
(2013) 01 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 14554 of 2010 (O and M) and LPA No. 895 of 2012 (O and M)

Rajesh Goyal

APPELLANT

Vs

Bharat Petroleum Corporation Limited
 Bharat
Petroleum Corporation Ltd. Vs Rajesh Goyal

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 SCT 114

Hon'ble Judges : A.K. Sikri, C.J.;Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Samrath Sagar in CWP No. 14554 of 2010 and Mr. Raman Sharma in LPA No. 895 of 2012, for the Appellant; Samrath Sagar, Advocate in LPA No. 895 of 2012 and Mr. Raman Sharma, Advocate in CWP No. 14554 of 2010, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, C.J.—By way of this order, we shall dispose of two cases being CWP No. 14554 of 2010 and LPA No. 895 of 2012 as both are interconnected. Petitioner has filed this writ petition seeking certain benefits from the respondent which are in the nature of arrears of differential amount on account of pay revision. It is an admitted position that the petitioner had resigned from the post of Deputy Manager (Engineering) Construction of the Mathura office in January 2008. He was never posted in the State of Punjab, Haryana or Union Territory, Chandigarh. The benefits which he is seeking also relate to Mathura office of the respondent-Corporation. The respondent, in the written statement filed, has taken objection regarding territorial jurisdiction of this Court. Learned Single Judge, while accepting that merely because the petitioner is residing within the jurisdiction of this Court after his resignation would not give rise to cause of action, at the same time, has also observed that it would not be a case of complete lack of inherent jurisdiction and the power of the Court under Article 226 of the Constitution of India will extend to the situations where the petitioner

makes out a case that the decision of the respondents does not conform to law. On that basis, the plea of lack of jurisdiction was rejected by the learned Single Judge vide orders dated 01.03.2012 and challenging that order, LPA No. 895 of 2012 is filed.

2. It is difficult to accept the aforesaid rationale given by the learned Single Judge while assuming the jurisdiction under Article 226 of the Constitution of India.

3. Learned counsel for the petitioner has made an averment stating that even if a part of cause of action has arisen within the territorial jurisdiction of this Court, this Court will have the jurisdiction. He submits that the rejection order was received by the petitioner in Kalayat, Haryana and, therefore, the receipt of this communication would constitute a part of cause of action. This plea is clearly erroneous. The decision was taken by the respondent-Corporation in Mathura office. Simply because the petitioner is now resident of Haryana and it became necessary to send him the communication here, that would not mean that part of cause of action arose in Haryana. Even otherwise, the law on the cause of action now stands well settled in *A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem*, *In Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI)* and *Another*, the Supreme Court propounded the theory of substantial cause of action in the following manner:-

A 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.

It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it 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.

4. All these judgments have been considered by the 5 Judges Bench of the Delhi High Court in *Sterling Agro Industries Ltd. Vs. Union of India (UOI) and Others*, On that basis, following 7 principles were culled out relating to the territorial jurisdiction:-

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs

of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

In view of the aforesaid, we are of the opinion that the Court does not have the territorial jurisdiction to entertain the present writ petition. The impugned order dated 01.03.2012 passed by the learned Single Judge is set aside, as a result of which, the writ petition is dismissed as not maintainable and the appeal is allowed. However, liberty is granted to the petitioner to approach the Court of competent jurisdiction.