
(2002) 04 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 2934 of 2001

R.K. Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 226(2)

Navy Act, 1957 — Section 11(2), 23

Navy Service Regulations, 1965 — Regulation 235, 236, 237, 238, 239

Citation : (2002) 3 ALLMR 434 : (2002) 4 BomCR 567 : (2002) 4 BOMLR 246 :
(2002) 94 FLR 956 : (2002) 3 MhLj 561

Hon'ble Judges : V.K. Tahilramani, J;A.P. Shah, J

Bench : Division Bench

Advocate : S.A. Mehta, instructed by Satendrakumar, for the Appellant; A.J. Rana and Rajiv Chavan, for the Respondent

Final Decision : Allowed

Judgement

A.P. Shah, J.—Rule. Respondents waive service. By consent Rule is made returnable forthwith.

2. The petitioner is a sailor in the Indian Navy holding the rank of Engine Room Apprentice III (E.R.A. III). The petitioner was enrolled in the Indian Navy as an Artificer Apprentice from 6-1-1990. He was engaged for a period of 20 years.

The petitioner along with other three applicants filed a writ petition in the Delhi High Court being Civil Writ Petition No. 6470 of 1999 inter alia challenging the provisions of Section 11(2) of the Navy Act, 1957 and Regulation No. 269(1A) of the Navy Service Regulations, 1965 as being unconstitutional on the ground that they violate Article 14 of the Constitution of India. The contention of the petitioner in the said writ petition was that the petitioner was discriminated against by being compelled to engage for a period of 20 years instead of 15 years like the other sailors. The said writ petition was dismissed by the Delhi High Court on 15-2-2000 holding that the period of 20 years was being applied

to all categories of sailors in pursuance of the provisions of Navy Act and the Navy Service Regulation and consequently, the petitioner could not have any grievance, since there was no arbitrariness in the application of the provisions of Section 11 as well as regulations.

3. On 13-10-2000 the Chief Staff Officer (LA and P) Eastern Naval Command, Visakhapatnam, respondent No. 3 issued an administrative order to commanding officer INS Rana, respondent No. 4 where the petitioner was posted to take action against the petitioner for filing writ petition in the Delhi High Court. The respondent, No. 3 stated that the petitioner had violated the rules and regulations of the Navy by approaching the court without exhausting the remedies available u/s 23 of the Navy Act and regulations 235 to 239 of the Regs. Navy Part II (Statutory). Therefore the respondent No. 3 directed respondent No. 4 to bring the petitioner to a summary trial for violating the channels of redressal of grievances. On 17-3-2001 the petitioner was summoned by respondent No. 4 and was informed that he had been awarded warrant punishment No. 1 of 2001 i.e. removal of two good conduct badges for having filed the said writ petition in the Delhi High Court without exhausting the remedies available u/s 23 of the Navy Act and regulations 235 to 239 of the Regs. Navy Part II (Statutory). According to the petitioner no opportunity was given to him to furnish any explanation and he was simply informed that it had been recorded that he had pleaded guilty to the charges. The petitioner has contended that he never pleaded guilty of any such charges as there was no question of doing so. Some of these facts were recorded by the petitioner by his letter dated 28-3-2001 to the respondent No. 4 whereby the petitioner sought redressal of his grievance. As no action was taken by the respondent No. 4 the petitioner filed the present petition seeking to quash and set aside the impugned order dated 17-3-2001 awarding punishment of removal two good conduct badges of the petitioner.

4. Mr. Mehta, learned counsel for the petitioner strenuously contended that every citizen of India has a right to approach the court under Article 226 of the Constitution for the purpose of seeking redressal of his grievance. If a citizen approaches a court it can never amount to misconduct on his part. He submitted that it is now well settled that Article 226 of the Constitution of India is part of the basic structure of the Constitution and that being so the right of a person to approach a court under Article 226 of the Constitution can never be taken away or curtailed in any manner. The learned counsel then submitted that invocation of provision of Section 23 of the Navy Act and regulations 235 to 239 of the Regs. Navy Part II (Statutory) was completely misconceived. He submitted that Section 23 of the Navy Act and regulations 235 to 239 of the Regs. Navy Part II (Statutory) provide a remedy to a sailor who thinks that he has suffered any personal oppression, injustice or other ill treatment at the hands of any superior officer to make a complaint in accordance with the regulations. Mr. Mehta therefore submitted that Section 23 and regulations 235 to 239 of the Regs. Navy Part II (Statutory) does not apply to the petitioner's grievance that he had been wrongly compelled to engage for a period of 20 years instead of 15 years.

