

(1989) 08 CAL CK 0055
In the Calcutta High Court

In Re : Chowdhury Niranjana Mahapatra

Date of Decision : 18-08-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1A)

Citation : 94 CWN 503

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Advocate : Partha Sarathi Bose, for the Appellant; Dipak Ghosh for Respondents Nos. 1 to 5, for the Respondent

Judgement

G.N. Ray, J.—This writ petition is directed against an order of punishment passed in a disciplinary proceeding initiated against the petitioner by way of stoppage of two annual increments for the years 1987 and 1988 with cumulative effect in terms of Clause 8(1) and 4(b) of Andhra Bank Officers Employees (Discipline and Appeal) Regulations and the order dated 25th May, 1987 passed by the Appellate Authority confirming the decision of the Disciplinary Authority, and the order passed by the Reviewing Authority dated 4th August, 1988 affirming the aforesaid decisions of the Disciplinary and the Appellate Authority. The petitioner was appointed in the Andhra Bank as Rural Credit Officer on 10th February, 1982 in the Bhubaneswar Region. The petitioner contends that under the Andhra Bank (Officers") Service Regulations, 1982, he was entitled to leave travel concession and he was entitled to travel to his home town or to any place in India by the shortest route once in each block of 2 years. On 6th July, 1985, the petitioner applied for such leave travel concession to the regional office of the said Bank at Bhubaneswar for travelling from Bhubaneswar to Kanyakumari via Madras and from Kanyakumari to Bhubaneswar via Madras. In the said application, the petitioner requested for payment by way of advance amount to the tune of Rs. 8,500/-. On the basis of such letter, the leave travel allowance was allowed to the petitioner. The petitioner contends that he has travelled in two taxis from Bhubaneswar to Kanyakumari along with his family members from 11th August, 1985 to 22nd August, 1985. The aforesaid taxis were arranged by M/s. Pacific Tour & Travel Agent of Bhubaneswar and the petitioner obtained taxi hire bills

and receipts from the said Travel Agent. The petitioner has contended that after his return from the tour, he submitted to the Bank the travelling allowance bills along with the documents, but the respondent no. 4 in the purported exercise of the Disciplinary Authority, 1986 to the petitioner, inter alia, alleging that it had been brought to the notice of the Bank that the petitioner had committed grave and serious irregularities while working at the regional office at Bhubaneswar in availing the L.T.C. and tried to cheat the Bank to the tune of Rs.9,545/- and such conduct was unbecoming of a responsible Bank Officer. It was alleged in the charge-sheet that the petitioner submitted a false and fake bill for huge amount without undertaking the journey, thereby misusing the LTC facility and the petitioner had tried to cheat the Bank for illegal gain. The petitioner submitted a reply to the said charge-sheet on 8th September, 1986, inter alia, confirming that he had gone to Kanyakumari and stayed there at Gopinivas Lodge and while he was at Kanyakumari, he released a telegram to the Regional Manager, Bhubaneswar of the said Bank for extension of leave also. The petitioner contended in the reply that the taxi bills submitted before the Bank were genuine and he had not misused the L.T.C. facility in any way. The petitioner has contended that in spite of such reply of the petitioner, the Disciplinary Authority without holding any enquiry and without giving any chance to defend the petitioner inflicted the aforesaid punishment of stoppage of two annual increments for the years 1987 and 1988 with cumulative effect flagrant violation of all the principles of natural justice. The petitioner thereafter preferred an appeal, but the Appellate Authority confirmed the order of Disciplinary Authority without considering the merit of the case and without disclosing the reason which had weighed the Appellate Authority in confirming the order of the Disciplinary Authority. The petitioner made an application for review, but the Reviewing Authority viz. the respondent no. 2 confirmed the punishment without giving any reason and petitioner has alleged that such non-speaking order was passed by the Reviewing Authority in a mechanical way without any application of mind. It may be noted in this connection that on and from July, 1987, the petitioner had been transferred to Calcutta Zonal Office and the respondent no. 5 is the present Disciplinary authority of the petitioner. The petitioner contended that he could not move the Court earlier because of the financial stringency.

