

(2006) 05 GUJ CK 0009

In the Gujarat High Court

Case No : Letters Patent Appeal No. 725 of 2006 in Spl.C.A. No. 5039 of 2006
with C.A. No. 5298 of 2006

Mohan V. Pednekar

APPELLANT

Vs

Executive Director (H.R.), Indian Oil Corporation Ltd. and
Another

RESPONDENT

Date of Decision : 03-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226(2)

Citation : (2007) 2 GLR 1735

Hon'ble Judges : M.S. Shah, J;H.N. Devani, J

Bench : Division Bench

Advocate : Bhushan B. Oza and E. Shailaja, for the Appellant; Manish R. Bhatt,
for the Respondent

Final Decision : Allowed

Judgement

M.S. Shah, J.—Admit. With the consent of the learned Counsel for the parties, the appeal is taken up for final disposal today.

2. This appeal is directed against the order dated 28-4-2006 by which the learned single Judge dismissed the writ petition of the appellant herein (challenging the order of penalty in a departmental proceedings) as not maintainable on the ground of want of territorial jurisdiction of this Court.

3. The appellant (hereinafter referred to as "the petitioner") is an employee of the Indian Oil Corporation Ltd., the respondent-company with its Head Office at Mumbai and was serving at the relevant time at Mumbai where the alleged misconduct took place. When the charge-sheet dated 1-12-2003 was issued by respondent No. 2 (the disciplinary authority at Mumbai), the petitioner was rendering his services at Mumbai. After the departmental inquiry was concluded by the Inquiry Officer, but before the disciplinary authority passed the order of penalty, the petitioner came to be transferred to Ahmedabad in May, 2005. Ultimately, the disciplinary authority, respondent No. 2 herein, General Manager

(HR) of the respondent-company at Mumbai passed the penalty order dated 29-9-2005 inflicting upon the petitioner the penalty of reduction of basic pay by three stages as a measure of disciplinary action against the petitioner. The penalty order dated 29-9-2005 (Annexure-H) was addressed to the petitioner as under:

Shri M. V. Pednekar, Emp No. 10350 AM (HR), Gujarat SO.

The penalty order also informed the petitioner that appeal against this order of penalty lies before Executive Director (HR) at Mumbai (respondent No. 1 herein). The petitioner accordingly submitted from Ahmedabad his appeal memo to respondent No. 1 at Mumbai on 3-12-2005. It appears that the petitioner sought the hearing before the appellate authority, but the appellate authority did not give any personal hearing and rejected the appeal by his order dated 25-1-2005 in the following terms:

Having applied my mind to the facts and circumstances of the case as brought out on records, I find that Shri M.V. Pednekar has not brought out any new fact or circumstances in his appeal dated 3-12-2005 which may warrant any change in the said Final Order passed by the Competent Disciplinary Authority. As such, I hereby reject the appeal of Shri M.V. Pednekar.

The said order of the appellate authority came to be communicated to the petitioner by letter dated 28-2-2006 of Mr. S.P. Sinha, Sr. Manager (ER)-WR at the same Ahmedabad address of the petitioner. The petitioner filed the petition challenging the said order of penalty, as confirmed in appeal, by filing Special Civil Application No. 5039 of 2006 before the learned single Judge of this Court.

4. Before the learned single Judge, the respondents raised a preliminary contention about want of territorial jurisdiction of this Court on the ground that both the disciplinary authority as well as the appellate authority were at Mumbai and that the misconduct in question had also taken place at Mumbai, that the territorial jurisdiction could not be conferred on this Court merely because the petitioner happened to be in the State of Gujarat while filing the petition.

Relying on the decision of the Apex Court in *Union of India and Others Vs. Adani Exports Ltd. and Another*, the learned single Judge upheld the preliminary objection and accordingly dismissed the petition. Hence, this appeal.

We have accordingly heard the learned Counsel for the parties only on the limited question of maintainability of the petition in the context of the preliminary objection about want of territorial jurisdiction of this Court.

5. Mr. Bhushan Oza, learned Counsel for the appellant has submitted that the observations made by the Apex Court in the case of *Adani Exports (supra)* would not apply to the present case or any other similar service matter because in case of a business person or a company, whether its registered office or Head Office or the place of business would be in one State or another would depend on the volition of the businessman or the company and merely because the situs of the

business is in one particular State, the High Court of that State would not automatically get jurisdiction to entertain a petition challenging the orders passed by the authorities in another State. It is, however, vehemently submitted that the principle cannot apply to a service matter where the employee against whom penalty order is passed is transferred by the employer to another State. The employee has no other alternative but to report at the place of transfer, and thereafter, if the order of penalty is served upon the employee in the other State, service of the impugned penalty order at the place where the employee is posted becomes a part of the cause of action as held by the Constitution Bench of the Apex Court in *State of Punjab Vs. Amar Singh Harika*, . It is submitted that the same principle was following by another Division Bench of this Court in *Modern Food Industries (India) Ltd. Vs. M.D. Juvekar*,

Mr. Oza has also relied on the decision of learned single Judge of this Court in *Alka Synthetics v. S.E.B.I.* 1997 (3) GCD 88 and the decision of the Securities and Exchange Board of India Vs. *Alka Synthetics Ltd. and Others*, in support of his submission that a place where the notice impugned in the petition is served is a part of cause of action to confer territorial jurisdiction on the Court.

