
(2014) 07 CAL CK 0005
In the Calcutta High Court
Case No : W.P. No. 5360(W) of 2014

Pankaj Panwar

APPELLANT

Vs

Lalit Kala Akademi

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 16, 21
Constitution of India, 1950 — Article 12, 226, 226(2)

Citation : AIR 2015 Cal 67 : (2014) 3 CALLT 418

Hon'ble Judges : D. Datta, J

Bench : Single Bench

Advocate : Arunabha Ghosh, Anindya Lahiri, P. Roy, Mainak Ganguly and Pushpal Chakraborty, Advocate for the Appellant; V.S.R. Krishna, S. Tiwary and Kaushik Chanda, Advocate for the Respondent

Judgement

Dipankar Datta, J.—A public notice was published by the Lalit Kala Akademi, the first respondent (hereafter the Akademi) in the Hindustan Times, an English daily having wide circulation in West Bengal, in its issue dated January 11, 2014. Upon an order passed in this behalf by the Chairman of the Akademi, the third respondent, it was sought to be notified by such notice that "Disciplinary Committee has been set up by the Akademi in compliance with Government/High Court orders to inquire into complaints against General Council Members who have violated Code of Conduct rules by promoting themselves/relatives in Akademi activities giving priority to personal needs over Akademi activities" and that "all concerned are hereby informed that the Competent Authority of Lalit Kala Akademi vide his order dated 07.01.2014 issued under clause 17(11) of the Akademi Constitution has passed the following orders in respect of the General Council Members mentioned below." The notice contained names of number of persons who had either been censured or otherwise penalised. In respect of Sri Mukul Panwar, one of several persons who were proceeded against, the following punishment had been awarded:

Censure for all times. Recovery of loss to the Akademi due to his unauthorised

visit to various countries. Withdrawal of National Award to his brother Pankaj Panwar including plaque and recovery of Award money. Publication in National Print media for information to public at large.

2. The challenge in this writ petition dated February 13, 2014 presented by Sri Pankaj Panwar is to that part of the public notice whereby he has been visited with penalty, viz. withdrawal of national award including plaque and recovery of award money and information thereof to the public, without being called upon to participate in any proceedings that might have been drawn up.

3. Preliminary objection to the maintainability of this writ petition has been raised by Mr. Krishna, learned counsel for the Akademi and its several officers who have been impleaded as respondents. According to him, the decision which has resulted in the petitioner feeling aggrieved was taken in New Delhi and since no part of the cause of action for presenting this writ petition has arisen within the territorial limits of this Court, it ought not to be entertained and merits dismissal.

4. I may place on record that no objection to the maintainability of the writ petition on the ground that the Akademi is not a "State" within the meaning of Article 12 of the Constitution was raised by Mr. Krishna. In fact, he submitted that a writ petition questioning the action of the Akademi would be maintainable at the instance of the petitioner in the Delhi High Court.

5. Upon hearing the parties on the preliminary objection, I had proposed to the parties to go ahead with their arguments on the merits of the petitioner's claim observing that the preliminary objection would be dealt with while passing the final order on the writ petition. Mr. Krishna did not agree, and requested that the preliminary objection be decided first. The indication was clear and hence judgment on the preliminary objection was reserved. I would now proceed to dispose of the preliminary objection.

6. The petitioner is presently Professor of the Department of Sculpture, Kala Bhavan, Viswabharati University, Santiniketan, District Birbhum, West Bengal. His attainments in the field of art and sculpture have been given in details in paragraph 1 of the writ petition. It is claimed by him that although he was a member of the "Advisory Committee and Jury Member for National Exhibition of Art in respect of" the Akademi, he was "never a Member of the General Council, Executive Board, Finance Committee and Standing Committee" of the Akademi.

7. In paragraph 4 of the writ petition, the procedure for grant of national awards by the Akademi has been delineated while the following paragraph is the narration of his work of art being an exhibit in the 47th National Exhibition and selection of the same for National Akademi award, ultimately conferred on him in November, 2004. He had been awarded a plaque and award money as acknowledgement of the grant of award.

8. Paragraphs 6, 8, 9, 16 and 18 being relevant for a decision on the issue of

territorial jurisdiction of this Court, are reproduced hereunder:

6. The petitioner states that he was astonished to find a publication made in various English National Newspapers viz. the Hindustan Times and others from where he acquired knowledge that while purporting to implement a punishment against one Mukul Panwar, it had been announced that the National Award granted to the petitioner, including the plaque would be withdrawn and the award money granted to the petitioner along with the national award be recovered from him. It transpires from such publication that the petitioner was erroneously construed to be the brother of such Mukul Panwar against whom the punishment was awarded. In this regard it is specified that Mukul Panwar is not the uterine brother of the petitioner and as such does not fall within the direct relations of the petitioner. The petitioner suffered the tremendous damage to his reputation at his present place of residence as his image and reputation in the estimation of the persons knowing him has been lowered and irreparable loss has been caused to the character of the petitioner. It is stated that since the newspapers where the publications have been made have a very wide circulation throughout all the States of this country including West Bengal, hence the reputation of the petitioner has been lowered in all the places where the persons knowing the petitioners has read the article. *****

8. The petitioner states that he was at no point of time served with any communication or notice granting him opportunity to explain his position. The order dated 07.01.2014 which has been claimed to have been issued under Clause 17(11) of the Constitution of the Akademi was not served upon the petitioner, and till date the petitioner is not aware of the contents of such order which appears to be the basis of the publication of the notice. The petitioner states that he has made a demand for justice dated 31.01.2014 wherein he has agitated this issue.

