

(2015) 01 DEL CK 0117
In the Delhi High Court
Case No : Writ Petition (C) 186/2015

Lt. Col. A.S. Chaudhari

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 190, 319
Prevention of Corruption Act, 1988 — Section 14, 19

Citation : (2015) 218 DLT 267

Hon'ble Judges : Pratibha Rani, J.; Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : S.S. Pandey, for the Appellant; Anil Soni, Advocates for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Vide decision dated August 06, 2014, OA No. 47/2014 filed by the writ petitioner has been directed to be returned to the petitioner, holding that the Principal Bench of the Armed Forces Tribunal at Delhi did not have the territorial jurisdiction to entertain the original application in view of Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 and the law declared by the Supreme Court in the decision reported as Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, as also the decision of a Five Judge Bench of this Court reported as Sterling Agro Industries Ltd. Vs. Union of India (UOI) and Others, The Tribunal has noted that its view finds support from an unreported decision dated January 23, 2014 passed by a Division Bench of this Court in WP(C) 57/2012 Hav.Venkatagireppa vs. UOI and Ors.

2. We note that the factual matrix has not been noted by the Tribunal, and thus it would be advised that before we look into the decision referred to by the Tribunal for its opinion it would be advisable to note the relevant facts.

3. The petitioner was granted a Short Service Commission in the Indian Army on

March 07, 1987 in the Regiment of Artillery. On completing five years" service successfully the petitioner was granted permanent commission in the year 1992. The petitioner earned promotions and attained the rank of Lieutenant Colonel on December 16, 2004.

4. Not being found suitable for promotion to the rank of Colonel at the board appraisals, the petitioner was posted to a National Cadet Corps Unit with a direction to take over the appointment of Officer Commanding First Bihar Artillery Regiment, NCC, as part of NCC Group, Patna on January 29, 2010.

5. Alleging that the petitioner had proceeded on leave without handing over charge, a Court of Inquiry was ordered. The deposition of various witnesses were recorded at the Court of Inquiry and the proceedings were sent to the Head Quarter (Director General), NCC at Delhi.

6. On August 23, 2011, a show cause notice was issued to the petitioner along with the Court of Inquiry proceedings and other related documents, requiring petitioner to render an explanation with respect to the findings at the Court of Inquiry, which indicted the petitioner. He submitted a reply thereto. On November 02, 2011 the Director General, NCC awarded penalty of censure. Writ petitioner's statutory representation against the recordable penalty of censure was rejected by the Central Government on March 20, 2013. The penalty, as claimed by the petitioner, adversely affected his further consideration to the rank of Colonel (TS).

7. The original application was filed by the petitioner before the Principal Bench of the Tribunal at Delhi praying that the order levying penalty of censure as also the appellate order be quashed.

8. Treating as if cause of action having accrued in Delhi had been pleaded with respect to the statutory appeal filed being rejected by the Central Government at Delhi, noting the law declared by the Supreme Court in Kusum Ingots's case (supra) and the decision of this Court in Sterling Agro's case (supra) and the decision in Hav.Venkatagireppa's case (supra), the Tribunal has held that the Principal Bench at Delhi would have no jurisdiction. An additional reason has been given by the Tribunal interpreting Rule 6 of the Armed Forces (Procedure) Rules, 2008 applying the maxim "Generalia Specialibus Non Derogant". The view taken by the Tribunal is that in view of clause (i) sub-Rule (1) of Rule 6 the place where the applicant is posted for the time being or was last posted or attached, jurisdiction would be determined with respect to the territory thereof and said clause was the special provision made on the matter of jurisdiction and hence would exclude the general provision. To quote, the Tribunal has held:-

"The Rules are a self contained Code and have substituted the general provisions under the civil law including "that the plaintiff must sue in the Court to which the defendant is subject at the time of suit (Actor sequitur forum rei). The maxim generalia specialibus non derogant (general provisions will not abrogate special provisions) would, therefore, be applicable. It is also a cardinal principle of

interpretation of a Subsidiary Rule that only those cases or situations can be covered under a residual head, which are not covered under a specific head. Union of India (UOI) and Others Vs. Rajpal Singh, . Accordingly, only those cases would fall within the ambit of the residual sub clause (ii) of Sub-rule (1) of Rule 6 above which are not covered under sub clause (i) thereof."

9. Rule 6 of the Armed Forces (Procedure) Rules, 2008 reads as under:-

"6. Place of filing application -

(1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction -

(i) The applicant is posted for the time being, or was last posted or attached; or

(ii) Where the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 14 of the Act, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

10. We wonder as to how the maxim "Generalia Specialibus Non Derogant" would be attracted to interpret sub-clause (ii) of Rule 6 (1) in light of sub-clause (i).

