

(2020) 03 MP CK 0239

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10545 Of 2019

M/s. AKC & SIG Joint Venture Firm & Ors.

APPELLANT

Vs

Western Coalfields Ltd. & Ors

RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 226(2)
Code Of Civil Procedure Act, 1908 — Section 20, 20(c), 141
Contract Act, 1872 — Section 23, 28

Citation : (2020) 03 MP CK 0239

Hon'ble Judges : Ajay Kumar Mittal, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Sidharth Gupta, Amit Garg, Greeshm Jain, Vivek Shukla

Final Decision : Dismissed

Judgement

Vijay Kumar Shukla, J

1. The petitioners have filed the present petition under Article 226 of the Constitution of India, challenging the order dated 08-05-2019, passed by the respondent no.2, whereby the work order issued in favour of the petitioners has been terminated, security amount has been forfeited and the joint venture of the petitioners has been debarred from participation in tenders of the respondent Western Coalfields Limited (for short WCL) for a period of 12 months from the date of issuance of the impugned order dated 08-05-2019.

2. The necessary facts are that the petitioners were the successful bidder in the NIT No.24/2014-15, issued by the respondent WCL in September, 2014. In pursuance thereof, a work order was issued to the petitioners on 08-12-2014 in their favour by the WCL. It is submitted that the petitioners had completed the work at an extremely fast pace in the initial period. According to the petitioners because of the hindrances created by the respondents and due to departmental failure, some delay occurred in the execution of the contract. The respondents also did not extend the period of execution of the contract.

3. Learned counsel for the respondents raised preliminary objection regarding territorial jurisdiction of this court in view of Clause 32.1 of the contract and urged that the parties have specifically agreed that any dispute arising between them shall be dealt with exclusively by the Nagpur Court only. It was further submitted that where cause of action arises within the territorial jurisdiction of various Courts and the parties to the contract have agreed for forum at a particular place only having territorial jurisdiction then that Court alone shall exercise jurisdiction. Elaborating further, it was urged that though the letter of acceptance was issued by the office of General Manager Contract Management Cell of WCL at Nagpur, the agreement was entered with the WCL Management and on behalf of the General Manager Pench Area and the agreement was signed in respect of the work which was to be executed at Pench Area in district Chhindwara, yet, the Courts at Nagpur alone would have jurisdiction in view of clause 32.1 of the agreement.

According to the learned counsel this territorial jurisdiction of the Courts at Madhya Pradesh to entertain the petition relating to dispute between the parties would not be there.

4. Per contra, learned counsel for the petitioners argued that this court has jurisdiction under Article 226 of the Constitution of India, as part of cause of action has arisen in district Chhindwara within the territorial jurisdiction of this court. In support of his submissions, he placed reliance on the judgment of the Supreme Court in Maharashtra Chess Association Vs. Union of India (UOI) and others (Civil Appeal No.5654 of 2019) (arising out of Special Leave Petition (C) No.29040 of 2018), decided on 29-07-2019. Further, reference was also made to the decisions in Alchemist Ltd. And another Vs. State Bank of Sikkim and others, (2007) 11 SCC 335, Nawal Kishore Sharma Vs. Union of India and others (2014) 9 SCC 329. Judgment reported as Kusum Ingots & Alloys Ltd. Vs. Union of India and another, (2004) 6 SCC 254 was relied to contend that the forum convenience is with the plaintiff/petitioner.

5. The preliminary issue that arises for consideration herein is whether in the facts and circumstances of the present case where there is specific exclusion clause in the contract regarding territorial jurisdiction of Courts other than Nagpur Court only, the territorial jurisdiction would still vest in the Courts at Madhya Pradesh.

6. It would be apposite to refer to Clause 32.1 of the agreement, to appreciate the controversy, which reads thus :-

"Clause 32: Legal Jurisdiction:

32.1 : Mater relating to any dispute or difference arising out of this tender and subsequent contract awarded based on the bid shall be subject to jurisdiction of Nagpur Court only."

7. We proceed to examine Section 20 of the Code of Civil Procedure (In short,

'the Code') which provides for institution of suits where defendants reside or cause of action arises. It reads thus :-

20. Other suits to be instituted where defendants reside or cause of action arises- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises. Explanation - A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place"

8. Section 20 of the Code deals with the issue of jurisdiction of a Court. It lays down in no uncertain terms that a Court within the jurisdiction of which the cause of action wholly or in part arises or where the defendant resides or carries on business shall have the jurisdiction to try a matter.

