

(2014) 07 CAL CK 0055

In the Calcutta High Court

Case No : C.A.N. 11763 of 2013 With W.P. 5524 (W) of 2012

Lucky Coke Manufacturers

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20(c)
Constitution of India, 1950 — Article 226(2)

Citation : (2014) 142 FLR 723

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Pratyush Patwari, Advocate for the Appellant; Kalimuddin Mondal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.—The writ petition has been filed, inter alia, challenging the impugned decision of Chief General Manager (S & M/QC) of BCCL rejecting the prayer of the petitioner to execute fuel supply agreement as prayed for.

2. At the outset Mr. Mondal, learned advocate for the respondent no. 4 submits that the writ petition is not maintainable due to lack of territorial jurisdiction. He further submits that the issue of lack of territoriality was kept open at the time of admission. In support of such plea, Mr. Mondal submitted that admittedly the office of the authority who took the impugned decision and all records thereto is situated at Dhanbad in the State of Jharkhand and the impugned decision was also taken therein. He further submitted that the primary relief sought for is to set aside the said decision and hence, no part of the cause of action in respect of the writ petition arose within the territorial jurisdiction of this Court.

3. In support of his argument, he relied upon the decisions of the Hon'ble Supreme Court in Union of India and Others Vs. Adani Exports Ltd. and Another, Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, and Sonic Surgical Vs. National Insurance Company Ltd.,

4. Mr. Patwari, learned advocate for the petitioners submitted that the petitioner no. 1 is carrying on business at Purulia within the jurisdiction of this Court. He further submitted that the coal supplied under the proposed agreement was to be utilized at Purulia. Accordingly, he submitted that a part of cause of action in respect of the impugned refusal to supply arose within the territorial jurisdiction of this Court.

5. As the issue of maintainability of the writ petition on the score of lack of territorial jurisdiction was kept open at the time of admission, I choose to decide this issue as a preliminary issue.

6. Considering the averments in the writ petition and the prayers contained therein, I find that the challenge has been thrown to the impugned order dated 25/27.9.2010 of Chief General Manager (S & M/QC) of respondent no. 4 refusing to execute fuel supply agreement with the petitioners. There is no controversy that the office of respondent no. 4 as well as the concerned officer is situated outside the territorial jurisdiction of this Court and the decision was taken therein. All records pertaining to the decision are lying in the concerned office beyond the territorial jurisdiction of this Court. In view of such facts, mere situs of business of the petitioner cannot confer jurisdiction to this Court to entertain the writ petition. It is not the case of the petitioner that upon execution of the agreement, the respondents have failed to supply coal at its place of business. Accordingly, where the petitioners carries on business or intends to utilise the coal, if supplied by the respondent authorities, cannot in my considered opinion confer jurisdiction to the Court to examine the legality of the impugned order passed by the concerned officer of respondent no. 4 which decision was admittedly taken beyond the territorial jurisdiction of this Court.

7. In *Union of India & Ors. Vs. Adani Exports Ltd. & Anr.* (Supra), the Apex Court held as under:

....each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction of the court concerned...

8. In *Eastern Coalfields Ltd. & Ors. Vs. Kalyan Banerjee* (Supra), the challenge was thrown to an order of termination of an employee which passed in Jharkhand outside the jurisdiction of the Court on the premise that the head office of the company was situated within its jurisdiction. The Apex Court, inter alia, held that the situs of the office respondent would not confer jurisdiction upon the Court, if the bundle of facts constituting the cause of action did not fall within its jurisdiction. While enunciating of such proposition of law, the Apex Court held that only material facts which constitute cause of action are relevant to test the territoriality of the Court in entertaining the petition. The Court held as follows:

7. "Cause of action", for the purpose of Article 226(2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged u/s 20(c) of the Code of Civil Procedure. It means a bundle of facts which are required to be proved. The entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed.

9. Similar view has been reiterated in *Sonic Surgical Vs. National Insurance Company Ltd.* (Supra).

10. In the light of the aforesaid ratios, as the prayer in the writ petition is to set aside/quash the impugned decision which admittedly was taken by the concerned respondent at its office situated beyond the territorial jurisdiction of this Court, the plea that the petitioners carries on business or would have utilized coal, if the decision was rendered is in its favour, within territorial jurisdiction of the Court are not material facts constituting cause of action in the instant case.

11. Accordingly, I am of the view that this Court lacks territorial jurisdiction to entertain the writ petition.

12. At this stage, the learned advocate for the petitioners has submitted that as affidavits have been exchanged, the matter may be considered on its merits. I am unable to subscribe to such view as the writ petition was admitted subject to the issue of maintainability on the question of territorial jurisdiction being kept open. I am of the view that the Court does not have territorial jurisdiction to entertain the writ petition, I choose not to decide the matter on merits.

13. The writ petition is accordingly dismissed due to the lack of territorial jurisdiction. The petitioner is at liberty to assail the impugned order before the appropriate Court in accordance with law, if so advised.

14. I make it clear that I have not expressed any opinion as to the legality of the impugned order as the dismissal of the writ petition has been on the ground of lack of territorial jurisdiction of this Court.

15. In view of the above, the application, being CAN 11763 of 2013, is also dismissed.

16. Urgent photostat certified copy of this order, if applied for, be given to the appearing parties upon compliance of necessary formalities.