
(2002) 09 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 573 of 2001

Ram Niwas Bera

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226(2)

Citation : (2004) 2 RLW 1235

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : G.R. Punia, for the Appellant; Jagdish Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner on 18.1.2001 against the respondents with the prayer that by an appropriate writ, order or direction the enquiry report (Annex. 14) by which the Enquiry Officer found the charges in respect of criminal) conspiracy and theft of material proved against the petitioner and the final order dated 18.6.2000 (Annex. 16) passed by the respondent No. 4 Commandant, C.I.S.F. Chennai Port Trust, Chennai by which on the basis of the Charges proved, the petitioner was removed from service and the appellate order dated 27.11.2000 (Annex. 18) passed by the respondent No. 3 Dy. Inspector General. CISF (SZ), Chennai by which the appeal of the petitioner was dismissed, be quashed and set aside.

2. The case of the petitioner as put forward by him in this writ petition is as follows:-

The petitioner joined the Central Industrial Security Force (for Short "C.I.S.F.") as a Constable on 15.6.1994. After the recruitment under the provisions of the Central Industrial Security Force Act, 1968 (hereinafter referred to as "the Act of 1978) and the Rules framed thereunder being Central Industrial Security Force

Rules, 1969 (hereinafter referred to as "the Rules of 1969"), the petitioner was put to service training at Devali District Tonk (Rajasthan).

It was submitted by the petitioner that on completion of training, he was transferred to Madras Post Trust (now Chennai Port Trust) on 31.8.1995. According to the petitioner, he was performing his duties with utmost zeal and dedication and to the entire satisfaction of his superiors. However, the respondents without any cogent reason and only with a view to harass the petitioner, suspended the petitioner from service under Rule 30(1) of the Rules of 1969 vide order dated 17.1.1999, a copy of which is marked as Annex. 1

Thereafter, charges in the following manner were levelled against the petitioner:-

"No. 941401807 Constable R.N. Bera of CISF Unit, Chennai Port Trust, Chennai is charged with grave misconduct, indiscipline, negligence and facilitating crime in connivance with others. Const. R.N. Bera was instrumental in criminal conspiracy and theft of valuable imported materials by associating with others which happened at about 0350 hrs on 9.1.1999. The criminals with connivance of CISF staff attempted to commit a theft of imported materials on 8/9.1.99 during the "C" Shifts hours. Being a member of CISF, Const. R.N. Bera was supposed to inform to the higher officer for safeguard in the Chennai Port Trust materials, but he failed in his duty and exhibited gross misconduct and reprehensible conduct by himself facilitating the crime in connivance with others. Hence the charge.

CISF No. 941401807 Constable R.N. Bera of CISF Unit, Chennai Port Trust, Chennai was to perform duty in "C" Coy for safeguarding and protecting the property of Chennai Port Trust, Chennai. He was instrumental in the criminal conspiracy and the theft of materials by facilitating to break open the container No. Texu-3689/2-0-20 kept at JD-V shed. On 8/9.1.1999 valuable imported materials containing chloroquine and chloramphenicol chemicals and 9 Nos. of bales of imported raw silk were stolen by criminals in connivance with the CISF Staff and others. Later on the vehicle used for transporting the stolen materials was seized at about 0500 hrs on 9.1.99 and the stolen materials were also recovered subsequently. In this connection a theft report No. I & II were also received from S.S.SM.V.JD-V(N) dated 9.1.99 intimated that during III shift on 8/9.1.99 some criminals removed cargo from the container No. Texu-3689/2-0-20 and loaded them in a lorry No. KVS-TMW-9412. The container was destuffed on 9.1.99. As per the destuffing tally sheet it was noticed that 9 bales on dupion silk under mark CSC were short of the manifested quantity of 100 bales and CB drums under Nil mark (Cargo Chloramphenicol BP-93.500 kgs of Chloroquine Phosphate BP 93) were short of the manifest quantity of 40 CB drums. The stolen properties were recovered and handed over to the Port authorities subsequently, had Const. R.N. Bera informed the plan of theft in advance to the higher authorities of CISF the occurrence of theft could be averted. But Constable R.N. Bera himself became instrumental in organising the crime in connivance with his colleagues/and others. To escape from the charge he availed leave w.e.f. 9.1.99. Thus, he exhibited grave misconduct, indiscipline and

negligence quite unbecoming of a member of a disciplined armed force of the Union. Hence the charge."

For these charge, the petitioner faced enquiry twice as previous enquiry was set aside.

The respondent No. 4 Commandant, CISF, Chennai Port Trust, Chennai issued memorandum on 9.9.1999 and conducted de novo enquiry against the petitioner. A copy of the said memorandum dated 9.9.1999 alongwith the article of charges, statement of list of documents and the preliminary enquiry report is marked as Annex. 11.

The petitioner submitted the written statement of the defence on 18.9.1999, a copy of which is marked as Annex. 12.

