

Before S.S. Nijjar & Ranjit Singh, JJ.

GURDIAL SINGH,—*Petitioner*

versus

FOOD CORPORATION OF INDIA AND OTHERS,—*Respondents*

C.W.P. No. 6162 of 2004

27th March, 2006

Constitution of India, 1950—Art. 226—Territorial jurisdiction—Order of premature retirement from service of an Assistant Manager, FCI passed at New Delhi—Petitioner posted at Shimla at the time of passing of the order of retirement—Order could not be served at Shimla because of petitioner's absence from duties—Service of order upon petitioner at his permanent address—Whether grounds of permanent residence and service of notice at the place of permanent residence are sufficient for entertaining the petition—Held, no—Mere service of order at the place of permanent address does not constitute any part of cause of action under the territorial jurisdiction of High Court—Receipt of order at the place of residence only gives a right of action based on the cause of action—No territorial jurisdiction to entertain the petition—Petition dismissed while granting liberty to petitioner to approach the Court of appropriate jurisdiction.

Held, that initially the petitioner had only invoked jurisdiction of this Court on the basis of his residence being in District Ropar (Punjab). In this regard, he has also relied upon the fact of service of notice dated 5th July, 2002 at his permanent place of residence—Naya Gaon, Chandigarh. Accordingly, as per the pleaded facts, these are the only two grounds urged by the petitioner to invoke the jurisdiction of this Court to file this petition. It is not in dispute that the impugned order dated 5th July, 2002 was passed at New Delhi and was forwarded for serving to the petitioner through the Regional Manager, FCI, Regional Officer, Shimla, as can be seen from the endorsement contained in this order. Similarly, the order rejecting the representation filed by the petitioner was also passed at Noida (U.P.) and was forwarded to the Regional Office at Shimla for service upon the petitioner. Thus, the residence of the petitioner and the service of this order alone has been the reason for the petitioner to

urge before this Court to entertain this petition. Mere service of order even if it be so, cannot constitute an integral part of cause of action. The cause of action arises by the action of the Government or Authority and not by the residence of the person aggrieved and that receipt of a communication itself does not constitute a fact in the bundle of facts constituting the cause of action. At best, receipt of the order or a communication only gives a party a right of action based on the cause of action arising out of the action complained of. Accordingly, the contention of the petitioner that service of order at Naya Gaon, Chandigarh or his place of residence in Chandigarh would entitle him to invoke jurisdiction of this Court cannot be accepted. At best, the service of order only gave him 'right of action' but not the 'cause of action'. No part of cause of action has accrued to the petitioner under the territorial jurisdiction of this Court which can entitle him to maintain the present petition before this Court.

(Paras 16 & 21)

S.K. Midha Advocate, *for the petitioner*

Anil Malhotra, Advocate, *for the respondents.*

JUDGEMENT

RANJIT SINGH, J.

(1) The petitioner—Gurdial Singh Sidhu, Assistant Manager in Food Corporation of India (for short, the FCI) has approached this Court by way of present Writ Petition seeking quashing of order retiring him from service prematurely and so also order of rejection of his representation annexed as Annexures P-1 and P-11 respectively.

(2) Apart from opposing the petition on merits, the respondent—FCI has raised preliminary objection in regard to the territorial jurisdiction of this Court to entertain this Writ Petition filed by the petitioner.

(3) A brief narration of facts leading to the filing of the Writ Petition in order to dispose of the preliminary objection may be made :

(4) The petitioner joined the service of the FCI as Technical Assistant Grade-III on 14th April, 1969. After having been promoted as Technical Assistant Grade-II in April, 1970 followed by promotion

as Technical Assistant Grade-I in August, 1971, the petitioner was promoted as Assistant Manager (Quality Control) in December, 1984. The petitioner has averred that he remained posted at various places in the North Zone till 5th July, 2002 when he was retired from service before attaining the age of superannuation,—*vide* order dated 5th July, 2002, Annexure P-1. It is further averred in the petition that the order dated 5th July, 2002 was served upon the petitioner at the place of his permanent residence at Naya Gaon, Post Office Sector 11, Chandigarh. The petitioner claims that during his entire service period with the FCI, he performed his duties with efficiency, devotion, honesty and integrity and that he had always been graded by his superiors as one of the best employees of the FCI. The petitioner has further urged that he had approached different higher authorities for review of the impugned order of retirement and ultimately on 29th October, 2003 he submitted a written representation to respondent No. 2 for revocation of the impugned order. The said representation filed by the petitioner has been rejected on 12th January, 2004, copy of which is at Annexure P-11. He has also made a mention to his service record which need not be referred in detail in view of the fact that the petition is being disposed of on preliminary objection raised by the respondent—FCI.

