

Mohan Khanna, Mohan Lal Khanna and Charanjit Khanna Vs Union of India and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 28, 2001

Acts Referred: Constitution (Fifteenth Amendment) Act, 1963 " Article 226

Constitution of India, 1950 " Article 226, 226(1), 226(1A), 226(2)

Customs Act, 1962 " Section 111D, 124(1), 27

Foreign Exchange Regulation Act, 1973 " Section 37, 51, 64(2), 9(1)

Imports and Exports (Control) Act, 1947 " Section 3(2)

Citation: (2001) 252 ITR 626

Hon'ble Judges: Nirmal Singh, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: J. Kathuria, Suvineet Sharma and Munisha Gandhi, for the Appellant; R.P. Sawhney Rajesh Bindal and D.D. Sharma, for the Respondent

Judgement

G.S. Singhvi, J.

By this order, we are disposing of the preliminary objection raised on behalf of the respondents to the jurisdiction of this court to entertain these petitions.

2. A perusal of the record shows that the petitioners are partners in B. R. Engineering and Company (hereinafter referred to as "the company"),

which is registered at Mumbai and has its office at 102, Loha Bhavan, P.D. Mellow Road, Mumbai. In the year 1994-95, the company exported

computer software packages to A/o Bowl Indigo 11531, Moscow St. Sayanskaya 15, Russia, owned by one Shri Salil Gupta. The business

premises of the company as well as residential premises of Shri Rahul Gupta, one of the partners of the company, were searched u/s 37 of the

Foreign Exchange Regulation Act, 1973 (for short "the Act"), on May 21, 1997, resulting in seizure of certain documents. Residential premises of

Shri Ashok Gandhi and Shri Kirti Kumar, two of the persons involved in the export of software packages to Russia, were also searched u/s 37 of

the Act resulting in recovery and seizure of certain documents. After considering these documents and recording the statements of S/Shri Rahul

Gupta, Shekhar Gupta and Nemi Chand Shah, the Special Director, Enforcement, Delhi, issued notice dated February 1, 2000, to the company

and its partners including the petitioners to show cause as to why adjudication proceedings as contemplated by Section 51 of the Act should not

be held against them for contravention of the provisions of Section 9(1)(f)(i) read with Section 64(2) of the Act.

3. The petitioners have challenged the notices dated February 1, 2000, on various grounds set out in the writ petitions and have prayed as under :

(a) that the High Court may be pleased to issue a writ of certiorari quashing the notification/clarification dated June 18, 1997, issued under the

orders of respondent No. 1 and/or ;

(b) that the High Court may be pleased to issue a writ of mandamus to respondent No. 3 commanding that they will intimate respondent No. 4 that

the events and declarations submitted to and accepted by respondent No. 3 warrants dropping of proceedings initiated by respondent No. 4 and/

or ;

(c) that the High Court may be pleased to issue a writ of prohibition to respondent No. 4 from proceedings with the notice dated February 1,

2000, and acting upon the notification/clarification dated June 18, 1997, issued by the Central Board of Direct Taxes as indicated in their letter

dated August 24, 1998 ; and/or

(d) that the High Court may be pleased to issue an appropriate writ, direction or order as the High Court may deem fit on the facts and in the

circumstances of the case and/or ;

(e) that the High Court may be pleased to order that the proceedings initiated in terms of the notice dated February 1, 2000, issued by respondent

No. 4 be stayed forthwith.

4. In the written statements filed on behalf of respondents Nos. 1 to 3 and respondent No. 4, a common objection has been raised to the

jurisdiction of this court to entertain the writ petitions on the ground that no part of the cause of action has arisen within the territorial jurisdiction of

this court.

