
(2013) 04 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9396 of 2013

M/s. DOT Systems, Secunderabad and 2 Others

APPELLANT

Vs

Union of India, Ministry of External Affairs and 5 Others

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 20, 20(c)
Constitution of India, 1950 — Article 14, 19(1)(g), 226, 3

Citation : (2013) 6 ALD 348 : (2013) 5 ALT 1

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : P.S. Rajasekhar, for the Appellant; Ponnam Ashok Goud Asst. Solicitor General and Mrs. S. Nanda, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—The 1st petitioner is a proprietary concern located in Secunderabad, and is engaged in the business of providing software and hardware solutions in the education sector in India and abroad. Petitioners 2 and 3 are companies registered under the Srilanka Companies Act, 2007, and are also engaged in the business of providing Information Technology solutions. The petitioners have invoked the jurisdiction of this Court to declare the action of respondents 1, 3 and 4, in accepting the bids of respondent Nos. 5 and 6 on 21.12.2012 for setting up nine provincial Srilanka-India Centres for English language training in Srilanka, as arbitrary, illegal and in violation of Articles 14 and 19(1)(g) of the Constitution of India. They seek a direction to respondents 1, 3 and 4 to renotify the notice inviting bids duly consulting the 2nd respondent at all stages of the tender, and award the contract to the successful bidder for setting up the nine provincial Srilanka Centres for English language training.

2. Facts, to the limited extent necessary to examine whether or not this Court has territorial jurisdiction to entertain the Writ Petition, are that the 1st respondent entered into a Memorandum of Understanding (MOU) with the

Government of Srilanka on 13.09.2011 to render technical and financial assistance for setting up nine Srilanka provincial centres for English language training. The said MOU envisaged a project known as the "India-Srilanka project for expanding English language training in Srilanka". Pursuant thereto, the 1st respondent is said to have given its financial concurrence to the project for approximately Rs. 5.6 crores. Thereafter a notice inviting tender was issued on 08.07.2012, in the public procurement portal of the Government of India, for setting up nine language laboratories in Srilanka. The petitioners claim that the said notice is accessible throughout the territory of India including the State of Andhra Pradesh. Petitioners 2 and 3 (both of which are located in Srilanka) are said to have submitted their separate bids on 03.08.2012, and a letter of intent for entering into a joint venture with petitioner No. 1. The 5th respondent company, registered under the Srilanka Companies Act, 2007, is said to have joined with the 6th respondent (a company registered under the Companies Act, 1956), and to have submitted their bid. The petitioners refer to certain instances which, according to them, are irregularities in evaluation of the bid process. They are aggrieved by the action of respondents 1, 3 and 4 in accepting the bids submitted by respondents 5 and 6.

3. In support of his submission that this Court has territorial jurisdiction to entertain the Writ Petition, Sri P.S. Rajasekhar, Learned Counsel for the petitioner, would place reliance on Article 3 of the M.O.U. dated 3.09.2011 which relates to "project execution", wherein it is stated that the Government of India shall utilize the services of the English and Foreign languages University (EFLU), Hyderabad as the technical consultant for this project; the services of other Indian agencies, if felt appropriate, could also be obtained by the Government of India for this purpose; and the Government of Srilanka would be represented by the Secretary, Ministry of Education and the Presidential Secretariat for implementation of the Project co-ordination with EFLU, Hyderabad, India. Learned Counsel would also refer to the letter dated 25.3.2013, addressed to the petitioners by EFLU, (in reply to the petitioners' earlier letter dated 18.03.2013), informing them that the office of the Dean, International Relations, does not have in its possession any record of communication from the Government of India seeking permission from EFLU to be included or commissioned as a technical consultant for setting up of nine language laboratories in Srilanka; and the tender specifications, for the purpose of inviting tenders for setting up nine language laboratories in Srilanka by the High Commission of India, was approved by EFLU. Learned Counsel would submit that the fact that the Government of India did not include or commission EFLU as the technical consultant, for the setting up of nine language laboratories in Srilanka, gives rise to a part of the cause of action within the territorial limits of this Court and the petitioners are, therefore, entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

