
(2005) 05 AHC CK 0042

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 40090 of 2005

Union of India (UOI)

APPELLANT

Vs

M.A. Siddiqui and Others

RESPONDENT

Date of Decision : 18-05-2005

Acts Referred:

Citation : (2006) 1 AWC 729

Hon'ble Judges : B.B. Agarwal, J;A.K. Yog, J

Bench : Division Bench

Advocate : Amit Sthalekar, for the Appellant; S.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog and B.B. Agarwal, JJ.—Heard Counsels representing the petitioner and the contesting-respondent Nos. 1 to 4.

2. Respondent No. 5/Central Administrative Tribunal, Allahabad Bench, Allahabad through its Registrar, is a redundant non-contesting respondent. No notice need be given to said respondent.

3. Considering the nature of the case, we proceed to decide this petition finally at the admission stage itself as contemplated under Chapter XXII Rule 2(1), 11 proviso of Rules of Court, 1952. The issue of jurisdiction (as primarily issue) is to be adjudicated on the basis of undisputed facts on record.

4. In brief, the facts are that Chief Security Commissioner, Railway Protection Force, Northern Railway, Gorakhpur, issued advertisement No. 1/2000 in newspaper, original paper clipping of "Dainik Jagran" dated 30.8.2000 placed before us for perusal. This advertisement shows that there are 25 posts of Inspector/Abhiyojan-Grade 11. It provided that application should be sent to Chief Security Commissioner/Railway Protection Force, Northern Railway Board, Baroda House, New Delhi or Chief Security Officer/ Railway Protection Force, Northern Railway, Gorakhpur. The advertisement further mentioned that

candidate should indicate "Railway Zone" in respect of which he submitted his application. It is nowhere mentioned that all the 25 posts shown in the Advertisement were with respect to Gorakhpur Zone only. These 25 posts under advertisement were spread over The country in different Railway zones. The respondent authorities did not proceed with "selection" on the basis of the said advertisement. Later another advertisement No. RRB/CDG/EN-02/2002 dated 7.12.2002 was issued; photo copy of it is Annexure 3 to the Writ Petition. Relevant extract of the aforesaid advertisement is reproduced below :-

"RAILWAY RECRUITMENT BOARD EMPLOYMENT NOTICE NO-02/2002 S.C.O.78-79, Sector 8-C, MADHYA MARG, DATE OF ISSUE :07/12/2002 CHANDIGARH- 16009 CLOSING DATE : 07/01/2003 TIME : 17.30 HRS Applications are invited for the post of Inspector(Prosecution) in Railway Protection Force(RPF)from eligible male citizens of India.

IMPORTANT

(i) Candidates who had applied earlier for this post in response to Employment Notice issued by the Chief Security Commissioners of the 9(nine) Zonal Railways as mentioned below and whose applications have been found in order need not apply again. Intimation has already been sent though UPC post to the candidates whose earlier applications have been found in order during preliminary scrutiny and also to those whose earlier applications have been rejected. In case of any clarification they may contact this Recruitment Board on Phone No. 0172-544235 or in person on any working day. The candidates whose earlier applications have been rejected may now apply afresh against this Employment Notice, if they fulfil eligibility criteria.

(ii) Please read the entire notification carefully before filling up the application form. Please note that the Written Examination, Physical Measurement test and Interview will be held at different places within the jurisdiction of Railway Recruitment Boards, Chandigarh, Kolkata, Chennai, Mumbai, Gorakhpur and Guwahati, but the application must be addressed to the Assistant Secretary, Railway Recruitment Board, Chandigarh, at the address given above.

Provisionals Vacancies

Cat. Name Age as on Period Stipend Medical UR SC ST ST Total Minimum No. of 1.1.2003 of (Rs.) standard Qualif- Post (in years) Training 19
INSPECTOR Upto 32 As per As per C-1 13 03 02 07 25 (i) Bachelor (PROSE- (For those Rules Rules degree in CUTION) GR.II/RPF who have from Law and Pay-Scale applied time to time to (ii) 5 Rs. 6500- earlier in time time years 10500 response standing (RSRP) to the as an notifications advocate. issued by Zonal Railways, the age limit will be as per those earlier notification) These vacancies are distributed over the following Nine Zonal Railways are:

(i) Chief Security Commissioner/RPE/Northern Railway, New Delhi.

(ii) Chief Security Commissioner/RPF/Western Railway, Mumbai.

