

(2014) 12 DEL CK 0130

In the Delhi High Court

Case No : Writ Petition (Civil) 8290/2014 and CM Appl. 19235/2014

Shailendra Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 226(2), 227

Citation : (2014) 12 DEL CK 0130

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Ayush Negi and Kuldeep Yadav, Advocate for the Appellant; Jasmeet Singh, CGSC, V.N. Koura and Sumit Singh Benipal, Advocate for the Respondent

Judgement

Hima Kohli, J.—The present petition has been filed by the petitioner praying inter alia for issuance of a writ of certiorari to quash the advertisement No.03/2014 issued by the respondent No.2/ONGC's Western Sector, Gujarat, whereby applications have been invited for filling up various posts in the workman cadre, including 11 posts of Junior Assistant (P&A) , on the ground that the same is violative of Articles 14 and 16 of the Constitution of India.

2. In short, the facts of the case are that the petitioner, who is a resident of Moradabad, UP, has raised a grievance with regard to the restrictions placed by the respondents in the aforementioned advertisement and submitted that though he is eligible to apply for the subject post mentioned the advertisement, he is being deprived of his right to participate in the selection process solely on account of the fact that the advertisement has prescribed that only the candidates, whose names are registered in any of the Employment Exchanges within the State of Gujarat, can apply.

3. As the petition is fulcrumed on the aforementioned advertisement, it is deemed appropriate to refer to some of the terms and conditions stipulated therein. From the title of the advertisement, it is clear that the same has been issued by the ONGC, Western Sector, Gujarat. In para 3 thereof, applications

have been invited to the posts of workmen with the requisite essential qualifications and a valid registration in any Employment Exchange located within the State of Gujarat, with a further condition that the Employment Exchange Registration Card should be valid during the online registration process, written test and the interview. Clause 5.3 of the advertisement names three centres for conducting the written test, which are Ahmedabad, Baroda and Surat. All the three cities are situated within the State of Gujarat. Clause 6, which refers to the manner in which the candidates are required to apply, reiterates that only those candidates, who meet the eligibility criteria, possess the requisite essential qualifications and have a valid registration in any of the Employment Exchanges located within the State of Gujarat may apply online.

4. Under the General Instructions, Clause 8 (12) prescribes that the court of jurisdiction for any dispute will be Vadodara. Clause 8(14) prescribes that the Employment Exchanges of Ahmedabad, Mehsana, Bharuch, Anand, Chhota Udaipur, Gandhinagar and Vadodara have been requested to inform the sponsored candidates to apply online for the purposes of recruitment. As per the time schedule for the online registration and the written test mentioned in clause 9 of the advertisement, the starting date of the online registration was 25.09.2014 and the closing date was 15.10.2014. The last date for remittance of application registration charges in the bank was 18.10.2014 and the tentative date of the written test was 23.11.2014.

5. On the last date of hearing, when the matter was listed for admission on 28.11.2014, learned counsel for the petitioner was requested to address the Court on the issue of maintainability of the present petition as it was observed that the entire cause of action appeared to have arisen outside the territorial jurisdiction of this Court. As learned counsel for the petitioner had sought time to examine the aforesaid issue, the matter was renotified for today.

6. Today, on the first call, proxy counsel had appeared on behalf of the counsel for the petitioner and had sought a pass over on the ground that the arguing counsel was held up in a matter before the Supreme Court and he was duly accommodated. On the second call, in the post lunch session, yet again, learned proxy counsel seeks an adjournment on the same ground, which is turned down and he has been requested to address the Court on the aspect of maintainability of the present petition in this Court.

7. The main contention of the learned counsel for the petitioner is that the condition specified in the advertisement to the effect that the candidates must have a valid registration with any of the Employment Exchanges located within the State of Gujarat amounts to depriving the prospective candidates like the petitioner herein of equal opportunity in matters of public employment despite the fact that they possess the requisite qualifications but are residing in other parts of the country.

8. Before going into the merits of the case, it is considered necessary to examine

whether this Court would be vested with the territorial jurisdiction to entertain the present petition.

