
(1993) 03 CAL CK 0055
In the Calcutta High Court
Case No : Matter No. 3416 of 1992

Omega Traders India

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1), 226(2)

Citation : (1994) 1 CALLT 321

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Dipankar Bose and Makhan Roy, for the Appellant; Tapas Banerjee and Ashoke Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—The writ application was taken up for hearing on 19th February, 1993, and again on 24th February, 1993, on the preliminary question as to whether this court had jurisdiction to entertain the same. Inasmuch as, on both the days no one appeared on behalf of the writ petitioners, I had no alternative but to request Dr. Tapas Banerjee, Mr. Ashoke Sarkar appearing with him, for the respondent No. 3, to make submissions on the preliminary question raised by him. "

2. Appearing for the Mahanagar Telephone Nigam Ltd., the respondent No. 3 in the writ petition, Dr. Tapas Banerjee submitted that having regard to the grievance of the petitioner in the writ petition, this court had no jurisdiction to entertain the writ petition, as neither any part of the cause of action had arisen within the State of West Bengal nor were any of the principal respondents amenable to the territorial jurisdiction of this court. Dr. Banerjee pointed out that the petitioner's grievance was against the respondent No. 3 which was located outside the territorial jurisdiction of this court. Dr. Banerjee submitted that merely by impleading the Union of India, the petitioner could not bring the writ petition within the territorial jurisdiction of this court, since no relief had been

sought for against the Union of India.

3. Dr. Banerjee pointed out that for the purpose of invoking the jurisdiction of this court, certain averments had been made in the writ petition.

4. Dr. Banerjee first referred to paragraph 1 of the writ petition wherein it had been stated that the petitioner No. 1 is a partnership firm registered in Calcutta. In paragraph 4 of the writ petition it has been stated that, although the petitioner has business in cities, other than Calcutta, the entire business of the petitioner No. 1 is controlled and coordinated and supervised from its office at Calcutta at 16A, Synagogue Street, Calcutta, In paragraphs 5 and 6 of the writ petition it has been stated that the business of the petitioner No. 1 in cities other than Calcutta is financed from the Calcutta Office and that the petitioner No. 1 has its main Bank Account with International Banking Branch of U.Co. Bank at Red Cross Place, Calcutta-1.

5. In paragraph 11 of the writ petition it has been opening of a Telecom Centre at the Kanishka Shopping Plaza, 19 Ashoka Road in New Delhi, had been widely circulated in Calcutta. The petitioners have further contended in paragraph 16 that the form for applying for allotment of a Telecom Centre at Kanishka Shopping Plaza had been filled in at 16A, Synagogue Street, Calcutta.

6. Dr. Banerjee pointed out that it was the petitioner's further case that the petitioner No. 1 was duly selected by the respondent No. 3 from amongst various other applicants and it was directed to make certain deposits for being allotted the Telecom Centre at Kanishka Shopping Plaza in New Delhi. According to the petitioners, such Telecom Centre has already been set up at 2 Kanishka Shopping Plaza at 19, Ashoka Road in Delhi and the same is being operated from the said premises. It is the petitioner's case that the said Telecom Centre has been financed by the Calcutta Office of the petitioner No. 1 and that the proceeds of the said Centre, after deducting the revenue expenses, are transmitted regularly to the head office of the petitioner No. 1 at Calcutta. It is the petitioner's further case that the business of the Telecom Centre of the aforesaid premises at Delhi is controlled and coordinated from Calcutta.

7. Dr. Banerjee pointed out that in paragraph 47 of the writ petition certain averments have been made along the lines mentioned hereinbefore to show that this court had jurisdiction to entertain the writ petition. One of the other grounds taken in the said paragraph is that the impugned action of the respondent would have seriously prejudicial consequences and cause losses to the petitioners within the jurisdiction of this court.

8. Dr. Banerjee submitted that having regard to the principles laid down in various decisions both of this court and the Supreme Court, it could not by any stretch of imagination be said that any part of the cause of action for the writ petition arose within the jurisdiction of this court.

9. In support of his aforesaid submissions Dr. Banerjee firstly referred to a Single

Bench decision of this court in the case of Kajaria Exports Ltd. and Another Vs. Union of India (UOI) and Others, . In the said case it was decided by the learned Single Judge that the mere fact that the petitioner's Registered office was situated at Calcutta and that the petitioner company made correspondence with foreign sellers therefrom and the foreign sellers also made correspondence with the Calcutta Office and the price of the goods was paid from Calcutta Office, are wholly irrelevant for the purpose of ascertaining as to whether this court had jurisdiction to hear the matter. It was, therefore, held that when all the respondents were located outside the jurisdiction of this court and no part of the cause of action arose within the jurisdiction of this court, this court had no jurisdiction to entertain the writ petition.