2. The writ petition was moved with a notice to the respondents and Mr. Dipak Ghosh, the learned counsel appeared for the respondents Nos 1 to 5. A preliminary objection was raised by the said learned counsel for the respondents as to the maintainability of the instant writ petition before this Court on the contention that no part of the cause of action has arisen within the territorial jurisdiction of this Court and as such the writ petition is not maintainable in this Court and the Court should, therefore, dismiss the writ petition on the ground of non-maintainability.

3. The learned counsel for the respondents in support of his contention that the instant writ petition is not maintainable before this Court contended that subject matter of charge-sheet relates to submission of false T.A. bill in connection with

the leave travel concession when the petitioner was working at Bhubaneswar. The charge-sheet in question was served when the petitioner was in Bombay by the Disciplinary Authority at Hyderabad. The petitioner submitted the reply to the Disciplinary Authority at Hyderabad and the Disciplinary Authority Hyderabad passed the order of punishment of stoppage of two annual increments and the same was communicated to the petitioner when he was working in Bombay. The petitioner preferred an appeal to the Assistant General Manager at Hyderabad while he was working in Bombay and the said Appellate Authority at Hyderabad passed the order and communicated the same to the petitioner when the petitioner was working at Bombay. The petitioner applied to the Reviewing Authority at Hyderabad directly. The Reviewing Authority at Hyderabad passed an order, but the same instead of being communicated to Zonal Office was directly sent to the petitioner at Calcutta. It has been contended by the learned counsel for the respondents that more communication of the decision of the Reviewing Authority to the petitioner at Calcutta cannot be constituted as a part of the cause of action arising within the territorial jurisdiction of this Court. The learned counsel has contended that the jurisdiction to issue writs against persons and authorities is extensive to territorial jurisdiction and in support of such contention reference has been made to the following decisions of the Supreme Court:

- i) Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, ;
- ii) Election Commission, India Vs. Saka Venkata Subba Rao and, ;
- iii) Madan Gopal Rungta Vs. Secretary to The Government of Orissa, .

4. The learned counsel for the respondents has contended that the subject matter of dispute was the issuance of the charge-sheet and the initiation of the disciplinary proceeding and the order of punishment passed by the Disciplinary Authority since confirmed by the Appellate Authority and the reviewing Authority. The Disciplinary Authority, the Appellate Authority and the Reviewing Authority are all at Hyderabad. It has been contended by the learned counsel for the respondents that the jurisdiction to entertain a writ petition under Article 226 (1A) of the Constitution of India will lie where the subject matter of dispute is situated and in the facts of the case the subject matter of dispute was not the territorial jurisdiction of this Court. In support of this contention, the learned counsel for the respondents has referred to the decision of the Supreme Court made in the case of Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, . The learned counsel has contended that the law is well settled that for the purpose of acquiring jurisdiction, the cause of action must arise wholly or in part within the territorial jurisdiction of the concerned High Court. He has further contended that if the principle respondent is outside jurisdiction of the concerned High Court, writ will not be maintained in the said High Court. In support of this contention, reference has been made to the decision of the Supreme Court made in the case of Union of India and Others Vs. Oswal Woollen Mills Ltd. and Others, . The learned counsel has also contended that if the cause of action does not arise within the territorial jurisdiction of this Court