9. Article 226 of the Constitution of India needs to be noticed for effective adjudication of the controversy, which is in the following terms :-

"226. Power of the High Courts to issue certain writs - (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(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 cause 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.

(3) xxxxx

(4) xxxxx"

10. Clause (2) of Article 226 of the Constitution of India provides that 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 cause 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.

11. The issue relating to the territorial jurisdiction of a Court to entertain writ petition was elaborately discussed in *Nawal Kishore Sharma vs. Union of India and ors*, 2014 (9) SCC 329. The relevant observations recorded therein are reproduced as under:

"10. The interpretation given by this Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke writ jurisdiction. As a result, Clause 1(A) was inserted in Article 226 by the Constitution (15th) Amendment Act, 1963 and subsequently renumbered as Clause (2) by the Constitution (42nd) Amendment Act, 1976. The amended Clause (2) now reads as under:-

"226. Power of the High Courts to issue certain writs - (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(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 cause 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.

(3) xxxxx

(4) xxxxx"

11. On a plain reading of the amended provisions in Clause (2), it is clear that now 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. Cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action

is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed.

12. xxxxx

12. In *State of Rajasthan and Others vs. M/s Swaika Properties and Another*, (1985) 3 SCC 217, the Apex Court was concerned with the meaning to be assigned to the expression "cause of action". The facts therein were that the respondent- Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur City. It was served with notice for acquisition of land under Rajasthan Urban Improvement Act, 1959. Notice was duly served on the Company at its registered office at Calcutta. The Company, first appeared before the Special Court and finally filed a writ petition before the Calcutta High Court challenging the notification of acquisition. The matter ultimately travelled before the Supreme Court where the question that arose for discussion was whether the service of notice under Section 52(2) of the Act at the registered office of the Respondent in Calcutta was an integral part of cause of action and was it sufficient to confer jurisdiction upon the Calcutta High Court to entertain the petition challenging the impugned notification. Answering the question it was held:-

7. xxxxx

8. The expression "cause of action" is tersely defined in Mulla's Code of Civil Procedure:

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court."

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. 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. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State

Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

14. xxxxx

13. Clause (2) of Article 226 of the Constitution of India came for discussion in *Kusum Ingots & Alloys Ltd. vs. Union of India and Another*, (2004) 6 SCC 254. The Supreme Court elaborately delving into clause (2) of Article 226 of the Constitution, with reference to the expression 'cause of action' viz-a-viz Section 20(c) and Section 141 of the Code of Civil Procedure observed thus :-

"9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20 (c) of the Code of Civil Procedure and clause (2) of Article 226, being in *pari materia*, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, 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." Their Lordships further observed as under:-

"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* has, thus, no application.

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*."

14. In *Union of India and others vs. Adani Exports Ltd. and another*, (2002) 1 SCC 567, it was laid down that in order to confer jurisdiction on a High Court to entertain a writ petition, the petition must disclose the integral facts in support of the cause of action so as to constitute a cause to empower the court to decide the dispute as the entire or a part of it arose within its jurisdiction. It was

concluded that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that they 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 involved in the case. The relevant observation reads thus :-

"17. It is seen from the above that 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 [pic] 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. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

15. In *A.B.C. Laminart (P) Limited Vs. A.P. Agencies, Salem* MANU/SC/0001/1989, (1989) 2 SCC 163, the Apex Court was considering the validity of the exclusionary clause in the agreement regarding jurisdiction of the Court, after discussing the issue, it was held that it is well settled principle of contract law that the parties cannot by contract exclude the jurisdiction of all courts . Such a contract would constitute an agreement in violation of provisions of Section 28 of the Indian Contract Act, 1972.

However, where parties to a contract confer jurisdiction on one amongst multiple courts having proper jurisdiction, to the exclusion of all other courts, the parties cannot be said to have ousted the jurisdiction of all courts . Such a contract is valid and will bind the parties to a civil action. The relevant para-16 of the pronouncement reads as under :

"16. So long as the parties to a contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the Court. If under the law several Courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If

on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy."

