
(2000) 09 MP CK 0039
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5187/96

Prem Prakash Ambedkar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 226, 226(2)

Citation : (2001) 1 JLJ 261 : (2001) 1 MPHT 176

Hon'ble Judges : Mr. R.S. Garg, J

Bench : Single Bench

Advocate : Shri P.P. Ambedkar, for the Appellant; Smt. Indira Nair, for the Respondent

Final Decision : Dismissed

Judgement

R. S. Garg, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge his discharge from the Armed Forces on the ground that firstly he was wrongly retired, and secondly no proper opportunity was given to the petitioner before the discharge order was issued.

2. The details of the facts at this juncture are not necessary barring few facts. Undisputedly the discharge order was issued from Secunderabad and was ultimately served upon the petitioner who was serving at Pathankot. According to the petitioner, his wife had made a statutory complaint/appeal against unceremonious discharge of the petitioner and the petitioner also made a statutory appeal to the authorities, but his appeal has yet not been considered; while the appeal sent by his wife was rejected, and the order dismissing the appeal filed by wife was conveyed to him at Jabalpur. The petitioner says and submits that during his service tenure on two occasions he was posted at Jabalpur and when he was indisposed of, he was treated at Jabalpur, and as he is a permanent resident of Jabalpur, this Court has jurisdiction to hear and decide the petition.

3. On the other hand, the respondents have submitted that no part of cause of action ever accrued in Madhya Pradesh. According to them, the order was issued from Secunderabad and was executed at Pathankot (Punjab); simple communication relating to the dismissal of the statutory appeal would not confer any jurisdiction on this Court because information relating to the decision on an appeal would not be an integral part of the cause of action. It is further submitted by them that residence of the petitioner would not clothe this Court with the jurisdiction so also the earlier postings of the petitioner or his treatments at Jabalpur would also not confer any jurisdiction on this Court.

4. I have heard the parties on the question of jurisdiction of this Court.

5. Article 226(2) of the Constitution of India reads as under:

"The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

6. The words "cause of action" have been defined in Mulla's CPC and approved by the Supreme Court in the matter of State of Rajasthan and Others Vs. Swaika Properties and Another, The words mean "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". According to the Supreme Court "cause of action" is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. For conferring territorial jurisdiction upon a Court, the party approaching the Court must show that the cause of action wholly or in part arose within the territories of the said Court.

7. A bare perusal of Article 226(2) of the Constitution of India would show that the powers conferred by clause (1) of Article 226 to issue directions, etc. can 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. For conferral of the territorial jurisdiction a petitioner is duty bound to show to the Court that cause of action wholly or in part arose within the territories of the said Court.

8. Both the parties have placed their strong reliance upon the judgment of the Supreme Court in the matter of State of Rajasthan and Others Vs. Swaika Properties and Another, . The facts in the nut-shell were that certain properties belonged to one M/s. Swaika Properties which was a Calcutta base company; the said property situate at Rajasthan. The State of Rajasthan issued a notification under the provisions of Rajasthan Urban Improvement Act and caused service of the said notice on M/s, Swaika Properties at Calcutta. M/s. Swaika Properties, taking an exception to issuance of the notice, lodged a petition in Calcutta High Court. The Calcutta High Court not only entertained the petition, but even issued

an ad-interim prohibitory order against the State of Rajasthan. Being aggrieved by the said order, the State of Rajasthan filed an appeal before the Supreme Court. The Supreme Court, in the said matter, observed that mere service of a notice at Calcutta would not clothe the Calcutta High Court with any jurisdiction to entertain a petition under Article 226 of the Constitution of India. The Supreme Court observed that service of the notice u/s 52(2) of the Act on the respondents at their registered office at 18-B, Barbourne Road, Calcutta within the territorial limits of State of West Bengal could not give rise to a cause of action within the territory unless the service of such notice was an integral part of the cause of action. The Supreme Court further observed that the entire cause of action culminating in the acquisition of the land u/s 52 (1) of the Act arose within the State of Rajasthan that is within the territorial jurisdiction of Rajasthan High Court at Jaipur Bench. The Supreme Court was of the opinion that 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 of India must depend upon the nature of the impugned order giving rise to a cause of action. The Supreme Court ultimately held that the Calcutta High Court in the given set of facts could not exercise its jurisdiction under Article 226 of the Constitution of India.

9. The petitioner submits that a fair reading of the judgment in the matter of Swaika Properties (supra) would show that if the service of the notice or its effect or consequences are integral part of the cause of action, then the Court within whose jurisdiction the notices have been served would have jurisdiction to entertain a petition under Article 226 of the Constitution of India. Contending contrary to this submission, Smt. Nair, learned counsel for the respondents submits that a simple service of" the notice at the place of the residence of such a petitioner would not be integral part of the cause of action and as such this Court would have no jurisdiction.

