

(2002) 05 DEL CK 0268
In the Delhi High Court
Case No : CW No. 3102 of 2002

Indian Charge Chrome and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1), 32

Citation : (2002) 99 DLT 809 : (2003) 152 ELT 269

Hon'ble Judges : Vikramajit Sen, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : P. Chidambaram, Vibhu Bhakhru and V. Menon, for the Appellant;
Kirit Javali, for Navin Chawla, for the Respondent

Judgement

Dalveer Bhandari, J.—The petitioner - M/s Indian Charge Chrome - a company registered under the Companies Act, 1956, having its registered office at Bomikhal, P.O. Rasulghar, Bhubaneswar, Orissa, has filed this petition with the prayer that the respondents be directed to grant exemption from payment of customs duty on spares and consumable items imported by the petitioner to meet the requirements of its captive power plant at Choudhwar, District Cuttack, Orissa.

2. It is incorporated in the petition that the petitioner were entitled to exemption from payment of customs duty on import of spares and consumables up to 18th May, 1999 as recommended by respondent No.4. Such exemption from payment of customs duty on import of spares and consumables subsequently up to 27.1.2000 was available on approval by the Assistant Commissioner of Customs on the recommendation of the Development Commissioner, Ministry of Commerce, Nizam Palace, Kolkatta. The petitioner company and other main contesting respondents are located outside the territorial jurisdiction of this court.

3. Before We scrutinize detailed facts and questions of law involve in this petition we would like to reflect on the legal position as crystalised by a series of authoritative judgments regarding territorial jurisdiction of this Court in

entertaining this petition.

4. In *Election Commission, India Vs. Saka Venkata Subba Rao and*, the Apex Court held that the powers under Article 226 of the Constitution are to be exercised throughout the territories in relation to which it exercise jurisdiction, that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue writs must be within those territories which clearly implies that they must be amenable to the jurisdiction either by residence or location within those territories.

5. Their Lordships of the Supreme Court in *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, held that High Court is invested with powers to issue writs under Article 226 of the Constitution. This power is subject to two limitations; first limitation is that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction, that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs must be within jurisdictional territories of that court and this implies that they must be amenable to its jurisdiction either by residence or location within those territories.

6. In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, contract work to be carried out in Gujarat. However, the advertisement inviting tenders was published in newspaper which was read at Calcutta. The contractor submitted the offer from Calcutta and made representations from Calcutta. Dispute having arise, a petition was filed at Calcutta. Their Lordships have held:

(i) The power conferred by Clause (1) of Article 226 can be exercised by the High Court provided the cause of action wholly or any part had arisen within its territorial limits;

(ii) merely because the advertisement was read at Calcutta and the contractor submitted the offer and made representations from Calcutta, they do not constitute "an integral part of the cause of action"; it cannot be said that a part of the cause of acting arose within the jurisdiction of Calcutta High Court. Whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of averments made in the petition.

(iii) that some event, however trivial and unconnected with the cause of action, occurring within the jurisdiction of a Court does not confer jurisdiction on the said Court; the litigant carrying the cause before such Court makes an abuse of the process of the Court.

7. In *Everest Coal Co. Pvt. Ltd. Vs. Coal Controller and Others*, the Division Bench has held "In order to maintain a writ application, the petitioner has to establish that within the territorial limit of the Courts jurisdiction prima facie a legal right claimed by him has been either infringed or is threatened to be

infringed by the respondents. Such infringement may take place by causing him legal injury or threat thereof. Accordingly, when the impugned act of the respondent takes effect within the territorial jurisdiction of a particular High Court, the Court may entertain the writ petition of the person aggrieved notwithstanding that the respondents have the offices or residences outside its territorial jurisdiction. An order which has been made by an authority or person at a place beyond the territorial jurisdiction of a particular High Court but is given effect to against the petitioner within the said High Court's jurisdiction gives rise to at least a part of cause of action at the place where it is implemented. When an order becomes effectively only when it is communicated or served, the service of the order or receipt of a notice thereof would form part of cause of action for filing a writ petition by the person aggrieved thereby."

8. In *Sita Ram Singhania v. Bank of Tokyo-Mitsubhishi Ltd and Ors.* (1991) 4 SCC 382, their Lordships of the Supreme Court observed that "We see no reason why the High Courts in such matters filed by the defendants in suits instituted by the banks before the Debt Recovery Tribunal should more or less as a matter of course grant stay of proceedings before the tribunals. The very purpose of setting up the tribunals will be lost by granting stay merely because there is challenge to the notification Constituting the tribunal. In the present case, the High Court has rightly come to the conclusion that as the proceedings were initiated in the State of Madhya Pradesh, the Allahabad High Court had no jurisdiction."

