

Khalid A. Hakim Vs. Assistant Commissioner of Labour, Authority Under Payment of Wages Act and ors.

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Court : Gujarat

Decided On : Apr-27-2009

Reported in : (2009)3GLR2065

Judge : K.M. Thaker, J.

Acts : [Payment of Wages Act, 1936](#); Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 - Sections 2, 2(1), 8, 12, 14, 15, 16, 17, 18, 21, 22 and 52(2); [Factories Act, 1948](#); [Mines Act, 1952](#) - Sections 2(1); [Industrial Disputes Act, 1947](#); Constitution (Forty-second Amendment) Act, 1976; Code of Civil Procedure (CPC) - Sections 20; [Constitution of India](#) - Article 226, 226(2)

Appeal No. : Special Civil Application No. 28473 of 2007

Appellant : Khalid A. Hakim

Respondent : Assistant Commissioner of Labour, Authority Under Payment of Wages Act and ors.

Advocate for Def. : D.S. Vasavada, Adv. for Respondent No. 3.; Prashant G. Desai, Adv. for Respondent No. 4 and;

Advocate for Pet/Ap. : Yogini V. Parikh, Adv.

Disposition : Petition dismissed

Judgement :

K.M. Thaker, J.

1. Heard Mrs. Parikh, learned Advocate for petitioner, Mr. N. J. Shah, learned A.G.P., for respondent Nos. 1 and 2 and Mr. D. S. Vasavada, learned Advocate for respondent No. 3. Rule. Mr. Vasavada, Mr. Desai and Mr. Shah have waived service of notice of Rule. At the request and with the consent of all parties the petition is taken up for final hearing.

1.1. The petitioner has preferred present petition seeking below mentioned reliefs:

(9/A) Your Lordships be pleased to issue a writ of certiorari and or any other appropriate writ, order of direction in the like nature quashing and setting aside the Notice dated 13-9-2007 issued by the respondent A.L.C. and authority under Payment of Wages Act, Mahabubnagar (State-Andhra Pradesh) in P.W. Application No. 8 of 2007 (Annexure-A) and show-cause notice No. E/824/2006 dated 10-8-2006 issued to the petitioner by the A.L.C. Mahabubnagar (State-A.P.) under the Inter-State Migrant Workmen (R.E.C.) Act, (Annexure-B).

(9/B) Your Lordship be pleased to stay the operation, implementation and execution of the impugned notice dated 13-9-2007 (Annexure-A) and show-cause notice dated 10-8-2006 (Annexure-B) during pendency of hearing and final disposal of the petition.

2. The facts leading to the presentation of this petition are as follows:

2.1. The respondent No. 4 had invited tenders for execution of certain works. The petitioner had submitted its tender and after following the prescribed procedure, the tender of the petitioner was accepted and the petitioner came to be awarded a contract for executing the specified jobs.

2.2. The petitioner had, for the purpose of executing the said contract, entered into a sub-contract with M/s. K. G. Reddy. The execution of the contracted work was

undertaken during the period between November, 2000 and February, 2002.

2.3. It appears that so as to discharge his obligation, the sub-contractor M/s. K. G. Reddy had recruited and employed certain labourers who were, as per the case of said persons, recruited by the sub-contractor in the State of Andhra Pradesh.

2.4. After having recruited the labourers i.e. the concerned persons in the State of Andhra Pradesh, the said sub-contractor deployed them at Udhana-Surat for executing the contract awarded to present petitioner. Thus, the provisions under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (hereinafter referred to as '1979 Act') gets attracted in present case.

2.5. It is claimed that after the contract work was executed, the labourers engaged by the aforesaid sub-contractor were discharged, and subsequently, they went back to their home-State i.e. Andhra Pradesh. It further transpires from the record that when the said workmen were discharged and before they started their journey for their home-State, they were, as alleged by them, not completely paid their wages for the period during which they were recruited and engaged by the sub-contractor.

2.6. On account of such non-payment, the said workmen filed, in their home-State i.e. Andhra Pradesh, a group of applications, under the provisions of [Payment of Wages Act, 1936](#). After presentation of the group of applications, the Assistant Commissioner of Labour, Mehbubnagar, Andhra Pradesh seems to have issued notice dated 13-9-2007. The said notice is issued against present opponent No. 1 and other opponents include present respondent No. 4 and the said sub-contractor M/s. K. G. Reddy.

