

(2005) 09 AHC CK 0233

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 61529 of 2005

Shri J.C. Thind

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 20, 2005

Acts Referred:

- Central Civil Services (Conduct) Rules, 1964 - Rule 14
- Civil Procedure Code, 1908 (CPC) - Section 20
- Companies Act, 1956 - Section 113, 113(2), 207
- Constitution of India, 1950 - Article 226

Citation: (2006) 1 AWC 256

Hon'ble Judges: Vineet Saran, J; B.S. Chauhan, J

Bench: Division Bench

Advocate: Ranjit Saxena, for the Appellant; K.C. Sinha, A.S.G. and S.S. Sinha, for the Respondent

Final Decision: Dismissed

Judgement

B.S. Chauhan, J.

This writ petition has been filed for quashing the Memorandum dated 19.7.2005, issued by the Director General, Central Industrial Security Force, Ministry of Home Affairs, Lodhi Road, New Delhi (Annex. 35).

2. The facts and circumstances giving rise to this case are that the petitioner, at present, is posted at Anpara, District Sonbhadra, (U.P.). However, respondents have initiated the domestic inquiry against the petitioner under the provisions of Rule 14 of the Central Civil Services (Conduct) Rules, 1964; and Central Civil Services (Classification, Control and Appeal) Rules, 1965. Charge-sheet contains four charges in respect of transportation of sleepers of Devdar from Uri to Delhi between 23.10.2002 to 13.6.2004 by government vehicles. The Drivers carrying the said sleepers in the Government , vehicles were arrested, sleepers were seized etc. etc.

The present petition has been filed for quashing the said charge-sheet.

3. Shri Shashank Sheikhar Singh, learned counsel appearing for the respondents has raised the preliminary objection regarding the maintainability of the writ petition, pointing out that as no cause of action, partly or fully, has arisen within the territorial jurisdiction of the State of U.P., mere posting of the petitioner in U.P. at present, will not confer the jurisdiction upon this Court. Petition is liable to be dismissed for want of territorial jurisdiction.

4. On the other hand, Shri Ranjit Saxena, learned counsel appearing for the petitioner has tried to impress upon us that as the petitioner is posted in district Sonbhadra of the State of U.P., he can maintain a petition and seek quashing of the charge-sheet in respect of the misconduct committed outside the State.

5. We have considered the rival submissions made by the learned counsel for the parties on the preliminary objection.

6. Clause (2) of Article 226 of the Constitution reads as under:-

"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, On 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."

7. This clause was inserted by amendment of the Constitution and prior to the same, the accrual of the "cause of action" was not relevant at all for the purpose of jurisdiction. The development in this regard requires to be considered.

8. A Constitution Bench of the Hon'ble Supreme Court in [K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.](#), while examining the scope of territorial jurisdiction of the Court and exercise of the discretion held as under:-

"...There are only two limitations placed upon the exercise of these powers by a High Court under Article 226 of the Constitution; one is that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories" and this implies that they must be amenable to its jurisdiction either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Article 226 of the Constitution is to be determined.

...For purposes of this case it is enough to state that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has

always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere."

9. Another Constitution Bench of the Hon"ble supreme Court in [Election Commission, India Vs. Saka Venkata Subba Rao and](#), held that writ does not lie beyond the territorial jurisdiction of the High Court.

10. A seven Judges" Bench of the Apex Court in [Lt. Col. Khajoor Singh Vs. The Union of India and Another](#), held that location of the seat of the Central Government was the only determining factor of jurisdiction of the writ court and no other factor could be taken into account. Similar view was taken by the Constitution Bench of the Apex Court in [Shriram Jhunjhunwala Vs. The State of Bombay and Others](#), observing that in case of mineral lease under the mineral Concession Rules, 1949, Central Govt was the only competent Authority to deal with the matter and as the State Government could only carry the orders of the Central Govt, Bombay High Court had no territorial jurisdiction to entertain a writ petition in respect of the same. Same view, in respect of the same Rules was taken by another Constitution Bench of the supreme Court in [Madan Gopal Rungta Vs. Secretary to The Government of Orissa](#),

11. Subsequent to these judgments vide 15th Constitutional Amendment Act 1963, clause (1-A) was added to Article 226(1), which was renumbered as cl. (2) by 42nd Constitutional Amendment Act 1976. Thus after the 15th Amendment, jurisdiction of the writ court was extended also to those cases wherein the cause of action even if partly, has arisen within their territorial jurisdiction.