4. It is necessary to note that the situs of respondent No. 1 is at New Delhi, respondent No. 6 in the State of Kerala, and respondents 3 to 5 at Colombo in

Srilanka. It is the 2nd respondent alone which is located within the territorial jurisdiction of this Court. The petitioners have not sought any relief against the 2nd respondent. It is their case that failure of the Government of India, to utilize the services of the EFLU, has vitiated the tender process, and consequently the respondents should renotify the notices inviting bids duly consulting the 2nd respondent at all stages of the tender. The question whether the "cause of action", either in whole or in part, has arisen within the territorial jurisdiction of a particular High Court must only be decided on the basis of the pleadings. In determining the objection regarding 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 enquiry 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 writ petition. *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*,). In the absence of an averment that the cause of action, or a part of it, has arisen within the territorial jurisdiction of the concerned High Court the writ petition would be dismissed. *Sarabjit Kaur Vs. Union of India (UOI) and Others*, . Can the mere fact that the Government of India has not, at all stages, consulted EFLU which is located at Hyderabad give rise to a part of the "cause of action" within the territorial limits of this Court? Clause (2) of Article 226 makes it clear that the High Court, exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that, even if a small fraction of the cause of action (that bundle of facts which gives the petitioner a right to sue) accrued within the territories of a High Court, the High Court of that State will have jurisdiction. (*Rajendran Chingaravelu Vs. Mr. R.K. Mishra, Addl. Commissioner of IT and Others*,). In view of clause 2 of Article 226 of the Constitution of India if a part of cause of action arises within the jurisdiction of a High Court, it would have jurisdiction to issue a writ. If a part of the cause of action arises within the territorial limits of a High Court, and the other part in another High Court, it would be open to the litigant who is the dominus litis to have his forum conveniens in either of the High Courts. The litigant has the right to go to a Court where a 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 a part of the cause of action arising within the jurisdiction of the Court. The Court will find out in each case whether the jurisdiction of the court is rightly attracted by the alleged "cause of action". *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, ; *Canon Steels P. Ltd. Vs. Commissioner of Customs*, *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*,

5. The collocation of the words "cause of action, wholly or in part, arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section

also deals with the jurisdictional aspect of Courts Navinchandra N. Majithia Vs. State of Maharashtra and Others, 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 the Supreme Court rendered on an interpretation of Section 20(c) CPC apply to writ proceedings also. (Ambica Industries Vs. Commissioner of Central Excise, ; Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another,

6. "Cause of action" implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. The expression "cause of action" is not defined in any statute. It has, however, been judicially interpreted inter-alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be a part of the cause of action. For every action, there has to be a cause of action. If not the plaint or the writ petition, as the case may be, shall be rejected summarily Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, . It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. (Read v. Brown (1888) Vol. XXII QBD 128, The The State of Madras Vs. C.P. Agencies and Another, 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. (State of Rajasthan and Others Vs. Swaika Properties and Another, Bloom Dekor Limited Vs. Subhash Himatlal Desai and Others, ; Om Prakash Srivastava Vs. Union of India (UOI) and Another, . It must include some act done by the defendant since, in the absence of such an act, no cause of action would possibly accrue or arise. [South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. and Others, Om Prakash Srivastava Vs. Union of India (UOI) and Another, . In a generic and wide sense, (as in Section 20 of the Civil Procedure Code, 1908), "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment, (Sadanandan Bhadrans Vs. Madhavan Sunil Kumar, Om Prakash Srivastava Vs. Union of India (UOI) and Another,), the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. (Rajasthan High Court Advocates Association Vs. Union of India and Others, ; Om Prakash Srivastava Vs. Union of India (UOI) and Another, . These are all those essential facts without the proof of which the plaintiff must fail in his suit. (Gurdit Singh and Others Vs. Munsha Singh and Others, 1; Om Prakash Srivastava Vs. Union of India (UOI) and Another, It refers entirely to the grounds set forth in the plaint as the cause of action or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour. The State of Madras Vs. C.P. Agencies and Another,

7. The expression "cause of action" 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 of suing; a factual situation that entitles one person to obtain a remedy in court from another person (Black's Law Dictionary). 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; In Words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action", in common legal parlance, is the existence of those facts which give a party a right to judicial interference on his behalf. Navinchandra N. Majithia Vs. State of Maharashtra and Others, ; Om Prakash Srivastava Vs. Union of India (UOI) and Another, . In Halsbury's Laws of England (4th Edn.): -

Cause of action" has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.

