

(2013) 08 DEL CK 0034

In the Delhi High Court

Case No : Writ Petition (C) No. 5452 of 2013

M. Shankar Rao and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 19
Civil Procedure Code, 1908 (CPC) — Section 20(c)
Constitution of India, 1950 — Article 226, 226(2)

Citation : (2013) 08 DEL CK 0034

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sandeep Sharma and Mr. Gautam Panjwani, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

C.M. No. 12189/2013 (exemption)

Exemption allowed subject to just exceptions.

C.M. stands disposed of

W.P.(C) No. 5452/2013 and C.M. No. 12188/2013 (stay)

1. All the petitioners, who are 31 in number, are serving the respondent No. 2 at Hyderabad office. Benefits which the petitioners claim of extension of age of retirement from 58 to 60 years will be by means of enforcement of the relevant circulars or challenging the circulars in its implementation with respect to petitioners' services at Hyderabad. Admittedly, at Hyderabad the respondent No. 2 has a branch office where the petitioners serve. Merely because Union of India is sued as respondent No. 1 cannot mean that any cause of action will accrue at Delhi nor is any writ to be passed against respondent No. 1 for enforcement inasmuch as writ or directions to be issued for enforcement will be only against

the respondent No. 2/employer and which admittedly has a branch office at Hyderabad where the petitioners are working. Merely because the head office is in Delhi, so far as the cause of action in the present case is concerned, jurisdiction will not be of the Courts at Delhi.

I have had an occasion to consider the aspect of territorial jurisdiction in a recent judgment in the case of Bharat Electronic Technical Cadre Association and Anr. Vs. Union of India and Ors. in W.P.(C) No. 1851/2013 decided on 12.4.2013. Paragraphs 4 to 14 of this judgment are relevant to show that in the present case this Court does not have territorial jurisdiction and the said paras read as under:-

4. This writ petition first came up for hearing on 20.3.2013, when the issue as to whether this Court had territorial jurisdiction came up and therefore, the following order was passed:-

1. Prima facie and subject to further arguments, I am of the opinion that this Court does not have territorial jurisdiction This is because the impugned order which is challenged is of the respondent No. 3 dated 12.5.2009 which is issued at Bangalore. By the impugned order the pay-scales of the employees of the respondent No. 3 have been revised downwards. The employees are the employees of the respondents No. 3 and working at Bangalore and Ghaziabad i.e. not at Delhi.

2. Merely because the Ministry of the Union of India is a parent ministry and which may issue certain directions at Delhi, the same shall not empower this Court with territorial jurisdiction because the circulars will have to be ultimately implemented through the concerned PSU and which is the respondent No. 3 in this case.

3. Also, if I look at the issue strictly from the point of view of the fact that reliefs are claimed only against Union of India and not against the respondent No. 3 then the issue would be lack of inherent jurisdiction of this Court by virtue of Section 15 of the Administrative Tribunals Act, 1985 read with Section 19 thereof.

4. Learned senior counsel for the petitioners wants to examine the matter, and if so required take appropriate instructions.

5. List on 12th April, 2013.

5. Today, it is argued on behalf of the petitioners that this Court has territorial jurisdiction for two reasons. First reason is said to be the letter dated 26.11.2012, which is issued by the Government of India, Ministry of Heavy Industries and Public Enterprises, at New Delhi. The second reason for contenting that Courts at Delhi had territorial jurisdiction is in view of the orders dated 26.11.2008 and 27.4.2009 of the respondent no. 1/Union of India through the Secretary, Ministry of Heavy Industries and Public Enterprises and Director, Ministry of Defence respectively.

6. A writ petition under Article 226 of the Constitution of India lies admittedly as per the arguments urged before me where cause of action arises wholly or in part. Learned senior counsel for the petitioners states that this Court has territorial jurisdiction in view of the aforesaid two points canvassed. Reliance is also placed upon the judgment of the Supreme Court in the case of Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee,

7. In my opinion, this Court does not have territorial jurisdiction and this petition is liable to be dismissed for the reason given hereinafter.

8. A reading of the prayer clauses shows that the reliefs which have been claimed are against the employer-respondent no. 3. The respondent no. 3 is not situated in Delhi and the petitioners are not serving the respondent no. 3 in Delhi but at Ghaziabad. Prayer in the petition is for quashing of the letter dated 12.5.2009, and which is a letter issued by the employer-respondent no-3, not at Delhi but at Bangalore, for revision of scales of pay and allowances of the executives. Other reliefs with respect to restoring of benefits and for refunding of amounts are also the reliefs which are claimed against the employer-respondent no. 3. Merely because the employer/respondent no. 3 will have to implement the notifications issued by the respondent no. 1 will not mean that Delhi High Court would have jurisdiction because the notifications have been issued in Delhi because in this case there is no challenge for quashing of the notifications, but reliefs are claimed for implementation of the notifications, and which implementation necessarily will have to be done either at Bangalore where the respondent no. 3 is situated or at the place of work of the petitioners which is at Ghaziabad i.e. not Delhi.

9. In fact, the judgment which is relied upon by the petitioners answers the issue of territorial jurisdiction squarely against the petitioners and paras 7 and 8 are relevant and they read as under:-

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.

