

Court No. 9
(265711)

WPA 21092 of 2024

10.09.2024

(AD 3)

(S. Banerjee)

Surya Alloy Industries Limited & Anr.
Vs.
Union of India & Ors.

Mr. Debnath Ghosh
Mr. Farhan Ghaffar
Mr. Debsoumya Basak
Mr. Viswajit Neogi Dasgupta
Mr. Subhas Chandra Jana

...for the petitioners

Mr. Atarup Banerjee
Ms. Rashni Bothra

...for the Union of India

1. Let the supplementary affidavit filed by the petitioners in court, be taken on record.
2. The writ petition has been filed challenging an order dated June 18, 2024, by which the petitioner no.1 was temporarily delisted from the list of approved vendors of the Research Designs & Standards Organisation, Government of India ('RDSO', for short). The petitioner no. 1 had been a listed vendor since long.
3. The Indian Railways floated an e-tender dated February 23, 2022, inter alia, for manufacture and supply of 6.2 mm Thick Composite Grooved Rubber Sole Plates with horns for 60 Kg PSC Sleepers to RDSO. The petitioners duly participated in the tender and were selected as the lowest bidder. The letter of

acceptance was issued by the Headquarters-Engineering, Northeast Frontier Railway, Maligaon, Guwahati. In terms of the letter of acceptance, the completion period was specified as four months. 50% of the supply was to be effected within a period of three months from the date of issuance of the letter of acceptance. Some communications continued between the parties with regard to the delivery, purchase orders, supply of materials etc. By a letter dated June 1, 2022, the petitioner no. 1 was asked to submit a photocopy of the pooled performance guarantee, at the earliest. Thereafter the purchase order was issued on July 18, 2022. The goods were allegedly inspected by the concerned authorities and despatched sometime around September 4, 2022. The quantity of goods tendered for inspection was 69,860. The petitioner no. 1 company raised bills and they were allegedly accepted. Payments were allegedly released.

4. It is contended by the petitioners that, all on a sudden a letter dated April 10, 2023, was issued by the Joint Director (Track)-IX, RDSO, addressed to the Chief Track Engineer, Northeast Frontier Railway, Guwahati. The petitioners came to learn that the letter was regarding failure of the petitioners to supply the goods as per the specifications. A joint inspection was planned to be held. Allegedly, no

information in this regard was furnished to the petitioners. The petitioners apprised the authorities with regard to the despatch of the goods and the authorities proceeded to hold an inspection. The petitioners requested for an opportunity to participate in the joint inspection by a representation dated April 11, 2023. The authorities proceeded to hold the joint inspection.

5. The goods supplied were allegedly found to be of sub-standard quality. A show-cause notice was issued to the petitioner no. 1 on various grounds and the petitioner no. 1 was asked to answer. The relevant portion of the show-cause notice is quoted below:

“...4.0 In continuation to above, the 1st set of samples of three lots of 6.2mm CGRSP were sent to M&C Directorate of RDSO for testing as per IRS Specification No RDSO/M&C/RP-198/2006. Vide ref v) above.

5.0 Vide ref vi) above M&C Directorate has sent Sample Testing Report No. R-19/23 dt 10-05-2023 to Track Directorate. From the reort (report) (sic) I tis (it is) (SIC) observed that the samples are unsatisfactory (due to more than 5% variation from specified accepted values as per specifications) in parameters of specific gravity and ash contents. Samples of one of the lot found unsatisfactory in visual test as well.

6.0 The observations recorded during the joint inspection and subsequent test results

establish that 6.2mm thick CGRSP at supplied by M/s. Surya Alloy Industries Ltd. Howrah to Track depot BNGN/Northeast Frontier Railway were of substandard quality and did not conform to the specifications.”

6. The petitioner no. 1 answered to the notice, inter alia, stating that in the show-cause notice, six documents were relied upon, which were not made available to the petitioners and without such documents the petitioners were not in a position to answer to the show-cause notice, satisfactorily.

7. The authorities once again reminded the petitioners to answer to the show-cause notice, inter alia, stating that an unsatisfactory reply to the show-cause notice would lead to down-gradation of the petitioner no. 1 from the ‘List of the Approved Vendors’. Thereafter, the petitioners filed a formal reply (demand justice) which is annexed to the supplementary affidavit and submitted that the proceeding could not have been initiated on the basis of an anonymous complaint. The guidelines of the Central Vigilance Commission provided that cognizance of such complaints could not be taken.

8. By a letter dated June 18, 2024, the petitioner was informed of the decision to delist the petitioner from the list of approved vendors, temporarily. The petitioner was granted liberty to appeal before the

appellate authority of RDSO. The petitioners contend that neither the documents relied upon by the authorities in the show-cause notice were supplied, nor were the petitioners granted an opportunity of hearing. Thus, the remedy of an appeal would not be a bar. The ground for invoking the jurisdiction of this court is, violation of the principles of natural justice.

