

(2020) 10 DEL CK 0171

In the Delhi High Court

Case No : Civil Writ Petition No. 4580 Of 2020, Civil Miscellaneous No. 16543, 17722 Of 2020

Dilbar Singh Negi And Ors

APPELLANT

Vs

Footwear Design & Development Institute & Anr

RESPONDENT

Date of Decision : 05-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 32(2), 226, 226(1), 226(2)

Code Of Civil Procedure, 1908 — Section 20(c), 141, Order 1 Rule 10(2)

Footwear Design and Development Institute Act, 2017 — Section 3(f), 4(3), 8(1), 30

Citation : (2020) 10 DEL CK 0171

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Shantanu Sagar, Prabhat Ranjan Raj, Jeewesh Prakash, Anil Kumar, Binay Kumar, Ashish Prasad, Chetan Garg

Final Decision : Dismissed

Judgement

Jyoti Singh, J

1. Petitioners herein assail a communication dated 01.07.2020 issued by the Respondents by which allegedly the services of the Petitioners were dispensed with and also seek a direction to the Respondents to retain them on the posts held by them with all benefits as regular employees.

2. At the outset, FDDI has raised an objection to the maintainability of the petition on ground of lack of territorial jurisdiction of this Court and thus it would be apposite to first decide the issue of maintainability of the petition.

3. Petitioners herein as per the case set up in the writ petition entered into the service of FDDI through an Agreement of Service on different dates, the details of which have been elaborately mentioned in the writ petition and claim to have been working for a period ranging from 5 years up to 26 years. The service contracts of the Petitioners were renewed as recently as on 29.03.2018 whereby

their services were extended for a period of one year. Again on 29.03.2019, the contracts were renewed w.e.f. 01.04.2019 on the same terms and conditions as in the earlier Agreement of Service.

4. On 19.01.2020 Respondents floated an Advertisement inviting applications for the posts in which the Petitioners were working, to be filled on contractual basis. However, in the meantime due to Covid-19 Pandemic, on 30.03.2020, Respondents sent an email to the Petitioners intimating that due to the unprecedented situation created by the Pandemic, it had been decided to extend all contracts of appointments expiring on 31.03.2020, by 3 months, except in cases where the employee was superannuating within the next few months.

5. However, vide order dated 01.07.2020, Petitioners were informed that their existing service contracts with FDDI had expired on 30.06.2020 and their services were no longer required beyond the said date. Petitioners were requested to complete formalities regarding settlement of outstanding dues/clearances etc., so that full and final settlement could be processed.

6. Aggrieved by the said emails, on 08.07.2020, Petitioners submitted a joint representation before the Management requesting to continue their services and consider the matter compassionately. Getting no response to the representations, the Petitioners filed the present writ petition.

7. FDDI has filed a counter affidavit taking a preliminary objection that this Court lacks the territorial jurisdiction to entertain the present petition. Learned counsel for FDDI contends that the FDDI has its registered office at Noida, Uttar Pradesh and the Petitioners were employed in different parts of the country including Noida, Jodhpur, Chennai etc. but none at Delhi. The service contracts of the Petitioners even at the initial stage were executed outside the territorial boundaries of this Court and even the extensions were outside Delhi, at their respective offices and it is there that the contracts have ended by efflux of time, giving rise to cause of action, if any, and no cause of action, wholly or partly, has arisen at Delhi, to enable this Court to entertain the present petition.

8. In support of the contention learned counsel relies on the judgment of the Supreme Court in *Om Prakash Srivastava v. Union of India* (2006) 6 SCC 207 and also the judgments in *Eastern Coalfields Ltd. v. Kalyan Banerjee*, (2008) 3 SCC 456 wherein the Supreme Court relied on the earlier judgement of the Court in *Kusum Ingots & Alloys Ltd. v. Union of India*, (2004) 6 SCC 254 as well as *Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd.*, (2006) 3 SCC 658. In *Kusum Ingots* (supra), Supreme Court held that to determine the jurisdiction of one High Court vis-à-vis the other, the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be made and the facts which have nothing to do therewith cannot give rise to cause of action to invoke the jurisdiction of a Court.

9. Without prejudice to the preliminary objection, learned counsel further submits that even otherwise the writ petition is not maintainable as it pertains to

a private contract not involving any element of public law. He submits that the contract has not been terminated and has come to an end by efflux of time on 30.06.2020 and the communication dated 01.07.2020, is only an intimation to that effect.