9. The petitioner states that before causing such irreparable injury to the reputation of the petitioner by publication of the public notice he was not granted any opportunity informing him about the possibility of the withdrawal of the award granted to him or publication of such notice and as such the entire process is vitiated by non-compliance of the principle of natural justice.*****

16. The petitioner states that till date he has not been served or formally informed about the withdrawal of National Award including the plaque and recovery of award money, which discloses the arbitrary and mala fide intention of the Chairman, Lalit Kala Akademi against the petitioner.*****

18. The petitioner states that he originates from a family which is having a background in the field of creativity and art. The parents of the petitioner had been the students of Viswabharati, Shantiniketan and the petitioner has also devoted his entire life for development of the contemporary art and the impugned publication has caused prejudice and loss of reputation to the petitioner, for which he holds the Chairman of the respondent no. 1 responsible.

9. The petitioner has also pleaded in paragraph 24 of the writ petition how and in what manner, according to him, the cause of action for invoking the writ jurisdiction of this Court has arisen. Relevant extracts from such paragraph read as under:

24. ****Moreover, the publication of the punishment in the National Newspapers viz., Hindustan Times causing the tremendous loss of reputation of the petitioner amongst his known circle has been caused and felt by the petitioner within the jurisdiction of this Hon''ble Court. The petitioner has suffered the tremendous loss of reputation within the jurisdiction of this Hon''ble Court which has prompted the petitioner to challenge the impugned publication. Due to the above circumstances the cause of action for instituting the instant writ petition has arose within the territorial jurisdiction of this of this Hon''ble Court.

10. Written notes of arguments were filed by Mr. Krishna, where it is contended there that these pleadings are not sufficient to hold that at least a part of the cause of action has arisen in West Bengal for invocation of this Court's writ jurisdiction. While countering the claim of the petitioner that his reputation has taken a beating as a result of the newspaper publication, an argument has been advanced that "publication of advertisements do not create a cause of action for preferring writ petitions under Art. 226". It also appears from such written notes that two other persons, similarly penalized like the petitioner, had invoked the jurisdiction of the Allahabad High Court but faced with the objection of lack of territorial jurisdiction, the writ petitions were withdrawn and leave obtained to move the appropriate High Court. In support of the arguments relating to lack of territorial jurisdiction, heavy reliance has been placed on the following decisions of the Supreme Court:

- (i) State of Rajasthan and Others Vs. Swaika Properties and Another,
- (ii) Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others,
- (iii) National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others,
- (iv) Alchemist Limited and Another Vs. State Bank of Sikkim and Others, and
- (v) Election Commission, India Vs. Saka Venkata Subba Rao and,

11. Whenever an objection of lack of territorial jurisdiction is raised, the decisions in Swaika Properties (supra) and Utpal Kumar Basu (supra) are invariably cited by the objector. No Court, much less the Calcutta High Court, can choose to decide any matter touching the point of territorial jurisdiction before it ignoring the said decisions.

12. Bare perusal of the said decisions together with the decisions referred to therein would leave none in doubt that the Calcutta High Court incurred the displeasure of the Supreme Court on more occasion than one and had been at the receiving end between the mid-eighties and the mid-nineties, admonition having flowed thick and fast from the Supreme Court for entertaining writ

petitions which ought not to have been entertained for lack of territorial jurisdiction, or where the Court proceeded to grant ex parte ad interim order of injunction on the first day the writ petition was moved and in effect granted substantial relief claimed in the writ petition at the interlocutory stage.

13. Twenty-nine years and twenty years have passed since the decisions in *Swaika Properties* (supra) and *Utpal Kumar Basu* (supra) respectively were rendered. Calcutta High Court, the oldest High Court of the country and a mother figure for all associated with it, has silently borne the ignominy for days, months and years, which many wonder whether it really deserved or not. Not only has the admonition of the Calcutta High Court by some very erudite Supreme Court judges left an indelible stigma on the functionality of its justice delivery system and the conduct of judges thereof, which is hard to obliterate, attribution of perceived misdemeanour of a particular judge to the Calcutta High Court as a whole is an aspect that militates against the solidness of character shown by the judges for whom it has been a matter of great pride to adorn the Bench, as well as the high attainments and rich traditions this Court has been known for. Now that heavy reliance has been placed on the said decisions by the respondents and a tendency to browbeat the Court based thereon is discernible to ensure that proceedings progress as per their desire, the urge to share the thoughts that have reverberated through the long corridors of the Calcutta High Court over the years is felt before the preliminary objection is decided.