12 In [Subodh Kumar Gupta Vs. Shrikant Gupta and Others](#), the Apex Court held that in order to maintain the writ petition it is to be shown that a part of the cause of action arose within the territorial jurisdiction of that Court.

13 In [Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another](#), the Hon"ble Supreme Court examined a case which related to claim for waiver of port charges and release of the goods seized by the Board of Trustees of the Port of Calcutta. The consignment of imported goods by the plaintiff had been unloaded at Calcutta Dock, the respondents" representations to the Port Trust Authority to waive the port charges and release the goods were refused by the Board of Trustees of the Port at Calcutta. The suit was filed for waiver of the port charges and release of goods in the District Court, Bharatpur (Rajasthan). Obviously no part of the cause of action relating to the seizure of the goods by the Port Trust of Calcutta which was unloaded at Calcutta for non-payment of port charges had arisen within the territory of Rajasthan. The Court found that the cause of action had arisen at Calcutta. The Supreme Court affirmed the principle that the place where whole or part of the cause of action arises, gives jurisdiction to the Court within whose territory such place is situate. Whether cause of action has arisen within the territory of the particular Court will have to be determined in each case on its own facts in the context by the subject matter of the litigation, and relief claimed.

14. In [Haji Esmail Noor Mohammad and Co. and Others Vs. The Competent Officer, Lucknow and Others](#), the respondents had main office at Mussoorie, Uttar Pradesh. The matter was heard there and its appeal was heard at Allahabad and dismissed. Subsequently, the office of the respondents therein was shifted to Delhi. When the matter was challenged before the Allahabad High Court, a preliminary objection was raised that this Court had no jurisdiction as the office of the respondents had been shifted to Delhi. The Hon'ble Apex Court rejected the said contention observing that the cause of action had arisen in Uttar Pradesh as the appeal was decided at Allahabad, jurisdiction of this Court was upheld.

15. In *Aligarh Muslim University v. Vinay Engineering Enterprises Ltd.*, (1994) 4 SCC 710 the Apex Court said "that the contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute, the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none.

16. In the case of [Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others](#), it was held by the Apex Court as under:-

"Under Article 226 a High Court can exercise the power to issue directions, 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. 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. 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. Thus, the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial."

17. While deciding the said case, the Hon'ble Supreme Court placed reliance upon the judgment in *Chand Koer v. Partab Singh*, 15 Ind. Appeals 156, wherein it had been observed as under: -

"The cause of action has no relation whatsoever 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; in other words, to the media upon which the plaintiff asked the court to arrive at a conclusion in his favour."

18. 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 embargo upon an inquiry as to the correctness or otherwise of the said facts.

19. In [Union of India and Others Vs. Adani Exports Ltd. and Another](#), the Hon"ble Apex Court held that in such a case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. Each and every fact pleaded by the party in its application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which ♦ have a nexus or relevance with the lis that is involved in the case. Facts, which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned.

