
(2018) 03 MP CK 0059

In the Madhya Pradesh High Court

Case No : W.P. NO. 2003, 2004, 2756, 2006 OF 2017

Mahendra Singh Yadav Ors

APPELLANT

Vs

State Of Madhya Pradesh Anr

RESPONDENT

Date of Decision : 07-03-2018

Acts Referred:

Code Of Civil Procedure, 1973 — Section 20(c)
Constitution of India, 1950 — Article 226(2)

Citation : (2018) 03 MP CK 0059

Hon'ble Judges : SANJAY YADAV, J

Bench : Single Bench

Advocate : K.S. Tomar, K.S. Tomar, Praveen Newaskar, Arvind Dudawat

Final Decision : Disposed Of

Judgement

With the consent of learned counsel for the parties, the matter is finally heard.

This order shall govern the final disposal of Writ Petition No. 2003/2017, Writ Petition No. 2004/2017, Writ Petition No. 2006/2017 & Writ Petition No. 2756/2017.

This batch of Writ Petitions takes exception to the orders passed by the Secretary, State Transport Authority, Lucknow, Uttar Pradesh, whereby

while counter-signing respective permits, which are subject matter in these petitions, has modified the initial timings of the petitioners contrary to

condition No. 4(xiii) of the agreement. The said agreement is a reciprocal agreement between the State of Madhya Pradesh and the State of Uttar

Pradesh executed on 21/11/2006. Under Clause 4(xiii) of the reciprocal agreement, the initial timetable fixed in the permit granting authority is valid for

four months and is required to be finalized. It is alleged that the Secretary, U.P. State Transport Authority on 15/12/2016 after the hearing has

entertained the objection from existing permit holder and modified the timings, without consulting the original granting authority, which act it is urged is

contrary to condition No. 4(xiii) of the agreement vide impugned orders.

The respondents have raised preliminary objection as to maintainability of present petition on the ground of territorial jurisdiction. It is contended that

the Secretary, U.P. State Transport Authority, Lucknow having passed the order, whereagainst revision is preferred before U.P. State Transport

Authority. It is contended that the cause of action having accrued at Lucknow, it is beyond the territorial jurisdiction of this Court to entertain the

same.

Petitioners have vehemently opposed the preliminary objection as to maintainability. It is urged that, since it is the reciprocal agreement signed by the

Madhya Pradesh State Transport Authority and countersigned by the Secretary, U.P. State Transport Authority, the part of cause of action having

accrued in the State of Madhya Pradesh, the present Writ Petitions are tenable.

Reliance is placed on the decisions in *M/s Moti Lal Harvallabh Mishra Vs. State Transport Authority M.P.* [W.P. No. 1145/2009], *Padam Chand*

Gupta Vs. State of Madhya Pradesh and others [W.P. No. 3053/2009], *Madhya Pradesh State Road Transport Corporation, Gwalior Vs. Nirmal*

Kumar Chordia and others [M.P. No. 1017/1988], *Kana Ram and others Vs. The Regional Transport Authority and another* [AIR 1990 Rajasthan

143], *Uttar Pradesh State Road Transport Corporation and others Vs. Guruprit Singh and others* [W.A. No. 189/2017], *Smt. Reena Jain Vs.*

President, State Transport Appellate Tribunal and another [W.P. No. 10641/2012], *Pawan Arora & 2 others Vs. Som Prakash Channana & 6 others*

[2017 (II) MPJR 169], to bring home the submissions that since the issue crops up from reciprocal agreement between the two states, it is within the

jurisdiction of this Court to entertain the grievance against the action of the Secretary, U.P. State Transport Authority, Lucknow.

In *M/s Moti Lal Harvallabh Mishra (supra)*, the Court was concerned with inaction of the State Transport Authority, State of Uttar Pradesh in non

countersigning the permit under reciprocal agreement granted by the State of Madhya Pradesh. It was held therein that, since reciprocal agreement

has been entered into between the State of Madhya Pradesh and the State of Uttar Pradesh, and that the State of Madhya Pradesh having been

granted the permit, obligatory it was on the part of the State Transport Authority, Uttar Pradesh to have countersigned as per reciprocal agreement

dated 21/11/2006. The Court was not concerned with the jurisdiction under Article 226(2) of the Constitution of India.

In Padam Chand Gupta (supra), also there was no issue as to the jurisdictional aspect. However, in review preferred by the Secretary, State

Transport Authority, Uttar Pradesh (Review Petition No. 23/2010), learned Single Judge observed that under the provisions of reciprocal agreement

entered into between the State of Madhya Pradesh and the State of Uttar Pradesh and as per the stipulations in the agreement, the State of Madhya

Pradesh was authorized to issue permits for the route in question and as there is no provisions in the M.P. Motor Vehicles Rules that two permits

could not be covered by a single vehicle, but because the permits issued by the State Transport Authority as per the quota given to the State of

Madhya Pradesh. It was held that it is within the territorial jurisdiction of the High Court at Gwalior to entertain the Writ Petition.

In Nirmal Kumar Chordia (supra), the Division Bench refrained from passing any order in respect of the route which lay in the State of Rajasthan.

This would be evident from paragraph 12 of the judgment wherein it has been observed:-

“12. Article 226(2) of the Constitution contemplates that a High Court exercising jurisdiction in relation to the territories within which the cause of

action, wholly or in part, arises for the exercise of such power, shall have jurisdiction to issue directions, orders or writs to any Governmental authority

or person notwithstanding that the seat of such Government or authority or the residence of such person is not within the territorial jurisdiction of the

High Court. In the instant case, there is no doubt that the impugned order as also the impugned permit has given rise to a cause of action in the State

of Madhya Pradesh partly but substantially indeed, because almost the whole of the route except 8 K.M.s lie within the State of Madhya Pradesh.

