
(1986) 04 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 2127 of 1984 and C.A. No. 1191 of 1986

Nitin Industrial Associates

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-04-1986

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 127

Bombay Reorganisation Act, 1960 — Section 41

Constitution of India, 1950 — Article 14, 226, 226(1), 299

Citation : AIR 1986 Bom 298 : (1986) 3 BomCR 174 : (1986) MhLj 474

Hon'ble Judges : N.K. Parekh, J; M.M. Qazi, J

Bench : Division Bench

Advocate : A.S. Bobde, M.L. Vaidya and K.R. Gohokar, for the Appellant; M.A. Garud, A.G.P., V.A. Masodkar and Sudhir Moharir for No. 4 and S.C. Mehadia, for No.3, for the Respondent

Judgement

N.K. Parekh, J.—The facts that give rise to this petition are that the Director of Health Services issued a notice dt. 21st July, 1983 inviting tenders in respect of used X-ray plates and "wasteful hypo solution" to be sold to Small Scale Units (these being items from which silver is extracted). Six parties submitted tenders in respect thereof. However, the Government thereafter passed a Resolution dt. 3rd Aug. 1984 purporting to distribute these two items amongst three parties, namely, the petitioners (herein) and respondents 3 and 4, and also indicating the areas in which each of these parties would operate. The said resolution also stipulated that the used X-ray films would be sold at Rs. 40.50 per kilogram whilst "wasteful hypo solution" would be sold at Rs. 11.00 per litre. Being aggrieved by the said Resolution, the petitioners have filed this petition for quashing the said resolution and consequential reliefs. The petitioners have contended : (a) that the tenders have not been rejected and/or have otherwise not been dealt with and the Government could not purport to pass the resolution (now impugned) distributing the items in the manner they have done, (b) that looking to the tenders filed by the petitioners and respondents 3 and 4, the rates

quoted by the petitioners in respect of both the items were the highest, and the petitioners' tender ought to have been accepted and the items ought to have been given to the petitioners exclusively, and (c) that there was no methodology by which the Government allotted these items in the proportions specified in the said resolution, or allocated the areas specified in the said resolution, or as to how the respondents 3 and 4 who had quoted a lesser price, were allotted a part of the said items, and as to how they were called upon to pay the price at which the petitioners had offered to buy the items.

2. The petition is of course resisted by respondents 1 and 2 who have contended that these items were to be sold to small-scale industries with a view to help such industries. That it is in the light of this policy that the items were allotted amongst the petitioners and respondent 3 and 4. That although the price quoted by respondents 3 and 4 in their tenders were lower than the price quoted by the petitioners, none the less respondents 1 and 2 had demanded the same price from respondents 3 and 4 as quoted by the petitioners and hence there was no loss to the Government. That in the circumstances the question of quashing the said resolution did not arise. Respondent 3 has contended that although under the impugned Government resolution respondent 3 was allotted a quota less than what they would be entitled to, the question of quashing the said resolution did not arise. Respondent 4 has contended that the High Court Bench sitting at Nagpur has no jurisdiction to receive try and hear this petition. On merits, respondent 4 has contended that since the intention of the Government in selling these items was to assist small-scale industries, the Government resolution (now impugned) fulfils the very purpose, and the petitioners would be entitled to no relief.

3. Now as regards the question whether this Court has jurisdiction to receive, try and hear this petition is concerned, it has been submitted by counsel for respondent 4 that admittedly the tender notice was issued in Bombay and the resolution (now impugned) was also passed at Bombay. That the whole cause of action had arisen in Bombay. That it was the cause of action that attracted jurisdiction, and this being so, the High Court Bench at Nagpur had no jurisdiction to receive, try and hear this petition. In support of this contention, counsel for respondent 4 placed reliance on the decision in the case of Siku Industries and Others Vs. Smt. C. D'Souza and Others, Counsel for respondent 4 further contended that Section 41, Bombay Reorganisation Act, 1960 (Act No. 11 of 1960) reads as follows :

"41: Without prejudice to the provisions of Section 51, States Reorganisation Act, 1956, such Judges of the High Court at Bombay, being not less than three in number, as the Chief Justice may, from time to time nominate, shall sit at Nagpur in order to exercise the jurisdiction and power for the time being vested in that High Court, in respect of cases arising in the district? of Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara, Chanda and Rajura:

Provided that the Chief Justice may, in his discretion, order that any case arising

in any such district shall be heard at Bombay."

That Chap. XXXI, Bombay High Court Appellate Side Rules, 1960, inter alia, reads as follows :

"1. All appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution arising in the Judicial Districts of Akola, Amaravati, Bhandara, Buldana, Chandrapur, Nagpur, Wardha, Yavatmal and Gadchiroli which lie to the High Court of Bombay shall be presented to the Additional Registrar of that High Court at Nagpur and shall be disposed of by the Judges sitting at Nagpur:

Provided that the Chief Justice may, in his discretion, order that any case arising in any such district shall be heard at Bombay."

