
(2019) 03 GAU CK 0070
In the Gauhati High Court
Case No : Writ Petition (C) No. 1698 Of 2019

Sangamitra Sadhu

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Central Excise Act, 1944 — Section 35G
Constitution Of India, 1950 — Article 226(2), 227

Citation : (2019) 03 GAU CK 0070

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : S Borthakur

Final Decision : Dismissed

Judgement

1. Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. S.K. Singha, learned CGC for the respondent No. 1. No one appears for the respondent Nos. 2, 3 & 4 as no notice has been issued to them till date.

2. The petitioner is praying for setting aside the impugned order dated 08.02.2019, issued by the respondent No. 2, extending the fellowship of the petitioner in the Indian Institute of Advanced Study, Shimla for a period of 6 (six) months. The petitioner has prayed that the extension should be for a period of 1 year, as the petitioner needs the said 1 year extension period to successfully complete the fellowship program.

3. The petitioner's counsel submits that the petitioner is an Assistant Professor, serving in Cotton University, Guwahati, who is presently undergoing fellowship program in the Indian Institute of Advanced Study, Shimla, which is ordinarily for 2 years. As the petitioner has been granted only 6 months extension, the petitioner will not be able to complete her fellowship program within the 6 months extension period. He submits that there is no provision in the Rules for extension of the fellowship program for 6 months and the extension has to be

given for a period of 1 year. He submits that unless the petitioner completes the fellowship program, the petitioner will not be issued a Completion Certificate by the Institute, which in turn may affect the petitioner from being allowed to rejoin Cotton Univeristy.

4. Mr. S. Borthakur, learned counsel for the petitioner submits that the impugned letter dated 08.02.2019 had been received by the petitioner in Guwahati and in view of the above, a part of the cause of action has arisen in Guwahati. He submits that the place where the communication is made would be the place where the territorial jurisdiction of the Court would exist. In this regard, he has relied upon the judgment of the Delhi High Court in the case of Mr. P.K.S. Shrivasta v. Union of India and Another, reported in 2016 SCC ONLINE Del 6149 and the judgment of the Madras High Court in the case of Community Action for Rural Development (CARD) v. The Secretary, Ministry of Women & Child Development & Chairman of Rashtriya Kosh, W.P.(MD) No. 15328 of 2012 and M.P.(MD) No. 1 of 2012. He thus submits that the writ petition is maintainable and this Court has the territorial jurisdiction to decide the case.

5. The learned CGC on the other hand submits that the petitioner's fellowship program is a residential program under the Indian Institute of Advanced Study, Shimla. He also submits that the petitioner had been granted 1 month's study leave for library consultation and field work, during which time, the petitioner was in Guwahati, wherein she received the impugned letter. Besides the above one month period, the petitioner has to be in Shimla to complete her fellowship program. He accordingly submits that this Court does not have the territorial jurisdiction to examine the grievance of the petitioner. He also submits that all the respondents in the writ petition are all having their addresses in Shimla, except for the respondent No. 1, whose address is in New Delhi.

6. I have heard the learned counsels for the parties.

7. In the two cases cited by the petitioner, the Delhi High Court and Madras High Court have held that the place where the communication is made would be relevant for coming to a finding that a part of the cause of action arises in the place where the order is communicated.

8. In the case of Harshad Chimanlal Modi .v DLF Universal Limited & Another, reported in (2005) 7SCC 791, the Apex Court has held that the jurisdiction of Court may be classified into several categories and that the important categories were:

- (i) Territorial or local jurisdiction
- (ii) Pecuniary jurisdiction and
- (iii) Jurisdiction over the subject matter.

It also held that an order passed by a Court having no jurisdiction is a nullity.

9. The Apex Court in the case of Nawal Kishore Sharma vs. Union of India &

Others, reported in (2014) 9 SCC 329 has relied upon the judgment passed by the Apex Court in Kusum Ingots & Alloys Ltd. -vs- Union of India and Another reported in (2004) 6 SCC 254, which is as follows, "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 has jurisdiction in the matter". It has also held as follows:

"30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens."

10. In the case of Ambica Industries v. Commissioner of Central Excise, reported in (2007) 6 SCC 769, the Supreme Court has held at para 12, 13 and 17 as follows:

"12. The said decision proceeded on the basis that part of the cause of action may arise at the forum where the appellate order or the revisional order is sourced. If, thus, a cause of action arises within one or the other High Court, the petitioner shall be the dominus litis. Indisputably, if this set of reasoning is to be accepted, the impugned judgment as also the decision rendered in Bombay Snuff (supra) would not be correct. Before dilating on the said proposition of law it may be noticed that the decision of a Tribunal would be binding on the Assessing Authority. If the situs of the appellate Tribunal should be considered to be the determinative factor, a decision rendered by the Tribunal shall be binding on all the authorities exercising its jurisdiction under the said Tribunal.

