

(2014) 04 CAL CK 0053
In the Calcutta High Court

Case No : G.A. Nos. 141, 143, 676 of 2013 and W.P. Nos. 1008, 1009 of 2010

Indica Smokeless Fuel Industries and Another APPELLANT
Vs

Coal India Limited and Others
 M/s. Gyan Enterprises RESPONDENT
and Another Vs Coal India Limited and Others

Date of Decision : 22-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Criminal Procedure Code, 1973 (CrPC) — Section 173(2)

Citation : (2014) 04 CAL CK 0053

Hon'ble Judges : D. Datta, J

Bench : Single Bench

Advocate : Kalyan Bandyopadhyay, Mr. Saptanshu Basu, Sr. Advocates, Mr. S.D. Sanjay and Mr. Pallav Banerjee, Advocate for the Appellant; S.N. Mukherjee, Sr. Advocate and Mr. Kalimuddin Mondal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

D. Datta, J.—These two writ petitions involve common questions of fact and law and hence have been heard together; this common judgment and order shall govern both the writ petitions.

2. The facts in W.P. 1008 of 2010 may be noticed. The first petitioner, a proprietorship firm (hereafter the firm), is engaged in the manufacture of smokeless fuel. Soft coke is the primary raw material therefor. Raw material was being received by the firm through a linkage policy devised by the coal companies, all of whom are government companies. Such policy envisaged equitable distribution of coal based on need of individual consumers or traders at a reasonable price. A new system was sought to be introduced by the coal companies in 2006 for distribution of coal through electronic auction using the medium of internet. The system was primarily geared towards making available coal to the highest bidders. The policy was challenged before different High Courts of the country. The dispute eventually reached the Apex Court and in its

decision reported in *Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others*, , the system was found to be unreasonable, arbitrary and ultra vires Article 14 of the Constitution. Thereafter, coal was taken out from the list of essential commodities within the meaning of the Essential Commodities Act, 1955, by an amending Act with effect from February 12, 2007. A new policy for distribution of coal was evolved by the Government of India, Ministry of Coal on October 18, 2007. In terms of such policy, consumers like the firm were sought to be covered by a distribution and supply regime, providing that 75% of the coal requirements were to be supplied through an independent agreement, viz. Fuel Supply Agreement and for the rest 25% of the requirement, the consumer has to participate in an e-auction. The said new policy was challenged before this Court by the firm by presenting a writ petition. It was admitted and affidavits were invited. Interim protection was also granted. The operative part of the order dated April 30, 2008 reads as follows:

Having heard rival submissions, I am of the view at this stage, petitioners may enter into the Fuel Supply Agreement without prejudice to their rights and contentions and for this purpose since today appears to be the last date prescribed for executing such agreement, having regard to the special circumstances the respondents shall extend the time for entering into this agreement till Monday i.e. 5th May, 2008. During the pendency of this writ petition, the termination clause or the provision for gradual reduction of supply contained in clause 2.3 shall not be implemented in the case of the petitioners without the leave of the Court.

Mr. Pal has also pressed for implementation of the new coal distribution policy and in particular clause 4 thereof, to which Mr. Mukherjee submitted that his clients are bound by it and would implement the same. In view of such submission, I direct that there shall be no departure from the new distribution policy, and in particular Clauses 4 and 11 thereof by any of the parties during the pendency of this writ petition.

As regards the e-auction system, the petitioners shall be at liberty to participate therein without prejudice to their rights and contentions. However, in the event the petitioners succeed eventually in this writ petition, the petitioners shall get refund of the amount beyond the specified price contained in the F.S.A.

Let affidavit-in-opposition be filed by 4th June, 2008. Reply thereto, if any, be filed by 13th June, 2008.

Liberty to mention for early hearing of this matter.

3. The firm thereafter having expressed interest, a Coal Supply Agreement (hereafter the supply agreement) was entered into by Central Coalfields Ltd. (hereafter CCL) and the firm on April 30, 2008 at Ranchi in Jharkhand. The respective office addresses of the parties as appearing therefrom reveal that the

same are also at Ranchi, Jharkhand. Clause 18.4 of the agreement contained the following term:

18.4 Governing Law: This Agreement, and the rights and obligations hereunder shall be interpreted, construed and governed by the laws of India. The court of Jharkhand High Court at Ranchi shall have exclusive jurisdiction in all matters under this Agreement.