- (iii) Chief Security Commissioner/RPF/Central Railway, Mumbai.
- (iv) Chief Security Commissioner/RPF/Eastern Railway, Kolkata.
- (v) Chief Security Commissioner/RPF/Southern Railway, Chennai,
- (vi) Chief Security Commissioner/RPF/Northern Eastern Railway, Gorakhpur
- (vii) Chief Security Commissioner/RPF/North East Frontier Railway, Maligaon, Guwahati.
- (viii) Chief Security Commissioner/RPF/South Eastern Railway, Kolkata
- (ix) Chief Security Commissioner/RPF/South Central Railway, Secunderabad.

The candidate will have to indicate the option of the Zone for his initial appointment at the time of interview, if called. However the selected candidates are liable to be posted anywhere on Indian Railway.

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14. EXAMINATION CENTRES:

The written examination (Single stage) or Preliminary written exam (in case of two stage will be conducted within the geographical jurisdiction of the Railway Recruitment Board, CHANDIGARH, KOLKATA, CHENNAI, MUMBAI, GORAKHPUR AND GUWAHATI. Final written exam (in case of two stage exam) and interview will be conducted at Chandigarh,necessary that the candidates select one of these RRB's for the examination and indicate, it in application in the relevant column.

21. IAST DATE FOR RECEIPT OF APPLICATION :

The last date for the receipt of application in the office of Railway Recruitment Board, Chandigarh is 17:30 hours on 07/01/2003. The last date for receipt of application from the candidates residing abroad, Andaman & Nicobar, Lakshadweep Islands is 21/01/2003. Candidates hailing from J & K State may submit their application forms complete in all respect so as to reach the office of the Director, Employment Exchange, J & K government Jammu/Srinagar at least one week in advance from the closing date. The Director Employment Exchange J & K government, Jammu/Srinagar, will in turn send the same office of the Railway Recruitment Board, Chandigarh on or before 21/01/2003.

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26.FOR ANY LEGAL ACTION ARISING OUT OF THIS EMPLOYMENT NOTICE, THE JURISDICTION SHALL BE CHANDIGARH ONLY. In the event of dispute, English

version of Employment Notice will be treated as valid.

5. The subsequent advertisement No. 02/2002/Annexure 3 to the writ petition, shows that candidates who had earlier applied in pursuance to the advertisement No. 1/2000 referred to above were asked not to apply afresh.

6. Petitioner admits that he had appeared in written examination at Delhi; result was declared at Chandigarh and interview took place at Chandigarh. For ready reference para 4 (i) to (iv) of the Original Application before the Tribunal read:-

(i) The facts giving rise to the present application are that the applicants applied against 25 posts of Inspector (Prosecution) Grade II Railway Protection Force advertisement vide category No. 19 of Employment Notice No. RRB/CDG/EN-02/2002 dated 7.12 2002 which was issued by the Railway Recruitment Board, Chandigarh.

For the kind perusal of this Hon"ble Court a copy of the advertisement issued by the respondent No. 2 is being attached herewith and marked as Annexure No. 2

(ii) That on 27.4.2003 and 28.4.2003 the applicant appeared in the written examination and physical measurement test held only at Delhi by the respondent No. 2000

For the kind perusal of this Hon"ble Court a copy of the a copy of the Admit Card is being attached herewith and marked as annexure No. 3 to 3 BC.

(iii) That on 19.6.2003 result/revised vacancy was published, which states that is a result of review conducted by the respondent No.2, the provisional vacancies for the post of Inspector Prosecution Gr. II (RPF) Advertised vide Cat. 19 of employment Notice dated 7.12.2002 has been revised to 77 vacancies and accordingly declared the result of written and physical measurement test in which the applicants were also declared qualified for interview on the prescribed date at Chandigarh by the respondent No.2.

A copy of the result of written and physical measurement test dated 19.6.2003 is being attached herewith and marked as Annexure No. 1..

(iv) That thereafter the applicants appeared in the interview on the dated fixed. But the applicant no. appeared for interview on 23.7.2003 before prescribed date with the permission of respondent No. 2. The other examinations were held on the prescribed date and after conducting/completing the interview the final result was declared on 22.8.2003 without applying rule of overlapping and same was prepared and issued as applying category by the candidates whereas prescribed rule is that if any reserved candidate obtained the higher marks in the merit list may be created as general candidate as General Merit List.

A copy of the interview letters are being attached herewith and marked as Annexures No. 5 to 5B.

7. Except above referred advertisement No. 1/2000 nothing happened with

reference to the selection in the State of U.P.