2.7. It deserves to be mentioned that after having received the said notice dated 13-9-2007, present petitioner has submitted its reply dated 17-10-2007 opposing the said payment of wages applications and it has been, inter alia, contended that the said applications are not maintainable on the ground of lack of territorial jurisdiction in light of the fact that the cause of action, as per submission of present petitioner, has arisen in the State of Gujarat. Besides, the above referred notice in

connection with the said payment of wages applications, the petitioner also received another show-cause notice dated 10-8-2006 alleging violation of Sections 8, 12, 17 etc., of the 1979 Act. The petitioner claims that it has submitted reply to the said show-cause notice also and urged that the notices may be dropped in light of the contention raised in the reply.

2.8. The petitioner claims that despite its replies to both the notices, the proceedings have not been dropped, and that therefore, the petitioner, being aggrieved by the said notices, has preferred the captioned petition.

3. Mrs. Parikh, learned Advocate for the petitioner submitted that the entire, or at least part of the cause of action has arisen in the State of Gujarat, and that therefore, the applications cannot be maintained in the State of Andhra Pradesh. She further submitted that no permission/sanction has been obtained by the applicants from State of Gujarat for filing the application in the State of Andhra Pradesh. She also submitted that the presentation of the application in the State of Andhra Pradesh is mala fide and the applications have been instituted only with a view to harassing the petitioner so as to extract the amounts which are otherwise not due and payable. She submitted that a huge and unbelievable claim of more than Rs. 24.00 lakhs has been made. She submitted that the principal employer i.e. petitioner is in State of Gujarat, the contract was awarded in the State of Gujarat and it was also executed in the State of Gujarat. Hence, the authority in the State of Andhra Pradesh would not have territorial jurisdiction to entertain and adjudicate the said application. So as to substantiate her submission, Mrs. Parikh, learned Advocate has relied upon the judgment reported in the case between Belal Biri Factory Pvt. Ltd. and Anr. v. Regional Provident Fund Commissioner and Anr. reported in : 2006 (3) LLJ 532 and Alchemist Ltd. and Anr. v. State Bank of Sikkim and Ors. reported in : AIR 2007 SC 1812.

3.1. Mr. Vasavada, learned Advocate appearing for the respondent No. 3 i.e. the concerned applicants, has opposed the petition and submitted that the contention that no part of cause of action has arisen in the State of Andhra Pradesh and the application is not maintainable before the authority in the State of Andhra Pradesh is without merits. Mr. Vasavada relied upon the judgment of Division Bench of this

Court in the case between Textiles Labour Union, Nadiad v. Union of India and Ors. reported in : 2007 (2) GLR 1202.

4. For the purpose of considering and deciding the contentions raised by the petitioner herein, it is relevant and necessary to take into account the provisions under the 1979 Act as well as the provisions contained under Payment of Wages Act. Under the 1979 Act, the term 'Inter-State Migrant Workman' has been defined under Section 2(e) which reads thus:

Inter-State migrant workman' means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.

The term 'contractor' has been defined under Section 2(b) which reads thus:

'contractor', in relation to an establishment, means a person who undertakes (whether as an independent contractor, agents, employee or otherwise) to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and include a sub-contractor, khatadar, sardar, agent or any other person, by whatever name called, who recruits or employs workmen.

The term 'principal employer' has been defined under Section 2(g) which reads thus:

'principal employer' means,:

(i) in relation to any office or department of the Government or a local authority, the head of that office, department or authority or such other officer as the Government or the local authority, as the case may be, may specify in this behalf;

(ii) in relation to a factory, the owner or occupier of the factory and where a person has been named as the Manager of the Factory under the [Factories Act, 1948](#), the person so named;

(iii) in relation to a mine, the owner or agent of the mine and where a person has been named as the Manager of the mine, the person so named;

(iv) in relation to any other establishment, any person responsible for the supervision and control of the establishment.

Explanation : For the purposes of Sub-clause (iii) of this clause, the expressions 'mine', 'owner' and 'agent' shall have the meanings respectively assigned to them in Clause (j). Clause (1) and Clause (c) of Sub-section (1) of Section 2 of the [Mines Act, 1952](#).

4.1. In view of the controversy raised in the present petition, it is also relevant to take into account the definition of term 'recruitment' which is defined under Section 2(h) which reads thus:

'recruitment' includes entering into any agreement or other arrangement for recruitment and all its grammatical variations and cognate expressions shall be construed accordingly.