10. Alternatively, it is contended that even assuming that the Petitioners have any grievance or dispute with respect to the contract, they have an alternative remedy under Section 30 of the FDDI Act, 2017 read with Clause 15 of the contract dated 01.10.2012, to resort to Arbitration, in the event of any dispute, as per the Arbitration and Conciliation Act, 1996, as amended from time to time.

11. Learned counsel submits that the Supreme Court in *Joshi Technologies International Inc. v. Union of India & Others*, (2015) 7 SCC 728 has held that normally the Court would not exercise a discretion to examine an issue in a writ petition, unless the action has some public law character attached to it. Whenever a particular mode of settlement of disputes is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution of India and relegate the party to the said mode of settlement, particularly when the settlement is envisaged through means of Arbitration. It is argued that the Court in the same judgement has held that the scope of judicial review in respect of disputes falling within the domain of contractual obligation is extremely limited.

12. Responding to the submissions of learned counsel for FDDI, learned counsel for the Petitioners submits that the contention of the Respondent that this Court lacks the territorial jurisdiction is misconceived. He submits that Section 3(f) of the FDDI Act, 2017 defines "Governing Council" to mean the Governing Council of the Institute, constituted under Section 4(3). A perusal of Section 4(3) shows that the Members of the Governing Council are none other than the Officers of the Ministry of Industry and Commerce, in their ex-officio capacity. He further submits that the Governing Council is under the overall control of the Central Government which is evident from Section 8(1) of the Act and the President of India is the Visitor of the Institute. In view of this, there is no doubt that action of discontinuing the services of the Petitioners and not extending their contracts is with the approval of the Governing Council which is the Competent Authority and therefore this Court shall have territorial jurisdiction. Attention of the Court is drawn to the impugned communication dated 01.07.2020 wherein it is mentioned that the order has been passed after approval of the Competent Authority and it is argued that "Competent Authority" herein is the Governing Council.

13. Maintainability of the petition on account of territorial jurisdiction is the first and foremost issue that needs adjudication. For answering the said legal nodus, it shall be inevitable to first consider the provisions of Article 226 of the Constitution of India, as it stood prior to its Amendment. The unamended Article reads as under:-

"226. Power of High Court to issue certain writs:

(1) Notwithstanding anything in Article 32, 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, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32."

14. In *Election Commission v. Saka Venkata Rao*, 1953 SCR 1144, the Constitution Bench of Supreme Court while interpreting the unamended provision held that the writ Court would be bound by the territories for its jurisdiction and the Government or the Authority affected by the issuance of writ would be amenable to the jurisdiction, either by residence or location, within the territory. Court was also of the view that the rule that cause of action gives jurisdiction in Suits is based on statutory enactment and cannot apply to writs under Article 226 which makes no reference to "cause of action" or where it arises. A similar view was taken by another Constitution Bench in *K.S. Rashid and Son v. Income Tax Investigation Commission*, 1954 SCR 738.

15. A larger Bench of the Supreme Court in *Lt. Col. Khajoor Singh v. Union of India*, (1961) 2 SCR 828 approved the aforesaid two Constitution Bench judgements and laid a clear dicta that a writ Court cannot exercise jurisdiction beyond its territorial jurisdiction.

16. After passing of these judgements, Clause (1-A) was inserted in Article 226 by the Constitution (Fifteenth) Amendment Act, 1963 which was re-numbered as Clause (2) by the Constitution (Forty-second) Amendment Act, 1976. Amended Clause (2) reads as under:-

"226. Power of High Court 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."

17. The change that was thus brought about by the Amendment was that the High Court could issue a writ even where the person or the authority against whom the writ is issued is beyond its territorial jurisdiction, provided, the cause of action arises within its territorial jurisdiction, wholly or in part.

18. The term "cause of action" in Article 226(2) came up for consideration before Supreme Court time and again. In *Kusum Ingots* (supra), Supreme Court at length discussed Clause (2) of Article 226, more particularly in the context of the words "cause of action", keeping in background Section 20(c) and Section 141 CPC and observed as under:-

"9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in parimateria, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

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18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

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29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in *Khajoor Singh* [Lt. Col. Khajoor Singh v. Union of India, AIR 1961 SC 532] has, thus, no application."

19. The expression cause of action has been defined tersely in Mulla's Code of Civil Procedure and is as follows :-

"The "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court."

20. It would also be useful to quote a passage from the Report in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu &Ors.*, (1994) 4 SCC 711 as under :-

"6. 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 paras 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."

