

(2018) 10 MP CK 0033
In the Madhya Pradesh High Court
Case No : Writ Petition No. 25811 Of 2018

Vijay Shukla

APPELLANT

Vs

State Of Madhya Pradesh And Ors

RESPONDENT

Date of Decision : 31-10-2018

Acts Referred:

Constitution of India, 1950 — Article 225, 226

Motor Vehicles Act, 1988 — Section 88

State Reorganization Act, 1956 — Section 54

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 3

Citation : (2019) 2 MPLJ 65

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Shailendra Gupta, Vivek Jain

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution of India has been filed, seeking a direction to the State of Maharashtra and Secretary, State Transport Authority, Bandra, Mumbai (Maharashtra) to countersign the Stage Carriage Permit (Annexure P1) granted to the petitioner by the Secretary, S.T.A., M.P. (Respondent No.3) in the light of reciprocal transport agreement, executed between the State of M.P. and Maharashtra for plying the vehicle/bus bearing Registration No.MP 45P1167 over the interstate route Betul to Nagpur -via- Multi, Pandurna.

It is submitted by the counsel for the petitioner that as per the provisions of Reciprocal Agreement and Section 88 of Motor Vehicles Act, the permit issued by the State Authority is required to be counter-signed by another State Authority for plying the vehicle over the route. The application filed by the petitioner for grant of permanent Stage Carriage Permit is pending for consideration before the respondent No.1, therefore, the petitioner had applied for grant of temporary permit for plying the vehicle over the aforesaid route for the period from 10th

October, 2018 to 31st January, 2019 and the same was allowed and a request was made by the respondent No.3 to respondent No.4 for countersigning the permit (Annexure P2). In compliance of aforesaid permit as well as the letter, the petitioner applied for counter-signature before the respondent No.4 (Secretary, State Transport Authority, Bandra, Mumbai) after depositing requisite fees. It is submitted by the counsel for the petitioner that the petitioner's application for counter-signature is pending before respondent No.4 (Secretary, State Transport Authority, Bandra, Mumbai) though the petitioner is having valid permit issued by State of Madhya Pradesh. As the respondent No.4 is not counter-signing the vehicle in spite of deposit of requisite fees, therefore, this petition is filed at the instance of petitioner by seeking the following reliefs:-

"(1) The respondent No.4 be directed to counter-sign the permit, Annexure P/2 and the petitioner be allowed to ply the vehicle as per the permit granted by the State of Madhya Pradesh;

(2) The respondent No.4 further directed not to create hindrance in plying the vehicle by the petitioner as per permit.

(3) Any other writ, order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case be granted. Costs be awarded. "

On the other hand, the Government Advocate for the State/ respondents No. 1 and 3 submits that the petitioner is alleging that respondent no.4 has not countersigned the temporary permit, therefore, the High Court of Mumbai, will have territorial jurisdiction to entertain the writ petition, as the respondents no.2 and 4 are functioning within the territorial jurisdiction of State of Maharashtra.

In reply, it is submitted by the counsel for the petitioner, that the temporary permit for the aforesaid route has been issued by respondent no.3 and its office is situated within the territorial jurisdiction of the Gwalior Bench of M.P. High Court, therefore, this Court has territorial jurisdiction to entertain this writ petition. It is further submitted that it has been already been settled that where a part of cause of action has arisen, then the said Court would also have territorial jurisdiction to entertain the writ petition.

Considered the submission made by the learned counsel counsel for the parties.

It is undisputed fact that Betul is border District of State of Madhya Pradesh, whereas Nagpur is in the State of Maharashtra.

The counsel for the Petitioner could not dispute that in the present case, the major portion of the route would be within the State of Maharashtra, and thus, it is clear that as per the submission of the counsel for the Petitioner himself, the High Court of Mumbai, shall have territorial jurisdiction in the matter. Thus, even if the claim of the petitioner with regard to territorial jurisdiction of the Court is considered, then it would be clear that being the resident of Betul and having principal place of business, a part of cause of action, has also arisen at Betul, which falls within the territorial jurisdiction of Principal Bench of M.P. High Court.

The Supreme Court in the case of *Kusum Ingots & Alloys Ltd. v. Union of India*, reported in (2004) 6 SCC 254 has held as under :

"27. When an order, however, 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. 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. In other words, 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 and as the order of the original authority merges with that of the appellate authority."

The Supreme Court in the case of *Alchemist Ltd. Vs. State Bank of Sikkim*, reported in (2007) 11 SCC 335 has held as under :-

"37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that."

Thus, it is clear that in the present case, it can be said that a part of cause of action has arisen in State of Maharashtra, a part of cause of action has arisen within the territorial jurisdiction of Principal Bench of High Court of M.P. at Jabalpur and a part of cause of action has arisen within the territorial jurisdiction of this Court, as the temporary permit which is sought to be implemented by directing the respondent no.4 to countersign the same, has been issued within the territorial jurisdiction of this Court.

