
(2014) 06 KL CK 0037
In the High Court Of Kerala
Case No : Writ Appeal No. 1541 of 2013

Anand Anoop

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 226(2), 32

Citation : (2014) 4 ILR 281 : (2014) 3 KLT 171

Hon'ble Judges : K.M. Joseph, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : P.C. Sasidharan, Advocate for the Appellant; P. Parameswaran Nair) and C.G.S.C. (P. Sanjay), Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner in W.P. (C). No. 20823 of 2013 is the appellant before us. The brief facts necessary for the disposal of this appeal are as follows;

The appellant is a candidate who appeared at the pre-medical entrance examination conducted by the 3rd respondent institute for admission to the MBBS course for the academic year 2013-14. The 3rd respondent institute is situated in Maharashtra. In the prospectus published by the 3rd respondent institute, produced as Ext. P1 in the Writ Petition, it is mentioned that in addition to the seats reserved for candidates from the general category and categories eligible for reservation in terms of the Constitution of India, there are four seats, referred to as the central pool seats, reserved for nominees of the Government of India. The nomination is to be made by the Government of India pursuant to a selection conducted by the Ministry of Health and Family Welfare, Government of India, New Delhi, from among eligible applicants. The categories of persons eligible to apply for nomination to the said seats, and the manner in which the applications for the same are to be preferred, are spelt out in Ext. P1 prospectus.

The appellant, who appeared at the entrance examination conducted by the 3rd respondent institute and was declared as passed in the said examination,

preferred an application for nomination to the central pool seats before the 1st and 2nd respondents who are officials in the designated Ministry of the Government of India. The appellant staked his claim for nomination under the category "Ward of defence personnel" as his father is serving as a Command Aviation Officer 11 in the Indian Navy. While the application preferred by the appellant yielded no response from the 1st and 2nd respondents, he was also informed that the respondents were proposing to finalise a select list by adopting criteria that were contrary to those specified in Ext. P1 prospectus. This led the appellant to prefer the Writ Petition seeking a direction to the 1st and 2nd respondents to finalise the select list of nominees to the central pool seats in accordance with Ext. P1 prospectus.

2. The Writ Petition was dismissed by the learned single Judge on the issue of maintainability. The relevant portion of the judgment of the learned single Judge reads as follows:

"Heard the learned counsel for the petitioner in detail as also the learned standing counsel appearing for respondents 1 and 2. After going through the pleadings and proceedings, this Court finds that the petitioner, if at all aggrieved as to the course and proceeding, has necessarily to approach the concerned Court having jurisdiction over the third respondent. Territorial jurisdiction of this Court does not extend to grant any relief to the petitioner in this case.

The Writ Petition is dismissed without prejudice to the right of the petitioner to approach the appropriate Court for appropriate relief."

It is the above judgment that is impugned in this Writ Appeal.

3. We have heard Adv. Sri. P.C. Sasidharan, learned counsel appearing on behalf of the appellant and Adv. Sri. P. Sanjay, Learned Central Government Standing Counsel appearing on behalf of the 1st and 2nd respondents. Counsel for the appellant would contend that in so far as the relief prayed for in the Writ Petition was for a direction to the 1st and 2nd respondents to finalise the select list of nominees to the central pool seats in the 3rd respondent institute, the Kerala High Court would have territorial jurisdiction in the matter of entertaining a Writ Petition under Art. 226 of the Constitution of India. He would, in particular, refer to the provisions of Art. 226(2) of the Constitution to contend that insofar as the direction sought for in the Writ Petition was to the 1st and 2nd respondents, who represent the Central Government, the Writ Petition could be maintained before the High Court in Kerala which had jurisdiction over Tellicherry, the place of his residence in Kerala. He would point out that insofar as his application before the 1st and 2nd respondents had been preferred from Kerala and he was a resident of Kerala, the non-communication of any decision on his application, or the communication of any adverse decision on his application, would affect his rights in Kerala and hence, a part of his cause of action against the respondents arose in Kerala for the purposes of Art. 226 of the Constitution of India. He would further point out, that at any rate, insofar as the 3rd respondent institute had no

role to play in a decision to be taken on his application for nomination for the central pool seats, the High Court having jurisdiction over the 3rd respondent could not be the court having jurisdiction to entertain a Writ Petition under Art. 226.

