

(2012) 03 CAL CK 0086
In the Calcutta High Court
Case No : W.P.C.T. No. 293 of 2011

Sadhan Kumar Kundu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Companies Act, 1956 — Section 10(F)

Constitution of India, 1950 — Article 136, 226, 226(2), 227, 323(A)

Citation : (2012) 4 CHN 186

Hon'ble Judges : Soumen Sen, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : R.N. Majumdar, Mr. Sourav Chakraborty and Mr. Supratim Bhattacharjee, for the Appellant; L.K. Chatterjee, Anjan Kumar Pal for Respondent Nos. 1 to 14, Mr. Ayan Banerjee for Respondent No. 9, Mr. Ashoke De and Ms. Sanchita Barman Roy for Respondent No. 16, Mr. Rahul Karmakar for Respondent Nos. 17 and 18, for the Respondent

Judgement

Nishita Mhatre, J.—The writ application has been preferred against the decision of the Principal Bench of the Central Administrative Tribunal in O.A. No. 1132 of 2011 which was heard alongwith O.A. No. 1133 of 2011, O.A. No. 1232 of 2011 & 1325 of 2011; the last mentioned being filed by the petitioner herein. The brief facts arising in the present petition are as follows:-

2. The grievance of the petitioner here is regarding the seniority list dated 5th November 2008 prepared in respect of the employees of the Income Tax Department. The petitioner challenged this seniority list by preferring O.A. No. 1325 of 2011. Similarly affected employees in various parts of the country filed original applications before the tribunal challenging the same seniority list. The Principal Bench of the Central Administrative Tribunal, therefore, transferred all matters pending before the various benches of the Central Administrative Tribunal to itself where an application on the same issue was pending. Accordingly, the application O.A. 1132 of 2011 was filed by Amit Kumar

Chattopadhyay before the Ranchi Bench, O.A. No. 1133 of 2011 was filed by T.K. Haridas Kumar before the Kochi Bench and O.A. No. 1232 of 2011 was preferred by S. Ranganathan before the Pune Bench. Those applicants have been joined as proforma respondents in the present writ application as respondents No. 16, 17 & 18 respectively. The respondents in each of the original applications have been joined as party respondents between 5 & 15 to the present writ application.

3. The Principal Bench of the Central Administrative Tribunal has dismissed the original applications filed by the petitioner and respondents 16, 17 & 18 and hence the present writ application.

4. Mr. Ayan Banerjee, learned counsel appearing for the respondent no. 9 who was a respondent in O.A. No. 1132 of 2011 before the Ranchi Bench and O.A. 1133 of 2011 before the Kochi Bench has raised a preliminary objection to the maintainability of the present writ application. He submitted before us that respondent no. 9 was not a party to the original application filed by the writ petitioner and, therefore, he ought not to have been joined as a respondent in the present petition. His next objection to the maintainability of the writ petition is that the Calcutta High Court would have no jurisdiction to decide about the correctness of the impugned order as it had been passed by the Principal Bench of the Central Administrative Tribunal situated at New Delhi. According to him, therefore, it is only the Delhi High Court, which would have the territorial jurisdiction to entertain the writ petition against the impugned order. The learned advocate has placed reliance on judgement of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, . He drew our attention to the observation of the Supreme Court in paras 91 & 99 in support of his submission that it is only the Delhi High Court which could entertain the writ petition challenging the order of the Principal Bench of the Central Administrative Tribunal.

5. Mr. R. N. Majumdar, learned counsel appearing for the petitioner has submitted that the cause of action arose in Calcutta and, therefore, the present writ is maintainable. According to him the provisions of Article 226(2) of the Constitution of India clearly permit a petition to be filed before a particular High Court if even a part of cause of action has arisen within the territorial jurisdiction of that High Court. He submitted that there can be no doubt that the petitioner is employed in Kolkata. He is prejudicially affected by the order in Kolkata and that since the seniority list is an all India seniority list and petitioner would be entitled to maintain the present petition before this Court. The learned counsel has relied on the judgement of the Supreme Court in the case of Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., The learned counsel then brought to our notice the judgement of the Special Bench of the Delhi High Court which decided Sterling Agro Industries Ltd. Vs. Union of India (UOI) and Others, . Based on these judgement the learned counsel submitted that the Concept of "Forum Conveniens" cannot be ignored and the petitioner who lives in Kolkata and works in the same city should not be driven to file a writ before the Delhi High Court when his original application had been preferred

before the Calcutta bench of the Central Administrative tribunal. This would, according to the learned counsel greatly prejudice the petitioner as he would have to incur huge expenses for the same.

6. Mr. Ashoke De, learned counsel appearing for the respondent no. 16 has supported the submissions made on behalf of the petitioner. He has brought to our notice that the judgement of this court in Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, and Supreme Court in the case of Rajendran Chingaravelu, Appellant vs. R.K. Mishra, Additional Commissioner of Income Tax & Ors. reported in (2010) 1 SCC 457. The learned counsel emphasized that the petitioner and respondents 16, 17 & 18 whose applications were transferred from the respective benches which had jurisdiction to decide their grievance to the Principal Bench of the Central Administrative Tribunal for administrative convenience. They were suffering the consequences and the effect of the judgement of the Principal Bench in their respective states and, therefore, the petition was maintainable before the Calcutta High Court.