9. Learned counsel for the petitioner submits that the petitioner is well entitled to file the present petition in this Court as the corporate office of the respondents No.2 and 3/ONGC is situated in Delhi.

10. Learned counsel for the respondents No.2 and 3/ONGC counters the said submission and states that merely because the corporate office of the respondents No.2 and 3/ONGC is situated in Delhi would not be sufficient reason to clothe this Court with territorial jurisdiction and the averments in the writ petition also reveal that no part of the cause of action has arisen in Delhi.

11. For deciding the issue of territorial jurisdiction, the Court is required to examine the relevant facts stated in the petition, which when taken collectively, can be treated as an essential part of the cause of action. No doubt, even a small part of the cause of action, if it has arisen within the jurisdiction of a Court, would be sufficient for that Court to entertain a petition, but to determine the said issue, it is the substance and not the form that is important.

12. The territorial jurisdiction of the High Courts has been defined in Article 226 of the Constitution of India. By the Constitution (Fifteenth Amendment) Act, 1963, enacted by the Parliament, after clause (1) , a new clause (1-A) , [renumbered as Clause (2) by the Constitution (Forty second Amendment) Act, 1976] was added; which reads as under:-

"(2) 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."

13. The underlying object of the amendment was expressed in the following words :-

"Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226. So that when any relief is sought against any Government, Authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs."

14. The effect of the amendment is that it made the accrual of cause of action an additional ground to confer jurisdiction on a High Court under Article 226. As the Joint Committee had observed:-

"This clause would enable the High Court within whose jurisdiction the cause of

action arises to issue directions, orders or writs to any Government, Authority or person, notwithstanding that the seat of such Government or Authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feel"s that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction."

15. Thus, after the insertion of Clause (1-A) , the legal position is that a writ can be issued by a High Court against a person, Government or Authority residing within the jurisdiction of that High Court, or within whose jurisdiction the cause of action in whole or in part arises. In other words, the concept of "cause of action" came into play.

16. After the insertion of Clause (1-A) (renumbered as Clause (2) , the jurisdiction of a High Court can be invoked if the cause of action arises, wholly or in part, within the territorial jurisdiction of that court. However, the expression "cause of action" has not been defined in the Constitution or in the Code of Civil Procedure. As observed by the Supreme Court in the case of Eastern Coalfields Ltd. (supra) , "cause of action", for the purpose of Article 226(2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged under Section 20(C) of the Code of Civil Procedure. It means a bundle of essential facts that are required to be proved. However, the entire bundle of facts pleaded, need not constitute a cause of action and what is necessary to be proved is such material facts based whereon a writ petition can be allowed.

17. In this context, the following observation made by the Supreme Court in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , are germane:-

"18. ..The facts pleaded in the writ petition must have a nexus on the basis whereon a prayer can be granted. Those facts which have nothing to do to the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the court."

18. In the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , the Supreme Court had clarified that in determining the objection of lack of territorial jurisdiction, the court must take into consideration all the facts pleaded in support of the cause of action, albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Stated differently, whether a High Court has the territorial jurisdiction to entertain a writ petition, must be answered on the basis of the averments made in the writ petition, the truth or otherwise whereof being immaterial.

19. In the case of Alchemist Limited and Another Vs. State Bank of Sikkim and Others, , the Supreme Court held that "the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or an essential part of the lis between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. It is also well settled that in

determining the question, the substance of the matter and not the form thereof has to be considered."

20. Guided by the ratio laid down in a catena of decisions of the Supreme Court and the High Courts on the issue of territorial jurisdiction, it is evident that for the purpose of deciding as to whether the facts averred by a petitioner would or would not constitute a part of the cause of action, the court is required to examine as to whether such facts constitute a material, essential or integral part of the cause of action. Even if a small fraction of the cause of action arises within the jurisdiction of the court, the said court would be vested with the territorial jurisdiction to entertain the petition. However the condition is that it must be "a part of the cause of action" and nothing short of that.

