Dr.Mukul Gupta Vs. Management Development Institute and Anr.

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SooperKanoon Citation : sooperkanoon.com/40964

Court : Delhi

Decided On : Feb-20-2015

Judge : Pradeep Nandrajog

Appellant : Dr.Mukul Gupta

Respondent : Management Development Institute and Anr.

Judgement :

* % IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on : February 10, 2015 Judgment Delivered on : February 20, 2015 + LPA No.59/2015 DR.MUKUL GUPTA Represented by: .....Appellant Ms.Jyoti Singh, Sr.Advocate instructed by Ms.Tinu Bajwa, Mr.Sameer Sharma, Mr.Lokesh Bhola and Mr.Anubhav Ray, Advocates versus MANAGEMENT DEVELOPMENT INSTITUTE & ANR. .....Respondents Represented by: Mr.S.K.Taneja, Sr.Advocate instructed by Mr.Rajat Arora and Ms.Kajal Srivastava, Advocates CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J.

1. The appellant was the writ petitioner and has suffered a setback when vide impugned order dated January 27, 2015, the learned Single Judge has dismissed WP(C) No.7944/2014 filed by the appellant holding that the Delhi High Court lacked territorial jurisdiction to entertain the writ petition because no part of cause of action accrued at Delhi. That the registered office of the first respondent was at Delhi has been held to be no ground to confer territorial jurisdiction on the Delhi

High Court. The learned Single Judge has noted that the appellant was an employee of the first respondent at its institute in Gurgaon and the letter dated October 28, 2014 terminating the service of the appellant was dispatched from the institute of the first respondent in Gurgaon and received by the appellant at his residence in Gurgaon. That the decision to terminate the services of the petitioner was taken by the Board at Delhi has been held to be not constituting a part of the cause of action.

2. The case of the appellant was that the first respondent, though a society registered under the Societies Registration Act, 1860, was a State within the meaning ascribed to the term in Article 12 of the Constitution of India having its registered office at IFCI Tower, 61, Nehru Place, New Delhi. The first respondent had established a management institute (respondent No.2) in Gurgaon in Sukhrali. The appellant was offered appointment to the post of Professor at the said institute on March 01, 2000 which was accepted by the appellant and as a consequence the appellant joined the institute in May, 2000. Highlighting his achievements while working with the institute it was pleaded that the Chairman of the Board of Governors, impleaded as respondent No.3 and the Registrar of the Institute, impleaded as respondent No.4, started influencing the appellant regarding enrolment of the students. It was pleaded that since the appellant did not succumb to the illegal pressures, under a stratagem, without affording any opportunity of hearing, a mala fide decision was taken at a Board meeting held at the registered office of the first respondent at Delhi on October 16, 2014 to terminate the service of the appellant.

3. Noting that the decision on the file reflecting the Board meeting held on October 16, 2014 was authored at Delhi, the learned Single Judge has held that the same would not confer jurisdiction on the court at Delhi.

4. To put it pithily, the view taken by the learned Single Judge is that since the letter conveying the decision of the Board meeting held on October 16, 2014 was posted from Gurgaon and was received by the appellant in Gurgaon, complete cause of action was in Gurgaon.

5. In the decision reported as AIR 2004 SC2321 Kusum Ingots & Alloys Ltd. Vs. UOI, the Supreme Court had held that although in view of Section 141 of the Code of Civil Procedure the provisions of the Code do not apply to a writ proceedings, the phraseology used in Section 20(c) of the Code and Clause(2) of Article 226 of the Constitution being in pari materia, decisions of the court rendered on the interpretation of Section 20(c) of the Code of Civil Procedure would apply to writ proceedings also.

6. The expressions cause of action is neither defined in the Constitution nor has it been defined in the Code of Civil Procedure. Mulla, in the Code of Civil Procedure Vol.1 (15th Edition) at page 251 has stated : A 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 the bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

7. The classic definition of a cause of action was given by Brett, J.

in the decision reported as (1873) LR A CP107Cooke Vs. Gill : Cause of action has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed - every fact which the defendant would have a right to traverse.

