are the sources on the basis of which the writ petitioner, as the lessee of the respondent/Railways, derives its rights under the contract. The cause of action here is violation of one of those rights, which has occurred due to issuance of the said impugned order to the writ petitioner, by ACM (Goods) Divisional Office, Commercial Branch, Mumbai CSMT /Central Railways. The same has been received by the writ petitioner, at the place wherefrom it has been issued.

Article 226(2) of the Constitution has provided for writ jurisdiction of a Court within which, the whole or part cause of action arises. The particular facts of this case

show that neither the execution of the lease agreement nor issuance of the said Circular but violation thereof has been questioned here, which, however, is only relatable to the impugned order issued by the Mumbai office. Due to the issuance of the said order, petitioner's rights emanating from the agreement or Circular, has been alleged to have been violated. Therefore, the fact giving the petitioner a right to sue is issuance of the impugned order by the Mumbai office, dated May 22, 2024 upon the writ petitioner, who has been communicated with the same at the place of issuance only.

Not each and every fact of the case would form the cause of action thereof. It is only those facts of the case which gives the petitioner the right to sue, should be construed as the cause of action of a particular case. Very naturally those relevant facts would differ from case to case. On the basis of the particular facts and circumstances of this case, the Court finds the fact, of issuance of the impugned order, to have given the right to sue to the writ petitioner. Therefore, on the factual background of this case, that is the cause of action of the writ petitioner and not any other facts related with the case. A person's right to sue is relatable to infringement thereof, or otherwise there would not have been any question of knocking the doors of a Court. Alleged infringement of right of the writ petitioner does not appear

to be for a reason arisen within the local limits of jurisdiction of this Court. The tests laid down in *Om Prakash's case (supra)* is not satisfied in the case of the present writ petitioner.

On the premise as above, the Court finds force in the submissions made on behalf of the respondent/Railways, relating to the non-maintainability of the present writ petition.

It is found that pursuant to the issuance of the impugned order dated May 22, 2024, by ACM (Goods) Divisional Office, Commercial Branch, Mumbai CSMT /Central Railways, the petitioner is aggrieved on the ground of alleged violation of his rights under the lease agreement and the departmental Circular dated March 3, 2022 as well. Therefore, in his case, the cause of action arose at a place, beyond jurisdiction of this Court. No part there of can be said to have arisen within local limits of jurisdiction of this Court, to espouse its jurisdiction under Article 226(2) of the Constitution. In such factual background of the case, the ratio of the decisions as referred to in this case on behalf of the writ petitioner, shall have no manner of application, being distinguishable on different facts thereof. Accordingly, the cause of action of this case, either wholly or in part,

having not arisen within the jurisdiction of this Court, the present writ petition is found to be not maintainable.

Hence, the Court finds it not necessary to go into the other point, raised by the respondent/Railways, regarding maintainability of this writ petition.

The writ petition WPA No. 17349 of 2024 is dismissed as not maintainable. However, the petitioner is granted liberty to move the appropriate Court for redress, if any.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)