5. Shri R.P. Sawhney, senior counsel for respondents Nos. 1 to 3 and Shri D.D. Sharma, counsel for respondent No. 4, argued that this court

does not have the territorial jurisdiction to entertain the writ petitions and the cause of action, if any, in the context of the prayers made by the

petitioners has arisen only within the territorial jurisdiction of the High Courts of Mumbai and Delhi. Learned counsel pointed out that the company

is not only registered at Mumbai and having its office at Mumbai, but the entire transaction leading to the initiation of proceedings under the Act

had taken place at Mumbai. They further pointed out that the search and seizure operations were carried out at Mumbai, the

notification/clarification impugned in the writ petitions was issued by the Central Board of Direct Taxes at New Delhi (for short, "the CBDT"), and

the proceedings qua which a writ of prohibition has been sought are pending before respondent No. 4 at Delhi and argued that this court cannot

entertain the petitions because neither the cause of action nor a part of it has arisen within its territorial jurisdiction. Learned counsel further argued

that mere service of notices issued by respondent No. 4 cannot be treated as a part of cause of action so as to entitle the petitioners to invoke the

jurisdiction of this court.

6. Shri J. Kathuria, advocate for the petitioners, argued that the objection raised on behalf of the respondents to the jurisdiction of this court should

be rejected because a part of cause of action has accrued to the petitioners within the territorial jurisdiction of this court. He submitted that the

notices which constitute the foundation of the action proposed to be taken under the Act have been served upon the petitioners at Amritsar which

falls within the territory of the State of Punjab and, therefore, this court has the jurisdiction to entertain the writ petitions. Learned counsel referred

to the prayer clause of the writ petitions to show that the petitioners have challenged not only the notification/clarification issued by the Central

Board of Direct Taxes, but also prayed for issuance of a writ of prohibition restraining respondent No. 4 from proceeding with the notice dated

February 1, 2000, and acting upon the notification/clarification dated June 18, 1997, and submitted that the respondents cannot object to the

maintainability of the writ petitions. In support of his argument, learned counsel relied on the following decisions :

(i) L.V. Veeri Chettiar v. STO [1970] 26 STC 579 ; AIR 1971 Mad 155 ,

(ii) Prem Cables Pvt. Ltd. v. Assistant Collector (Principal Appraiser), Customs [1981] ELT 440 (Raj) ; and

(iii) Dowsyl Polymers Pvt. Ltd. and another Vs. M.G. Abrol, Special Secretary, Ministry of Finance and others, .

7. We have given serious thought to the respective arguments. Article 226(1) of the Constitution of India, which begins with a non obstante clause,

lays down that every High Court has the power, 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, 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. Article 226(2) lays down that 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. In other words, the power vested in a High Court under Article 226 of the Constitution to issue directions,

orders or writs can be exercised qua a Government authority outside the territories over which it exercises jurisdiction provided that the cause of

action, wholly or in part, arises within its territorial jurisdiction.

8. In the light of the above, it is to be seen whether mere service of notices dated February 1, 2000, at Amritsar can be treated as part of cause of

action in the context of the prayers made by the petitioners.

9. In *Oil and Natural Gas Commission v. Utpal Kumar Basu* [1994] 5 JT 1 SC, their Lordships of the Supreme Court interpreted Article 226(1)

and (2) and laid down the following proposition (page 5):

On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to

issue direction, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other

purpose if the cause of action, wholly or in part, had arisen within the territories 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

territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen

within the territorial jurisdiction of that court. That is at best its case in the writ petition.

It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a

judgment in his favour by the court. In *Chand Kaur v. Pratap Singh*, [1889] 16 Cal 98 at 102, Lord Watson said :

"... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of

the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action or in other words to the matter upon

which the plaintiff asks the court to arrive at a conclusion in his favour."

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.

10. In that case, the Calcutta High Court had entertained the writ petition filed by the respondents to consider the offer of the petitioner for setting

up of a kerosene recovery processing unit at Hazira Complex in Gujarat. The jurisdiction of the Calcutta High Court to entertain the writ petition

was challenged by the appellant on the ground that the cause of action or a part thereof had not arisen within the territorial jurisdiction of that court.