4.2. Section 8 of the Act obliges the contractor to take out licence. The said Section reads thus:

Licensing of contractors : (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies shall:

(a) recruit any person in a State for the purpose of employing him in any establishment situated in another State, except under and in accordance with a licence issued in that behalf,:

(i) if such establishment is an establishment referred to in Sub-clause (i) of Clause (a) of Sub-section (1) of Section 2, by the licensing officer appointed by the Central Government who has jurisdiction in relation to the area wherein the recruitment is made;

(ii) if such establishment is an establishment referred to in Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 2, by the licensing officer appointed by the

State Government who has jurisdiction in relation to the area wherein the recruitment is made;

(b) employ as workmen for the execution of any work in any establishment in any State, persons from another State (whether or not in addition to other workmen) except under and in accordance with a licence issued in this behalf,;

(i) if such establishment is an establishment referred to in Sub-clause (i) of Clause (a) of Sub-section (1) of Section 2, by the licensing officer appointed by the Central Government who has jurisdiction in relation to the area wherein the establishment is situated;

(ii) if such establishment is an establishment referred to in Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 2, by the licensing officer appointed by the State Government who has jurisdiction in relation to the area wherein the establishment is situated.

4.3. Section 18 of the 1979 Act prescribes liability of principal employer in certain cases. The said provisions reads thus:

Liability of principal employer in certain cases : (1) If any allowance required to be paid under Section 14 or Section 15 to an inter-State migrant workman employed in an establishment to which this Act applies is not paid by the contractor or if any facility specified in Section 16 is not provided for the benefit of such workman, such allowance shall be paid, or, as the case may be, the facility shall be provided, by the principal employer within such time as may be prescribed.

(2) All the allowances paid by the principal employer or all the expenses incurred by him in providing the facility referred to in Sub-section (1) may be recovered by him from the contractor either by deduction for any amount payable to the contractor under any contract or as a debt payable by the contractor.

4.4. One of the relevant provisions for the purpose of captioned petition, is Section 21 which provides that Inter-State migrant workmen shall be deemed to be in employment 'from date of recruitment for the purposes of certain enactments.' The said provisions reads thus:

For the purposes of the enactments specified in the Schedule, as inter-State migrant workman shall, on and from the date of his recruitment, be deemed to be employed and actually worked in the establishment or, as the case may be, the first establishment in connection with the work on which he is employed.

The Schedule referred to in the said Section 21 includes 'at Serial No. 2 of the Entries in the Schedule - [Payment of Wages Act, 1936](#).'

4.5. Another relevant provision, for the purpose of present petition, is to be found under Section 22 of 1979 Act which reads thus:

Provisions, regarding industrial disputes in relation to Inter-State migrant workmen : (1) Notwithstanding anything contained in the [Industrial Disputes Act, 1947](#), any dispute or difference in connection with the employment or non-employment or the terms of employment or the conditions of labour, of an inter-State migrant workman (hereinafter in this Section referred to as the industrial dispute), may,:

(a) if the industrial dispute is relatable to an establishment referred to in Sub-clause (i) of Clause (a) of Sub-section (1) of Section 2, be referred under the provisions of the said Act, by the Central Government to any of the authorities referred to in Chapter II of that Act (hereinafter in this Section referred to as the said authorities),:

(i) in the State wherein the establishment is situated;

(ii) in the State wherein the recruitment of such workman was made if he makes an application in that behalf to that Government on the ground that he has returned to that State after the completion of his employment;

(b) if the industrial dispute is relatable to an establishment referred to in Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 2,:

(i) be referred under the provisions of the said Act, by the Government of the State wherein the establishment is situated, to any of the said authorities in that State; or

(ii) be referred under the provisions of the said Act, by the Government of the State wherein the recruitment of such workman was made to any of the said

authorities in that State, if he makes an application in that behalf to that Government on the ground that he has returned to that State after the completion of his employment.

Provided that:

(a) no application referred to in Sub-clause (ii) of Clause (a) or Sub-clause (ii) of Clause (b) shall be entertained after the expiry of a period of six months from the date of his return to the State wherein the recruitment was made after the completion of his employment unless the Government concerned is satisfied that the application was prevented by sufficient cause from making the application within that period;

(b) no reference under the said Sub-clause (ii) of Clause (b) shall be made except after obtaining the concurrence of the Government of the State wherein the establishment concerned is situated.

4.6. As can be seen from the perusal of the said Section 22, if the migrant workmen have migrated back to their home-State or the State where recruitment was effected, then it is permissible to raise industrial dispute and institute the proceedings in the said State as well in accordance with the said provision.

5. It is in light of the aforesaid provisions that the issues raised by the petitioner are required to be considered.

5.1. The petitioner claims that the cause of action has arisen in the State of Gujarat, and therefore, the applications filed before the authority in the State of Andhra Pradesh are not maintainable and the said authority will not have territorial jurisdiction to adjudicate the said applications.

