

(1991) 07 GAU CK 0003

Gauhati High Court

Case No: Civil Rule No. 60 of 1990

Umesh Borgohain

APPELLANT

Vs

Indian Drugs and
Pharmaceuticals Ltd.

RESPONDENT

Date of Decision: July 18, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226, 226

Citation: (1991) 2 GLJ 164

Hon'ble Judges: R.K.Manisana Singh, J and M.Sharma, J

Bench: Division Bench

Advocate: A.K.Thakur, A.R.Barthakur, A.B.Choudhary, K.Basar, Advocates appearing for Parties

Judgement

R. K. Manisana, J.

In this application under Article 226 of the Constitution of India, the petitioner has prayed for directing the respondents to fix the headquarters of the petitioner at Gauhati and to make the payment of his subsistence allowance.

2. Facts, At the relevant time, the petitioner was an employee officer under the respondent1, Indian Drugs & Pharmaceuticals Limited, a Government of India undertaking, and was posted at Ahmedabad. While he was working at Ahmedabad the respondent 3, Senior SubDivisional Manager (W), issued suspension order dated 9.12.86 placing the petitioner under suspension. Under that order the headquarters of the petitioner was fixed at the Regional Office at Ahmedabad, and the petitioner was directed not to leave the headquarters (Admedabad) without obtaining the previous permission from the respondent 3. In the suspension order, it was also indicated that subsistence allowance admissible to the petitioner during the period of suspension would be issued separately In the counter of the respondents, there are allegations against the petitioner about his misconduct for leaving the

headquarters without permission, etc.

3. In the course of the hearing of the petition, Shri A B. Choudhury, learned counsel for the respondents, has contended that this Court has no territorial jurisdiction as the cause of action wholly arose in Ahmedabad. Mr. A.R. Barthakur, learned counsel for the petitioner, has submitted that the cause of action, in part if not wholly, arose within Assam and, therefore, this Court has jurisdiction to entertain the petition, or in any event the question of territorial jurisdiction cannot be raised at this stage for the respondents have waived to raise the question.

4. The writ petition was filed on 8.1.90. On 11.1.90, this Court passed an interim order directing the respondents to make the payments of subsistence allowance as due to the petitioner within a period of two weeks from the date of receipt of that order. The order was subsequently modified on 26.2.90 directing the respondents to pay the petitioner a sum of Rs. 7000/ out of his subsistence allowance at Gauhati within a period of 15 days to meet his expenses to go and report to the headquarters at Ahmedabad and also to pay the entire subsistence allowance to the petitioner less Rs. 7000/, if paid at Gauhati, at Ahmedabad within 10 days. On 16.3.90, the learned counsel for the respondents prayed for extension of time for payment of the amount of Rs.7000/. Subsequent orders indicate that Rs. 7000/ had been paid to the petitioner in pursuance of the order dated 26.2.90. In other words, the interim orders were given effect to and the respondents from time and again filed applications for modification of the interim order or otherwise submitting to the jurisdiction of this Court without raising the question of jurisdiction.

5. The objection as to territorial jurisdiction should be taken at the earliest opportunity. In this case, the objection to jurisdiction was taken for the first time in the course of the hearing of the main petition. The respondents could have raised the point of territorial jurisdiction at the time of passing the interim orders. Instead, they were filing applications time and again for modification of the interim order or otherwise as already stated. The respondents had implemented all the directions issued from time to time by this Court. On the ground of lack of territorial jurisdiction, if the writ petition is to be returned for presentation to the proper Court, there will be complications as the interim orders have been given effect to. The affidavitinopposition was filed on 29.5.90, after the passing of the interim order, stating that this Court has no jurisdiction to entertain the writ petition as the suspension order was issued at Ahmedabad. After the filing of the affidavitinopposition also, the respondents did not take objection to jurisdiction. For instance, the respondents did not raise any objection while application of the petitioner for directing the respondents to pay subsistence allowance at Gauhati was heard and disposed of on 18.6.90. If the question was raised earlier, this Court would have considered the same, and no occasion would have arisen to pass the interim orders or any order affecting the respondents, if it was found that this Court has no local jurisdiction.

6. In *Hira Lal vs. Kali Nath*, AIR 1962 SC 199, the Supreme Court has held:

"It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like S. 21 of the Code of Civil Procedure."

In *Bahrein Petroleum Co vs. P.J. Pappu*, AIR 1966 SC 634, it has been held that independently of section 21, CPC, the defendant may waive objection and may be subsequently precluded from taking it. In the facts and circumstances of the case discussed above, we are of the view that objection as to the local jurisdiction has been waived by the respondents, and that there would not be failure of justice if the petition is heard and disposed of by this Court. Therefore, we are not dealing with the question as to whether this Court has the jurisdiction.

7. As regards the change of headquarters, the petitioner has submitted a fresh representation to the respondents for change of his headquarters as directed by this Court, but it was rejected on 1. 11. 90. In the Government of India's instruction dated 8.9.56. it is stated :

"An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave the station without prior permission. As such the headquarters of a Government servant should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters there is no objection to a competent authority changing the headquarters if it is satisfied that such a course will not put Government to any extra expenditure like grant of TA. etc or other complications." (see Chaudhuri's compilation of the Fundamental Rules and the Supplementary Rules, Volume 1, 9th Edition).

We are of the opinion that the principle underlying the instruction quoted above can be considered in, or should be extended to, such a case in the interest of administration of justice.

8. In the order of rejection by the management, it is stated thus :

"...when an employee is suspended, it is entirely the prerogative of the management to determine his headquarter during the suspended period. Since at the time of your suspension, you were posted in Ahmedabad Region, accordingly your headquarter during the suspended period has been kept Ahmedabad accordingly, no injustice has been done in this regard."

The order does not indicate that the change of headquarters will put the respondents to any inconvenience or complication. The petitioner submitted

representation for the change of headquarters on the compassionate ground of his ill health. The order does not also show that the management considered the petitioner's ill health and, therefore, the management did not apply its mind, and as such, mere stating that no injustice has been done would not be sufficient. Fair play in action must be the basis of the policy whether in administrative function, judicial function or quasijudicial function. The respondent is a Government of India undertaking, viz, an organ of the State or an instrumentality of the State. Therefore, the action of State organ can be checked under Article 14 of the Constitution. Every action of the authority of State organ must be subject to rule of law and must be informed by reasons. The Courts in this country are primarily the Courts of equity, justice and good conscience [see *Indira Bai vs. Nand Kishore*, (1990) 4 SCC 688], and judicial review is not against the decision, but, against the "decision making process". Therefore, in the facts and circumstances of the case, if we direct to change the headquarters of the petitioner from Ahmedabad to Gauhati it will be fair and just and in consonance with equity. We do so accordingly.

9. In the result, it is ordered and directed that the respondents shall issue order for changing the headquarters of the petitioner to Gauhati and make the payments of subsistence allowances as admissible to him under the rules at Gauhati. The petition is allowed. No costs.