
(2016) 06 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4381 of 2014

Kailash Chand Parate

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Citation : (2016) 3 JabLJ 101 : (2016) 4 MPLJ 84

Hon'ble Judges : S.A. Dharmadhikari, J.

Bench : Single Bench

Advocate : Arun Dudhawat, Advocate, for the Petitioner; Sameer Kumar Shrivastava, Advocate, for the Intervener; Kamal Jain, Government Advocate, for the Respondents

Final Decision : Dismissed

Judgement

S.A. Dharmadhikari, J.—Shri Arun Doodhawat, learned counsel for the petitioner.

Shri Sameer Kumar Shrivastava, learned counsel for the intervenor.

Shri Kamal Jain, learned Govt. Advocate for the respondents.

Parties are heard on IA No. 5726/2014, an application for dismissing the writ petition on the ground that this Bench has no territorial Jurisdiction to entertain the writ petition as no cause of action has arisen within the territory of this Court.

2. In the instant petition, the issue regarding territorial Jurisdiction of the High Court and its Benches exercising the powers under Article 226 of the Constitution is involved. Not only this, the issue of "Forum conveniens" is of greater importance connected with the issue of territorial Jurisdiction.

3. The basic objection raised by Shri Kamal Jain, Govt. Advocate and Shri Sameer Kumar Shrivastava, counsel for the intervenor is that the Bench at Gwalior has no territorial Jurisdiction to entertain this petition.

4. Before dealing with the preliminary objection, it would be necessary to place the relevant facts for deciding the controversy. The Vigilance Officer of the Respondent Bank had proposed an inquiry with regard to the genuineness of the Caste certificate of the petitioner on the suspicion that the same is forged. The petitioner was working on the post of Manager in Satpura Narmada Kshetriya Gramin Bank. The matter was got enquired by the District level Committee, Balaghat and the Superintendent of Police, Balaghat. Report of both the authorities were forwarded to the High Level Committee. Not only this, the revenue record was also examined to verify the actual caste of the petitioner. On the basis of the material, the High level Committee found that the petitioner does not belong to the Caste "Halwa" which falls under the Schedule Tribe Category. The petitioner was found to be of the Caste "Kosta" which comes under Other Backward class category.

5. As a result the Caste Certificate was cancelled/confiscated. The petitioner has challenged the legality, validity and propriety of the Order dated 26.02.2014 passed by the High Level Committee canceling the Caste Certificate, the writ petition has been filed before this Court i.e. at the Gwalior Bench of M.P. High Court.

6. The counsel for the respondents submitted that the entire cause of action arose at Balaghat and the impugned order is passed by the High Level Committee at Bhopal, therefore, there is no justification to entertain the petition at this Bench, the petitioner is free to approach the Principal Seat, Jabalpur.

7. The prayer is opposed by Shri Arun Dudhawar, learned counsel for the petitioner contending that when the impugned order dated 26.02.2014 was passed by the respondent No. 2, the petitioner was posted at Gwalior and the same was served upon him at Gwalior on 14.07.2014 which affected his service conditions, therefore, cause of action for challenging the order arose at Gwalior which is within the territorial Jurisdiction of this Court.

8. Counsel for the petitioner further contends that in light of Article 226(2) of the Constitution of India, which provides that the High Court shall exercise the jurisdiction under Article 226 (1) in relation to the territories within which the cause of action wholly or in part, arises, and looking to the fact that the petitioner was residing/posted at Gwalior when the impugned order was passed, therefore, part of cause of action has arisen at Gwalior and hence the Gwalior Bench of High Court M.P. shall have jurisdiction to entertain the writ petition under Article 226 (1) of the Constitution of India in accordance with the provisions of Article 226 (2) of the Constitution of India.

9. Learned counsel for the petitioner relied on the judgment passed by this Court reported in 2013 (3) MPLJ 36 (Bhupendra v. Chhatar Singh and Anos.)