14. The discussion must begin with a caveat. It is indeed not within my province to answer the questions that are posed, for, it is well known that a High Court judge would not be justified either in law or on considerations of judicial discipline and comity to show disrespect to any order or direction made by the Supreme Court or to question the propriety of such order/direction, either when the said judge is called upon to apply the law laid down therein for deciding an issue before him or while betraying remissness in compliance therewith. Trite it is that if such course were permissible, it would have the effect of destroying the hierarchical system in the administration of justice under the Constitution and the people bound to lose faith in the system. The ratio decidendi of a decision given by the Supreme Court on a point of law has to be loyally accepted by the High Court, unless of course there are sufficient grounds for the High Court to hold that there is an additional or different fact before it which makes a world of difference between conclusions in two cases even when the same principles are applied in each to similar facts. That each judge of a court of record is bound to maintain high standards of judicial conduct in Court cannot be gainsaid. Respect for any order/direction of a superior court, in view of the present dispensation, must flow as a matter of course for achieving the common good, irrespective of what a judge lower in the hierarchy believes about the necessity or the lack of it for passing such order/direction. However, bearing in mind the fact that this writ petition does not involve compliance with any direction by a superior court and with due deference to the learned judges of the Supreme Court whose decisions would fall for consideration at the instance of the respondents, parties like them

who attempt to steal a march over their adversary by simply citing the decisions in *Swaika Properties* (supra) and *Utpal Kumar Basu* (supra) as if the ratio thereof were to be blindly relied on in each case where an objection to the maintainability of a writ petition on the ground of territorial jurisdiction is raised before the Calcutta High Court, must be deterred by sending the message loud and clear that each case requires decision on its own factual matrix vis-a-vis the law applicable thereto and not by mere awe and reverence that a celebrated decision of the Supreme Court would generate.

15. The decision in *Swaika Properties* (supra) is considered first. It deals with two important points. One is with regard to erroneous assumption of jurisdiction by the Calcutta High Court and the other pertaining to its making an ex parte ad interim order on the mere asking.

16. Insofar as the ex parte ad interim order made by the learned judge is concerned, the relevant passages from the said decision are quoted below:

2. It is somewhat strange that a learned single Judge of the Calcutta High Court (****, J.) should have by his order dated March 13, 1984 entertained a petition under Art. 226 of the Constitution filed by the respondents, issued a rule nisi thereon requiring ***** and passed an ad interim ex parte prohibitory order, restraining them from taking any steps.***** We are distressed to find that the learned single Judge despite a long line of decisions of this Court starting from *Siliguri Municipality and Others Vs. Amalendu Das and Others*, deprecating the practice prevalent in the High Court of passing such interlocutory orders for the mere asking, should have passed the impugned orders in the manner that he did. It seems that the pronouncements of this Court have had little effect on the learned single Judge.

9. It is to be deeply regretted that despite a series of decisions of this Court deprecating the practice prevalent in the High Court of passing such interlocutory orders for the mere asking, the learned single Judge should have passed the impugned ad interim ex parte prohibitory order the effect of which, as the learned Attorney General rightly complains, was virtually to bring to a standstill a development scheme of the *****, irrespective of the fact whether or not the High Court had any territorial jurisdiction to entertain a petition under Art. 226 of the Constitution. Such arbitrary exercise of power by the High Court at the public expense reacts against the development and prosperity of the country and is clearly detrimental to the national interest.

10. Quite recently, Chinnappa Reddy, J. speaking for the Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, administered strong admonition deprecating the practice of the High Court of granting ad interim ex parte orders which practically have the effect of the grant of the main relief in the petition under Art. 226 of the Constitution irrespective of the fact whether the High Court had any territorial jurisdiction to

entertain such a petition or whether the petition under Art. 226 was intended and meant to circumvent the alternative remedy provided by law or filed solely for the purpose of obtaining interim orders and thereafter delaying and protracting the proceedings by one device or the other particularly in matters relating to public revenue or implementation of various measures and schemes undertaken by the Government or the local authorities for general public benefit. Although the powers of the High Courts under Art. 226 of the Constitution are far and wide and the Judges must ever be vigilant to protect the citizen against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore there is always the need to use such extensive powers with due circumspection. There has to be in the larger public interest an element of self-ordained restraint. We hope and trust that the High Court will determine the extent of its territorial jurisdiction before making such interlocutory orders.

(words highlighted in bold font by me)

17. By the long line of decisions post *Amalendu Das* (supra), the Bench obviously meant the decision in *Dunlop India Ltd.* (supra) referred to in paragraph 10 of its decision and I suppose, the decisions in *Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others*, (dated March 27, 1984); *Samarias Trading Co. Pvt. Ltd. Vs. S. Samuel and Others*, (dated November 9, 1984); and *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, (dated April 13, 1983), which are all referred to in *Dunlop India Ltd.* (supra).

18. While setting aside the interim order of the Calcutta High Court restraining Siliguri Municipality from recovering a graduated consolidated rate, the Supreme Court in *Amalendu Das* (supra) observed that a levy or an impost does not become bad as soon as a writ petition is instituted assailing the levy and normally the High Court should not, as a rule, in proceedings under Article 226 of the Constitution grant any stay of recovery of tax except under very exceptional circumstances; the grant of stay in such matters should be an exception and not a rule.

19. In *Oswal Woollen Mills Ltd.* (supra), the Supreme Court observed that the interim order under challenge was of a drastic character having great potential for mischief and had the effect of practically allowing the writ petition at the stage of admission without hearing the opposite parties. The Court was of the further opinion that the nature of stay might have devastating consequences leaving no way of undoing the mischief and that granting interim relief straightway and leaving it to the respondents to move the Court to vacate the interim order would put public interest in jeopardy. Caution was sounded that the Courts ought to be circumspect in the matter of granting interim relief, more particularly so when interim relief was directed against the orders or the actions of public officials acting in discharge of their public duty and in exercise of statutory powers. On facts and in the circumstances, the Court was satisfied that no interim relief should have been granted by the Calcutta High Court in the terms in which it was done and the same was set aside.