4. It is not in dispute that the manufacturing unit of the firm is also situated in Jharkhand and the supplies were being made by CCL to the firm in Jharkhand, pursuant to the supply agreement.

5. On or about July 3, 2010 the General Manager (S & M), CCL conveyed to the firm as follows:

Sub: Suspension of dispatches of coal to your unit.

Dear Sir,

This is to inform you that as per the directive of the competent authority dispatches of coal to your unit has been suspended with immediate effect till further order.

This is for your kind information please.

6. The letter was issued from the office of the General Manager at Ranchi, Jharkhand and addressed to the firm having its office at Ranchi, Jharkhand. Copy of such letter was forwarded to various officers of CCL as well as to the Chief General Manager (S & M), Coal India Ltd., Kolkata.

7. Upon receipt thereof, the firm by its letter dated July 8, 2010 addressed to various officers of CCL and CIL, prayed for revocation of the order of suspension and for resumption of supply of coal. It was threatened that any failure to resume supply would force the firm to approach the appropriate Court alleging contempt. The request did not yield any result, resulting in presentation of W.P. 1008 of 2010 on July 30, 2010. The prayers in W.P. 1008 of 2010 read as follows:

Your petitioners, therefore, humbly pray Your Lordships for an order that-

a) A declaratory order to the following effect:

i) Impugned format notice being No. CCL/HQ/C-4-590 dated 3rd July, 2010 is bad in law and is liable to be struck down.

ii) Respondent CIL is bound to direct CCL to quash, rescind, cancel and withdraw format notice No. CCL/HQ/C-4-590 dated 3rd July, 2010 issued arbitrarily and without jurisdiction based upon irrelevant considerations.

b) A writ in the nature of Mandamus do issue directing the respondent CIL/CCL to cancel, rescind and quash the impugned notice No. CCL/HQ/C-4-590 dated 3rd July, 2010.

c) A writ in the nature of Mandamus do issue directing the respondents CIL and CCL to forebear from giving any effect or further effect to the impugned notice No. CCL/HQ/C-4-590 dated 3rd July, 2010 and continue supply of coal to the writ petitioners as per FSA signed with the writ petitioners.

d) A writ in the nature of Certiorari directing each of the respondents to certify and transmit to this Hon''ble Court records pertaining to the case of the petitioners.

e) Rule NISI in terms of prayers above to make such rule absolute.

8. The writ petition was entertained by a learned judge of this Court on August 4, 2010. The Court, in view of the impugned order not disclosing any reason, had enquired from the learned senior advocate representing Coal India Ltd. (hereafter CIL) the reason for suspension of supply in favour of the firm. It was contended on behalf of CIL and the other respondents including the authorities of CCL that supply had to be suspended consequent to a raid conducted by the Central Bureau of Investigation (hereafter the CBI), whereupon it was found that the unit of the firm was non-existent and the petitioners were obviously diverting the coal elsewhere and/or selling the same in open market. On behalf of the petitioners, reliance was placed on clause 13 of the supply agreement relating to suspension of coal supply. The Court was of the opinion that supplies could be suspended in case of a default in payment by the purchaser and in view of the restriction inherent in it, CCL was not justified in issuing the order of suspension and that too without obtaining the leave of the Court in connection with the earlier writ petition of the firm. The order of suspension was, accordingly, stayed but leave was granted to the respondents to obtain leave of the Court for taking appropriate action against the petitioners. Affidavits were called for and the writ petition was posted for hearing on September 2, 2010.

9. It is not in dispute that supply of coal was not resumed in favour of the firm in terms of the order dated August 4, 2010 and proceedings for contempt filed by the petitioners alleging wilful disobedience of the order dated August 4, 2010 has subsequently been withdrawn on January 14, 2011.