8. A different facet thereof, but in our opinion a guiding star, could be the opinion of Diplock LJ.

in the decision reported as (1964) 2 All ER929Letang Vs. Cooper : a cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.

9. The words used by the two learned Judges may be different, but bring out that only those facts which are material to be proved are to be taken into account

ignoring pleadings of unnecessary allegations or the addition of further instances with reference to better particulars. To put it differently, one may say that incidental facts, which may be explanatory of the material facts, have to be overlooked. The facts pleaded for purposes of cause of action must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein are not a part of a cause of action.

10. But the problem lies because the selection of the material facts to define the cause of action has to be made at the highest level of abstraction.

11. A right to sue accruing has not to be confused with the cause of action. The wrong alleged, when committed, infringing upon a right would give rise to a right to sue. The entire bundle of facts attracting the relevant law which need to be proved, upon being traversed by the opposite party, would be the bundle of facts constituting the cause of action.

12. Different acts constituting the bundle of facts relating to the cause of action may take place at different times and at different places. Thus, the issue of jurisdiction, which has to be decided with reference to the place where the cause of action, wholly or in part, arises, has thus to be decided by carefully looking at the claim put forth by the protagonist against the antagonist and while doing so, to ignore the surplus pleadings and only pick up such pleadings of facts which as per the law applicable require to be proved, if traversed by the antagonist. As held in the decision in Kusum Ingotss case (supra) nexus with the lis would guide the court. As held in the decision reported as (1983) 4 SCC707Globe Transport Corporation Vs. Triveni Engineering Works & Anr. the determination whether a particular fact constitutes a cause of action has to be on the facts of each case, taking into consideration the substance, rather than the form of action.

13. We may simply put it that to win a case the protagonist must prove the major legal points of the case which lie in his favour and these may be called the elements of his cause of action. For example, in a claim of negligence, the elements are : The (existence of a) duty, breach (of that duty), proximate cause (by that breach), and damages.

14. In a suit or a writ petition challenging the termination by the employer, the court within territorial jurisdiction of which the cause of action, wholly or in part, has accrued would have the jurisdiction. Now, what would be the bundle of facts required to be pleaded and proved if traversed by the employer. A determination thereof would subsume the determination where the fact occurred or took place and as a sequitur, would be the jurisdiction determined.

15. Unless there is a jural relationship of an employer and employee, the action cannot be founded at all for service being wrongfully terminated; and thus the existence of a fact from which the employeremployee relationship emerges has to be pleaded. The place where this jural bond was forged would therefore be a place where a part of cause of action accrued. To wit : letter offering appointment is issued by the employer at Delhi and received by the employee at Delhi, the jural bond of employer-employee is forged at Delhi, and thus it would be a case where part cause of action had accrued at Delhi. The employee is alleged to have done a wrong while working for the employer at a work site in Mohali (a city adjoining the city of Chandigarh). A site office of the employer is at Chandigarh where some administrative staff sits. The terms of the employment vest a right in the employee to be heard before any action is taken and this would mean the issuance of the charge memorandum. The disciplinary authority of the employee is at Chandigarh, and without issuing a charge memorandum proceeds to terminate the service. The order terminating the service is passed at Chandigarh but posted from Mohali to the employee. To challenge the termination the employee would have to plead the terms of the contractual relationship and that one of which was his right to be heard before terminating his service and since the wrong alleged on which the relief if founded is non-issuance of a show cause notice, said fact would have to be pleaded and the question would be whether the court at Chandigarh has jurisdiction. The order terminating the service having been passed at Chandigarh (because the disciplinary authority was at Chandigarh), the obligation in law to issue the charge memorandum would be at the situs of the disciplinary authority wherefrom the order of termination was issued and hence the fact of omission which would be a part of a cause of action would be at Chandigarh.

16. In the decision reported as AIR1956 Saurashtra 75 Hiralal Vs. State of Saurashtra, in a suit for declaration that the order of plaintiffs dismissal from service was wrongful, the alleged failure of the government to give him an opportunity under Article 311 of the Constitution to show cause against the proposed punishment being an essential fact to be proved, was held constituting a part of cause of action. Hence, such a suit was held liable to be instituted in the court at the place where the order of dismissal had been passed on the reasoning that the alleged failure to give an opportunity must also be deemed to have occurred at that place and therefore, that court would have the jurisdiction.

