

The High Court of Madhya Pradesh
WP No.25132/2018
Smt. Reena Chachda vs. State of MP & Ors.

Gwalior, dtd. 30/10/2018

Shri R.D. Sharma, Counsel for the Petitioner.

Shri Vivek Jain, Government Advocate for respondents No. 1 and 3/ State.

Heard on the question of admission.

This petition under Article 226 of the Constitution of India has been filed seeking direction to the State of Maharashtra and Secretary, State Transport Authority, Bandra, Mumbai (Maharashtra) to countersign temporary permit granted to the petitioner by the Secretary, S.T.A., M.P. (Respondent No.3) in the light of the reciprocal transport agreement, executed between the State of M.P. and Maharashtra on 1-3-2007. It is submitted by the Counsel for the Petitioner that temporary permit has been granted to the Petitioner on Chhindwara to Amravati (Inter-State) route for one single trip on daily basis w.e.f. 1-8-2018 to 30-11-2018 on vehicle No.MP28P0277 of 56+2 seats subject to counter-signature of STA Maharashtra. Accordingly, letters of recommendation were sent to the respondent no.4, however, in spite of deposit of the requisite fee, the respondent no.4 has not countersigned the permit.

The following reliefs have been sought :

"(A) To, issue directions to the respondent no. 2 and 4 to countersign the petitioner permit (Annexure-P/2) subject to payment of Tax as per rule, permitting operation of its vehicle in the portion of Maharashtra in the interest of travelling public.

(B) The respondent no. 1 & 3 may kindly be directed to ensure the implementation of the Agreement strictly with mutual consultation to the respondent no. 2 & 4.

(C) Any other order deem fit and proper in the facts and circumstances of the case may kindly be passed, in the interest of justice."

It is submitted by the Counsel for the respondent that the

Petitioner has got the temporary permit for plying her vehicle on the route Chhindwara to Amravati and since, she is complaining that the 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 route Chhindwara to Amravati has been issued by the 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 the 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. It is further submitted that since, the law in this regard has been settled by the Division Bench of this Court also, therefore, the said judgment is binding on the Single Bench.

Heard the learned Counsel for the parties.

In support of his contentions, the counsel for the petitioner has placed reliance on the following judgments:-

- (1) State of UP and Others vs. Sheo Nandan and Others, reported in AIR 1994 SC 1183,
- (2) Distt. Manager, APSRTC vs. K.Shivaji and Others, reported in AIR 2001 SC 383,
- (3) Farooq Mohammad vs. State of MP & Ors, reported in AIR 2016 MP 10;
- (4) Nasiruddin vs.State Transport Appellate Tribunal, reported in AIR 1976 SC 331;
- (5) KP Govil vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya, reported in AIR 1987 MP 228;
- (6) Devendra Bahadur Singh vs. State of MP and Four others, reported in 1989 MPJR HC 721;

- (7) V.D.Balani Bus Service, Itarsi vs. State Transport Appellate Tribunal, reported in 1990 MPLJ, 732;
- (8) Madhya Pradesh State Road Transport Corporation, Gwalior vs. Nirmal Kumar Chordia and Others, reported in AIR 1989 MP 212;
- (9) Uttar Pradesh State Road Transport Corporation and Others vs. Guruprit Singh and Another, reported in 2018(I) MPWN 22;
- (10) Kana Ram vs. RTA, reported in AIR 1999 (Raj) 143;
- (11) Vishnu Agrawal and Anr. vs. State of MP and Ors, reported in 2009(2) MPJR 211;
- (12) Jabalpur Bus Operators Association and Ors. Vs. State of MP & Anr, reported in 2003(I) MPJR 158.

The petitioner's counsel, in support of his contentions, has also relied upon the order passed in the case of **The Secretary, State Transport Authority U.P. & another Vs. Padam Chand Gupta and others** passed on **12-3-2010** in **R.P. No.23/2010 (Gwalior Bench)** and submitted that where major part of the route is situated within the territorial jurisdiction of State of M.P., then this Court will have jurisdiction to entertain the petition. In the case of **Padam Chand Gupta (Supra)**, it has been held as under :-

"With regard to territorial jurisdiction of this Court, it is clear that permits have been issued by the State Road Transport Authority of M.P. and major portion of the Rule is within the territorial jurisdiction of the State of M.P. In such circumstances, in my opinion, this Court has territorial jurisdiction to issue directions to the petitioners."

It is further submitted that the above-mentioned order was affirmed by the Supreme Court in S.L.P. (Civil) No.20382-20384 of 2010.

Considered the submission made by the Counsel for the Petitioner. In the considered opinion of this Court, the submission

made by the Counsel for the Petitioner, does not help her case. It is undisputed that Chhindwara is border District of State of M.P. whereas Amravati 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.

It is next contended by the Counsel for the Petitioner that since, the application has to be made to the authority for grant of permit, within whose jurisdiction, the applicant resides or carries on his/her business, therefore, the petitioner has to apply before the respondent no.3, and since the office of the respondent no.3 is situated within the jurisdiction of this Court, and the order granting temporary permit has been passed at Gwalior, therefore, this Court has jurisdiction to entertain the Petition.

Considered the submission made by the Counsel for the Petitioner.

Section 69 of Motor Vehicles Act, reads as under :-

"69. General provision as to applications for permits.—(1) Every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles:

Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles:

Provided further that if it is proposed to use the vehicle or vehicles in two or more regions lying in different States, the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has

his principal place of business.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, by notification in the Official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in different States, the application under that sub-section shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business."

From the plain reading of Section 69(2) of Motor Vehicles Act, 1988, it is clear that the place of residence or principal place of business is the decisive factor to determine the competence of the State Transport Authority. In the present case, the Petitioner is the resident of Chhindwara and has her principal place of business at Chhindwara. The respondent no.3 has also issued temporary permit for plying bus on Chhindwara to Amravati route. However, Chhindwara does not fall within the territorial jurisdiction of this Court.

The Presidential Order dated 28-11-1968 reads as follows :-

"In exercise-of the powers conferred by Sub-S. (2) of S.51 of the States Reorganization Act, 1956 (37 of 1956), I, Zakir Husain, President of India, after consultation with the Governor of Madhya Pradesh and the Chief Justice of the High Court of Madhya Pradesh, hereby establish a permanent Bench of the Madhya Pradesh High Court at Gwalior and further direct that such Judges of the High Court of Madhya Pradesh, being not less than two in number, as the Chief Justice may from time to time nominate, shall sit at Gwalior in order to exercise the ,jurisdiction and power for the time being vested in that High Court in respect of cases arising in the revenue districts of Gwalior, Shivpuri, Datia, Guna, Vidisha (Bhilsa), Bhind and Morena :

Provided that the Chief Justice may, for special reasons, order that any case or class of cases arising in any such district shall be heard at

Jabalpur."

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 Chhindwara, and having principal place of business, a part of cause of action, has also arisen at Chhindwara, which falls within the territorial jurisdiction of Principal Bench of M.P. High Court.

It is next contended by the Counsel for the Petitioner that since, the temporary permit has been issued by respondent no.3 at Gwalior, which falls within the territorial jurisdiction of this Court, therefore, this Court, has also jurisdiction to entertain the writ petition.

The submission made by the Counsel for the Petitioner has force.

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.

However, 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 JIJ 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 her grievance.

(G.S.Ahluwalia)
Judge