

AD-09
Ct No.09
21.08.2023
TN

WPA No. 19016 of 2023

Ananda Rao Korada
Vs.
Insolvency and Bankruptcy Board of India

Mr. Chayan Gupta,
Mr. Shoham Sanyal,
Mr. Soumyajyoti Nandy,
Mr. G. Prakash

.... for the petitioner

Ms. A. Rao,
Mr. A. Basu

.... for the respondent

The question of maintainability of the writ petition is raised at the outset by learned counsel appearing for the respondent.

Learned counsel for the respondent cites the judgment rendered by the Supreme Court in *Kusum Ingots & Alloys Ltd. Vs. Union of India* and another reported at (2004) 6 SCC 254, to argue on the contours of Article 226(2) of the Constitution of India.

Learned counsel also places reliance on the judgment of *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others*, reported at (1994) 4 SCC 711, as well as (2004) 9 SCC 786 [*National Textile Corpn. Ltd. and others Vs. Haribox Swalram and others*] in support of her proposition.

In *ONGC* (supra), it is argued, it was observed that the dispute arose in connection with the rejection of a bid of the petitioner therein, in a tender process floated by the ONGC.

The petitioner had, *inter alia*, contended that the advertisement was read by the petitioner at Calcutta and the offer was submitted from Calcutta. Representations were made by the petitioner from Calcutta as well.

However, the Supreme Court, while turning down the said plea of the petitioner, held that the Calcutta High Court did not have territorial jurisdiction to take up the matter.

In *National Textile Corpn. Ltd.* (supra), the Supreme Court held on similar lines. It was observed that the question which arose for consideration was whether the service of the notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceeding was conducted in Jaipur. The Supreme Court, in the said case, turned down the plea of the petitioner that the Calcutta High Court had jurisdiction to take up the matter. It is argued that, in the present case as well, the entire corporate resolution proceeding from which

the cancellation of the petitioner's registration as a Resolution Professional arose, took place in Odisha. In fact, the petitioner also participated in a proceeding in connection therewith in the High Court at Odisha.

That apart, the decision to cancel the petitioner's registration was taken by the respondent in New Delhi.

As such, the mere fact that the petitioner has obtained the licence in Kolkata and that the cancellation of the registration of the petitioner was communicated in Kolkata, does not confer territorial jurisdiction on this Court to entertain the present writ petition.

Lastly, learned counsel places reliance on *Magma Fincorp Ltd. vs. Assistant Director, DGCEI, Kochi & Ors.*, reported at 2013 SCC OnLine Cal 17881.

Learned counsel appearing for the writ petitioner, while answering the question of maintainability, places reliance on a judgment rendered by a Division Bench of this court in *Everest Coal Co. Pvt. Ltd. vs. Coal Controller and Ors.*, reported at 90 CWN 438. In the said case, the court observed that in order to maintain the writ petition, the petitioner has to establish that within the territorial limit of the court's jurisdiction *prima facie* a legal right

claimed by him has been either infringed or threatened to be infringed by the respondents.

It was also observed that at least a part of the cause of action has to arise within the territorial jurisdiction of the court which assumes jurisdiction. It is highlighted by learned counsel that the Division Bench in the said case observed that when an order becomes effective only when it is communicated or served, the service of the order or receipt of a notice thereof would form part of the cause of action for filing the writ petition by the person aggrieved. It is argued that the same happened in the present case.

Learned counsel submits a coordinate Bench decision of this court rendered in *Sri Pankaj Panwar vs. Lalit Kala Akademi & Ors.*, reported at *AIR 2015 Cal 67*, where all the judgments cited by the petitioner were considered by the learned Single Judge. Ultimately, the learned Single Judge came to a finding that to hold service of an order or a notice on the addressee would never give rise to a cause of action to move the court within whose territorial limit the order/notice is received, may not be reasonably sound. The learned Single Judge observed that if service of an order or a notice is an event of substance, that is, an event which is a material, essential or integral part of the *lis* connected with the

action that is impugned, there is no plausible reason as to why the same should not be considered as a material, essential or integral part of the cause of action.

