

(2016) 10 MAN CK 0005
In the Manipur High Court
Case No : W.P (C) No. 23 of 2016

R. Rajasekaran

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226(2)

Citation : (2016) 151 FLR 1076

Hon'ble Judges : N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : S. Rajeetchandra, Advocate, for the Petitioner; S. Rupachandra, ASG and N. Jotendro, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.(CAV) - Heard Mr. S. Rajeetchandra, learned counsel for the petitioner, Mr. S. Rupachandra Singh for the respondents no. 1 to 3 and Mr. N. Jotendro, learned counsel the respondent no. 4.

2. The present writ petition has been filed by the petitioner seeking quashing of the enquiry pending against him. Various grounds have been raised by the petitioner in contending that the enquiry in the present state cannot continue. It has been contended, inter alia, that the statutory period for completion of the enquiry initiated against the petitioner under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 as provided under Section 11 (4) mandating completion of enquiry under Section 11(1) within a period of ninety days, has long been breached. The petitioner contends that the enquiry which was initiated in February 2015 has dragged on incomplete for more than a year, and having crossed the statutory limit cannot be legally permitted to continue and must be brought to an end. His other contentions are that because of the inordinate delay in concluding the enquiry, his promotional prospects have been also jeopardised. He also has alleged various other irregularities in the aforesaid enquiry apart from mala fide on the part of the

authorities.

3. The writ petition has been vigorously resisted by the official as well as the private respondents. While the averments and allegations in the writ petition have been specifically denied by the respondents, the respondents have taken a common plea that the present writ petition is not maintainable before this High Court on the ground of lack of territorial jurisdiction.

4. If this objection of the respondents is upheld, obviously, there would not be any necessity to go into the merit of the case so as to examine the various issues raised by the petitioner in this writ petition which will left to be decided by the competent Court or forum.

5. Since, this issue of lack of jurisdiction of this Court to entertain this writ petition has been raised, it should be determined first for which this Court needs to refer to the relevant facts to decide this issue.

6. The petitioner alleges as reflected in the pleadings that while the petitioner was posted as a Deputy Inspector General (DIG) in the Central Reserve Police (CRPF) in Jammu & Kashmir in 2014, he unearthed certain scam in the procurement of ration articles, liquor and pilferage of kerosene oil in Srinagar sector and was taking preventive measures and preparing to take departmental actions, a complaint of sexual harassment was filed by the Respondent no. 4 on 17.1.2015 against the Deputy Commandant under the petitioner accusing the petitioner of abetting the same. Consequently, an Enquiry Committee was constituted on 2.2.2015 to look into the matter. On being notified of the same, the petitioner pointed out various irregularities in the action initiated against him, the details of which may not be necessary at this stage to be referred to. He also alleged that because of this malicious allegation against him which is yet to be proved, the higher authorities have made adverse remarks in his annual reports jeopardising his promotional prospects. The petitioner then proceeds to state his grounds for challenging this enquiry initiated against him and filing this writ petition. No further relevant facts are spelt out in the writ petition.

7. Article 226 of the Constitution confers jurisdiction to the High Court to issue directions, writs, orders throughout the territories in relation to which it exercises jurisdiction for enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. Clause (2) of Article 226 provides that 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.

8. Thus the moot question to be decided in this petition is whether the cause of action, whether wholly or in part has arisen within the territorial jurisdiction of this Court to enable this Court entertain this writ petition. If any part of the

cause of action has arisen within the territorial jurisdiction of this Court, this petition will be maintainable.

9. As to the meaning and scope of the expression "cause of action" as found in Article 226 has been discussed in *Kusum Ingots & Alloys Ltd. v. Union of India*, (2004) 6 SCC 254 where the Hon"ble Supreme Court held that,

6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

10. In a recent judgment, the Hon"ble Supreme Court after taking a panoramic view of the law in this regard held in *Nawal Kishore Sharma v. Union of India*, (2014) 9 SCC 329 as follows:

12. In *Kusum Ingots & Alloys Ltd. v. Union of India*, (2004) 6 SCC 254, this Court elaborately discussed clause (2) of Article 226 of the Constitution, particularly the meaning of the word "cause of action" with reference to Section 20(c) and Section 141 of the Code of Civil Procedure and observed: (SCC p. 259, paras 9-10)

"9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter."

Their Lordships further observed as under: (*Kusum Ingots & Alloys Ltd. case*, SCC p. 264, paras 29-30)

"29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in *Lt. Col. Khajoor Singh v. Union of India*, AIR 1961 SC 532 has, thus, no application.

Forum conveniens

30. 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."

13. In *Union of India v. Adani Exports Ltd.*, (2002) 1 SCC 567, this Court held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction. Each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts are such which have a nexus or relevance with the lis i.e. involved in the case. This Court observed: (SCC pp. 573-74, para 17)

"17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

14. In *Om Prakash Srivastava v. Union of India*, (2006) 6 SCC 207 : (2006) 3 SCC (Cri) 24, answering a similar question this Court observed that on a plain reading of clause (2) of Article 226 it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose if the cause of action in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territory. In para 7 this Court observed: (SCC p. 210)

"7. The question whether or not cause of action wholly or in part for filing a writ

petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof."

15. In *Rajendran Chingaravelu v. CIT*, (2010) 1 SCC 457 : (2010) 1 SCC (Cri) 810, this Court while considering the scope of Article 226(2) of the Constitution, particularly the cause of action in maintaining a writ petition, held as under: (SCC p. 461, paras 9 & 11)

"9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.