10. After lapse of quite some time, the petitioners filed an application [G.A. 141 of 2013] incorporating subsequent facts. The case made out by the petitioners in G.A. 141 of 2013 was that the CBI upon conclusion of investigation submitted police report u/s 173(2), Criminal Procedure Code, which was in the nature of a final report to the effect that the allegations contained in the complaint, which was being investigated, were not substantiated and a prayer was made for closure of the case. According to the petitioners, the ground for issuing the order of suspension did not survive once final report was submitted by the CBI and, accordingly, the following relief was claimed:

Your petitioners, therefore, humbly pray Your Lordships for an order that-a) Order of suspension impugned in the W.P. No. 1008 of 2010 stands revoked for the reasons stated above in the application and particularly in view of the closure

of the case by the C.B.I. as evident from the Annexure-D to the application.

b) An order restraining CIL/CCL from giving any effect and/or further effect to the impugned notice dated 3rd July, 2010 and continue to affect supply of coal to the writ petitioners as per F.S.A.

11. The learned judge, who had heard the first writ petition of the petitioners, considered G.A. 141 of 2013 and on January 28, 2013 made the following order:

So far as the territorial jurisdiction of this Court is concerned, I do not find from the interim order passed on 4th August, 2010 that such objection was taken at the initial stage. It is submitted on behalf of the respondents that the appeal has been preferred on that ground. But as I have already observed, no stay of operation of the interim order has been granted by the Appellate Bench. In the writ petition, prayer has been made for certain direction upon the Coal India Ltd., whose office is within the jurisdiction of this Court. Thus, at this stage, I do not think the petitioners can be non-suited on the ground of lack of territorial jurisdiction of this Court to entertain this writ petition, particularly since objection was not raised on this ground at the initial stage.

In these circumstances, while I am not rejecting outright objection of the respondents on maintainability of the writ petition, I am of opinion that this issue has to be decided at the final stage of hearing of the writ petition. There is no application for vacating the interim order either, which interim order is in subsistence for more than two years.

In this factual background, I do not find any reason as to why further supply of fuel shall remain suspended to the petitioners on the basis of the order of suspension dated 3rd July, 2010. Objection was raised on behalf of the respondents on procedural ground to resist prayer of the petitioners for further interim order, after withdrawal of the contempt petition. But this application has been taken out after closure of the case against the petitioners, which fact occurred subsequent to institution as well as withdrawal of the contempt proceeding. The closure of the case has significant impact on the case of the petitioners in the writ petition, and I do not think it was impermissible for the petitioners to bring the said fact to the notice of this Court by filing an interlocutory application, and make fresh prayer for relief on the basis of such subsequent event. The respondents are accordingly directed to resume supply to the petitioners forthwith but the conditions contained in the interim order passed on 4th August, 2010 shall remain and it would be for the coal company to take appropriate steps, if they so desire in the manner contemplated in the aforesaid interim order.

Let affidavit-in-opposition be filed in both the writ petition and the connected application within a period of four weeks from date, as prayed for, by Mr. Mondal. Reply thereto, if any, be filed within two weeks thereafter. Let the matter be listed after seven weeks under the heading "For Orders".

I make it clear that supply shall be resumed without prejudice to the rights and contentions of the parties and in terms of the existing conditions for payment as consideration for such supply, and all other conditions stipulated in the agreement shall prevail.

12. Taking a cue from the order dated January 28, 2013, the respondents then filed an application for vacating the interim order made thereby, being G.A. No. 676 of 2013, arising out of W.P. 1008 of 2010. While contending that the writ petition was not maintainable on the ground of lack of territorial jurisdiction, it was urged on behalf of the respondents that in view of the forum selection clause the parties ought to approach the Hon"ble High Court of Jharkhand at Ranchi for settling their disputes.

13. The interim applications together with the writ petition are now before me for consideration.

14. Noticing the orders passed by the Court from time to time as well as the objection of the respondents in regard to maintainability of the writ petition before this Court, I had called upon learned advocates for the petitioners to address me first on the point of territorial jurisdiction. I had also expressed that the merits of the writ petition would be examined, should the preliminary objection regarding territorial jurisdiction be overruled.

15. Extensive arguments have been advanced by Mr. Bandyopadhyay, learned senior advocate and Mr. Sanjay, learned advocate for the petitioners. Several authorities have been cited in support of the contention that the writ petition is maintainable.