20. A Constitution Bench of the Hon"ble Supreme Court in [Sri Nasiruddin Vs. State Transport Appellate Tribunal](#), examined the correctness of the judgment of the Full Bench of this Court between the same parties, reported in [Nirmal Dass Khaturia and Others Vs. The State Transport \(Appellate\) Tribunal, U.P., Lucknow and Others](#), . In that case, the question¹ arose regarding grant of permits under the provisions of Motor Vehicles Act, 1939 by the Regional Transport Authority, Bareilly. Against the resolution of the RTA, appeals were preferred before the State Transport Appellate Tribunal, Lucknow, and against the orders passed by the Appellate Tribunal, writ petitions were filed before the Lucknow Bench. A question arose as to whether the cause of action arose at Bareilly, in spite of the fact that the appeals had been disposed of by the Tribunal at Lucknow and consequently as to whether the writ petitions could have been entertained by the Lucknow Bench for the reason that Bareilly was within the territorial jurisdiction of the Allahabad High Court. It was held that Lucknow Bench had territorial jurisdiction over 12 districts, and the Lucknow Bench can entertain a petition if the cause of action had arisen partly or fully within those 12 districts. The Court held that it was immaterial that the original order had originated from Bareilly and as the appeal was decided by the Tribunal at Lucknow, it cannot be said that the cause of action had not partly arisen within the territorial jurisdiction of the Lucknow Bench. The Court held as under:-

"If the cause of action arises in part within the specified areas in Oudh it would be 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. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside

the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out In each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action."

21. Similarly in Rajasthan High Court Advocates' Association v. Union of India & Ors AIR 2001 SC 416 , the Hon"ble Supreme Court held that clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court and one of the tests may be as to whether the cause of action partly or fully has arisen within its territorial jurisdiction. While deciding the said case reliance has been placed upon its earlier judgment in [U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others](#), , wherein it has been held that the expression "cause of action" has acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression 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. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises.

22. The Hon"ble Supreme Court in [Dr. Manju Varma Vs. State of U.P. and Others](#), considered the whole issue as well as the aforesaid judgments in Nasiruddin (Supra); Rajasthan High Court Association (Supra) and interpreted the provisions of Clause 14 of the Amalgamation Order holding that as in the said case the order had been issued by the State Government having a seat at Lucknow, the Lucknow Bench had the jurisdiction to entertain the petition, and by transferring the case to Allahabad High Court by passing a quasi-judicial order, the Hon"ble Chief Justice deprived the said petitioner of her right as dominus litis.

23. In Manju Bhatia and Anr. v. New Delhi Municipal Council & Anr. AIR 1998 SC 223, the Hon"ble Supreme Court considered a case for damages, under which a "cause of action" in a definite form may not be relevant except when necessary to comply with the laws relating to procedure and limitation etc. The Apex Court observed that "a cause of action in modern law is merely a factual situation, the existence of which enables the plaintiff to obtain a remedy from the Court and he is not required to head his statement of claim with a description of the breach of the law on which he relies."

24. In State of Assam and Ors. v. Dr. Brojen Gogol and Ors. AIR 1998 SC 143, the Hon"ble Supreme Court examined a case wherein the Bombay High Court had granted anticipatory bail to a person who was allegedly connected with the offence, for all practical purposes, in a place within the territorial jurisdiction of Gauhati High

Court and all such activities had prepatrated therein. The Hon"ble Apex Court transferred the case from Bombay High Court to Gauhati High Court to be heard further.

25. In [C.B.I. Anti-Corruption Branch, Mumbai Vs. Narayan Diwakar](#), the Hon"ble Apex Court considered a case where the respondent was the Incharge/ Collector in Daman within the territorial jurisdiction of Bombay High Court and an FIR had been lodged against him in Daman for hatching conspiracy. He stood transferred to Arunachal Pradesh within the territorial jurisdiction of Gauhati High Court. The CBI gave him a wireless message from Bombay advising him to appear before its officers, in respect of investigation of the said case, in Bombay. The respondent filed a writ petition under Article 226 of the Constitution before the Gauhati High Court. The Supreme Court did not decide the case on merit but observed as under:-

"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 Gauhati 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 Gauhati High Court was not maintainable."

26. The entire argument in the case had been that the Gauhati High Court had no jurisdiction to entertain the writ petition as no cause of action had arisen, even partly, within its territorial jurisdiction and receiving the message in Arunachal Pradesh to appear before the CBI Authority at Bombay did not give rise to the cause of action, even partly.

