

(1988) 11 CAL CK 0001
In the Calcutta High Court
In Re: Joytirmoy Ganguly

Date of Decision : 24-11-1988

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 226(2)

Citation : 93 CWN 1176

Hon'ble Judges : Mohitosh Majumdar, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, P.K. Chatterjee and Gita Gupta, for the Appellant; Ajoy Mitra and K.K. Bandyopadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Mohitosh Majumdar, J.—The writ petitioner by impugning the order of suspension dated March 11, 1988 and also the charge-sheet dated 11/16th April, 1988 being annexure "E" & "F" to the writ application presented a writ application on September 28; 1988 when the following order was passed :-

Affidavit-in-Opposition is to be filed within September 30, 1988, reply thereto, if any, is to be filed within October 3, 1988 and the matter will appear as "For Orders" on October 3, 1988.

The order of suspension and the charge-sheet read thus:-

11-3-88

"To

Shri J. Ganguly,

Accounts Asstt,

Area Office, Bhowra.

Sub :- Suspension from duty

You were apprehended on 10.2.1988 by C. B. L Officers, Dhanbad in connection with the acceptance of illegal gratification from the proprietor of Pintoo Auto

Garage, Bowra.

You are put under suspension, from duty with immediate effect. The charge sheet with specific charges will follow in due course.

Sd/- Illegible - General Manager

Bhowra Area.

/C.H.F.

Charge sheet : -

In continuation of our letter No. GH/XI/88/3866-69 dated 11/3/88, I hereby require you to explain within 72 hours of the receipt of this charge sheet as to why disciplinary action including your dismissal from the services of the company shall not be taken for the misconduct committed by you under clause 17 1(a), (b) & (q) of Model Standing Orders applicable to Bhowra Area Office of BCCL on account of the following charges:

That on 10/2/99 you were caught red-handed in your office by Sri A. K. Sahay, Inspector of Police SPE, CBI Dhanbad and his team while accepting illegal gratification of Rs.50/- from Sri Nand Kishore Singh of M/s. Pintoo Auto Electrical Works, Bhowra in connection with giving financial concurrence No. of 3 bills duly passed for payment of Rs. 1794/-, Rs. 1135/- Rs. 438/-.

2. The above charges which are framed under clause 17 1(a), (b) & (q) of Model Standing Orders are reproduced below :-

Model Standing Orders :-

17 1(a) Theft, fraud, dishonesty in connection with Employers business or property;

(b) Taking or giving bribe or an illegal gratification whatsoever in connection with the employers business or his own interest; &

(c) Any breach of Mines Act 1952, or any other Act or Rules, Regulations or bye-laws thereunder or of any standing orders of IPC a public servant taking gratification other than legal remuneration in respect of an official act

You will remain suspended from duty pending disposal of the above charge sheet.

Sd/- Illegible

General Manager/C.M.E.

BHOWRA Area.

3. Mr. Ajoy Kumar Mitter duly assisted by Sri Kalyan Kumar Bandopadhyaya raised preliminary objection on the grounds of absence of territorial jurisdiction in the first blush.

