

(2011) 08 AHC CK 0017
In the Allahabad High Court
Case No : Special Appeal No. 1581 of 2011

Satyendra Kumar Pandey

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2), 226(2)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 498A
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20

Citation : (2012) 5 ADJ 45

Hon'ble Judges : Syed Rafat Alam, C.J; Krishna Murari, J

Bench : Division Bench

Advocate : Ashok Khare and Siddharth Khare, for the Appellant;

Final Decision : Dismissed

Judgement

1. This intra Court appeal filed under the Rules of the Court is preferred against the judgment and order of the learned Single Judge dated 28th July, 2011 dismissing the petitioner-appellant's writ petition in limine on the ground of lack of territorial jurisdiction. We have heard learned counsel for the parties.

2. The relevant facts of the case as stated in the writ petition are as under :

3. The petitioner-appellant was an applicant for the post of Sub-Inspector in the Central Industrial Security Force (CISF) in pursuance to an advertisement issued in the year 2001. After being successful in the written examination as well as physical and medical examination and interview, he was issued appointment letter dated 9.11.2010 directing him to report for training at National Industrial Security Academy, Hyderabad. The appointment order was accompanied with copy of attestation form and questionnaire requiring him to disclose whether he has ever been convicted by any Court of law or any other judicial institution or is there any case pending in any Court of law and has any FIR been lodged and the case is pending and whether any FIR was ever lodged in the past. The petitioner-

appellant disclosed in the questionnaire that an FIR u/s 498A read with Section 304B IPC and 3/4 D.P. Act was lodged against him, registered as Case Crime No. 515 of 2008 wherein he was charge-sheeted but later on acquitted, vide order dated 9.6.2011 passed by the Commandant/TRG, CISF NISA, Hyderabad, the offer of appointment made to the petitioner-appellant was withdrawn on the ground that he was not found suitable for the post of Sub-Inspector. Aggrieved by the aforesaid order, the petitioner-appellant approached this Court by filing writ petition.

4. Preliminary objection raised by the learned Assistant Solicitor General with respect to the maintainability of the writ petition for want of territorial jurisdiction was upheld by the learned Single Judge and accordingly, the writ petition was dismissed.

5. Learned counsel for the appellant vehemently contended that since the appellant is residing within the State of U.P. and further his selection and appointment on the post in question has been cancelled mainly on the ground that he was involved in a criminal case instituted within the State of U.P., hence this Court has jurisdiction. In support of the contention, reliance has been placed on the judgment of the Hon'ble Apex Court in the case of Navinchandra N. Majithia v. State of Maharashtra and others, (2007) 7 SCC 640. It is further submitted that since the cancellation of his appointment was on account of involvement in a criminal case within the State of U.P., hence part of cause of action arose within the territorial jurisdiction of this Court and the learned Single Judge committed manifest error of law in dismissing the writ petition for want of territorial jurisdiction.

6. The records of the writ petition indicate that the letter dated 9.11.2010 making an offer of appointment to the petitioner-appellant was issued by Commandant, NISA, Hyderabad. In pursuance whereof, the petitioner-appellant reported for training at Hyderabad and vide letter dated 9.6.2011 the offer made to him was withdrawn as he was not found suitable. The withdrawal letter was also issued by the Commandant, CISF, NISA, Hyderabad.

7. In the back-drop of the above facts, it is to be tested whether any part of cause of action arose within the territorial jurisdiction of this Court so as to confer jurisdiction upon this Court to test the legality and validity of the order under challenge. The power under Article 226 (2) of the Constitution of India can only be exercised by the High Court in relation to the territories within which the cause of action, whole or in part, arises for exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. The High Court can exercise jurisdiction of issuing writs when the cause of action, whole or in part, arises within the territorial jurisdiction of the Court.

8. The petitioner-appellant claims that since his involvement in a criminal case within the State of UP was the basis for withdrawal of the offer of appointment

hence the part of cause of action has arisen within the territorial jurisdiction of this Court and the withdrawal of appointment based upon criminal case would be amenable to the writ jurisdiction of this Court.

9. Whether the residence can only be a factor to determine the jurisdiction of the High Court under Article 226 of the Constitution of India was considered by the Hon'ble Apex Court in *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, wherein their Lordships held that the jurisdiction of the High Court for exercising power under Article 226 of the Constitution depends on the person or the authority passing the order, whether situated within the territory of that Court or not, and the residence or location of the person aggrieved will have no relevance on the question of High Court's jurisdiction. In paragraph 13 of the judgment, their Lordships held as under:

13. 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 Bombay 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.

10. The Apex Court again while considering the issue of jurisdiction of the High Court under Article 226 of the Constitution, in *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, held that while deciding the objection regarding 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 of the said facts. The Apex Court further observed 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. While deciding the said case, the Supreme Court placed reliance upon the judgment in *Chand Koer v. Pratap Singh*, 15 Ind. Appeals 156, wherein it had been observed as under :

The cause of action has no relation whatsoever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set-forth in the plaint as the cause of action; in other words, to the media upon which the plaintiff asked the Court to arrive at a conclusion in his favour.

12. Therefore, while dealing with the objections raised regarding lack of territorial jurisdiction, the Court has to consider all the facts pleaded in support of the cause of action.

13. In *Union of India and Others Vs. Adani Exports Ltd. and Another*, , the Supreme Court held that the High Court must be satisfied from the entire facts pleaded in support of the 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. Each and every fact pleaded by the party in its application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts, which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned.

14. In *U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others*, , it has been held by the Hon'ble Apex Court that expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises.

