

(2014) 08 SC CK 0042

In the Supreme Court Of India

Case No : Civil Appeal No. 7414 of 2014 (Arising out of SLP (C) No. 19549 of 2013)

Nawal Kishore Sharma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 20
Constitution of India, 1950 — Article 226, 226(2), 32
Rajasthan Urban Improvement Trust Act, 1959 — Section 52(1), 52(2), 52(5), 52(6)

Citation : AIR 2014 SC 3607 : (2014) 4 AJR 410 : (2014) 106 ALR 710 : (2014) 5 AWC 4947 : (2014) 5 CHN 192 : (2014) 143 FLR 1015 : (2014) 4 JLJR 69 : (2014) 4 PLJR 227 : (2014) 9 SCALE 244 : (2014) 9 SCC 329 : (2014) 7 SCJ 307 : (2014) 4 SCT 129 : (2014) 3 SLJ 175

Hon'ble Judges : Ranjan Gogoi, J;M. Yusuf Eqbal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

JUDGMENT

M. Yusuf Eqbal, J.—Leave granted.

2. Aggrieved by the judgment and order dated 16.4.2013 passed by learned Single Judge of Patna High Court dismissing Appellant's writ petition for want of territorial jurisdiction, this appeal by special leave has been preferred by the Appellant, who in November, 1988 had joined the off-shore Department of the Shipping Corporation of India (in short, "the Corporation") and after about eight years he was transferred from the off-shore duty to a main fleet in the Foreign Going Department.

3. It is the case of the Appellant that he was found medically fit in the medical test conducted by the Marine Medical Services in February, 2009 and thereafter, on 29.9.2009, an agreement known as the articles of agreement for employment of seafarers was executed for Appellant's off-shore duty. On 18.6.2010, when the

Appellant reported sickness i.e. cough, abdominal pain, swelling in leg and difficulty in breathing, he was sent for medical treatment ashore at Adani, Mundra Port. The Medical Officer ashore advised him for admission in the Hospital and accordingly he was signed off for further medical treatment. Thereafter, he was considered permanently unfit for sea service due to dilated cardiomyopathy (heart muscle disease) as per certificate dated 18.3.2011 issued by Corporation's Assistant Medical Officer. Consequently, the Shipping Department of the Government of India, Mumbai issued order dated 12.4.2011 cancelling registration of the Appellant as a Seaman.

4. It is contended by the Appellant that after he settled at his native place Gaya, Bihar, he sent several letters/representations from there to the Respondents for his financial claims as per statutory provisions and terms of contract. On the disability compensation claim, Respondent No. 2-Corporation communicated vide letter dated 7.10.2011 that since the Appellant was declared unfit for sea service due to heart problem (organic ailment) he will be entitled to receive severance compensation of Rs. 2,75,000/-, which was although offered, but not accepted by the Appellant. It was also informed that he is not entitled to receive disability compensation, which becomes payable only in case a seaman becomes incapacitated as a result of the injury.

5. By filing a writ petition, the Appellant approached Patna High Court Under Article 226 of the Constitution of India for grant of various reliefs including 100% disability compensation and pecuniary damages. However, at the time of hearing, Respondents raised the question of maintainability of the writ petition on the ground that no cause of action or even a fraction of cause of action arose within the territorial jurisdiction of the Patna High Court and contended that the Appellant was appointed by the Corporation on the post of Seaman for off-shore services and he discharged his duty outside the territory of the State of Bihar. It is the case of the Respondent that the order declaring the Appellant permanently unfit as well as the letter/order dated 7.10.2011 was passed by an authority of the Respondent Corporation at Mumbai. Per contra, it is the case of the Appellant that he is a permanent resident of Bihar and 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.

6. After hearing learned Counsel appearing for the parties and considering entire materials on record, learned Single Judge of the Patna High Court dismissed the writ petition of the Appellant holding that no cause of action, not even a fraction of cause of action, arose within its territorial jurisdiction. Hence, the present appeal by special leave.

7. We have heard learned Counsel appearing for the parties.

8. The short question that falls for consideration in the facts of the present case is that as to whether the Patna High Court is correct in taking the view that it has no jurisdiction to entertain the writ petition. For answering the said question we

would like to consider the provision of Article 226 of the Constitution as it stood prior to amendment. Originally, Article 226 of the Constitution read as under:

Article 226. Power of 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 or the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by Clause (1) shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32.

9. While interpreting the aforesaid provision the Constitution Bench of this Court in the case of Election Commission, India Vs. Saka Venkata Subba Rao and, held that the writ court would not run beyond the territories subject to its jurisdiction and that the person or the authority affected by the writ must be amenable to court's jurisdiction either by residence or location within those territories. The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issued Under Article 226 of the Constitution which makes no reference to any cause of action or where it arises but insist on the presence of the person or authority within the territories in relation to which High Court exercises jurisdiction. In another Constitution Bench judgment of this Court in K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., this Court took the similar view and held that the writ court cannot exercise its power Under Article 226 beyond its territorial jurisdiction. The Court was of the view that the exercise of power conferred by Article 226 was subject to a two-fold limitation viz., firstly, the power is to be exercised in relation to which it exercises jurisdiction and secondly, the person or authority on whom the High Court is empowered to issue writ must be within those territories. These two Constitution Bench judgments came for consideration before a larger Bench of seven Judges of this Court in the case of Lt. Col. Khajoor Singh Vs. The Union of India and Another, The Bench approved the aforementioned two Constitution Bench judgments and opined that unless there are clear and compelling reasons, which cannot be denied, writ court cannot exercise jurisdiction Under Article 226 of the Constitution beyond its territorial jurisdiction.