Moreover in the writ petition filed before the Delhi High Court, petitioner had also challenged the provisions of Section 11(2) of the Navy Act and regulation 269(1A) of the Navy Service Regulations which challenge could not have been made u/s 23 of the Navy Act. In support, of his contentions Mr. Mehta placed reliance on the decisions of the Supreme Court in *Makhan Singh Vs. State of Punjab* (and connected appeals), . In the matter of: Under Article 143 of the Constitution of India, and *L. Chandra Kumar Vs. Union of India* and others, .

5. We find considerable force in the submission of Mr. Mehta. In the instant case the punishment was awarded to the petitioner on the ground that the petitioner approached the court without exhausting the remedies allegedly available u/s 23 of the Navy Act and regulations 235 to 239 of the Regs. Navy Part II (Statutory). None of these provisions empower the Naval Authorities, as indeed they cannot, to sit in judgment over the provisions of law and decide whether the same are constitutionally valid or not. Moreover petitioner's grievance was not that he has suffered personal oppression, injustice or other ill treatment at the hands of any superior officer to make a complaint in accordance with the regulations but he was aggrieved by certain provisions of law which were challenged in the writ petition filed by him in the Delhi High Court. We, therefore, are of the view that the action of the respondents in awarding the said punishment is per se arbitrary and illegal.

6. Mr. Rana, learned counsel appearing for the respondents was unable to support, the order passed by the respondent No. 4. In fact Mr. Rana stated that he is not making any submissions on merits of the case. Mr. Rana, however, contended that this court has no jurisdiction to decide the petition as no cause of action has arisen within the territorial jurisdiction of this court. He submitted that the concerned parties are based outside the territorial jurisdiction of this court. Originally the petition was filed in the Delhi High Court. The respondent Nos. 3 and 4 are admittedly outside the State of Maharashtra. The respondent No. 4 is based in Visakhapatnam and not in Mumbai. The action against the petitioner was initiated at Visakhapatnam. Therefore according to Mr. Rana no cause of action has arisen within the territorial jurisdiction of this court. Mr. Rana placed reliance on the following observations of the Supreme Court in *Union of India and Others Vs. Adani Exports Ltd. and Another*, .

"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. 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."

7. Per Contra, Mr. Mehta contended that the respondent No. 4 is the Commanding Officer/Captain of vessel INS Rana which is in the territorial waters of India. It is well settled that the territorial waters are not part of any State but

vest in the Union of India and that it is the Union of India which exercises sovereignty over the territorial waters. It is also well settled that the judicial power of the country vested in the courts is an aspect of national sovereignty and therefore this court can exercise jurisdiction in relation to the territorial waters in India. In this connection he relied upon the decision of the Supreme Court in *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, .* He also referred to the decision of the division bench of this court on *Kamla Kant Dube and Anr. v. m. v "Umang" and Ors., Appeal No. 59 of 2000* decided on July 2000. He submitted that a naval vessel which is a moving authority or a moving State or instrumentality of State is situated in the territorial waters of India and is amenable to the jurisdiction of this court. It is irrelevant where the naval vessel is registered or to which command it is allocated. He submitted that in the present case respondent No. 4 who is the Commanding Officer of the ship has passed the order and not the Eastern Command and that the said ship is off the coast of Mumbai and nowhere near Visakhapatnam. In these circumstances, asking the petitioner who is presently posted on the ship *INS Ranvijay* which is presently off the coast of Mumbai, to file a writ petition in the Andhra Pradesh High Court would be wholly unjust and unfair. The other aspect of Mr. Mehta's submission is that for the purpose of granting complete relief to the petitioner, it is necessary to issue a writ of mandamus to respondent No. 5 who is the present Commanding Officer on *INS Ranvijay*, on which the petitioner is presently serving. This ship is admittedly in the territorial waters outside Mumbai. Therefore, he submitted that even if the contention of Mr. Rana is to be accepted, respondent No. 5 is admittedly within the jurisdiction of this court. In the alternative Mr. Mehta submitted that part of the cause of action has admittedly arisen in Mumbai inasmuch the punishment awarded to the petitioner is partly executed and implemented in Mumbai by naval authorities. It is settled law that even the execution and implementation of the punishment constitutes a part of the cause of action. Mr. Mehta referred to the decision of the Supreme Court in *Navinchandra N. Majithia Vs. State of Maharashtra and Others, .*