4. Per contra, the learned Central Government Standing Counsel would contend that insofar as the decision, on the application preferred by the appellant, was to be taken at Delhi and the matter pertained to admission to an institute in Maharashtra, the courts having jurisdiction to entertain the Writ Petition would be the High Courts in those States.

5. We have considered the rival contentions on the issue of maintainability of the Writ Petition. Essentially what is to be determined in the instant case is whether this Court has the jurisdiction to entertain a Writ Petition, under Art. 226 of the Constitution of India, wherein the reliefs prayed for are against persons or authorities who are situated in places outside the territorial limits of the State of Kerala. The legislative history of Art. 226 would reveal that in terms of the provision, as it stood prior to its amendment in 1963 vide the Constitution (15th Amendment) Act, 1963, a High Court could not issue a writ or order under the provision unless the person, authority or Government against whom the writ was sought was physically resident or located within the territorial jurisdiction of the High Court. It was pursuant to the amendment in 1963 that Clause (1A) (which was subsequently re-numbered as Clause (2) by the Constitution (42nd Amendment), 1976) provided that if the cause of action arises, wholly or in part, within the territorial jurisdiction of that High Court it may issue a writ against a Government, authority or person resident within the jurisdiction of another High Court.

Article 226(2) of the Constitution reads as follows:

[226. Power of High Courts to issue certain writs:--

(1).....

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

Article 226(2), as it now stands, indicates that a petition under Art 226 can be preferred before either:

(i) The High Court within whose territorial jurisdiction the person or authority against whom relief is sought resides or is situate;

OR

(ii) The High Court within whose jurisdiction the cause of action in respect of

which relief is sought under Article 226 has arisen, wholly or in part.

6. In the case before us, we are concerned with option (ii) noted above. The appellant basically seeks relief against the 1st and 2nd respondents who represent the Central Government, the seat of which is situate within the jurisdictional limits of the Delhi High Court. A Writ Petition seeking reliefs against the Central Government can be maintained before the High Court of Kerala only in a case where the cause of action, in respect of which relief is sought, arises wholly or in part, within the jurisdictional limits of the Kerala High Court. It must, at once, be noted that the words used in Art. 226(2) are "cause of action" and not "right of action". The distinction between the two terms is important because it helps one to understand the import of the term "cause of action". As noted by the learned author Durga Das Basu in his Commentary on the Constitution of India (8th Edition, 2010), "the two terms are neither synonymous nor interchangeable. A right of action arises as soon as there is an invasion of a right. A right of action is a right to enforce a cause of action. A person residing anywhere in the country, being aggrieved by an order of the Government, Central or State, or authority or person, may have a right of action in law, but the jurisdiction of the High Court under Art. 226 can be invoked only when the cause of action arises within the territorial jurisdiction, either wholly or partially." This distinction has also been brought out in the Full Bench decision of this Court in *Naik Nakul Deo Singh Vs. The Deputy Commandant, C.I.S.F. and Others* .

7. The term "cause of action" has been the subject matter of judicial exposition in a number of judgments of the Supreme Court as also the Full Bench decision of this Court referred to above. The interpretation of the term has been rendered in the context of its usage in Art. 226 of the Constitution and, in doing so, reliance has also been placed on the interpretation of the term for the purposes of the Code of Civil Procedure. A brief survey of some of the important judgments of the Supreme Court may be apposite at this stage.