20. Titaghur Paper Mills Co. Ltd. (supra) was a decision not relating to grant of ex parte ad interim order. The Supreme Court, by such decision, upheld dismissal of the writ petition by the Orissa High Court on the ground of availability of an alternative remedy to the affected party who presented the writ petition.

21. The Supreme Court in Dunlop India Ltd. (supra) severely criticized the Calcutta High Court for making an interim order as soon as the writ petition was presented, when a second thought (or a second's thought) would have exposed impairment of the public interest. Referring to earlier decisions, the Court held that the interim directions made by a learned judge granting the benefit of exemption of little less than rupees three crore and directing release of goods on a bank guarantee being furnished were wholly unsustainable and should never have been made because no governmental business or for that matter no business of any kind can be run on mere bank guarantees. It was remarked that an interim order could be made restraining realization of government revenue when there is not the slightest indication of a likelihood of prejudice to the public interest.

22. The Calcutta High Court again ran into rough weather for entertaining an oral application and granting an ex parte ad interim order staying further proceedings in connection with an auction of a liquor shop at Rangat, Middle Andamans in Samarias Trading Co. (supra). The learned judge who entertained the oral prayer of the writ petitioner S. Samuel had also entertained the writ petition of Swaika Properties. The Supreme Court deprecated the practice prevalent in the Calcutta High Court of entertaining oral applications, followed by recording of an undertaking from the learned advocate for the writ petitioner that a written petition would be filed over the next couple of days, without even insisting for a petition in skeletal form and without even recording what led the party to approach the writ court and what were the prima facie reasons for grant of an ad interim order. However, despite noticing that such practice of moving oral applications were not prevalent in the High Courts of Karnataka, Madhya Pradesh, Andhra Pradesh and Rajasthan and the Patna, Madras and Bombay High Courts, the Supreme Court endorsed that in exceptional cases an oral application could be moved and urgent interim order issued on the basis of a skeletal application setting out the bare facts and the points involved, with permission to file a detailed application later.

23. Reverting to Swaika Properties (supra), it may be noted that the decision in Amalendu Das (supra) was delivered by the Supreme Court on January 6, 1984. The other decisions, which may have been in the mind of the Bench included in "the long line of decisions" and referred to above, were all delivered between March 27, 1984 and November 30, 1984. Internet connectivity was unknown in 1984 and I guess, in those days, the judges of all the High Courts could have a first look at decisions of the Supreme Court as and when the same were reported in the available journals like Supreme Court Reports, All India Reporter and Supreme Court Cases. Considering the lack of promptness in reporting reportable

decisions in those days, it is highly unlikely that Amalendu Das (supra) may have been reported prior to March 13, 1984 when the rule nisi was issued and ex parte injunction ordered by the learned judge of the Calcutta High Court on the writ petition of Swaika Properties. Having regard thereto, one is left to wonder whether the observations made by the Supreme Court (as expressed in paragraphs 9 and 10 extracted supra, that exercise of power was arbitrary and issuance of a rule nisi together with a prohibitory order by the Calcutta High Court were in disregard of the caution sounded by the Supreme Court in the long line of decisions), were not too harsh qua the circumstances. One cannot say for certain, but it could well be so that the learned judge may not have had the opportunity to be aware of the caution sounded by the Supreme Court in the long line of decisions, and passed a prohibitory order seemingly in disregard but possibly in ignorance thereof.

24. That apart, perusal of the decision in Swaika Properties (supra) reveals the view that:

It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under S. 52(2) for the grant of an appropriate writ, direction or order under Art. 226 of the Constitution for quashing the notification issued by the State Government under *****.

25. The aforesaid extract was preceded by the following words:

The mere service of notice under S. 52(2) of the Act on the respondents at ***** 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 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 Art. 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated ***** issued by the State Government under 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.

(words highlighted in bold font by me)

26. It would, therefore, appear from the above extract that the Court introduced a new concept of "integral part of the cause of action", which "must depend upon the nature of the order impugned giving rise to a cause of action" as a test for determining whether cause of action had arisen within the territorial limits of a High Court or not. Such concept may not have been propounded in any decision of the Supreme Court prior to the decision in Swaika Properties (supra). On the contrary, the Courts all along seem to have proceeded on the fundamental principles that a suitor is dominus litis, and that where a law permits a suitor to

institute a suit on the basis of accrual of the cause of action, either in whole or in part, the Court within whose jurisdiction a small fraction of the cause of action has arisen would be entitled to receive the suit. However, without being oblivious of Section 16 of the CPC (hereafter the CPC), it may be stated that different considerations would arise in regard to exercise of writ jurisdiction even in regard to immovable property related disputes in view of clause (2) of Article 226 of the Constitution read with Section 141 of the CPC. The said decision brought about a significant development of law, for testing the point of maintainability of a writ petition presented on the basis of accrual of a part of cause of action within the territory of a particular High Court, from the angle that service of any and every notice on a litigant would not entitle him to approach the Court within whose jurisdiction the notice was received but that service of such notice must form an integral part of the cause of action within the meaning of clause (2) of Article 226 i.e. it must have a nexus or relevance with the lis that is involved in the case. The use of the adjective "integral" before "part of cause of action" tends to suggest that even if a part of cause of action may have arisen within a High Court's territorial limits, the same would not suffice unless a nexus or relevance with the lis of the case is established and the High Court has to be sure that an integral part of the cause of action had arisen empowering it to receive the writ petition and to try it. The concept that unless an integral part of the cause of action arises within the territorial limits of a Court would be akin to no part of the cause of action having arisen, was perhaps propounded for the first time in the decision in *Swaika Properties* (supra) and, therefore, one cannot but surmise whether the Calcutta High Court (for entertaining the writ petition of *Swaika Properties ex parte*) could be taken to task for not reasonably comprehending application of a test which hitherto before none had applied.

