

(2011) 08 GUJ CK 0060

In the Gujarat High Court

Case No : Special Civil Application No. 3956 of 2005

Ramanlal Kanjibhai Baranda

APPELLANT

Vs

Commandant and Another

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 226, 226(1), 226(2)

Citation : (2011) 08 GUJ CK 0060

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Y.H. Vyas, for the Appellant; S. Vasavdatta Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.

1 Heard Mr. Y.H. Vyas, learned Counsel for the Petitioner and Mrs. Vasavdatta Bhatt, learned Counsel appearing for the Respondents.

2 The short question that arises for consideration in this Special Civil Application is that if the Petitioner is dismissed from service while he was serving as Head Constable in CRPF at Imphal, Manipur, whether the cause of action to sue would be available to the Petitioner to file Special Civil Application, in Gujarat High Court on the ground that he is a resident of State of Gujarat ?

3. The Petitioner joined the services of CRPF as Constable on 16.10.1980. Thereafter, the Petitioner was promoted as Hawaldar and thereafter promoted as Head Constable. On 03.06.2002, when the Petitioner was discharging his duties at Imphal, Manipur, he was found drunk while he was posted on Guard duty. Hence, departmental disciplinary proceedings were initiated against the Petitioner. Thereafter, vide order dated 30.11.2002, the Petitioner was dismissed from service. The said order of dismissal was confirmed by the Appellate Authority at Chandigarh vide order dated 25.08.2004.

4. By means of the present writ petition, the Petitioner has challenged both the orders dated 30.11.2002 as well as 25.08.2004. This petition has been filed on the ground that the Petitioner is resident of Gujarat and, therefore, he can file the instant writ petition in State of Gujarat on the ground of his residence and the order passed by the Appellate Authority having been served on him in Gujarat.

5. By 15th Constitutional Amendment Act, 1963, Clause (1-A) was added to Article 226(1) which was re-numbered as Clause (2) by the 42nd Constitutional Amendment, 1976. The effect of the amendment was that writ jurisdiction of the High Court was extended to those cases also where only a part of cause of action had arisen within the territorial jurisdiction of a High Court. It is necessary to extract Clause (2) of Article 226 of the Constitution which reads as below:

226(2) Power of High Courts to issue certain writs.-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.

Section 20(c) of the CPC and Article 226(2) being *pari materia*, it is necessary to extract Section 20(c) which reads as under:

20. Other suits to be instituted where Defendants reside or cause of action arises.-Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

Xxx

(c) the cause of action, wholly or in part, arises.

The expression "cause of action" has not been defined in any Statute. Cause of action means that the person or authority to whom the High Court is empowered to issue must be within the territorial limits of the High Court and even a small fraction of right to sue accrued within the jurisdiction of the High Court. In other words, the cause of action wholly or in part must have arisen within the territorial jurisdiction of the High Court. "Cause of action" is the bundle of facts which taken with applicable to them, gives the Petitioner a right to relief against the Respondent.

6. The Apex Court in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, held that the cause of action would accrue at the place where the appellate/revisional order was passed, even though part of cause of action had arisen.

7. In the case of *Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others*, the facts were that the Appellant filed a complaint in West Bengal alleging dishonour of cheque issued by Respondent Company which had registered at

Head Office at Ernakulam in Kerala for the amount due for supply of stone chip in connection with the construction work of major bridges in the State of West Bengal. Summons was issued by CJM, Birbhum, West Bengal. Kerala High Court in a writ petition stayed the proceedings before the CJM. The Supreme Court held that the registered Head Office was at Kerala, the cheque was issued from Kerala and payment of dishonoured cheque was sent from Kerala were not relevant facts for holding that a part of cause of action arose within the territorial jurisdiction of Kerala High Court. Similar view with regard to cause of action had been taken by the Apex Court in *Om Prakash Srivastava Vs. Union of India (UOI) and Another, Alchemist Ltd. and Anr. v. State Bank of Sikkim and Ors.* (2007) 11 SCC 335, and *Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee*,

8. The expression "cause of action" is the entire set of facts that gives right to an enforceable claim. It is understood to mean a situation or facts that entitles a party to maintain an action in a Court. But whole or part of cause of action must arise within the territorial jurisdiction of the High Court. In order to entertain a writ petition or special civil application under Article 226(2), the High Court has to be satisfied from the entire facts pleaded in support of 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. Facts which have no bearing with the dispute involved in the case would not confer territorial jurisdiction on the Court.

9. Now, we may examine as to whether residence of the Petitioner in State of Gujarat which confer jurisdiction on this Court wholly or partly, though the Petitioner was dismissed from service while he was serving at Imphal, Manipur. In *Daya Shanker Bhardwaj Vs. Chief of the Air Staff, New Delhi and Others*, , the Division Bench held -

A right of action is the right to enforce a cause of action. A person residing anywhere in the country being aggrieved by an order of government Central or State or authority or person may have a right of action at law but it can be enforced or the jurisdiction under Article 226 can be invoked of that High Court only within whose territorial limits the cause of action wholly or in part arises. The cause of action arises by action of the government or authority and not by residence of the person aggrieved.

10. The decision of the Apex Court in *Dinesh Chandra Gahtori v. Chief of Army Staff* was considered by the Full Bench of Allahabad High Court in *Rajendra Kumar Mishra v. Union of India and Ors.* (2005) 1 U.P.L.B.E.C. 108. The Full Bench in paragraph 17 relied on the decision of the Apex Court in *Oil and Natural Gas Commission v. Utpal Kumar Basu* (1994) 4 SCC 71, wherein it was held as under:

Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in

part, had arisen within the territories 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 territories. The expression "cause of action" means that bundle of facts which the Petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus, 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. The Full Bench came to the conclusion that place of residence of Petitioner at District Ballia in State of Uttar Pradesh would not confer territorial jurisdiction on Allahabad High Court the Petitioner was dismissed from service in Court Martial proceedings in State of West Bengal and as even part of cause of action had not arisen in State of Uttar Pradesh and the writ petition was not maintainable.

12. In the case in hand, the Petitioner was dismissed from service while he was serving at Imphal, State of Manipur. Furthermore, the appeal filed by the Petitioner against his dismissal order was also dismissed by the Appellate Authority at Chandigarh, State of Punjab. No part of cause of action had arisen in State of Gujarat. Therefore, this Special Civil Application is dismissed with liberty to the Petitioner to approach the appropriate authority or legal Forum. Rule discharged. Parties shall bear their own costs.