10. The aforesaid view of the learned Single Judge was according to Dr. Banerjee subsequently approved by a Division Bench of this court in the case of Anant Plasma Private Ltd. and Anr. v. Union of India and Ors., which was said to have been disposed of by this court on 20th May, 1985. Dr. Banerjee also referred to the decision of another learned Judge of this court in the case of In Re: Bharat Sugar Mills Ltd. and Another, .

11. In view of the statements made in paragraph 11 of the writ petition that the advertisement inviting applications for allotment of the Telecom Centre at 2 Kanishka Shopping Plaza in New Delhi, had been widely circulated in Calcutta, Dr. Banerjee submitted that mere circulation of the advertisement could not give rise to a cause of action for filing a writ petition, but that steps taken subsequent to such advertisement would give rise to such cause of action. Dr. Banerjee pointed out that all steps to be taken in terms of the said advertisement were to be taken at Delhi and that, accordingly, mere circulation of the advertisement in Calcutta, would not vest this court with jurisdiction to entertain the writ application.

12. In the context of the statements made by him, Dr. Banerjee also referred to the decision of the Supreme Court in the case of Advocate General, Bihar v. M.P. Khair Industries, reported in AIR 1980 SC 947 and State of Rajasthan v. Swaika Properties, reported in 1985 SC 1289. Dr. Banerjee also referred to the decision of another learned Judge of this court in the case of D.P. Prakash and Anr. v. Collector of Customs & Central Erase, Shillong, reported in 1974 CLJ 27. In the said case, this court had occasion to consider the publication of the Official Gazette in which the impugned notification had appeared in Delhi and not in Calcutta. The learned judge took the view that circulation of a notification in an Official Gazette by itself is not a part of the cause of action for filing a writ application.

13. Referring to yet another Single Bench decision in the case of Bijoli Grill Aerated Water Company and Anr. v. Union of India and Ors. reported in 1990(2) CHN 4 Dr. Banerjee submitted that it was held in the said case that no cause of action could be said to have arisen within the territorial jurisdiction of this court as the respondents who really mattered were outside the territorial jurisdiction of this court.

14. Dr. Banerjee urged that since in the present case no part of the cause of action had arisen within the State of West Bengal and that since all the respondents are located outside the jurisdiction of this court, this court had no jurisdiction to entertain the writ petition which was liable to be dismissed for want of territorial jurisdiction.

15. After Dr. Banerjee had finished his arguments, I had kept the matter "for orders" on 5th March, 1993. On 5th March, 1993, when the matter was taken up, Mr. Dipankar Bose, learned advocate, appeared on behalf of the writ petitioners and submitted that the writ petition was maintainable before the Calcutta High Court despite the fact that the allotment of a new Manned Pay Phone with STD/ISD facilities was to be made in Delhi. Mr. Bose canvassed three grounds in support of his aforesaid submission. Mr. Bose firstly submitted that the maintainability of the present writ application was not dependent solely on the advertisement published by the respondent No. 3 on 15th February, 1992, inviting applications for Manned Pay Phone with STD/ISD facilities, Mr. Bose submitted that the petitioner had already been allotted a Manned Pay Phone at 2, Kanishka Shopping Plaza, 19, Ashoka Road, New Delhi, and that in the event any fresh Manned Pay Phone booth of the aforesaid nature was granted in or around the said shopping plaza, the petitioner would be adversely affected. Mr. Bose submitted that the advertisement was not the entire cause of action for moving the Calcutta High Court, but that it was part of a bundle of facts arising out of the earlier allotment made in the petitioners' favour, which gave the Calcutta High Court jurisdiction to entertain the writ application.

16. Mr. Bose then submitted that since the allotment of Pay Phones by the respondent No. 3 amounted to a contract, the application made by the petitioner for such allotment of a Manned Pay Phone amounted to an offer which also conferred jurisdiction on the Calcutta High Court to entertain the writ application.

17. In support of his said submissions, Mr. Bose referred to a decision of the Bombay High Court in the case of *Bombay Steam Navigation Co. Ltd. Vs. Union of India*, . In the said case, a learned Single Judge of the Bombay High Court was considering the question as to whether leave granted to the plaintiff under Clause 12 of the Letters Patent to file a suit in the Bombay High Court had been correctly given, in view of the fact that the acceptance of the offer made by the plaintiffs from Bombay was at Belgaum. In the said case the offer was made from Bombay to the defendant at Belgaum by a letter written by the plaintiffs to transport certain logs of teak wood from the Kanara Forest to Marmagaoa and from Marmagaoa to Karachi. The offer of the plaintiff was accepted by the defendants by their letter posted from Belgaum. In the said case it was contended that in such circumstances no part of the cause of action had arisen in Bombay and, therefore, leave ought not to have been granted under Clause 12 of the Letters Patent.