The next question for consideration would be that whether this Court, can refuse to exercise the powers under Article 226 of the Constitution of India or not?

The Supreme Court in the case of *Kusum Ingots & Alloys Ltd. v. Union of India*, reported in (2004) 6 SCC 254, has held as under :

"Forum conveniens -

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See *Bhagat Singh Bugga v. Dewan Jagbir Sawhney*, *Madanlal Jalan v. Madanlal*, *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.*,

S.S. Jain & Co. v. Union of India and New Horizons Ltd. v. Union of India.]"

Furthermore, in exercise of powers under Article 225 of the Constitution of India, Section 54 of the State Reorganization Act, 1956, Clause 27 and 28 of the Letters Patent and Section 3 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, the High Court of M.P. has made rules regulating practice and procedure of the High Court known as Madhya Pradesh High Court Rules & Orders (hereinafter referred to as "the High Court Rules"). Chapter III of the High Court Rules deal with territorial jurisdiction of the Principal Seat and the Benches and Rule 4 thereof provides as under:-

"4. Where a bench, in the Principal Seat at Jabalpur or the Benches at Indore or Gwalior, on an objection taken by the Registry or otherwise, is of the opinion that a main case posted before it, had arisen from a revenue district falling within the territorial jurisdiction of some other Bench or the Principal Seat, it may record its opinion and return the main case for its presentation at proper place for orders, after retaining one complete set of the main case."

Therefore, if a Bench either sitting at the Principal Seat at Jabalpur or Bench at Indore or Gwalior is of the opinion that the main case had arisen from the revenue district falling within the territorial jurisdiction of some other Bench or the Principal Seat, as the case may be, it may record its opinion and return the main case for presentation at proper place for orders etc.

This Court in the case of Smt. Puspa Bai and Others vs. Board of Revenue, Madhya Pradesh, Moti Mahal, Gwalior and Others, reported in (2016) 2 RN 113 has held as under:-

"Therefore, in the light of the provisions under Rule 4 of the High Court Rules based on the concept of forum conveniens also, in the considered opinion of this Court, the writ petition at Gwalior Bench of the High Court of M.P. Is not maintainable. In view of the concept, meaning and dimensions of cause of action or part of cause of action, as propounded in catena of Supreme Court judgments reviewed in the case of Alchemist (supra) and provisions contained in Rule 4 of the High Court Rules, the judgments cited by learned counsel for the petitioner viz. K.P. Govil v. Jawaharlal Nehru Krishi Vishwa Vidyalya, Jabalpur and another, 1987 J LJ 341, Rajendran Chingaravelu v. R.K. Mishra, Additional Commissioner of Income Tax and others, (2010) 1 SCC 457, Gajendra Singh Arya and another vs. State of M.P. and others, 2000 (2) MPLJ 50, G.S.Gyani and Company, Bhopal vs. Oriental Electric and Engineering Co., Calcutta and another, 2006 (2) MPLJ 530, Dashrath Rupsingh Rathod v. State of Maharashtra and another, (2014) 9 SCC 129, M.P. Co-operative Marketing Federation, Bhopal v. Bhojraj Ghanshyamdas and another, 1991 RN 2 are distinguishable on facts and of no assistance to the petitioner. In no way, these decisions are in conflict with law laid down in the case of Alchemist (supra).

Accordingly, the writ petition is dismissed as not maintainable. However, petitioner is set at liberty to file appropriate writ petition or any other

proceedings falling within the territorial jurisdiction of the High Court of M.P. At Principal Seat Jabalpur."

Moreover, the concept of forum conveniens or forum non-conveniens also assumes importance in the midst of the controversy involved and, therefore, the same is also required to be dealt with. The Black's Law Dictionary defines forum conveniens as follows:-

"The Court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses."

Thus, it is clear that considering the facts and circumstances of a given case, the High Court, may refuse to exercise its powers under Article 226 of the Constitution of India, on the ground of Forum Conveniens, specifically when the petitioner is seeking direction against an authority functioning with the territorial jurisdiction of another High Court.

Under the facts and circumstances of the case, where the petitioner is seeking direction against the respondent no.4 to countersign the temporary permit and the respondent no. 4 is within the territorial jurisdiction of State of Maharashtra, and a part of cause of action has also arisen within the State of Maharashtra, this Court, does not find it appropriate to exercise its powers under Article 226 of the Constitution of India, for directing the respondent no.4 to countersign the temporary permit issued by the respondent no.3.

Thus, this petition is dismissed on the ground of Forum Conveniens with liberty to the petitioner to approach the High Court of Mumbai, for redressal of his grievance.