27. Significantly, the learned judge of the Calcutta High Court while issuing the rule nisi did not have the benefit of considering the version of the State of Rajasthan that the facts betrayed lack of bona fides on the part of the writ petitioner *Swaika Properties* in relation to the acquisition process, which was one other ground for the Supreme Court to hold that the writ petitioner by its conduct had disabled itself to exercise of discretionary jurisdiction in its favour.

28. *Utpal Kumar Basu* (supra) is the other decision where the Supreme Court severely criticized the Calcutta High Court for entertaining and deciding a writ petition despite not having territorial jurisdiction. After discussing the case set up in the pleadings and holding that even if the same were accepted as correct no part of the cause of action had arisen within the jurisdiction of the Calcutta High Court so as to enable the learned judge to entertain the writ petition filed by *NICCO*, reliance was placed on the decision in *Swaika Properties* (supra). It would be important at this stage to bear in mind what exactly the Supreme Court said in paragraph 12 of its decision. The relevant portions of such paragraph are quoted hereunder:

12. *****Notwithstanding the strong observations made by this Court in the

aforesaid decision and in the earlier decisions referred to therein, we are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made time and again, some of the learned Judges continue to betray that tendency. Only recently while disposing of appeals arising out of SLP Nos. 10065-66 of 1993, Aligarh Muslim University v. Vinay Engineering Enterprises (P) Ltd., this Court observed: "We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction." In that case, ***** it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation.

(words highlighted in bold font by me)

29. A second decision of the Supreme Court that is as overtly critical of the conduct of members (read judges) of a High Court as the one under consideration may not have seen the light of the day. The contents of this paragraph border on attributing "motives" to the judges. There may have been some black sheep here and there (and one could find them even beyond the territorial limits of the Calcutta High Court) but, on facts and in the circumstances, did the Calcutta High Court and the concerned learned judge deserve this treatment?

30. The passage extracted above tends to suggest that the Bench was distressed and pained because Swaika Properties (supra) and other decisions referred to therein were not considered. Apart from the fact that Swaika Properties (supra) did not refer to any earlier decision on the point of territorial jurisdiction [it had referred only to Dunlop India Ltd. (supra), which in turn had referred to certain other previous decisions referred to hereinabove on the point of grant of interim relief on the mere asking resulting in the final relief being granted, either on a

written application or an oral application], one would be inclined to form an opinion reading the discussions in paragraph 13 of the report, dealing with Section 21 of the CPC. The relevant passage reads thus:

13. The submission of the learned counsel for NICCO based on Section 21 of the CPC that even if this Court comes to the conclusion that the High Court of Calcutta had no jurisdiction, this Court should, in the absence of proof of prejudice, refuse to interfere with the decision of the High Court unless it is otherwise found to be erroneous. While the spirit of Section 21 of the CPC may support such a submission, we are afraid, the discretion cannot be used in favour of a party which deliberately invokes the jurisdiction of a court which has no jurisdiction whatsoever for ulterior motives. *****

31. Whatever were the reasons for the Supreme Court not exercising discretion in favour of NICCO, the fact that the respondents had submitted to the jurisdiction of the learned judge without even giving the slightest inkling that the Calcutta High Court lacked territorial jurisdiction to entertain the writ petition of NICCO might have led His Lordship to proceed to hear the parties on the merits of their respective claims without adverting attention to the point of territorial jurisdiction and raising it even suo motu.

32. One also finds reference in Utpal Kumar Basu (supra) to the decision in Aligarh Muslim University v. Vinay Engineering Enterprises (P) Ltd., arising out of SLP Nos. 10065-66 of 1993. On the date the decision in Utpal Kumar Basu (supra) was pronounced, the decision in Vinay Engineering Enterprises (P) Ltd. (supra) was not reported in any journal or else the Bench would not have referred to the SLP No. The decision is since reported in : (1994) 4 SCC 710, and the text thereof immediately precedes the report of Utpal Kumar Basu (supra).

33. The decision in Vinay Engineering Enterprises (P) Ltd. (supra), which was rendered by a Bench of three Hon"ble Judges of which the author of the decision in Utpal Kumar Basu (supra) was the presiding judge, is no less curt. Exercise of jurisdiction by the Calcutta High Court was condemned by the words "this is a case of abuse of jurisdiction". However, the writ petition of NICCO was decided by the High Court barely three months after the decision in Vinay Engineering Enterprises (P) Ltd. (supra) and in the absence of the same being reported, the learned judge may not have had the occasion to notice it.

34. One common feature of the decisions in Swaika Properties (supra) and Utpal Kumar Basu (supra) is that the Supreme Court was approached by the aggrieved party direct, without carrying the relevant impugned order before the Division Bench in writ appeal. It also does not appear from the decision in Vinay Engineering Enterprises (P) Ltd. (supra) whether the Division Bench was approached or not. Who knows, the relevant Division Bench of the Calcutta High Court, if approached, might have set things right upon hearing the aggrieved appellant.