21. Given the facts of the present case, the only argument advanced by learned counsel for the petitioner to explain as to why the petitioner has approached this Court for relief is that the corporate office of the respondents No.2 and 3/ONGC is situated in Delhi. However, it is significant to note that the corporate office does not have any role to play in the matter of recruitment for the subject posts. The advertisement in question has been issued by the Western Sector of the ONGC. If the petitioner is aggrieved by one of the conditions imposed in the impugned advertisement, which is to the effect that only those persons, who are registered with the Employment Exchanges within the State of Gujarat can offer their candidatures for the subject posts, then it is for him to approach the competent Court within the State of Gujarat for seeking appropriate relief.

22. For purposes of deciding the jurisdictional aspect, the other relevant term and condition of the advertisement is contained in clause 12 of the General Instructions, which clearly stipulates that the court of jurisdiction for any dispute would be Vadodara. This is in line with the decision of the respondents to designate centres in three cities within the State of Gujarat for conducting the written test and request the Employment Exchanges in various cities within the State of Gujarat to call upon their registrants to apply for the subject posts.

23. All the aforesaid facts and circumstances when taken together, are a clear pointer towards the fact that this Court is not vested with the territorial jurisdiction to entertain this petition as no part of the cause of action has arisen within the NCT of Delhi. Moreover, the advertisement itself specifies that any dispute would be amenable to the jurisdiction of courts situated in Vadodara.

24. At this stage, it may also be relevant to discuss the issue of forum conveniens in the context of the argument advanced by learned counsel for the petitioner that the situs of the corporate office of the respondent No.2 and 3/ONGC is in Delhi. Learned counsel for the petitioner states that the location of the corporate office of the ONGC is itself sufficient ground for the petitioner to file the petition in Delhi: The said submission has to be examined in the light of the decision in the case of Kusum Ingots and Alloys Ltd. (supra) . In the said case, it was highlighted that the situs of the office of Parliament, Legislature of a

State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action for cases arising. Consequently, framing of a statute, statutory rule or issuance of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof.

25. Recently, a Full Bench of five Judges of this Court in the case of Sterling Agro Industries Ltd. Vs. Union of India (UOI) and Others, had the occasion to examine the doctrine of "forum conveniens" and the concept of cause of action in view of the conflicting judgments on the issue referred to them. After examining a number of decisions of the Supreme Court on this issue including the cases of Sri Nasiruddin Vs. State Transport Appellate Tribunal, , Kishore Rungta and Others Vs. Punjab National Bank and Others, , Alchemist Limited (supra) , National Textile Corp'n. Ltd. and Others Vs. Haribox Swalram and Others, , the Full Bench observed as below :

"31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra) , Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view."

26. The Full Bench of this Court went on to summarize their discussion in the following manner:-

"33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional

authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra) .

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra) .

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."

27. The position of law that clearly emerges from the above is that the expression, "cause of action" means and includes the circumstance resulting in breach of a right or an immediate occasion for the party to react. The said expression takes in its fold the whole bundle of material facts which a party must prove in order to succeed. It also embraces the circumstances and situations that entitle a party to maintain an action in court. For determining as to whether a particular fact constitutes a cause of action, would have to depend on the facts and circumstances of each case and while considering the facts averred, the

court has to consider the substance of the matter and not the form. Simply because a miniscule part of the cause of action arises within the territorial jurisdiction of a particular High Court may not be sufficient to compel the said court to decide the matter on merits. In appropriate cases, discretion still rests with the court to decline to exercise the jurisdiction vested in it by invoking the doctrine of forum conveniens or the doctrine of non- conveniens. The said doctrine of forum non-conveniens can be invoked when the court deciding to refrain from exercising its jurisdiction, is vested with the jurisdiction to decide the case.

28. In view of the given facts and circumstances of the case and having regard to the clear terms and conditions stipulated in the advertisement, this Court declines to entertain the present petition on the ground of lack of territorial jurisdiction.

29. The present petition is accordingly disposed of in limine with liberty granted to the petitioner to seek his remedies against the respondents before the competent court vested with the territorial jurisdiction in that regard.