8. In our view, it is not necessary to decide the larger issue as to whether the Bombay High Court will have jurisdiction in respect of naval vessels in the territorial waters of India, since the judgments cited by Mr. Mehta namely, *m. v. Elisabeth* and *Kamla Kant Dubey* (supra) pertain admittedly to the Admiralty jurisdiction of the Bombay High Court and in this case we have found that a part of the cause of action did arise within the territorial jurisdiction of this court. In the present case, we are concerned with the deprivation of a good conduct badge which is temporary and lasts until it is restored. After the punishment of deprivation of good conduct badge was awarded the punishment warrant was sent to the CBS at Mumbai. The CBS has thereafter published a circular called the Bureau of Punishment which was forwarded to the Naval Pay Office, Mumbai for further action, namely carrying out the necessary deduction in the pay of the petitioner. On the basis of this Bureau publication, the Naval Pay Office at

Mumbai has withheld the petitioner's allowance of Rs. 80 per month from his monthly salary. It is thus clear that the punishment was executed and implemented by the naval authorities in Mumbai.

9. In Navinchandra N. Majithia's case the Supreme Court held that in view of Clause 2 of Article 226, the power conferred on the High Court under Article 226 could be exercised by any High Court, exercising jurisdiction in relation to the territories within which "the cause of action wholly or in part, arises" and it does not matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The Court explained that the words "cause of action, wholly or in part arises" have been lifted from Section 20 of the Code of Civil Procedure, 1908, which Section also deals with the jurisdiction aspect of the Courts. The expression "cause of action" means "the bundle of facts which it would be necessary for the plaintiff to prove if traversed in order to support his right to the judgment of the court. That was a case where the petition was filed in the Bombay High Court for quashing the FIR registered at Shillong. It was held that major portion of the facts which led to the registering of the FIR have taken place at Mumbai. Even the very fact that a major portion of the investigation of the case under the FIR has to be conducted at Mumbai itself, shows that a part of the cause of action had arisen within the territorial limits of the Bombay High Court. In the present case, though the punishment was awarded by the respondent No. 4 who is Commanding Officer of the ship in territorial waters, the implementation and execution of the punishment has taken place within the territorial limits of this court. Therefore, we hold that this court has jurisdiction to try this petition.

10. In Adnani Exports Ltd's case, relied upon by Mr. Rana, the Supreme Court held that the High Court of Gujarat did not have the territorial jurisdiction to entertain the writ petition since no part of the cause of action based on which the petition was filed, arose within the territorial jurisdiction of the High Court of Gujarat. In that case, the controversy was related to the benefit of the Pass Book Scheme in the Export Import Policy in relation to certain credits to be given on export of shrimps. It was an admitted position that the Pass Book Licence was issued at Chennai by the designated authority at Chennai and the transactions concerning the said Pass Book were also made from the Chennai Port and thus the entire cause of action had arisen at Chennai. However, the argument of the respondents was that they had executed a Bank Guarantee and a Bond at Ahmedabad which in law the respondents were entitled to get cancelled through the intervention of the Courts at Ahmedabad. The Court however, found that the Bank Guarantee and the Bond had no direct nexus or bearing on the disputes involved in the petition. Such is not the case here. In our opinion, the fact that a part of punishment was executed and implemented in Mumbai is sufficient to confer jurisdiction on this court to entertain the present petition under Article 226.

In the result petition succeeds. Rule is made absolute in terms of prayer Clauses

(a) and (b). The respondents shall pay to the petitioner costs of this petition quantified at Rs. 5000/.

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