(5) On notice of motion having been issued, the respondents have put in appearance and have filed written statement. A separate written statement has been filed by respondent No. 5, who was impleaded in person. He has denied the allegations of bias made against him by the petitioner.

(6) In the written statement filed on behalf of respondents No. 1 to 4 and 6, a preliminary objection has been raised to the effect that the petitioner has wrongly invoked the territorial jurisdiction of this Court inasmuch as that the petitioner was working with the FCI, Regional Office, Shimla in the State of Himachal Pradesh at the time of passing of the impugned order of retirement, Annexure P-1 dated 5th July, 2002. It is stated that the petitioner had been transferred to the State of Himachal Pradesh,—*vide* order dated 20th September, 2000 and that he had been relieved of his duties with effect from the said date to join his duties at Shimla. A copy of the order transferring the petitioner to the Regional Office, Shimla

has been appended as Annexure R-1 to the written statement. It is also mentioned in the written statement that the order dated 5th July, 2002, impugned in the present Writ Petition, was sent to the petitioner at the place of his posting at Shimla. An account payee cheque for a sum of Rs. 28,275 was also enclosed along with the order. This order, as disclosed in the written statement, was received by the office of the Senior Regional Manager, FCI Regional Office, Shimla on 9th July, 2003. As per stand in the written statement, the petitioner had not been attending the office with effect from 8th July, 2002 and accordingly a Committee comprising of three Officers, i.e. Shri D.R. Chadda, Assistant Manager (Admn.), Shri Hari Shanker Prashad, Assistant Manager (Accounts) and Shri N.S. Negi, Assistant Manager (Hindi) was constituted to serve the order of retirement upon the petitioner at his permanent address. It is in this background that these three Officers, as noted above, served the order upon the petitioner on 9th July, 2002 at his permanent address at Village Naya Gaon, Chandigarh, along with a cheque for Rs. 28,275. It is claimed by the respondent—FCI that the petitioner had not intentionally impleaded Senior Regional Manager, Regional Office, Shimla (H.P.) in order to avoid invoking jurisdiction of High Court at Shimla and in order to invoke jurisdiction of this High Court. It is accordingly pleaded that no cause of action has arisen within the territorial jurisdiction of this Court since the impugned order dated 5th July, 2002 (Annexure P-1) was passed at New Delhi and was sent to the place of posting of the petitioner which was at Shimla. Merely because the petitioner evaded the service and as such was required to be served the order at Naya Gaon, Chandigarh would not confer territorial jurisdiction on this Court to entertain the present petition. In support of his submissions, the respondents have relied upon a number of judgments of this Court as well as that of other Courts. Stand of the respondents on merits of the petition need not be noticed as we are disposing of the petition on preliminary objection raised by the respondents.

(7) In the light of the facts, as pleaded and as mentioned above, we are required to see if this Court would have territorial jurisdiction to entertain the present petition filed by the petitioner.

(8) We have heard the counsel for the parties, Sarvshri S.K. Midha and Anil Malhotra.

(9) Article 226 of the Constitution of India, as it originally stood, provided that “every High Court shall have 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...”

(10) During the earlier years of post-Constitution period, different High Court gave a wider perspective to the jurisdiction of the High Court and pointed out that a High Court can exercise powers under Article 226 even in respect of Tribunals or Authorities situated outside the territorial limits of its jurisdiction if such Tribunal or Authority exercises powers in such a manner as to affect the fundamental rights of persons residing or carrying on business within the jurisdiction of such High Court. In this regard, judgments in the cases of **K.S. Rashid Ahmed versus Income Tax Investigation Commission, (1)**, **M.K. Ranganathan versus The Madras Electric Tramways Limited, (2)** and **Ashwini Kumar Sinha versus Deputy Collector of Central Excise and Land Customs, Shillong, (3)** may be referred. Subsequently, a Constitution Bench of the Supreme Court in the case of **Election Commission, India versus Saka Venkata Subba Rao, (4)** held differently by ruling that “the power of the High Court to issue writs under Article 226 of the Constitution is subject to the twofold limitation that such writs cannot run beyond the territories subject to its jurisdiction and the person or authority to whom the High Court is empowered to issue writs must be amenable to the jurisdiction of the High Court either by residence or location within the territories subject to its jurisdiction.” This decision necessitated the Parliament to bring 15th Amendment to the Constitution, by adding clause (1A) to Article 226 of the Constitution. By 42nd Amendment to the Constitution, clause (1A) added earlier was designated as sub-clause (2) to Article 226 of the Constitution. This clause now 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