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 u/s 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the CPC 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. The term 'cause of action' as appearing in Clause (2) came for consideration time and again before this Court.

13. In the case of State of Rajasthan and Others Vs. Swaika Properties and Another, the fact was that the Respondent-Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur City 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 the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came before this Court to answer a question as to whether the service of notice u/s 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 invest the Calcutta High Court with a jurisdiction to entertain the petition challenging the impugned notification. Answering the question this Court held:

7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the Respondents Under Article 226 of the Constitution or to make the ad

interim ex parte prohibitory order restraining the Appellants from taking any steps to take possession of the land acquired. Under Sub-section (5) of Section 52 of the Act the Appellants were entitled to require the Respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession Under Sub-section (6) thereof.

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 u/s 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 u/s 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 u/s 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 u/s 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 u/s 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 u/s 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. This provision was again considered by this Court in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, In this case the Petitioner Oil and Natural Gas Commission (ONGC) through its consultant Engineers India Limited (EIL) issued an advertisement in the newspaper inviting tenders for setting up of Kerosene Recovery Processing Unit in Gujarat mentioning that the tenders containing offers were to be communicated to EIL, New Delhi. After the final decision was taken by the Steering Committee at New Delhi, the Respondent NICCO moved the Calcutta High Court praying that ONGC

be restrained from awarding the contract to any other party. It was pleaded in the petition that NICCO came to know of the tender from the publication in the "Times of India" within the jurisdiction of the Calcutta High Court. This Court by setting aside the order passed by the Calcutta High Court came to the following conclusion:

6. 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 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 petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.

15. In *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, this Court elaborately discussed Clause (2) of Article 226 of the Constitution, particularly the meaning of the word 'cause of action' with reference to Section 20(c) and Section 141 of the CPC and observed:

9. Although in view of Section 141 of the CPC the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the CPC 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.

16. In the case of Union of India and Others Vs. Adani Exports Ltd. and Another, , this Court held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction. 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 are such which have a nexus or relevance with the lis i.e. involved in the case. This Court observed:

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. 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.

17. In Om Prakash Srivastava Vs. Union of India (UOI) and Another, , answering a similar question this Court observed that on a plain reading of Clause (2) of Article 226 it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose if the cause of action in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territory. In para 7 this Court observed:

7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits 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, a writ Petitioner has to establish that a legal right claimed by him has prima facie either been

infringed or is threatened to be infringed by the Respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

18. In the case of *Rajendran Chingaravelu v. R.K. Mishra*, Additional Commissioner of Income Tax and Ors. (2010) 1 SCC 457, this Court while considering the scope of Article 226(2) of the Constitution, particularly the cause of action in maintaining a writ petition, held as under:

9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the Appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. 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 a Petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.

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11. Normally, we would have set aside the order and remitted the matter to the High Court for decision on merits. But from the persuasive submissions of the Appellant, who appeared in person on various dates of hearing, two things stood out. Firstly, it was clear that the main object of the petition was to ensure that at least in future, passengers like him are not put to unnecessary harassment or undue hardship at the airports. He wants a direction for issuance of clear guidelines and instructions to the inspecting officers, and introduction of definite and efficient verification/investigation procedures. He wants changes in the present protocol where the officers are uncertain of what to do and seek instructions and indefinitely wait for clearances from higher-ups for each and every routine step, resulting in the detention of passengers for hours and hours. In short, he wants the enquiries, verifications and investigations to be efficient, passenger-friendly and courteous. Secondly, he wants the Department/officers concerned to acknowledge that he was unnecessarily harassed.

19. Regard being had to the discussion made hereinabove, 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.

20. We have perused the facts pleaded in the writ petition and the documents relied upon by the Appellant. Indisputably, the Appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to

hospital. Consequently, he was signed off for further medical treatment. Finally, the Respondent permanently declared the Appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the Appellant as a seaman. A copy of the letter was sent to the Appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the Appellant sent a representation from his home in the State of Bihar to the Respondent claiming disability compensation. The said representation was replied by the Respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the Appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the Respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, Appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.

21. Apart from that, from the counter affidavit of the Respondents and the documents annexed therewith, it reveals that after the writ petition was filed in the Patna High Court, the same was entertained and notices were issued. Pursuant to the said notice, the Respondents appeared and participated in the proceedings in the High Court. It further reveals that after hearing the counsel appearing for both the parties, the High Court passed an interim order on 18.9.2012 directing the authorities of Shipping Corporation of India to pay at least a sum of Rs. 2.75 lakhs, which shall be subject to the result of the writ petition. Pursuant to the interim order, the Respondent Shipping Corporation of India remitted Rs. 2,67,270/- (after deduction of income tax) to the bank account of the Appellant. However, when the writ petition was taken up for hearing, the High Court took the view that no cause of action, not even a fraction of cause of action, has arisen within its territorial jurisdiction.

22. Considering the entire facts of the case narrated hereinbefore including the interim order passed by the High Court, in our considered opinion, the writ petition ought not to have been dismissed for want of territorial jurisdiction. As noticed above, at the time when the writ petition was heard for the purpose of grant of interim relief, the Respondents instead of raising any objection with regard to territorial jurisdiction opposed the prayer on the ground that the writ Petitioner-Appellant was offered an amount of Rs. 2.75 lakhs, but he refused to accept the same and challenged the order granting severance compensation by filing the writ petition. The impugned order, therefore, cannot be sustained in the

peculiar facts and circumstances of this case.

23. In the aforesaid, the appeal is allowed and the impugned order passed by the High Court is set aside and the matter is remitted to the High Court for deciding the writ petition on merits.