

Barid Baran Banerjee Vs. the Coal Controller and ors.

Barid Baran Banerjee Vs. the Coal Controller and ors.

SooperKanoon Citation : sooperkanoon.com/857964

Court : Kolkata

Decided On : Dec-18-1997

Reported in : (1998)1CALLT404(HC)

Judge : Basudeva Panigrahi, J.

Acts : [Constitution of India, 1950](#) - Article 226

Appeal No. : Constitution Writ Jurisdiction W.P. No. 8335(W) of 1997

Appellant : Barid Baran Banerjee

Respondent : The Coal Controller and ors.

Advocate for Def. : Mr. Vinode Kr. Gupta, Adv.

Advocate for Pet/Ap. : Mr. Bikash Ranjan Bhattacharyya and ;Mr. Sukumar Bhattacharyya, Advs.;Mr. Sudaranda Pal and ;Mr. Pradip Talukdar, Advs.

Judgement :

B. Panigrahi, J.

1. The Writ petitioner has claimed that his father was the owner of a number of mines in the State of Bihar. But after the death of his father, the petitioner looked after his business. During the life time of his father all the coal mines which the petitioner's father enjoyed as lessee were nationalised. Notwithstanding such order the petitioner as well as his father claimed to have subsisting interest over

those Collieries. It is, Inter alia, claimed that since the petitioner's father's time petitioner was granted lease on composite mines having alternative layers of fire-clay and coal. The petitioner claimed the validity of the Amendment Act before this court. But anyway, since the matter was disposed of by the Hon'ble Supreme Court reported in AIR 1988 SSC page 1682 in the case of Tora Prasad Singh v. Union of India, the apex court disposed of the matter with a direction that the orders of stay in the matters of composite mines stood vacated. The petitioner has now claimed against the Union of India particularly, against the Coal Controller that appropriate direction be made for granting lease in favour of State of Bihar Mineral Development Corporation who could sub-let it in favour of the petitioner.

2. Mr. V.K. Gupta, the learned advocate appearing for the State of Bihar has raised an Initial objection relating to exercise of territorial jurisdiction of this court. It has been contended that since the petitioner has not prayed any specific prayer against State of West Bengal nor any part of cause of action has arisen within the jurisdiction of this court, therefore, this court could not exercise its Jurisdiction under Article 226 of the Constitution. It has been claimed under the Colliery Control Order, 1945 that Coal Controller means and Includes the Joint Controller and the 'Deputy Controller'. Therefore since all the collieries over which reliefs have been sought for by the petitioner are situated within the State of Bihar. It is the Deputy Controller who is having Jurisdiction to decide such matters. Thus, the petitioner without taking recourse to filing of such writ in the Patna High Court could not have challenged it by invoking Article 226 of the Constitutional jurisdiction of this court.

3. The identical question comes for consideration in the case of *ONGC Natural Gas Commission v. Utpal Kumar Basu and Ors.* reported in (1994) 4 Supreme Court cases 711. It has been held in the aforementioned judgment as follows :--

'From the facts pleaded in the writ petitioner, it is clear that N1CCO invoked the Jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to N1CCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response

thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages to EIL, ONGC etc., at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on 27.1.1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the Jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding Justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, 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. Besides the fax message of 15.1.1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27.1.1993. 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.'

4. The Supreme Court came heavily in the aforementioned case on the ground of exercise of jurisdiction of this court under Article 226 of the Constitution of India. In the recent decision reported in 1997 AJHC 2997 Vol. 3 September 1997, Part 9 Met. Merajual AJrIn and Ors. v. Coal India Ltd. and others, where a Single Bench of this court presided by Mr. V K Gupta, J. held that since no part of cause of action accrued within Calcutta, mere existence of the Head Office here does not confer the jurisdiction upon the High Court. The learned single Judge has held as follows :--

'I have gone through very minutely the averments made in the writ application and found that there is not a single fact mentioned in the petition which constitutes even a smallest part of cause of action which can be said to have accrued within the territorial limits of this court. Even if Coal India Limited may be a holding company and even if Bharat Coking Coal Limited may be a subsidiary company of Coal India Limited, yet the fact remains that the petitioners are the employees of Bharat Coking Coal Limited and their entire reliefs as claimed in the petition are directed against their employer. As has been noticed above, the petitioners claimed three main reliefs relating to the holding of the examination, and their participation in that examination. It is not at all stated as to whether the examination is scheduled or required to be held in any part of the territory to which the Jurisdiction of this court applies. It was Incumbent upon the petitioners to have specifically pleaded in the petition the fact which might have given the jurisdiction to this court. As is well known, cause of action is a bundle of facts and the same is true about any part of it. Since the petitioners are the employees of Bharat Coking Coal Limited which admittedly is having its office in the State of Bihar and since admittedly the petitioners are working in the State of Bihar merely stating that Coal India Limited has its offices at Calcutta, it does not confer any Jurisdiction upon this court. Positive acts have to be attributed to Coal India Limited and it has to be specifically stated as to how and in what manner Coal India Limited is concerned or would be concerned about the reliefs claimed by the petitioners. The petition is totally silent about any relief which could be claimed against the Coal India Limited.'

5. Accordingly, the writ petition is wholly untenable for want of territorial Jurisdiction. From the rationale of the above judgment and also on close scrutiny of the averments of the writ petition, I find that the petitioner did not claim any relief against Coal Controller save and except his office is only located within the Jurisdiction of this court. It has also been held in 1997(1) CLJ page 656 in *Kabindra Nath Mukherjee v. Union of India* that mere location of the head office without accrual of any cause of action within the jurisdiction shall not afford a right to the petitioner for invocation of Jurisdiction within the High Court at Calcutta.

6. Therefore, analysing the true test of Jurisdiction, I hold that the petitioner having not claimed any relief against Coal Controller mere adding him without any relief shall not clothe the petitioner a right to file a case in this court. I did not have any occasion to examine the merit of the case. Therefore these observation shall not preclude the petitioner from filling any case before the other appropriate court.

With the above observation, the writ petition is dismissed as it has been wrongly filed in this court.

7. Petition dismissed

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com