

(2020) 08 DEL CK 0204

In the Delhi High Court

Case No : Civil Writ Petition No. 5329 Of 2020, Civil Miscellaneous Application
No. 19247 Of 2020

Ritika Jain

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 226(1), 226(2)

Code Of Civil Procedure, 1908 — Section 20(c), 141

Footwear Design And Development Institute Act, 2017 — Section 3(f), 4(3), 8(1), 30

Citation : (2020) 08 DEL CK 0204

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Rajiv Sarin, Sanjay K. Sharma, Rajiv K. Agarwal, Aakanksha Kaul,
Mrinalini Sen Gupta, Kritika Gupta, Rajesh Kumar, Binay Kumar, Chetan Garg

Final Decision : Dismissed

Judgement

Jyoti Singh, J

1. Petitioner herein assails communication dated 01.07.2020 issued by Respondent No. 2 Footwear Design and Development Institute (hereinafter referred to as "FDDI") by which allegedly services of the Petitioner were terminated and seeks a direction to FDDI to reinstate the Petitioner with all benefits and continue her services. Directions are also sought with respect to a complaint lodged by the Petitioner against one of the senior officers under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (hereinafter referred to as "Sexual Harassment Act"), culminating into a Report by the ICC.

2. At the outset, FDDI has raised an objection to the maintainability of the petition on ground of lack of territorial jurisdiction of this Court and thus it would be apposite to first decide the issue of maintainability of the petition.

3. Petitioner entered into the service of FDDI on contractual basis vide an agreement dated 24.09.2010 for a period of three years i.e. upto 31.03.2013, on the post of Assistant Hostel Warden. Services of the Petitioner were extended from time to time, on contract basis, after she was promoted to the post of Senior Personal Assistant on 04.09.2013. The last extension was from 01.04.2017 to 31.03.2020.

4. On 04.02.2019, according to the case set up by the Petitioner, she received an internal order from FDDI regarding her realignment with the Reporting Manager/ Officer, Mr. Sandeep Bhatia, DGM, Admission Cell, FDDI. It is averred in the petition that between February 2019 and July 2019, Petitioner along with her colleagues faced multiple instances of abuse, insult, inappropriate behavior, including sexually actuated gestures and unwelcome comments from the DGM. On 10.07.2019, the DGM, during an official meeting, created a hostile work environment by using abusive language, resulting in the Petitioner fainting, when he shouted at her. A written complaint was filed by the Petitioner on 15.07.2019, against Mr. Bhatia, for repeated acts of sexual harassment, mental abuse, verbal abuse etc. including threats to remove the Petitioner from service.

5. An Internal Complaints Committee (ICC) was constituted on 25.07.2019. Petitioner requested the ICC to change her Reporting Officer as that would cause prejudice to the inquiry and also approached Respondent No. 1 regarding alleged unfair mechanism adopted by the ICC during the proceedings.

6. Vide an email dated 01.07.2020, Petitioner was informed that her contract with the FDDI had expired on 30.06.2020 and that her services were no longer required. A representation/notice was instantly sent by the Petitioner to Respondent No. 1 and FDDI for taking her back into service.

7. After much delay and awaiting, on 16.07.2020, Petitioner received the report of the ICC dated 13.11.2019, on a plain reading of which, it was clear that the ICC by its majority decision of four members found merit in the allegation of the Petitioner regarding the sexual harassment at workplace. Petitioner thereupon submitted a representation dated 17.07.2020 pointing out that the FDDI overlooked the recommendations of the Inquiry Report of the ICC, in her favour and instead of imposing a penalty on the DGM, had arbitrarily removed her from service. Getting no favourable response, the Petitioner filed the present petition.

8. FDDI has filed a short Affidavit taking a preliminary objection that this Court lacks the territorial jurisdiction to entertain the present petition. Mr. Rajesh Kumar learned counsel for FDDI contends that FDDI has its registered office at Noida, Uttar Pradesh and the Petitioner was employed in the Campus at Noida. The initial service contract of the Petitioner dated 24.09.2010 was executed at Noida and the extensions have been granted by FDDI at Noida. Cause of action, if any, has arisen in the State of Uttar Pradesh and the Petitioner has no cause of action, partly or wholly within the territorial jurisdiction of this Court.

9. In support of the contention learned counsel relies on the judgement of the

Supreme Court in *Eastern Coalfields Ltd. v. Kalyan Banerjee*, (2008) 3 SCC 456 wherein the Supreme Court relied on the earlier judgement of the Court in *Kusum Ingots & Alloys Ltd. v. Union of India*, (2004) 6 SCC 254 as well as *Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd.*, (2006) 3 SCC 658. In *Kusum Ingots* (supra), Supreme Court held that to determine the jurisdiction of one High Court vis-à-vis the other, the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be made and the facts which have nothing to do therewith cannot give rise to cause of action to invoke the jurisdiction of a Court.