Learned counsel next cites another judgment of this court rendered in *Pranab Bose vs. Union of India and Ors.*, which is an unreported judgment where it was, *inter alia*, observed that the premise of the challenge there was on a wider footing of blacklisting the petitioner therein from participating for one whole year for any work with the respondent authority. It was observed that another logic which sanctifies the territorial jurisdiction of this court is that the effect of the impugned blacklisting would directly be that the petitioner would not be able to function in any activity of the respondent authorities from its registered office situated in Kolkata, which is within the territorial jurisdiction of this High Court.

That apart, learned counsel for the petitioner cites *Cement Workers' Mandal vs. Global Cements Limited (HMP Cements Limited) and others*, reported at (2019) 20 SCC 517, in support of the proposition that Article 226(2) of the Constitution confers jurisdiction on any High Court, within the jurisdiction of which even a part of the cause of action has arisen, to decide the writ petition.

Lastly, learned counsel cites a Division Bench judgment of the Bombay High Court, which is also an unreported one, where the Division Bench entertained a writ petition, on a similar issue of challenge to the order passed by the Disciplinary Committee appointed by the Insolvency and Bankruptcy Board of India (IBBI), where the proceedings took place in Delhi, that is, outside the territorial jurisdiction of the Bombay High Court.

A perusal of the judgments cited by both sides indicates that certain cardinal principles have been laid down by the Supreme Court while deciding the scope of operation of Article 226(2) of the Constitution. Although facts differ from case to case, it has been held that the cause of action or a part of it has to arise within the territorial jurisdiction of the relevant High Court, for it to assume jurisdiction.

As echoed in the judgment of the learned Single Judge of this court in *Sri Pankaj Panwar* (supra), the court has to consider whether the material, essential or integral part of the cause of action arises within the territorial jurisdiction of the court assuming jurisdiction.

The premise of the judgment rendered by the Supreme Court in *ONGC* (supra) was a challenge to a rejection of a bid of the petitioner therein in a tender

process. The petitioner therein had sought to invoke the jurisdiction of the Calcutta High Court primarily on the ground that the advertisement for the tender was read by the petitioner in Calcutta (now Kolkata) and that the petitioner had sent its offer from Calcutta along with certain subsequent representations.

As rightly held by the Supreme Court in the said case, the simple fact of the petitioner having issued an offer from Kolkata might not be a germane fact embodying an essential part of the cause of action. The cause of action in the said case was a challenge to the refusal to accept the bid of the petitioner, which took place outside Calcutta and the Supreme Court was justified in turning down the jurisdiction of the Calcutta High Court on such count.

The other relevant judgment relied on by the respondent is that of *National Textile Corpn. Ltd.* (supra). In the said case, the question which arose for consideration was summed up in paragraph 12 of the report. The textile mills which were situated in Bombay and the supply of cloth, which was in dispute, was to be made ex-factory at Bombay. According to the writ petitioner, the money was paid to the mills at Bombay and the learned Single Judge in the said case, after a detailed discussion of the matter held that the Calcutta High Court had no

jurisdiction to entertain the writ petition. The Division Bench, in the case, reversed the finding on the ground that a concluded contract had come into existence which could be cancelled only after giving opportunity of hearing and consequently the question of revocation of the contract at the petitioner's Calcutta address would constitute a cause of action.

With utmost respect, it could be argued, as done in the said case, that the said revocation of jurisdiction could be termed as a bit convoluted, having no direct connection with the bundle of facts which led to the said writ petition. The prayer made in the writ petition was a writ of mandamus commanding the respondents therein to produce the entire records relating to withdrawal of delivery of goods pursuant to the contract mentioned in the writ petition.

However, the facts of the said case, in the context of which the Supreme Court rendered the findings therein, have no similarity with the present case.

Kusum Ingots (supra) undoubtedly lays down the contours of the operation of Article 226(2) of the Constitution. A proposition was laid down therein that if a part of the cause of action arises within the territorial jurisdiction of a court, the same has

jurisdiction. In fact, in paragraph no. 30 of the same, the Supreme Court while dealing with the concept of *Forum conveniens* observed that it ought to be reminded that even if a small part of the cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits. In appropriate cases, the court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *Forum conveniens*. As opposed to the said case, in the present case, the effect of the impugned action of the respondent is on a much wider footing.

