

(1987) 10 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 18048 of 1987

Rakesh Dhar Tripathi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-10-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1988 All 47

Hon'ble Judges : K.C. Agarwal, J;K. Gulati, J

Bench : Division Bench

Advocate : Ram Niwas Singh and V.K. Chandel, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—Through this petition filed under Article 226 of the Constitution, the petitioner, Rakesh Dhar Tripathi, amongst others, has sought:

(i) Writ in the nature of quo-warranto : directing Akhil Bakshi, respondent No. 3, to show the authority under which he is occupying the post of Director General of Nehru Yuva Sangathan, Jawaharlal Nehru Stadium, New Delhi.

(ii) Mandamus directing the Union of India to continue the Nehru Yuva Kendra Sangathan as the department of Union of India instead of establishing the Sangathan; and

(iii) Direction in the nature of writ of Mandamus directing the Union of India and the Sangathan to make appointment of the Director General and other employees through Union Public Service Commission.

2. Apart from the aforesaid three reliefs, some others have also been claimed.

3. On 25th February, 1987, the Government of India, published a resolution of the Ministry of Human Resources, Development (Department of Youth Affairs and Sports)" regarding establishment of Nehru Yuva Kendra Sangathan. It is said : --

"And Whereas Government are satisfied that this objective could best be achieved through the establishment of a well knit organisational structure with necessary resource and flexibility and for this purpose an autonomous society under the Societies Registration Act of 1860 would be the best agency".

4. It was decided that Nehru Yuva Kendra Sangathan, which had been registered as a Society under the Societies Registration Act, 1860, will be provided funds as grant-in-aid.

5. Akhil Bakshi, respondent No. 3, was subsequently appointed by the Government of India as the Director General of the Nehru Yuva Kendra Sangathan, New Delhi. It is this appointment made by the Union of India which led to the filing of the present petition. The petitioner has taken a number of grounds assailing his appointment. The following persons were also nominated as members of the Sangathan Society/Board of Governors :

1. Smt. Vijayanthi Mala Bali, Member of Parliament, Lok Sabha.

2. Sri Aslam Ser, Member of Parliament, Lok Sabha.

3. Sri D. P. Ray, Member of Parliament, Rajya Sabha.

4. Sri Aditi Mangal Das, Artist in Cultural Field.

6. The point that first arises for decision by us is about the entertainment of this petition by the Allahabad High Court.

7. The three respondents arrayed are :

(i) Union of India.

(ii) Nehru Yuva Kendra Sangathan, New Delhi.

(iii) Akhil Bakshi, Director General, Nehru Yuva Kendra Sangathan, New Delhi.

All of them are beyond the territorial jurisdiction of this Court. The question about the entertainment of the petition and granting of relief is to be decided on the basis of Article 226(2) of the Constitution. This Article reads :

"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. Article 226 was amended by the Constitution (15th Amendment) Act 1963 whereby Clause (1A) to Article 226(1) was incorporated and such incorporation enlarged the territorial jurisdiction of the High Court in writ matters so as to include places within which the cause of action has arisen. Prior to the insertion of Clause (1-A), it was held that the writs could not go beyond the territories in

relation to which each High Court exercises K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., . This was followed thereafter. Hence, a High Court could not issue a writ or order under Article 226 unless the person, authority or Government against whom the writ is sought was physical resident or located within the territorial jurisdiction of the High Court. Election Commission, India Vs. Saka Venkata Subba Rao and, and Lt. Col. Khajoor Singh Vs. The Union of India and Another, . In the light of these decisions of the Supreme Court, Clause (1-A) was amended by the 15th Amendment of the Constitution. This Clause was renumbered as Clause (2) by the 42nd amendment. Under this clause it is necessary in order to exercise the jurisdiction under Clause (1) of Art 226 that the cause of action must be wholly or in part arising within the territorial limit of that High Court for the exercise of the power conferred by Art 226(1), notwithstanding that the seat or authority or the residence of such person was not within those territories.

9. In the instant case, the grounds on which reliefs mentioned above and others, which have not been stated by us in this judgment on the ground that they were not necessary to be mentioned, the cause of action did not arise in Allahabad. By whatever the petitioner was aggrieved took place in New Delhi. The only thing emphasised and relied upon by the petitioner's counsel was that since the petitioner was a resident of Allahabad, the writ could be filed in this Court For the purposes of entertainment of, writ, the residence of the petitioner at Allahabad which is within the territorial limit of this Court is not material The "cause of action" which must be read as "cause of proceedings" occurred in New Delhi.

9A. "Cause of action had been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed which the defendant has a right to traverse (see Cooke v. Gill (1873) L.R. 8 C.P. 107, per Brett, J., at p. 116).

10. Section 20 of the Code of Civil Procedure, which has a relevance to resolve the present controversy in its material particulars lays down that the suit can be instituted in Court within the local limits of whose jurisdiction :

- (a) "the defendant, or each of the defendants actually and voluntarily resides, or carries on business;
- (b) any of the defendants who do not reside, or carry on business; and
- (c) the cause of action, wholly or in part, arises."