9. Mr. Atarup Banerjee, learned advocate appearing for the respondents submits that the writ petition is not maintainable before this court, due to lack of territorial jurisdiction. The tender was floated in Guwahati, the goods were supplied in Guwahati and the inspection was also made in Guwahati. Reliance has been placed on a decision of a co-ordinate bench of this court in **WPA 12956 of 2023 (Shri Goutam Sengutpa –Vs.- Union of India & Ors.)** which was affirmed in **MAT 255 of 2024 (Goutam Sengupta – Vs.- Union of India & Ors.)**.

10. Heard the parties. The cause of action in this writ petition is neither matters arising out of the tender conditions, nor the disputes which arose during the execution of the work. The cause of action is the order of temporary delisting, which was served upon the petitioner no. 1 within the jurisdiction of this court.

11. Thus, in my view, at least a part of the cause of action has arisen before this court.

12. The decision in WPA 12956 of 2023 was rendered in a matter where the entire disciplinary proceeding which was under challenge had taken place at Dhanbad, within the State of Jharkhand. The coordinate Bench held that once the charged officer had challenged the entire disciplinary proceeding and he had attended the disciplinary proceeding at Dhanbad, from Kolkata, even after his retirement, the writ petition should be maintained before the Jharkhand High Court. Deduction of pension from the account at Kolkata was not the cause of action according to His Lordship, which had given rise to the writ petition. Under such circumstances, the writ petition was dismissed on the ground of lack of territorial jurisdiction.

13. MAT 255 of 2024 arising from the said order, was dismissed by an Hon'ble Division Bench on the same ground. The Division Bench found that the decision of the Supreme Court in ***Shanti Devi alias Shanti Mishra Vs. Union of India & Ors.***, reported in **(2020) 10 SCC 766**, would not apply in the said case. No part of the cause of action arose in the jurisdiction of the Calcutta High Court.

14. In ***Shanti Devi (Supra)*** the Hon'ble Apex Court held that even if a fraction of the employee's cause of action arose within the territorial jurisdiction of Patna High Court, the High Court would have the territorial

jurisdiction to entertain the writ petition. In the said case, a part cause of action was refusal to revoke the order of refund. The relevant paragraphs are quoted below:-

“14. The learned Single Judge did not correctly consider the facts and pleadings in Writ Petitions Nos. 13955 of 2006 and 5999 of 2014. The earlier writ petition filed by the petitioner in the year 2006 was where the petitioner had prayed for refund of wrongly withheld/illegally detained amount of Rs 1,33,559. When the earlier writ petition was filed, there was no issue of non-payment of pension or stoppage of pension since the pension had been started w.e.f. May 2005. The subsequent Writ Petition No. 5999 of 2014 was filed when payment of pension after 8 years was stopped and the petitioner was directed to return the amount of Rs 8,09,268. The cause of action for filing Writ Petition No. 5999 of 2014 was entirely different. The learned Single Judge committed error in holding that in view of the dismissal of the earlier writ petition on the ground of lack of territorial jurisdiction, the writ petition is also dismissed.

15. The second reason given by the learned Single Judge that the petitioner ought to have filed the writ petition before the Jharkhand High Court also does not commend us. For a retiree, who is settled in Darbhanga and receiving pension at District Darbhanga, it cannot be said that it was necessary for him to file his petition in the Jharkhand High Court where his earlier writ petition was pending. The subject-matter of the earlier writ petition was entirely different and the dismissal of the writ petition does not preclude the petitioner to file subsequent writ petition in the same High Court.

16. The Division Bench of the High Court did not advert to the facts or pleadings of the writ petition and only after quoting Paras 4 and 5 of the judgment [Shanti Devi v. Union of India, 2017 SCC OnLine Pat 3639] of the learned Single Judge dismissed the writ petition without adverting to any issue, which was raised in the LPA by the writ petitioner. Copy of the grounds of LPA No. 1265 of 2017 has been filed as Annexure P-24, which indicate that the petitioner has clearly pleaded the relevant facts and specifically stated that cause of action arisen in the year 2013 cannot be subject-matter of writ petition filed 8 years ago in the year 2006. The main pleadings in the writ petition were not dealt with by the High Court and the High Court having dismissed the writ petition on the ground of lack of territorial jurisdiction, we need to

advert as to whether there was any cause of action for entertaining the writ petition by the Patna High Court.