However, the point which the petitioner is overlooking is that at this juncture what the petitioner has challenged is the action of the authority of taking cognizance of the applications and issuing notices. The petitioner inter alia contends that the authority ought not to have taken cognizance of the applications and should have rejected the same for want of territorial jurisdiction or relegated the claimants to the authority in the State of Gujarat. The question, therefore, is whether the

petitioner can challenge the action of authority in the State of Andhra Pradesh, in this Court. The petitioner claims, it can. In present case, the contention regarding jurisdiction which has been raised can be considered from the perspective of (1) of the doctrine of dominus litis, (2) cause of action, (3) situs and (4) the doctrine of forum conveniens.

5.2. The short point is that even if it is assumed that there is merits in the contention raised by the petitioner then also when the petitioner intends to challenge the action of the authority in the Andhra Pradesh, then it would be appropriate to challenge it before the Hon'ble High Court of Andhra Pradesh mainly because the authority who has issued the notices and taken cognizance of the applications is within the territorial jurisdiction of the Hon'ble High Court of Andhra Pradesh and the applicants who have initiated the proceedings are also in the limits of territorial jurisdiction of Hon'ble Andhra Pradesh High Court, and that therefore, any grievance or objection against any action of such authority ought to be raised before the High Court within whose territorial jurisdiction such authority exercises its jurisdiction.

6. The petitioner's submissions may be, now, considered in light of the judgments on which petitioner has relied.

So far as the judgment in the case between Belal Biri Factory Pvt. Ltd. and Anr. v. Regional Provident Fund Commissioner and Anr. reported in : 2006 (3) LLJ 532 is concerned, it is relevant to note that in the said case a show-cause notice issued by the Regional Provident Fund Authority at Jharkhand was challenged. The said show-cause notice was issued by the authority within whose jurisdiction the petitioner maintained their establishment relating to the Biri manufacturing process. It was contended that the entire cause of action of the writ petition had arisen within the jurisdiction of High Court at Ranchi and the show-cause notice was also issued by the authority at Jharkhand, and that therefore, the Calcutta High Court did not have jurisdiction. It is pertinent that the said objection was taken at the stage when an application for amendment was moved, however the petition against the notice was already entertained by the Hon'ble Calcutta High Court in September, 2005, and time to the parties was given for filing affidavits and at a

later stage an application for amendment was filed. While opposing the said amendment application, the aforesaid contention was taken. In the backdrop of such contention, the Hon'ble Calcutta High Court considered that the establishment where the manufacturing process was undertaken was in Jharkhand and the establishment was assessed with effect from 15-9-1978, and a separate code number had also been allotted in favour of the petitioner establishment in Bihar, now Jharkhand and in light of such facts it was contended that notwithstanding allotment of code number by Provident Fund Authority, West Bengal in respect of their establishment in West Bengal, the Jharkhand Authority has jurisdiction to determine the petitioner's dues towards the provident fund of their employees engaged in their establishment in Jharkhand, hence, in light of such facts, the contention by the respondent was raised to the effect that:

Mr. Das Adhikary thus submitted that when the independent determination of the dues in respect of each of the departments/branches is permissible, the impugned cause of action of this writ petition which arose within the territorial jurisdiction of Jharkhand can only be challenged before the High Court of Jharkhand at Ranchi and not before this Court, as cause of action arose in Jharkhand is separable from the cause of action which allegedly arose in West Bengal.

The said contention was opposed on behalf of the petitioners by submitting that:

Mr. Chatterjee, learned Senior Advocate, appearing for the writ petitioners, submitted that the situation of the office of the respondent is not the only factor on which the jurisdiction of the High Court to issue writs under Article 226 of the [Constitution of India](#), depends. Mr. Chatterjee submitted that if a part of the cause of action arose within the territorial jurisdiction of one High Court, the said High Court can certainly entertain such a writ petition even though the office of some of the respondents or even the office of the principal respondent, situates beyond the jurisdiction of the said High Court.

Upon considering the said contention, the Hon'ble High Court of Calcutta observed that:

Admittedly, the office of the respondent No. 2 is located at Ranchi within the territorial jurisdiction of Jharkhand High Court at Ranchi. It is also an admitted fact that the principal challenge in this writ petition is with regard to the impugned notice which was issued by the said respondent No. 2. Undisputedly, no relief has been claimed against the respondent No. 1 in this writ petition.

Thus, if the maintainability of this writ petition is considered with reference to the situation of the office of the respondent No. 2 whose action is under challenge in this writ petition, then this Court cannot hold that this Court has territorial jurisdiction to entertain this writ petition particularly in view of the fact that a writ of certiorari has been prayed for.

