
(1998) 02 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19099 of 1994

Kamineni Satish Babu

APPELLANT

Vs

Brig. 30 Inf. BDE. Mukhyalaya and others

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19, 20(C)
Constitution of India, 1950 — Article 226, 300
Government of India Act, 1935 — Section 176

Citation : (1998) 3 ALD 228 : (1998) 3 ALT 464 : (1998) 2 APLJ 314

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. G. Dharma Rao, for the Appellant; Mr. B. Adinarayana Rao, SC for Central Government, for the Respondent

Judgement

1. This writ petition is filed challenging the order of discharge passed by the 2nd respondent dated 30-4-1994 discharging the petitioner from services and also the order of the Appellate Authority dated 28-7-1994. A detailed counter is filed by the respondents contending that this Court has no territorial jurisdiction, in the sense that neither the original authority nor the Appellate Authority are situated within the jurisdiction of this Court. The respondents relied upon the judgment of the Supreme Court in support of their contention reported in Lt. Col. Khajoor Singh Vs. The Union of India and Another, and also a judgment of this Court reported in Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd., . As against these judgments, the learned Counsel for the petitioner relied upon two judgments of the High Court of Kamataka reported in Dr. P.S. Rao v. the Union Government and others AIR 1974 Mys 39 and another judgment in D.L. Suresh Babu and etc. Vs. Institute of Chartered Accountants of India and Others, . He elaborated the argument contending that the impugned order of discharge is served on the petitioner on his address at Guntur in Andhra Pradesh. Therefore, this Court has territorial jurisdiction. He further submitted that at any rate, a part of cause of action has arisen within the jurisdiction of this Court since

the petitioner has been residing at Guntur and he has also received the impugned order on his address at Guntur.

2. It is no doubt true that the two judgments of the High Court of Karnataka support of the contention of the petitioner partly. In the judgment rendered by the Division Bench of the High Court of Mysore (later renamed as High Court of Karnataka) (supra) it is held that, that Court had territorial jurisdiction to entertain a writ petition filed by the petitioner who was working at Bangalore by holding the post of Head of Utilisation Research at the Forest Research Laboratory, Bangalore, even though the petitioner questioned the order of Director of Biological Institute, Dehradun. The learned Judges of the Division Bench analysed the concept of "cause of action". By noticing that Article 226 of the Constitution of India does not mention, cause of action, it observed that an analogy could be sought from Section 20(C) of the CPC and on that basis they concluded that the petitioner therein working as Head of Utilisation Research at Forest Research Laboratories, Bangalore, could maintain the writ petition before that Court since a part of cause of action did arise at Bangalore. In this judgment, the High Court of Karnataka took note of the fact that the office where the petitioner was working was the one under the control of the Government of India and as such a part of cause of action arose in Bangalore. The later judgment reported in D.L. Suresh Babu and others v. Institute of Chartered Accountants of India and others, (supra) following the earlier Division Bench judgment reported in Dr. P.S. Rao v. Union Government and others, (supra) held that if a person was residing within the jurisdiction of this Court, could maintain a writ petition. In that case, the petitioners were the Chartered Accountants having residence at Bangalore and they filed nominations to the Central and Regional Councils of Institute of Chartered Accountants of India, which had its Head Office at Delhi and the petitioners sent their nominations by Registered Post to Delhi from Bangalore, and those nominations being rejected, they filed the writ petition before the High Court of Karnataka. The teamed single Judge held that a part of cause of action arose in Bangalore and therefore, those Chartered Accountants could maintain writ petition. In the detailed analysis of both the judgments, I find that the earlier judgment of the Division Bench of High Court of Mysore took into consideration of the fact that the petitioner was working in a branch office, the head office which was situated at Dehradun. But, in the later case, pure residence of the petitioner at Bangalore has taken as the basis for holding that Court has jurisdiction. One thing is certain that both the judgments are based on the basis of the principles of "cause of action" found under Sections 19 and 20 of CPC. But, the Constitutional Bench of the Supreme Court in Lt. Col. Khajoor Singh v. Union of India and another, (supra) held that the concept of "cause of action" is alien to Article 226 of the Constitution of India and for the purpose of enforcing the writs under Articles 226 and 227 of the Constitution of India, what has to be seen is whether authority against whom the writ is sought are situated within the territorial jurisdiction of that Court or not. The Hon'ble Supreme Court upholding that the executive power of the Government of India

extends to the entire territory of India, ultimately held that it is only that High Court has jurisdiction to issue appropriate orders under Articles 226 and 227 of the Constitution of India, where the commission or omission of the act takes place by the officers of the Government of India. Relying upon its own earlier judgment rendered in *Election Commission, India Vs. Saka Venkata Subba Rao and, ,* the Hon''ble Supreme Court laid down the law as under :