The question to some extent was considered by a Three-Judge Bench of this Court in Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, stating:

18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

As regards the question as to whether situs of office of the appellant would be

relevant, this Court noticed decisions of this Court in Sri Nasiruddin Vs. State Transport Appellate Tribunal, and U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others, to hold:

26. The view taken by this Court in U.P. Rashtriya Chini Mill Adhikari Parishad that the situs of issue of an order or notification by the Government would come within the meaning of the expression "cases arising" in Clause 14 of the (Amalgamation) Order is not a correct view of law for the reason hereafter stated and to that extent the said decision is overruled. In fact, a legislation, it is trite, is not confined to a statute enacted by Parliament or the legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instructions issued in this behalf shall also come within the purview thereof. Situs of office of Parliament, legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof. 27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

8. Kusum Ingots & Alloys Ltd. (supra) has been followed by this Court in Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others, stating:

26. In Kusum Ingots & Alloys Ltd. v. Union of India 14 a three-Judge Bench of this Court clearly held that with a view to determine the jurisdiction of one High Court vis-a-vis the other the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be made and the facts which have nothing to do therewith cannot give rise to a cause of action to invoke the jurisdiction of a court. In that case it was clearly held that only because the High Court within whose jurisdiction a legislation is passed, it would not have the sole territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction. ...

(emphasis added)

10. A reading of the aforesaid paras show that the entire bundle of facts which are pleaded need not constitute a cause of action and what is necessary to be

proved is material fact whereupon a writ petition can be allowed. It is clarified by the Supreme Court in the case of Eastern Coalfields Ltd.(supra) by reference to the earlier Three-Judge Bench judgment of the Supreme Court in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, that facts pleaded in the writ petition must have a nexus to the prayers and on the basis of which reliefs can be granted. To the facts which have nothing to do with the prayers made, the same cannot be said to give rise to a cause of action which would confer jurisdiction on this Court. Therefore, it is quite clear that only those facts which would ultimately lead to the reliefs claimed in this writ petition would be the bundle of facts constituting the cause of action and not the other facts/ bundle of facts. Stray facts which have to be alleged in the writ petition are not the material facts which only constitute the cause of action, and, only the material facts which constitute cause of action decides where the territorial jurisdiction arises.

11. Since, as already stated above, the reliefs which are claimed can only be granted either at Bangalore or at Ghaziabad and only implementation is sought of the circulars of the Union of India which have to be implemented by the respondent no. 3 either at Bangalore or at Ghaziabad, this Court would not have territorial jurisdiction on the basis that the circulars are issued by the respondent no. 1/Ministry of Heavy Industries and Public Enterprises at Delhi.

12. So far as the argument that the letter dated 26.11.2012 issued by the respondent no. 1 that it confers territorial jurisdiction on this Court is concerned, it is necessary to refer to the said letter, and which is reproduced as under:-

Most Immediate

Legal Matter

No. 5(28)/2012-DPE(WC)

Government of India

Ministry of Heavy Industries & Public Enterprises

Department of Public Enterprises

.....

Public Enterprises Bhawan

Block No. 14, CGO Complex, Lodi Road

New Delhi, the 26 November, 2012.

OFFICE MEMORANDUM

Subject:- Issue of additional increments allowed by Bharat Electronic Limited (BEL) to their executives and Technical Cadre Personnel in 2007 scales of pay

The undersigned is directed to forward herewith a copy of Legal Notice dated

03.11.2012 received from Shri Suryakant Singla, Advocate, Delhi High Court, on behalf of BEL Technical Cadre Association, on the subject mentioned above and to state that the BEL had issued order dated 12.05.2009 in which it was clarified that the additional increments allowed w.e.f. 01.12.2006 would be ignored for the purpose of pay fixation. Shri Singla, Advocate has requested for withdrawal of the order dated 12.05.2009. Department of Defence Production being the administrative Department of BEL is requested to take appropriate action in terms of DPE guidelines in the matter at their end.

13. A reference to the aforesaid letter shows that the Ministry has only forwarded a legal notice received by BEL Technical Cadre Association of the respondent no. 3 and has requested for directions on the issue of pay-fixation. The last line of this letter refers to the Department of Defence Production being the administrative Department of Bharat Electronics Ltd./respondent no. 3 is requested to take actions in terms of the DPE guidelines. In my opinion, even this letter cannot confer territorial jurisdiction because ultimately, and as stated above, the issue is of implementation of the relevant circulars, and which implementation will necessarily have to be done by the employer-respondent no. 3 and which implementation will be done where the respondent no. 3 is situated i.e. at Bangalore or at Ghaziabad where the petitioners are working for the respondent no. 3. I may note that the Supreme Court in the case of State of Rajasthan and Others Vs. Swaika Properties and Another, has held that merely serving of a legal notice at a particular place will not confer territorial jurisdiction on that Court where notice is served.

14. In view of the above, this Court has no territorial jurisdiction and the writ petition is therefore dismissed giving liberty to the petitioners to file the appropriate proceedings in the competent Court having territorial jurisdiction.

2. Before concluding, I must observe that I fail to understand as to why certain persons including the petitioners in this case are given unnecessary legal advice to approach the Courts at New Delhi. Surely, if the petitioners are residing in Hyderabad and are serving the respondent No. 2 in Hyderabad it is surely convenient to approach the Courts at Hyderabad, and they should have been well advised to approach the Courts at Hyderabad and not at Delhi. I may note that there is no paragraph in the writ petition stating as to how this Court has territorial jurisdiction. Merely because the head office is situated at Delhi cannot give jurisdiction when directions can be issued to the branch office where the petitioners work with regard to the reliefs which are claimed in the writ petition. Writ petition is accordingly dismissed for want of territorial jurisdiction with liberty to the petitioners to file appropriate independent proceedings in the competent Court having territorial jurisdiction.