
(1992) 07 CAL CK 0005
In the Calcutta High Court
Case No : F.M.A.T. 3816 of 1991

Bihar Coal Traders

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-07-1992

Acts Referred:

Citation : (1992) 2 ILR (Cal) 264

Hon'ble Judges : Bhagabati Prasad Banerjee, J; Amal Kumar Bhattacharjee, J

Bench : Division Bench

Advocate : Tapan Kumar Mukherjee, for the Appellant; Norottam Chatterjee and A.K. Dhandhanian, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Banerjee, J.—This instant appeal has been filed against the order of Susanta Chatterjee J. dated November 27, 1991 whereby the writ petition filed by the Appellant Petitioner was summarily rejected, inter alia, on the ground that no part of cause of action had arisen within the jurisdiction of this Court and no prima facie case had been made out to challenge the order in question. It is not necessary to go into the other questions which were taken note of by the learned trial Judge. Inasmuch as the preliminary question raised by the learned Advocate for the Respondents that this Court had no jurisdiction to entertain the writ application and, as such, this Court need not go into the merits of this case.

2. In order to decide this question it is necessary to set out certain facts which have been disclosed in the petition. The Appellant Petitioner's case is that the Appellant Petitioner carries on business in the name and style of "Bihar Coal Traders" at G.T. Road, Durgapur-3, in the district of Burdwan for selling of Coal washeries and/or middlings/rejects coal having ash content of 35% and that the Appellant Petitioner has got its head office at Dhanbad in the State of Bihar. It is further stated that the principal place of business, particularly selling of middlings of rejects, is being done at Durgapur in the district of Burdwan. It was further alleged that the Steel Authority of India against whom relief was claimed

is the holding company of all iron and steel companies in the public sector having its registered office in New Delhi. The principal office of the Steel Authority of India is situated in Calcutta. Besides the said office, there is another office of the General Manager of the said Authority also in Calcutta.

It is stated that the holding Company takes the policy decision as far as the Appellant/Petitioner has been able to ascertain and the subsidiary company execute the same. As the office of the Managing Director of the Steel Authority of India and the office of the Managing Director of Bokaro Steel Plant, Durgapur Steel Plant are situated in Calcutta within the State of West Bengal and this Court has jurisdiction to entertain this petition. The subject matter of challenge is the notice dated May 15, 1991, issued by the Steel Authority of India whereby all concerned were informed that sale of middlings/rejects etc. cannot be made to any party who was not holder of valid coal licence under the Bihar Trade Articles (License Unification) Order, 1984. It is the case of the Appellant/Petitioner that the provisions of the said Bihar Trade Articles (License Unification) Order, 1984, (hereinafter called as "Bihar Trade Order") does not apply in case of the Appellant Petitioner and that the relief which has been sought for before this Court was to restrain the Respondents from applying the provisions of the said Bihar Trade Order and also for applying the provisions of Section 7 of the Essential Commodities Act, 1985, in respect of the Appellant/Petitioner's purchasing and/or selling and/or dealing in non-coking coal, particularly middlings/rejects having ash content more than 35 % within India without obtaining any formal permission from the opposite parties. The Appellant/Petitioner did, not move against any particular order or notice that has been served, but it is the case of the Appellant/Petitioner that there is no restriction under the law on the right of the Appellant/Petitioner to sell coal. There is also restriction under the Colliary Control Order. By the notification dated April 1, 1966, and July 24, 1967, all control over acquisition and/or transfer of coal came to an end provided, however, the said coal to be consumed in India and that the Appellant/Petitioner stated that in spite of the fact that there was no restriction in law to sell and purchase the coal, the Police authorities are harassing the Appellant/Petitioner and the Appellant/Petitioner apprehends that the trucks may be wrongfully detained and withheld by the Police authorities in the State of Bihar. It is the further case of the Appellant/Petitioner that the Appellant/Petitioner was dealing with middlings/rejects having ash content of 35% or more and in this connection referred to the notice issued on Mahabir Traders by the Steel Authority of India, Dhanbad, wherein it was stated that as per Government of India Gazette Notification on pricing of various grades of coal effective from January 1, 1989, only such coals as contain ash content not exceeding 35% can qualify in the category of coking coal. Any coal containing more than about 53% ash does not qualify to be called even non-coking coal. It was further pointed out that Dugda-II middlings contain around 60% ash and Pathardih rejects contain about 56% ash. As such, Dugda-II middlings qualify in the category of non-coking coal while Patherdih rejects do not qualify in the category of coal at all.