21. In *Union of India v. Adani Exports Ltd.*, (2002) 1 SCC 567, the Supreme Court observed that jurisdiction of the High Court to entertain a writ petition would be conferred only when it discloses that the integral facts pleaded to support a cause of action constitute a cause empowering the Court to decide the controversy and at least some part, if not the entire, arises within its jurisdiction. The Court observed as follows:-

"16. It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this regard, it would suffice for us to refer to the observations of this Court in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu* [(1994) 4 SCC 711] (SCC at p. 713) wherein it was held:

"Under Article 226 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. 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. 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. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial."

17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that

those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.

18. As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denial of credit in the passbook having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants."

22. Relevant it would be to rely on a passage from a judgement in *Om Prakash Srivastava v. Union of India* (supra), wherein emphasis was again laid on the cause of action to entertain the writ petition, notwithstanding that the seat of the Government or any other Authority, was not within the territorial jurisdiction of the concerned High Court. This interpretation was given keeping in view the Amendment to Article 226 and the relevant part is as under:-

"7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof."

23. From the conspectus of the judgements and the affirmation of the Supreme Court on the "cause of action" being a significant factor for conferring territorial jurisdiction on a High Court, it is palpably clear that the writ court can exercise jurisdiction where the Respondent is located in its territories and can also issue a writ where the Government or Authority is located outside its territorial boundaries, but in the latter case, the pre-requisite to exercise the power shall be the arising of cause of action in its territorial jurisdiction. The said expression as clearly defined and amplified in various judgments would take in its ambit,

partial cause of action as well. Thus, where not even a miniscule part of the cause of action has arisen within the territorial boundaries of the Court, it shall lack the territorial jurisdiction to entertain a petition and to issue directions to the Respondents who are located outside its boundaries. The Constitutional Amendment introducing Article 226 (2) with a non-obstante clause highlights this position and even in the absence of seat of the Government or Authority or residence within the territorial boundaries of the High Court, it could entertain a petition, if cause of action has arisen within the jurisdiction of the High Court. Needless to state, that this Constitutional mandate would govern the considerations to decide the territorial jurisdiction of this Court.

24. From the various judgements what further unveils is that Supreme Court has unambiguously reiterated that to confer jurisdiction to entertain a writ petition, High Court must be satisfied from the facts pleaded that they have a nexus or relevance with the lis that is involved in the case and the facts having no bearing with the lis would not give rise to cause of action to confer territorial jurisdiction. In other words, the bundle of facts so mentioned must give rise to an actionable wrong within the territories of Court. It must be kept in mind that Article 226 (1) deals with both the source of power of Court and its territorial jurisdiction while Clause (2) amplifies the jurisdiction with respect to the cause of action. There is thus a clear bifurcation in the Clauses and the power of a Court is certainly not synonymous to the jurisdiction of a Court.

25. The case of the Petitioners would have to be tested on the anvil of the aforementioned judgments to decide the territorial jurisdiction of this Court. Petitioners are thus required to show that at least some part of the cause of action, if not the whole, has arisen within the territorial boundaries of this Court in view of the fact that offices of FDDI are located beyond the territory of this Court and admittedly the Petitioners were also employed and working in various parts of the country, except Delhi. In this context the reliefs sought by the Petitioners are also relevant and are as follows:-

"(i) Issue of an appropriate Writ/Order/Direction including a Writ in the nature of Certiorari seeking quashing and setting aside of the order communicated vide email dated 1.7.2020 passed by the respondent by which the services of the petitioners were dispensed with; and/or

(ii) Issuance of an appropriate Writ/Order/Direction including a Writ in the nature of Mandamus directing the respondent to consider the representation of the petitioners and retain them on the posts which the petitioners have held till 30.6.2020 with all benefits as regular employees; and/or

(iii) Issuance of an appropriate Writ/Order/Direction restraining the respondent from taking any coercive action against the petitioners including forceful dispossession from their residential accommodations; and/or

(iv) Issuance of any appropriate writ, order or direction which this Hon'ble Court deems just and proper, in the facts and circumstances of the present matter.

(v) The costs of the present writ petition may also be awarded in favour of the petitioners."