28. From the facts of the present case, we are of the considered opinion that part of the cause of action has arisen within the territorial jurisdiction of the Patna High Court. The deceased petitioner was continuously receiving pension for the last 8 years in his savings bank account in State Bank of India, Darbhanga. The stoppage of pension of late B.N. Mishra affected him at his native place, he being deprived of the benefit of pension which he was receiving from his employer. The employer requires a retiring employee to indicate the place where he shall receive pension after his retirement. Late Shri B.N. Mishra had opted for receiving his pension in State Bank of India, Darbhanga, State of Bihar, which was his native place, from where he was drawing his pension regularly for the last 8 years, stoppage of pension gave a cause of action, which arose at the place where the petitioner was continuously receiving the pension. We, thus, are of the view that the view of the learned Single Judge [Shanti Devi v. Union of India, 2017 SCC OnLine Pat 3639] as well as the Division Bench [Shanti Devi v. Union of India, 2018 SCC OnLine Pat 933] holding the writ petition not maintainable on the ground of lack of territorial jurisdiction was completely erroneous and has caused immense hardship to the petitioner.”

15. In the case of ***State of Goa Vs. Summit Online trade Solutions Private Limited & Ors.***, reported in **(2023) 7 SCC 791**, which was disposed of by the Hon’ble Apex Court along with other civil appeals, the term cause of action was elaborately discussed in paragraphs 14 to 17 of the said decision. The same read thus:

“14. While dealing with an objection as to lack of territorial jurisdiction to entertain a writ petition on the ground that the cause of action has not arisen within its jurisdiction, a High Court essentially has to arrive at a conclusion on the basis of the averments made in the

petition memo treating the contents as true and correct. That is the fundamental principle. Bearing this in mind, we have looked into the petition memo of WP(C) No. 38 of 2017 and searched in vain to trace how at least part of the cause of action has been pleaded by the petitioning company, to have arisen within the territorial jurisdiction of the High Court.

15. 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.

16. 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 v. Gill* [*Cooke v. Gill*, (1873) LR 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.

17. 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.”

16. Paragraph 59 of this writ petition deals with the averments relating to the jurisdiction of this court.

The same is quoted below:-

“59. The petitioner's factory and office both are situated within the State of West Bengal which is within the territorial jurisdiction of this Hon'ble Court. The petitioners No.1 had received all correspondences including the show cause notice at its Registered Office, which is situated at 1/1, Camac Street, Kolkata - 700016 and which is within the jurisdiction of this Hon'ble Court. The office of the respondent no.3 wherefrom the respondent RDSO controls its activities relating to Inspections etc., is also situated within the jurisdiction of this Hon'ble Court. All correspondences have been issued and received in connection with the instant matter by the petitioners No. 1 at its said Registered Office and the impact of the show cause dated 16th May, 2023 issued by RDSO and communication dated 21st June, 2023 and the impact of the delisting order, wherefrom the cause of action has arisen in the matter, have been felt by the petitioners at its Registered Office which is situated within the jurisdiction of this Hon'ble Court.

As such part cause of action has duly arisen within the territorial jurisdiction of this Hon'ble Court and thus this Hon'ble Court has jurisdiction to try and adjudicate this instant Writ Petition.”

17. The Hon'ble Apex Court was of the view that the Constitutional mandate is that a Writ Court, under Article 226 of the Constitution of India is to entertain and try writ petitions, provided at least a part of the cause of action would arise within the territorial jurisdiction of the High Court concerned.

18. In this case, the entire series of communications and letters, starting from the show-cause, to the reminders, replies etc and the final order, were all served upon the petitioner in Kolkata. The petitioner is an approved vendor in Kolkata, runs his business from Kolkata and the orders and payments were received by him in Kolkata.

19. Under such circumstances, this court holds that the writ petition should not be rejected on the ground of lack of jurisdiction.

20. With regard to the merits of the order passed, this court has not expressed any opinion as this court finds that the order simply mentions that the reply by the petitioners was not satisfactory. Issues raised by the petitioners were not discussed and the petitioner was not granted an opportunity of hearing.

21. Under such circumstances, the order impugned is set aside. The RDSO is granted liberty to proceed afresh on the basis of the show cause notice. The replies of the petitioners and the points raised therein, should be considered. An opportunity of hearing must be given to the petitioners. The matter should be disposed of in accordance with law, by passing a reasoned order.

22. The demand justice which has been annexed to the supplementary affidavit, shall be treated as the

representation of the petitioners along with the other replies which have been filed earlier. The documents which were relied upon in the show-cause, shall be supplied to the petitioners and if they are voluminous, inspection thereof shall be allowed to the petitioners, before the petitioners are heard. Upon inspection of the documents, in case the petitioners want to file a supplementary reply, they shall be given such opportunity. Thereafter, the entire matter shall be heard and decided. A reasoned order will be passed and communicated.

23. The writ petition is disposed of.

24. All parties are to act on a server copy of this order.

(Shampa Sarkar, J.)