

(2011) 02 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 1278 of 2011

Sarjeet Singh Maidhan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

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

Citation : (2011) 1 GLH 714

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

Bench : Division Bench

Advocate : Vaibhav A. Vyas for Paresh Upadhyay for Petitioner, for the Appellant;

Final Decision : Dismissed

Judgement

Mr. V.M. Sahai, J.—The short question that arises for consideration in this Special Civil Application is that if the petitioner is declared a deserter in State of Assam and his representation is rejected at Gaya (Bihar), whether the cause of action to sue would be available to the petitioner to file Special Civil Application, in Gujarat High Court on the ground that he is a resident of State of Gujarat?

2. The petitioner was enrolled in the Indian Army as a Constable on 18.11.1987. He was promoted on the post of Naik. While he was in service as Naik "C Coy 521 ASC Battalion, Assam, he was granted leave with effect from 11.4.2006 to 16.5.2006. He overstayed after 16.5.2006 and did not return for joining Army at Assam. Therefore, he was declared deserter as he was absent from duty from 16.6.2006. The petitioner's mother Dakha started claiming regularization of debit balance of deserter before the ASC, Records (AT) (Paharpura), Gaya, Bihar. The aforesaid authority informed Dakha that the certificate duly signed and counter-signed by District Soldiers Army Welfare Office be written, so that action may be taken. Similar letters were also sent on 27.5.2008 and 30.11.2008. The petitioner wrote a letter to the aforesaid Authority on 21.11.2008 claiming

pension and other retrial benefits. On 15.4.2010, the petitioner claimed pension and other retrial benefits from the office at Gaya (Bihar). He was informed on 18.4.2010 that those soldiers who are declared deserter are not paid pension. For other amounts he may write to the President of India, Central Government. Thereafter, the petitioner filed Special Civil Application No. 3223 of 2010 before this Court, which was dismissed on 29.3.2010 as pre-mature. In this application the petitioner has prayed for quashing of the communication dated 28.4.2010 denying pension and has prayed for pension and other terminal benefits.

3. We have heard Mr. Vaibhav A. Vyas, learned Counsel holding the brief of Mr. Paresh Upadhyay, Counsel for the petitioner.

4. 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 material, 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-

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(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 to them, gives the petitioner a right to relief against the respondent.

5. 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/revisonal order was passed, even though part of cause of action had

arisen.

6. 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 dishonor 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 dishonored 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 another v. State Bank of Sikkim and others (2007) 11 SCC 335, and Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee,

7. 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 entitle a party to maintain an action in ? 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.

8. Now, we may examine as to whether residence of the petitioner in State of Gujarat which confer jurisdiction on this Court wholly or partly though the petitioner was declared a deserter while he was in service in State of Assam and his representation made to the Authority at Gaya, State of Bihar was rejected at Gaya. In Daya Shanker Bhardwaj Vs. Chief of the Air Staff, New Delhi and Others, the Division Bench held,

A right of action is the right to enforce a cause of action. A person residing anywhere in the country being aggrieved by an order of Government Central or State or Authority or person may have a right of action at law but it can be enforced or the jurisdiction under Art.226 can be invoked of that High Court only within whose territorial limits the cause of action wholly or in part arises. The cause of action arises by action of the Government or Authority and not by residence of the person aggrieved.

9. 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 others (2005) 1 U.P. Local Bodies & Education Cases 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.

10. 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.

11. In view of the discussions made above, we are of the considered opinion that since the petitioner was declared as deserter while he was in service at Assam, either the High Court at Guhati would have jurisdiction or where the petitioner's representation was rejected, i.e. at Gaya (Bihar), Patna High Court would have jurisdiction, but 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 residing in Gujarat State, therefore, on the ground of residence, he is entitled to maintain this Special Civil Application, is liable to be rejected.

12. In the case in hand, the petitioner was declared deserter in State of Assam, his representation was rejected at Gaya in State of Bihar. 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.