16. The view in *A.B.C. Laminart (P) Limited (supra)* has been reiterated in subsequent decisions as well. In the case of *Angile Insulations Vs. Davy Ashmore India Ltd.* and another (1995) 4 SCC 153, after referring to the provisions of Section 20 of CPC, it was concluded that the territorial jurisdiction of court normally lies where cause of action arises, but it will be subject to terms of a valid contract between the parties. Where jurisdiction vests upon more than one Court, consequent upon a part of the cause of action arising therewith, if parties stipulate in the contract to vest jurisdiction in one such court to try the disputes arising between themselves and if the contract is unambiguous, explicit and clear and is not pleaded to be void and opposed to section 23 of the Contract Act, then suit would lie in the court agreed to by the parties and the other court will have no jurisdiction even though cause of action arose partly within the territorial jurisdiction of that court. Relevant para-5 reads as under :

"So, normally that Court also would have jurisdiction where the cause of action, wholly or in part, arises, but it will be subject to the terms of the contract between the parties. In this case, Clause (21) reads thus:

"This work order is issued subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will, therefore, fall within the jurisdiction of the above Court only."

A reading of this clause would clearly indicate that the work order issued by the appellant will be subject to the jurisdiction of the High Court situated in Bangalore in the State of Karnataka. Any legal proceeding will, therefore, be instituted in a Court of competent jurisdiction within the jurisdiction of High Court of Bangalore only. The controversy has been considered by this Court in *A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem*, [1989] 2 SCC 163. Considering the entire case law on the topic, this Court held that the citizen has the right to have his legal position determined by the ordinary Tribunal except, of course, subject to contract (a) when there is an arbitration clause which is valid and binding under the law, and (b) when parties to a contract agree as to the jurisdiction to which dispute in respect of the contract shall be subject. This is clear from s.28 of the Contract Act. But an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void being against the public policy under s.23 of the Contract Act. We do not find any such in validity of Clause (21) of the Contract pleaded in this case. On the other hand, this Court laid that where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therewith, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves, the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague, it is not hit by ss.23 and 28 of the Contract Act. This cannot be understood as parties

contacting against the statute. Mercantile law and practice permit such agreements."

17. Great emphasis was placed on the pronouncement in Maharashtra Chess Association (supra) by the petitioner. The principle of law enunciated therein is that the parties cannot by agreement confer jurisdiction on a court which lacks the jurisdiction to adjudicate. However, where more than one Court has jurisdiction to entertain the subject matter of the dispute, it can be agreed that a suit shall be brought exclusively before one of the several courts, to the exclusion of the others. Interpreting Clause 21 therein, it was recorded that it does not oust the jurisdiction of all courts. Rather, the Appellant and the second Respondent had agreed to submit suits or legal actions to the courts at Chennai. So long as the courts at Chennai had proper jurisdiction over a dispute involving the Appellant and the second Respondent, Clause 21 was not in violation of the principle set out in A B C Laminart. The Apex Court in the said judgment considering the factual matrix therein, particularly clause 21, held that mere existence of alternate forum does not create a legal bar of a High Court to exercise its jurisdiction. The factual matrix being different, it does not advance the case of the petitioner.

18. Thus, in view of aforesaid enunciation of law and taking into consideration Clause 32.1 of the agreement, it is concluded that the territorial jurisdiction of court ordinarily lies where cause of action arisen but it will be subject to terms of a valid contract between the parties. Further, where more than one court has jurisdiction consequent upon a part of the cause of action arising therewith, but if parties stipulate in the contract to submit to the jurisdiction into a specified Court to try the dispute arising between them and the contract is unambiguous, explicit and clear which is not pleaded to be void and opposed to Section 23 of the Contract Act, then suit would lie in the court agreed to by the parties and any other court will have no jurisdiction even though cause of action had arisen partly within the territorial jurisdiction of that court. Adverting to the factual matrix herein, there is a valid contract between the petitioner and the respondents whereby they have agreed to submit suits or legal actions to the courts at Nagpur. The principles enunciated above would apply to a writ filed under Article 226 of the Constitution of India, in view of the provisions of Article 226(2) as held in the cases of Nawal Kishore Sharma and Kusum Ingots & Alloys Ltd. (supra). In other words, even though in the present case part of cause of action may arise within territorial jurisdiction of this court, keeping in view Clause 32.1 of the contract, the lis would be amenable to the jurisdiction of the courts at Nagpur or High Court within whose jurisdiction the cases relating to Nagpur are filed.

15. In view of the aforesaid, the writ petition is dismissed on the ground of lack of territorial jurisdiction. No order as to costs.