9. *Satya Prakash Vs. State of U.P. and Others*, , was a case arising out of the order of this Court refusing to entertain the appellant's application with the prayer that a direction be given to an independent agency to inquire into the matter on the ground that the Delhi High Court had no territorial jurisdiction. The alleged offence, if any, was committed outside the jurisdiction of the Delhi High Court. In the petition under Article 32, the Supreme Court while dismissing the petition observed that the dismissal will not preclude the petitioner from moving the appropriate Court including the High Court of Delhi, if so advised. Because of this observation of the Supreme Court, the appellant moved the Delhi High Court but this petition was also dismissed. It was contended that the orders of the Supreme Court must be construed as a mandamus from the Supreme Court to the Delhi High Court conferring jurisdiction on the Delhi High Court to entertain and dispose of the matter on merits. When the matter was again taken to the Supreme Court, their Lordships held that "We are unable to construe the aforesaid two orders passed by the Court conferring jurisdiction on the Delhi High Court to entertain the matter over which it does not possess any territorial jurisdiction inasmuch as the offence was, admittedly, committed within the territorial jurisdiction of the Allahabad High Court. " In that view of the matter, the Court declined to interfere with the order of the Delhi High Court and observed that the petitioner would be at liberty to approach the Allahabad High Court, if so advised.

10. A Division Bench of Allahabad High Court in *Ram Kirpal Chhakkar and Another Vs. Union of India (UOI) and Another*, observed that one important circumstance is that the Courts do not issue writs and injunctions which they have no power to enforce. If a writ or injunction is disobeyed, the only way to enforce it is to take proceedings against the guilty party for disobedience of the order. If that party is outside the jurisdiction of the Court, then the Court has no power to enforce obedience of the injunction or writ issued by the Court. The Courts, Therefore, do not issue writs where they have no power to enforce their obedience. If a writ is issued to some Officer at New Delhi and he ignores it, the Allahabad High Court cannot proceed in contempt against such Officer, as he is outside the jurisdiction of the Court.

11. A Division Bench of Hyderabad High Court in *C. Shrikishen v. State of Hyderabad and Ors.* reported as AIR 1956 Hyd 186 observed that a person or an authority against which a writ under Article 226 is sought to be directed must be within the territories as a condition of the High Court being empowered to issue such a writ. Where, Therefore, several of the respondents against whom writs are sought to be issued are residing outside the territorial limits of the High Court, it has no jurisdiction to issue writs against them.

12. A Division Bench of Punjab High Court in *Ebrahim Aboobaker and Another Vs. L. Achhru Ram*, came to the conclusion that the High Court has no power or authority to issue writ to a person or an authority not within its jurisdiction.

13. Their Lordships of the Supreme Court in *Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others*, observed:

"M/s. Oswal Woollen Mill Limited, having its registered office at Ludhiana in the State of Punjab and a branch office at Calcutta, and Narayan Das Jain, Secretary of the Company have filed a writ petition in the Calcutta High Court seeking various reliefs against the Union of India (through the Secretary, Ministry of Commerce, New Delhi), the Chief Controller of Imports and Exports, New Delhi, the Deputy Chief Controller of Imports and Exports, Amritsar, the Collector of Customs, Calcutta and the State Trading Corporation of India, New Delhi. The primary prayer in the writ petition is to prevent or to quash an apprehended or purported action under Clause 8-B of the Import Control Order. All the other reliefs sought in the writ petition revolve round the principal relief regarding Clause 8-B of the Import Control Order. The other prayers are either ancillary or incidental to the principal prayer or are of an interlocutory character. Having regard to the fact that the registered office of the company is at Ludhiana and the principal respondent against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or Delhi High Court. The Writ petitioners, however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of the writ petition elsewhere than at the place where the concerned offices and the relevant

records are located is to delay prompt return and contest. We do not desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the Company is in the state of Punjab and all the principal respondents are in Delhi. But we do feel disturbed such writ petitions are often deliberately filed in distant High Courts, as part of maneuver in the legal matters, so as to render it difficult for the officials at Delhi to move applications to vacate stay where it becomes necessary to file such applications."

14. In *State of Rajasthan and Others Vs. Swaika Properties and Another*, the court observed:

"It is to be deeply regretted that despite a series of decisions of this Court deprecating the practice prevalent in the High Court of passing such interlocutory orders for the mere asking, the learned Single Judge should have passed the impugned ad interim ex parte prohibitory order the effect of which, as the learned Attorney General rightly complains, was virtually to bring a standstill a development scheme of the Urban Improvement trust, Jaipur viz. Civil Lines Extension Scheme, irrespective of the fact whether or not the High Court had any territorial jurisdiction to entertain a petition under Article 226 of the Constitution. Such arbitrary exercise of power by the High Court at the public expense reacts against the development and prosperity of the country and is clearly detrimental to the national interest."

