

(1979) 04 CAL CK 0028
In the Calcutta High Court
Case No : Civil Rule No. 3831 (W) of 1976

Abdul Kafi Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-04-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 20
Constitution of India, 1950 — Article 226

Citation : AIR 1979 Cal 354

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Kanika Banerjee, for the Appellant; S.K. Roychowdhury, for the Respondent

Judgement

M.N. Roy, J.—In this Rule, the petitioner has impeached the charge-sheet in Annexure "B", the enquiry report in Annexure "G" and the show cause notice in Annexure "H", contending them to be bad, illegal, improper and issued in violation of principles of natural justice apart from contending that they were also in contravention of Railway Services Discipline and Appeal Rules 1968 (hereinafter referred to as the said Rules) and also of Article 311 of the Constitution of India.

2. The petitioner has stated to have been appointed by the Divisional Superintendent, Eastern Railway respondent No. 3 on 23rd Jan. 1959 and at the time material to the issue of the Rule, he was working as a Switchman at Kechki in Bihar. He has also claimed to be permanent Class III staff. It appears that on 10th March 1974 Up Barwadih-Dehri-on-Sone-Mughalsarai Passenger, the driver of which was one Shri Musafit and Shri N. K. Pandey, was the guard, left Mangra Station and reached up Loop Line at Kechki at about 9.10 a.m. It has been stated that because of a fault at the relevant time in the overhead line, token less working between stations from Mangra and Chianki was suspended and paper line clear had been introduced. The petitioner at the material time was

working as a Switchman in West Cabin, Kechki. He has stated to have given duly a slot to East Cabin and exchanged private number with the Station Master on duty. After arrival of the concerned train, the petitioner has stated to have gone to point No. 16, which was set for down main line to release the detector so that he could divert the train from up Loop Line to main line after reversing the lever point. The petitioner has alleged that during such operation the train started and he immediately ran with the red flag for stopping the same. The petitioner has also stated that he asked one Shri Babulal, the relieving Switchman, who was present at that time, to show danger signal to the train. But all these attempts failed and the concerned train entered into the sand-hump and the engine was derailed. It is the case of the petitioner that neither any bogie was derailed nor there was injury to any person. However, the passengers of the train became very angry and furious and they started chasing the petitioner and he in fear and for the purpose of saving him from the onslaught of the passengers, fled away from the place.

3. There was an on spot enquiry and a report by the enquiry committee to the following effect:

"The Switchman on duty in W/Cabin Shri Abdul Kafi Khan is prima facie responsible for giving Private Number 69 to the Station Master on duty at Kechki Station for issue of OP/T 27 for the defective up loop starter signal for starting I B.D.M. Passenger from there to main line without setting the relevant points for main line and having them set in the normal position to sand-hump. Thus he violated subsidiary R. 53 (e) (ii).

(2) Shri B.M. Dev, train examiner and Shri Manbodh, Fitter of Barawadih, who examined the rake at Barawadih, are prima facie responsible for allowing it to be worked as I B.D.M. Passenger train with weak Brake Power of 66% active vacuum cylinders only as out of 12 cylinders on the train, four cylinders were converted blank (inactive). They thus, violated instructions contained in C M E Calcutta left No. MC/208/PT III dated 6-6-1966.

4. Thereafter, on 19th March 1974, the petitioner was suspended by an order of the Divisional Safety Officer, Respondent No. 4, whose office is at Dhanbad at Bihar and outside the territorial jurisdiction of this Court. Then on 29th July 1974, a charge-sheet in Annexure "B" was issued to the petitioner alleging that on 10th March 1974, he gave a Private No. 69 to the Station Master on duty at Kechki for the issue of OP/T-27 for the defective Loop Starter signal for the concerned train for main line, without setting the relevant points for such line and leaving them set in normal position to sand hump. As such he violated subsidiary Rule 52 (e) (ii) (sic.) The statements of allegations which were based on the findings of the enquiry as above, were also set along with the charge-sheet. This charge-sheet was issued by the Assistant Operating Superintendent, Dhanbad, Bihar, Respondent No. 5, who is also admittedly outside the territorial jurisdiction of this Court. This charge-sheet, has of course been claimed by the petitioner to be illegal, bad, void and unauthorised, as the same was issued by

the Assistant Operating Superintendent, who was not his appointing authority and certainly inferior in rank than such authority. The petitioner, as mentioned above, has claimed the Divisional Superintendent, Eastern Railway, Respondent No. 3, to be his appointing authority. That apart, he has claimed that the Assistant Operating Superintendent had no power or any authority to issue a charge-sheet for major penalty, in view of Railway Board's Circulars.