8. Perusal of the subsequent advertisement No. 02/2002 clearly indicates that 25 posts were confined not only to Gorakhpur Zone but other several other zone also. We may hasten to point out that even if petitioners had applied against posts falling under Gorakhpur Zone alone, it would make no difference, for the reasons disclosed hereunder.

9. The result was published in Employment News of September 19, 2003 at Chandigarh by Railway Recruitment Board, Chandigarh; photostat copy filed as Annexure. 4 to the writ petition.

10. The contesting respondents, not selected, made complaints to Scheduled Caste & Scheduled Tribe, Commission, New Delhi and the Railway Minister, New Delhi. We need not dilate upon this facts except that it is now a calculated indigenous device to malign and manoeuvre pressure upon concerned authorities by involving such commission, even though they are not even remotely concerned.

11. The contesting respondent, having failed to manage the result in their favour filed O.A. No. 421 of 2004. Parties exchanged their pleadings. We are informed, at the hearing stage, a preliminary objection regarding jurisdiction of Central Administrative Tribunal, Allahabad was raised on behalf of Union of India before us. Preliminary objection, was that neither whole nor part of cause of action, in the facts of the case had arisen within territorial jurisdiction of C.A.T. at Allahabad. According to Union of India & others, the case was cognizable by Central Administrative Tribunal, Chandigarh or by C.A.T.- Principal Bench at Delhi. Application No. 103 of 2005 containing objection regarding Jurisdiction was filed before C.A.T, Allahabad (Annexure 5 to the writ petition). Counter affidavit, in reply to the aforesaid preliminary objection, was filed by the contesting respondents before C.A.T,Allahabad (photostat copy placed before us for perusal by Sri Sheo Nath Singh, Advocate).

12. We have gone through the said counter affidavit/reply and find nothing new except the facts narrated above.

13. The counter affidavit/reply (filed by the contesting respondent before Tribunal) shows that initially advertisement No. 1/2000 was issued at Gorakhpur and with reference to it claimed that part of action had arisen at Gorakhpur and hence it is argued that Central Administrative Tribunal at Allahabad had jurisdiction to entertain Original Application in question.

14. The Central Administrative Tribunal, Allahabad/Respondent No. 5 vide judgement and order dated 20.4.2005 had rejected aforesaid Misc. Application No. 103 of 2005 and directed case to be listed for final hearing on 15.4.2004. We are informed that on said date case was adjourned and it is still pending.

15. The question regarding jurisdiction is probably as old as the judicial system.

16. In support of preliminary objection, reliance is placed on the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, wherein the Apex Court had categorically observed " Mere fact that the petitioner resides within its territorial jurisdiction, even though no cause of action arose within its jurisdiction, would not entitle him to invoke the jurisdiction of High Court in his favour. There are catena of decisions which lay down that residence of plaintiff/ petitioner is not at all relevant to determine jurisdiction which court has jurisdiction shall depend upon the bunch of facts giving rise to "cause of action". For convenience we quote relevant passages from para 8, 12 and 15 of this case ONGC(supra)

" 8 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 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 Haziara 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. 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.

9.....Notwithstanding the strong observations made by this Court in the aforesaid decision and in the earlier decisions referred to therein, we are distressed that the High Court of Calcutta persists in exercising jurisdiction even in the cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the counter should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in our carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made time and again, some of the learned Judges continue to \\ betray that tendency. Only recently while disposing of appeals arising out of SLP Nos. 10065-66 of 1993, Aligarh Muslim University v. Vinay Engineering Enterprises Ltd., (1994) 4 SCC 710 this Court observed.

"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."

In that case, the contract in question was executed at Aligarh, the construction

work was to be carried out at Aligarh, the contracts provided that in the event of dispute the Aligarh court alone will have jurisdiction the arbitrator as appointed at Aligarh and was to function at Aligarh and yet merely because the respondent was a Calcutta-based firm, it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a court depends on how the members of that institution conduct themselves.

15. In the result, we allow this appeal, set aside the order of the High Court and direct that the writ petition will stand disposed of for want of jurisdiction. Since we are satisfied that NICCO had not invoked the jurisdiction of the Calcutta High Court bona fide, we think that this is a fit case for granting exemplary costs to ensure that such abuse of the Court's jurisdiction does not take place in future. We, therefore, direct NICCO to pay Rs. 50,000 by way of costs."