16. The authorities cited have been given due consideration. There cannot be any dispute with regard to the proposition of law laid down therein, but it must invariably be remembered that an objection of territorial jurisdiction has to be decided on the basis of the facts of each particular case, wherefore the pleadings assume great significance. The authorities can be used as guides for tracking the right path, nothing more nothing less. All the decisions cited discussed what "cause of action" means and thereafter proceeded to decide whether the concerned High Court was right or wrong in entertaining the writ petition before it. It, however, requires no reiteration that a High Court under Article 226 of the Constitution may entertain a writ petition and exercise its power to issue writs/orders/directions in an appropriate case if the seat of the authority or residence of the person to whom a writ could be directed or against whom an order/direction could be made, is within the territorial limits of its jurisdiction. A writ petition may also be entertained if the cause of action, wholly or in part, arises within such jurisdiction notwithstanding that the seat of the authority or residence of the person is beyond such territory.

17. Bearing in mind this elementary principle and the pleadings in the writ petition, let me examine whether this Court has territorial jurisdiction to try it.

18. As has been noted in the above factual narrative, the supply agreement was entered into by and between the parties in Ranchi, coal was being supplied by CCL to the firm's unit in Jharkhand, the impugned order was issued from Ranchi and served on the petitioners at Ranchi. In such factual background, the territorial jurisdiction of the Court is sought to be invoked and in support thereof the petitioners have pleaded in paragraph 59 of the writ petition as follows:

59. Your petitioners are set up their industry upon advertisement of CIL from Calcutta. Your petitioners case of linkage was processed and decided by CIL, Calcutta. Almost all the respondents impleaded in this petition have their office within the jurisdiction of this Hon"ble Court. Records of the case in any case are located within the offices of CIL in the jurisdiction of this Hon"ble Court. Additionally, integral part of the cause of action has arisen in Calcutta within the jurisdiction of this Hon"ble Court. Further, the petitioners have entered into FSA "without prejudice to their rights and contentions" and pursuant to the interim order of this Hon"ble Court dated 30.04.2008 passed in AST no. 961, 962 and 964 of 2008. As such, this Hon"ble Court has territorial jurisdiction to entertain the instant writ petition.

19. From the cause title of the writ petition, it appears that CIL, and the Chairman, the Chief of Marketing and the Director (Marketing) thereof are the first four respondents having their respective offices in Kolkata. CCL is the respondent no. 5, whereas respondents 6, 7 and 8 are its Chairman-cum-Managing Director and other senior officers. Union of India, represented by the Secretary to the Ministry of Coal having office at New Delhi, is the respondent no. 9.

20. The statement in paragraph 59 quoted supra that almost all the respondents impleaded in the writ petition have their offices within the jurisdiction of this Court does not appeal to me to be completely true for deciding the question of maintainability of the writ petition.

21. It is no doubt true that CIL and its senior officers have their respective offices at Kolkata but in the present case the role played by the senior officers of CIL in suspension of supply of coal to the firm, as directed by the impugned order dated July 3, 2012, has not been established with any degree of certainty. Marking of the impugned order to an official of CIL in Kolkata, without anything more, is not sufficient to hold that the impugned order is based on any prior decision, advice, directive or guideline of CIL thereby conferring jurisdiction on this Court. Arraying CIL and its officers as respondents in the writ petition is considered to be absolutely unnecessary since it has neither been pleaded nor been shown in course of arguments how CIL or its officers were involved in the decision making process leading to the impugned order of suspension.

22. Moreover, the petitioners' claims of setting up of industry upon noticing an advertisement issued by CIL, Kolkata and linkage having been processed and decided by CIL, Kolkata are misconceived. For the purpose of countering the plea

of absence of territorial jurisdiction, how the firm was born is not an issue. Also, the aspect of linkage did not survive once the supply agreement was entered into by and between the parties and, therefore, the same is of no relevance.

23. To invoke the writ jurisdiction of this Court, the petitioners have conveniently described the addresses of the respondents 5 to 9 as "Darbhanga House, Ranchi [Jharkhand] and also at 15, Park Street, Calcutta-16". Assuming that CCL has an office at 15, Park Street, Kolkata, no correspondence was issued from such office relevant to the issue under consideration. Here, the Court is concerned with the legality of the order of suspension dated July 3, 2010. It is an undisputed fact that such order was issued from Ranchi by the General Manager (S & M), CCL, and copies thereof were forwarded to other officers of CCL having offices at Ranchi. The nature of functions performed by the office of CCL at Kolkata relatable to the subject matter of challenge has not been placed before the Court. Mentioning the Kolkata office address of CCL and its officers in addition to their respective Ranchi office address appears to me to be a clever ploy adopted by the petitioners to invoke the writ jurisdiction of this Court.