35. It is the view of the Supreme Court itself that remarks or observations made

by the High Court while exercising its power of superintendence in relation to a member of the subordinate judiciary, which are avoidable or uncalled for, should be avoided. This is because of the simple reason that the same, apart from being capable of leading the member to a sense of frustration or having the effect of demoralising him, shakes the very confidence of the people in judicial institutions. The Supreme Court has sounded caution that a judicial officer against whom aspersions are made in a judgment does not have the scope of appearing before a higher court to defend his order, and the judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against the lower judiciary [see *Braj Kishore Thakur Vs. Union of India*, Here, I am also reminded of the decision in *The State of Uttar Pradesh Vs. Mohammad Naim*, where a four-judge bench of the Supreme Court including two judges who had adorned the seat of judges of this premier institution had the sobriety and gentleness but firmness to observe as follows:

10. *** If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.

(words highlighted in bold font by me)

36. It is axiomatic that it is not for a High Court judge to say what the Supreme Court ought to or ought not to do. However, the variance in approach as discernible from the cases discussed above is conspicuous and might leave the judges in a quandary. No doubt, despite having the power of administrative and judicial superintendence over the lower judiciary, a High Court judge is to exercise care, circumspection, poise and restraint when faced with a challenge to an order that is atrocious; but the need for maintaining discipline on the judicial side and setting examples at all tiers ought not to be too different. If castigating members of the subordinate judiciary does no good to the system, by the same analogy castigating a High Court may also not bring about the desired result. Our

Constitutional scheme for the judiciary ordains that both the Supreme Court as well as the High Courts would be courts of record and, therefore, the view that the High Courts are subordinate to the Supreme Court, is not right. The minority view expressed in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, that "subordination of the High Court under the scheme of the Constitution was not only evident but also logical" has not been accepted as right by the Supreme Court in subsequent decisions. Even a decade back, the Supreme Court in *Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others*, has held that "in a unified hierarchical judicial structure" which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts and that there are a few provisions which give an edge and assign a superior place in the hierarchy to the Supreme Court over the High Courts. It has also been held there that if the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remains the elder brother only to the extent of exercise of appellate jurisdiction. Certainly the Supreme Court exercises a superior jurisdiction and, hence, is a superior court than the High Courts which exercises in that context an inferior or subordinate jurisdiction, but any institution dealing with another institution under the Constitution shall have to observe grace and courtesy and not criticize each other, and should it be necessary, the corrective step has to be taken carefully with courtesy and respect and not by way of harsh criticism.

37. Regard being had to the strict standards set by the Supreme Court itself, the question that is often asked is whether the criticism and castigation of the Calcutta High Court were not avoidable, and the disparaging remarks necessary for the decision of the cases by the Supreme Court as an integral part thereof? Portrayal of the Calcutta High Court, as if it were the only High Court to have indulged in entertaining writ petitions without territorial jurisdiction, and disclosure of the names of the concerned learned judges in *Swaika Properties* (supra) and *Utpal Kumar Basu* (supra) and the harsh criticism have left an indelible impact on the administration of justice in matters where territorial jurisdiction has been in issue, leading to possible deflection of justice. Notably, subsequent reported cases where the Supreme Court interfered with decisions of other High Courts either declining interference on the ground of lack of territorial jurisdiction or entertaining a writ petition despite having no jurisdiction are not rare, but the Supreme Court has preferred not to name the learned judge whose order was interdicted. It is true that the Supreme Court in *National Textile Corporation Ltd.* (supra), while arriving at the conclusion that the Division Bench erred in holding that the Calcutta High Court had territorial jurisdiction and upholding the order of the single judge refusing to entertain the writ petition, did not name the author of the decision of the Division Bench under challenge before it. The records say that by then, the author had been elevated as a judge of the Supreme Court.

38. Be that as it may, judges being humans, all are not possessed of the same

qualities and probably each suffers from one or the other disability. It is difficult, if not impossible, to find a judge who is an exception and suffers from no disability at all. Insofar as judgments are concerned, I doubt as to whether any judge, who has been on the bench for quite some time and has delivered judgments in numbers, can claim that none of his judgments has ever been overruled or upset by a superior court. The Supreme Court itself has acknowledged that a judge who has not committed an error is yet to be born [see V.K. Jain Vs. High Court of Delhi through Registrar General and Others, and Mona Panwar v. High Court of Judicature of Smt. Mona Panwar Vs. The Hon''ble High Court of Judicature at Allahabad and Others, To err is human, is an age old adage and none is infallible. The decision in Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, where suspension of fundamental rights of citizens by a Presidential Order was upheld by the majority, thereby approving that the judiciary could, in certain circumstances, be rendered impotent by the executive, is one decision of the Supreme Court that is famous for the wrong reasons. One of the most respected Chief Justices the Supreme Court has ever had, Hon''ble M.N. Venkatachaliah, C.J. (as His Lordship then was) in a lecture delivered by His Lordship on February 25, 2009 observed that the same "should be confined to the dustbin of history."

