
(2011) 01 AHC CK 0262

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3288 of 2011

Satya Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : (2011) 01 AHC CK 0262

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The relief claimed in the present petition is for quashing the order dated 21st July, 2010 passed by the Air Officer-in-charge Administration, Air Headquarter, New Delhi as also the order dated 6th December, 2010 passed by the Wing Commander Joint Director, Personnel Airman-1, New Delhi.

2. A preliminary objection has been raised by Sri R.B. Singhal, learned Senior Counsel for the Respondents assisted by Sri Keshav Kumar Srivastava that this Court does not have the jurisdiction to entertain the petition as no cause of action or part of cause of action has arisen within the territorial jurisdiction of this Court.

3. Learned Counsel for the Petitioner, however, submitted that since the Petitioner is resident of Mathura, this Court can entertain this petition. It is not possible to accept the contention of the learned Counsel for the Petitioner.

4. A Full Bench of this Court in Ram Prakash Dubey Vs. District Inspector of Schools and Others, held that since misconduct was committed at Calcutta and Summary Court Martial was also held at Calcutta, the entire cause of action arose at Calcutta and, therefore, the Allahabad High Court will have no jurisdiction and the observations are as follows:

12. In the present case it may be noted that the misconduct was committed at

Calcutta and Summary Court Martial was also held at Calcutta. Thus the entire cause of action arose at Calcutta. We, therefore, fail to understand how a writ petition can be entertained at Allahabad High Court where no part of the cause of action had arisen.

13. In our opinion merely because the Petitioner is presently residing at Ballia this will not give jurisdiction to this Court in view of the Seven Judges Bench decision of the Supreme Court in Lt. Col. Khajoor Singh Vs. The Union of India and Another, of the aforesaid decision the Supreme Court observed:

Now it is clear that the jurisdiction conferred on the High Court by Article 226 does not depend upon the residence or location of the person applying to it for relief; it depends only on the person or authority against whom a writ is sought being within those territories. It seems to us, therefore, that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Mumbai High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Article 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Article 226

41. We may mention that a "cause of action" is the bundle of facts which, taken with the law applicable, gives the Plaintiff a right to relief against the Defendant. However, it must include some act done by the Defendant, since in the absence of an act, no cause of action can possibly occur [Vide Radhakrishnamurthy Vs. Chandrasekhara Rao, Ram Awalamb and Others Vs. Jata Shankar and Others, and Salik Ram Adya Prasad Vs. Ram Lakhan and Others,

42. In the present case no part of the cause of action has arisen in U.P. Hence in our opinion the writ petition is not maintainable in this Court. It is accordingly dismissed. The decision of the Division Bench in Kailash Nath Tiwari v. Union of India (Special Appeal No. 997 of 1995, decided on 9.1.2002) in our opinion does not lay down the correct law and is overruled.

5. A Division Bench of this Court in M/s Deeptiman Logistics Pvt. Ltd. and Anr. v. Union of India and Ors., reported in 2010 (4) ADJ 148, has also examined this issue. In this case, the Government of India, Railway Board issued a Scheme, namely, Wagon Investment Scheme on 20th November, 2005 and the said Circular was sent to different Railway Zones including the South East Central Railway, Bilaspur. The Petitioners submitted two applications to the Chief Commercial Manager, South East Central Railway, Bilaspur and the applications

were approved by the order dated 22nd December, 2006 with reference to the letter dated 28th September, 2006 sent by the South East Central Railway, Bilaspur forwarding the applications of the Petitioner for consideration. Thereafter, an agreement dated 28th May, 2007 was executed between the Indian Railway and the Petitioners. The Petitioners submitted a letter dated 11th December, 2009 to the Chief Commercial Manager, South East Central Railway, Bilaspur for extending the delivery period for one year. In response to the said letter, a communication dated 28th January, 2010 was received by the Petitioner at the Allahabad Office stating that for extension of time limit, the Petitioners may approach the Railway Board. The Petitioners thereafter filed a writ petition in the Allahabad High Court. The Division Bench held that the writ petition cannot be entertained by this Court since no part of cause of action had arisen within the territorial jurisdiction of this Court. The relevant observations are as follows:

. The Petitioners claim that part of cause of action has arisen within the territorial jurisdiction of this Court since the Petitioners received all communications from Railway Board as well as from Respondent No. 3 at its head office at Allahabad, which furnishes cause of action to the Petitioners to approach this Court...

From the above exposition of the phrase "cause of action", it is clear that cause of action means every fact which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to his judgment. The Petitioners claim that part of cause of action has arisen within the territorial jurisdiction of this Court, is based on its pleading that communications were received at its head office at Allahabad. The issue, thus, boils down to the fact that whether in facts of the present case sending of communication at Allahabad by the Railway Board as well as by Respondent No. 3 gives part of cause of action to the Petitioner to invoke the territorial jurisdiction of this Court. The question as to whether receipt of communication or notice furnishes a cause of action, has been considered by the Apex Court and this Court on several occasions...

Service of notice, communication of an order, when it form integral part of cause of action, the territorial jurisdiction may be at the place where notice is served or communication is received but when the said communication is only by way of sending information at the registered head office, which is not integral part of cause of action, the writ petition cannot be entertained at the place where the communication is said to be received. In the present case the challenge is to the decision of Respondent No. 3 not to grant extension in the period of supply of wagons and further for not to accept the prayer for changing of loading station, which challenge cannot fall on non proving the fact of receiving the communication at head office at Allahabad. The decision of Respondent No. 3 informing the Petitioner 28th January, 2010 that Petitioners may approach the Railway Board was taken at Bilaspur and the decision became effective as soon as it was taken. Even if the Petitioners were not communicated the decision or even if the decision was not communicated or received by the Petitioners, their

cause of action is complete to challenge the action of Respondent No. 3. Thus the receipt of communication at head office at Allahabad cannot be said to be an integral part of cause of action which furnished a cause of action to challenge the decision of South East Central Railway, Bilaspur at Allahabad.

6. In *State of Rajasthan and Ors. v. M/s Swaika Properties and Anr.* (1995) 3 SCC 217, the Supreme Court held that mere service of notice u/s 52(2) of the Rajasthan Urban Improvement Act, 1959 on the Respondents at their registered office at Calcutta will not give rise to a cause of action within the territorial jurisdiction of the Calcutta High Court, unless the service of such notice was an integral part of the cause of action. It was found that the entire cause of action culminating in the acquisition of land arose within the State of Rajasthan and the remedy was to file a petition before the Rajasthan High Court where the cause of action wholly or in part arose.

7. Thus, in view of the aforesaid decisions of the Full Bench of this Court in *Rajendra Kumar Mishra (supra)*, Division Bench of this Court in *M/s Deeptiman Logistics Pvt. Ltd. (supra)* and the decision of the Supreme Court in *State of Rajasthan (supra)*, the preliminary objection raised by the learned Counsel for the Respondents has substance and the writ petition deserves to be dismissed for this reason.

8. The writ petition is, accordingly, dismissed as no cause of action or even part of cause of action has arisen within the territorial jurisdiction of this Court.