That the reading of these two provisions must further demonstrate that it is the place where the cause of action arose that will attract jurisdiction, and in the present case the cause of action having arisen in Bombay, the petition if at all ought to be presented before the High Court Bench in Bombay but the High Court Bench at Nagpur would be precluded from entertaining the writ petition. In other words, this "Court" has no jurisdiction to receive, try and hear this petition.

4. We are unable to accept these contentions. Turning to the first limb of the argument, Article 226, Clauses (1) and (2) of the Constitution read as follows :

"(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."

Hence Clause (1) provides that within the State, the Court's jurisdiction is conterminous with the territories of the State, whilst Clause (2) envisages the issue of writs beyond the Court's territorial jurisdiction provided that the cause of action has arisen within the territorial jurisdiction of the Court concerned. In the present case, the tender notice and the impugned resolution were both issued within the territorial jurisdiction of this Court and by reason of Article 226, Clause (1) the Bench at Nagpur would clearly have jurisdiction. The provisions of Section 41, Bombay Reorganisation Act, 1960 (Act No. 11 of 1960) read with Rule 127, Bombay High Court Appellate Side Rules, cannot abridge the writ

jurisdiction. We are fortified in this view by the observations in the case of Election Commission, India Vs. Saka Venkata Subba Rao and, wherein the Court was pleased to observe as follows :

"The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority "within the territories" in relation to which the High Court exercises jurisdiction."

Then again in dealing with the writ jurisdiction in *In re: Kerala Education Bill, 1957*, AIR 1958 SC 956 the Court was pleased to observe as follows :

"Article 226 of the Constitution confers extensive jurisdiction and power on the High Courts in the States. This jurisdiction and power extend throughout the territories in relation to which the High Court exercises jurisdiction. It can issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs of the nature mentioned therein for the enforcement of the fundamental rights or for any other purpose."

The contention therefore that it is the cause of action that attracts jurisdiction must hence be negated.

5. As regards the citation namely *Siku Industries and Others Vs. Smt. C. D'Souza and Others*, is concerned, the facts in that case were that the petitioners therein were carrying on business at Nagpur and they failed to pay certain amounts under the Provident Fund. That a prosecution in respect thereof was launched at Bombay. The petitioners therein hence filed a petition for quashing the said proceedings on the basis that the Presidency Magistrate's Court at Bombay had no jurisdiction to entertain the complaint. The contention canvassed on behalf of the respondents was that since the complaint was filed at Bombay, the writ challenging the complaint ought to have been filed in Bombay. Dealing with the subject matter of the said petition, the Court went on to hold that a material part of the cause of action had arisen at Nagpur and in the circumstances the Bench at Nagpur had jurisdiction to receive, try and hear the petition. Whilst the citation has been pressed into service for the purposes of reinforcing the argument that it is the place where the cause of action arises that must determine jurisdiction, it may be stated that in the said matter what was being considered were the provisions of Article 227 and not the provisions of Article 226. On the other hand, in the very judgment, there is a clear observation which reads as follows :

"So far as the exercise of the powers under Article 226 of the Constitution is concerned, the matter stands on a different footing. It empowers the High Court to issue to any person or authority, including in appropriate cases any Government directions, orders or writs for the enforcement of any of the rights conferred by Part III and for any other purpose."

Hence the said decision cannot be of any assistance to respondent 4 in the present case.

6. Turning to the next limb of the argument namely that since the cause of action had arisen in Bombay the writ jurisdiction of the High Court Bench at Nagpur stands abridged by reason of the provisions of Section 41, Bombay Reorganisation Act, 1960 (Act No. 11 of 1960) read with the provisions of Chap. XXXI, Bombay High Court Appellate Side Rules, 1960, we do not see how any enactment passed by the Parliament and/or by the State Legislature can possibly trench upon the jurisdiction conferred on the High Court by Article 226. In *In re : Kerala Education Bill*, AIR 1958 SC 956, it has been observed as follows :

"No enactment of a State Legislature can, as long as that Article (i.e. 226) stands, take away or abridge the jurisdiction and power conferred on the High Court by that Article."

In view of this, the contention must be negated. But be that as it may, although the said two provisions cannot abridge the jurisdiction, the said two provisions need to be looked at in their proper perspective. The said two provisions, namely, Section 41, Bombay Reorganisation Act, 1960 (Act No. 11 of 1960) and the provisions of Chap. XXXI, Bombay High Court Appellate Side Rules, 1960 are designed to meet administrative requirements and administrative convenience. Hence it is not that every petition under Article 226 which is presented to this Bench at Nagpur that needs to be entertained and regard must be had to these two provisions in the filing of writ petitions so that the petitions can be dealt with by an appropriate Bench. However, in so far as this matter is concerned, in view of the above discussion, it cannot be said that the Bench at Nagpur has no jurisdiction to try and hear the petition. Ordinarily we are extremely slow in entertaining such matters which are required to be entertained and tried at Bombay, but in the peculiar facts and circumstances of this case, when the matter has already been admitted as back as on 25-9-1984 and, if we may say so, we have decided to hear and decide this matter while sitting at Nagpur.

