

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
ON THE 24TH OF JULY, 2024

WRIT PETITION No.19795 OF 2024

AMIT SINGH TOMAR

Vs.

UNION OF INDIA & OTHERS

APPEARANCE

(SHRI AKRAM KHAN – ADVOCATE FOR THE PETITIONER)

(SHRI PRAVEEN KUMAR NEWASKAR – DY. SGI FOR THE RESPONDENTS)

ORDER

The present petition, under Article 226/227 of the Constitution of India, has been filed by the petitioner seeking following reliefs:

“(I) The period of No Work No Pay w.e.f. 06/01/2017 to 04/08/2017 may kindly be set aside and further the petitioner may kindly be awarded the backwages and all the consequential benefit in the interest of justice.

(II) The respondent authority may kindly be directed to rectify the ACR of year 2017 of the present petitioner in the interest of justice. The cost of the present petitioner may kindly be awarded in the interest of justice.

Any other relief that this Hon'ble Court deems fit in the facts and circumstances of the case may kindly be granted to the petitioner.”

2. At the outset, Shri Praveen Kumar Newaskar – learned Dy. Solicitor General of India appearing for the respondents has raised a

preliminary objection with regard to maintainability of the present petition on the ground of non-existence of territorial jurisdiction of this Court to decide it. In support of his objection, reliance was placed on order dated 24.09.2019 passed by this Court in the matter of **Rajendra Singh Bhadoriya vs. Union of India & Others.**

3. To resolve the aforesaid controversy, it is necessary to analyze the factual matrix of the matter which is as follows:

The petitioner was appointed on 08.03.2011 on the post of Constable in the CRPF after following the due procedure. At the time of joining, a form of Character Certificate was sent, which was replied by Police Station Nagra and SDM, Ambah in favour of the petitioner, accordingly, he joined his services. After the joining, Form-25 was not sent on time for further verification of the petitioner's character. After serving the department/respondent for more than 05 Years, the petitioner was provided to fill up 'Form-25' and copy of the same was sent for verification to concerned Police Station in two sets. The Superintendent of Police, Morena marked two different comments on both the copy. In one copy, the comment was marked as 'no offence' whereas in another copy, the detail of an offence has been mentioned in which the petitioner was punished with a fine of Rs.500/- by the Juvenile Justice Board is mentioned. Due to which, the petitioner was terminated by the respondent No.4 without giving any opportunity of hearing while making an allegation of concealment of the alleged offence vide order dated 06.01.2017. The aforesaid order was challenged by the petitioner before the Deputy Inspector General of CRPF, Srinagar, Jammu & Kashmir which also got dismissed vide order dated 14.03.2017. Being aggrieved by the aforesaid order, the review petition was preferred by

the petitioner which was ultimately allowed vide order dated 14.07.2017 and the petitioner was reinstated but the duration of the date of termination to reinstatement was declared as 'No Work No Pay' and the back-wages thereof was also denied. Aggrieved by the aforesaid, the present petitioner has come before this Court.

4. Learned counsel for the petitioner, with regard to maintainability of the present present petition on the ground of lack of territorial jurisdiction of this Court as raised by learned Dy. SGI for the respondents has submitted that in the light of Clause (2) of the Article 226 of the Constitution of India, the present petition can be presented before any of the High Courts within whose jurisdiction, the cause of action, in respect of which the relief is sought, has arisen wholly or in part, to be precise the principle deductible is that in cases of the orders impugned, the cause of action would arise at a place where the order was made and also at a place where its consequences fell on the person concerned.

5. To bolster his submissions, reliance was placed in the matters of **Kusum Ingots and Alloys Ltd. Vs. Union of India & Another** reported in (2004) 6 SCC 254; **Ambica Industries vs. Commissioner of Central Excise** reported in (2007) 6 SCC 769 and **State of Goa vs. Summit Online Trade Solutions** reported in (2023) 7 SCC 791.

6. On the strength of the above arguments, it was contended that the present petition be allowed and the impugned order dated 14.07.2017 so far it relates to the period of 'No Work No Pay' w.e.f. 06.01.2017 to 04.08.2017 and the back-wages being patently illegal be quashed and the respondents authorities be directed to give the back-wages alongwith all the consequential benefits to the petitioner.

7. Heard counsel for the parties and perused the record.
8. It would be profitable to quote relevant extract of Article 226 of the Constitution of India which is as follows:-

“Article 226. Power of High Courts to issue certain writs. – (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day

of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.

9. On a plain reading of the amended provisions of Clause (2) of the Constitution, it is clear that the High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the Court's territorial jurisdiction. Cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression 'cause of action' has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action so far it relates to Code of Civil Procedure is a bundle of facts which is necessary for the plaintiff therein to prove in the suit before he can succeed. The term 'cause of action' as appearing in Clause (2) of Article 226 of the Constitution India came for consideration time and again before this Court as well as before the Hon'ble Apex Court.

