(1992) 03 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No''s. 483 and 484 of 1992

Paras Corporation APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 142

Citation : (1993) 41 ECC 39 : (1993) ECR 50 : (1992) 61 ELT 409

Hon'ble Judges : K.S. Bhakthavatsalam, J

Bench : Single Bench

Advocate : Shri R. Thiagarajan, T. Muthuraman, A.K. Jayaraj and D. Gurumoorthy, for the Appellant; Shri C.A. Sundaram, Addl. C.G.S.C., for the Respondent

Judgement

1. Both the petitions are filed to quash the orders of adjudication passed by the Additional Collector of Customs, Bombay.

2. Notice of motion has been ordered in both the writ petitions on 21-1-1992.

3. Mr. C. A. Sundaram, the learned Additional Central Government Standing Counsel appears for the respondents and has filed a counter-

affidavit.

4. A preliminary objection has been taken by Mr. C. A. Sundaram, the learned Additional Central Government Standing Counsel that this Court

has no jurisdiction to entertain the writ petitions and that both writ petitions have to be dismissed in limine on that ground. He also relies upon a

decision of the Karnataka High Court in Trishala Shoes (P) Ltd. Vs. Union of India, and the decision in State of Rajasthan and Others Vs. Swaika

Properties and Another, , for the proposition. The learned counsel also states that even after the Amendment to the Constitution, 15th Amendment

Act, 1963, it cannot be said that this Court has got jurisdiction under Article 226 of the Constitution of India, interfere with the impugned order.

5. Mr. R. Thiagarajan, the learned Senior Counsel appearing for the petitioner, on the other hand, submits that the petitioner has got a branch

office at Madras and refers to Section 142 of the Customs Act which appears in Chapter XVI with regard to the recovery of the sum due to the

Government. The learned senior counsel also points out that where any duty or penalty is demanded from any person, an appropriate officer may

take action for the recovery of the amount payable to the Government. After referring to Section 142 of the Customs Act, the learned senior

counsel contends that even though the orders have been passed at Bombay, the impact will be known at Madras office. In short, the learned senior

counsel states that when the transaction would have taken place at the branch office at Madras, this Court has got jurisdiction under Article 226 of

the Constitution of India. He further points out that this court can entertain the writ petitions under Article 226 of the Constitution of India against

orders padded by the Collector of Customs at Bombay.

6. I am inclined to decide the question raised as the preliminary objection and so I am not to enter into the merits of the case. Article 226 of the

Constitution has been amended by the 15th Amendment Act, 1963 by which sub-section (2) to Article 226 has been inserted and it reads as

follows :

..... The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or persons 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.....

7. In view of this sub-clause, whether this Court has got the jurisdiction under Article 226 of Constitution of India is the question posed by the

learned counsel appearing for the respondents. Learned counsel for the respondents Department strenuously contends that by no stretch of

imagination, the petitioner herein can invoke the provisions under Article 226 of the Constitution of India. The learned counsel refers to me the bills of lading which have shown the address in Gujarat. The orders of adjudication have also been made by the Assistant Collector of Customs,

Bombay. In view of that the learned counsel for the respondents states that simply because a branch office is at Madras, it does not mean that the

petitioner can come to this Court and invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. The decision in Trishala

Shoes (P) Ltd. Vs. Union of India, arose in similar circumstances, and single Judge of the Karnataka High Court has held that the cause of action

in that case entirely arose out of Karnataka and in such circumstances it has held that the fact that the petitioner company is located within the State

has no relevancy at all to constitute a ''cause of action'' to challenge the levy of customs duty at Bombay. The Supreme Court had an occasion to

consider the issue raised on different situations. In a land acquisition proceedings, notice under Rajasthan Act was served on the owner at West

Bengal. The owner thought if fit to file a writ petition at Calcutta challenging the land acquisition proceedings. The Calcutta High Court entertained

the writ petition. On an appeal by the State, the Supreme Court in State of Rajasthan and Others Vs. Swaika Properties and Another, has held

that the rule nisi issued by the Calcutta High Court on the petition and the ad interim ex parte prohibitory order restraining the State Government

from taking any steps to take possession of the land acquired are liable to be set aside. In the above-mentioned case, the Supreme Court has

deprecated the practice which was prevalent in the Calcutta High Court and observed as follows :

(at p. 1292)

.... 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 of 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 benefit. Although the powers of the High Courts under Art. 226 of the

Constitution are far and vide 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 ....