and all the respondents and the records are not within the jurisdiction of this Court, this Court cannot entertain the writ petition under Article 226 of the Constitution of India. In support of such contention, the learned counsel for the respondents has referred to a decision of this Court made in the case of Hindusthan Sugar Mills and Others Vs. Union of India (UOI) and Others, . It has also been contended by the learned counsel for the respondents that even if the registered office of the organisation in which a delinquent employee is employed is within the territorial jurisdiction of this Court and the correspondence is made with the registered office and the payment of price is made by the registered office, such correspondence and payment will not confer jurisdiction unless the cause of action either in whole or in part arises within the jurisdiction of the High Court. In support of this contention, the learned counsel has referred to a decision of this court made in the case of Kajaria Exports Ltd. and Another Vs. Union of India (UOI) and Others, . The learned counsel has contended that similar view has also been taken in another decision, of this Court where the registered office was at Calcutta, but the manufacturing activity was in Bihar and the show cause notice by the Superintendent, Central Excise, Ranchi was issued and the adjudication in such show cause preceding was made in Bihar. It has been held by this Court in the case of Indo Asahi Glass Co. Ltd. v. Union of India, reported in 1986 (11) CLJ 104 that the writ petition challenging the validity of the adjudication is not maintainable in this court. The learned counsel has also contended that simply because the Reviewing authority has communicated its decision to the petitioner at Calcutta instead of sending the same through the Zonal Office such communication will not confer any jurisdiction on this Court. Referring to the decision of the Supreme Court made in the case of State of Rajasthan v. Swaika Properties, reported in AIR 1985 SC 1283, the learned counsel for the respondents has submitted that all the said authorities are outside the territorial jurisdiction of this Court. The impugned decision has been taken outside the territorial jurisdiction of this Court and the records are also lying outside the territorial jurisdiction of this Court and mere communication of the Order therefore cannot be constituted as a cause of action arising within the territorial jurisdiction of this Court. He has contended that in Swaika Properties" case, service of notice was made in Calcutta but the entire proceeding challenged in the Writ petition had taken place in Rajasthan. The Supreme Court has specifically held that such service of notice at Calcutta shall not confer jurisdiction on this Court.

5. The learned counsel for the petitioner has, however, contended that the writ petition is maintainable before this Court. It has been submitted by the learned counsel for the petitioner that the main grounds of challenge in the writ petition against the impugned order of punishment and the order passed by the Appellate and Reviewing Authorities are to the effect that without conducting any enquiry and without giving the petitioner reasonable opportunity to defend in the disciplinary proceeding, the aforesaid orders were passed and the Appellate and the Reviewing Authority did not apply their minds to the case made by the

petitioner before such authorities and the appeal and the review application were disposed of mechanically without application of mind. It has been contended that the petitioner was transferred to Calcutta and while posted at Calcutta, the petitioner made an application for review from Calcutta and the decision of the Reviewing Authority was communicated to the petitioner in Calcutta. In the instant case, the last decision is the decision made by the Reviewing Authority and such decision having been made on the application being sent from Calcutta and communicated to the petitioner in Calcutta, a part of the cause of action has arisen within the meaning of Article 226(1A) since renumbered as clause (2) of Article 226 (4 2nd Amendment). It has been contended by the learned counsel for the petitioner that the decisions reported in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , Election Commission, India Vs. Saka Venkata Subba Rao and, and R.R. Chari Vs. State of U.P., were made prior to insertion of clause (1A) in the year 1963 and the present clause (2) of Article 226 as amended in 1976. The said decisions, therefore, are not applicable after the amendment of the provisions of the Constitution. The learned counsel for the petitioner has submitted that there cannot be any dispute with regard to the principle as enunciated in the case in Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, and Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, , that to acquire jurisdiction, the cause Of action must lie wholly or in part, but he has contended that in the instant cause, a part of the cause of action has arisen within the territorial jurisdiction of this Court. Referring to the decision of the Supreme Court reported in 1984 (2) SCC 645, the learned counsel for the petitioner has contended that the Supreme Court has observed in the said decision that in the ordinary circumstances, writ petition should be filed wherein the principal respondents reside or have office so that delay is avoided and there is prompt return and contest. it is contended by the learned counsel for the petitioner that the Supreme Court has not decided that the writ petition cannot be entertained by the High Court even though a part of cause of action has arisen within its jurisdiction. He has contended that there was no question of delay of return and contest. The learned counsel has contended that the facts and circumstances leading to the decisions made in the cases reported in AIR 1985 Cal 17, AIR 1985 SC 70 and 1986(11) C.L.T 104 are clearly distinguishable. The learned counsel for the petitioner" has referred to a decision of this Court made in the case of Sirajuddin & Co. v. State of Orissa & Ors., reported in AIR 1971 Cal 414. It has been held in the said decision that where the orders as to the grant and revocation of a mining lease was served within the territorial jurisdiction of the High Court and a part of the cause of action arose within its jurisdiction, the concerned High Court would have writ jurisdiction in respect of the order of revocation even though the authority revoking the lease and the authority communicating the revocation order were beyond the jurisdiction of the High Court. The contention raised by the respondents in the said proceeding that as all the respondents had their offices located beyond the territorial jurisdiction of the Court, this Court had no jurisdiction to entertain the writ petition was not

