

(2021) 09 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5055 Of 2019

Ravi Kant Kumar

APPELLANT

Vs

Chairman Cum Managing Director

RESPONDENT

Date of Decision : 10-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226(2)

Citation : (2021) 09 PAT CK 0045

Hon'ble Judges : Vikash Jain, J

Bench : Single Bench

Advocate : Maruth Nath Roy, Prabhakar Tekriwal

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and learned counsel for the respondents through video conference.

2. The present writ petition has been filed "for issuance of writ in the nature of Mandamus, directing & commanding the respondents to consider the case for appointments of petitioners to the post of Assistant Grade III (Depot) (I) for the South Zone, Food Corporation of India, who have successfully qualified written test and due verification has already been done for the appointment for all zones in pursuance of Advertisement No. 3/2015".

3. Mr. Prabhakar Tekriwal, learned counsel appearing on behalf of the respondent-FCI has raised a preliminary objection with respect to non-maintainability of the present writ petition on the ground that no part of cause of action can be said to have arisen within the State of Bihar for the purposes of territorial jurisdiction of this Court. Reference has been invited to clauses 16 and 26 of the advertisement (Annexure-1), inter alia, setting up the zone wise examination centres and stipulating that the jurisdiction of each zone would be as enumerated for 597 vacancies (later increased to 780) advertised for Assistant Grade-III (Depot) entirely in the South Zone and none of the posts to be filled up pursuant to such

vacancies related to the Bihar region. All actions were taken within the South Zone, such as conduct of the written examination on 02.08.2015, document verification and also the officers verifying the documents and the officers competent to appoint are all from the South Zone.

4. Learned counsel for the respondent-FCI places reliance on the decision of Hon'ble Supreme Court rendered in *Alchemist Ltd. v. State Bank of Sikkim*, (2007) 11 SCC 335. In the said case, the contentions of the parties have been taken note of in detail in paragraphs 8, 9 and 10 of the judgment, which are as follows-

"8. The appellant Company contended that a part of cause of action had arisen within the territorial jurisdiction of the High Court of Punjab and Haryana. The appellant Company, for such submission, relied on the following facts:

- (i) the appellant Company has its registered and corporate office at Chandigarh;
- (ii) the appellant Company carries on business at Chandigarh;
- (iii) the offer of the appellant Company was accepted on 20-2-2004 and the acceptance was communicated to it at Chandigarh;
- (iv) part-performance of the contract took place at Chandigarh inasmuch as Rs 4.50 crores had been deposited by the appellant Company in a fixed deposit at Chandigarh as per the request of the first respondent;
- (v) the Chairman and Managing Director of the first respondent visited Chandigarh to ascertain the bona fides of the appellant Company;
- (vi) negotiations were held between the parties in the third week of March, 2005 at Chandigarh;
- (vii) letter of revocation dated 23-2-2006 was received by the appellant Company at Chandigarh. Consequences of the revocation ensued at Chandigarh by which the appellant Company is aggrieved.

It was, therefore, submitted that at least a part of cause of action had certainly arisen within the territorial jurisdiction of the High Court of Punjab and Haryana and hence it had jurisdiction to entertain the petition. It was, therefore, submitted that the impugned order passed by the High Court deserves to be set aside by directing the Court to decide the writ petition on merits.

9. The respondents, on the other hand, submitted that neither of the above facts nor circumstances can be said to be a part of cause of action investing jurisdiction in the High Court of Punjab and Haryana. According to the respondents, all substantial, material and integral facts constituting a cause of action were within the territory of the State of Sikkim and, hence, the High Court of Punjab and Haryana was fully justified in holding that it had no territorial jurisdiction to entertain, deal with and decide the lis between the parties.

10. The respondents, in this connection, relied upon the following facts:

- (i) registered and corporate office of the first respondent Bank is at Gangtok i.e. Sikkim;
- (ii) secretariat of the second respondent State is situated at Gangtok i.e. Sikkim;
- (iii) offers were called for from various parties at Gangtok;
- (iv) all offers were scrutinised and a decision to accept offer of the appellant Company was taken by the first respondent Bank at Gangtok;
- (v) the State Government's decision not to approve the proposal of the appellant Bank was taken at Gangtok;
- (vi) the meeting of the Board of Directors of the first respondent Bank was convened at Gangtok and a resolution was passed to withdraw the letter dated 20-2-2004 at Gangtok;
- (vii) a communication was dispatched by the first respondent Bank to the appellant Company on 23-2-2004 from Gangtok"

5. After considering the various decisions on the point, the Hon'ble Supreme Court concluded in paragraphs 37, 38 and 39 of the said judgment as follows-

"37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.

38. In the present case, the facts which have been pleaded by the appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of "cause of action" within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition.

39. For the foregoing reasons, we see no infirmity in the order passed by the High Court dismissing the petition on the ground of want of territorial jurisdiction. The appeal, therefore, deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, we

6. leave parties to bear their own costs".

It is therefore submitted that, in the instant case, none of the actions having been taken within the territory of Bihar, no cause of action can be said to have accrued for the purposes of territorial jurisdiction of this Court.

7. Learned counsel for the respondent-FCI then relied on a decision of this Court in the case of Sunil Kumar Yadav Vs. Union of India reported in 2016 (3) PLJR

870 in which the aforesaid decision in Alchemist Ltd.'s case (supra) as also a host of other decisions of the Hon'ble Supreme Court were taken note of, and it was held that this Court had no territorial jurisdiction to entertain the writ petition in the following background -

"50. In view of the aforesaid proposition of law mentioned herein above, if that proposition is applied to the present case it appears from the fact that Staff Selection Commission, Bangalore, issued an advertisement prescribing the qualification, the notification was also published in the State of Bihar. The petitioner applied for the post, annexing his caste certificate. Accordingly, preliminary test was conducted at Allahabad and after clearing preliminary test, the petitioner appeared in the final written test, which was conducted at Lukhnow. As the petitioner did not produce his proper caste certificate, he was communicated his that he was not selected. In such view of the matter, all the action can be said integral part of cause of action or part thereof has not been taken place in the State of Bihar. Either it has taken place in the State of Karnataka from where the Notification was published or in the state of U.P. where the petitioner has appeared either in the preliminary test or in the final written test. Mere service of notice does not create any cause of action or any fraction cause of action with this Court to entertain this petition".

8. Learned counsel for the respondent-FCI has also relied on another decision of this Court rendered in Priyanka Sharma Vs. Food Corporation of India (CWJC No. 6384 of 2011) which is much to the same effect.

9. In the present case, this Court on 09.09.2021 passed the following order-

"A preliminary objection was raised by learned counsel for respondent-FCI on 23.08.2021 with regard to maintainability of the writ petition, upon which learned counsel for the petitioners sought time. Further time was sought on 27.08.2021.

2. However, when the matter was called on 06.09.2021, the petitioners were not represented. Once again, none appears today on behalf of the petitioners.

3. In the interest of justice, the matter is passed over by way of a last indulgence to the petitioners"

10. Learned ptitioners"counsel. for the petitioners has appeared today but has not furnished any copy of the judgement on which he proposes to place reliance.

11. In the above view of the matter, this Court has no hesitation in holding that no part of cause of action can be said to have arisen within the State of Bihar and as such, there is lack of territorial jurisdiction for the purpose of present writ petition, which accordingly, stands dismissed.