13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or Courts or Tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.

17. There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also Clause (2) of Article 226 thereof, the High Court

would exercise its discretionary jurisdiction as also power to issue writ of certiorari in respect of the orders passed by the Subordinate Courts within its territorial jurisdiction or if any cause of action has arisen there within but the same tests cannot be applied when the appellate court exercises a jurisdiction over Tribunal situated in more than one State. In such a situation, in our opinion, the High Court situated in the State where the first court is located should be considered to be the appropriate appellate authority. Code of Civil Procedure did not contemplate such a situation. It provides for jurisdiction of each court. Even a District Judge must exercise its jurisdiction only within the territorial limits of a State. It is inconceivable under the Code of Civil Procedure that the jurisdiction of the District Court would be exercisable beyond the territorial jurisdiction of the District, save and except in such matters where the law specifically provides therefor."

11. In the case of *Ambica Industries v. Commissioner of Central Excise*, reported in (2007) 6 SCC 769, the Supreme Court has held that if the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Court or Courts, some sort of judicial anarchy shall come into play. In this aspect, the Apex Court had considered the facts of that case, which is to the effect that the appellant had carried on business at Lucknow and he was assessed at Lucknow. The matter came up before the Central Excise and Service Taxes Appellate Tribunal (In short, 'CESTAT'), New Delhi. The said Tribunal (CESTAT) exercised jurisdiction in respect of the cases arising within the territorial limit of the State of Uttar Pradesh, National Capital Territorial of Delhi and the State of Maharashtra. The appeal was filed against the order of the Tribunal before the Delhi High Court, having regard to the situs of the Tribunal. A Division Bench of the Delhi High court, relying on the basis of an earlier Division Bench's judgment, in *Bombay Snuff (P) Limited -Vs- Union of India*, reported in 2006 194 ELT 264 Delhi, held that the Delhi High Court has no jurisdiction in the matter. In the case of *Bombay Snuff (P) Ltd. (Supra)*, the Division Bench of the Delhi High Court held as follows:

"29. On the reasoning adopted by this Court in *Technological Institute of Textile* case an appeal under Section 35-G must also be filed only in the High Court who has jurisdiction over the authority from whose order the proceedings have originated. The fact that the main seat of CESTAT is situated in Delhi or that the appeal was heard and decided at Delhi would not mean that all appeals arising from cases so decided regardless from which State the case has originated can be maintained in this Court."

The Apex Court agreed with the view that the Delhi High Court has no jurisdiction in the matter. In para 38 of *Ambica Industries (Supra)*, the Apex Court held as follows:-

"38. We have noticed hereinbefore that if the decision of the High Court in the aforementioned question is taken to its logical conclusion, the same would lead to a great anomaly. It would also give rise to the problem of forum shopping. We

may notice some examples to show that the determination of the appellate forum based upon the situs of the tribunal would lead to an anomalous result. For example, an assessee affected by an assessment order in Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it which may be contrary to judgments of the High Court of Bombay. This cannot be allowed. (See Suresh Desai and Associates -v- CIT, ITR, at pp. 915-17 and CCE -v- Technological Institute of Textile.)"

The Apex Court subsequently agreed with the judgment of the Division Bench of Delhi High Court in Ambica Industries (Supra).

12. In the present case, though a part of the cause of action has accrued within the jurisdiction of this Court, this Court is of the view that the receipt of the letter issued by the respondent No. 2 is not a determinative factor to decide the matter on merit in this Court. The respondent No. 2 Institute being located in Shimla, the decision of this Court would only be of persuasive value to the authorities as it is functioning under the jurisdiction of a different High Court. If this Court was to exercise its power of judicial review in respect of decisions made by Institutions, which are under the territorial jurisdiction of another High Court, there would be judicial anarchy, as persons would file cases in different High Courts. This would lead to a greater confusion as the execution/implementation of those orders passed by a High Court in respect of Institutions situated in the territorial jurisdiction of another High Court would be difficult, without having the power or resource to effectively execute/implement those orders.

13. As the Apex Court has held in Kusum Ingots & Alloys Ltd. (Supra) that the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of "forum conveniens", in cases where only a fraction of the cause of action accrues within the territorial jurisdiction of a Court, this Court is of the view that the proper forum to decide the present issue should be agitated before the appropriate forum in Shimla, Himachal Pradesh. Accordingly, this Court is not inclined to exercise its discretionary jurisdiction in entertaining this Writ petition, by invoking the doctrine of "forum conveniens".

Writ petition is accordingly dismissed. However, liberty is granted to the petitioner to approach the appropriate Court/forum in Shimla, Himachal Pradesh as per law.