During the de novo enquiry, the preliminary questionnaire was framed by the Enquiry Officer asking the various questions on the charges and the defence, copy whereof is marked as Annex.13.

It was submitted by the petitioner that the Enquiry Officer ignored the questionnaire and submitted his enquiry report to the respondents No. 4 Commandant and the respondent No. 4 Commandant vide office memorandum dated 13.5.2000 served the copy of the enquiry report and the findings of the Enquiry Officer and asked the petitioner to file the representation, if any, against the enquiry report. A copy of the said office memorandum dated 13.5.2000 alongwith the enquiry report is marked as Annex. 14.

The petitioner submitted a detailed representation against the enquiry report on 5.6.2000 copy of which is marked as Annex.15.

Thereafter, the respondent No. 4 Commandant passed the final order purported to be under Rule 34 of the Rules of 1969 and dismissed the petitioner from service by order dated 18.6.2002, a copy of which is marked as annex. 16.

The petitioner thereafter filed an appeal before the respondent No. 3 Dy. Inspector General (SZ), Chennai against the order dated 18.6.2000 (Annex.16) passed by the respondent No. 4. A copy of the memo of appeal is marked as Annex. 17.

The respondent No. 3 Dy Inspector General (SZ) (Appellate Authority) dismissed the appeal of the petitioner vice order dated 27.11.2000, a copy of which is marked as Annex.18.

The further case of the petitioner is that the appellant order Annex.18 dated 27.11.2000 by which the appeal of the petitioner was dismissed by the respondent No. 3 was served on the petitioner in Rajasthan on 19.12.2000 through registered post and being aggrieved from the orders dated 18.6.2000 (annex. 16) passed by the respondent No. 4 by which he was removed from service and appellate order dated 27.11.2000 (Annex.18) passed by the respondent No. 3, by which his appeal was dismissed, the petitioner has

preferred this writ petition and these orders have been challenged on various grounds.

A reply to the writ petition was filed by the respondents and a preliminary objection was taken by the respondents in the manner that since the petitioner was posted at Madras presently known as Chennai, he was charge-sheeted at Chennai, the enquiry was held against him at Chennai and after enquiry, order of dismissal was passed against him at Chennai and departmental appeal against the dismissal order was also decided at Chennai meaning thereby whole enquiry was conducted against the petitioner at Chennai and no part of cause of action arose within the territorial jurisdiction of this Court, therefore, in these circumstances, this Court has no jurisdiction to entertain this writ petition. It was further submitted by the respondents that simply because the appellate order Annex. 18 dated 27.11.2000 passed by the appellate authority was served on the petitioner in Rajasthan, this Court would not acquire any territorial jurisdiction to decide the present controversy, as the service of that appellate order on the petitioner in Rajasthan does not give rise to any part of the cause of action at Rajasthan at least for the purpose of conferring territorial jurisdiction on this Court. Hence, this Court has no jurisdiction to entertain this writ petition and the same be dismissed as such.

3. Since a preliminary objection was raised by the learned counsel for the respondents that this Court has no jurisdiction to entertain this writ petition as no cause of action arose in Rajasthan, therefore, arguments were heard on the point whether this Court has territorial jurisdiction to entertain this writ petition or not.

4. In this case, there is no dispute on the following facts:-

(1) That the enquiry in respect of the charges framed against the petitioner was conducted at Chennai.

(2) That the petitioner at the relevant time was posted at Chennai.

(3) That the alleged theft of materials took place at Chennai.

(4) That the final order dated 18.6.2000 (Annex.16) dismissing the petitioner from service was passed by the respondent No. 4 Commandant at Chennai.

(5) That the appellate order dated 27.11.2000 (annex. 18) by which the appeal of the petitioner was dismissed was also passed at Chennai by the respondent No. 3 Dy. Inspector General.

(6) That the concerned authorities, who conducted the enquiry and passed the final order and appellate order against the petitioner, reside at Chennai and their offices are also situated and located at Chennai.

(7) That the appellate order Annex. 18 dated 27.11.2000 passed by the respondent No. 3 was served on the petitioner in Rajasthan as at the bottom of last page of that order, the address of the petitioner of Rajasthan was mentioned.

5. Now it is to be seen whether the facts just stated above give rise to any part of the cause of action at Rajasthan, at least for the purpose of conferring territorial jurisdiction on this Court or not.

6. The contention of the learned counsel for the petitioner is that since the appellate order Annex. 18 dated 27.11.2000 passed by the appellate authority (respondent No. 3 Dy. Inspector General) was served on the petitioner in Rajasthan, therefore, a part of cause of action has, arisen in Rajasthan and thus, this Court has jurisdiction to entertain this writ petition.

7. On the other hand, it was submitted by the learned counsel for the respondent that since the whole enquiry against the petitioner was conducted at Chennai and the final order as well as appellate order were passed against the petitioner at Chennai, therefore, no part of cause of action arose in Rajasthan and thus, this court has no jurisdiction entertain this writ petition. Apart from this, merely because the appellate order Annex. 18 was served on the petitioner in Rajasthan, this fact would not give rise to any part of the cause of action at Rajasthan, atleast for the purposes of conferring territorial jurisdiction on this Court.