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- (1) AIR 1951 Punjab 74
 - (2) AIR 1952 Madras 659
 - (3) AIR 1952 Assam 91
 - (4) 1953 SCR 1144

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.”

(11) Accordingly, as per the provisions of Article 226 of the Constitution, a High Court can exercise jurisdiction in relation to territories within which a cause of action, wholly or in part, arises. It is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of the High Court. The amendment was aimed at widening the width of area for reach of the writs issued by different High Courts. The effect of amendment was considered by the Supreme Court in the case of **Oil and Natural Gas Commission versus Utpal Kumar Basu and Another**, (5). It was held that it is clear that the power conferred by Clause (1) of Article 226 can be exercised by the High Court provided the ‘cause of action’, wholly or in part, had arisen within its territorial limits.

(12) Though not defined in the Constitution, yet we need not devote ourselves much to find the meaning of ‘cause of action’, as by now, it is well understood by various authoritative pronouncements. The words “cause of action, wholly or in part arises” apparently have been lifted from Section 20 of the Code of Civil Procedure. While referring to a judgment in **Read versus Brown**, (6), the Supreme Court in a case titled **Navinchandra N. Majithia versus State of Maharashtra and others**, (7), held that ‘cause of action’ means every fact which it would be necessary for the plaintiff to prove, if travestied, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. “Even in the context of Article 226(2) of the Constitution, the Supreme Court had adopted the same interpretation to the expression ‘cause of action, wholly or in part arises’. In this regard, reference may also be made

(5) J.T. 1994 (5) S.C. 1

(6) (1989) 22 Q.B.D. 128

(7) J.T. 2000 (10) S.C. 61

to **State of Rajasthan and others versus Swaika Properties and another, (8)** and **Oil and Natural Gas Commission versus Utpal Kumar Basu and Another, (supra)**. In the case of **State of Rajasthan and another (supra)**, the Supreme Court relied upon the definition of 'cause of action' as given in **Mulla's Code of Civil Procedure**, which says that "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 **Oil and Natural Gas Commission (supra)** the Supreme Court further ruled that "..... the cause of action has no relation what ever 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 set in the plant as the cause of action or in other words to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

(13) Thus, 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. In **Oil and Natural Gas Commission's case (supra)**, the Supreme Court had given a word of caution to the High Courts against transgressing into the jurisdiction of other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience.

(14) In a recent decision in the case of **Musaraf Hossain Khan versus Bhageeratha Engineering Limited and others, (9)**, the Supreme Court has held that "cause of action within the meaning of clause (2) of Article 226 shall have the same meaning as is ordinarily understood. The expression 'cause of action' has a definite connection. It means a bundle of facts which would be required to be proved."

(15) In the light of the principles as emerging from the judgments noted above, we have to decide whether this Court has the territorial jurisdiction to entertain the present petition filed by the petitioner ?