5. The petitioner, it appears made representations denying the charges and raising the points as aforesaid for consideration. He has stated that he further asked for the Private number sheet and also made a representation for holding proper enquiries for bringing out the truth. However, the Assistant Operating Superintendent, Dhanbad, was appointed the Enquiry Officer in the case and the necessary enquiry by him commenced on 28th Nov. 1974. The enquiry as held, has also been claimed to be contrary to law, practice and procedure, apart from being in violation of principles of natural justice. It has been alleged that although the defence helper of the petitioner was present, yet the petitioner was not allowed entry in the room when witnesses were examined and the enquiry officer failed and neglected to have the evidence as adduced by the witnesses to sign their evidence after the same was recorded. This has been claimed to be contrary to the requirements under the Rules. It has also been alleged that even on the evidence as recorded, the guilt of the petitioner was not established. It is also true that a defence note was filed by the defence helper of the petitioner pointing out the illegalities and irregularities. It has further been alleged that if the Station Master concerned was vigilant, the accident could have been avoided and there was no negligence on the part of the petitioner.

6. The Enquiry Officer, on consideration of the available materials, found the petitioner guilty of the charges as alleged. Agreeing with such report and findings, the Divisional Safety Officer, Respondent No. 4, issued the concerned show cause notice in Annexure "H", asking the petitioner to show cause, why he should not be removed from service. At this stage the present Rule was obtained.

7. Mrs. Banerjee, appearing in support of the Rule contended that the entire proceedings was vitiated by non-compliance with the principles of natural justice apart from the fact that the findings arrived at were baseless, without jurisdiction and unauthorised as the proceedings were initiated improperly and the same on which initiation were also conducted with such defects. It was her contention that the charge sheet was issued by an authority lower in rank than the appointing authority of the petitioner, the petitioner was not allowed to be present in the proceedings; private number, although asked for, was not supplied, the Disciplinary Authority acted with bias and prejudiced mind or notion, because he was the person who issued the charge-sheet and was also a member of the fact finding enquiry and there was violation of the provisions as contained in Accident Manual and more particularly Rule 172 of the same. It was also contended by her that the enquiry and so also the proceedings thereunder or the findings as arrived at, were vitiated as neither he nor his defence helper or the Enquiry

Officer, has signed them duly.

8. The above submissions and allegations have been categorically denied by Mr. Roychowdhury, on a reference to his clients' affidavit-in-opposition dated 30th July 1975. A plain copy of the said opposition has been kept in the record as the original is not available. Mr. Roychowdhury has of course stated that the original has been filed in the office. The petitioner has also filed his reply to the same.

9. Before dealing with the case on merits and that too on the basis of the pleadings as mentioned above, I think a preliminary point regarding the jurisdiction of this Court, to hear this matter, as taken by Mr. Roychowdhury, should be decided first, as if answer to such point is in favour of the respondents and against the petitioner, then I shall not be required to go into the merits of the case.

10. In view of the admitted facts viz. the impugned orders were not passed by any authority who is within the territorial jurisdiction of this Court, Mr. Roychowdhury, took the preliminary point as mentioned above and contended that this Court will not be competent to decide the case and the issues as involved. There is no doubt that the orders as impeached were passed by the respondents Nos. 3, 4 and 5, whose offices are outside the territorial jurisdiction of this Court. Mrs. Banerjee, appearing in support of the Rule contended that since the General Manager of Eastern Railway, has his office, which incidentally is the Head Office, within the territorial jurisdiction of this Court, so even in spite of the fact that such orders were passed by authorities outside the territorial jurisdiction, this Court will have jurisdiction to interfere and determine the issues involved, as the location of the General Manager's office here, within the jurisdiction of this Court, would bring the case fairly and squarely within Section 20 read with Section 141, Civil P. C. Section 20 lays down that subject to limitation as mentioned in the Code, every suit shall be instituted in a Court within the local limits of whose jurisdiction (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit actually and voluntarily resides or carries on business or personally works for gain; (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises. As mentioned above, it was contended by her that since the General Manager has his office here, who again, is the representative of the Union of India and superior of the respondents Nos. 3, 4 and 5, this Court would be competent to decide and hear the matter. She also contended that the provision of the Civil P. C. would be applicable in this case as the cause of action arose before the amendment of Section 141 by the Amendment Act of 1976 and the more so when such amendment is not retrospective. She relied on the determination of this Court in the case of Krishna

Lal Sadhu v. State of West Bengal ILR (1966) Cal 14, where it has been observed that the provisions of the C. P. C., 1908 would apply to writ proceedings under Article 226, which are proceedings in Court of Civil Jurisdiction attracting Section 141. The fact that the amendment of Section 141 is not retrospective cannot be doubted or disputed. But even if the provisions of the Code, before the Amendment of Section 141 in 1976 has or had application in this case, we have got to see and find out whether this application is maintainable here in view of the location of the records and those who passed them.