To appreciate the above contentions, Article 226(2) of the Constitution of India, which speaks of the territorial jurisdiction of the High Court, is quoted here:-

"226(2) The power conferred by Clause (1) to issue directions, order of 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 for such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

8. It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises.

9. In order to confer jurisdiction on a High Court to entertain a writ petition, 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.

10. Apart from this, the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial.

11. Before proceeding further, what the word "cause of action" means has to be seen.

12. The word "cause of action" has not been defined in any statute and for the first time, it was defined in an English case Known as Cook v. Gill (1), in the following manner:-

"Every fact which it would be necessary for the plaintiff to prove, it traversed in

order to support his right to the judgment of the Court, but does not comprise every piece of evidence which is necessary to be proved."

13. In *Sidramappa v. Rajashetty and Ors.* (2), the word "cause of action" has been defined in the following manner:

"Cause of action" means the "cause of action" for which the suit was brought. Cause of action is cause of action which gives occasion for and forms the foundation of the suit. If that cause of action enables a person to ask for a larger and wider relief than to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings."

14. Thus, in short, the word "cause of action" can be explained in the following manner: -

"Cause of action" generally stated it means every fact which it is necessary to establish to support right or obtain judgment. To put it differently, it means bundle of essential facts which it is necessary for the plaintiff to prove before the can succeed in the case. It can as well be said to be the media upon which the Court arrives at a conclusion in the suit in favour of the plaintiff. Yet another shade of meaning is that. "A cause of action means every fact which if traversed in order to support his right to the judgment."

15. In my considered opinion, the admitted facts just quoted above, if taken together or connected with the relief sought for by the petitioner, do not give rise to any of the cause of action at Rajasthan atleast for the purpose of conferring territorial jurisdiction on this Court. In other words, the facts pleaded by the petitioner do not ipso facto lead to the conclusion that these facts given rise to a cause of action within the territorial jurisdiction of this Court, as all things pertaining to the departmental enquiry against the petitioner happened at Chennai meaning thereby alleged theft of material took place at Chennai, the departmental enquiry against the petitioner was conducted at Chennai and final order removing the petitioner from service and appellate order dismissing the appeal of the petitioner were also passed at Chennai. Simply because appellate order Annex. 18 was served on the petitioner in Rajasthan, it would not give rise to any part of the cause of action at Rajasthan at least for the purpose of conferring territorial jurisdiction on this court. Furthermore, as the facts mentioned above do not have any nexus or relevance with the dispute involve in the case, therefore, they do not give rise to a cause of action, so as to confer territorial jurisdiction on this Court. This, this court has no jurisdiction to entertain this writ petition. In this respect, the law laid down by the Hon"ble Supreme Court in *Union of India and Ors. v. Adani Exports Ltd. and Anr.* (3), may be referred to.

16. Thus, it is held that this Court has no jurisdiction to entertain this writ petition as the admitted facts just quoted above do not give rise to any part of the cause of action at Rajasthan at least for the purpose of conferring territorial jurisdiction on this Court.

17. So far as the decision relied upon by the learned counsel for the petitioner in Mohan Singh v. Union of India (4), is concerned, the same would not be helpful to the petitioner as the facts of that case and the facts of the present case are altogether different one as in that case the writ petition was filed by a retired person claiming pension in Rajasthan, where he settled after retirement, while in the present case, the imposed orders under challenge have been passed by the concerned authorities at Chennai.

18. Similarly, so far as the authority relied upon by the learned counsel for the petitioner in Navinchandra N. Majithia v. State of Maharashtra and Ors. (5), is concerned, the same also stands distinguished from the facts of the present case as in that case, the Hon'ble Supreme Court came to the conclusion that the Bombay High Court has jurisdiction in respect of quashing the criminal complaint filed at Shillong on the ground that it was false, while in the present case, all final orders have been passed at Chennai and, therefore, this ruling would not be helpful to the petitioner.

19. Similarly, the ruling relied upon by the learned counsel for the petitioner in Saju v. State of Kerala (6), would not be helpful to the petitioner as it deals with the offences of IPC.

20. For the reasons stated above, since this Court has no territorial jurisdiction to entertain this writ petition, therefore, this writ petition is liable to be dismissed on this preliminary ground alone.

21. During the course of arguments, it was lastly submitted by the learned counsel for the petitioner that in case this Court is not inclined to entertain this writ petition on the ground of territorial jurisdiction, then the petitioner may be given liberty to file a fresh writ petition in the competent court. This prayer appears to be reasonable and just.

Accordingly, this writ petition filed by the petitioner is dismissed, as being not maintainable on preliminary point of territorial jurisdiction. If the petitioner intends to file a fresh writ petition before the competent court, this order would not come in his way.

No order as to costs.