6. On the other hand, Mr. Manish R. Bhatt, learned Counsel for the respondents has submitted that since both the disciplinary authority as well as the appellate authority are in Mumbai and the misconduct in question also took place at Mumbai, no part of cause of action took place within the territorial jurisdiction on this Court. It is also submitted that merely because the order came to be communicated to the petitioner in Gujarat cannot confer territorial jurisdiction of this Court because as held in *Adani Exports Ltd. (supra)*, the 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 on the Court concerned. It is submitted that in *Adani Exports case (supra)* also the company was having its registered office at Ahmedabad and had sent its communications and had received in Ahmedabad the impugned order of the respondent-authority situate in Delhi. The High Court had entertained the petition overruling the preliminary objection of want of territorial jurisdiction, but the Hon"ble Supreme Court reversed that finding.

7. Having heard the learned Counsel for the parties, it does appear to us that such matters do give rise to difficult questions about territorial jurisdiction of the Court to entertain petitions challenging orders of authorities situate outside the territorial limits of the Court.

8. Article 226(2) of the Constitution reads as under:

226(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the casue of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is

not within those territories.

(Emphasis supplied)

8.1 In *Union of India and Others Vs. Adani Exports Ltd. and Another*, heavily relied upon by the learned Counsel for the respondent-company, a Bench of two Hon'ble Judges of the Apex Court laid down the following principle:

17....in order to confer jurisdiction on a High Court to entertain a writ petition or a Special Civil Application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the Court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that 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 pleaded 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 on the Court concerned.

8.2 In *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, a Bench of three Hon'ble Judges of the Apex Court has enunciated the following principles:

(i) Keeping in view expressions used in Clause (2) of Article 226 of the Constitution, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter. (Para 10)

(ii) When a part of cause of action accrues within one or the other High Court, it will be for the petitioner to choose his forum. It is open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. (Paras 25 and 26)

(iii) 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.

9. It thus appears that even in the matter of deciding whether the Court should entertain a particular petition under Article 226 of the Constitution, in the context of controversy about territorial jurisdiction of the Court, the following aspects may be required to be considered:

(a) whether service of the impugned order or notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution.

(b) whether civil or evil consequences will fall on the petitioner within the territorial jurisdiction of the Court.

(c) the doctrine of forum conveniens.

10. Whether service of notice an integral part of the cause of action.

In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, , the Apex Court has held - "The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action". *State of Punjab Vs. Amar Singh Harika*, , a Constitution Bench of the Apex Court has held that mere passing of an order of penalty is not effective unless it is published and communicated to the officer concerned. An order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it does not take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published.

Following the aforesaid principles, a number of High Courts including this Court have taken the view that orders of penalty passed by the employer do not become effective till they are served on the concerned employees. In *Umashankar Chatterjee v. Union of India* and Ors. 1982 Lab.IC 1361 , the Calcutta High Court, in *Union of India Vs. P. Kunhabdulla*, the Kerala High Court and in *Secretary, Home Department, Government of Maharashtra v. Bansidhar* and Ors. 1982 (2) SLR 475, the Allahabad High Court have taken the view that the Court within whose territorial jurisdiction the order of dismissal is served on the concerned employee will have the territorial jurisdiction to entertain the proceedings challenging such orders of penalty because service of the order of penalty is considered an essential element constituting the cause of action.

We see no reason why the same principle should not apply to a case where the order of penalty is not one of dismissal or removal, but an order reducing the delinquent's pay. It appears to us that while in matters pertaining to business transactions, the Courts are slow to permit the petitioner to invoke the territorial jurisdiction of a High Court merely on the ground that the impugned order or notice was served upon him within the jurisdiction of that Court, in service matters, the Courts do not take such a strict view.

11. Much has been sought to be made out on behalf of the respondent-employer that the Division Bench of this Court in *Modern Food Industries* (supra) which was a service matter and the Apex Court has reversed the decision of this Court in *Adani Exports* case (supra). However, in the case of *Modern Food Industries* (supra), the penalty order was served on an employee in Ahmedabad when he

was on leave and still the Court held that service of the order on the employee in Ahmedabad constituted a part of the cause of action. In view of the subsequent decisions of the Apex Court, we may not go that far, and therefore, we are of the view if the petitioner's posting had continued to remain in Mumbai, but the order of penalty happened to be served on him in Gujarat on account of the fortuitous circumstance of his traveling to Gujarat while on leave, we would have accepted the preliminary objection raised on behalf of the respondents. In the facts of the present case, however, when the petitioner was in the State of Gujarat upon his transfer by the employer in May, 2005 and the disciplinary authority as well as the appellate authority served the orders of penalty/appellate order on the petitioner within the State of Gujarat where he was required by the employer to render his services, we are of the view that this Court would have the territorial jurisdiction to entertain the petition.

