

Eastern Coalfields Ltd. & Ors vs Kalyan Banerjee on 4 March, 2008

Author: S.B. Sinha

Bench: S.B. Sinha, V.S. Sirpurkar

CASE NO.:

Appeal (civil) 1736 of 2008

PETITIONER:

Eastern Coalfields Ltd. & Ors

RESPONDENT:

Kalyan Banerjee

DATE OF JUDGMENT: 04/03/2008

BENCH:

S.B. Sinha & V.S. Sirpurkar

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 1736 OF 2008 [Arising out of SLP (Civil) No. 7375 of 2006]
S.B. SINHA, J :

1. Leave granted.

2. Respondent was an employee of Eastern Coal Fields Limited, Appellant No. 1 herein in the Mugma Area, in the district of Dhanbad, Jharkhand. The General Manager of the area, whose office is also situated at Mugma was his appointing and disciplinary authority. The services of the respondent were terminated at Mugma. He filed a writ application before the Calcutta High Court. As he was serving in the Mugma Area and the office of the General Manager was situated at Mugma which is in the State of Jharkhand, a preliminary objection was raised in regard to the jurisdiction of the Calcutta High Court. In support of the said objection, reliance was placed upon a decision of a learned Single Judge in N.N. Singh v. Coal India Limited [C.O. No. 5869 (W) of 1994].

3. The learned Single Judge, however, disagreed with the said view and referred the matter to the Division Bench. The Division Bench by a judgment and order dated 26.03.2003 opined that the Calcutta High Court had no territorial jurisdiction to entertain the said writ petition stating:

" In this case the Division Bench relying on an observation of the learned Single

Judge held that since the registered office of Eastern Coalfields Ltd. is situated at Sanctoria, Burdwan within the territorial jurisdiction of this Hon'ble Court which is a necessary party and also the order of approval for dismissal was ultimately obtained from the Director, Personnel of the Eastern Coalfields Ltd., whose office is at the said registered office, the writ petition can be maintained before the Calcutta High Court. Therefore, this case was essentially decided on facts, but there is no such averments in the petition that the order of termination, passed by the General Manager, Badjna Colliery, Mugma Area, Dhanbad had obtained any prior approval from the head office at Calcutta. Therefore, this decision of the Division Bench of this Court does not held the writ petitioner/ respondent in this case. As per the three Apex Court decisions, referred to above, cause of action is decisive of the matter for acquiring territorial jurisdiction to decide the matter. Simply because the head office of the company is at Calcutta is not decisive of the matter as held in the case of Oil & Natural Gas Commission Vs. Utpal Kumar Basu (supra) because that would not give a cause of action to the party. Cause of action is a bundle of facts which decides the territorial jurisdiction of the Court, if any of the cause of action has arisen to the party within the jurisdiction of Calcutta High Court then the High Court at Calcutta will have jurisdiction to decide the matter. Simply because a head office of the company is within the territorial limits of the Calcutta High Court, that will not give jurisdiction to the Calcutta High Court unless cause of action arises within the territorial jurisdiction of Calcutta High Court."

4. A review application was filed thereagainst. By reason of the impugned judgment dated 25.11.2005, the said review application has been allowed holding that the Division Bench had not taken into consideration two other decisions of the Division Benches of the said Court, viz., Ram Brich Muchi v. Coal India Limited [A.P.O.T. No. 343 of 2002] and Eastern Coal Fields Ltd. v. Khagen Bouri & Ors. [2002 (1) C.L.R. 884]. It was furthermore opined:

"As provided in the Companies Act, a company is a body corporate and its registered office should be deemed to be its site for the purpose of all litigations. The law is equally settled that an employee challenging an order of dismissal cannot get an effective order unless the employer is made party to the litigation and as such, in this case, the Eastern Coal Fields Limited having its registered office in the district of Burdwan is a necessary party and if the Court proposed to give relief to the writ petitioner, specific direction of reinstatement must be given to the employer to be carried out through its appropriate officers. As provided in Article 226(1) of the constitution of India, even if the cause of action arises outside the territorial limit of High Court, such High Court can entertain a writ application if the person sought to be bound by the order of the Court is stationed within the territorial limit. Article 226(2) is an additional provision subsequently incorporated by way of amendment enabling a High Court to issue writ even in cases where the respondents are functioning beyond its territorial limit if the cause of action has arisen fully or in part within its territorial limit.