7. Coming to the merits, Mr. Bobde, the learned counsel for the petitioners, contended that since tenders were invited, the tender of the party who offered the highest price should have been accepted. That admittedly amongst the petitioners and respondents 3 and 4, it was the petitioners who offered the highest price and the petitioners' tender ought to have been accepted. If the respondents 1 and 2 wanted to do away with the tenders, they should have treated the tenders as terminated and in that case they could have adopted any other procedure open to them for the disposal of the two items, but respondents 1 and 2 could not have, in view of the tenders, acted in the manner they had done, namely by issuing a resolution purporting to allocate the items as aforementioned or allocate the areas in which the parties should operate. That the whole procedure followed by respondents 1 and 2 was contrary to law.

8. In support of the aforesaid contention, Mr. Bobde relied upon the decision in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, In that case, the tender notice issued stated that "sealed tenders in the prescribed form are hereby invited from Registered IInd Class Hoteliers having at least 5 years" experience for putting up and running a IInd Class Restaurant and two Snack Bars at this Airport for a period of 3 years." Several parties submitted tenders and the Airport Authorities proceeded to give the contract to one of the parties who was respondent 4 in the said proceedings. The petitioner, therefore, contests this method of assigning the contract to respondent 4. It was argued on behalf of respondents 1 and 4 that there was nothing wrong in respondent 1 giving the contract to respondent 4 since it was competent to respondent 1 to reject all the tenders received by it and to negotiate directly with respondent 4 for giving them the contract and it made no difference that instead of following this procedure, which perhaps might have resulted in respondent 4 offering a smaller licence fee and respondent 1 suffering a loss in the process, respondent 1 accepted the tender of respondent 4. In dealing with this argument, the Court held that there was no force in this argument and further observed as follows :

"But here respondent 1 did not reject the tenders outright and enter into direct negotiations with respondent 4 for awarding the contract. The process of awarding a contract by inviting tenders was not terminated or abandoned by respondent 1 by rejecting all the tenders but in furtherance of the process, the tender of respondent 4 was accepted by respondent 1. The contract was not given to respondent 4 as a result of direct negotiations. Tenders were invited and out of the tenders received, the one submitted by respondent 4 was accepted and the contract was given to them. It is, therefore, not possible to justify the action of respondent 1 on the ground that respondent 1 could have achieved the same result by rejecting all the tenders and entering into direct negotiations with respondent 4".

9. Mr. Garud, the learned Assistant Government Pleader on behalf of the respondents 1 and 2, contended that the whole object of selling these items to small-scale industries was to assist small-scale industries in one manner or the other. That in distributing these two items amongst the three parties namely the petitioners and respondents 3 and 4, respondents 1 and 2 had acted fairly as the rates claimed from each of them were the same and there was no loss to the Government That there was hence no question of quashing the said resolution. The learned counsel on behalf of respondent 3 contended that ordinarily respondent 3 ought to have got a lion's share of the items but since respondents 1 and 2 had by their resolution distributed the items amongst the petitioners and respondents 3 and 4, the question of quashing the resolution did not arise. Counsel for respondent 4 also adopted the same line of argument as that of counsel for respondent 3 namely that since the two items were distributed amongst the three parties, there was no cause for quashing the resolution.

10. The arguments of counsel for respondents 1 and 2 and counsel for respondents 3 and 4 do not answer the crucial question, namely, whether it was proper on the part of respondents 1 and 2 having invited tenders to ignore the tenders and pass the resolution (now impugned). The act of respondents 1 and 2 in ignoring the tenders and then again without rejecting or terminating the same, proceeding to allocate the two items amongst the three parties by the said resolution dated 3rd August, 1984 must clearly be held to be bad in law. In view of this, the petitioners would be entitled to the relief prayed, namely, that the resolution dt. 3-8-1984 be quashed.

11. x x x x x x x x x x x QAZI AND DEO, JJ., (Dt. 15-4-1986) :--

12. Heard council on C. A. No. 1191/86.

13. There is no dispute that the operative part of the order dated 15th January, 1986 -passed by this Court is not correctly reproduced. Mr. Masodkar, the learned counsel for respdt. No. 4 has, therefore, applied for clarification of the operative part of the judgment. He has reproduced the operative part which was dictated in the open Court and which he had then noted. We have verified the same from the record maintained by the Steno and we have found that there is much substance in what Mr. Masodkar has submitted. We accordingly direct that paragraph 11 of the judgment dated 15th January, 1986 be deleted and instead the following be added as operative part of the judgment:

"The resolution dated 3rd August, 1984 is quashed by writ of certiorari. The respondent Nos. 1 and 2 will however, be entitled to dispose of the items in question in accordance with law and in accordance with the usual procedure available to them. No order as to costs."

The writ if already issued in the present form of the order, the same may be recalled and the writ in accordance with the present operative part of the order be issued.