27. In [Navinchandra N. Majithia Vs. State of Maharashtra and Others](#), the Hon"ble Supreme Court while considering the provisions of Clause (2) of Article 226 of the Constitution, observed as under:-

"In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more basis for suing; a factual situation that entitles one person to obtain a remedy in court from another person...."Cause of. action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment...the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf."

28. The Apex Court held that while considering the same, the court must examine as to whether institution of a complaint/ plaint is a mala fide move on the part of a party to harass and pressurise the other party for one reason or the other or to achieve an ulterior goal. For that consideration, the relief clause may be a relevant criterion for consideration but cannot be the sole consideration in the matter.

29. In [H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others](#), , the Hon"ble Supreme Court examined the issue of territorial jurisdiction of a court in respect of the offence u/s 113(2) of the Indian Companies Act, 1956. Taking note of Sections 113 and 207 of the said Act, the Apex Court held that the cause of action for default of not sending the share certificates within the stipulated period would arise only at a place where the registered office of the company was situated as from that place the share certificates could be posted and are usually posted.

30. In Muhammad Hafiz v. Muhammad Zakariya AIR 1922 PC 23, the "cause of action" was explained as under:-

"...the cause of action is the cause of action which gives occasion for and forms the foundation of the suit...."

31. Similarly, in Read v. Brown (1889) 22 QBD 128, this was explained as under:-

"Every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

32. Same view has been reiterated by the Privy Council in AIR 1949 78 (Privy Council) and by the Supreme Court in [The State of Madras Vs. C.P. Agencies and Another](#), and [A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem](#),

33. A "cause of action" is a bundle of facts which, taken with the law applicable, gives the plaintiff a right to relief against the defendant. However, it must include some act done by the defendant, since in the absence of an act, no cause of action can possibly occurred. [Vide [Radhakrishnamurthy Vs. Chandrasekhara Rao](#), [Damomal Kausomal Raisinghani Vs. Union of India and Others](#), ; [Ram Awalamb and Others Vs. Jata Shankar and Others](#), [Salik Ram Adya Prasad Vs. Ram Lakhan and Others](#), and [Umasankar Chatterjee v. Union of India](#) 1982 Lab IC 1361 (Cal.)].

34. In [The Commissioner of Commercial Tax, Ranchi and Another Vs. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others](#), the State of Jharkhand challenged the territorial jurisdiction of the Patna High Court granting benefit of notification issued by the unbifurcated State of Bihar in respect of the benefit of sales tax exemption. The Hon"ble Supreme Court rejected the plea observing that since partly "cause of action" accrued in the State of Bihar and also due to the fact that the said State itself preferred an appeal before the Patna High Court and contested the case without raising any question of territorial jurisdiction of the Patna High Court.

35. In [National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others](#), , the Hon"ble Supreme Court examined a case wherein the writ petition had been filed against the National Textile Corporation with regard to supply of" cloth by Textile Mills situate in Bombay, for money, and the money was paid to the Mills at Bombay. The Supreme Court held that Calcutta High Court could not have invoked the jurisdiction on the mere fact that the writ petitioner carried on business at Calcutta

or that the reply to the correspondence was received by him at Calcutta.

36. In [Kunjan Nair Sivaraman Nair Vs. Narayanan Nair and Others](#), the meaning of "cause of action" has been explained by the Apex Court compendiously observing that the term has acquired a judicial settled meaning. In the restricted sense "cause of action" means the "circumstance forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit including not only the infraction of the right but the infraction coupled with the right itself. The expression means every fact which would be necessary for the plaintiff to prove, if traverse, in order to support his right to the judgment of the Court. "

37. In [New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and Others](#), the Supreme Court explained the scope of Section 20 C.P.C. observing that where the party enters into an agreement it is permissible to institute the suit in two or more Courts, but if by agreement parties restrict only to one place, that is, place of suing to only one of them, such an agreement is binding upon the parties not being contrary to public policy. However, the parties by consignment note cannot confer jurisdiction on a court which otherwise does not have jurisdiction to deal with the matter.

