
(2013) 02 DEL CK 0209
In the Delhi High Court
Case No : Writ Petition (C) 15099 of 2004

Shri A.K. Jain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0209

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sarvesh Bisaria, for the Appellant; O.P. Gaggar, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition filed under Article 226 of the Constitution of India by the petitioner/employee of the respondent No. 2/Union Bank of India impugns the orders of the Disciplinary Authority dated 18.06.1999 and the Appellate Authority dated 22.02.2002 which have imposed the punishment of compulsory retirement on the petitioner. The acts of which the petitioner was found guilty were committed by him when he was posted as an In-charge of a Branch of respondent No. 2-bank at Samastipur, Patna Region, Bihar. The disciplinary authority and the appellate authority have passed the impugned orders at Mumbai.

2. The counsel for the respondent No. 2- bank has taken up a preliminary objection as to the lack of territorial jurisdiction of this Court inasmuch as the impugned acts of which the petitioner was found guilty had taken place at Samastipur Branch, Patna Region, Bihar, enquiry proceedings were conducted at Patna, and the orders of the disciplinary authority and the appellate authority were passed at Mumbai i.e. none of the aforesaid took place in Delhi. It is argued on behalf of the respondent No. 2-bank that merely because the petitioner is residing at New Delhi where the orders of the disciplinary authority and the appellate authority were served cannot confer territorial jurisdiction on this

Court. Reliance in this regard is placed upon a Division Bench judgment of this Court in *Manohar Lal Vs. Union of India (UOI) and Others*, . In the case of *Manohar Lal (Supra)* the incident complained of and the departmental proceedings against the petitioner took place in Kanpur, the disciplinary authority issued the orders at Kanpur and the appellate authority disposed of the appeal at Allahabad. The writ petition, therefore, which was filed at Delhi, was held not to be maintainable for want of territorial jurisdiction. Paras 4 to 8 of the said judgment read as under:

4. In the light of the aforesaid submissions, we proceed to decide the preliminary issue, which was raised regarding the maintainability of the writ petition. It cannot be disputed that the incident, which was the subject-matter of the departmental proceeding, had taken place at Kanpur. The order of the disciplinary authority was also passed in Kanpur whereas the order of the appellate authority was passed in Allahabad. Therefore, no part of the cause of action in the present writ petition has arisen within the territorial jurisdiction of this court.

The only plea that is taken before us is that this court shall have extra territorial jurisdiction to entertain this petition in view of the provisions of Article 226(2) of the Constitution of India and also because the office of the Director General, CRPF is located in Lodhi Colony, New Delhi.

In our considered opinion, the aforesaid submission of the counsel appearing for the petitioner is misconceived and is required to be rejected outright. In this connection, we derive support from a decision of the Supreme Court in *KUSUM INGOTS and Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, . In the said decision a similar issue was raised before the Supreme Court as to whether the High Court of Delhi would have the requisite territorial jurisdiction to entertain a writ petition only because the seat of the Government is in Delhi. While considering the aforesaid preliminary objection, which was raised, the Supreme Court referred to the provisions of Article 226(2) of the Constitution of India as also Section 20(c) of the CPC and after setting out the said provisions, it was held in para 9 of the said judgment by the Supreme Court as follows:-

9. Although in view of section 141 of the CPC the provisions thereof would not apply to a writ proceedings, the phraseology used in section 20(c) of the CPC and Clause (2) of Article 226, being in pari material, the decisions of this Court rendered on interpretation of section 20(c) of CPC shall apply to the writ proceedings. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a case of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

5. In para 10 of the said judgment it was held by the Supreme Court that keeping in view the expressions used in Clause (2) of Article 226 of the

Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of a Court, that Court will have jurisdiction in the matter. The aforesaid conclusion was arrived at by the Supreme Court upon discussion of various earlier decisions of the Supreme Court, which are referred to and discussed in the said judgment. In para 22 of the said judgment in *Kusum Ingots (supra)* the Supreme Court has clearly stated that the court must have requisite territorial jurisdiction in absence of which a writ petition cannot be entertained. The Supreme Court has also discussed the relevancy of the situs of the office of the respondents. In para 23 of the said judgment it was held that a writ petition, questioning the constitutionality of a Parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. While coming to the aforesaid conclusion the Supreme Court relied upon and referred to the decision of the Calcutta High Court in *Abdul Kafi Khan Vs. Union of India (UOI) and Others*, . It was held in para 27 of the said judgment that when an order is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. It was further held that even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places and, Therefore, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside as the order of the original authority merges with that of the appellate authority.

6. In the decision of *National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others*, , the Supreme Court has held thus:-

As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, Therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed....