In most of the judgments cited by the respondent, the dispute revolves around the refusal of a particular entity in a tender process or some other similar process.

In the present case, however, the cancellation of the registration of the petitioner as a Resolution Professional under the Insolvency and Bankruptcy Code, 2016 (for short “the IBC, 2016”) is not restricted or confined to a proceeding happening at Odisha. The petitioner, while acting as the resolution professional, undoubtedly operated within the scope of the Odisha Tribunal and functioned as a resolution professional in the said proceeding, including appearing before the

Orissa High Court. However, functioning as a resolution professional before the Odisha forums is a direct antithesis of the cancellation of the registration of the petitioner as a resolution professional.

Hence, the functioning of the petitioner as a resolution professional within the territorial jurisdiction of Odisha cannot, by any stretch of imagination, be cited as a determinant for territorial jurisdiction when the petitioner's very registration for acting as a resolution professional has been cancelled.

The cancellation, as much as in Odisha, precludes the petitioner from acting as a resolution professional throughout the territorial jurisdiction of India, which is not restricted to a particular State, be it West Bengal, Odisha or the Union Territory of Delhi.

The mere fact that the decision to cancel the petitioner's registration was taken in New Delhi by the respondent does not, in any way, restrict the jurisdiction of the present cause of action to the Delhi High Court. In fact, as held in most of the cited cases, even if a part of the cause of action arises within the territorial jurisdiction of a High Court, it may very well assume jurisdiction under Article 226(2) of the Constitution.

In the present case, the cause and the effect of the decision of the respondent-authorities was not

limited to the functioning of the petitioner in New Delhi. The basis of the decision apparently took place throughout the country, particularly in other States than New Delhi such as Odisha.

As such, it cannot be said that the territorial jurisdiction for the present purpose can be restricted to Odisha. Also, the petitioner himself was registered in Kolkata as a resolution professional and thereafter has started functioning in such capacity throughout the country.

That apart, the cancellation directly pertains to the registration of the petitioner which was obtained in Calcutta for pan-India purpose. Moreover, the cancellation was a composite continuum of the act of issuing the decision of cancellation by e-mail and the component of the petitioner receiving the same in Kolkata. Receiving the cancellation order in Kolkata completed the bundle of cause of action by ripening the issue for the petitioner to prefer the present writ petition. It cannot, in any manner, be equated to merely reading a pan-India tender advertisement online in Kolkata.

In the present case, as such, this court has territorial jurisdiction, since at least a part of the cause of action has arisen within the territorial jurisdiction of West Bengal. As such, the objection as

to maintainability taken by the respondent is hereby turned down.

The writ petition is now taken up for deciding on the question of passing ad-interim order.

Learned counsel for the petitioner seeks to make out a *prima facie* case in the writ petition.

Heard learned counsel for both sides.

Although an arguable case has been made out for hearing of the writ petition on merits, this court is of the opinion that grant of interim order, as prayed, even to the extent that the petitioner will continue to perform as a resolution professional in the pending corporate resolution proceedings, would tantamount to grant of final relief in the writ petition.

Going by the concept of balance of convenience and inconvenience, in the event the petitioner is permitted to carry on functioning as a resolution professional in some proceedings somewhere within India and ultimately the writ petition is dismissed, the damage then done would be irreversible, since the entire gamut of the proceedings cannot be put back in time.

On the other hand, the petitioner shall not suffer any irreversible or irreparable injury in the event he remains restrained from functioning as a resolution professional due to the cancellation,

subject to the outcome of the writ petition, since the resolution professional can be changed in a proceeding within the preview of IBC, 2016 at any point of time.

Keeping such consideration in view, the ad interim prayers made in the writ petition are refused.

The respondent shall file their affidavit-in-opposition within three weeks from date. Reply thereto, if any, shall be filed within a week thereafter.

The matter shall next be listed for hearing on September 25, 2023.

(Sabyasachi Bhattacharyya, J.)