But since the location of the office of the respondent is not the only criteria for determination of the Court's jurisdiction to entertain a writ petition, this Court has considered the pleading of the writ petition to find out as to whether any part of the cause of action has arisen within the territorial jurisdiction of this Court. This exercise is being done by this Court by keeping in mind the decision of the Hon'ble Supreme Court in the case of *Kusum Ingots and Alloys Ltd. v. Union of India and Anr.* (supra) wherein it was held that '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.

6.1. The Hon'ble High Court, then observed that the principal establishment of the petitioner is within the jurisdiction of West Bengal authority and the entire establishment of the petitioners including the employees of Bihar unit, now in Jharkhand, has already been assessed for the disputed period by the West Bengal authority, and in such circumstances and facts, the Hon'ble Court held that if that be so, then the Court cannot conclude that it had no territorial jurisdiction to entertain the writ petition as the cause of action which arose was within West Bengal certainly constitutes a substantial part of the entire cause of action for this writ petition.

7. Thus, considering the fact that a substantial part of cause of action had arisen in territorial jurisdiction of Calcutta High Court and on considering that for the

disputed period the unit was already assessed by West Bengal authorities and that neither the authority in Jharkhand or in West Bengal had ever objected the proceedings before Hon'ble Calcutta High Court or in fact all parties had submitted to the jurisdiction, the Hon'ble Court held that it had the territorial jurisdiction to entertain the writ petition. The another factor which the Hon'ble Court took into consideration to arrive at the aforesaid conclusion is that neither the authority of Jharkhand nor the authority of West Bengal had ever objected to the entertainment of the said writ petition by the Hon'ble Calcutta High Court, and in fact, the said authorities had not only accepted their jurisdiction but had also accepted the decision of the Hon'ble Calcutta High Court binding on them, and that since all throughout the parties had submitted the jurisdiction of the Court, the Hon'ble High Court considered at that stage the respondent cannot raise such a contention. It was in this view of the matter, the Hon'ble Calcutta High Court observed in Paras 31 and 32 as under:

Neither the authority of the Jharkhand nor the authority of West Bengal objected to the entertainment of the said writ petition by this Court. On the contrary, both the said authorities not only accepted the jurisdiction of this Court but also accepted the decision of the Court as binding on them.

Since, all throughout the parties have submitted to the jurisdiction of this Court, the respondents at this stage cannot raise such an objection regarding the jurisdiction of this Court to entertain this writ petition as and by way of preliminary objection.

Thus, the Hon'ble Court rested the decision on the premise of substantial part of cause of action.

8. The petitioner has also relied upon the judgment of Hon'ble Apex Court in the case of Alchemist Ltd. and Anr. v. State Bank of Sikkiin and Ors. (supra). In the said judgment, the Hon'ble Apex Court has held that after the amendment in Article 226 of the [Constitution of India](#), if a part of cause of action has arisen within jurisdiction of a High Court, petition would be maintainable in the said High Court. In the said judgment, the Hon'ble Supreme Court also took into consideration the object of Constitution (Forty-second Amendment) Act, 1976, and upon considering the object of the said amendment, the Hon'ble Supreme Court has, in Paras 18

and 19 observed thus:

It may be stated that by the Constitution (Forty-second Amendment) Act, 1976, Clause (1A) was renumbered as Clause (2). The underlying object of amendment was expressed in the following words:

Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226. So that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs.

(Emphasis supplied)

The effect of the amendment was that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under Article 226 of the Constitution.

8.1. Then, in Para 21 of the said judgment in the case of *Alchemist Ltd. and Anr. v. State Bank of Sikkim and Ors.* (supra), the Hon'ble Supreme Court has also observed thus:

The legislative history of the constitutional provisions, therefore, make it clear that after 1963, cause of action is relevant and germane and a writ petition can be instituted in a High Court within the territorial jurisdiction of which cause of action in whole or in part arises.

8.2. In light of the aforesaid position and in view of the fact that contract work was executed in State of Gujarat and the principal employer (i.e. the petitioner) against whom claim is made is having its place in State of Gujarat, the petitioner claims that the petition is maintainable in this Court and that this Court ought to set aside the notices by the authority, and thereby, the applications on the ground that the applications are not maintainable in State of Andhra Pradesh.

8.3. The claimants, on the other hand, would urge that in light of various other facts and factors attached to the case, which would also constitute cause of action for them, and in light of doctrine of dominus litis, the applications are maintainable in the State of Andhra Pradesh and in any case if the maintainability of the applications is to be challenged and/or the authority's action of taking cognizance is to be challenged then such action in law needs to be taken out in the Hon'ble High Court of Andhra Pradesh.