While upholding the objection, their Lordships of the Supreme Court held as under (page 7) :

From the facts pleaded in the writ petition, it is clear that NICCO 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 NICCO, 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 January 27, 1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose

within the jurisdiction 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 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 January 15, 1993, cannot be construed as conveying rejections of the offer as that fact occurred on January 27.

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.

11. The question as to whether service of notice can be treated as part of cause of action was considered by the Supreme Court in State of

Rajasthan and Others Vs. Swaika Properties and Another, . The facts of that case were that vide notice dated June 25, 1975, issued u/s 52(2) of

the Rajasthan Urban Improvement Act, 1959, the Special Officer, Town Planning Department, Jaipur, gave an indication about the proposed

acquisition of land, including 14 bighas and 16 biswas of land belonging to the respondents u/s 52(1) of the Act for a public purpose, namely, for

the implementation of a development scheme at public expense. The notice was duly served on the respondents. They appeared before the Special

Officer and made attempts to get the land released from acquisition. They also made efforts to seek exemption from the Government. After having

failed in that effort, they filed a writ petition in the Calcutta High Court challenging the notification issued u/s 52(1) by the State Government of

Rajasthan. A learned single judge of the Calcutta High Court entertained the writ petition and issued a rule nisi requiring the opposite party to show

cause as to why a writ in the nature of mandamus should not be issued directing them to forbear from giving effect to the impugned notification. He

also passed an ad interim ex parte prohibitory order restraining them from taking any steps u/s 52(5) and (6) of the Act. Their Lordships of the

Supreme Court set aside the interim order and quashed the proceedings on the writ petition by making the following observations (page 1291) :

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.

The expression "cause of action" is tersely defined in Mulla's CPC :

"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 u/s 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 u/s 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 u/s 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, u/s

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 u/s 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 u/s 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.

12. The issue relating to the territorial jurisdiction of the High Court of Guwahati was recently considered by a two-judge Bench of the Supreme

Court in C.B.I. Anti-Corruption Branch, Mumbai Vs. Narayan Diwakar, . The facts of that case were that the Central Bureau of Investigation had

registered three FIRs in September, 1993, against the respondent containing allegations that while working as Collector, Daman, he had entered

into a criminal conspiracy and prepared or caused to be prepared a forged map of Daman and increased and reduced the area of the industry zone

with a view to benefit the land owners of village Daman. In March, 1994, he was transferred to Andhra Pradesh. In April, 1994, a wireless

message was sent by the Superintendent of Police, Central Bureau of Investigation, Anti-Corruption Branch, Bombay, to the Chief Secretary,

Arunachal Pradesh, Itanagar, with a request to advise the respondent to meet Shri A.K. Asthana, Inspector of Police, CBI, ACB, Bombay, in

connection with the investigation of one of the three cases. Upon this, the respondent filed a writ petition in the High Court of Guwahati with the

prayer to quash the FIRs and for other consequential benefits. A learned single judge of the High Court of Guwahati entertained the writ petition

and quashed the FIRs. On the question of jurisdiction, the learned single judge held that the communication of the wireless message to the

respondent at Itahagar (Arunachal Pradesh) was a part of the cause of action for filing the writ petition and, therefore, the same was maintainable.

At the hearing of the appeal filed by the Central Bureau of Investigation in the Supreme Court, counsel for the respondent agreed that the order of

the High Court may be quashed leaving it open to the respondent to approach the competent authority for redress of his grievance at the

appropriate stage. Their Lordships accepted his request and did not go into the merits of the case but held that the writ petition filed at the

Guwahati High Court was not maintainable. This is clearly borne out from paragraph 8 (page 658 of [1999] 4 SCC) of the judgment which reads

as under (page 2363 of AIR 1999 SC) :

In view of what has been fairly stated by the learned counsel for the respondent, it is not necessary for us to enter into the merits of the case,

suffice it to say that on the facts and circumstances of the case and the material on record, we have no hesitation to hold that the Guwahati High

Court was clearly in error in deciding the question of jurisdiction in favour of the respondent. In our considered view, the writ petition filed by the

respondent in the Guwahati High Court was not maintainable.