10. I have heard the learned counsel for the parties.

11. In the Bhupendra (Supra), it is seen that this Court dealt with the aspect of

territorial Jurisdiction and cause of action. This Court opined that the Indore Bench of M.P. High Court is having jurisdiction and power in respect of cases arising in Revenue Districts including West Nimar (Khargone), therefore, even if the claim petition has been decided by the Labour Court, Khandwa, then too, this Court is having jurisdiction to entertain the appeal as the cause of action accrued to the appellant at Khargone in west Nimar. However, counsel for the respondent submits that in the present case admittedly the matter was got enquired by the District Level Committee, Balaghat and Superintendent of Police, Balaghat. Thereafter, both the reports were sent to the High Level Committee and the revenue records available in Balaghat were examined. Counsel for the respondent further submits that the impugned order was passed at Bhopal and the same was served at Gwalior. Mere service of impugned order at Gwalior would not give territorial jurisdiction at Gwalior. Hence, as per the concept of "Forum Conveniens", the petitioner be relegated to Principal Seat.

12. The High Court of M.P. has framed Rules for regulating practise and Procedure of the High Court known as M.P. High Court Rules and Orders. (herein after referred to as Rules). Chapter III of the Rules deals with territorial Jurisdiction of the Principal Seat and the Benches. For the purpose of Convenience Rule 4 is reproduced below as under:-

"Where a Bench, in the Principal Seat at Jabalpur or the Benches at Indore or Gwalior, on an objection taken by the Registry or otherwise, is of the opinion that a main case posted before it, had arisen from a revenue district falling within the territorial Jurisdiction of some other Bench or the Principal Seat, it may record its opinion and return the main case for its presentation at proper place for orders, after retaining one complete set of the main case."

13. Therefore, if any of the Bench of the M.P. High Court is of the opinion that the case arises from the revenue district falling under the territorial Jurisdiction of some other Bench, the case may be returned back for presentation before the Bench which has jurisdiction to entertain the case.

14. The principle of "Forum Conveniens" was dealt with by Supreme Court in *Kusum Ingots & Alloys Ltd. v. Union of India* and another reported in (2004) 6 SCC 254 and in *Alchemist Ltd. and Anr. v. State Bank of Sikkim and Ors.* Reported in 2007(11) SCC 335. A Special Bench (5 judges) of Delhi High Court in AIR 2011 DEL 174 (*M/s. Sterling Agro Industries Ltd. v. Union of India & Ors.*) considered this principle and in the said judgment. Justice Dipak Misra (CJ. as His Lordship then was) opined as under:-

31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note

of. Be it noted, the Apex Court has clearly stated in the cases of *Kusum Ingots* (supra), *Mosaraf Hossain Khan* (supra) and *Ambica Industries* (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in *New India Assurance Co. Ltd.* (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in *New India Assurance Company Limited* (supra) and proceed to state our conclusion in seriatim as follows:-

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e. Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of *Alchemist Ltd.* (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted/

constructed as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinised by the High Court depending upon the factual matrix of each case in view of what has been stated in *Ambica Industries (supra)* and *Adani Export Ltd. (supra)*.

(g) The conclusion of the earlier decision of the Full Bench in *New India Assurance Company Limited (supra)* "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated herein above stands overruled.

15. In view of aforesaid Special Bench judgment, it is clear that merely because order was served on the petitioner where he is posted which falls under the territory of this Bench, it cannot be said that it constitutes the place of forum conveniens. The view taken by earlier Full Bench was held to be incorrect by the Special Bench. Even if it is assumed that part of cause of action has arisen, while exercising writ jurisdiction under Article 226 of Constitution, the High Court may apply doctrine of "forum conveniens". Therefore, the earlier order of this Court *Bhupendra v. Chhatar Singh and Ano. (Supra)* is of no assistance to the petitioner because the said order merely deals with the aspect of part of cause of action and does not deal with the doctrine of "forum conveniens".

16. In the facts and circumstances of the present case, it is clear that the impugned order dated 26.02.2014 was passed by the respondent No. 2 at Bhopal, before that the matter was dealt by the District Level Committee, Balaghat and Superintendent of Police, Balaghat. All the parties are situated within the territorial Jurisdiction of the Principal Seat. Except that the petitioner was posted at Gwalior at the time order was passed by the High Level Committee, Bhopal and was served upon him at Gwalior on 14.07.2014. Therefore, the Principal Bench will be appropriate forum for the parties. In this view of the matter, I deem it proper to invoke the doctrine of "forum conveniens". Thus in exercise of discretionary jurisdiction under Article 226 of Constitution, it would be proper to direct the petitioner to approach before the Principal Bench/Principal Seat.

17. Resultantly, IA No. 5726/2014 is allowed. The petition is dismissed. The liberty is granted to the petitioner to file fresh petition before the Principal Seat, if so advised.