38. Similarly, in [Kusum Ingots and Alloys Ltd. Vs. Union of India \(UOI\) and Another](#), the Hon'ble Supreme Court explained the scope of clause (2) of Article 226 comparing it with Section 20(c) of the CPC and dealt with territorial jurisdiction of the writ court, observing that a court in whose territorial jurisdiction the cause of action has partly or fully arisen, would have the jurisdiction to deal with the case, though the original order might have been passed outside the territorial jurisdiction of the said Court.

39. A Division Bench of this Court in Lt. Col. Saroj Mahanta v. Union of India (2003) 3 ESC 1419 has taken a view that a writ petition is not maintainable before this Court unless petitioner satisfies the requirement of the territorial jurisdiction. Mere residence/posting of the petitioner in Uttar Pradesh is neither decisive, nor relevant. The party has to satisfy the Court that the cause of action has partly or fully arisen in its jurisdiction. The matter was referred for re-consideration to the larger Bench in view of the earlier judgment of the Division Bench, wherein following the judgment of the Hon'ble; Supreme Court in Dinesh Chandra Gahtori v. Chief of Army Staff , held that writ petition can be filed against Chief of the Army Staff in any of the High Courts in India. The Full Bench, in [Rajendra Kumar Mishra Vs. Union of India \(UOI\) and Others](#), affirmed the view taken by the Division Bench in It. Col. Saroj Mahanta (Supra). Instant case is squarely covered by the said Full Bench judgement.

40. In view of the aforesaid judicial pronouncements, it may be summarised that the cause of action is a bundle of facts and to examine the issue of jurisdiction, it is necessary that one of the inter-linked facts must have occurred in a place where the

case has been instituted. The said fact must have a direct nexus to the lis between the parties and in case the facts taken in the plaint/petition are denied, the plaintiff/petitioner has to prove the same. The fact must have direct relevance in the lis involved. It is not that every fact be treated as a "cause of action" in part and may create a jurisdiction of the court, in whose territorial jurisdiction it has occurred. The condition precedent for creation of jurisdiction is that the facts occurred therein must form an integral part of the "cause of action". A mere allegation by a plaintiff/petitioner for the purpose of creating a jurisdiction should not be enforced for conferring jurisdiction. More so, a fact, which does not have any direct relevance with the lis but is made to occur only to defeat to statutory provisions provide for jurisdiction in order to deprive the court which must have territorial jurisdiction over the subject matter of the case, should not be accepted for the reason that the act has knowingly or purposely been performed to harass the defendant and deprive the court which has territorial jurisdiction over the subject matter and to try the case.

41. Thus, in view of the above, we are of the considered opinion that in order to determine as to whether the writ court has a jurisdiction to entertain a petition the pleadings in the petition have to be examined and opinion is to be formed as to whether a cause of action partly or fully has arisen or the respondents reside or have office within the territorial jurisdiction of the Court. In absence thereof if the view is taken that petition is to be entertained on merit without considering as to whether such pre-requisite conditions are there the provisions of clauses (1) and (2) of Article 226 of the Constitution would render nugatory.

42. In the instant case, goods were transported from Uri to Delhi by the Government vehicles without authorisation. The vehicles were seized and Drivers were arrested in between Uri and Delhi. Charge sheet was prepared in Delhi, There is nothing on record to show that any cause of action, even partly, accrued in U.P. Mere subsequent posting of the petitioner would not confer the jurisdiction to entertain this petition upon this Court. None of the respondents have residence or office within the State of U.P. In such a fact situation, we are unable to hold that this Court can have jurisdiction to entertain the petition.

43. In view of the above, petition is dismissed for want of jurisdiction. The petitioner is at liberty to raise the issue before the appropriate forum. No cost.