10. The Hon'ble Apex Court in the matter of **Nawal Kishor Sharma vs. Union of India** reported in **AIR 2014 SUPREME COURT 3607** while placing reliance of its earlier decisions in paragraphs No.10 to 16 has considered this aspect and has held that 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. Paragraphs No.10 to 16 for ready reference are reproduced below for ready reference:

13. In the case of State of Rajasthan and Others vs. M/s Swaika Properties and Another, (1985) 3 SCC 217, the fact was that the respondent- Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur City was served with notice for acquisition of land under Rajasthan Urban Improvement Act, 1959. Notice was duly served on the Company at its registered office at Calcutta. The Company, first appeared before the Special Court and finally the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came before this Court to answer a question as to whether the service of notice under Section 52(2) of the Act at the registered office of the Respondent in Calcutta was an integral part of cause of action and was it sufficient to invest the Calcutta High Court with a jurisdiction to entertain the petition challenging the impugned notification. Answering the question this Court held:-

“7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession

under sub-section (6) thereof.

8. The expression “cause of action” is tersely defined in Mulla’s Code of Civil Procedure: “The ‘cause of action’ means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.” In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for

the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.”

14. This provision was again considered by this Court in the case of Oil and Natural Gas Commission vs. Utpal Kumar Basu and others, (1994) 4 SCC 711. In this case the petitioner Oil and Natural Gas Commission (ONGC) through its consultant Engineers India Limited (EIL) issued an advertisement in the newspaper inviting tenders for setting up of Kerosene Recovery Processing Unit in Gujarat mentioning that the tenders containing offers were to be communicated to EIL, New Delhi. After the final decision was taken by the Steering Committee at New Delhi, the respondent NICCO moved the Calcutta High Court praying that ONGC be restrained from awarding the contract to any other party. It was pleaded in the petition that NICCO came to know of the tender from the publication in the “Times of India” within the jurisdiction of the Calcutta High Court. This Court by setting aside the order passed by the Calcutta High Court came to the following conclusion :-

“6. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said

facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.”

15. In *Kusum Ingots & Alloys Ltd. vs. Union of India and Another*, (2004) 6 SCC 254, this Court elaborately discussed Clause (2) of Article 226 of the Constitution, particularly the meaning of the word ‘cause of action’ with reference to Section 20(c) and Section 141 of the Code of Civil Procedure and observed:-

“9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause 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.

10. 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 the Court, the Court will have jurisdiction in the matter.” Their Lordships further observed as under:- “29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh has, thus, no application.

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.”

16. In the case of Union of India and others vs. Adani Exports Ltd. and another, (2002) 1 SCC 567, this Court held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction. Each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court’s territorial jurisdiction unless those facts are such which have a nexus or relevance with the lis i.e. involved in the case. This Court observed:

“17. It is seen from the above that in order to confer jurisdiction on a High Court to

entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no [pic]bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.”

17. In *Om Prakash Srivastava vs. Union of India and Another* (2006) 6 SCC 207, answering a similar question this Court observed that on a plain reading of Clause(2) of Article 226 it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose if the cause of action in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territory. In para 7 this Court observed:-

“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."

18. In the case of Rajendran Chingaravelu vs. R.K. Mishra, Additional Commissioner of Income Tax and Others, (2010) 1 SCC 457, this Court while considering the scope of Article 226(2) of the Constitution, particularly the cause of action in maintaining a writ petition, held as under:

"9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.

11. Normally, we would have set aside the order and remitted the matter to the High

Court for decision on merits. But from the persuasive submissions of the appellant, who appeared in person on various dates of hearing, two things stood out. Firstly, it was clear that the main object of the petition was to ensure that at least in future, passengers like him are not put to unnecessary harassment or undue hardship at the airports. He wants a direction for issuance of clear guidelines and instructions to the inspecting officers, and introduction of definite and efficient verification/investigation procedures. He wants changes in the present protocol where the officers are uncertain of what to do and seek instructions and indefinitely wait for clearances from higher-ups for each and every routine step, resulting in the detention of passengers for hours and hours. In short, he wants the enquiries, verifications and investigations to be efficient, passenger-friendly and courteous. Secondly, he wants the Department/officers concerned to acknowledge that he was unnecessarily harassed.”

19. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit 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, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court’s jurisdiction.

11. It is a trite law that cause of action means an enforceable right in law which accrues to a person and if an enforceable right arises on communication of the order, then a cause of action arises and is

complete only when the communication of the order to the person concerned is complete. Without such communication of an order to the concerned person, the cause of action is not complete for filing it in the Court of law.

13. Considering the facts and circumstances of the case and after analysing the judgments cited therein, in my considered opinion, this Court lacks territorial jurisdiction to entertain the present petition, as no part of the cause of action has accrued in its jurisdiction and mere posting of the petitioner at Gwalior at present would not create jurisdiction of this Court.

15. In view of the above, this Court since has no territorial jurisdiction to entertain the present writ petition, it is, therefore, liable to be and is hereby dismissed on this count. However, the petitioner is at liberty to approach the competent Court of territorial jurisdiction in accordance with law.

16. As this Court lacks territorial jurisdiction to entertain the present writ petition, the issue on merits had not been gone into and they are left open to be decided by the Court of competent jurisdiction.

17. Admission, accordingly, is **declined**.

**(MILIND RAMESH PHADKE)
JUDGE**

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