12. Civil or evil consequences falling on the petitioner within the territorial jurisdiction of the Court.

It would appear that in *Kusum Ingots & Alloys Ltd. case* (supra), the Apex Court has expressed an opinion that the cause of action will also arise where the order, when implemented, will give rise to civil or evil consequences to the petitioner. The observations are of course made in the context of challenge to a parliamentary legislation. Mere passing of a legislation does not give rise to a cause of action for the purpose of questioning the constitutionality thereof in any High Court of the country. A cause of action will arise only when the provisions of the Act or some of them, when implemented, shall give rise to civil or evil consequences to the petitioner.

The consequences of the order of reduction of pay would fall on the employee within the territorial jurisdiction of this Court because the petitioner is posted in Ahmedabad since May, 2005 and the reduction in his pay would take place within the State of Gujarat.

We may also point out at this stage that Article 226 of the Constitution as originally enacted did not contain Clause (2), and therefore, did not incorporate the concept of place of cause of action for enabling the petitioner to invoke the territorial jurisdiction of the High Court. It was for this reason that the Apex Court in *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, made the following observation:

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 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.

In view of insertion 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.

13. Forum conveniens:

As already held in Kusum Ingots case (supra) (Para 8.2), when a part of cause of action arises within one or the other High Court, it is for the petitioner to choose his forum. It is open to the litigant who is dominus litis to have his forum conveniens. However, the Apex Court has cautioned that 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 merits. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens, which appears to be the underlying rationale of the decision in cases like Adani Exports (supra), National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, , Aligarh Muslim University v. Vinay Engineering Enterprises Ltd., (1994) 4 SCC 710 and in Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , which were all disputes pertaining to trade and business. On the other hand, in service matters, where the employee in one State is transferred to another State, the employee has no option but to join at the place of transfer and there is no question of volition on his part, unlike in the case of businessman who decides for himself where his registered office, Head Office or the place of business would be. So also, the case of such transferred employee is not comparable to the case of a detenu who may be permanently residing in State A but would prefer to go to State B in order to accept service of the order of detention and would invite the wrath of the Court for doing so. At this stage also, we may reiterate the view indicated in Para 11 hereinabove that if a penalty order passed against an employee in State A happens to be served on the employee in State B because he was on leave at that point of time, such a fortuitous circumstance cannot be permitted to enable the petitioner to invoke the jurisdiction of the High Court in State B.

14. On a cumulative assessment of all the three relevant factors indicated earlier, we have no doubt that this Court does have the territorial jurisdiction to entertain the petition of the employee who came to be transferred to Gujarat in May, 2005 and the order of penalty as well as the order of appellate authority were subsequently served upon him in the State of Gujarat and a subordinate officer of the Indian Oil Corporation posted in the State of Gujarat will be implementing the impugned orders in the State of Gujarat for reduction in pay of the appellant and thus the civil consequences on the petitioner would also fall

within the State of Gujarat. In the overall facts and circumstances of the case, we are of the view that a part of cause of action having arisen within the State of Gujarat, it is open to the appellant, who is the dominus litis to have his forum conveniens. Refusing to entertain the present petition on the ground that the respondents are in Mumbai and compelling the appellant to go to Mumbai from where the respondent-employer has already transferred him to Gujarat would neither be just nor fair when the appellant has been successfully able to invoke the other two factors in his favour for exercise of territorial jurisdiction by this Court.

15. In view of the above discussion, we allow the appeal and set aside the order of the learned single Judge and remit the matter back to the learned single Judge for hearing and deciding the petition on merits.

Since, the appeal is allowed, the Civil Application stands disposed of.

16. At this stage, Mr. Oza for the appellant prays for interim relief against implementation of the order of penalty as confirmed by the appellate authority.

Mr. M. R. Bhatt for the respondents opposes the request.

Since, we have not heard the parties on the question of merits of the challenge to the order of penalty, we are not inclined to entertain the request at this stage. However, we make it clear that it will be open to the appellant-petitioner to raise all available contentions before the learned single Judge and while deciding such contentions and the petitioner's prayer for interim relief, the learned single Judge will decide the same without being influenced by the fact that we have not granted the request at this stage. Hence, even if the order of penalty is implemented, as stated by the learned Counsel for the respondents, it will be open to the petitioner to urge, on a case being made out, for such interim relief as the facts of the case may warrant.