15. Again, the Apex Court had considered the issue of part of cause of action in

context of Article 226(2) of the Constitution, in Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, and did not approve exercising jurisdiction by the High Court even in cases where any part of cause action arose within its territorial jurisdiction. In the aforesaid case, Oil and Natural Gas Commission had a gas processing plant at Hazira in the State of Gujarat. Engineers India Ltd., acting as consultants for Oil and Natural Gas Commission (ONGC), issued an advertisement in leading newspapers inviting tenders for setting up of a Kerosene Recovery Processing Unit at Hazira. According to the advertisement, the tenders containing offers were to be communicated to EIL at New Delhi. A company NICCO, having its registered office in Calcutta read the notice in the Times of India and submitted its tender. The Tender Committee after examination rejected the bid of the NICCO's at New Delhi. The NICCO submitted a representation which was also not favourably accepted. The contract was awarded to some other Company. A writ petition was filed at Calcutta for restraining from awarding the contract to any other party. The writ was issued by the Calcutta High Court against which Oil and Natural Gas Commission filed SLP before the Apex Court. In the Apex Court the NICCO contended that Calcutta High Court had jurisdiction since it came to know about the tender from the publication in Times of India at Calcutta, it submitted its tender from its registered office within the jurisdiction of Calcutta High Court. It was also contended that a fax message sent in answer to the NICCO's fax message was also received at Calcutta office. The Apex Court considered the submissions and held that Calcutta High Court lacked jurisdiction. Following was laid down in paragraphs 8 and 11:

8. From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages, to EIL, ONGC, etc., at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on 27.1.1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made

representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of 15-1-1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27-1-1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court.

11. Strong reliance was placed on the decision of this Court in the State of Rajasthan case by the learned counsel for ONGC. The facts of that case reveal that the respondent-company having its registered office at Calcutta owned a large chunk of land on the outskirts of Jaipur. The Special Officer, Town Planning Department, Jaipur, at the instance of the Improvement Trust, Jaipur issued a notice intimating that the State Government proposed to acquire a large part of the said parcel of land for a public purpose, namely, implementation of a development scheme. The said notice was duly served on the respondents at their Calcutta office. The respondents thereafter participated in the inquiry and contended that they proposed to use the land for constructing a three star hotel. The Special Officer, however, felt that the alleged need of the respondents was just a pretence and the land was not needed bona fide by them, but the real object was to get the land released from acquisition. Consequently, the requisite final notification for the acquisition of the land was issued. Thereafter an attempt was made to seek exemption in regard to the notified land u/s 20 of the Urban Lands (Ceiling and Regulation) Act, 1976, but in vain. Having failed to get the land released from acquisition, the respondents filed a writ petition under Article 226 of the Constitution in the High Court of Calcutta challenging the acquisition wherein rule nisi was issued and an ad interim ex parte prohibitory order was granted restraining taking of possession of the acquired land, etc. The question which arose for consideration in the backdrop of the said facts was whether the High Court of Calcutta had jurisdiction to entertain the petition and grant ex parte ad interim relief. This Court observed that upon the said facts, the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Judge had no jurisdiction to issue rule nisi or to grant the ad interim ex parte prohibitory order. After extracting the definition of the expression "cause of action" from Mulla's Code of Civil Procedure, this Court observed as under: (SCC p.223, para 8)

The mere service of notice u/s 52 (2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land u/s 52 (1) of the Act arose within the State of Rajasthan, i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench.

16. A Full Bench of this Court in the case of Ram Prakash Dubey Vs. District Inspector of Schools and Others, , while considering the issue has observed in paragraph 40 as under:

40. 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 v. Chandrasekhara Rao, AIT 1966 AP 334; Ram Awalamb v. data Shankar, AIR 1969 All 526 (FB); and Salik Ram Adya Prasad Vs. Ram Lakhan and Others,].

17. In the case in hand, the offer of appointment was made to the petitioner-appellant from Hyderabad and withdrawal letter was also issued from Hyderabad. The withdrawal letter nowhere indicates that the offer of appointment is being withdrawn on account of involvement of the petitioner-appellant in a criminal case. It simply mentions that the petitioner-appellant is found unsuitable for the post hence the offer made to him is being withdrawn. In such circumstances, the allegation of the petitioner that he has been not suited on account of his involvement in a criminal case is not borne out from the record and thus by no stretch of imagination it can be said to be a part of cause of action. The fact that the petitioner-appellant had been acquitted from the criminal charges by a Court situate within the State of UP can at best be an evidence of the fact of his wrongful involvement in criminal case but evidence of fact is to be distinguished from the fact itself constituting cause of action. The case of Navinchandra N. Mijithia (supra) relied upon by the learned counsel for the petitioner-appellant is also of no help and is clearly distinguishable on facts. In that case, while examining the issue where part of cause of action had arisen within the State of Maharashtra, the Apex Court noticing that large number of events have taken place at Bombay in respect of the allegations contained in the FIR registered at Shillong held that part of cause of action arose within the State of Maharashtra and therefore the writ petition was maintainable before the Bombay High Court. In para graph 45 of the said judgment, it was observed as under :

It is almost impossible to hold that not even a part of the cause of action has arisen at Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ petition filed by the petitioner. Even the very fact that a major portion of the investigation of the case under the FIR has to be conducted at Bombay itself, shows that the cause of action cannot escape from the territorial limits of the Bombay High Court.

18. The aforesaid judgment is on its own facts and has no relevance or application in the facts of the present case.

19. In view of the facts of the case and also considering the enunciation of law on the subject as discussed above, we are of the considered opinion that no part of cause of action has arisen within the territorial jurisdiction of this Court, hence the writ petition is not maintainable before this Court and the learned Single

Judge has rightly declined to entertain the writ petition on the ground of jurisdiction.

20. The appeal, thus, being without merit, stands dismissed. In the facts and circumstances of the case, there shall be no order as to costs. However, the petitioner-appellant is at liberty to challenge the order impugned in the writ petition before the appropriate forum.