17. The criterion for determining jurisdiction of Court, there are various factors in law. In the facts of the instant case, however, we find that no part of action had arisen at Gorakhpur, since Advertisement 1/2000 became non existent when advertisement 2002 superseded it. The mere fact that advertisement No. 1/2000 was issued by the authority at Gorakhpur or application were to be submitted at Gorakhpur is of no significance in view of the fact there under advertisement 2002 it was clearly mentioned that Entire process of selection was to take place at Chandigarh. Petitioner had also applied in pursuance to advertisement No. 2/2002 and submitted to the jurisdiction of Railway Recruitment Board at Chandigarh. Their result, as noted earlier was declared at Chandigarh.

18. Considering advertisement No. 2/2002, it cannot be doubted that examination process in question was undertaken by the examining body at Chandigarh.

19. The Central Administrative Tribunal had placed reliance upon the decision in the case of Dinesh Chandra Gahtori v. Chief of Army Staff

20. We regret Tribunal failed to appreciate this in proper perspective. Supreme Court had itself noted (in the said judgement of the Dinesh Chandra Gahtori (supra)) that "the writ petition was filed in 1992. The impugned order was passed in 1999. This is a fact that the High Court should have taken into consideration. More importantly, it should have taken into consideration fact that the Chief of Army Staff may be sued anywhere in the country. Placing reliance only on the cause of action, as the High Court did was not justified."

21. From the observations of the Apex Court in the judgement of Dinesh Chandra Gahtori, it is abundantly clear that Supreme Court took note of unexplained period of 7 years at the behest of Union of India /Army Staff. The Supreme Court nowhere laid down that all other relevant considerations (which are determinative) should be ignored. Moreover, we also find that the earlier decisions of the Apex Court itself, laying down criterion to determine, jurisdiction need not be considered. The observations made by the Apex Court in the

aforesaid case of Dinesh Chandra Gohtroi (supra). We are supported in our view by the Full Bench decision of this Court in the case of Rajendra Kumar Mishra v.. Union of India 2004(4) ESC(All.)2313 . The said Full Bench has taken into consideration the catena of decision as well as Apex Court. Paras 10 and 30 are relevant and for ready reference reproduced below :

"10. It may be noted that the aforesaid observation in the three Judge decision of the Supreme Court in Dinesh Chandra Gahtori's case(supra) is only a laconic observation and it cannot be override larger Bench decisions of the Supreme Court.

30. In our opinion, the judgement of the three Judge Bench decision of the Supreme Court in Dinesh Chandra Gahtori's case (supra) cannot prevail over the Constitution Bench decisions of the Supreme Court in K.S. Rashid v. Income Tax Investigation Commission, (supra) and Election Commission v. S. Venkata Rao. (supra). It is well settled that if there is a conflict between a larger Bench decision of the Supreme Court and smaller Bench decision then the view of the larger Bench will prevail.

22. It is to be noted that even perusal of Advertisement No. 2/2002 shows that there are 9 zones. If candidates, who had applied against these nine Zones in India, then on the argument of Respondent-candidates case can be filed by aggrieved person all over India making impossible for Railway Recruitment Board, Chandigarh to contest the cases. We have no doubt that in the matter of examination or selection, jurisdiction of Court will not depend upon the place of advertisement or where advertisement is read or where applications are submitted. It is the place where examining body is situate where cause of action arises.

23. In the case ONGC (supra) Apex Court has held that jurisdiction of a Court cannot be created on the ground that advertisement has been read at particular place.

24. In view of the above, we have no doubt in our mind that Central Administrative Tribunal unduly stretched its jurisdiction by misapprehending facts of the case and having failed to appreciate that the decision in the case of Dinesh Chandra Gahtori (supra) is not a binding precedent. It is to regret that it ignored the binding "precedent" of the Apex Court in the case of ONGC (supra).

25. In the result, we set aside the impugned judgement and order dated April 10, 2005 passed by Central Administrative Tribunal, Allahabad rejecting Misc. Application No.103 of 2005 (in Original Application No. 421 of 2004 -M.A. Siddiqui and others Versus Union of India and another) and allow Misc. Application No. 103 of 2005 holding CAT, Allahabad Bench, Allahabad has no jurisdiction to entertain aforementioned O.A. 421/200001.

26. It is not denied before us part of cause of action had arisen at New Delhi.

27. Since time is the essence, as far as contesting Respondents are concerned we

direct the Central Administrative, Tribunal, Allahabad to transmit "entire record" of Original Application No. 421 of 2004 within one week of receipt of certified copy of this order to the Central Administrative Tribunal, Principal Bench, New Delhi with request to decide it at New Delhi at an early date preferably within six months particularly when parties have already exchanged their pleadings.

28. Writ petition stands allowed subject to the direction given above.

29. No order to costs.