11. This term "cause of action" has been considered by innumerable decisions of our High Courts as well as other Courts. The authoritative pronouncement received was in Reed v. Brown (1889) 22 QBD 128. It was said that : - -

"The Division Bench consisting of Pollack B. and Ministry, J. had come to the conclusion that the expressions "cause of action" and "part of the cause of action" had long been judicially defined as meaning respectively the facts and any material fact in the case for the plaintiff. Lord Esher, M. R. in his judgment

quoted with approval the definition of that expressions given in the earlier case in *Cooke v. Gill*, (1873) 8 CP 107 as : every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court, but it does not comprise every piece of evidence which is necessary to prove each fact but every fact which is necessary to be proved."

12. Fry, L.J. agreeing with that opinion remarked that every thing, which, if not proved, gives the defendant an immediate right to judgment must be part of cause of action, and Lopes, L.J. agreeing with the definition given by the Master of Rolls of a cause of action pointed out that it includes every fact which it would be necessary to prove, if traversed, in order to enable a plaintiff to sustain his action.

13. In *Chand Koer v. Pratap Singh* ILR (1889) Cal 98, the Privy Council had an occasion to consider as to what was meant by the expression "cause of action". It was remarked :

"Now 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 grounds set forth in plaint as the "cause of action", or, in other words, to the media upon which the plaintiff asked the court to arrive at a conclusion in his favour."

14. In *Mohd. Zakaria v. Mohd. Hafiz*, AIR 1917 All 17(2), it was remarked that the meaning of expression "cause of action" has long been judicially settled and finally pronounced in *Reed v. Brown* (1888 22 QBD 128) (*supra*).

15. In *Guardian Assurance Co. Ltd. Vs. Thakur Shiva Mangal Singh* , Suleman, C.J. held for the Division Bench that:--

"As defined in English Courts the words "cause of action" mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the Court, but it does not comprise every piece of evidence which is necessary to prove each fact but every fact which is necessary to be proved."

16. *State of Rajasthan and Others Vs. Swaika Properties and Another* , was concerned with a case in which the validity of a notice issued by the State of Rajasthan u/s 52(1) of the Rajasthan Urban Improvement Act, 1959 was issued in respect of the land situated in a village on the outskirts of Jaipur city. The writ petition under Art 226 of the Constitution was filed in the Calcutta High Court challenging the aforesaid notification made in respect of the land situated in Jaipur on the ground that since the petitioner, M/s. Swaika Properties, had its head office at 18-B, Brabourne Road, Calcutta, the cause of action accrued in Calcutta and the writ could be filed in that High Court, The argument of the petitioner M/s. Swaika Properties and another was that service of the notice under Sub-section (2) , of Section 52 of the Rajasthan Urban Improvement Act, 1959 was since an integral part of cause of action, the same was sufficient to

invest the Calcutta High Court to entertain the petition under Article 226. The Supreme Court reversed the judgment of the Calcutta High Court by saying :--"

"Upon these facts we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and, therefore, the learned single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired."

17. The Supreme Court held that the mere service of notice u/s 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta within the territorial jurisdiction of West Bengal could not give rise to a cause of action within that territory. Its view was that the entire cause of action culminating in the acquisition was within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court. The appeal of the State of Rajasthan was consequently allowed.

18. This decision concludes the controversy arising before us, the cause of action in this case arose outside the territorial limits of Allahabad not be filed here (sic).

19. Much emphasis was laid by the petitioner counsel on the fact of residence of the petitioner at Allahabad. This, in our view, is immaterial. As the fact of his residence in Allahabad does not have the remotest relevance for deciding whether the cause of action, wholly or partly, arose within the territorial limits of Allahabad High Court for entertainment of the Writ Petition, the fact of residence of the petitioner could not entitle him to get the relief prayed for if the cause of action did not arise in Uttar Pradesh.

20. Counsel next urged that as the Nehru Yuva Kendra Sangathan is a body meant for the benefit of the country as a whole, the writ could be filed at any place in India, and for that purpose, reliefs sought in the writ petition were referred to.

21. This submission also has no merit. The expression "cause of action" has been, as stated above, compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to succeed in the action brought by him. It has no relation whatever either to the defence which might be set up nor does it depend upon the character of the relief prayed for by the plaintiff/petitioner. Relief is removal or alleviation of distress. It can also be described as help, remedy. The relief is given on the facts established or found by a Court. The plaintiff is required to prove his case on the grounds which are taken in a plaint or petition for succeeding in the suit. In *Sarsuti & Company v. Kunj Behari Lal* ILR (1883) All 345, Stuart, C.J., said :

"In relation to the case and practice in such cases generally, I may point out what appears to me to be a misapprehension of the law by which the term "relief is confound with the larger and more comprehensive expression "cause of action".

22. The relief is the whole of the claim arising out of the cause of action. This cannot be understood as synonymous with the words "any part of the claim". In that connection, the learned Judge further said : --

"The word "relief at least as used in this country, is not a term of exact or precise technically but simply means the remedy which a Court of Justice may afford in regard to such actual or apprehended wrong or injury. Such remedy being large or small as the case may be. But it is not synonymous with "cause of action....."