accepted. The learned counsel for the petitioner has referred to another decision of this Court made in the case of *The Chairman and Managing Director, Punjab National Bank & Ors. v. Dilip Kumar Dey.* reported in 1987(1) CLJ 534. It has been held in the said decision that as the suspended Bank employee was residing within the territorial jurisdiction of this Court and he had been making correspondence from his place of residence and his suspension allowances were being paid at Calcutta, it cannot be contended that no part of the cause of action has arisen in Calcutta and accordingly the writ petition under Article 226 is maintainable before this court. Referring to the decision made in the case of *Bharat Sugar Mill limited & Anr.,* reported in AIR 1984 Calcutta 102, the learned counsel for the petitioner has contended that in the said decision it has been held that even if the person or authority against whom the writ was asked for does not reside within the territorial jurisdiction of the High Court, still the High Court can issue writs or directions provided the cause of action either wholly or partly arose within the territorial jurisdiction of this Court. The writ petition was not entertained in the finding that the cause of action being bundle of facts required to be proved in order to succeed in the claim made in the writ petition had not arisen within the territorial jurisdiction of this Court. The learned counsel for the petitioner has, therefore, contended that in the facts of that case, this Court having come to the finding that the cause of action has not arisen within the territorial jurisdiction of this Court did not entertain the writ petition. After considering the respective contentions of the learned counsels for the parties, it appears to me that the basic cause of action in this writ proceeding is the order of punishment made by the Disciplinary Authority while the petitioner was posted in Bombay, outside the territorial jurisdiction of this Court. The said order of punishment passed by the Disciplinary Authority inflicting punishment of stoppage of two increments with cumulative effect has been sustained both by the Appellate Authority and by the Reviewing Authority and both such Authorities are also outside the territorial jurisdiction of this Court. The records relating to the disciplinary proceeding and the appellate and review proceedings are also lying outside the territorial jurisdiction of this Court. Only because a review application was sent by the petitioner from Calcutta where subsequently he was transferred and the decision was communicated to him in Calcutta will not constitute any part of the cause of action arising within the territorial jurisdiction of this Court. In my view, in the facts of the case, the cause of action arose by the order of punishment inflicted in Bombay and the decision taken by the Appellate Authority and the Reviewing Authority at Hyderabad in upholding the order of punishment. The learned counsel for the respondents is justified in his contention that the communication of the order of Reviewing Authority to the writ petitioner in Calcutta will not give rise to any part of the cause of action for challenging the order of the Disciplinary or the Appellate or Reviewing Authority. In the decision made in the case of *State of Rajasthan v. Swaika Properties* (AIR 1985 SC 1283) it was made clear that for the purpose of appreciating the cause of action, the service of the notice is not the real test. The decision of this High Court reported in AIR 1971 Cal 414 is not applicable in the facts and

circumstances of this case. In the said case, the order and grant of revocation of licence were part of the cause of action arising within the territorial jurisdiction of this Court. In the case of *Chairman & Managing Director, Punjab National Bank v. Dilip Kumar Dey* 1987 (1) Cal LJ 534. it was held that in the peculiar facts of the case this Court had jurisdiction to entertain the petition. In the said case, the petitioner was admittedly under suspension and was allowed to reside during suspension in Calcutta and had been admittedly receiving his suspension allowances in Calcutta. The petitioner challenged the continuance of the order of suspension and prayed for revocation of the order of suspension. In the context of continued suspension while the petitioner was in fact under suspension in Calcutta, it was held that a part of the cause of action had arisen within the territorial jurisdiction of this Court. I am, therefore, inclined to hold that in the instant case, no part of the cause of action has arisen within the territorial jurisdiction of this Court and the writ petition is, therefore, not maintainable. As, in my view, the writ petition is not maintainable in this Court. I have refrained from entering into the merits of the case. There will be, however, no order as to costs.