(i) In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, - the Supreme Court had occasion to consider the issue of whether a Company situated in Calcutta could challenge a decision taken by a tender committee in connection with the award of a contract for setting up a Kerosene Recovery Processing Unit in Gujarat. The tender committee functioned in New Delhi and the contention raised by the Calcutta Company was that insofar as it had come to know of the tender within the jurisdiction of the High Court of Calcutta, had responded to the tender therefrom and had demanded justice from the respondents through communications issued from its registered office situated in Calcutta, a part of the cause of action arose in Calcutta. The said contention was repelled by the Court as follows:

5. Clause (1) of Art. 226 begins with a non obstante clause - notwithstanding anything in Art. 32 - and provides that every High court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government,

"within those territories" directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Art. 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Art. 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had 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 direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the Writ Petition.

6. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kour v. Partab Singh* Lord Wastson said:

"....the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a Writ Petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the Writ Petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.

(ii) In *Union of India and Others Vs. Adani Exports Ltd. and Another*, - the Supreme Court repelled a contention that the mere existence of the registered office of a Company would, ipso facto, give a cause of action to the High Court within whose jurisdiction the registered office of the Company was situated. While doing so, the Court took note of the contention on behalf of the appellant, placing reliance on an earlier decision of the Supreme Court in *Navinchandra N.*

Majithia Vs. State of Maharashtra and Others, - that there were precedents for the proposition that a Writ Petition could be maintained before a High Court within the jurisdiction of which an investigation was being carried on, notwithstanding that the complaint itself was filed within the territorial jurisdictional limits of another court. It then went on to clarify that it may be possible that in a matter involving a criminal dispute, the consequences of such dispute have a direct bearing on the personal freedom of a citizen guaranteed under Art. 21 of the Constitution. In such cases, the Court having jurisdiction over the place of residence of the applicant would have the jurisdiction to entertain a writ petition preferred by the citizen.

(iii) In Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, it was clarified that even if a small part of the cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

8. Lord Esher MR in Read v. Brown - (1888 (22) QBD 128) defined "Cause of action" to mean "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. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved". In the light of this definition, that has withstood the test of time and has been consistently approved and applied in a host of judgments of the Supreme Court, we must now proceed to examine the pleadings in the case before us to find out if the appellant has a cause of action that he can agitate before this Court in proceedings under Art. 226 of the Constitution. A perusal of the pleadings, in this case, reveals that the appellant relies on the following facts to contend that he has a cause of action that confers territorial jurisdiction on this High Court.

(i) The appellant is a person who is residing in Tellicherry, in Kerala;

(ii) He applied to the 3rd respondent institute for selection to the MBBS Course, from Tellicherry, Kerala and the hall ticket enabling him to write the entrance examination was received by him in Tellicherry.

(iii) His application before the 1st and 2nd respondents, for nomination to the Central Pool seats, was also preferred from Tellicherry.

(iv) The non-communication of any decision, as also the effect of any adverse decision against him, would affect his rights in Tellicherry, where he resided.

It is on the basis of the said facts that the appellant seeks directions against the 1st and 2nd respondents, who are authorities of the Central Government, to consider his application for nomination to the central pool seats for admission to the 3rd respondent institute. The decision to be taken by the 1st and 2nd respondents is essentially one that will determine the eligibility of the appellant

for the benefit of a nomination to the central pool seats. The right that is urged by the appellant is, therefore, a right to a fair consideration of his candidature for nomination, in his capacity as a "ward of defence personnel". We do not think there is any fact, having a nexus to the territorial limits of jurisdiction of this court, which the appellant would have to prove in order to establish his right to a fair consideration of his candidature for nomination. The decision is one that the 1st and 2nd respondents would have to take in New Delhi, where they are situated, and based on relevant material made available to them by the appellant. In that view of the matter, the appellant would have to approach the High Court in New Delhi for agitating his rights under Art. 226 of the Constitution. We are of the view that no cause of action, either wholly or in part, arises within the jurisdictional limits of this Court in the instant case. The appeal therefore fails, and it is accordingly dismissed.

No costs.