Although we have held that the appellate order as also the permit issued pursuant thereto are devoid of jurisdictional foundation and we have a

constitutional duty to ensure that those are not given effect, those need not be quashed. This view we have taken considering the fact that the

concerned respondents 2 and 3, State Appellate Tribunal, Jaipur and R. T. A., Kota, are not served and are not represented in this matter. However,

we are also of the view that the permit lacking jurisdictional validity, could not be presented for counter-signature and that the same could not be

validly countersigned by the Assistant Secretary, State Transport Authority, Gwalior. Accordingly, we quash the counter-signature dt. 7-4-1988

(Annexure P/9). But, we also hold and decide that the relevant impugned permit (Annexure P/5(a)) shall not be valid on any portion of the route,

Indore-Raipur, falling within the State of Madhya Pradesh.â??

Thus, the judgement in Nirmal Kumar Chordia (supra) is of no assistance to the petitioners.

In Kana Ram (supra), the Rajasthan High Court in the given facts of the said case observed that the permit having been granted by the Regional

Transport Authority of one State (Rajasthan) and is to be countersigned by the Regional Transport Authority of other State (Haryana), a part of cause

of action has to be origin in either of the two States.

In Guruprit Singh (supra), the issue was relating to pick-up and set-down passengers at authorized bus stands of State undertaking/ Corporation

which was denied at Agra contrary to the reciprocal agreement and the terms of permit. In the said context, it was observed that it was within the

jurisdiction of High Court at Gwalior to issue mandamus to the authorities at Agra to abide by the terms of permit issued under the reciprocal

agreement.

In Smt. Reena Jain (supra) and Pawan Arora (supra), the issue was not as to the jurisdictional aspect.

In respect of controversy qua territorial jurisdiction for a writ petition under Article 226 of the Constitution of India, following decisions may be taken

note of.

In Navinchandra N. Majithia Vs. State of Maharashtra and others [(2000) 7 SCC 640], it is held:-

â??17.â?? From the provision in clause (2) of Article 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends

on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

18. In legal parlance the expression â??cause of actionâ?? is generally understood to mean a situation or state of facts that entitles a party to maintain

an action in a court or a tribunal; a group of operative facts giving rise to one or

more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary)

19. In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

20. "Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an inquiry as to the correctness or otherwise of the said facts. In other words the question whether a High court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition.

In Union of India and others Vs. Adani Exports Ltd. and another [(2002) 1 SCC 567], it is held:-

16. It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in-part, arises. "A

In Nawal Kishore Sharma Vs. Union of India and others [(2014) 9 SCC 329], it is held by their Lordships:-

9. "On a plain reading of the amended provisions in clause (2), it is clear that now the High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction."

In Kusum Ingots Vs. Alloys Ltd. Vs. Union of Indian and another [(2004) 6 SCC 254], the Supreme Court while dwelling upon the scope of Article 226 (2) of the Constitution of India held that:-

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.

28. Lt. Col. Khajoor Singh Vs. The Union of India [AIR 1961 SC 532] whereupon the learned counsel appearing on behalf of the appellant placed

strong reliance was rendered at a point of time when clause (2) of Article 226 had not been inserted. In that case the Court held that the jurisdiction of

the High Court under Article 226 of the Constitution of India, properly construed, depends not on the residence or location of the person affected by

the order but of the person or authority passing the order and the place where the order has effect. In the latter sense, namely, the office of the

authority who is to implement the order would attract the territorial jurisdiction of the Court was considered having regard to Section 20(c) of the Code

of Civil Procedure as Article 226 of the Constitution thence stood stating :

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 person 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 argument 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.

29. In view of clause 2 of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it

would have jurisdiction to issue a writ. The decision in Khajoor Singh (supra) has, thus, no application.

However, while dwelling on the aspect of forum conveniens, it was held by their Lordships:-

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court,

the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases,

the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See Bhagat Singh Bugga v. Dewan

Jagbir Sawhney, AIR 1941 Cal 670; Madanlal Jalan v. Madanlal, (1945) 49 CWN 357; Bharat Coking Coal Limited v. Jharia Talkies & Cold Storage

Pvt. Ltd. (1997) CWN 122; S.S. Jain & Co. v. Union of India (1994) 1 CHN 445; New Horizons Ltd. v. Union of India, AIR 1994 Del 126).

In the present set of petitions, evident it is from the impugned orders that the objections were raised before the counter-signing Authority at Lucknow,

who afforded opportunity of hearing to the present petitioners. There is no material on record to suggest that the petitioners took objection as to

competence of the Secretary, U.P. State Transport Authority. Be that as it may. The fact is that the impugned orders have been passed at Lucknow

and these orders are subject to challenge in revision wherein notices have been issued to respective parties.

In view whereof and taking into consideration the decision in Kusum Ingots (supra), wherein as regard to forum conveniens, it is held that even if a

small cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor

compelling the High Court to decide the matter on merit.

The preliminary objection raised on behalf of the respondents as to maintainability of present petitions, when tested on the anvil of the law laid down

by the Supreme Court in Kusum Ingots (supra) deserves to be upheld.

Consequently, we decline to entertain the petitions. The petitioners, however, would be at liberty to seek redressal of grievance before the Allahabad

High Court, Bench at Lucknow.

Petitions stand disposed of finally in above terms. There shall be no costs.