

124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5635-2024

Date of Decision:12.03.2024

JITENDER KUMAR

..... Petitioner

Versus

UNION OF INDIA AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Rajeev Anand, Advocate for the petitioner.

Ms. Simran Grewal, Advocate for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 09.03.2022 (Annexure P-3), order dated 12.07.2022 (Annexure P-7), order dated 01.12.2022 (Annexure P-9) and order dated 19.07.2023 (Annexure P-11) whereby petitioner was dismissed from service and his appeal as well as revision and mercy petition have been rejected.

2. The order of dismissal from service dated 09.03.2022 (Annexure P-3) was passed at Odisha. The appellate, revisionary and mercy petition orders were passed at Odisha or West Bengal.

3. The incident which led to dismissal from service occurred outside the jurisdiction of this Court and thereafter all the impugned orders came to be passed outside the territorial jurisdiction of this Court. The petitioner has invoked jurisdiction of this Court on the sole ground that petitioner is resident of State of Haryana and impugned orders were communicated at his residence.

4. A two Judge Bench of Hon'ble Supreme Court in *Alchemist Ltd. v. State Bank of Sikkim, (2007) 11 SCC 335* while dealing with

question of territorial jurisdiction has held that “part of cause of action” must arise to constitute territorial jurisdiction. High Court cannot invoke writ jurisdiction if no part of cause of action has arisen within its jurisdiction. In the said case, this Court dismissed writ petition despite claim of petitioner that the petitioner company has its registered and corporate office at Chandigarh; the offer of the petitioner company was accepted on 20-2-2004 and the acceptance was communicated to it at Chandigarh; part-performance of the contract took place at Chandigarh inasmuch as Rs 4.50 crores had been deposited by the petitioner company in a fixed deposit at Chandigarh as per the request of the first respondent; the Chairman and Managing Director of the first respondent visited Chandigarh to ascertain the bona fides of the petitioner company; negotiations were held between the parties in the third week of March, 2005 at Chandigarh; and letter of revocation dated 23-2-2006 was received by the petitioner company at Chandigarh. The petitioner company filed SLP before Supreme Court which came to be dismissed. The relevant extracts of the judgment read as:-

“6. The High Court dismissed the writ petition only on the ground that it did not have territorial jurisdiction to entertain the writ petition as no cause of action had arisen within the territorial jurisdiction of the Court. The High Court did not enter into merits of the matter and granted liberty to the appellant Company to seek appropriate remedy before an appropriate court.

7. The said decision of the High Court is challenged by the appellant Company in this appeal. We have heard the learned counsel for the parties.

8. *The appellant Company contended that a part of cause of action had arisen within the territorial jurisdiction of the High Court of Punjab and Haryana. The appellant Company, for such submission, relied on the following facts:*

(i) the appellant Company has its registered and corporate office at Chandigarh;

(ii) the appellant Company carries on business at Chandigarh;

(iii) the offer of the appellant Company was accepted on 20-2-2004 and the acceptance was communicated to it at Chandigarh;

(iv) part-performance of the contract took place at Chandigarh inasmuch as Rs 4.50 crores had been deposited by the appellant Company in a fixed deposit at Chandigarh as per the request of the first respondent;

(v) the Chairman and Managing Director of the first respondent visited Chandigarh to ascertain the bona fides of the appellant Company;

(vi) negotiations were held between the parties in the third week of March, 2005 at Chandigarh;

(vii) letter of revocation dated 23-2-2006 was received by the appellant Company at Chandigarh. Consequences of the revocation ensued at Chandigarh by which the appellant Company is aggrieved.

It was, therefore, submitted that at least a part of cause of action had certainly arisen within the territorial jurisdiction of the High Court of Punjab and Haryana and hence it had jurisdiction to entertain the petition. It was, therefore, submitted that the

impugned order passed by the High Court deserves to be set aside by directing the Court to decide the writ petition on merits.

9. The respondents, on the other hand, submitted that neither of the above facts nor circumstances can be said to be a part of cause of action investing jurisdiction in the High Court of Punjab and Haryana. According to the respondents, all substantial, material and integral facts constituting a cause of action were within the territory of the State of Sikkim and, hence, the High Court of Punjab and Haryana was fully justified in holding that it had no territorial jurisdiction to entertain, deal with and decide the lis between the parties.

