

(2020) 08 MP CK 0296

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10307 Of 2020

Pradeep Singh Bhadouria

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 16, 32, 136, 226, 226(2), 227, 323A, 323B

Army Act, 1950 — Section 28, 46(a), 47, 52(1), 52(2), 164(2)

Citation : (2020) 08 MP CK 0296

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Shiva Nand Mishra, Vivek Khedkar

Final Decision : Dismissed

Judgement

In the wake of unprecedented and uncertain situation due to outbreak of the Novel Corona virus (COVID-19) and considering the advisories issued by the Government of India, this petition has been heard and decided through video conferencing to maintain social distancing. The parties are being represented by the respective counsel through video conferencing, following the norms of social distancing/ physical distancing in letter and spirit.

The present petition is being filed challenging the order dated 27.11.2019 passed by the General Court Martial and subsequent confirmation order dated 11.02.2020 passed against the petitioner whereby the petitioner has been sentenced with rigorous imprisonment for three years. It is submitted that the petitioner is undergoing rigorous imprisonment in Central Prison, Hyderabad. Being aggrieved by the aforesaid order, the petitioner has preferred a statutory appeal as provided under Section 164 (2) of the Army Act, 1950 before the appellate authority on 06.07.2020 alongwith an application for suspension of the sentence and release of the petitioner from Central Prison, Hyderabad but as the appellate authority is not functioning at present, therefore, the petitioner has

filed the present petition challenging the aforesaid orders alongwith an application under Section 389 of the Cr.P.C. praying for suspension of the sentence. It is alleged that the petitioner has already undergone the imprisonment for more than two and half years out of total three years imprisonment, therefore, looking to the present scenario of Covid-19 pandemic as the the appellate authority is not functioning regularly, this petition may be considered for grant of suspension of sentence.

Learned counsel for the respondents has opposed the petition on the ground of territorial jurisdiction. It is contended that this Court is having no territorial jurisdiction to entertain the writ petition. It is argued that the orders impugned were passed at Hyderabad, therefore, the petition before High Court of M.P., Bench at Gwalior is not maintainable. Even otherwise the appeal has already been preferred by the petitioner, the petitioner may approach the appellate authority and prays for a suspension of the sentence. It is argued that in similar circumstances, the Coordinate Bench of this Court has considered the similar aspect in W.P.No.25402/2019 (Shaikh Ilyas Vs. Union of Indian & Ors.) and has dismissed the writ petition for want of territorial jurisdiction. It is submitted that he has further relied upon the judgments passed by the Hon'ble Supreme Court in the case of State of Karnataka and Others vs. Ameerbi and Others, reported in 2007 (11) SCC 681 and Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, 2008 (3) SCC 456. It is argued that as the impugned orders are passed at Hyderabad, therefore, by no stretch of imagination it can be said that this Court is having territorial jurisdiction to entertain the writ petition. He has prayed for dismissal of the petition.

Per contra, learned counsel for the petitioner has heavily relied upon the judgment passed by the Hon'ble Supreme Court in the case of Balkrishna Ram Vs. Union of India & Anothers, Civil Appeal No.131/2020 dated 09.01.2020 wherein considering the judgment passed by the Hon'ble Supreme Court in the case of L.Chandra Kumar Vs. Union of India and Others, reported in (1997) 3 SCC 261 , the Hon'ble Supreme Court has held that in cases like that of the present petitioner the petitions can be filed anywhere in the country and the High Courts in the country are having territorial jurisdiction to entertain the writ petitions. It is submitted that he has relied upon the judgment passed by the Hon'ble Supreme Court in the case of L. Chandra Kumar (supra) wherein the following paras are as under:-

"90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If

such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a First Appellate Court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of Tribunals under Article 227 of the Constitution. In R.K. Jain's case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunals on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the afore-stated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

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93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the

Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

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99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

and has argued that in such circumstances, the present petition is maintainable

before this Court. It is further argued that the appeal is already pending consideration before the appellate authority. He will pursue the appeal but as the appellate authority is not functioning, therefore, he has prayed for consideration of this application under Section 389 of Cr.P.C. for suspension of the sentence.

Heard the learned counsel for the parties and perused the record.