4. The writ petitioner was initially appointed as Account Clerk in the Audit Section of the Central Office of the Oriental Coal Company, 25, Brabourne Road, Calcutta on August 2, 1971. Thereafter the writ petitioner was posted as Accounts Clerk in the Audit Section of the Central Office of the Oriental Coal Co. Limited at Bhowra, Dhanbad on the terms and condition contained in the said letter of appointment. Sequel to the passing of the Coking Coal Mines Emergency Provisions. Act, 1971 Coal Mines owned by Oriental Coal Company was taken over and managed by the Central Government. Thereafter all such coking coal mines including the coal mines of Oriental Coal Limited were thereafter nationalised, acquired and taken over by the Central Government under the provisions of Coking Coal Mines Nationalisation Act, 1972. Along with the coal mines the employees working under different coal companies were also taken over and absorbed by Central Government in one and other companies or organisation set up by the Central Government for the purpose of management, control and development of business of the said several coal mines. Initially the services of the petitioner was taken over by the Central Government and the petitioner was entrusted with the duties of maintaining cash ledger and other books of accounts. The petitioner was directed to report his performance of work daily to the accounts advisor of the said organisation. The petitioner became an employee of Bharat Coking Coal Limited (for short B. C. C. L. hereinafter) and was directed to work at Dhanbad. While on duty in the office on February 19, 1988 the petitioner was subjected to suffer a vigorous search by the C.B.I. personnel. Such search, according to the petitioner, was made at the instance of Nandalal Singh, a influential local man. Nothing incriminating was found from the petitioner but one scrap of paper was found on the floor and the petitioner was directed to pick up the paper but he refused to do the same. The C. B. I. people took up the piece of paper lying on the floor. An inventory of the documents was made by C. B. I. but no signature was obtained from the petitioner on the said list. Subsequently the signature of the petitioner was obtained in the night of February 10, 1988. The F. I. R. was recorded by C. B. I. officer and the criminal case was initiated. The petitioner was placed under suspension by an order passed on March 11, 1988. On 11th April, 1988 the charge-sheet was served upon the petitioner. Mr. Ajoy Mitter, the learned advocate assisted by Sri Kalyan Kumar Bandopadhyaya the learned Advocate claimed the writ application can not be sustained as the entire cause of action arises outside the jurisdiction of this Hon'ble Court. The search of the petition took place at Dhanbad. The order of suspension and charge sheet issued by the General Manager, C. M. E., Bhowra, Area, Dhanbad were served upon the petitioner.

5. In the back ground of the facts and circumstances of the case Mr. Saktinath Mukherjee, the learned Senior Advocate duly assisted by Sri P. K. Chatterjee, Learned Advocate appearing for the petitioner claimed and contended that B. C. C. L. being a subsidiary of Coal India Limited is wholly and totally under the control and supervision of Coal India. The registered office/principal place of business of B. C. C. L. is at Calcutta and the B.C.C.L is controlled and guided by

Coal India Ltd. from Calcutta. The B.C. C. L. has its main and Central Sales Office at 6, Lyons Range, Calcutta. The Chairman and Managing Director of the B.C. C. L. having his office at the Central Sales Office at No. 6, Lyons Range, Calcutta B.C.C.L. carries on business from Calcutta within the jurisdiction of this Hon''ble Court; hence this Hon''ble Court is competent to entertain the application filed by the writ petitioners, permanent resident of Baruipara lane, P.S. Baranagore, District : 24 Bags. Mr. Saktinath Mukhrejee referred to the judgment of this Hon''ble Court in case of Umashankar Chatterjee v. Union of India it Ors., reported in 86 CWN 100; M/s. Industrial Fuel Marketing Co. & Ors. v. Union of India, reported in 89 CWN 263 and State of Orissa v. Goenka Investment & Mining Industries, reported in 83 CWN 254 and submitted that the judgment reported in the case of State of Rajasthan v. M/s. Swaika Property & Ors., reported in 1985 SC 1289 has no manner of application.

6. Mr. Ajoy Mitter assisted by Kalyan Kumar Bandopadhyay appearing for the respondents raised the following objections :-

(i) The cause of action leading to the filing of the instant writ petition arose beyond the territorial jurisdiction of this Hon''ble High Court and as such, this Hon''ble Court cannot entertain the instant writ petition.

(ii) The writ petitioner deliberately gave wrong.... address of the Respondent nos. 2 and 3 for the purpose of misleading this Hon''ble Court so that the Hon''ble Court, at the first blush, may entertain the writ petition, taking into consideration the cause of action leading to the filing of the writ petition as if the same arose within the territorial jurisdiction of this Hon''ble Court.

(iii) The correct addresses of the Respondent No. 2 and 3 have not been given by the writ petitioner, with a deliberate intention, there was no compliance with Rule 9 of the Rules relating to Article 226 of the Constitution of India framed by this Hon''ble Court.