8. In order to exercise jurisdiction to entertain a writ petition, 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. Union of India and Others Vs. Adani Exports Ltd. and Another, Each and every fact pleaded in the writ petition 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 are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing on the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. Union of India and Others Vs. Adani Exports Ltd. and Another, Similarly, 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. (Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, ; Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee,

9. What is necessary to be proved, before the petitioner can obtain a decree, are material facts. The expression material facts is also known as integral facts. Ambica Industries Vs. Commissioner of Central Excise, ; Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, The test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. In determining the question, the substance of the matter, and not the form, has to be considered. Alchemist

Limited and Another Vs. State Bank of Sikkim and Others, High Courts should exercise caution not to transgress into the jurisdiction of other High Courts merely on the ground that some insignificant event, trivial and unconnected with the cause of action has taken place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. (Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, ; Navinchandra N. Majithia Vs. State of Maharashtra and Others,

10. While a part of the cause of action has arisen within the territorial limits of both the Delhi and the Kerala High Courts, where the 1st and the 6th respondent respectively are located, what, however, needs to be examined is whether a part of the cause of action can be said to have also arisen within the territorial jurisdiction of the High Court of Andhra Pradesh, for even if a fraction of the cause of action has so arisen, and as the choice of the forum is for the suitor to decide, the petitioner would be justified in having invoked the jurisdiction of this Court.

11. As noted hereinabove, the question which falls for consideration is whether the allegation that the Government of India has not, at all stages of the tender, consulted EFLU which is located at Hyderabad would, by itself, constitute "cause of action in part" having arisen within the territorial limits of this Court. It is evident from the letter dated 25.03.2013, addressed to the petitioner by EFLU, that the tender specifications were approved by EFLU for the purpose of inviting tenders. Both the letter addressed by the petitioner to EFLU on 18.03.2013 and the reply thereto by EFLU dated 25.03.2013 are three months after respondents 1, 3 and 4 had accepted the bids, of respondents 5 and 6, on 21.12.2012. The petitioners' grievance is only against respondents 1, 3 and 4, for having accepted the bids of respondents 5 and 6, and not against the 2nd respondent. The relief sought for in this writ petition is also not against EFLU which is located at Hyderabad, but against respondents 1, 3 and 4. That EFLU is located at Hyderabad, or that EFLU was not consulted at all stages by the 1st respondent-Government of India, are neither facts of substance nor do they constitute material, integral or essential facts which have nexus and relevance to the lis. The said plea is relevant only to show that the petitioner has a right of action on the accrued cause of action. The distinction between a "right of action" and the "cause of action" must be borne in mind, for it is the bundle of facts taken with the law applicable to them which constitutes the "cause of action", and it is before the High Court, within whose territorial limits the "cause of action" has arisen, can the petitioners have his right to the relief enforced. While the petitioners "right of action" may arise because EFLU was not consulted at all stages of the tender process, the "cause of action" is the failure of the 1st respondent, (which is located at New Delhi), to consult EFLU at all stages in the tender process, and in respondents 1, 3 and 4 accepting the bids of respondents 5 and 6, none of whom are located within the territorial limits of this Court. The action of the 1st respondent in not consulting EFLU, and that of respondents 1, 3 and 4 in accepting the bids of respondents 5 and 6, is either at New Delhi where

the 1st respondent is located, or at Cochi in the State of Kerala where respondent No. 6 is situated, and not at Hyderabad merely because EFLU is located thereat. As no part of the cause of action has arisen within the territorial jurisdiction of this Court, the Writ Petition as filed is not maintainable. The Writ Petition is liable to be, and is accordingly, dismissed. However, in the circumstances, without costs. The Miscellaneous Petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.