From the perusal of the record, it is seen that the entire proceedings with respect to the Court Martial and inflicting punishment upon the petitioner were done at Hyderabad. The prosecution was initiated at Hyderabad. The proceedings which finally have ended up in Court Martial of the petitioner and subsequent conviction of the petitioner under Sections 46 (a) and 47 of the Army Act, 1950 for three years rigorous imprisonment. The orders were passed at Hyderabad. The petitioner has also preferred an appeal under Section 164 (2) of the Army Act, 1950 and the same is pending for consideration before the appellate authority.

The Hon'ble Supreme Court in the case of Dinesh Chandra Gahtori vs. Chief of Army Staff and another reported in (2001) 9 SCC 525 has held as under:-

"3. The appellant filed a writ petition before the High Court at Allahabad to quash a communication sent to his wife which stated that the appellant had been tried by a Summary Court Martial and had been found guilty of using criminal force against his superior officer and awarded the sentence of dismissal from service. The High Court dismissed the writ petition at the admission stage by holding:

"In view of the fact that the summary court- martial proceedings were conducted in the State of Punjab and orders were also passed in Punjab by the West Command, we are of the view that this Court has got no territorial jurisdiction to entertain this writ petition."

4. The writ petition was filed in 1992. The impugned order was passed in 1999. This is a fact that the High Court should have taken into consideration. More importantly, it should have taken into consideration the fact that the Chief of Army Staff may be sued anywhere in the country. Placing reliance only on the cause of action, as the High Court did, was not justified."

A coordinate Bench of this Court in the case of S.P. Tiwari Vs. UOI & Ors. reported in 2006 (II) MPJR 411 has held as under:-

"7. After hearing learned counsel for the parties on the preliminary objection, I am of the view that the preliminary objection in regard to territorial jurisdiction is devoid of any substance. In the case of Dinesh Chandra Gahtori (supra) the employee of the army staff was subjected to court martial and was awarded the sentence of dismissal from service. The High Court dismissed the writ petition at the admission stage by holding that the summary court martial proceeding were conducted in the State of Punjab and orders were also passed there and therefore the writ petition was dismissed on account of territorial jurisdiction. The decision of the High Court was assailed by Dinesh Chandra by filing petition in

the Supreme Court. The Supreme Court categorically held that the High Court should have taken into consideration the fact that Chief of Army Staff may be sued any where in the country and placing reliance only on the cause of action as the High Court did it was not found to be justified. The Apex Court allowed the appeal by setting aside the order of the High Court and directed the High Court to decide the petition on its own merit. The said decision of the Apex Court Dinesh Chandra Gahtori (supra) was placed reliance by the division bench of this court in the case of Ram Narain Singh (supra). In the present case also the impugned order Annexure P/3 was passed and served to the petitioner in Punjab, but, the important fact which cannot be marginalized and blinked away is that the Chief of the Army Staff can be sued anywhere in the country as held by the Supreme Court in the case of Dinesh Chandra (supra). On these premised reasons and by following the decision of Supreme Court in the case of Dinesh Chandra (supra) and the Division Bench decision of this Court Ram Narain Singh (supra), and preliminary objection in regard to the maintainability of this writ petition on the ground of territorial jurisdiction cannot be accepted and the same is hereby overruled and this petition is held to be maintainable."

The Division Bench of this Court in the case of Ram Narain Singh v. Chief of Army Staff and others reported in 2002 (2) J.L.J. 86 has held that the High Court having territorial jurisdiction over the place at which the decision on appeal is communicated to the petitioner, will have the jurisdiction.

From the plain reading of all above judgments, it is clear that the orders of dismissal were challenged by the persons concerned. In none of the petitions, none of the orders, which was passed during the service period of the persons concerned, was under challenge. The same are therefore distinguishable. Furthermore, in the present case it is not the claim of the petitioner that the impugned order was communicated to him at Gwalior, on the contrary, undisputedly the impugned order was communicated to the petitioner at a place falling within the territorial jurisdiction of State of West Bengal.

The words "cause of action" have not been defined, however, the words "cause of action" have been defined in Mulla's Code of Civil Procedure and approved by the Supreme Court in the case of State of Rajasthan Vs. Swaika Properties and another reported in (1985) 3 SCC 217, which reads as under:-

"8. The expression "cause of action" is tersely defined in Mulla's Code of Civil Procedure:

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court."

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52 (2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory

unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52 (1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226 (2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52 (1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52 (2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52 (1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52 (1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.

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 Urban Improvement Trust, Jaipur viz. Civil Lines Extension Scheme, irrespective of the fact whether or not the High Court had any territorial jurisdiction to entertain a petition under Article 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."