17. In the decision reported as AIR1959 All 598 Shridhar Misra & Ors. Vs. Jaichandra Vidyalankar & Ors., in a suit for declaration that a new Constitution framed by a Committee appointed by a Society is invalid, it was held that the most important part of the cause of action arises when the Constitution was framed and would be at the place where the Constitution was framed.

18. After noting the fact that the impugned decision to terminate service of the appellant was taken at Delhi, the learned Single Judge has held that in view of certain observations of the Supreme Court in Kusum Ingotss case (supra), the place where the decision was taken would not confer territorial jurisdiction.

19. In Kusum Ingotss case the company, having its registered office at Mumbai obtained and was granted a loan from the Bhopal branch of the State Bank of India. The Bank issued a notice for re-payment of loan from Bhopal, foundation of which notice was the Securitizations and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, vires of which was challenged by the company by filing a writ petition in the Delhi High Court; pleading jurisdiction on the fact that the legislation was promulgated in Delhi. In paragraph 19 of its decision, the Supreme Court held : Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefor. In the next paragraph, para 20, it was observed : A distinction between a legislation and executive action should be borne in mind while determining the said question.

20. Thus, a reading of para 19 and 20 of the opinion of the Supreme Court in Kusum Ingotss case (supra) makes it clear that the taking of the execution decision/action is the cause of action and the place where the executive decision/action is taken would be the place where cause of action can be said to have arisen.

21. This is apparent from the observations in para 21 of the decision wherein it is held that unless the implementation gave rise to a civil or evil consequences, passing of a legislation is irrelevant. In other words the executive decision/action under a legislation would be a part of a cause of action.

22. Overruling the view taken by an earlier Bench of the Supreme Court in the decision reported as 1995) 4 SCC738U.P. Rashtriya Chini Mill Adhikari Parishad Vs. State of U.P. wherein it was held that issuance of an order or notification by the Government would be a part of cause of action arising, in Kusum Ingotss case (supra) the Supreme Court categorically held in para 27 that 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.

23. The learned Single Judge has referred to the words used by the Supreme Court in Kusum Ingotss case (supra) in paragraph 26 of the decision wherein it is observed by the Court that framing of statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof. The learned Single Judge has therefore excluded the making of the executive order as a part of cause of action and hence the place thereof as where cause of action accrued.

24. The learned Single Judge has overlooked that the observations of the Supreme Court concerning the making of an executive order or instructions and the place where it is made have been referred to in the context of what would constitute law, evidenced by the fact that in the same paragraph the Supreme Court has observed In fact, a legislation, it is trite, is not confined to a statute enacted by Parliament or the legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not

covered by any statutory rule, executive instructions issued in this behalf shall also come within the purview thereof. It is only thereafter a reference is made to the situs of the office.

25. In other words, orders and instructions which are in the nature of law would be distinct from decisions and orders which though executive in nature but are not akin to a law.

26. Since the impugned decision on the file, recorded in the minute books of the board of the first respondent, was taken at the registered office of the first respondent at Delhi, it would be a case where part cause of action has arisen in Delhi for the reason the perceived wrong by the appellant is the decision in question and apart from other grounds violation of principles of natural justice while taking the decision has been pleaded. The omission to give the hearing would therefore be required to be treated as an act of omission in Delhi.

27. Though jurisdiction may not be vested in this Court on account of the sole reason that the registered office of the employer i.e. the first respondent is at Delhi, but for the reasons above given and facts above noted, jurisdiction would vest in Delhi because a vital part of the cause of action i.e. the decision to terminate the service of the appellant was taken by the Board of the first respondent at Delhi and minuted in the Minute Book maintained at Delhi.

28. The appeal is allowed. Impugned decision dated January 27, 2015 is set aside. It is held that keeping in view the pleading in the writ petition the Delhi High Court would have territorial jurisdiction to entertain the writ petition. The writ petition would therefore be maintainable in this Court.

29. The writ petition would be listed for directions before the learned Single Judge on February 23, 2015.

30. No costs. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE FEBRUARY20 2015 rk