11. The language of the Rule admits of no two meanings and we see no scope for a debate on the subject. The two sub-clauses are not competing with each other. One sub-clause deals with territorial jurisdiction with reference to the place of posting of the applicant for the time being or the place of last posting or attachment, and independent of said clause, the other clause deals with territorial jurisdiction with reference to the place where the cause of action, wholly or in part has arisen. It cannot be said that sub-clause (i) is a special provision vis-?-vis sub-clause (ii).

12. The maxim, "Generalia Specialibus non Derogant" means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. This legal maxim is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied repeal is raised. Craies states the law correctly: (Craies on Statute Law, 1963, 6th Edn. pp.376)

"The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior

enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in *Seward v. Vera Cruz* (1884) 10 AC 59 "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

13. Further, Maxwell's Interpretation of Statutes (11th Edn. p. 168) notes that:

"When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms."

14. The said maxim is a well accepted rule of interpretation of statutes, and it has been cited in several notable judgments of the Supreme Court of India.

15. In the decision reported as *Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh and Another*, , concerning the interplay between Section 19 of the Prevention of Corruption Act, 1988 and Section 190 and 319 of the Code of Criminal Procedure, 1973, with reference to the maxim "Generalia Specialibus non Derogant" the Court held that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. The court further held that "A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 Cr.P.C. if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person."

16. Thus, the view taken by the Tribunal interpreting Rule 16 of the Armed Forces (Procedure) Rules, 2008 is incorrect and is overruled. The place where an original application can be filed could either be where the applicant is posted for the time being or was last posted or attached and it can well be the place where the cause of action, wholly or in part, has arisen.

17. On the subject of cause of action arising, wholly or in part, the decision of the Five Judge Bench of this Court in *Sterling Agro Industries's* case has, in paragraph 15 of its opinion, cited with approval the view taken in para 31 of the decision reported as *Indian Institute Of Technology Vs. P.C. Jain and Others*, , wherein it was held that an appellate order of an appellate authority constitutes a part of a cause of action and a writ petition would be maintainable in the High Court within whose jurisdiction the appellate authority is located since the original order merges into the appellate authority. In para 33 of its opinion in *Sterling Agro Industries's* case (supra) the Bench stated its 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/constricted 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 scrutinized 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 Exports 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 hereinabove stands overruled."

18. To put it pithily, a place where even a part of a cause of action has arisen would confer territorial jurisdiction and we find that the Division Bench judgment of this Court in Hav. Venkatagireppa's case (supra), misconstrued the law declared by the Five Judge Bench of this Court when the Division Bench observed that rejection of a statutory complaint would not give rise to a cause of action even in part.

19. The decision of the Supreme Court in Kusum Ingots case and the decision of the Five Judge Bench of this Court in Sterling Agro's case (supra) hold that merely because a Court, which would include even a Tribunal, would have territorial jurisdiction because some part of cause of action has accrued within the territorial jurisdiction of the Court would not mandate upon the Court, and which would include the Tribunal, to adjudicate the lis brought before it and that on the principles of forum conveniens, the Court, and which would include a Tribunal, can refuse to entertain the petition directing the petitioner before it to approach a Court where it would be convenient for the parties to litigate.

20. Thus, the issue of a Court and a Tribunal having territorial jurisdiction with reference to accrual of a part of cause of action has not to be confused with the power of the Court or the Tribunal not to entertain a petition on the principle of forum conveniens.

21. If a Court or a Tribunal refuses to entertain a petition notwithstanding it having territorial jurisdiction, the applicable facts on which the Court or the Tribunal holds that the convenient forum has to be a Court or a Tribunal at some other place have to be set out. Normally, forum conveniens is applied where the evidence or witnesses of a party are available in a territory outside the limits of a Court and reside in a territory where part of cause of action has accrued or it would be convenient in terms of money, resources and time for the party to litigate before a Court or a Tribunal at a particular place.

22. In the instant case, the original penalty order of censure has been passed by an authority in Delhi. The appellate order has been passed by the appellate authority in Delhi. The entire record is available in the Army Headquarters at Delhi. There is no scope to relegate the petitioner to some other place applying the principle of forum conveniens because the convenient forum in the instant case would be the Tribunal at Delhi. Further, a part of cause of action has accrued in Delhi because the penalty order as also the appellate order have emanated from Delhi.

23. The writ petition is accordingly allowed. Impugned order dated August 06, 2014 returning OA No. 47/2014 to the petitioner is set aside. It is declared that the Principal Bench of the Armed Forces Tribunal at Delhi has the jurisdiction to entertain the original application and the place of convenient forum is the Armed Forces Tribunal at Delhi. The Tribunal is thus requested to adjudicate the original application on merits.

24. No costs.