10. The respondents, in this connection, relied upon the following facts:

(i) registered and corporate office of the first respondent Bank is at Gangtok i.e. Sikkim;

(ii) secretariat of the second respondent State is situated at Gangtok i.e. Sikkim;

(iii) offers were called for from various parties at Gangtok;

(iv) all offers were scrutinised and a decision to accept offer of the appellant Company was taken by the first respondent Bank at Gangtok;

(v) the State Government's decision not to approve the proposal of the appellant Bank was taken at Gangtok;

(vi) the meeting of the Board of Directors of the first respondent Bank was convened at Gangtok and a resolution was passed to withdraw the letter dated 20-2-2004 at Gangtok;

(vii) a communication was dispatched by the first respondent Bank to the appellant Company on 23-2-2004 from Gangtok.

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12. *Before entering into the controversy in the present appeal, let the legal position be examined:*

Article 226 of the Constitution as it originally enacted had twofold limitations on the jurisdiction of High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised by the High Court “throughout the territories in relation to which it exercises jurisdiction” i.e. the writs issued by the court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be “within those territories”, which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories.

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26. *In Union of India v. Oswal Woollen Mills Ltd. [(1984) 2 SCC 646 : 1984 SCC (Cri) 348 : AIR 1984 SC 1264 : (1984) 3 SCR 342] the registered office of the Company was situated at Ludhiana, but a petition was filed in the High Court of Calcutta on the ground that the Company had its branch office there. The order was challenged by the Union of India. And this Court held that since the registered office of the Company was at Ludhiana and the principal respondents against whom primary relief was sought were at New Delhi, one would have expected the writ petitioner to approach either the High Court of Punjab and Haryana or the High Court of Delhi. The forum*

chosen by the writ petitioners could not be said to be in accordance with law and the High Court of Calcutta could not have entertained the writ petition.

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37. 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.

38. In the present case, the facts which have been pleaded by the appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of “cause of action” within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition.

39. For the foregoing reasons, we see no infirmity in the order passed by the High Court dismissing the petition on the ground of want of territorial jurisdiction. The appeal, therefore, deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, we leave the parties to bear their own costs.

5. A Full Bench of Kerala High Court in **The Registrar, Indian Maritime University Versus K.G. Viswanathan and Another;**

2014 SCC OnLine Ker 21221 has considered similar issue involved in the present case. The petitioner therein approached Kerala High Court challenging the orders passed by disciplinary authorities at Tamil Nadu on the ground that the orders were communicated to the petitioner at Kerala, thereby integral part of cause of action arose within the jurisdiction of Kerala High Court. The petitions came to be dismissed on the ground that no part of the cause of action has arisen, much less any integral part of cause of action, in the jurisdiction of Kerala High Court.

The relevant paragraphs read as:-

“5. In Selvin Abraham (supra), the correctness of which is doubted, while working as Assistant Manager in the Punjab & Sind Bank at Coimbatore, the appellant was proceeded against for certain misconducts. Enquiry was conducted at Coimbatore and the charges were proved. The Disciplinary Authority dismissed him from service. This order was served on him at his native place in Kerala. His appeal and review were also dismissed. He filed a writ petition before the Kerala High Court challenging the order of suspension, dismissal and the orders passed by the appellate and review authorities. Objection was raised by the bank that this Court lacked territorial jurisdiction to entertain the writ petition as the entire cause of action arose outside the State. This contention was accepted by the learned single Judge, relying on the judgment of the Full Bench in Nakul Deo singh (supra) and the writ petition was accordingly dismissed.

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52. Since Nawal Kishore Sharma (supra) was decided “in the peculiar facts and circumstances” of the case, in view of the principles laid down in Rafiq Masih

(supra), we should accept the contention that relief was granted in Nawal Kishore Sharma, in exercise of the powers of the Apex Court under Article 142 of the Constitution of India.

53. Thus, the conclusion is irresistible, that the principles laid down in Selvin Abraham are contrary, not only to the Full Bench judgment in Nakul Deo Singh but also to the Apex Court judgments we have referred to. As a result, Selvin Abraham does not laid down good law and therefore, is overruled. The question referred to the Full Bench is answered as aforesaid.