39. ADM, Jabalpur (supra) may not be a stray incident of the learned judges of the Supreme Court committing an error, but an error when detected and rectified ex debito justitiae is doing what is right. That precisely is the reason why a mistake is reviewed in exercise of inherent powers and justice administered. In the words of the Supreme Court itself, to own up the mistake when judicial satisfaction is reached does not militate against its status or authority; perhaps it would enhance both [see A.R. Antulay Vs. R.S. Nayak and Another, What emerges is that the judiciary is manned by none other than human beings and even though those who are elevated as High Court judges are mature, wise and prudent persons, who have the independence to express their mind and are bound by their oath to uphold the Constitution and the laws, there could be situations where a judge might miss an evidence or misinterpret the law and based on his erroneous perception of law or facts or both, an erroneous decision is rendered making a party to the lis feel aggrieved. A judge is entitled to form his own views and if at all his view is patently erroneous and there is no material to doubt his integrity, it may not always be right to view it as anything more than an aberration. The point that resonates with relevance and immediacy is that a sweeping generalisation based on personal perceptions and impressions, apart from being far from fair and just, might result in more disservice than service to the institution and affect the independence of the judiciary as a whole. It would be perfectly justified for a superior court to criticise a judgment that is assailed before it, if it appears to be clearly wrong, but criticism of the author of the judgment might prove to be counter-productive in the administration of justice. It would be equally unfair to single out a particular High Court for admonition for any perceived misdemeanour of any of its judges. If misbehaviour or misconduct

is detected, the course mandated by the Constitution without anything more should follow against such judge instead of giving the High Court a bad name, and the error committed by him undone in course of an appeal.

40. It may sound parochial but robbing the Calcutta High Court of its pristine glory has created a situation which could not have been overlooked by anyone owing to the institution a great debt of gratitude. It is time for the silenced voice to be heard and to signal the resurgence of the "terribly independent" Calcutta High Court.

41. Turning to the objection at hand, it must be decided in view of the pleadings and not on the basis of the conclusions reached in *Swaika Properties* (supra) and *Utpal Kumar Basu* (supra) that the Calcutta High Court assumed a jurisdiction that it did not possess. The decision in the former case never laid down the law that receipt of a notice within the territorial limits of a High Court is not sufficient to clothe such Court with jurisdiction. On facts, it was found that it was not necessary to plead the service of the notice. What the Supreme Court said was that the receipt of the notice, in order to confer jurisdiction on the Calcutta High Court, must have been an integral part of the cause of action. In the latter case, every event or incident material for a decision on the lis was held to have occurred beyond the territorial limits of the Calcutta High Court and even if the averments in the writ petition were taken as true, it could not be said that any part of the cause of action arose within the jurisdiction of the Calcutta High Court.

42. Here, the facts are different. Although the decision to withdraw the honour that was earlier conferred on the petitioner was taken in New Delhi, the chain of events could not have been complete without the public notice being published in terms of the direction of the Chairman. There cannot be any doubt that the contents of the public notice itself bears a vital link in the entire chain of events commencing from grant of award to the petitioner with plaque, initiation of proceedings for withdrawal, and the decisions to withdraw the award and the plaque and to notify the public including the petitioner the decision regarding withdrawal, ultimately culminating in the paper publication wherefrom the petitioner could come to know of the impugned decision resulting in consequences, as alleged.

43. The claim of the petitioner that this Court has territorial jurisdiction is also based on the situs of affectation of rights. Mr. Krishna has referred me the decisions in *National Textile Corporation Ltd.* (supra) and *Alchemist* (supra). The reasons for upsetting the judgment and order of the Division Bench of the Calcutta High Court are recorded in paragraphs 12 and 12.1 of the decision in *National Textile Corporation Ltd.* (supra). It is clear that the point based whereon the Division Bench had held that part cause of action had arisen within its territorial limits was found by the Supreme Court not to have been pleaded in the writ petition, and that mere carrying on of business by the writ petitioner at Calcutta or receipt of correspondence in Calcutta were not integral part of the cause of action. Although in *Alchemist* (supra) the point of consequence of the

letter of revocation was raised [paragraph 8(vii) of the decision], the Supreme Court held, while affirming the order of the High Court holding the writ petition to be not maintainable before it, that none of the facts pleaded constitute essential, integral or material facts so as to constitute a part cause of action within the meaning of Article 226(2) of the Constitution. The decisions are, therefore, distinguishable on facts.

44. It cannot be disputed that whether or not cause of action in part has arisen within the territorial limits of a particular High Court has to be examined having regard to the facts and circumstances of the case as well as what is pleaded in support of the claim, irrespective of what the defence of the adversary is. Each case must therefore be decided on its peculiar facts and the nature of infringement of right that the aggrieved voices in his writ petition.