23. "Cause of action" is on the strength of which a plaintiff comes into Court.

24. In *State v. Bhimadevraj* AIR 1956 Guj 77 as well as *G. Venkatesha Bhat and Others Vs. Kamalapat Motilal and Others*, both the Mysore and Madras High Courts took the same view that a relief claimed in the suit is not a part of the "cause of action". The Madras High Court held:

"It has no relation whatever to the defence which might 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 grounds set forth in the plaint as the cause of action or any other words to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour....."

25. The submission relating to the relief claimed which will affect the entire country does not confer jurisdiction on this court as the cause of action or the grounds on which the petition was filed did not arise within the territorial limits of the Allahabad High Court. Not only that the respondents impleaded are outside its territory, but also that the grounds on which the petition was filed did not occur or take place in Uttar Pradesh.

26. On behalf of the petitioner, cases relied upon are : *B. N. Singh v. U.P. Public Service Commission* 1985 U P L B E C 251 ; *Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another*, ; *Om Prakash Vs. Divisional Superintendent, Northern Rly.*, ; *Abdul Kafi Khan Vs. Union of India (UOI) and Others*, ; *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, and *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, .

27. *Om Prakash Vs. Divisional Superintendent, Northern Rly.*, was a case where the controversy was whether Clause (1-A) of Article 226 of the Constitution is procedural in nature and if that was so, could it be retrospective in effect so as to enable the High Court to exercise its power under Article 226 of the Constitution, in respect of a cause of action arising before the amendment. This question was answered in the affirmative by the Full Bench. It was held that the High Court could issue writs, orders or directions to any Government, authority or person, notwithstanding that the seat of such Government or authority is not within the territorial jurisdiction of the High Court. In this case also, the Full Bench held that the territorial jurisdiction of the High Court is extended beyond the boundaries of the State if the cause of action arises within its territory. This ruling is of no help

to the petitioner.

28. In *B. N. Singh v. U.P. Public Service Commission* 1985 U P L B E C 251 , the controversy was whether Allahabad High Court or Lucknow Bench had jurisdiction to entertain the writ petition. The dispute involved in that petition related to the inter se seniority of the petitioner and the respondent, which had been pending for adjudication before the State Government, The controversy in this case was about the interpretation of paragraph 14 of the U.P. High Courts Amalgamation Order, 1948. After considering the decision of the Supreme Court in *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, , the learned Judge held that if cause of action in part arises in the specified Oudh area and part of the cause of action arises out of the specified area, it was open to the litigant to attract the jurisdiction of the High Court at Allahabad or Lucknow. There is nothing in this decision which advances or supports the submission of the petitioner's counsel.

29. *Abdul Kafi Khan Vs. Union of India (UOI) and Others*, . In this case disciplinary proceedings against the petitioner Abdul Kafi Khan was taken by the railway authority in Bihar. A show cause notice against removal from service was also issued by the authority in Bihar. The writ petition was, however, filed in the Calcutta High Court challenging those orders. The Calcutta High Court held that it has no jurisdiction to entertain the petition merely because the head office of the Railway was located in Calcutta, when neither the cause of action nor any part thereof arose within its territorial jurisdiction. This decision supports our view.

30. In *Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another*, , by the fixation of selling price and the retention price of Aluminium, M/s. Hindustan Aluminium Corporation felt aggrieved. In this case, the Calcutta High Court held that" since there has been categorical averment of the sufferance by Hindalco by the sale of Aluminium and Aluminium products in Calcutta, therefore, a part of the cause of action arose at Calcutta within the jurisdiction of this Court. To us, it appears that accrual of loss by the petitioner at a particular place, where its head office is situated, is far too remote to constitute a part of the cause of action. The view taken in this case is contrary to the decision of the Supreme Court in *State of Rajasthan and Others Vs. Swaika Properties and Another*, . In that case also, the head office of the company, whose land had been acquired was situated at Calcutta, and the notice of acquisition had Also been served on it there, but the Supreme Court held that the cause of action neither wholly nor in part was within the territorial jurisdiction of the Calcutta High Court, and, therefore, the writ was not entertainable in that Court. Suffering of loss is the consequence of the breach of legal right of a person aggrieved.

31. In *Krishna Kumar Bhargava v. Metropolitan Magistrate* 1986 All CJ 277 : (1980 All LJ 1093), a Division Bench rejected the writ petition which sought quashing of a complaint filed against the petitioner of that case u/s 500 read with Ss. 109 and 34 of the Indian Penal Code before the court of Metropolitan

Magistrate, Bombay, this Court held that the Metropolitan Magistrate being beyond its territorial jurisdiction, the High Court has no power under Article 226 of the Constitution to issue the writ. The view taken in this case is fully supported by the aforesaid decision.

32. For what we have said above, we are of opinion that the writ petition has no merit and is rejected in limine on the ground of lack of territorial jurisdiction of Allahabad High Court.