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Court : Patna

Decided On : Aug-23-2002

Judge : Sachchidanand Jha and Tarkeshwar Prasad Singh, JJ.

Appeal No. : C.W.J.C. No. 7844 of 2002

Appellant : Gita Devi and anr.

Respondent : The Deputy General Manager, Allahabad Bank and ors.

Judgement :

1. This writ petition has been filed seeking direction upon the respondent Allahabad Bank to appoint Petitioner No. 2 Rajesh Kumar on compassionate ground on the death of his father late Karambir Prasad while in employment of the Bank as Armed Security Guard at Katrasgarh Branch of the Bank.

2. A preliminary objection has been taken on behalf of the respondents as to maintainability of the writ petition on the around of territorial jurisdiction. It has been submitted that Katrasgarh Branch in the district of Dhanbad lies within the territorial jurisdiction of the Jharkhand High Court and as no part of cause of action has arisen within the territorial jurisdiction of this Court, the writ petition is not maintainable. On behalf of the petitioners it has been submitted that they are residents of village Hasanpur Surat in the district of Samastipur within the jurisdiction of this Court, they entered into correspondence with the Bank for compassionate appointment from there and the decision not to appoint Petitioner

No. 2 was also communicated there and therefore, this Court has jurisdiction to entertain the petition and issue appropriate directions. Reliance is placed on a Bench decision in the case of Union of India v. Sarojni Mishra 2002 (1) PLJR 733. In reply on behalf of the respondents reliance is placed on Union of India v. Sunil Kumar Dwivedi 1997 (1) PLJR 769 and Sushil Kumar Pandey v. Union of India 2001 (2) BLJR 1313 : 2001 (4) PUR 678.

3. The case of the petitioner is as follows. Late Karambir Prasad was Havildar in the Indian Army from where he took retirement under the voluntary retirement scheme on 1.3.1983. He thereafter joined the Allahabad Bank as Armed Security Guard where he died while in employment on 29.9.1998. He was 56 years old at the time of his death. After his death, Petitioner No. 1, his widow, filed application for appointment of her son Petitioner No. 2 on compassionate ground on 24.10.1998. On 21.7.1998, she filed another application. All India Allahabad employees' Steering Committee vide letter dated 28.8.2000 recommended the petitioners' claim for appointment. Petitioner No. 1 again made representation to the General Manager of the Bank at Kolkata on 7.3.2001. On 9.5.2002 she was informed that the competent authority had rejected the claim because the income declared by the petitioners was sufficient to maintain the family. Copy of the said letter dated 9.5.2002 has been enclosed as Annexure-5 to the writ petition.

4. In view of the contentions raised at the bar on the point of jurisdiction, and the order that we propose to pass, it is not necessary to make any comments on the merit of the petitioners' claim.

5. Article 226 of the Constitution initially provided that every High Court shall have powers, throughout the territories in relation to which it exercises writ 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, prohibition, 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. In Election Commission v. Venkata Rao : [1953]4SCR1144, the Supreme Court while interpreting Article 226 as it then stood, observed that 'the rule that cause of action attracts jurisdiction in suits is based on statutory

enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action where it arises but insists on the presence of the person or authority 'within the territories' in relation to which High Court exercises jurisdiction' The Court thus held that in the absence of a specific provision in Article 226 on the lines of Code of Civil Procedure, the High Court cannot exercise jurisdiction on the plea that whole or part of the case of action had arisen within its jurisdiction. The decision was followed in subsequent cases. By the 15th amendment, Clause (1-A) was inserted in Article 226 introducing the cause of action clause. Later, by the 42nd amendment, Clause (1-A) was renumbered as Clause (2) and it would be appropriate to notice the same as under:

(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.

6. The term 'cause of action' in the context of Article 226(2) of the Constitution has come up for consideration before the Courts in quite a number of Cases. I propose to refer to only two of them namely, *State of Rajasthan v. Swaika Properties* : [1985]3SCR598 and *Oil and Natural Gas Commission v. Utpal Kumar Basu* : (1994)4SCC711 . In order to appreciate the ratio of the decision, it would be appropriate first to briefly notice the facts of the case. In *Swaika Properties* (supra) the facts were that the Company having its registered office at Calcutta held large chunk of land on the outskirts of Jaipur in the State of Rajasthan. The Special Officer, Town Planning, Jaipur issued notice intimating that the State Government proposed to acquire a large part of the said land for public purpose. The notice was served on the respondent Company at its Calcutta office. The company contested the matter. However, the Special Officer felt that the alleged need of the Company was a mere pretence and the land was not needed bona fide by them. In the circumstances, final notification for acquisition of the land was issued. The Company filed writ petition under Article 226 of the Constitution in the Calcutta High Court challenging the acquisition. The Calcutta High Court entertained the