45. Hon''ble Chittatosh Mookerji, J. (as the Hon''ble Chief Justice then was) while authoring the Division Bench decision of this Court in Everest Coal Co. Pvt. Ltd. Vs. Coal Controller and Others, ruled as follows:

5. The question whether or not cause of action, wholly or in part, for filing a writ petition has arisen within the territorial limits of a particular High Court ought to be also decided in the light of nature and character of proceedings under Article 226 of the Constitution. Every High Court has jurisdiction to issue directions or orders or writs for enforcement of Fundamental Rights and for "any other purpose". The pertinent question would be whether within the limits of the High Court in which a writ application has been filed, any of the facts which would entitle the petitioner to obtain relief under Article 226 of the Constitution has arisen. In other words, in order to maintain his writ application the petitioner has to establish that within the territorial limits of the court's jurisdiction prima facie a legal right claimed by him has been either infringed or is threatened to be infringed by the respondents. Such infringement may take place by causing him actual injury or threat thereof. Accordingly, when the impugned act of the respondents takes effect within the territorial jurisdiction of a particular High Court, it may entertain the writ petition of the person aggrieved notwithstanding that the respondents have the offices or residences outside its territorial jurisdiction. An order has been made by an authority or person at a place beyond the territorial limits of a particular High Court but the same is given effect to against the petitioner within the said High Court's jurisdiction. In such a cause, at least a part of the cause of action arises, where the impugned order is implemented. Thus, when an order becomes effective only when it is communicated or served, the service of the order of receipt of a notice thereof would form part of cause of action for filing a writ petition by the person aggrieved thereby (vide *Damomal Kausomal Raisinghani Vs. Union of India and Others*, *The State of Maharashtra Vs. Sarvodaya Industries*, A Division Bench of this court in *Umasankar v. Union of India* 86 CWN 355 (para 18) held inter alia that an order of dismissal had become effective only when the same was served at Calcutta and therefore, this Court had jurisdiction to entertain the writ petition

(see the decision of A.K. Sen, J. in the case of Serajuddin and Co. Vs. The State of Orissa and Others, , where a notice revoking a lease of a mine in Orissa was served upon the petitioner at Calcutta). Although the Division Bench in the case of Serajuddin & Co. v. State of Orissa 71 CWN 61, on another point reversed the ultimate decision of A.K. Sen, J., the Division Bench did not over rule the learned trial Judge's finding about accrual of cause of action of notice upon the petitioner at Calcutta. The Supreme Court in the case of State of Rajasthan v. M/s. Swaika Properties (supra), has pointed out that mere service of notice would not give rise to cause of action unless service of a notice was integral part of the cause of action. In other words, service of such notice must give occasion for filing the writ petition. For the purpose of accrual of cause of action for filing a writ petition, it is also necessary to make a distinction between actual or apprehended injury to the writ petitioner and indirect effect or remote consequences upon him. Obviously, for giving rise to cause of action for filing writ petition what is material is whether or not within the territorial limits of the said High Court, there has been any proximate or direct effect upon the petitioner. Indirect or remote result of the impugned acts of the respondents cannot be pleaded for establishing that cause of action, either whole or in part, had arisen within the territorial limits of a particular High Court.

(underlining for emphasis by me)

46. In Umasankar (supra), Hon'ble M.M. Dutt, J. (as His Lordship then was) speaking for a Division Bench of this Court held that an order of dismissal or removal from service is effective on the authority concerned as soon it is sent out, but so far as the Government servant is concerned, it becomes effective only when he is apprised of it either by oral communication or by actual service of it upon him; consequently, the order of removal became effective when the appellant (employee) received it through post office in Calcutta, he having no prior knowledge of the same by any other means, and part cause of action arose in Calcutta conferring jurisdiction on this Court to entertain the writ petition. This view was taken bearing in mind the decisions of the Supreme Court in State of Punjab Vs. Amar Singh Harika, State of Punjab Vs. Khemi Ram, and B.J. Shelat Vs. State of Gujarat and Others,

47. These decisions have stood the test of time and provide guidance that is invaluable.

48. To hold that service of an order or a notice on the addressee would never give rise to a cause of action to move the Court within whose territorial limits the order/notice is received, may not be reasonably sound. If service of an order or a notice is an event of substance i.e. an event which is a material, essential or integral part of the lis connected with the action that is impugned in a writ petition, there is no plausible reason as to why the same should not be construed as constituting a material, essential or integral part of the cause of action. The plea of affectation of right or interest by reason of such order/notice being served, if based on a substantial fact forming a part of the bundle of facts

constituting the cause of action, would indeed be relevant for determination of the question as to whether the writ petition ought to be entertained or not. Here, the decision to withdraw the award and the plaque from the petitioner was never communicated to him prior to the public notice being published in the print media and it is such publication, the only one in the series to make the public aware of the penalty imposed on the petitioner, that vitally affects the reputation and respect that he has earned over the years. Such affectation having taken place in Santiniketan, where the petitioner alleges he read the public notice for the first time and derived knowledge of the impugned decision of the Akademi (there being no material at least at this stage that the decision was formally served on the petitioner in any territory beyond West Bengal prior to the public notice being published), it is an integral, essential and material part of the lis constituting the cause of action to approach the Court and conferring jurisdiction on this Court to entertain the writ petition. The fact that the petitioners before the Allahabad High Court withdrew their writ petitions with liberty to approach the appropriate High Court is absolutely irrelevant and immaterial for a decision on the preliminary objection to the maintainability of this writ petition.

49. The preliminary objection, thus, stands overruled.

50. It has been admitted before me that the decision to withdraw the award and the plaque were taken behind the petitioner's back. I have also heard Mr. Krishna submit that since the decision to withdraw the honour is the subject matter of challenge in this writ petition, presently no interim order need be made as the impugned decision would not be immediately implemented. In view thereof, no interim protection is required and granted at this stage.

51. Place the writ petition under the heading "New Motion" on Monday next (July 14, 2014).

Urgent certified copy of this judgment and order, if applied for, may be furnished to the applicant at an early date.