The restriction which has been sought to be made in this case is by operation of Bihar Trade Order, para 3, of which provides that no dealer shall after the commencement of this order carry on business of purchase, sale or storage for sale of any of the trade articles mentioned in schedule I except under and in accordance with the terms and conditions of a licence issued in this behalf by the Licensing Authority under the provisions of the said order, inter alia, includes coal. The preliminary point that calls for the determination by this Court at this stage is whether the Appellant/Petitioner is required to take out any licence under the Bihar Trade Order in respect of the articles dealt with by the Appellant/Petitioner. In the writ application, Union of India has not been made a party. The State of Bihar, the Addl. District Magistrate (Supply), Dhanbad, and the General Manager (Coal) have also been made parties. The State of West Bengal has also been made a party but no allegation has been made and/or any relief has been claimed against the State of West Bengal. No relief has also been claimed against the Union of India.

3. Mr. Tapan Mukherjee, learned Advocate appearing for the Appellant/Petitioner, submitted that while deciding the question of jurisdiction the Court decides such question strictly on the basis of pleadings and submitted that in the petition statement it has been made that the Appellant/Petitioner has office and coal depot in the State of, West Bengal and that by operation of the Bihar Trade Order the Appellant/Petitioner's business is being affected and this Court has any jurisdiction" on the basis of the averments made in the writ petition to pass any order against the Bihar authorities for taking action under the Bihar Trade Order., Whether the Appellant/Petitioner is a dealer under that order or not is not necessary to be decided, as in the instant case, the Appellant/Petitioner has called upon this Court to decide that because of the nature of the business then, provisions of Bihar Trade Order does not apply to the Appellant/Petitioner's business and that for carrying on the business in respect of the articles mentioned in the petition the said Bihar Trade Order was not applicable. Mr. Mukherjee relied on the Division Bench decision of this Court in. the case of Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, wherein the Division Bench of this Court held that the question whether a High Court has territorial jurisdiction to entertain a writ petition has to be decided on the basis of the allegations made in the petition. In that case the impugned orders fixing the selling price and the retention price of aluminum was fixed by the Central Government at Delhi, the factory of the Petitioner company was located outside West Bengal. However, the Head Office was situated at Calcutta. In the petition it was alleged that the said company suffered loss in business at Calcutta as the direct consequence of the impugned orders. Accordingly, it was held that the part of the cause of action arose at Calcutta and, therefore, the Calcutta High Court had territorial jurisdiction to entertain the petition. Reference was also made to another decision of a Division Bench of this High Court in the case of Industrial Fuel Marketing Co. and Others Vs. Union of India (UOI) and Others, In that case it was held that the cause had arisen within

the territorial jurisdiction of this Court when all the Respondents were within the State of West Bengal. On behalf of the Respondents reference was made to a Division Bench of this Court is the case of Everest Coal Co. Pvt. Ltd. Vs. Coal Controller and Others, wherein vires of the provisions of the Bihar Trade Articles (License Unification) Order, 1984, and Bihar Essential Commodities Order, 1977, were under challenge. In that case the subject-matter of challenge in the writ petition was the provisions of Bihar Trade Articles (License Unification) Order, 1984, and Bihar Essential Commodities (Price and Display) Order, 1977. In that case, except the Coal Controller Office of all other Respondents were situated outside the territorial jurisdiction of this Court. In that case the Appellant claimed to be private limited company and the owners of a set of bee-hive hard coke ovens situated in the district of Dhanbad, Bihar. After considering the facts and circumstances of the case it was held in that case that aforesaid facts even on a facie establish that any part of its cause of action in respect of the aforesaid two orders made by the Government of Bihar had arisen within the territorial jurisdiction of this Court. Reference was made to the decision of the Supreme Court in the case of State of Rajasthan and Others Vs. Swaika Properties and Another, wherein the Supreme Court pointed out that mere service of notice would not give rise to cause of action. In other words, service of such notice must give occasion for filing the writ petition. For the purpose of accrual of cause of action for filing a writ petition, it is also necessary to make a distinction between actual or apprehended injury to the writ Petitioner and indirect effect or remote consequences upon him. Obviously, for giving rise to cause of action for filing writ petition what is material is whether or not within the territorial limits of the said High Court, there has been any proximate or direct effect upon the Petitioner. Indirect or remote result of the impugned acts of the Respondents cannot be pleaded for establishing that cause of action, either whole or in part, had arisen within the territorial limits of a particular High Court.