writ petition and granted an interim ex parte order restraining taking of possession of the acquired land. A question arose as to whether the Calcutta High Court had jurisdiction to entertain writ petition and grant the relief. The Supreme Court observed that the cause of action neither wholly nor in part arose within the territorial Jurisdiction of the Calcutta High Court and therefore, it had no jurisdiction to issue notice or grant any interim order. The Court observed.

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.

(Emphasis added)

7. In *Oil & Natural Gas Commission v. Utpal Kumar Basu* (supra) Engineers India Limited (EIL) acting as consultants for ONGC issued an advertisement in the leading newspaper of the country inviting tenders for setting up of a Kerosene Recovery Processing Unit at ONGC's Hazira Complex in Gujarat. As per the advertisement tenders containing offer were to be sent to EIL at New Delhi. The Company (NICCO) having its registered office at Calcutta, as per its case read and become aware of the tender notice printed in the Times of India, circulated within the jurisdiction of the Calcutta High Court and submitted its tender. The tenders were to be scrutinised by a Tender Committee and the final decision was to be taken by Steering Committee at New Delhi. The tender of NICCO was rejected. After the Tender Committee disagreed, the EIL again reconsidered the matter and reiterated its earlier view that NICCO lacked the experience criteria. This time the Tender Committee agreed with the recommendation and accordingly NICCO was not recommended for shortlisting by the Tender Committee. NICCO filed writ petition under Article 226 of the Constitution in the Calcutta High Court praying that ONGC be restrained from awarding the contract to any other party and, if awarded, to cancel the same.

8. In the writ petition it pleaded that it came to know of the tender from publication in the Times of India within the jurisdiction of Calcutta High Court, it submitted its tender, revised price bid by letters issued from its registered office at Calcutta and entered into correspondence from there and therefore, part of the cause of action had arisen within the jurisdiction of the Calcutta High Court. Hence, Calcutta High Court has jurisdiction to entertain the writ petition. The Calcutta High Court entertained the writ petition, directed the ONGC to reconsider the offer of the company i.e. NICCO along with others and in the event it is found to be valid and lowest and the petitioner otherwise complies with the formalities, its offer should be accepted by the respondent authorities. In appeal before the Supreme Court question arose as to whether the Calcutta High Court had jurisdiction to entertain and dispose of the writ-petition in the manner it did as the averments in the writ petition, even if assumed to be correct, did not disclose the even a part of the cause of action for instituting the writ petition had arisen within the jurisdiction of that High Court. Upholding the plea of the ONGC the Supreme Court observed.

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.

(Emphasis added)

While disapproving the 'tendency' to assume jurisdiction where it has none, the Supreme Court observed, rather strongly, as under:

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 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 country should appear to have

developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal.

9. From the decisions and observations of the Supreme Court in the above noted two cases it is clear that the mere residence of the person within the territorial jurisdiction of the High Court or his entering into correspondence, including receiving reply thereto would not confer jurisdiction to entertain the writ petition by the concerned High Court unless it forms an integral part of the cause of action. As is well known 'cause of action' comprises of bundle of facts which are necessary to prove in order to succeed in any action in a Court of law. Where an application is sent for appointment from a place, the place as such does not become integral part of cause of action, for such an application can be sent from any place. If this fact were to constitute a cause of action, the result would be that a person would choose a particular place which he may consider convenient, and from there send his application, thereby conferring territorial jurisdiction on the concerned High Court. The fact that reply is sent to the applicant at that place has no significance, for the replies are normally sent at the address Which is mentioned in the application.

10. In the above view of the matter, in the instant case, the fact that the petitioner sent application from Samastipur District and the respondent Bank sent its reply there would not confer territorial jurisdiction on this Court. Sending application and receipt of reply thereto may be integral part of the cause of action but the place from where it is sent cannot be treated as the integral part, in view of the above said decisions of the Apex Court.

11. In the result we hold that this writ petition is not maintainable in this Court and the same is accordingly dismissed in limine.