

(2002) 09 AHC CK 0080

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 35178 of 2002

Awlesh Kumar Singh and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 5 AWC 3961 : (2003) 1 BC 501

Hon'ble Judges : Sudhir Narain, J; C.P. Mishra, J

Bench : Division Bench

Advocate : P.S. Baghel, for the Appellant; M.C. Tripathi and Vijay Bahadur Singh, for the Respondent

Judgement

Sudhir Narain, J.—The petitioners have sought a writ of certiorari quashing the letter dated 5.11.2001 (Annexure VI to the writ petition) issued by the Chief Engineer/construction/NC, Northern Railway, Headquarters Office, Kashmere Gate, Delhi (respondent No. 3) rescinding the contract and consequential order dated 26.6.2002 (Annexure XII to the writ petition) issued by the Deputy Chief Engineer/Construction II, Northern Railway, Chandigarh asking the petitioners to deposit Rs. 120.48 lacs towards the railway risk and cost and the letter dated 10.7.2002 (Annexure XIV to the writ petition) issued by the same authority to the General Managers of different Railway Zones throughout the country to withhold payment of dues to the petitioner as he is liable to pay the amount of Rs. 120.48 lacs to the respondents.

2. A preliminary objection has been raised by Mr. M.S. Tripathi, learned Counsel for the respondents that the writ petition is not maintainable in this Court as the cause of action arose at Chandigarh or at Delhi but not within territorial jurisdiction of this Court.

3. Briefly stated the facts regarding the present controversy are that the Deputy Chief Engineer/Construction II, Northern Railway, Chandigarh (respondent No. 4) issued an advertisement in various Hindi and English newspapers of the nation

inviting tenders of earth-work in filing, construction of all minor bridges within the zone including in Zone No. 7 from Km. 20 to Km. 25 in Punjab area in connection with New E.G. Rail link from Chandigarh to Ludhiana. The petitioner submitted his tender and his tender was accepted on 17.7.2001. Respondent No.3 issued a letter dated 22.10.2001 to the petitioner that even after lapse of three months he has not taken any action to start the work and if he does not start the work within seven days, the contract will be rescinded. Another letter to the same effect was given on 30.10.2001. Respondent No. 3 issued a letter dated 5.11.2001 stating that since 48 hours notice had expired and the petitioner having not commenced the work, the contract stands rescinded in terms of Clause 62 of the General Conditions of the Contract. The petitioner submitted a representation 5.11.2001 requesting respondent No. 3 to recall its order dated 5.11.2001. He further made a request to respondent No. 5, the General Manager, Northern Railway, Baroda House, New Delhi for referring the dispute for arbitration.

4. Respondent No. 4 by letter dated 26.6.2002 informed the petitioner that fresh contract had been awarded to Amar Nath Aggarwal Construction (P) Ltd., Panchkula, Delhi to carry out the work which was earlier awarded to the petitioner for a sum of Rs. 4 crores and by letter dated 2.4.2002 the petitioner was asked to deposit Rs. 120.48 lacs as loss occurred to the Railways. On 10.7.2002 respondent No. 4 issued another letter to all the General Managers of Railway Zones throughout the country to stop payment to the petitioner in respect of any other pending contract inasmuch as an amount of Rs. 120.48 lacs was outstanding against him.

5. It has now to be determined whether on the facts and circumstances of this case any cause of action wholly or in part has arisen within the territory of this Court. Admittedly the petitioner submitted his tender which was accepted by the Chief Administrative Officer at Delhi (respondent No. 2). The letters dated 22.10.2001 and 30.10.2001 were issued by respondent No. 3. The contract to the petitioner was rescinded by an order passed by respondent No. 3 at Delhi. The letters dated 26.6.2002 and 10.7.2002 were issued by respondent No. 4 at Chandigarh. The petitioner was to carry out the contract work in Punjab area in connection with New E.G. Rail link from Chandigarh to Ludhiana.

6. In Election Commission, India Vs. Saka Venkata Subba Rao and, the Supreme Court held that the power of the High Court to issue writs under Article 226 of the Constitution is subject to the two-fold limitation-firstly, the writs cannot run beyond the territories subject to its jurisdiction and secondly, the person or authority to whom the High Court is empowered to issue writ must be amenable to the jurisdiction of the High Court either by residence or location within the territories subject to its jurisdiction. This necessitated the Parliament to bring the Fifteenth Amendment to the Constitution by which Clause (1 -A) was added to Article 226. This clause was subsequently re-numbered as Clause (2) by the Constitution Forty Second Amendment, Now Clause (2) of Article 226 reads as

under:

"(2) The power conferred by Clause (1) to issue directions, order 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."