4. With regard to the question of the part of cause of action reference was also made to the case of Kajaria Exports Ltd. and Another Vs. Union of India (UOI) and Others, In that case it was held that as regards the question of jurisdiction of the High Court to entertain writ petition and issue directions, orders or writs, the cause of action or any part thereof shall actually accrue or arise within the jurisdiction of that High Court. The "cause of action" means every fact which, if traversed, would be necessary for, the Plaintiff/Petitioner to prove in order to support his right to the judgment of the Court. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is formed. In that case the writ petition was filed in the Calcutta High Court when certain goods were lying in the Bombay Port, and the Customs Authorities at Bombay refused to release the goods on the ground that the goods imported were not covered by the license issued by the authorities from Delhi. The Calcutta High Court, it was held, has no jurisdiction to entertain the writ petition. The mere fact that the Petitioner's registered office is at Calcutta and the mere

fact that the Petitioner company made correspondence with the foreign sellers and the foreign sellers also made correspondence with the Calcutta Office in the matter and the price of the goods was paid from the Calcutta Office were wholly irrelevant in the matter for the purpose of ascertaining the question of the jurisdiction of the Court in this case. In the instant case, no action has actually been taken against the Appellant/Petitioner under the aforesaid Bihar Trade Order and further it does not appear that by operation of the said order which is limited in its operation within the State of Bihar the Appellant/Petitioner's right to carry on business within the State of West Bengal has been affected by any means whatsoever. The said Bihar Trade Order extends to the whole of the State of Bihar and that in case any action is taken by the authorities at Bihar under that order in that event the same may be challenged where the order is served or action is taken. In the instant case, all the notices and orders on which reliance were placed were issued from the State of Bihar and their application is intended within the State of Bihar. The Appellant Petitioner's contention that the Appellant/Petitioner has taken out articles which are beyond the purview of the said order and the Police authorities will harass and the vehicles may be seized could not be decided merely on the basis of hypothesis. We are in agreement with the view expressed by the Division Bench in the case of Everest Coal Co. (Supra) where vires of the self-same Bihar Trade Order was under challenge and where the Division Bench held that no part of cause of action had arisen within the territorial jurisdiction of the Calcutta High Court and as such the writ petition was not maintainable before the said Court. We are of the view that the ratio of the judgment in the case of Union of India v. Hindusthan Aluminium Corporation (Supra) has no manner of application in the instant case inasmuch as the question that was before the Division Bench was the effect of an all India Control Order by the Head Office which is situated in Calcutta and the Division Bench held that the company suffered loss in business in Calcutta as the direct consequence of the impugned order and as such the Calcutta High Court had territorial jurisdiction. But the facts of that case are entirely different from this case and, as such, they said principle is not applicable in the instant case. Accordingly, we are of the view that merely having one depot within the jurisdiction of this Court without anything more it does not and cannot mean that this Court has jurisdiction to entertain the writ petition when the principal Respondents against whom relief has been claimed are situated outside the jurisdiction of this Court and orders were passed by the authorities who are outside the jurisdiction of this Court and no part of cause of action had arisen within the jurisdiction of this Court.

5. Accordingly, we are in agreement with the view expressed by the learned trial Judge in view of the reasoning given by us. As we have held that this Court has no jurisdiction to entertain the petition it is not necessary to go into the merits of this case. Accordingly, we are not inclined to interfere with the order passed by the learned trial Judge. The appeal is treated as on day's list and both the appeal and the application are dismissed without any order as to costs.

6. This order is passed without prejudice to the rights of the Appellant/Petitioner to move before the appropriate forum.

7. Let a Xerox copy of this order be given to the learned Advocates for the parties on usual terms and conditions.

A.K. Bhattacharjee, J.

8. I agree.

9. Appeal dismissed.