18. While considering the aforesaid question, the learned Single Judge held that the acceptance of the offer having been communicated to the plaintiff at

Bombay, it must be held that there was a continuing acceptance of the offer until it reached the offerer at Bombay. The learned Judge thereupon held that since the acceptance of the offer was communicated to the plaintiffs at Bombay, the initial offer made from Bombay must be held to be a part of the cause of action conferring jurisdiction on the Bombay Court to entertain the plaintiff's suit.

19. While considering the said question, the learned Single Judge of the Bombay High Court relied on a Division Bench decision of this court in the case of *Dhanmal Marwari Vs. Messrs. Jankidas Baijnath* where it was held that a part of the cause of action arises where the offer is made, although, the contract may be concluded elsewhere, and a suit would, therefore, be maintainable where such offer was made, having regard to the provisions of Section 20(c) of the Code of Civil Procedure.

20. Mr. Bose then submitted that the place where payment is made also determines jurisdiction for instituting legal action. Mr. Bose submitted that payment in respect of the earlier Pay Phone booth allotted to the petitioner, at Delhi had been made by the Petitioners from their Calcutta Office. Mr. Bose submitted that when the first Pay Phone booth had been allotted to the petitioners, the entire transaction had been financed by their Calcutta office and all payments had been incurred by the Calcutta office of the petitioners. Mr. Bose submitted that the payment in respect of the earlier allotment of a Telecom Centre at 2, Kanishka Shopping Plaza 19 Ashoka Road, New Delhi, had been made by three Bank Drafts taken out at Calcutta. Mr. Bose submitted that the fact that such payment had been from Calcutta and that the petitioners' Telecom Centre at Delhi is being financed by the Calcutta office of the petitioners, and since the subsequent allotment in terms of the advertisement published on 15th February, 1992, is likely to adversely affect the petitioners, the Calcutta High Court had jurisdiction to entertain the writ application.

21. In this behalf, Mr. Bose firstly referred to a decision of the Madras High Court in the case of *The Karur Vysia Bank Ltd., Coimbatore Vs. Ramachandra C. Oza and Others*, , Mr. Bose pointed out that in the said case it had been held that the issuance of the cheque in question would form part of the cause of action for filing a suit and that the suit could be instituted where the cheque had been issued since in order to prove any dispute relating to the said cheque, it would have to be proved with reference to the place from where it had been issued.

22. Mr. Bose also relied on a decision of this court in the case of *Delhi Cloth and General Mills Co. Ltd. Vs. Ramjidas Shriram and Others*, . In the said case it was held by a learned Single Judge of this court that a suit based on Hundies filed in Delhi High Court in respect of the Hundies drawn at Delhi and accepted at Calcutta, was maintainable at Delhi since a part of the cause of act on had arisen in Delhi where the Hundies had been drawn.

23. Mr. Bose submitted that in line with the decisions cited by him, it should also be held that the Calcutta High Court had jurisdiction to entertain the present writ

application.

24. Mr. Bose next submitted that loss of business would also give rise to cause of action for instituting a legal action. Mr. Bose submitted that it had been averred in the writ petition that the profits of the Telecom Centre of the petitioners at Delhi were remitted to the Calcutta office of the petitioners and that if any new Pay Phone booth was to be allotted near the existing Pay Phone booth of the petitioners, then the petitioners would suffer loss of business and the petitioners' office at Calcutta would be adversely affected.

25. In support of his said submission, Mr. Bose referred to and relied on a Bench decision of this court in the case of *Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another*, . In the said case it was held that loss of business must be held to be part of the bundle of facts relating to cause of action which conferred territorial jurisdiction to entertain a legal action. Mr. Bose pointed out that in the said case the Division Bench had held that since the petitioners had pleaded loss of business at Calcutta in the writ petition, such averment prima facie disclosed that a part of the cause of action arose in Calcutta.

26. Mr. Bose then submitted that the decisions cited by Dr. Tapas Banerjee were distinguishable on facts from the Bench decision referred to above in that in the said decisions no averment had been made as to the petitioners suffering any loss in respect of their business at Calcutta. Mr. Bose submitted that in the absence of such averment it could not be contended that a part of the cause of action had arisen in Calcutta. But once such averment was made, it must be held to be a part of the bundle of facts giving rise to a cause of action for filing a legal action.