(iv) Bharat Coking Coal Ltd., Respondent No. 2, has its registered office at Koyla Bhawan, Koylanagar, Dhanbad, which is outside the territorial jurisdiction of this Hon''ble Court. The Central Sales Office of the Respondent No. 2 is also situated at Koyla Bhawan, Koylanagar, Dhanbad. The Chairman and Managing Director of Bharat Coking Coal Ltd.'s office is also situated at Koylanagar, Dhanbad, where the registered office of the Respondent no. 2 is situated.

v) The aforesaid factum of situation of the registered office of the Respondent no. 2 and the Chairman & Managing Director's office establishes that addresses'' of the Respondent nos. 2 and 3 as given in the cause title of the instant writ petition, are incorrect. It is (sic)ated specifically that the Respondent no. 2 has no Central Sales Office at 6, Lyons Range, Calcutta-1, as alleged in the Cause title of the writ petition and the Chairman-cum-Managing Director's Office is situated. at Koylanagar, Dhanbad and it is incorrect that the Chairman & Managing Director ''of Bharat Coking Coal Ltd., is having his office inter alia., at No. 6, Lyons Range, Calcutta - as alleged. Such incorrect addresses have been

given by the writ petitioner only with a view to creating the cause of action within the territorial jurisdiction of this Hon''ble Court.

vi) The writ petitioner was arrested at Bhowra, Dhanbad, by the Central Bureau of Investigation, Dhanbad. The order of suspension was also issued by the General Manager, Bhowra Area, whose office is also situated at P.O. Bhowra. District Dhanbad, Bihar and the charge sheet was also issued by the said General Manager and as such, the entire records of the case are lying beyond the territorial jurisdiction of this Hon''ble Court and as such, this Hon''ble Court has no jurisdiction whatsoever to entertain this instant writ petition.

vii) The law settled by this Hon''ble Court F.M.A.T. no. 1096 of 1985 (Anant Plasma Private Ltd. & Anr. v. Union of India & Ors.).

7. Apart from the decision cited by Mr. Mitter appearing for the respondents reference may be made to the following judgments.

Hindusthan Sugar Mills & Ors. v. Union of India & Ors., reported in AIR 1985 Calcutta - 17.

8. The contention of Mr. Saktinath Mukherjee that the BCCL is governed and controlled by Coal India Limited, Calcutta, that challenge of the writ petitioner, against the action of BCCL cannot but fail on the ground of absence of jurisdiction of this Court as claimed, the said challenge cannot be sustained as the criminal proceeding has been initiated at Dhanbad against the petitioner. The order of suspension and the charge sheet were issued by the General Manager, BCCL, Dhanbad. Registered office of the BCCL is at Dhanbad. The court cannot overlook that Dhanbad is not a part of the territory of the State of West Bengal. Dhanbad ceded to be a part of Territory of West Bengal long ago. Coal India is not a necessary party and the contention of Mr. Saktinath Mukherjee on this aspect is without any basis. This court is not competent to set aside the charge sheet and order of suspension which can only be done by the High Court at Ranchi Bench. The relevant portion of the judgment of Supreme Court in the case of State of Rajasthan v. Swaika Property is quoted below :-

" Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned single judge had no jurisdiction to issue a Rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the adinterim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to. require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

The expression "cause of action", is tersely defined in Mulla's CPC :

"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."

9. In the other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice u/s 52(2) of the act on the respondents at their registered office at 28 Branourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. 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 the 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 Art. 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 ail 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. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan u/s 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose".

10. The plea taken by Mr. Mukherjee on various ground are wholly unsustainable as the writ petitioner in my view ought not to have filed the writ petition before this Court. It is also to be borne in mind that Article 141 of the Constitution stares at the face of this Court. The contention raised by the respondents are well merited and they are accepted. The writ application is dismissed, but this order shall not prevent the writ petitioner from challenging the order and/or action of the respondents before the appropriate Court. I have not gone into the merits of the case.

There will be no orders as to costs.