13. We may now advert to the decisions relied upon by Shri Kathuria. In *L.V. Veeri Chettiar v. Sales Tax Officer* [1970] 26 STC 579, a Division

Bench of the Madras High Court considered the objection raised on behalf of the respondents to the jurisdiction of that High Court to entertain the

writ petition filed for quashing of the notice issued under the Bombay Sales Tax Act, 1959, and held that a writ of prohibition could be issued by

that court restraining the Sales Tax Officer (X-I), Enforcement Branch, Greater Bombay, from continuing the proceedings initiated under the

Bombay Sales Tax Act, 1959. The facts of that case were that the petitioner and his minor son had formed an association in 1961 for carrying on

the business of manufacture of handloom and powerloom cloth. They set up a factory in District Salem. Later on, they started the business of

manufacture and export of readymade garments. They were granted licences under the Export Promotion Scheme framed by the Government of

India. They sold import licences by way of forward sale through named brokers in Madras. In 1964, the Sales Tax Officer (X-I), Enforcement

Branch, Greater Bombay, sent a registered letter to the petitioners and called upon them to furnish the details of imports allegedly made at

Bombay. In their reply, the petitioners stated that they had not made imports at Bombay and challenged the hypothesis which prompted the officer

concerned to issue notice under the Bombay Sales Tax Act, 1959. Their representative met the concerned officer and asked him to furnish the

particulars of sale allegedly made at Bombay. Thereafter, the Sales Tax Officer issued notice dated November 4, 1966, proposing best judgment

assessment. While dealing with the objection to the jurisdiction of that court, a Division Bench of the Madras High Court observed as under (page

587) :

One other incidental contention is that this court has no jurisdiction to issue a writ because no part of the cause of action has arisen within the

jurisdiction of this court. We do not agree. Under Article 226(1A) of the Constitution of India, the High Court has the power to issue directions,

orders or writs to any Government, authority or person provided the cause of action for the issuance of such a rule under Article 226(1A), wholly

or in part, arises, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. What

then is the cause of action that is referred to in this sub-clause of Article 226 of the Constitution ? "Cause of action" has always been understood

as referable to the bundle of facts in a legal proceeding and if a limb of that bundle of facts is available, seen or discernible in one particular place

which is a seat of the High Court, then such High Court has the power to exercise all the powers conferred on it under Article 226(1A),

notwithstanding the fact that the authority against whom the ultimate rule has to be issued and whose act has created a cause of action as a whole

or in part, is situated outside its territorial limits. The person primarily affected by the respondent issuing the notices from time to time to the

petitioners and calling upon them to produce the accounts of their business carried on in the State of Tamil Nadu and again by proposing to assess

them to the best of his judgment on the assumption of certain jurisdictional facts, is the addressee of such notice and such affectation relates to the

bundle of facts in the totality of the lis or proceeding concerned, and such impact necessarily gives rise to a cause of action, though it may be in

part. It is established that in fiscal laws a proposal to assess forms part and parcel of the machinery of assessment and thus understood, the service

of notice to assess and calling upon the petitioner to explain has given rise to a cause of action as is popularly and legally understood and the

machinery of assessment has been set in motion and the impact of that motion is felt by the petitioners within the territorial limits of this State. We

have, therefore, no hesitation in holding that a part of the cause of action has arisen in the State of Tamil Nadu.