Once it is held that Article 226(1) is clearly applicable, there is no necessity of invoking Article 226(2) of the Constitution of India. From the order sought to be reviewed, we find that Division Bench confined its attention to the cause of action of the present writ application but totally ignored the fact that the employer, the Government company, has its registered office within the district of Burdwan and consequently the question whether cause of action had really arisen within the territorial limit of this Court was immaterial."

5. Mr. Anip Sachthey, learned counsel appearing on behalf of the appellant, submitted that it is not a case where sanction of the corporate office or head office was required to be taken. The entire cause of action having arisen within the jurisdiction of the Jharkhand High Court, the Calcutta High Court could not have exercised any jurisdiction in the matter.

6. The jurisdiction to issue a writ of or in the nature of mandamus is conferred upon the High Court under Article 226 of the Constitution of India. Article 226(2), however, provides that if cause of action had arisen in more than one court, any of the courts where part of cause of action arises will have jurisdiction to entertain the writ petition.

7. '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 Another* [(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 *U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow vs. State of U.P. and others* [(1995) 4 SCC 738] to hold:

"26. The view taken by this Court in *U.P. Rashtriya Chini Mill Adhikari Parishad* that the situs of issue of an order or notification by the Government 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."

8. Kusum Ingots & Alloys Ltd. (supra) has been followed by this Court in Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. and Others [(2006) 3 SCC 658] stating:

"26. In Kusum Ingots & Alloys Ltd. v. Union of India 14 a three-Judge Bench of this Court clearly held that with a view to determine the jurisdiction of one High Court vis--vis the other the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be made and the facts which have nothing to do therewith cannot give rise to a cause of action to invoke the jurisdiction of a court. In that case it was clearly held that only because the High Court within whose jurisdiction a legislation is passed, it would not have the sole territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction "

9. In Om Prakash Srivastava v. Union of India and Another [(2006) 6 SCC 207], this Court held:

"12. 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 reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, 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".

(See Rajasthan High Court Advocates' Assn. v.

Union of India)"

10. In *Uttaranchal Forest Rangers' Assn. (Direct Recruit) and Others v. State of U.P. and Others* [(2006) 10 SCC 346], this Court held:

"44. The second impugned order dated 12-4-2004 is further vitiated for the following reasons:

(a) Forum . The seniority list under challenge in the second writ petition was the seniority list of the Uttaranchal State Government of 2002 and such challenge could not have been made before the Lucknow Bench of the Allahabad High Court. (b) Parties . None of the direct recruits who would be directly affected by the order were made parties to the writ petition. Therefore the High Court did not have the benefit of competing arguments in the matter. Even though, the Principal Secretary of the State of Uttaranchal was made a party, the said party was never served. The only respondent which was heard was the State of U.P. which had no stake in the matter at all since all of the writ petitioners before the Lucknow Bench of the Allahabad High Court were employees of the State of Uttaranchal on the relevant date. It is, therefore, evident that the relevant material was not placed before the Allahabad High Court for the purpose of deciding the writ petition. Accordingly, the permission had to be taken from this Court by the present appellants to prefer the SLPs."

These directions are authorities for the proposition that only that court will have jurisdiction within which, the entire cause of action had arisen. In this case, no part of cause of action arose within the jurisdiction of the Calcutta High Court.

11. In view of the decision of the Division Bench of the Calcutta High Court that the entire cause of action arose in Mugma Area within the State of Jharkhand, we are of the opinion that only because the Head Office of the appellant company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court, particularly when the Head Office had nothing to do with the order of punishment passed against the respondent.

12. The appeal is allowed accordingly. No costs.