
(2013) 07 DEL CK 0297

In the Delhi High Court

Case No : Writ Petition (C) No. 7953 of 2010

Sh. Alok Chandra Jha

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0297

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Prem Prakash, for the Appellant; Ashish Wad, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner seeking appointment to the respondent. The petitioner seeks appointment as a Probationary Officer in Scale-I with the respondent. Counsel appearing for the respondent has argued that this Court would have no jurisdiction because the only advertisement issued for recruitment was in Mumbai (Annexure P-1 to the writ petition) and which specifically states that the sole jurisdiction of the Courts with respect to disputes arising out of the advertisement will be of the Courts at Mumbai. Reliance is placed upon the recent judgment of the Supreme Court in the case of M/s. Swastik Gases P. Ltd. Vs. Indian Oil Corp. Ltd. in Civil Appeal No. 5086/2013 decided on 3.7.2013 which holds that in fact for exclusion of jurisdiction expressions "alone", "only" etc need not be used. This judgment in the case of M/s. Swastik Gases (supra) refers to all other earlier judgments on the point including the celebrated judgment in the case of A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, The law consistently laid down by the Supreme Court is that once the ouster clause specifically uses the words "alone", "exclusive", "only" etc, any other Court except the one which is agreed to would not have the jurisdiction.

2. I may note that there is no objection with respect to territorial jurisdiction in

writing in the counter-affidavit but since the issue is a purely legal issue arising from the admitted facts from the advertisement issued, I have allowed the respondent to raise this objection.

3. Counsel for the petitioner sought to place reliance upon para 22 of the judgment in the case of Inter Globe Aviation Ltd. Vs. N. Satchidanand, however, the observations of the Supreme Court in this para are that parties by consent cannot confer jurisdiction of a Court which otherwise does not have any and therefore this judgment is not on the proposition that when two Courts have jurisdiction parties can agree to any one Court having exclusive jurisdiction to decide the disputes between them.

4. In the present case, the fact that Mumbai Courts have jurisdiction cannot be disputed because the only advertisement for recruitment was issued in Mumbai and recruitment process also took place in Mumbai. Though qua the petitioner recruitment process may have taken place at Delhi, will not mean that only Courts in Delhi will have territorial jurisdiction, because a part of cause of action has accrued in Mumbai and once there is an exclusionary clause with respect to territorial jurisdiction and whereby only Mumbai Courts have jurisdiction, this Court would not have territorial jurisdiction.

5. I may note that the Supreme Court in the case of National Highway Authority of India Vs. Ganga Enterprises and Another, has held that even before the main contract is entered into, even then with respect to an advertisement or invitation to tender there can be an independent contract. Therefore, in the facts of the present case there is an independent contract so far as the advertisement is concerned although appointment/employment has to subsequently follow.

6. In view of the above, this Court has no territorial jurisdiction in view of the exclusionary clause and only Courts at Mumbai would have territorial jurisdiction. The writ petition is therefore dismissed on account of lack of territorial jurisdiction, with liberty to the petitioner to approach the appropriate Courts at Mumbai for resolution of the disputes.