8. In Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, the Supreme Court was considering the interim relief granted by

the Calcutta High Court. That was a case arose under Clause 8-B of Import (Control) Order, 1955 and an ex parte order passed by the Calcutta

High Court. Chinnappa Reddy, J. while dealing with a situation where the petitioner therein has come to a Court having its registered office at

Ludhiana in the State of Punjab and a branch office at Calcutta observed at p. 1265 as follows :

...... Having regard to the fact that the registered office of the company is at Ludhiana and the principal respondents against whom the primary

relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the

Delhi High Court. The writ petitioners however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs

which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of writ petitions

elsewhere than at a place where the concerned offices and the relevant records are located is to delay prompt return and contest. We do not

desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the

company is in the State of Punjab and all the principal respondents are in Delhi......

9. In that case the registered office of the Company was at Ludhiana and the principal respondents against whom the primary relief sought for were

at New Delhi and the writ petition was filed at the Calcutta High Court and as such the Supreme Court observed that the writ petition ought not to have been filed at Calcutta High Court. On the facts of this case, the head office is at Bombay and the branch office is at Madras and the bill of

lading has been made at Gujarat. So taking into account the facts and circumstances of the case, I am of the opinion that the preliminary objection

taken by the counsel for the Department has to be upheld and this Court cannot exercise its jurisdiction with regard to the orders impugned before

me.

10. Mr. R. Thiagarajan, the learned senior counsel appearing for the petitioners relies upon a judgment of the single Judge which is reported in

Atlas Exporters and another Vs. K.V. Irniraya, Accie., . When deciding the territorial jurisdiction to try the writ petition, the learned Single Judge

of the Bombay High Court in that case has held that the business of export was carried on in Bombay, that the impugned order has been passed by

the respondent therein in Delhi and that the consequences flowed from that order are visited upon the petitioner therein in Bombay and the

petitioners business of export being carried on in Bombay are virtually affected. I am of the view that on the facts of this case, it cannot be said that

the decision of the learned Single Judge of the Bombay High Court in the above-mentioned case is right in holding that the Bombay High Court has

got jurisdiction in that case. That is not the case here. I have already narrated the facts in the earlier portion of this order and I do not think that it

need be repeated. I think the view taken by the Karnataka High Court in Trishala Shoes (P) Ltd. Vs. Union of India, has to be followed in this

case also. So also a Division Bench of the Delhi High Court has also held with regard to the territorial jurisdiction in AIR 1968 Delhi 225. In my

view the inaction or action of the Central Government should have a reasonable nexus, within the High Court jurisdiction, to the cause pleaded by

the petitioner to entitle the petitioner to move to a particular High Court. The fact that the petitioner is a local person and he is carrying on his trade

activities within the State by way of having a branch office itself is not enough to create a ""cause of action"" to invoke the extraordinary jurisdiction

of this Court under Article 226 of the Constitution of India. A reference to the decision in L.V. Veeri Chettiar and Another Vs. Sales Tax Officer,

Bombay, can be usefully referred to. In that case, a Division Bench of this Court has observed as follows (at p. 160) :

..... Cause of action"" has always been understood as referable to the bundle of facts in a legal proceeding and if a limb of that bundle of facts is

available, seen or discernible in one particular place which is a seat of the High Court, then such High Court has the power to exercise all the

powers conferred on it under Article 226(1A) notwithstanding the fact that the authority against whom the ultimate rule has to be issued and whose

act has created a cause of action as a whole or in part, is situate outside its territorial limits. The person primarily affected by the respondent issuing

the notices from time to time to the petitioners and calling upon them to produce the accounts of their business carried on in the State of Tamil

Nadu and again by proposing to assess them to the best of his judgment on the assumption of certain jurisdictional facts, is the addressee of such

notice and such affection relates to the bundle of facts in the totality of the list or proceeding concerned, and such impact necessarily gives rise to a

cause of action, though it may be in part. It is established that in fiscal laws a proposal to assess forms part and parcel of the machinery of

assessment and thus understood, the service of notice to assess and calling upon the petitioner to explain has given rise to a cause of action as is

popularly and legally understood and the machinery of assessment has been set in motion and the impact of that motion is felt by the petitioners

within the territorial limits of this State. We have therefore no hesitation in holding that a part of the cause of action has arisen in the State of Tamil

Nadu.

11. This is not the case here. The view I take that this Court cannot entertain the petitions filed by the petitioner under Article 226 of the

Constitution Of India and proper remedy would be to move the High Court at Bombay or Gujarat if it so advised. Therefore, the writ petitions

stand dismissed. No costs.