15. Their Lordships of the Supreme Court in *Rajasthan High Court Advocates Association v. Union of India and Ors.* reported as AIR 2001 SC 416 observed:

"The establishment of a permanent Bench at Jaipur and defining its territorial jurisdiction brought out a bifurcation of State of Rajasthan into two for the purpose of division of territorial jurisdiction of the High Court between principal seat and permanent Bench seat. The Chief Justice of the State cannot, thereafter, artificially or indirectly take away the jurisdiction belonging to one and confer it on the other. Conferring a discretion on the Chief Justice to order that any case or class of cases arising in any district within the territorial jurisdiction of permanent Bench at Jaipur shall be heard at Jodhpur cannot spell out a power to define where the cause of action shall be deemed to have arising in a writ case."

16. A Division Bench of this Court had occasion to decide a case of almost similar nature. Hon"ble Mr. Justice R.C. Lahoti, who delivered the judgment on behalf of the Court observed as under:-

"13. The law as reflected by the above said decisions is that the emphasis has shifted from the residence or location of the person or authority sought to be proceeded against to the situs of the accrual of cause of action wholly or in part. It is also clear that a trivial or insignificant part of the cause of action arising at a particular place would not be enough to confer writ jurisdiction; it is the cause of action mainly and substantially arising at a place which would be determination

factor of territorial jurisdiction. So also it shall have to be kept in view who are the real persons or authorities sought to be proceeded against or against whom writ to be issued by the Court would run. Joining of proforma or ancillary parties, and certainly not the joining of unnecessary parties, would be relevant for the purpose of Article 226(1).

17. In view of the crystallised well settled legal position set-out in the aforesaid cases the power to issue writ is exercised throughout the territory in relation to jurisdiction of that court. The other important circumstance is that the respondent; at least the main respondents, must reside within the territorial limit of that court. Otherwise, the court may not have powers to ensure obedience of the injunction or the writ issued by the court.

18. In the instant case, the petitioner, M/s. Indian Charge Chrome Ltd., is a company registered under the Companies Act, 1956 having its registered office at Bomikhal, P.O. Rasulgarh, Bhubaneswar, Orissa. The principal respondents in this petition are also residing/located outside the territorial limits of this Court.

19. Respondent No.3, Collector of Central Excise & Customs, Orissa, is located at Bhubaneswar, District Khurda, Orissa.

20. Similarly, respondent No.5, Assistant/Deputy Commissioner, Central Excise & Customs, is also located at Bhubaneswar, Orissa.

21. Respondent No.6, Development Commissioner, is located at Kolkatta.

22. According to the petitioner, this court has jurisdiction because union of India (Secretary, Ministry of Finance, Department of Revenue) and Central Board of Excise and Customs are located in Delhi. From this criteria all the petitions from throughout the country should be entertained by this court alone. In response to the court query even the learned counsel for the petitioner could not dispute this fact that the Orissa High Court has jurisdiction to entertain this petition.

23. It is abundantly clear that a trivial or insignificant part of the cause of acting arising at a particular place would not be enough to confer writ jurisdiction. It is the cause of action mainly and substantially arising at a place which would be determining factor of territorial jurisdiction as observed by our Division Bench in Sector Twenty-one owners Welfare Association (supra). While exercising the jurisdiction it shall have to be kept in view who are the real persons or authorities sought to be proceeded against or against whom writ be issued by the Court. We are in respectful agreement with the proposition of law laid down by their Lordships.

24. We do not deem it necessary to probe further about the question whether this petition was filed in this Court by design or accident. The petitioner company is registered at Bhubaneswar, Orissa. The main contesting respondents, respondents Nos. 3 & 5, are also located within the territorial jurisdiction of Orissa High Court.

25. We are of the considered opinion that it would be appropriate for the petitioner to approach the Orrisa High Court, as the Petitioner itself is located there and the most of the contesting respondents are located in Orissa. It would be convenient for all concerned to get the matter adjudicated within the territorial jurisdiction of Orissa High Court. Respondent Nos. 3 5 & 6 are located at Orissa & West Bengal. On court's notice all the contesting respondents will have to rush to this court which would mean waste of the money of public exchequer and avoidable delay in disposal of this petition. 26. While taking into consideration the totality of facts and circumstances obtaining in the case and looking at the overall view of the nature of this case and convenience of the parties. In our considered opinion, it would be just, proper and reasonable for the petitioner to approach Orissa High Court, if so advised.

27. This writ petition is accordingly disposed of. No orders as to costs.