"(16) Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Article 226 are not suits; they provide for extraordinary remedies by a special procedure and give powers of correction to the High Court over persons and authorities and these special powers have to be exercised within the limits set for them. These two limitations have already been indicated by us above and one of them is that the person or authority concerned must be within the territories over which the High Court exercises jurisdiction. Is it possible then to overlook this constitutional limitation and say that the High Court can issue a writ against a person or authority even though it may not be within its territories simply because the cause of action has arisen within those territories ? It seems to us that it would be going in the face of the express provision in Article 226 and doing away with an express limitation contained therein if the concept of cause of action were to be introduced in it. Nor do we think that it is right to say that because Article 300 specifically provides for suits by and against the Government of India, the proceedings under Article 226 are also covered by Article 300. It seems to us that Article 300 which is on the same line as Section 176 of the Government of India Act, 1935, dealt with suits as such and proceedings analogous to or consequent upon suits and has no reference to the extraordinary remedies provided by Article 226 of the Constitution. The concept of cause of action cannot in our opinion be introduced in Article 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or " authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Article 226. But the agreement of inconvenience, in our opinion, cannot affect the plain language of Article 226 nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it."

From the above judgment of the Hon''ble Supreme Court, it is clear that under Article 226 of the Constitution of India, the High Court can issue a writ against a person or authority residing within the territorial jurisdiction of that particular High Court and not on the basis of "cause of action". In the latter judgment reported in *Collector of Customs, Calcutta v. East India Commercial Company Limited*, (supra), the Hon''ble Supreme Court (where the order of an Appellate

Authority has jurisdiction as against the High Court in whose jurisdiction the original authority resided). In view of the principle of law that the original order merges with the appellate order, and it is the order of the appellate authority, which is enforceable. It further held that High Court can entertain the writ petition where the appellate authority is situated. The latter judgment of the Supreme Court is also by the Constitutional Bench. In view of the law declared by the Hon'ble Supreme Court in these two judgments, I have to hold that the two decisions of the High Court of Karnataka reported in *Dr. P.S. Rao v. the Union Government and others*, (supra) and another judgment in *D.L. Suresh Babu and others v. Institute of Chartered Accountants of India and others*, (supra) taking cause of action as the basis for the purpose of determining jurisdiction under Article 226 are per incuriam and they are no more good law. Even a learned single Judge of this Court in *Pawan Kumar Singh v. Union of India rep. by its Secretary (Defence) and others* 1995 (1) ALD 464, also held that the High Court, where the respondents whose orders are challenged resided, has jurisdiction. In that case, a charge-sheet was issued at Pune and an enquiry was conducted by the Summary Court Martial in Pune itself and thereupon the delinquent was dismissed from service. The order was communicated to him at Pune and in these circumstances, this Hon'ble Court held that the High Court of Andhra Pradesh could not entertain the writ petition under Article 226 of the Constitution of India for want of territorial jurisdiction. Though this judgment also proceeds on the basis of cause of action, but as per the law declared by the Supreme Court in the two judgments referred to above, the deciding factor is where the respondent authorities, who have passed the order impugned, resided so that a writ may be made to run against them effectively. From this it follows that the High Court has territorial jurisdiction to entertain a writ petition if the respondents, whose actions are challenged are situated within the area of that High Court.

3. In the instant case, no doubt that the petitioner has been residing at Guntur in Andhra Pradesh and the order was communicated to him at that place, but the fact remains that the original authority and appellate authority are residing at a place outside the territorial jurisdiction of this Court. According to the case of the petitioner, show-cause notice was issued from an authority in Rajasthan and the order of discharge is passed by another authority residing at Madras. It is further not clear where the appellate authority actually resided. But, it is not in dispute that none of these authorities, who have passed the impugned orders, are residing within the territorial jurisdiction of this Court. In this view of the matter, in view of the law declared by two Constitutional Benches of the Supreme Court, with all the heavy heart, I have to hold that this Court has no jurisdiction and accordingly the writ petition is liable to be dismissed on that ground alone. Hence, I pass the order as under :

4. The writ is dismissed as not maintainable. However, it is open to the petitioner to prefer appropriate proceedings or writ, before the Court having territorial jurisdiction. No costs.