7. In *Aligarh Muslim University v. Vinay Engineering Enterprises Ltd.*, (1994) 4 SCC 710 it was held that where the contract is executed and construction work is to be carried on and the Arbitrator is to decide the dispute that High Court alone has jurisdiction to entertain writ petition in regard to the contract work. In this case it was found that since the contract was executed at Aligarh and the construction work was to be carried at Aligarh and in the event of any dispute the Aligarh Court had jurisdiction, the High Court of Calcutta had no jurisdiction to entertain the writ petition merely because the firm which had to perform contract was a Calcutta based firm.

8. In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, the Apex Court held that the mere fact that the advertisement was published in all newspapers in India including at Calcutta and the contractor having submitted tender from Calcutta does not confer jurisdiction on the Calcutta High Court to entertain the writ petition under Article 226 of the Constitution only for the reason that the tender was submitted from Calcutta or the representation was submitted from Calcutta or such contractor was based at Calcutta.

9. In *State of Rajasthan and Others Vs. Swaika Properties and Another*, it was held that mere service of the notice itself does not give rise to cause of action in West Bengal. The facts were that the Rajasthan State Government issued a notice u/s 52(2) of the Rajasthan Urban Improvement Act, 1959 in relation to the acquisition of the land of the respondents. It was served upon the respondents at Calcutta. The petitioner challenged it by filing a writ petition under Article 226 of the Constitution on the ground that the notice was served at Calcutta. The Supreme Court repelled the contention that the cause of action arose at Calcutta merely because as the notice was served on them at Calcutta. The service of notice itself does not give cause of action unless it is integral part of cause of action. It was observed as under:

"The entire cause of action culminating in the acquisition of the land u/s 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government u/s 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land

became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur u/s 52(2) for the grant of an appropriate writ direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government u/s 52(1) of the Act."

10. Mr. Vijay Bahadur Singh, learned Senior Counsel for the petitioners has placed reliance upon the decision rendered in *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, wherein the Supreme Court held that the High Court at Bombay had jurisdiction to quash the F.I.R. filed in Meghalaya State. In this case the Company India Farmers Pvt. Ltd. had entered into a contract with Chinara Export Ltd. for purchase of certain shares. The control of Chinara Export Ltd. was taken over by J.B. Holdings Ltd. at Shillong. The dispute arose between the two companies namely, India Farmers Pvt. Ltd. and J.B. Holdings Ltd. The latter filed a complaint against the Managing Director of India Farmers Pvt. Ltd. at Shillong in the State of Meghalaya. The writ petition was filed to quash the complaint in Bombay High Court with the allegations that the complaint was false and it was deliberately filed at Shillong with the mala fide intention of exerting pressure and causing harassment to him so as to get the transaction relating to transfer of shares reversed. According to the petitioner therein the entire transaction upon which the complaint was based, had taken place at Bombay and at no point of time it took place outside Bombay much less at Shillong or at any other place in the State of Meghalaya. The Apex Court, after surveying various decisions in regard to the expression "cause of action" held that the cause of action had, in fact, taken place at Bombay in regard to the entire transaction of transfer of shares and merely filing of a complaint at Shillong does not deprive the High Court at Bombay to exercise its jurisdiction in quashing the complaint filed by the respondents at Shillong.

11. In *Dinesh Chandra Gahtori v. Chief of Army Staff and Anr.* (2201) 2 UPLBEC 1275 the writ petition was filed at the High Court at Allahabad to quash a communication awarding sentence of dismissal from service passed by the Chief of Army Staff. The Supreme Court held as the writ petition was pending for seven years in the High Court, the order communicated at Allahabad by the Chief of Army Staff can be sued anywhere in the country. The matter was remitted to the High Court for consideration on merits.

12. In *Modern Food Industries (India) Ltd. Ahmedabad and Ors. v. M.D. Juberkar*, 1989 LAB. I.C. 224 the Gujarat High Court took the view that the place where the order of dismissal was served on an employee, the High Court at such place has jurisdiction to entertain writ petition under Article 226 of the Constitution.

13. The test to find out whether any cause of action wholly or in part arises in the territory of jurisdiction of a High Court to seek remedy by a party under Article 226 of the Constitution is to find out the real nature of the transaction, the sequence of events and the surrounding circumstances. The service of the notice to an aggrieved party may itself will not give rise to a cause of action unless such

service of notice is integral part of the cause of action.

14. The petitioner entered into a contract for carrying out work in Punjab. It was accepted at Delhi. He has challenged the order dated 5.11.2001 whereby respondent No. 3 at Delhi has rescinded the contract. Respondent No. 4 issued a notice to all General Managers of Rail ways not to pay the amount to the petitioner unless the petitioner pays the amount alleged to be due to him in regard to the contract, which he failed to perform in Punjab. The real dispute is in regard to recession of the contract.

15. In view of the above, we find that this Court has no jurisdiction to entertain exercise its jurisdiction in regard to the prayers made by the petitioner in this writ petition.

The writ petition is, accordingly, dismissed.