

(2016) 02 CAL CK 0083
In the Calcutta High Court
Case No : W.P. No. 1767(W) of 2016.

Moti Lal Mahato

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 165 AIC 421 : (2016) 2 CalLT 308

Hon'ble Judges : Dipankar Datta, J.

Bench : Single Bench

Advocate : Arijit Basu and Swapna Paul, Advocates, for the Appellant; Pradip Tarafdar and Subir Pal, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

Dipankar Datta, J. - By presenting this writ petition, the petitioner seeks an order on the Damodar Valley Corporation (hereafter the "Corporation") and its officers to make payment of certain dues of the petitioner in connection with a work executed by him at Bokaro in the State of Jharkhand.

2. A preliminary objection to the maintainability of the writ petition has been raised by Mr. Tarafdar, learned advocate for the Corporation. According to him, the entire cause of action giving rise to the present writ petition arose within the territorial limits of Jharkhand High Court and this Court lacks territorial jurisdiction to entertain the writ petition. In support of his contention, Mr. Tarafdar has relied on the decisions of the Supreme Court reported in Eastern Coalfields Ltd. and Ors. v. Kalyan Banerjee, (2008) 3 SCC 456 and Nawal Kishore Sharma v. Union of India and Ors., (2014) 9 SCC 329 It is his submission that the petitioner may be granted liberty to approach the High Court of Jharkhand for redress of his grievance.

3. Per contra, Mr. Basu, learned advocate for the petitioner has invited the attention of this Bench to a letter dated August 12 1999 issued by the Deputy

Secretary of the Corporation, whereby it was conveyed as follows:

"?...With reference to your letter dated 11.8.1999 on the above subject I am directed to state that Corporation has agreed to the two conditions mentioned in your above referred letter. In this regard you are requested to take necessary action for the withdrawal of the Court Case on the subject.

For further details in this regard you are requested to contact Chief Engineer-I, BTPS "B" Plant."

4. He further submits that in view of such letter of the Corporation, the suit that was instituted by the petitioner in the District Court of Tenughat was withdrawn. It has also been submitted by him, referring to a letter dated April 16, 2015 issued by the Superintending Engineer (Civil) of the Corporation, that certain documents were asked for to enable the Corporation take steps for making payment of the outstanding amount as early as possible.

5. It is the specific contention of Mr. Basu that at least a part cause of action has arisen within the territorial jurisdictional limits of this Court.

6. It is also submitted by him that the Corporation has its head office at D.V.C. Towers, V.I.P. Road, Kolkata-700054 and the agreement to the two conditions mentioned in the petitioner's letter dated August 11, 1999 with a further instruction to have the suit withdrawn as a condition precedent for effecting payment, pursuant where to the petitioner had in fact withdrawn the suit, yet payment has not been effected, entitles him to approach this Court in its writ jurisdiction. In support of his submissions, he has relied on the decision of the Supreme Court reported in (2006) 6 SCC 207, *Om Prakash Srivastava v. Union of India and Anr.* and 2009 (Vol. 113) 379, *Secretary, Department of Atomic Energy, Government of India v. The Controller General of Patents, Designs and Trade Marks and Ors.*

7. I have heard learned advocates for the parties and perused the materials on record. It is trite that at the stage of deciding an objection to the maintainability of a writ petition on the ground of lack of territorial jurisdiction of the Court before which it is presented, the pleadings, prima facie, have to be treated as correct. It appears from the petitioner's letter dated August 11, 1999 that the same was addressed to the Additional Secretary of the Corporation having office at D.V.C. Towers, V.I.P. Road, Kolkata-700054. By such letter it was conveyed by the petitioner that he is agreeable to withdraw the suit in the Court of Munsif at Tenughat if the following two conditions are fulfilled:

"1. Please allow me to continue the work is being done by us as regular contract for the plant area with other similar contracts as like which is being awarded to various other contractors. We also request you to allow us to execute the remaining awarded work within the valid contract period.

2. We also request you to kindly release all the due payment with escalations at the earliest, as I am in need towards various obligations against my labours,

suppliers and vendors. I need the due payments at the request so I can pay the dues towards me and get rid of these obligations."

8. It is on receipt of such letter that a decision was taken at D.V.C. Towers, V.I.P. Road, Kolkata-700054 office of the Corporation that it would agree to such conditions provided the petitioner withdraws the suit. The petitioner having withdrawn the suit in terms of the said order issued from such office of the Corporation at Kolkata, it is clear that at least a part of cause of action for moving this writ petition has arisen within the territorial limits of this Court.

9. The decisions cited by Mr. Tarafdar do not lend him any assistance.

10. In Kalyan Banerjee (supra), the Division Bench of this Court had held that the entire cause of action had arisen in Mokama area within the State of Jharkhand and that the writ petition was received and decided only because the head office of the Eastern Coalfields Ltd. was situated in the State of West Bengal. According to the Supreme Court, the same by itself, could not have conferred any jurisdiction upon that Court particularly when the head office had nothing to do with the order of punishment passed against the respondent employee.

11. As has been noticed herein above, a part of cause of action has arisen within the territorial limits of this Court; not only that, the office of the Corporation at Kolkata did have a role to play in pursuance whereof, upon acceptance of the conditions proposed by the petitioner, he was asked to withdraw the suit, which he did comply, yet, payments have not been effected in his favour.

12. The decision in Kalyan Banerjee (supra) is clearly distinguishable on facts.

13. Insofar as the decision in Nawal Kishore Sharma (supra) is concerned, paragraph 16 has been relied upon by Mr. Tarafdar, which reads as follows:

"16. Regard being had to the discussion made herein above, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."

14. The aforesaid observations of the Supreme Court have to be appreciated in the light of the nature of objection that was raised before the High Court. The respondents had contended that no cause of action or even a fraction of cause of action arose within the territorial jurisdiction of the Patna High Court, for, he was appointed on the post of seaman for offshore services and has discharged his duty outside the territory of Bihar and that the order declaring the appellant permanently unfit as well as the letter/order dated December 07, 2011 was passed by an authority of the Corporation at Mumbai. It was further contended on behalf of the appellant that he was a permanent resident of Bihar and that he

asserted his rights in the State of Bihar and all communications with respect to rejection of his claims were made at his residential address in the State of Bihar. The Supreme Court set aside the order of the High Court and remitted the matter to it for deciding the writ petition on merits.

15. Infringement of legal rights within the territorial limits of a Court is one of the grounds on which the High Court may entertain a writ petition. The decision in Nawal Kishore Sharma (supra) has no application here since it was dealing with a different fact situation and, therefore, it is reiterated that the petitioner by approaching this Court has not abused its process or law.

16. The preliminary objection stands overruled. The writ petition shall be heard on affidavits.

17. Let affidavit-in-opposition be filed by the respondents within four weeks; reply thereto, if any, may be filed within two weeks thereafter.

18. Put up this writ petition in the monthly list of April 2016 for "Final Disposal".