54. Coming to the cases that are referred to the Full Bench, in W.A. 743/14, by Ext.P2 notification issued by the appellant from Chennai where its head office is situated, applications were invited to various posts, including the post of Professor (Management). In response to the notification, the respondent, who is presently working as a Professor in the NSS College of Engineering, Palakkad applied and he was invited for an interview at Chennai. He appeared for the interview and was issued Ext.P4 communication from Chennai, whereby, he was offered the post and was asked to report at Chennai. He accepted the offer by Ext.P5 and requested for a posting at the Cochin campus of the appellant. By Ext.P7 e-mail, he was informed that his request was accepted and was requested to report at the head quarters of the appellant. However, by Ext.P6 e-mail, he was informed that the offer is kept in abeyance and was thereafter issued Ext.P1 communication from Chennai, informing that the offer of appointment was withdrawn. It was in these circumstances, he filed W.P. (C) 22184/13 with the following main prayers:

“(a) Issue a writ of certiorari or any other

appropriate writ, order or direction calling for the records leading to the issue of Ext.P-1 and quash the same;

(b) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to allow the petitioner to join duty as Professor (Management) as originally ordered in terms of Exhibit P4 read with Exhibit P7 with all consequential benefits emanating therefrom;”

55. In so far as W.P. (C) 8678/14 is concerned, since 30.3.2009, the petitioner herein was working as Branch Manager of Indian Bank at Microsate at Puducherry. He continued there till 29.4.2010 when he was transferred and posted to Perinthalmanna, where, he joined on 1.5.2010. He was later transferred to Kunnamkulam on 11.7.2011 and while working at Kunnamkulam, by Ext.P2 order, he was placed under suspension pending disciplinary action. He was thereafter issued with Ext.P3 memo of charges containing various misconducts, all relating to his tenure at Puducherry and the disciplinary authority was the Assistant General Manager, Zonal office, Puducherry, the 4th respondent. Preliminary enquiry was conducted at the Zonal office, Puducherry on 30.12.2011 and the petitioner participated in the enquiry. 56. Thereafter, enquiry was also conducted at the Zonal office, Puducherry in which also, the petitioner participated. Ext.P4 is the report of the enquiry that was submitted to the disciplinary authority. The disciplinary authority, thereafter, forwarded the enquiry report along with his letter dated 20.7.2012, which was served on the petitioner while he was at Palakkad. The petitioner submitted his objection against the findings of the enquiry officer.

This was considered by the disciplinary authority, who, thereafter, issued Ext.P5 order dated 26.9.2012, removing the petitioner from service. This order was issued from Puducherry and was served on the petitioner while he was at Palakkad. He filed an appeal to the General manager, Indian Bank, Chennai which was rejected and this order was also communicated to the petitioner at Palakkad. He filed a review application to the first respondent, the Chairman and Managing Director of the Bank at Chennai. That was also rejected by Ext.P9 order which also was served on the petitioner at Palakkad. It was in these circumstances, the writ petition was filed with the following main prayers:

- 1) To issue Writ in the (nature of) certiorari to quash Ext.P3, Ext.P4, Ext.P5, Ext.P6 & Ext.P9 as legally unsustainable and violative of Article 14 & 16 of the Constitution of India.*
- 2) To issue Writ in the nature of mandamus commanding the 4th respondent to reinstate the petitioner in service with retrospective effect from the date of dismissal and grant all other consequential benefits including arrears of pay, pay and allowance etc.*
- 3) To issue writ in the nature of mandamus commanding the 4th respondent to treat the period of absence from the date of suspension to date of reinstatement as duty for all purposes and grant such other service benefits which were otherwise entitled to the petitioner untrammelled by the suspension and subsequent dismissal from service.*

57. Having gone through the pleadings, we do not see any averment in the writ petitions where the petitioners have raised any plea as to how the Kerala

High Court has territorial jurisdiction over the cause of action which led them to file the writ petitions. Instead, counsel wanted us to infer from the above pleading that an integral part the cause of action arose within the jurisdiction of this Court. However, if the facts which we have noticed above are evaluated in the light of the law laid down in Nakul Deo Singh and the Apex Court judgments, according to us, the only conclusion that is possible is that no part of the cause of action, much less any integral part of the cause of action, has arisen within the territorial jurisdiction of this Court justifying the entertainment of these writ petitions.”

6. A similar question came up for consideration before Division Bench of this Court in **M/s Vijay K. Jairath And Co. Versus Union of India and Another; CWP No.12420 of 2008 (decided on 01.05.2012)**. There was a difference of opinion among the Judges of the Division Bench, thus, matter was referred to third Judge of this Court. On the basis of opinion of majority, it was concluded that this Court on the basis of mere communication has no jurisdiction to entertain writ petition.
7. In view of afore-stated facts and findings, this Court is of the considered opinion that as no cause of action has arisen within territorial jurisdiction of this Court, the present petition is not maintainable. The petitioner is at liberty to avail remedies as permissible by law.
8. Dismissed with liberty as aforesaid.

(JAGMOHAN BANSAL)
JUDGE

12.03.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>