10. Without prejudice to the preliminary objection, learned counsel further submits that even otherwise the writ petition is not maintainable as it pertains to a private contract not involving any element of public law. He submits that the contract has not been terminated and has come to an end by efflux of time on 30.06.2020 and the communication dated 01.07.2020, is only an intimation to that effect.

11. Alternatively, it is contended that even assuming that the Petitioner has any grievance or dispute with respect to the contract, she has an alternative remedy under Section 30 of the FDDI Act, 2017 read with Clause 15 of the contract dated 24.09.2010, to resort to Arbitration, in the event of any dispute, as per the Arbitration and Conciliation Act, 1996, as amended from time to time.

12. Learned counsel submits that the Supreme Court in *Joshi Technologies International Inc. v. Union of India & Others*, (2015) 7 SCC 728 has held that normally the Court would not exercise a discretion to examine an issue in a writ petition, unless the action has some public law character attached to it. Whenever a particular mode of settlement of disputes is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution of India and relegate the party to the said mode of settlement, particularly when the settlement is envisaged through means of Arbitration. It is argued that the Court in the same judgement has held that the scope of judicial review in respect of disputes falling within the domain of contractual obligation is extremely limited.

13. Responding to the submissions of learned counsel for FDDI, learned counsel for the Petitioner submits that the contention of the Respondent that this Court lacks the territorial jurisdiction is misconceived. He submits that Section 3(f) of the FDDI Act, 2017 defines "Governing Council" to mean the Governing Council of the Institute, constituted under Section 4(3). A perusal of Section 4(3) shows that the Members of the Governing Council are none other than the Officers of Respondent No.1 i.e. the Ministry of Industry and Commerce, in their ex-officio capacity. He further submits that the Governing Council is under the overall control of the Central Government which is evident from Section 8(1) of the Act and the President of India is the Visitor of the Institute. In view of this, there is no doubt that the action of discontinuing the services of the Petitioner and not extending her contract is with the approval of the Respondent No.1, which is the

Competent Authority and since the office of the Respondent No.1 is at Delhi, this Court shall have the territorial jurisdiction. Learned counsel draws the attention of the Court to the impugned communication dated 01.07.2020 wherein it is mentioned that order has been passed after approval of the Competent Authority and argues and contends that "Competent Authority" herein is Respondent No.1.

14. Learned counsel for the Petitioner submits that the services of the Petitioner have been discontinued after several years of her dedicated and exemplary service, only on account of the fact that she filed a complaint of sexual harassment against a senior officer of Respondent No.2. Her stand is vindicated as the allegations have been found to be true, as per the recommendations of the ICC. Learned counsel further argues that instead of penalizing the DGM, based on the recommendation of ICC, FDDI has chosen to penalize the Petitioner by depriving her of her livelihood. Arguments have also been made with regard to violation of the mechanism laid down under the Sexual Harassment Act.

15. Learned counsel for Petitioner relies on paras 17 and 19 of the judgement of the Supreme Court in Nawal Kishore Sharma v. Union of India, (2014) 9 SCC 329. It is submitted that in the said case, the Court had agreed with the contention of the Petitioner that the cause of action at least in part arose within the jurisdiction of Patna High Court, as he had received a letter of refusal, disentitling him to disability compensation at his home town in Bihar. The representation was also sent by the Appellant therein, from his home in the State of Bihar and the response thereto was also received in Gaya, Bihar.

16. Ms. Mrinalini Sen Gupta appearing on behalf of Respondent no.1 supports the stand of FDDI. She submits that Respondent No.1 has no role either in execution of the initial contract of service or in the renewal thereof. She further submits that impugned communication has been issued without the approval of Respondent no. 1 and rightly so as the Ministry has no role in the matter. Present petition relates to a contract between FDDI and the Petitioner, executed and performed at Noida, UP and only because the office of the Ministry is at Delhi, it shall not give jurisdiction to this Court, in the absence of any cause of action concerning Respondent No.1.

17. I have heard learned counsels for the parties and examined their contentions.

18. Maintainability of the petition on account of territorial jurisdiction is the first and foremost issue that needs adjudication. For answering the said legal nodus, it shall be inevitable to first consider the provisions of Article 226 of the Constitution of India, as it stood prior to its Amendment. The unamended Article reads as under:-

"226. Power of High Court to issue certain writs:

(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within

those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32."