10. The petitioner submits that Annexure P-5 an information relating to disposal of the appeal filed by the petitioner's wife was supplied to his wife at Jabalpur, therefore, this Court would have jurisdiction. He further submits that on two earlier occasions, he was posted at Jabalpur and as during his ailment, he was treated at Jabalpur, therefore, this Court would have the jurisdiction. He also submits that his movement order was issued after his discharge to come to Jabalpur, therefore, this Court would have jurisdiction. Smt. Nair, learned counsel for respondents submits that the information given to the wife cannot be treated to be an integral part of the cause of action and similarly his earlier postings at Jabalpur or his treatment at Jabalpur when he had suffered certain ailments would also not give any jurisdiction to this Court. She submits that as per the service conditions a retired or discharged employee is entitled to go back to his home-town at the State expenses, therefore, in accordance with the said policy if the movement order is given to such an employee to go to his home-town, the Court of home-town would have no jurisdiction. Relying upon the judgments of the Supreme Court in the matter of Aligarh Muslim University v. Vinay

Engineering Enterprises Ltd., (1994) 4 SCC 710 , and Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , and South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. and Others, . It is submitted that simple service of an order, notice or so would not confer jurisdiction upon the said Court. In the matter of Aligarh Muslim University, the Supreme Court observed that simply because the petitioner resided or was based at Calcutta, the Calcutta Court would have no jurisdiction under Article 226(2) of the Constitution of India. In the matter of Oil and Natural Gas Commission, the Supreme Court again observed that the mere fact that the petitioner-company had its registered office at Calcutta, the Calcutta Court would have no jurisdiction because the advertisements inviting tenders at Delhi for works to be executed at Gujrat, no cause of action or part of cause of action accrued in Calcutta territories.

11. In the matter of South East Shipping Company the Supreme Court also took into consideration the provisions of Section 20(c) of the Code of Civil Procedure. The facts in brief in the said matter were that a Bank Guarantee was executed at Delhi and was transmitted to Bombay. For purpose of the contract the Bank Guarantee was submitted at Bombay and when the Bank Guarantee was required to be encashed, a suit was filed in Delhi in the High Court on its original side. The single Judge of the High Court observed that it had no jurisdiction, but the Division Bench of the said High Court on an appeal held that as the Bank Guarantee was executed in Delhi and the payments were required to be made at Delhi, the High Court had the jurisdiction to try the suit. The defendant of the said suit took up the matter before the Supreme Court. The Supreme Court observed as under:--

"It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a Courts of law. The cause of action means, therefore, 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 claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. In view of the admitted position that contract was executed in Bombay, i.e., within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done within the jurisdiction of the Bombay High Court; merely because Bank Guarantee was executed at Delhi and transmitted for performance to Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original side of the Delhi High Court. The contention that the Division Bench was right in its finding and that since the bank guarantee was executed and liability was enforced from the bank at Delhi, the Court got jurisdiction, cannot be sustained."

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 Kuldeep 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 Kuldeep 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 parte 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 ad-interim 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 u/s 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 Kuldeep Singh.

13. A perusal of Annexure P-5 would show that this is a communication to the wife of the petitioner wherein she was informed that the discharge order of the JCO issued vide office letter dated 22nd October, 1985 was in order. A simple information about the decision on a matter would not confer any jurisdiction on the Court within whose jurisdiction such person resides or where, to such a person the information/order was communicated. Such an information would never constitute an integral part of the cause of action. So far as the facts of earlier posting of the petitioner at Jabalpur and his treatments at Jabalpur when

he was sick or indisposed of would again not confer any jurisdiction on this Court because during the services career/tenure a person may be posted at different places. If the petitioner's argument is conceded, it would lead to a chaotic condition. A person who is posted at different places would always claim jurisdiction at all different places which would not be in true spirit of Article 226(2) or Section 20 of the Code of Civil Procedure. So far as the movement order after the discharge is concerned, undisputedly it is a part of the service condition. When a person is removed, retired or discharged from the active services, he is offered a movement order so that he may go back to his home-town. This movement order is simply a facility in accordance with the service conditions and would not create or give rise to a cause of action either wholly or in part. The question of residence would again be not final for deciding whether the Court would have jurisdiction or not. 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.

14. In the considered opinion of this Court, the cause of action in whole or in part did not arise within the territorial jurisdiction of this Court. As such in view of the bar contained under Article 226(2) of the Constitution of India, I am unable to exercise my jurisdiction. The petition deserves to and is accordingly dismissed for want of jurisdiction.

15. It is, however, made clear that this Court is not making any observation on the merits of the matter.

16. Writ Petition dismissed.