9. The position taken by the parties brings out the issue:

Should this Court entertain the petition and grant the relief prayed for.

10. In this background, reference can be made to the judgment of the Hon'ble Apex Court in the case between Eastern Coalfields Ltd. and Ors. v. Kalyan Banerjee reported in 2008 (2) GLH 317 (SC), wherein, while considering the question relating to territorial jurisdiction in light of 'cause of action', the Hon'ble Apex Court has observed in Para 7 as follows:

'Cause of action', for the purpose of Article 226(2) of the [Constitution of India](#), for all intent and purport, must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. It means a bundle of facts which are required to be proved. The entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed.

The question to some extent was considered by a Three-Judge Bench of this Court in Kusum Ingots & Alloys Ltd. v. Union of India and Anr. : 2004 (6) SCC 254 stating:

18. The facts pleaded in the writ petition 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 cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

As regards the question as to whether situs of office of the appellant would be relevant, this Court noticed decisions of this Court in Nasiruddin v. State Transport

Appellate Tribunal : AIR 1976 SC 331 and to hold:

26. The view taken by this Court in U.P. Rashtriya Chini Mill Adhikari Parsihad, that the situs of issue of an order or notification by the Government it would come within the meaning of the expression 'cases arising' in Clause 14 of the (Amalgamation) Order is not a correct view of law for the reason hereafter stated and to that extent the said decision is overruled. 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. Situs of office of Parliament, legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a 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.

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.

(Emphasis supplied)

10.1. In the judgment in the case between State of Rajasthan and Ors. v. Swaika Properties and Anr. reported in : AIR 1985 SC 1289, the Hon'ble Apex Court, in Para 8 of the judgment has observed as under:

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 rights 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 18B, 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.

10.2. With reference to the said expression, 'cause of action', the Hon'ble Supreme Court has, in the above-referred judgment in the case of Alchemist and Anr. (supra) in Para 24 observed thus:

The classic definition of the expression 'cause of action' is found in *Cooke v. Gill* 1873 (8) CP 107 : 42 LJ PC 98, wherein Lord Brett observed: 'cause of action' means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.

10.3. In a recent judgment in the case between Mohan V. Pednekar v. Executive Director (HR), Indian Oil Corporation Ltd. and Anr. reported in : 2007 (2) GLR 1735, the Hon'ble Division Bench of this Court has, while referring to and relying upon the judgment of the Hon'ble Supreme Court in the case between Kusum Ingots & Alloys Ltd. v. Union of India reported in : 2004 (6) SCC 254 has observed and held in Paras 8.2 and 9 as follows:

8.2. In *Kusum Ingots & Alloys Ltd. v. Union of India*, : 2004 (6) SCC 254, a Bench of three Hon'ble Judges of the Apex Court has enunciated the following principles:

(i) Keeping in view expressions used in Clause (2) of Article 226 of the Constitution, indisputably even if a small the jurisdiction of the Court, the Court will have jurisdiction in the matter. (Para 10)

(ii) When a part of cause of action accrues within one or the other High Court, it will be for the petitioner to choose his forum. It is open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. (Paras 25 and 26)

(iii) 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.

(Emphasis supplied)

9. It thus appears that even in the matter of deciding whether the Court should entertain a particular petition under Article 226 of the Constitution, in the context of controversy about territorial jurisdiction of the Court, the following aspects may be required to be considered:

(a) whether service of the impugned order or notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution.

(b) whether civil or evil consequences will fall on the petitioner within the territorial jurisdiction of the Court.

(c) the doctrine of forum conveniens.

In the same judgment, the Hon'ble Division Bench, while considering the doctrine of 'forum conveniens' has observed in Paras 13 and 14 as follows:

13. Forum conveniens:

As already held in Kusum Ingots case (supra) (Para 8.2), when a part of cause of action arises within one or the other High Court, it is for the petitioner to choose his forum. It is open to the litigant who is dominus litis to have his forum conveniens.