* * *

11. Normally, we would have set aside the order and remitted the matter to the High Court for decision on merits. But from the persuasive submissions of the appellant, who appeared in person on various dates of hearing, two things stood out. Firstly, it was clear that the main object of the petition was to ensure that at least in future, passengers like him are not put to unnecessary harassment or undue hardship at the airports. He wants a direction for issuance of clear guidelines and instructions to the inspecting officers, and introduction of definite and efficient verification/investigation procedures. He wants changes in the present protocol where the officers are uncertain of what to do and seek instructions and indefinitely wait for clearances from higher-ups for each and every routine step, resulting in the detention of passengers for hours and hours. In short, he wants the enquiries, verifications and investigations to be efficient, passenger-friendly and courteous. Secondly, he wants the Department/officers concerned to acknowledge that he was unnecessarily harassed."

16. Regard being had to the discussion made herein above, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents

within the territorial limit of the Court's jurisdiction."

11. When confronted with this maintainability objection raised by the respondents, Mr. Rajeetchandra. Ld. Counsel for the petitioner has submitted that the main grievance of the petitioner is that the authorities have violated the provisions of Section 11(4) of the Act which mandates completion of enquiry held under sub-section (1) of Section 11 within ninety days by not completing it within the statutory period and since, the violation of the aforesaid provision of the act continued even when he was posted in Manipur, it can be said that cause of action continues here also, so as to invest jurisdiction to this Court.

This submission however, is devoid of any merit. The Court of law, more particularly civil courts, unless its jurisdiction is ousted by statute, would have jurisdiction to adjudicate on any issue arising out any cause action so long as the Court has both territorial and pecuniary jurisdiction, wherever, provided. In other words, so long as the cause of action survives and continues, the Court will have jurisdiction to entertain any suit/application/petition subject to condition that it has both the territorial and pecuniary jurisdiction. Of course, the jurisdiction of a civil court may also depend upon the subject matter or whether it is original, revisional or appellate according to the statutes which govern the jurisdiction of the court. Thus, if either territorial or pecuniary jurisdiction is absent, mere continuation or survival of cause of action qua the aggrieved will not invest the court with the jurisdiction to entertain any action before it. As regards the High Court exercising jurisdiction under Article 226 of the Constitution, even if a part of the cause of action arises within its territorial jurisdiction, the High Court will have jurisdiction to entertain the writ petition.

12. In the present case, what this Court finds is that the complaint was filed by the Respondent no.4 at the location of 44BN CRPF which is in Jammu and Kashmir which is addressed to the Directorate General of Police, CRPF located at New Delhi, which are, admittedly, not within the territorial jurisdiction of this Court. The complaint pertains to certain acts attributed to the petitioner when he was posted in Jammu & Kashmir. Copy of the complaint was forwarded to the petitioner when the petitioner was still posted in Jammu & Kashmir. When the Enquiry Committee was constituted pursuant to the complaint, it was done so in New Delhi and the petitioner was not yet posted in Manipur. The objections raised by the petitioner against the action initiated were submitted by him from Delhi to the authorities in Delhi. Various other correspondences relied upon by the petitioner originate or are addressed to locations in Delhi or Jammu & Kashmir. The proceedings of the Complaint Committee were held in Delhi. The petitioner has annexed two representations for closing the enquiry when the petitioner was posted at Silchar, which is also outside the territorial jurisdiction of this Court. No action or activity connected with the pending enquiry or the complaint is relatable when the petitioner was posted in Manipur. No averment is also made of any action or step taken in connection with the pending enquiry when the petitioner was posted in Manipur.

13. In view of the aforesaid factual position, as discernible from the records, it is apparent that not even a part of the "cause of action" arose within the territorial jurisdiction of this Court so as to confer jurisdiction to this Court to entertain this petition. Of course, it is also true that violation of any statutory provision can form a valid cause of action for initiating legal proceeding. However, it can't be independent of the territorial or pecuniary or the statutorily created jurisdiction of the Court. Thus, merely because there is continuation of violation of statutory provisions when the petitioner was posted in Manipur, will not form any part of the cause of action so as to entitle the petitioner to file this petition before this Court. The violation of the statutory provision as alleged by the petitioner is not even remotely related to his place of posting. Of course, if the cause of the delay is attributable to any action which can be located in Manipur or relatable to his posting in Manipur, perhaps, one may claim that a part of the cause of action has arisen in Manipur. However, there is nothing to indicate that such is the position. Since the posting of the petitioner in Manipur or his activities in Manipur or any action of the authorities traceable to Manipur, has nothing to do with the alleged continued violation of the statutory provisions, no part of the cause of action can be said to have arisen in Manipur, as contended by the petitioner.

14. Therefore, for the reasons discussed above, this Court holds that no part of the cause of action has arisen within the territorial jurisdiction of this Court as required under Article 226(2) of the Constitution for invoking writ jurisdiction of this Court under Article 226 of the Constitution. Accordingly, as this Court lacks the territorial jurisdiction to entertain this writ petition, the writ petition is held to be not maintainable and hence, the same is liable to be dismissed without making any observation on the merit of the case.

15. The petition, is accordingly dismissed, however, without any costs. The petitioner will be at liberty to approach the Court of competent jurisdiction for redressal of his grievances in accordance with law.