14. The facts of Prem Cables Pvt. Ltd.'s case [1981] ELT 440 (Raj), show that the petitioners had filed writ petitions in the Rajasthan High Court

for quashing the orders passed by the Principal Appraiser of Customs, Bombay ; the Appellate Collector of Customs and the Commissioner

(Revision Applications), Government of India. An alternative prayer made by them was to direct respondent No. 3 to determine the question of

limitation u/s 27 of the Customs Act, 1962, and thereafter decide the revision application afresh. The respondents raised an objection to the

jurisdiction of the High Court to entertain the petition by contending that the cause of action had arisen within the territorial jurisdiction of the

Bombay High Court. A Division Bench of the Rajasthan High Court took notice of the amendment made under Article 226 of the Constitution

(Fifteenth Amendment) Act, 1963, referred to the decisions of various courts including that of the Division Bench of the Madras High Court in

L.V. Veeri Chettiar's case [1970] 26 STC 579, a decision of the Special Bench of the Bombay High Court in Gopal Vinayak Godse Vs. The

Union of India and Others, , and held that the Rajasthan High Court had the jurisdiction to entertain the writ petition because the impugned orders

were forwarded for communication to the petitioners at Pipalia Kalan in Rajasthan.

15. In Dowsyl Polymers Pvt. Ltd. and another Vs. M.G. Abrol, Special Secretary, Ministry of Finance and others, , the petitioners challenged the

show-cause notice dated January 12, 1978, issued u/s 111D of the Customs Act, 1962, read with Section 3(2) of the Imports and Exports

(Control) Act, 1947, order dated November 29, 1978/December 2, 1978, for confiscation, the appellate order passed by the Central Board of

Excise and Customs, New Delhi, and the revisional order passed by the Government of India. The respondents objected to the jurisdiction of the

Bombay High Court to entertain the writ petition. It was argued on their behalf that no part of the cause of action had arisen in Bombay and,

therefore, that High Court did not have the jurisdiction to grant relief to the petitioner. A learned single judge of that court relied on the decisions of

the Madras High Court in L.V. Veeri Chettiar's case [1970] 26 STC 579 and the Rajasthan High Court in Prem Cables Pvt. Ltd.'s case [1981]

ELT 440 and held as under :

However, I think that his contention falls squarely within the ratio of the case of Prem Cables Pvt. Ltd. [1981] ELT 440 (Raj). This is a case of

the Rajasthan High Court and is in relation to customs and countervailing duty. After referring to the amendment of Article 226 of the Constitution

of India and after referring to a number of judgments including the judgments cited by Mr. Sethna, the Rajasthan High Court took the view that

even though all actions had been taken outside Rajasthan and in Bombay, still the Rajasthan High Court had jurisdiction inasmuch as all the orders

were forwarded to the petitioner at Pipalia Kalan in Rajasthan and they were received at that place in Rajasthan.

16. The learned single judge distinguished the decision of the Supreme Court in State of Rajasthan and Others Vs. Swaika Properties and

Another, , by observing that in that case notice issued u/s 52(2) was not an integral part of the cause of action, whereas the notice issued u/s

124(1) of the Customs Act, 1962, was an integral part of the cause of action.

17. In our opinion, the ratio of the aforementioned decisions cannot be relied upon for entertaining these petitions. A look at the prayer clause of

the writ petitions shows that the relief sought by the petitioners is against the notification/clarification dated June 18, 1997, issued by the Central

Board of Direct Taxes. As regards notices dated February 1, 2000, the petitioners have prayed for issuance of a writ of prohibition directing

respondent No. 4 not to proceed with the said notices. In our opinion, service of notices dated February 1, 2000, at Amritsar cannot be treated as

an integral part of the cause of action so as to confer jurisdiction upon this court to entertain these petitions. All the events culminating in the

issuance of notices had taken place at Bombay. Notification/clarification dated June 18, 1997, and notices dated February 1, 2000, were issued at

Delhi. Therefore, the cause of action arose within the territorial jurisdiction of the Delhi and Bombay High Courts and not of this court.

18. For the reasons mentioned above, we uphold the preliminary objection and dismiss the writ petitions which necessarily means that the

petitioners will be free to file petitions either in the High Court of Bombay or in the High Court of Delhi.