However, the Apex Court has cautioned that 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 merits. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens, which appears to be the underlying rationale of the decisions in cases like *Adani Exports (supra)*, *National Textile Corporation Ltd. v. Haribox Swalram* : 2004 (9) SCC 786, *Aligarh Muslim University v. Vinay Engg. Enterprises (P) Ltd.* : 1994 (4) SCC 710 and in *O.N.G.C. v. Utpal Kumar Basu* : 1994 (4) SCC 711, which were all disputes pertaining to trade and business. On the other hand, in service matters, where the employee in one State is transferred to another State, the employee has no option but to join at the place of transfer and there is no question of volition on his part, unlike in the case of businessman who decides for himself where his registered office, head office or the place of business would be. So also, the case of such transferred employee is not comparable to the case of a detenu who may be permanently residing in State A but would prefer to go to State B in order to accept service of the order of detention and would invite the wrath of the Court for doing so. At this stage also, we may reiterate the view indicated in Para 11 hereinabove that if a penalty order passed against an employee in State A happens to be served on the employee in State B because he was on leave at that point of time, such a fortuitous circumstance cannot be permitted to enable the petitioner to invoke the jurisdiction of the High Court in State B.¹⁴ On a cumulative assessment of all the three relevant factors indicated earlier, we have no doubt that this Court does have the territorial jurisdiction to entertain the petition of the employee who came to be transferred to Gujarat in May, 2005 and the order of penalty as well as the order of appellate authority were subsequently served upon him in the State of Gujarat and a subordinate officer of the Indian Oil Corporation posted in the State of Gujarat will be implementing the impugned orders in the State of Gujarat for reduction in pay of the appellant and thus the civil consequences on the petitioner would also fall within the State of Gujarat. In the overall facts and circumstances of the case, we are of the view that a part of cause of action having arisen within the State of Gujarat, it is open to the appellant, who is the dominus litis to have his forum conveniens. Refusing to entertain the present

petition on the ground that the respondents are in Mumbai and compelling the appellant to go to Mumbai from where the respondent employer has already transferred him to Gujarat would neither be just nor fair when the appellant has been successfully able to invoke the other two factors in his favour for exercise of territorial jurisdiction by the Court.

10.4. Thus, the position which emerges is that a writ petition can be instituted in a High Court within the territorial jurisdiction of which 'cause of action in whole or in part' arises and that in appropriate cases the Court may refuse to exercise jurisdiction by invoking doctrine of forum conveniens.

11. In present case, the facts and circumstances attached to the presentation of the application by the concerned workmen disclose that part of the cause of action, in view of the provisions of the 1979 Act, can be said to have arisen in the State of Andhra Pradesh. Hence, when the petitioner is aggrieved by the action of the authority of taking cognizance of the applications filed in the territorial jurisdiction of Hon'ble High Court of Andhra Pradesh, then in that event, it would be appropriate for the petitioner to raise grievance about the statutory authority's action before the Hon'ble High Court of Andhra Pradesh.

12. It also needs to be taken into account that in present case, the claimants-applicants are domicile and were recruited in the State of Andhra Pradesh and within the territorial jurisdiction of Hon'ble High Court of Andhra Pradesh. Further, as per the provisions under Section 21 of the 1979 Act, the concerned workman shall be deemed to be in employment - for the purpose of enactments specified in the Schedule (which incidentally include Payment of Wages Act also) - and shall be deemed to be actually working in the establishment from the date of recruitment and thus their right to receive wages would start from the date of recruitment and since the recruitment was occasioned in the State of Andhra Pradesh, their right to receive wages commenced in the State of Andhra Pradesh from the date of their recruitment, and that therefore, it cannot be said that no part of cause of action, so far as the claimants are concerned, has arisen in the State of Andhra Pradesh.

12.1. In addition to this, the sub-contractor M/s. K. G. Reddy, who recruited and engaged the concerned workmen, has its office in the State of Andhra Pradesh and he recruited and engaged the claimants in the State of Andhra Pradesh. The sub-contractor, being the immediate employer is also liable to pay wages. Thus, in view of Section 21 read with Section 2(h) and Entry No. 2, in the Schedule of 1979 Act also, it cannot be said that no part of cause of action, so far as the concerned workmen is concerned can be said to have arisen in State of Andhra Pradesh.

12.2. As regards the cause of action, even if it is to be held that the part of cause of action arose in the State of Gujarat, then also the facts of the case prima facie supports and justifies the claim of the applicants that part of cause of action can be said to have also arisen within the territorial jurisdiction of the Hon'ble High Court of Andhra Pradesh. So as to summarise the relevant facts, it deserves to be mentioned that, prima facie, the recruitment took place in the State of Andhra Pradesh, and secondly, the immediate employer who engaged the concerned workmen has its establishment in the State of Andhra Pradesh and the authority, which has taken cognizance and issued notices, is also within the State of Andhra Pradesh and exercise its authority within the territorial jurisdiction of Hon'ble High Court of Andhra Pradesh.

12.3. Thus, if the petitioner has grievance against the action of the authority then it would be in the fitness of things and propriety would also demand, that the challenge should be raised before the Hon'ble High Court of Andhra Pradesh.

