

(2011) 07 GUJ CK 0081

In the Gujarat High Court

Case No : Special Civil Application No. 4342 of 2011

R.S. Rathor

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

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

Citation : (2011) 07 GUJ CK 0081

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

Bench : Division Bench

Advocate : Nagesh C. Sood, for the Appellant; Vasavdatta Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard learned Counsel Mr. Nagesh Sood for the Petitioner and Mrs. Vasavdatta Bhatt for the Respondents.

2. Learned Counsel for the Respondents Mrs. Vasavdatta Bhatt raised preliminary objection that this Court does not have territorial jurisdiction to hear the matter as no part of the case of actin has arisen within the jurisdiction of the Gujarat High Court.

3. Learned Counsel for the Petitioner Mr. Nagesh Sood urged that the impugned punishment order of reduction of pay scale for a period of three years with further order that the Petitioner shall not earn any increment during this period was passed by the Disciplinary Authority on 22.2.2010 at Nagpur as the Petitioner was posted at Nagpur. The Petitioner challenged the order of the Disciplinary Authority in appeal which was decided by the Appellate Authority at Bombay, which was the Appellate Authority for the entire zone. The appeal was dismissed on 6.5.2010. Meantime, after the decision of the appeal, the Petitioner was transferred and posted at Ahmedabad Airport. However, the Petitioner filed statutory revision which was decided by the Revisional authority at New Delhi

and the revision was dismissed on 30.11.2010 and the order was sent by post to the Petitioner, which was received by the Petitioner at Ahmedabad. The learned Counsel has urged that since the Petitioner has received the order of the Revisional Authority at Ahmedabad and now, he is posted at Ahmedabad, therefore, Gujarat High Court will have territorial jurisdiction to hear and decide the dispute.

4. The learned Counsel for the Petitioner, in support of his argument, has placed reliance on the following decisions:

(1) Rajendran Chingarvelu v. R.K. Mishra, Additional Commissioner of Income Tax and Ors. reported in (2010) 1 SCC 457;

(2) Al Chemist Ltd. and Anr. v. State Bank of Sikkim and Ors. reported in (2007) 11 SCC 335;

(3) Om Prakash Srivastava Vs. Union of India (UOI) and Another,

(4) Dinesh Chandra Gahtori v. Chief of Army Staff

5. From the aforesaid discussion, the decisions relied by the learned Counsel for the Petitioner are not applicable to the facts of the instant case and hence, they are not helpful.

6. 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 law to them, gives the Petitioner a right to relief against the Respondent.

7. 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.

8. 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*,

9. 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.

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 view of the discussions made above, we are of the considered opinion that since the impugned orders were passed in State of Maharashtra and New Delhi, either the High Court in State of Maharashtra would have jurisdiction or the High Court at New Delhi would have jurisdiction where the revision of the Petitioner was rejected, but the High Court of Gujarat would not have territorial jurisdiction as no cause of action wholly or in part has arisen in Gujarat. The argument of counsel for the Petitioner that since the Petitioner was transferred and posted in Ahmedabad, therefore, on that ground, he is entitled to maintain this Special Civil Application, is liable to be rejected.

13. In the case in hand, the punishment order was passed in Nagpur (State of Maharashtra) by the Disciplinary Authority, his appeal against the order of the Disciplinary Authority was rejected at Mumbai and his revision against the order of the Appellate Authority was rejected by the Revisional Authority at New Delhi, which was communicated to the Petitioner by post at Ahmedabad. 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.

14. We are of the considered opinion that the Gujarat High Court does not have territorial jurisdiction to hear and decide the dispute as the impugned order was passed in State of Maharashtra and New Delhi. Merely because the Petitioner has received the order at Ahmedabad or at present, he is posted at Ahmedabad will not confer any territorial jurisdiction of this Court. This petition is dismissed as not maintainable with regard to the Petitioner to seek his remedy for appropriate legal forum. Rule is discharged.