7. The submissions of Mr. Majumdar and Mr. De have been adopted by Mr. Karmakar appearing respondent nos. 17 & 18.

8. Mr. Chatterjee, learned counsel appearing for the Union of India. Reliance on the judgement in the case of Canon Steels (P) Ltd. Appellant vs. Commissioner of Customs, Respondent reported in (2007) 14 SCC 464, in support of his submission that it would be the Delhi High Court and not this court which would have jurisdiction to entertain a writ against the judgement of the Principal Bench of the Central Administrative Tribunal.

9. In L. Chandra Kumar, Appellant vs. Union of India & Ors., Respondents (supra) the Apex Court observed that all decisions of the Tribunals whether created pursuant to Article 323 (A) or Article 323 (B) of the Constitution of India would be subject to the High Court's writ jurisdiction under Article 226/227 of the Constitution of India before a Division Bench of the High Court within whose territorial jurisdiction the particular tribunal falls. Mr. Banerjee, has emphasised these observations in support of his submission that since the Principal Bench of the Central Administrative Tribunal was not situated within the territorial jurisdiction of this court, the writ application cannot be entertained here. However one cannot ignore the observations of the Supreme Court in the earlier part of para 91 where it has noticed that the remedy under the Administrative Tribunals Act has been provided as it was cost effective. The Court has observed that approaching the High Court within whose jurisdiction the Tribunal was situated was the proper remedy as it was too costly for an aggrieved person to appeal by way of Special Leave under Article 136 of the Constitution of India.

10. The Delhi High Court in the case of M/s. Sterling Agro Industries Ltd. vs. Union of India & Ors (supra) considered whether the petitioner industry which was situated in the state of Madhya Pradesh could challenge an order before the Delhi High Court. The jurisdiction of the Delhi High Court was invoked on the

ground that the revisional authority namely the office of the Joint Secretary of the Government of India was in Delhi and, therefore, the Delhi High Court had the territorial jurisdiction to deal with the lis in question. While considering the rival submission the court also noticed the concept of "forum conveniens" and observed thus:-

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alechemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction is invoked in a mala fide manner is too restricted /constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinised by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled.

11. In the case of StridewellStride well Leathers (P) Ltd. and ors., Appellants vs. Bhankerpur Simbhaoli Beverages (P) Ltd. Respondents (supra) the Supreme Court considered the connotation of the expression "the High Court" in Section 10-F of the Companies Act, 1956. It was held in that case that an appeal against the order of the company law board would lie in the Madras High Court. This was because the jurisdiction was required to be determined in relation to the place at which the registered office of the company concerned was situated. The jurisdiction could not be conferred on the Delhi High Court merely because the company law board at Delhi passed the order. The situs of the company law board was not relevant for deciding the jurisdiction of the court before which an appeal u/s 10-F could be filed.

12. In the case of Union of India and Ors. Appellants vs. Hindustan Aluminium Corporation Ltd. and Anr., Respondents (supra), a Division Bench of this court held that the territorial jurisdiction to entertain a writ petition has to be decided on the basis of the allegations made in the petition. The Petitioner Company in that case had alleged in the writ petition that it suffered losses in business at Kolkata and as a direct consequence of the impugned orders. This court, therefore, held that since a part of cause of action arose in Kolkata. The Calcutta High Court would have territorial jurisdiction to entertain the petition.

13. In Canon Steels (P) Ltd. Appellant vs. Commissioner of Customs, Respondent (supra), the Apex Court confirmed the view of the Punjab & Haryana High Court that it had no jurisdiction to entertain the appeal under the Customs Act as the original order and the appellate order were not passed within the territorial jurisdiction of that Court.

14. Taking a conspectus of the decisions cited before us in our view the writ application is maintainable before this court. Article 226(2) of the Constitution of India reads as follows.:-

Art. 226(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.

15. Therefore, a writ filed by a party against an order would be maintainable in the High Court within whose territorial jurisdiction the cause of action arises, at least in part. The situs of the subordinate Court/Tribunal/Authority is not the only relevant factor to decide whether the High Court has jurisdiction. The all India seniority list has been challenged in the original applications filed before the respective benches of the Central Administrative Tribunal that the Calcutta Bench, Ranchi Bench, Pune Bench and Kochi Bench by employees who are working within the territorial jurisdiction of the respective benches. It is no doubt that all these applications were transferred to the Principal Bench since some

applications had been filed by employees before the Principal Bench challenging the same seniority list. The Principal Bench therefore felt it was expedient to transfer matters challenging the same seniority list before itself and disposed of all matters together to obviate the possibility of conflicting judgements being rendered by the different benches. However, employees situated in various parts of the country, working within the territorial jurisdiction of different High Courts, are feeling the consequences of the order passed by the Principal Bench of the Central Administrative Tribunal. Therefore, an employee who initially files his application u/s 19 of the Administrative Tribunals Act before the Tribunal within whose jurisdiction he is working, must be permitted to challenge the order passed on that application before the High Court within whose jurisdiction that Administrative Tribunal lies. The situs of the Principal Bench is not material as the cause of action has arisen within the territorial jurisdiction of this High Court. The cause of action is not merely the order of the Principal Bench but in fact is the seniority list itself, which has been challenged, in various original applications and its consequences.

16. We respectfully agree with the view taken by the Delhi High Court that the Principal of forum conveniens must not be ignored while considering the territorial jurisdiction of a court. The original applications have been filed before the Administrative Tribunal within the territorial jurisdiction of this court. In our opinion this would entitle the petitioner to maintain the petition before this Court and this court can decide whether the impugned order has been passed in accordance with law.

17. In our opinion, therefore, the writ application is maintainable and must be decided on merits. Accordingly the petition be listed for hearing on merits in the monthly list of April 2012. Urgent xerox certified copies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Soumen Sen, J.

18. I agree.