7. In *Aligarh Muslim University v. Vinay Engineering Enterprises Ltd.*, (1994) 4 SCC 710 the Supreme Court has held thus:-

2.. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is case of abuse of jurisdiction and we feel that the respondent deliberately moved the

Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable.

8. In that view of the matter and in the light of the law laid down by the Supreme Court in the aforesaid decision, we hold that in the present case, no part of cause of action has arisen within the territorial jurisdiction of this court. We find no reason to entertain the present writ petition in this court.

The petition is held to be not maintainable for want of territorial jurisdiction.

It shall, however, be open to the petitioner to file an appropriate writ petition on the same cause of action in a court having territorial jurisdiction in the light of the observations made hereinabove. The writ petition stands disposed of accordingly.

(underlining added)

3. In my opinion, therefore, the judgment in Manohar Lal vs. UOI & Ors. (Supra) squarely applies to the facts of the present case and the writ petition is not maintainable in this Court.

4. On repeated queries being put to the counsel for the petitioner to show any judgment as per which a Court where the petitioner resides and where the orders of the disciplinary authority/appellate authority are served can be a Court which would have jurisdiction as per the petitioner, counsel for the petitioner has placed reliance upon a judgment of the Supreme Court in the case of Om Prakash Srivastava Vs. Union of India (UOI) and Another, . Para 7 of the said judgment is relevant which reads as under:

7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

5. Reliance is also placed upon a Full Bench judgment of this Court in New India Assurance Co. Ltd. Vs. Union of India (UOI) and Others, and which paragraphs discussing the issue of territorial jurisdiction are paras 30 and 31 of the said judgment which read as under:

30. Having held that this Court has jurisdiction, it cannot be said that only a insignificant or miniscule part of the cause of action has accrued within the jurisdiction of this Court or that the substantial cause of action has accrued within the jurisdiction of the High Court of Andhra Pradesh. In fact, the sole cause of action for the writ petition is the order of the appellate authority and

which cause of action has accrued entirely within the jurisdiction of this Court and this Court would be failing in its duty/function if declined to entertain the writ petition on the ground of the contesting respondent being situated within the jurisdiction of the High Court of Andhra Pradesh. Though the petition has been filed under Article 226 of the Constitution, it cannot be lost sight of that jurisdiction in such cases under Article 226 is overlapping with Article 227. Article 227 is clear in this regard. The power of superintendence over Tribunals is vested in the High Court within whose jurisdiction the Tribunal is situated. In that light of the matter also, it cannot be said that only insignificant or miniscule part of the cause of action has accrued within the jurisdiction of this Court. The appellate authority in the present case having passed the order which is impugned in the petition, being situated within the jurisdiction of this Court, even if the cause of action doctrine were to be invoked, substantial part of the cause of action has accrued within the jurisdiction of this Court only. Even the language of the impugned order giving rise to the cause of action in the writ petition, discloses significant cause of action to have accrued within the jurisdiction of this Court. This Court while deciding this writ petition is not required to issue any direction, order or writ to any person outside its jurisdiction. Section 110H of the Insurance Act provides for appeal to the Central Government, seat whereof is admittedly within the jurisdiction of this Court.

CONCLUSION

31. For the foregoing reasons, we hold that where an order is passed by an appellate authority or a revisional authority, a part of cause of action arises at that place. When the original authority is situated at one place and the appellate authority is situated at another, a writ petition would be maintainable at both the places. As the order of appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situated having regard to the fact that the petitioner is dominus litis to choose his forum, and that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens.

6. In my opinion, the arguments, as urged on behalf of the petitioner, relying on the judgment of the Supreme Court in *Om Prakash Srivastava's* (supra) case are misconceived as the observations in the judgment of jurisdiction qua Article 226 are general as to the jurisdiction of a High Court on arising of a cause of action. So far as the judgment in the case of *New India Assurance Co. Ltd.* (supra) is concerned, the same holds that a High Court had territorial jurisdiction where the appellate authority or a revisional authority passes the order or where a part of cause of action arises, and at all these places a writ petition can be filed. In the facts of the present case, however, no part of action had accrued at Delhi inasmuch as the acts charged against the petitioner were committed while being posted as the Branch In-charge of Union Bank of India, Samastipur, Patna Region, Bihar, the enquiry proceedings were at Patna, and the orders of the original authority and the orders of the appellate authority were passed at

Mumbai. Thus, merely because the petitioner resides at Delhi where the orders have been communicated will not give territorial jurisdiction to this Court and the case is fully covered by the judgment in the case of Manohar Lal vs. UOI & Ors. (supra). In view of the above, the writ petition is dismissed as being not maintainable in the present case with liberty to the petitioner to approach any appropriate Court which has territorial jurisdiction. No costs.