12.4. Besides this, in present case, there is another relevant aspect which should be taken into account and given due weightage viz., the claimants are migrant workmen (within the meaning of the term prescribed in 1979 Act) who came to Surat, State of Gujarat, after being recruited in the State of Andhra Pradesh. Of course, the execution work had to be and was carried out in State of Gujarat, however after the work was over, the concerned workmen have went back to their home-State, and before they went back to their home-State, as alleged by them, they were not paid their dues completely. Therefore, considering from the perspective of the claimants who are locals in the State of Andhra Pradesh, and also dominus litis so far the applications are concerned, they may very well opt to

file applications in Andhra Pradesh, and it would not be just and reasonable to expect that they should file the proceedings in the State of Gujarat otherwise on each date of hearing they or their representatives may have to come to the State of Gujarat.

13. Hence, considering the fact that the claimants are poor workmen who were recruited in the State of Andhra Pradesh and came to the State of Gujarat for executing a contract, it appears appropriate to hold that this Court should rather not entertain the petition raising objection about the maintainability of proceedings in the State of Andhra Pradesh and within the jurisdiction of the Hon'ble High Court of Andhra Pradesh.

14. At this stage, this Court is inclined to recall - even at the cost of repletion - that the Hon'ble Apex Court has, in the judgment in the case of Kusum Ingots & Alloys Ltd. (supra), held:

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.

(Emphasis supplied)

15. The authority in the State of Andhra Pradesh has taken cognizance of the said complaint and issued notices. The petitioner herein is aggrieved also by the fact that the statutory authority has taken cognizance and issued notices, whereas, according to the petitioner, the said authority should not have taken cognizance of the group of applications. The authority which has taken cognizance of the complaint is within the territorial jurisdiction of the Hon'ble High Court of Andhra Pradesh. Under the circumstances, if the test of situs is applied then also the applications would be maintainable within the territorial jurisdiction of the Hon'ble High Court of Andhra Pradesh. Thus, if at all the petitioner has grievance about the exercise of jurisdiction by the authority in the State of Andhra Pradesh, then the said objection may be raised in appropriate proceedings before the Hon'ble

High Court of Andhra Pradesh. For this reason also, this Court is not inclined to entertain the petition.

16. Further, as held by the Hon'ble Apex Court in the case of Kusum Ingots and Alloys Ltd., and also by the Hon'ble Division Bench of this Court, even if this High Court had parallel jurisdiction, this Court, in propriety can and it would refuse to exercise its jurisdiction.

17. In view of this Court, propriety demands that when the applicants are poor migrant workmen, who according to their claim, have not been paid their wages and have gone back to their home-State and cannot afford to attend the proceedings in Gujarat on every date and when the relevant statute does not prohibit presentation of applications in their home-State and when the adjudicating authority which has taken cognizance of the applications and issued notices, is exercising the jurisdiction within the territorial jurisdiction of the Hon'ble Andhra Pradesh High Court, then the objection or the grievance against the exercise of jurisdiction by the said authority ought to be made and raised before the Hon'ble High Court of Andhra Pradesh and it would not be justified or proper for this Court to entertain a petition raising grievance against the exercise of jurisdiction by an authority which is within the jurisdiction of another Hon'ble High Court.

18. Besides, the petitioner has already filed its objections before the authority, and that therefore, the petitioner can always request the authority to take into account the objection and invite the authority to decide the said objection as a preliminary contention. It is for the petitioner to decide either to await the decision of the authority and then to challenge the said decision or to pre-empt the proceedings and challenge the proceedings at this stage. In either of the situations, it would be, as aforesaid, in propriety that the action may be taken in the Hon'ble High Court of Andhra Pradesh. This Court would rather not exercise the jurisdiction to interject the proceedings which are pending before the authorities within the territorial jurisdiction of Hon'ble High Court of Andhra Pradesh.

At this stage, it appears necessary to clarify that the observations made in this judgment regarding the factual background are prima facie and not to be construed as final conclusions which may be made after proper and complete

evidence is on record.

19. On the overall situation of facts and circumstances and in view of the fact that prima facie at least part of cause of action can be said to have arisen in the State of Andhra Pradesh and considering the fact that the adjudicating authority who has exercised the jurisdiction is within the territorial jurisdiction of Hon'ble High Court of Andhra Pradesh, this Court is not inclined to exercise the jurisdiction. Therefore, the petition is not entertained.

20. Hence, the petition is dismissed with the aforesaid clarifications and observations. Rule is discharged with no order as to costs. Interim relief, if any, granted earlier shall stand vacated.

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