Article 226 of the Constitution of India confers the power upon the High Court to issue directions etc. in relation to the territories within which the cause of action wholly or in part arises for the exercise of such power.

The coordinate Bench of this court in the case of Prem Prakash Ambedkar vs. Union of India reported in 2001 (1) MPHT 176 has held as under:-

"12. From this passage it is clear that the cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a Court of law. From the above referred judgment it would clearly appear that unless the cause of action wholly or in part or an action which is an integral part of the cause of action comes into play within the territories of a particular Court, the said Court would have no jurisdiction. The petitioner has placed his reliance on a judgment

of Sikkim High Court in the matter of Brg. Kanwar Kuldip Singh Vs. Union of India and others, (1996) Vol. 2 All Indian Services Law Journal 72, to say that if a decision is conveyed to a particular person at the place of his residence, then the Court within whose jurisdiction such person resides would have the jurisdiction to entertain the lis. The case of M/s. Swaika Properties was taken into consideration in the said matter. Without being disrespectful to the Hon'ble Judge who decided the case in the matter of Brg. Kanwar Kuldip Singh (supra), I am bound to say that the judgment proceeded on certain wrong assumptions and mis-reading of the Supreme Court judgment in the matter of M/s. Swaika Properties. The Hon'ble Judge observed in the said case that the question of jurisdiction came up incidentally and the main point involved in the case was otherwise. It was also observed that the decision of the Hon'ble Apex Court made scattering remarks about the tendency of the Calcutta High Court to take up and pass ex party prohibitory orders in the matters which do not strictly fall within its territorial jurisdiction. The learned Judge lastly observed that the Apex Court did not strictly hold that service of notice would never give rise to cause of action. A fair reading of the judgment of the Supreme Court in the matter of Swaika Properties Ltd., would show that against the entertainment of the petition and grant of adinterim writ by Calcutta High Court, the State of Rajasthan felt aggrieved. The contention of the State Govt. before the Supreme Court was that the Calcutta Court had no jurisdiction. The question of jurisdiction did not come up incidentally, but in fact that was the sole issue before the Supreme Court. In the matter of Swaika Properties, the Supreme Court clearly observed that the Calcutta Court had no jurisdiction and if the petitioner (M/s. Swaika Properties) felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Govt. of Rajasthan under Section 52 (1) of the Act by a petition under Article 226 of the Constitution of India, the remedy of the respondents (M/s. Swaika Properties) for grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench where the cause of action wholly or in part arose. I am unable to concede to the judgment of the Sikkim High Court in the matter of Brg. Kanwar Kuldip Singh.

13.So far as the petitioner's residence is concerned, it would always depend upon his own choice. He may settle in any part of India, but his settlement would not clothe such Court within whose jurisdiction he is residing any territorial jurisdiction. It is only that the Court, where the cause of action either in whole or in part arises, would have the jurisdiction to hear and decide a lis."

(Emphasis Supplied)

The Supreme Court in the case of Oil and Natural Gas Commission vs. Utpal Kumar Basu reported in 1994 (4) SCC 711 has held as under:-

"6. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment

in his favour by the Court. In *Chand Kour v. Partab Singh* Lord Watson said:

"... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.

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8. From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages, to EIL, ONGC, etc., at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on 27-1-1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not

constitute an integral part of the cause of action. Besides the fax message of 15-1-1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27- 1- 1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court."

The Supreme Court in the case of *M/s Kusum Ingots & Alloys Ltd. vs. Union of India* and another reported in 2004 (6) SCC 254 has held as under:-

"25. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See *Bhagar Singh Bagga v. Dewan Jagbir Sawhany*, AIR 1941 Calcutta; *Mandal Jalan v. Madanlal*, (1945) 49 CWN 357; *Bharat Coking Coal Limited v. M/s Jharia Talkies & Cold Storage Pvt. Ltd.*, 1997 CWN 122; *S.S.Jain & Co. & another v. Union of India & others*, 1994 (1) CHN 445 and *M/s. New Horizon Ltd. v. Union of India*, AIR 1994 Delhi 126)."

The Supreme Court in the case of *Nawal Kishore Sharma vs. Union of India and Others* reported in (2014) 9 SCC 329 has held as under:-

"17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscle disease). As a result, the Shipping Department of the Government of India issued an Order on 12-4-2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the district of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, the appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing problem which forced him to stay in his native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he

received a letter of refusal disentitling him from disability compensation."