19. In *Election Commission v. Saka Venkata Rao*, 1953 SCR 1144, the Constitution Bench of Supreme Court while interpreting the unamended provision held that the writ Court would be bound by the territories for its jurisdiction and the Government or the Authority affected by the issuance of writ would be amenable to the jurisdiction, either by residence or location, within the territory. Court was also of the view that the rule that cause of action gives jurisdiction in Suits is based on statutory enactment and cannot apply to writs under Article 226 which makes no reference to "cause of action" or where it arises. A similar view was taken by another Constitution Bench in *K.S. Rashid and Son v. Income Tax Investigation Commission*, 1954 SCR 738.

20. A larger Bench of the Supreme Court in *Lt. Col. Khajoor Singh v. Union of India*, (1961) 2 SCR 828 approved the aforesaid two Constitution Bench judgements and laid a clear dicta that a writ Court cannot exercise jurisdiction beyond its territorial jurisdiction.

21. After passing of these judgements, Clause (1-A) was inserted in Article 226 by the Constitution (Fifteenth) Amendment Act, 1963 which was re-numbered as Clause (2) by the Constitution (Forty-second) Amendment Act, 1976. Amended Clause (2) reads as under:-

"226. Power of High Court to issue certain writs:

(1) ...

(2) 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."

22. The change that was thus brought about by the Amendment was that the High Court could issue a writ even where the person or the authority against whom the writ is issued is beyond its territorial jurisdiction, provided, the cause of action arises within its territorial jurisdiction, wholly or in part.

23. The term "cause of action" in Article 226(2) came up for consideration before Supreme Court time and again. In *Kusum Ingots* (supra), Supreme Court at length discussed Clause (2) of Article 226, more particularly in the context of the words "cause of action", keeping in background Section 20(c) and Section 141

CPC and observed as under:-

9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in parimateria, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

xxxx xxxx xxxx

18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

xxxx xxxx xxxx

29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh [Lt. Col. Khajoor Singh v. Union of India, AIR 1961 SC 532] has, thus, no application."

24. The expression cause of action has been defined tersely in Mulla's Code of Civil Procedure and is as follows :-

"The "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."

25. It would also be useful to quote a passage from the Report in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu &Ors., (1994) 4 SCC 711 as under :-

"6. 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. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether

in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paras 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

26. In *Union of India v. Adani Exports Ltd.*, (2002) 1 SCC 567, the Supreme Court observed that jurisdiction of the High Court to entertain a writ petition would be conferred only when it discloses that the integral facts pleaded to support a cause of action constitute a cause empowering the Court to decide the controversy and at least some part, if not the entire, arises within its jurisdiction. The Court observed as follows:-

"16. 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. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this regard, it would suffice for us to refer to the observations of this Court in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu* [(1994) 4 SCC 711] (SCC at p. 713) wherein it was held:

"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."

17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, 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. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer

territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.

18. As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denial of credit in the passbook having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants."

27. Relevant it would be to rely on a passage from a judgement in *Om Prakash Srivastava v. Union of India* [(2006) 6 SCC 207, wherein emphasis was again laid on the cause of action to entertain the writ petition, notwithstanding that the seat of the Government or any other Authority, was not within the territorial jurisdiction of the concerned High Court. This interpretation was given keeping in view the Amendment to Article 226 and the relevant part is as under:-

"7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof."

28. From the conspectus of the judgements and the affirmation of the Supreme Court on the "cause of action" being a significant factor for conferring territorial jurisdiction on a High Court, it is palpably clear that the writ court can exercise jurisdiction where the Respondent is located in its territories and can also issue a writ where the Government or Authority is located outside its territorial boundaries, but in the latter case, the pre-requisite to exercise the power shall be the arising of cause of action in its territorial jurisdiction. The said expression as clearly defined and amplified in various judgments would take in its ambit, partial cause of action as well. Thus where not even a miniscule part of the cause of action has arisen within the territorial boundaries of the Court, it shall lack the territorial jurisdiction to entertain a petition and to issue directions to the Respondents who are located outside its boundaries. The Constitutional

Amendment introducing Article 226 (2) with a non-obstante clause highlights this position and even in the absence of seat of the Government or Authority or residence within the territorial boundaries of the High Court, it could entertain a petition, if cause of action has arisen within the jurisdiction of the High Court. Needless to state, that this Constitutional mandate would govern the considerations to decide the territorial jurisdiction of this Court.

29. From the various judgements what further unveils is that Supreme Court has unambiguously reiterated that to confer jurisdiction to entertain a writ petition, High Court must be satisfied from the facts pleaded that they have a nexus or relevance with the lis that is involved in the case and the facts having no bearing with the lis would not give rise to cause of action to confer territorial jurisdiction. In other words the bundle of facts so mentioned must give rise to an actionable wrong within the territories of Court. It must be kept in mind that Article 226 (1) deals with both the source of power of Court and its territorial jurisdiction while Clause (2) amplifies the jurisdiction with respect to the cause of action. There is thus a clear bifurcation in the Clauses and the power of a Court is certainly not synonymous to the jurisdiction of a Court.