24. The argument made on behalf of the petitioners referring to clause (1) of Article 226 is, therefore, misconceived and stands rejected.

25. Let me now examine the objection in the light of the cause of action of the petitioners that has been pleaded for invoking jurisdiction.

26. The interim order dated April 30, 2008 passed by this Court on the first writ petition of the petitioners granted them the liberty to enter into a coal supply agreement and for that purpose, the time stood extended till 5th May, 2008. It is no doubt true that the supply agreement had been entered into without prejudice to the rights and contentions of the parties in such earlier writ petition. Once the supply agreement was being worked out and the supplies effected in terms thereof to the petitioners on the agreed terms and conditions, the question as to whether the agreement had been entered into without prejudice to the rights and contentions of the petitioners availing the liberty granted by this Court becomes inconsequential and recedes to the background. As has been held in the decision reported in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI)* and Another, , cause of action implies a right to sue and it is constituted by the material facts which are imperative for the suitor to allege and prove for an order in its favour. For every action therefore, there has to be a cause of action; however, the entire bundle of facts pleaded need not constitute the cause of action for moving the Court. What would be necessary for being proved are material facts, and in order to confer jurisdiction on a High Court to entertain a writ petition, it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and that the entire or a part of such cause arose within its jurisdiction. In my view, mere execution of the supply agreement by the petitioners without prejudice to their rights and contentions in the pending writ petition does not form part of the integral cause of action for invocation of this Court's jurisdiction.

27. Next, Mr. Sanjay's argument that the supply agreement was entered into in pursuance of an order of this Court and, therefore, this Court has jurisdiction deserves consideration. The interim order dated April 30, 2008 no doubt opened a new chapter, for, the supply agreement came into existence upon the parties executing the same availing the liberty granted by the learned judge on the petitioners' earlier writ petition. However, the said interim order by itself is not a material fact which is required to be proved for a decision on the present writ petition. The question that would come up for consideration of the Court on the merits of the writ petition is, whether the impugned order of suspension of supply of coal in terms of the supply agreement could have been passed without citing any reason and without the existence of any ground therefor. The material facts constituting the cause of action for the relief claimed in the writ petition would commence from the act of execution of the supply agreement and conclude with the service of the impugned order with other steps intervening in between. It was required for the petitioners to prove that either the supply agreement had been executed in Kolkata or the coal was being supplied to a unit in West Bengal or that the suspension of supply had been ordered in pursuance of any decision, which had been arrived at in West Bengal, or that the suspension order was received in any part of West Bengal. None of these incidents occurred within West Bengal and, therefore, I am of the view that this writ petition cannot also be entertained on the basis of clause (2) of Article 226 of the Constitution.

28. Having ruled so, the effect of clause 18.4 extracted supra may also be considered. It is true, as contended by Mr. Sanjay, that clause 18.4 would not oust the jurisdiction of this Court if the Court were to record a finding that either a part of the cause of action has arisen or that some of the respondents to whom the writ may be directed have their seats, within its jurisdiction. However, writ remedy is discretionary and the Court may refuse to entertain a writ petition considering that the parties reached a consensus while executing the agreement regarding selection of the forum for resolution of disputes. In addition to the reasons assigned in the preceding paragraphs, I hold that since the petitioners with open eyes agreed to have the inter se disputes and differences likely to arise out of the supply agreement decided by the Hon'ble High Court of Jharkhand at Ranchi, there is no special reason to hear their grievance.

29. In the result, the writ petition and the applications filed by the petitioners in W.P. 1008 of 2010 stand dismissed. Interim order stands vacated. G.A. 676 of 2013 filed by the respondents stands disposed of.

30. For the foregoing reasons, W.P. 1009 of 2010 and G.A. 143 of 2013 filed by the petitioners stand dismissed. Interim order stands vacated.

31. Parties shall bear their own costs.

32. Since this Court has no territorial jurisdiction, the right of the respective petitioners to institute appropriate proceedings in accordance with law before the appropriate forum, if so advised, is reserved.

Photocopy of this judgment and order duly countersigned by the Court Assistant shall be retained with the records of W.P. 1009 of 2010.

Urgent certified copy of this judgment and order, if applied for, be furnished to the applicant at an early date.