The Jammu and Kashmir High Court in the case of Jaswant Singh Vs. UOI and Ors. reported in 2017 LIC 2996 has held as under:-

"15. In view of the pleadings of the parties and the uncontroverted stand taken by the respondents in their objection, it is evident that no legal right of the petitioner has prima facie either been infringed or threatened to be infringed by the respondents within the territorial limits of this Court's jurisdiction. The petitioner has merely filed a statutory appeal during his tenure of posting at Jammu which does not amount to infringement of legal right of the petitioner within the territorial jurisdiction of this Court. Mere posting of the petitioner at the time of filing of the petition within the territorial jurisdiction of this Court taking into account the fact that entire action taken against the petitioner which is subject matter of challenge of this petition has been taken place beyond the territorial jurisdiction of this Court would not confer any territorial jurisdiction on this Court to entertain the writ petition. The decision relied on by the learned senior counsel for the petitioner in the case of Nawal 12 Kishor Sharma Supra has no application to the fact situation of the case as the appellant in the said case was suffering from serious heart ailment which forced him to stay in the native place. Besides that, it is pertinent to mention here that the respondents responded to his representations and the same were communicated to him on his home address in Bihar. In the instant case, the representation submitted by the petitioner from the State of Jammu and Kashmir have failed to evoke any response, therefore it cannot be said that any part of the cause of action has arisen within the territorial jurisdiction of this Court. In the aforesaid context, the Supreme Court has held that part of cause of action has arisen within the jurisdiction of Patna High Court, which is not the case here.

16. In view of conclusion arrived at by this Court that no part of cause of action has arisen within the territorial jurisdiction of this Court, it is not necessary to deal with the matter on merits. In the result, the writ petition fails. Needless to state that the petitioner would be at liberty to approach the appropriate forum for redressal of his grievances. (Emphasis Supplied)

The Hon'ble Supreme Court in the case of Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, 2008 (3) SCC 456 has held as under :-

"12. In Uttaranchal Forest Rangers' Assn. (Direct Recuirt) and Others v. State of U.P. and Others, reported in (2006) 10 SCC 346, this Court held:

"44. The second impugned order dated 12-4-2004 is further vitiated for the following reasons:

(a) Forum. The seniority list under challenge in the second writ petition was the seniority list of the Uttaranchal State Government of 2002 and such challenge could not have been made before the Lucknow Bench of the Allahabad High Court.

(b) Parties. None of the direct recruits who would be directly affected by the order were made parties to the writ petition. Therefore the High Court did not have the benefit of competing arguments in the matter. Even though, the Principal Secretary of the State of Uttaranchal was made a party, the said party was never served. The only respondent which was heard was the State of U.P. which had no stake in the matter at all since all of the writ petitioners before the Lucknow Bench of the Allahabad High Court were employees of the State of Uttaranchal on the relevant date. It is, therefore, evident that the relevant material was not placed before the Allahabad High Court for the purpose of deciding the writ petition. Accordingly, the permission had to be taken from this Court by the present appellants to prefer the SLPs."

These directions are authorities for the proposition that only that court will have jurisdiction within which, the entire cause of action had arisen. In this case, no part of cause of action arose within the jurisdiction of the Calcutta High Court.

13. In view of the decision of the Division Bench of the Calcutta High Court that the entire cause of action arose in Mugma Area within the State of Jharkhand, we are of the opinion that only because the Head Office of the appellant # company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court, particularly when the Head Office had nothing to do with the order of punishment passed against the respondent."

In the present case, admittedly the orders under challenged were passed at Hyderabad. The petitioner was convicted at Hyderabad. He is in custody in Hyderabad Prison. Therefore, there is no territorial jurisdiction to this Court to entertain the writ petition under Article 226 of the Constitution of India.

Considering the aforesaid judgments passed by the Hon'ble Supreme Court, this Court does not deem it appropriate to entertain the writ petition for want of territorial jurisdiction. Accordingly, the petition is dismissed.

The petitioner may pursue the pending appeal before the appellate authority and may pray for consideration of application under Section 389 of Cr.P.C. for suspension of sentence. The petition is dismissed with the aforesaid observations.

E-copy of this order be provided to the petitioner and E-copy of this order be sent to the trial Court concerned for compliance. It is made clear that E-copy of this order shall be treated as certified copy for practical purposes in respect of this order.