11. Thus, we shall have to find out whether the cause of action or any part thereof has actually accrued or arisen within the jurisdiction of this Court. "Cause of action" means the whole of the material facts, which it is necessary for the plaintiff to allege and prove in order to succeed. As observed in celebrated decisions; it is not intended to comprise every fact which may be proved in evidence and has no relation to the defence that may be set up. It is synonymous with the right to issue. It should be given its ordinary meaning. In wider sense, it means the necessary conditions for the maintenance of the suit and in a restricted sense, it means circumstances forming the infringement of the right or the occasion for the action. Such cause of action must be antecedent to the institution of the suit. The accrual of a part of the cause of action within the territorial jurisdiction of a Court is sufficient to maintain the connected proceeding before it. Thus, the question would be and as argued by Mrs. Banerjee, whether the location of the office of the General Manager, who admittedly is the delegate of the Union of India, (who is the owner of the Railways) and the superior of the respondents Nos. 3, 4 and 5, although no order has been passed by such General Manager, would come within the purview of the partial cause of action, giving thereby this Court the right and jurisdiction to determine the issue. In my view, when the General Manager has not as yet passed any order, even though a representation has been made to him by the petitioner, which has not as yet been determined, no cause of action or any part thereof, has arisen within the jurisdiction of this Court and as such, this Court would have no jurisdiction to hear and determine this proceedings.

12. It must be mentioned further that Mr. Roychowdhury, appearing for the respondents, apart from contending in the line as mentioned above, also contended on the evolution of Article 226 of the Constitution of India, that this Court would not also have jurisdiction to hear and decide the matter. He first relied on the provisions of Article 226 as it stood on the commencement of the Constitution and then to its gradual evolution up to the present day and submitted that in the facts and circumstances of the present case, when there is no doubt that no order has been passed within the jurisdiction of this Court, this Court should not make any interference, as it has no jurisdiction, because neither the cause of action nor any part thereof, has arisen within its territorial jurisdiction.

13. It is true that Article 226 was amended by the Constitution (15th

Amendment) Act, 1963, whereby Clause (1-A) to Article 226(1) was incorporated and such incorporation has enlarged the territorial jurisdiction of the High Court in writ matters, so as to include places within which the cause of action has arisen. Previously, the jurisdiction was limited to places within which the authorities against whom the writs were issued, were located. Thus, on a reading of Article 226(1), twofold limitations of the jurisdiction of the High Court would be apparent viz., the power is to be exercised throughout the territories in relation to which the High Court exercises jurisdiction, which means that writs issued by the High Court could not go beyond the territories subject to its jurisdiction and (2) the person or authority, to whom the writs are issued, must be within the territories subject to the jurisdiction of the High Court, which means that such persons or authority, must be amenable to the jurisdiction of the High Court, either by residence or location of records within those territories. The above rule has been evolved from the determination starting from the case of K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., and followed thereafter. In terms of the decision of the Supreme Court in the case of Election Commission, India Vs. Saka Venkata Subba Rao and, which has again been followed in the subsequent determinations, it is essential for the exercise of the power of the High Court under Article 226(1), that the persons or authority to whom the writ is issued, must reside or be located within the jurisdiction of the High Court. On the basis of the judicial pronouncements and the provisions of the Constitution of India, Union of India resides everywhere and as such all High Courts now have jurisdiction to issue writs against Union of India, for the redress of the actions as taken by them. The view as taken by the Supreme Court in the case of Election Commission, India v. Saka Venkata Rao (supra) has been approved and reiterated again in the case of Lt. Col. Khajoor Singh Vs. The Union of India and Another, and it has been observed that it was not permissible to read in Article 226 the residence or location of the person affected by the order passed, in order to determine the jurisdiction of the Court and such jurisdiction depends on the person or authority passing the order being within the jurisdiction of the High Court. The provision as to cl. (1-A) of Article 226(1) was inserted in the light of the decision of the Supreme Court as mentioned above and now the location of the subject-matter or the parties to the controversy is immaterial for the purpose of determining the jurisdiction of the High Court under Article 226(1). Still then, the cause of action or any part thereof should arise or accrue within the territorial jurisdiction of the Court concerned,

14. So on the basis of the determinations as referred to hereinbefore, and when admittedly either the cause of action or any part thereof, never arose or accrued within the territorial jurisdiction of this Court and the orders impeached were passed by the authorities at Bihar, this Court, as contended by Mr. Roychowdhury, would have no jurisdiction either to entertain this petition or issue the writs as asked for. The position would have certainly been different, if any order was either passed by an authority within the jurisdiction of this Court or such or any order was served within such jurisdiction. These facts, not having

been present admittedly, I hold, not only the cause of action but no part of the same, arose within the jurisdiction of this Court. The submissions of Mrs. Banerjee that since a representation in the form of a letter demanding justice has been made to the General Manager, who has his office within the jurisdiction of this Court, this Court would have jurisdiction to entertain this application, in my view are of no substance.

15. In view of the above, I hold that [the application should and so also the Rule fail on the preliminary point as raised. The Rule is thus discharged. There will however be no order for costs.

16. I must also have it on record that in view of the order which I have proposed, I have not gone into or considered and decided the case on merits of the respective contentions and all points as taken are kept open. This will not also prejudice the petitioner from approaching the appropriate forum for the redress of his grievances, if he is so advised.

17. The stay of operation of this order as prayed for is refused.