

(2010) 01 BOM CK 0119
In the Bombay High Court
Case No : Writ Petition No. 3718 of 2009

VSP Acqua Mist Fire Private Limited

APPELLANT

Vs

Maharashtra State Electricity Transmission Co. Limited and
Others

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 1
Bombay Reorganisation Act, 1960 — Section 41
Constitution of India, 1950 — Article 143(1), 226(2)
States Reorganisation Act, 1956 — Section 51

Citation : (2010) 6 BomCR 414

Hon'ble Judges : Naik Vasanti A., J; Bobde S.A., J

Bench : Division Bench

Advocate : Anand Parchure, for the Appellant; K.H. Deshpande assisted by S.V. Purohit, for Respondent No. 1, P. Mahalle, for Respondent No. 2, A.S. Kilor and K.N. Shukul, for the Respondent

Final Decision : Dismissed

Judgement

Bobde S.A., J.—Rule returnable forthwith. Heard by consent.

2. The Petitioners have challenged the tender process initiated by the Respondent No. 1 Maharashtra State Electricity Transmission Company Limited and the award of the contract to the Respondent No. 3. According to the Respondent No. 1 the entire cause of action has not arisen within the normal territorial jurisdiction of the Bench at Nagpur, and same has arisen within the territorial jurisdiction of the Principal Seat at Bombay, hence a preliminary objection has been raised to the filing of this petition at Nagpur. We have accordingly heard the learned Counsels on this issue.

3. Shri K.H. Deshpande, Senior Advocate, the learned Counsel for the Respondent No. 1 submitted that the place of filing of a writ petition is controlled by Article 226(2) of the Constitution of India which empowers a High Court to

exercise jurisdiction in relation to the territories within which cause of action, whole or any part thereof. Further, according to learned Counsel, as far as this Bench of the Bombay High Court is concerned, Parliament has specially delineated the territorial jurisdiction while reorganizing the State of Maharashtra by enacting Section 41 of the Bombay Reorganization Act, 1960, which reads as follows:

40. Without prejudice to the provisions of Section 51 of the States Reorganization Act, 1956, such Judges of the High Court at Bombay, being not less than three in number, as the Chief Justice may, from time to time nominate, shall sit at Nagpur in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara, Chanda and Rajura:

Provided that the Chief Justice may, in his discretion, order that any case arising in any such district shall be heard at Bombay.

Learned Counsel further relies on the Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960 which governs presentation of the matter at Nagpur, Aurangabad and Goa, in particular Rule 1 which reads as follows:

1- Presentation of matters at Nagpur, Aurangabad and Goa - All appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution arising in the Judicial Districts of Akola, Amravati, Bhandara, Buldhana, Chandrapur, Nagpur, Wardha, Yavatmal and Gadchiroli which lies to the High Court of Bombay shall be presented to the Additional Registrar of that High Court at Nagpur and shall be disposed of by the Judges sitting at Nagpur:

Provided that the Chief Justice may, in his discretion, order that any case arising in any such District shall be heard at Bombay;

Provided further that the Chief Justice may, in his discretion, order that any case presented at Bombay be heard at Nagpur.

4. According to learned Counsel for the Petitioner only writ petitions where the cause of action has arisen within districts specified in Rule 1 of Chapter XXXI and u/s 41 of the Bombay Reorganization Act, alone can be filed before the Nagpur Bench of the Bombay High Court. In the present writ petition since no part of the cause of action has arisen in any of the districts specified by any of the provisions, the present petition is liable to be returned for being presented before the Principal Seat at Bombay.

5. The relevant facts in relation to the cause of action are not disputed namely that, the tender notice was published at Bombay, bids were submitted at Bombay, the scrutiny of documents, fire tests were conducted at Bombay. Eventually the letter dated 27.8.2009 was issued at Bombay. According to the Petitioner the following events give rise to the part of the cause of action at

Nagpur -a communication pertaining to tender notice, communication of date and timing of opening and communication regarding a query about the validity of a certificate, all received at Nagpur. Indeed no other events are relied upon for asserting that the cause of action has arisen within the jurisdiction of the Bench at Nagpur.