26. A mere reading of the prayers in the writ petition shows that no relief has been sought against the Central Government. There is no averment in the pleadings in the writ petition that the Central Government/Ministry of Commerce & Industry had granted approval/sanction for execution of the service agreement of the Petitioners and subsequent renewals. Even in the application filed for impleadment under Order 1 Rule 10(2) CPC the only reason sought to implead Union of India as a party is that under the FDDI Act, 2017, by virtue of Section 4 (3) the Governing Council comprises of the senior officers of the Government of India as ex-officio members and that the impugned letters have been issued with the approval of the Competent Authority which is the Governing Council. Respondents in the reply to the impleadment application as well as in the Counter-Affidavit have taken a categorical stand that Ministry of Commerce and Industry, Government of India has no role in the adjudication of the present case, not being associated with the execution or renewals of the contracts in question. Merely because FDDI is under the aegis of the Government of India cannot mean that it would have any bearing on the issue in the present case, which is limited to non-renewal of the contracts. It is further averred in the Counter Affidavit that Respondent No.2 is the Managing Director and the Principle Executive Officer of the Institute. He is responsible for the Administration of the Institute including managing all appointments as per rules and procedure. It is categorically stated that services of the Petitioners were not renewed by decision of the Managing Director of the Institute. Petitioners have not produced any documentary evidence to rebut the submission that the Managing Director was the Competent Authority to renew the contracts, except for an averment that the Governing Council is under the control of the Central Government.

27. It needs to be mentioned here that the Petitioners have placed on record, along with the writ petition copies of the Service Agreements executed between the parties which reflect that they were executed between the FDDI, as a Society incorporated under the Societies Registration Act and the respective Petitioners. There is nothing in the Agreements which give any indication that the Union of India or the Governing Council had any role to play in the execution/renewal of the Agreements. It follows as a natural corollary that the Council/Union of India had no role in taking the decision with respect to further non-renewal of the contracts, once they expired on 30.07.2020, by efflux of time.

28. Thus the facts as they emerge, when looked at holistically clearly lead to the inevitable conclusion that the Service Agreements were executed, renewed and expired beyond the territorial boundaries of this Court and the Petitioners were admittedly employed outside Delhi. The grievance of the Petitioners is with respect to non-renewal of their contract of employment and not even a miniscule part of cause of action can be said to have arisen at Delhi. The entire bundle of

facts give rise to a cause of action, if any, only against FDDI and not the Ministry of Commerce and thus this Court would lack the territorial jurisdiction to entertain the present petition.

29. The Petitioners have during the pendency of the petition filed an application for impleadment of Union of India through the Secretary, Department of Commerce as well as the Additional Secretary & Financial Advisor, Ministry of Commerce & Industry, Government of India. It is obvious that the purpose of filing the application is to create an artificial jurisdiction of this Court while none exists. I am supported in my view by a judgment of a Division Bench of this Court titled *J.B. Textile Industries Pvt. Ltd. v. Union of India & Another* 1994 (30) DRJ (DB) wherein the Court dealing with a similar situation observed as follows:

"7. Clause (2) was inserted as Clause 1 A by 15th Amendment and it was renumbered as clause (2) by 42nd Amendment. Prior to the insertion of this clause it was held that the writs issued by the High Courts did not and could not run beyond the territories in relation to which they exercised jurisdiction. Now, a High Court within the territorial jurisdiction of which the cause of action arises may issue a writ against a person or authority residing within the jurisdiction of another High Court. In the case at hand, the cause of action to the petitioners has arisen within the jurisdiction of Bombay High Court and the authorities against whom the writ would issue are situated within the jurisdiction of that High Court. By impleading Union of India through the Secretary, Ministry of Finance (Central Excise) Delhi, the petitioners have tried artificially to create jurisdiction in Delhi High Court.

8. The learned Standing Counsel for UOI has rightly pointed out that this attempt of the petitioner has put the respondents to serious inconvenience and there was delay in putting forth defence because the records were all available at Bombay and not at Delhi. In *Bhagat Ram v. UOI* AIR 1988 S.C. 740 (para 12), their Lordships of the Supreme Court upheld the order of the Punjab & Haryana High Court declining to grant any relief to the petitioner "inasmuch as no part of the cause of action arose within the territorial jurisdiction of said High Court under Article 226 of the Constitution."

9. For the foregoing reasons, it is held that the two petitions are not maintainable before this High Court for want of territorial jurisdiction. Both the petitions are dismissed with costs quantified at Rs. 5000/- in each case payable by the petitioners to the respondents."

30. The various issues raised in the present petition by the parties respectively with regard to legality or otherwise of the action of non renewal of the service agreements, are left to be decided by the appropriate Court having jurisdiction to entertain the grievances and adjudicate upon them.

31. Petitioners are thus at liberty to approach the Court of jurisdiction to ventilate their grievances, in accordance with law.

32. It is made clear that the Court has not expressed any opinion on the merits of the case.

33. Accordingly, the petition along with the accompanying application for impleadment is hereby dismissed for lack of territorial jurisdiction.