30. The case of the Petitioner would have to be tested on the anvil of the aforementioned judgements to decide the territorial jurisdiction of this Court. Petitioner is thus required to show that at least some part of the cause of action, if not the whole, has arisen within the territorial boundaries of this Court as FDDI is located beyond the territory of this Court. In this context the reliefs sought by the Petitioner are relevant and are as follows:-

"(i) issue an appropriate Writ/Order/Direction including a Writ in the nature of Certiorari seeking quashing and setting aside of the order communicated vide email dated 01.07.2020 by the Respondent No.2 (FDDI) by which the services of the Petitioner was malafidely terminated/ dispensed with while the Petitioner's complaint regarding sexual harassment filed under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was still not disposed off by the ICC constituted by the Respondent No.2; and /or

(ii) issue an appropriate Writ / Order/ Direction including a Writ in the nature of Mandamus directing the Respondent No.2 to consider the representation/ notice dated 01.07.2020 of the Petitioner for retaining / take back the Petitioner in the Respondent No.2 institute immediately with all benefits the Petitioner was entitled for; and / or

(iii) issue an appropriate Writ / Order/ Direction to the Respondent No.2 to reconstitute an independent and unbiased Internal Complaint Committee for completing the enquiry / proceedings afresh within six months from the date ICC got reconstituted or when ICC proceedings are initiated; and / or

(iv) impose costs upon the Respondent No.2 on account of its failure to observe the law as prescribed under the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013; and / or

(v) issue any appropriate Writ/ Order/ Direction which this Hon"ble Court deems just and proper, in the facts and circumstances of the present matter."

31. A mere reading of the prayers in the writ petition shows that no relief has been sought against Respondent no.1. There is no averment in the pleadings in the writ petition that Respondent No.1 had granted the approval/sanction for the execution of the contract or its subsequent renewals. Neither is it pleaded that Respondent No. 1 controls the working or the terms and conditions of the employees of FDDI.

32. Though not pleaded, but learned counsel for the Petitioner argued that the Competent Authority mentioned in the impugned communication is Respondent No.1. Since the contract has been terminated with the approval of the Ministry, cause of action has arisen at Delhi. Learned counsel for the FDDI, on instructions, however, categorically submitted that the Competent Authority referred to in the communication was neither Respondent No.1 nor the Governing Council, but is the Managing Director of FDDI. There was no rebuttal to this stand by the Petitioner. Therefore for the Petitioner to argue that the office of the Ministry is located at Delhi cannot inure to her advantage.

33. It is evident from the prayers in the petition that reliefs have been sought only against FDDI. Mr. Kumar arguing for the FDDI has taken pains to point out that the entire cause of action, if any, with respect to the Contract in question arose at Noida and the Petitioner herself was employed at the office at Noida. He rightly submitted that Respondent No.1 has been impleaded only to create jurisdiction of this Court, which is impermissible, in the absence of any cause of action, at Delhi. It clearly emerges from the record that the contract whose renewal is sought was neither executed nor performed nor expired at Delhi. It is an admitted fact that the office of FDDI, where the Petitioner was working is located at Noida, Uttar Pradesh. The alleged acts of sexual harassment, during the course of employment of the Petitioner, were also beyond the territories of this Court. The reliefs sought, as rightly contended by the counsels for the Respondents, are only against FDDI.

34. Learned counsel for FDDI has forcefully and rightly pointed out that the pleadings in the writ petition, more particularly, paras O, P and Q are pointers to the fact that the cause of action arose within the confines of the office of the FDDI, wherein the Petitioner admittedly received the impugned communication dated 01.07.2020. Reading of the petition shows that the entire bundle of facts constituting the alleged grievances of the Petitioner, give rise to a cause of action, if any, only against FDDI and this Court thus lacks territorial jurisdiction to redress the said grievances. No writ can be issued to FDDI in the absence of any cause of action against it, within the territorial jurisdiction of this Court and thus the petition cannot be entertained by this Court.

35. Various issues raised in the present petition by the respective parties with regard to the legality or otherwise of the action relating to non-renewal of the

contract, proceedings in connection with the complaint of sexual harassment and the mechanism/procedure to be followed under the Sexual Harassment Act, are left open.

36. Petitioner is at liberty to approach the appropriate court of jurisdiction for redressal of her grievance, in accordance with law.

37. It is made clear that the Court has not expressed any opinion on the merits of the case.

38. Accordingly, the petition along with the accompanying application is hereby dismissed for lack of territorial jurisdiction.