6. Shri Deshpande, learned Senior Counsel for the Petitioner has relied on several decisions of the Supreme Court in support of his objection on behalf of Respondent No. 3. The learned Counsel has relied on the decision in State of Rajasthan and Others Vs. Swaika Properties and Another, where the Calcutta High Court had entertained a writ petition in respect of a cause of action which has arisen in Jaipur in the State of Rajasthan, ostensibly on the ground that a notice had been served on the Petitioner at Calcutta. The Supreme Court deprecated assumption of jurisdiction at Calcutta and held that if the Petitioners had felt aggrieved by the acquisition of their lands situated at Jaipur and wanted to challenge the authority of the notification issued by the State Government of Rajasthan u/s 152 of the Act, by petition under Article 226 of the Constitution, the remedy of the Respondents was to file such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action, wholly or in part arose. Thereafter, in Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , the Supreme Court reiterated the same view in respect of a petition entertained by the Calcutta High Court on the basis that the Petitioner had contended that it had come to know about the tender at Calcutta, had submitted the tender and revised bids from their registered office at Calcutta and had made demands for justice by communications which were addressed from Calcutta. The tender was issued by the CIL at New Delhi on behalf of the Oil and Natural Gas Commission. The Supreme Court relied on an earlier statement of law in Chand Kaur v. Partab Singh ILR 1989 Cal. 98 : 15 IA 156, where the Court had observed as follows:

The cause of action has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour

In parting, their Lordships observed the importance of why a Court should not exercise jurisdiction unless the cause of action has arisen wholly or partly within its territorial jurisdiction as follows:

It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to

avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation.

7. Though their Lordships expressed a hope that they would not have another occasion to deal with such a situation, it appears occasions arose again and the decisions are reported in *State of Rajasthan v. N.K. The Accused* 2000 DGLS 624: AIR 2000 S.C. 1812, *Shri Haji Abdul Razak Yasim Patel Vs. Bara Imam Masjid Trust and Others*, and *Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee*. It is not necessary to discuss the later decisions because the Supreme Court reiterated the same principles laid down earlier. Applying these decisions to the present case, it is clear that no part of the cause of action has arisen within territorial jurisdiction of this Bench as delineated by the Bombay Appellate Side Rules and the Reorganization Act. Aforesaid rules and Reorganization Act clearly requires that Nagpur Bench will have jurisdiction and powers only in those matters arisen which have in the districts specified therein.

8. Shri Parchure, the learned Counsel for the Petitioner has relied on *Nitin Industrial Associates Vs. State of Maharashtra and Others*, in order to contend that this Bench would be well within its power to exercise its writ jurisdiction in this case, since the matter has arisen within the territorial jurisdiction of this Court as understood under Article 226, Clause (1) of the Constitution of India namely the State of Maharashtra. We find from the decision that the Division Bench specifically negatived arguments that Chapter XXXI of the Bombay Appellate Side Rules and Section 41 of the Bombay Reorganization Act, in any way can be taken to have abridged the jurisdiction and power conferred on this High Court by Article 226 in view of the observations of the Supreme Court (in *Re: Kerala Education Bill v. Reference under Article 143(1) of the Constitution of India*) 8 1958 DGLS 84: AIR 1958 S.C. 956. The Division Bench has observed as follows:

In view of this, the contention must be negatived. But be that as it may, although the said two provisions cannot abridge the jurisdiction, the said two provisions need to be looked at in their proper perspective. The said two provisions namely, Section 41 Bombay Reorganisation Act, 1960 (Act No. 11 of 1960) and the provisions of Chapter XXXI, Bombay High Court Appellate Side Rules, 1960 are designed to meet administrative requirements and administrative convenience. Hence it is not that every petition under Article 226 which is presented to this Bench at Nagpur that needs to be entertained and regard must be had to these two provisions in the filing of writ petitions so that the petitions can be dealt with by an appropriate Bench

9. Having said so, the Division Bench, however considered and decided the petition before it in the peculiar circumstances of the case, since the matter has already been admitted as back as on 25.9.1984, and therefore decided to hear

and decide this matter while sitting at Nagpur. That decision cannot be considered as authority for the proposition that the matter arising outside the specified districts should be entertained by this Bench at Nagpur.

10. We thus find that mere receipt of three communications dated 23.12.2008, 9.1.2009 and 16.6.2009, by the Petitioner at Nagpur pertaining to a corrigendum to the tender notice, the date and time of the opening of the tender and whether a certificate submitted by the Petitioner is appropriate, do not furnish even part of the cause of action and thus, the Petitioner is not entitled to move this Bench at Nagpur.

11. In the result, we are of the view that this petition ought not to be entertained by this Bench at Nagpur. Papers are therefore, directed to be returned to the Petitioner for filing before the Principal Seat at Bombay. Order accordingly.