27. Replying to the submissions of Mr. Bose, Dr. Banerjee submitted that the earlier allotment of a Pay Phone booth made in favour of the petitioners could not give rise to a cause of action in support of a subsequent allotment. Furthermore, the earlier contract between the parties had been concluded and once the contract had been concluded, the offer out of which such contract arose lost its significance and relevance.

28. As to the Division Bench decision in the case of *Union of India v. Hindusthan Aluminium Corporation Ltd.* (supra), Dr. Banerjee submitted that the principles enunciated in the said case had been distinguished in the subsequent cases referred to by him. Dr. Banerjee further submitted that since the present writ application was in respect of a totally new offer made by the respondent No. 3, the same could have no bearing with the earlier writ application. Accordingly, loss of business could not be pleaded as a ground for maintaining the present writ application.

29. Dr. Banerjee pointed out that in the *Hindusthan Aluminium Corporation Ltd.* case, the Division Bench was considering the validity of the Aluminium Control Order, 1970, which had resulted in loss to the Hindusthan Aluminium Corporation

Ltd. at Calcutta and in the facts of that case this court held that loss of business arising out of the said Control Order gave rise to a cause of action for filing the writ petition in the Calcutta High Court. Dr. Banerjee pointed out that the loss of business referred to in the said decision was in the context of the Control Order and that gave the Calcutta High Court the jurisdiction to entertain the writ application since the Hindusthan Aluminium Corporation Ltd. was situated in Calcutta and would suffer loss of business at Calcutta as a result of the said Control Order. Dr. Banerjee pointed out that the decision in the said case has been distinguished in the cases cited by him on the ground that "cause of action" is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

30. Dr. Banerjee pointed out that the advertisement giving rise to the present writ application may have been given publicity in Calcutta, but such publication would not give rise to cause of action for filing a writ petition.

Considering the submissions made on behalf of the respective parties, I have no hesitation in accepting the arguments advanced by Dr. Banerjee on behalf of the respondent No. 3. In my view, there can be no doubt that the grievance of the writ petitioners is directed not against the Union of India, but against the respondent No. 3, which has a distinctly separate identity from the Union of India, as a registered company under the Indian Companies Act, 1956.

31. I am also of the view that no part of the cause of action for the writ petition arose within the State of West Bengal which would enable the petitioners to move the Calcutta High Court. The submissions made on behalf of the petitioners in this regard are not acceptable to me since the offer inviting applications for allotment of a Manned Pay Phone was made from Delhi in respect of an allotment to be made in Delhi. Furthermore, at the time when the writ application was moved, no new appointment had been made on the basis of such offer, whereby the principle of "Continuing Acceptance" referred to in the decision of the Bombay High Court in the case of *Bombay Steam Navigation Co. Ltd. v. Union of India* (supra) could be made applicable to the facts of this case. For the same reason, the decision of the Division Bench of this court in the case of *Dharmal Marwari* (supra) is also not applicable to the facts of the present case.

32. As far as the submissions made on behalf of the writ petitioners relating to payment is concerned, such stage has not yet been reached, since no allotment has yet been made. Payment effected in respect of the earlier allotment cannot be said to be a part of the cause of action for the present case. The submissions made on behalf of the writ petitioners and the decisions cited in this regard are, therefore, of no assistance to the petitioners in the facts of the present case.

33. As to the submissions made on behalf of the writ petitioners with regard to the loss of business and the Bench decision of this court in the *Hindalco* case, it has to be kept in mind that loss of business in a particular case and in a particular set of facts may give rise to a cause of action for filing a legal action in

a particular place, but such loss of business has to be considered in the light of the surrounding facts and cannot be considered in isolation for the purpose of determining the jurisdiction of a court to try a particular case. Furthermore, the subject-matter of challenge in the Hindalco case were several orders passed by the Central Government under the Aluminium Control Order, 1970, passed u/s 3 of the Essential Commodities Act, 1955. In the present case, no relief has been sought for by the petitioners against the Union of India, but against a company situated at Delhi inviting applications for allotment of a Pay Phone booth in Delhi. This is one of the factors which distinguishes the present case from the facts of the Hindalco case and makes the decision therein in applicable to the present case.

34. In my view, none of the conditions specified in sub-Articles (1) and (2) of Article 226 of the Constitution are satisfied in the present case, and it must be held that this court has no jurisdiction to entertain this writ application.

35. Accordingly, the writ application is dismissed as being not maintainable before the Calcutta High Court. This will not, however, prevent the petitioners from moving the Courts at Delhi, if they are so advised.

36. I make it clear that I have not gone into the merits of the writ application in view of the fact that the same is being disposed of on the point of maintainability alone.

37. There will be no order as to costs.

38. All parties are to act on a xerox signed copy of this judgment.