(8) 1985 (3) S.C.C. 217

(9) J.T. 2006 (3) S.C. 80

(16) Initially, the petitioner had only invoked jurisdiction of this Court on the basis of his residence being in District Ropar (Punjab), as can be seen from para 1 of the petition. In this regard, he has also relied upon the fact of service of notice dated 5th July, 2002 at his permanent place of residence-Naya Gaon, Chandigarh. Accordingly, as per the pleaded facts, these are the only two grounds urged by the petitioner to invoke the jurisdiction of this Court to file this petition. It is not in dispute that the impugned order, Annexure P-1 dated 5th July, 2002 was passed at New Delhi and was forwarded for serving to the petitioner through the Regional Manager, FCI, Regional Office, Shimla, as can be seen from the endorsement contained in this order. Similarly, the order rejecting the representation filed by the petitioner was also passed at Noida (U.P.) and was forwarded to the Regional Officer at Shimla for service upon the petitioner. Thus, the residence of the petitioner and the service of this order alone has been the reason for the petitioner to urge before this Court to entertain this petition. Mere service of order even if it be so, cannot constitute an integral part of cause of action. The Supreme Court in the case of **State of Rajasthan (*supra*)**, held that mere service of notice was not integral part of cause of action within the meaning of Article 226(2) of the Constitution of India. In this case, the respondent-company had its Registered Office in Calcutta (West Bengal) and the Company owned certain land in Jaipur City. Notification was issued under Section 52(2) of the Rajasthan Urban Improvement Act, 1959 regarding acquisition of that land for the public purpose of development scheme. The notice was duly served on the Company at its Registered Office at Calcutta. In response, the representative of the Company appeared before Special Officer rejected the prayer of the Company for release of the land and recommended that the entire land be acquired by the State Government. The respondent-company later filed the writ petition under Article 226 of the Constitution impugning the notification issued by the State Government under Section 52(1) before Calcutta High Court. This writ petition was entertained and ad-interim *ex-parte* prohibitory order restraining the State was passed. The question before the Supreme Court in appeal was whether the service of notice under Section 52(2) at the Registered Office of the respondent was integral part of cause of action and was sufficient to invest the

Calcutta High Court with jurisdiction to entertain the writ petition. The Supreme Court negated the said contention and held that the answer to question that the service of notice was an *integral* part of cause of action within the meaning of Article 226(2) must depend upon the nature of the impugned order giving rise to a cause of action. The Supreme Court further held that cause of action neither wholly or in part arose within the territorial limit of Calcutta High Court and, therefore, the Single Judge at Calcutta High Court had no jurisdiction to issue Rule Nisi on the petition filed by the respondent-company under Article 226 of the Constitution. In Oil and Natural Gas Commission's case (supra), the Supreme Court held that a party becoming aware of the contract to be given to a successful bidder on reading an advertisement which appeared in Times of India at Calcutta or sending representation or fax messages submitting tender from its Calcutta office pursuant to the said advertisement, would not confer any cause of action on the Calcutta High Court. Observations of the Supreme Court are as under :—

“xx xxx Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware 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 to EIL at New Delhi; that those would be scrutinized 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 representation 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. xx xx xx”.

(17) Similar controversy arose before a Full Bench of Kerala High Court in **Nakul Deo Singh versus Deputy Commandant, (10)** wherein the court was considering the question as to whether the receipt of an order passed by an Appellate Court in disciplinary proceedings would constitute 'cause of action'. After noticing the definition of the 'cause of action', as stated in Mulla's Code of Civil Procedure, 15th Edn. Vol. 1 at page 251 and a decision of the Court of Appeal in **Paragaon Finance versus D.B. Thakerar & Co. (11)**, the Full Bench has held as follows :—

“The fact that a person who was dismissed from service while he was in service outside the State would have to suffer the consequence of that dismissal when he is in his native place by being rendered jobless, is not a fact which constitutes the bundle of facts giving rise to a cause of action in his favour to challenge his dismissal. That right accrued to him earlier when he was dismissed from service outside the State and he lost his employment. Similarly, when an appeal is filed by him to an appellate authority who is outside the jurisdiction of this High Court and that appeal is dismissed by the appellate authority, the merger in the decision of the appellate authority takes place when the appeal is dismissed and not when the appellant receives the order. What a writ petition needs to plead as a part of his cause of action is the fact that his appeal was dismissed wholly or in part and not the fact that the order was communicated to him. That plea is relevant only to show when the right of action arose in his favour. The receipt of the order only gives him a right of action on the already accrued cause of action and enables him to meet a plea of laches or limitation raised in opposition. That the consequences of a proceeding in the larger sense are suffered by a person in his native place is not a ground to hold that the High Court within the jurisdiction of which the native place is situate is also competent to entertain a writ petition under Article 226 of the Constitution. When a person is dismissed or reduced in rank, he suffers the

(10) 1999 (3) KLT 629

(11) (1999) 1 ALLER 400

consequences where he was employed at the relevant time and not in his native place to which he might have retired on his dismissal.”

(18) This Full Bench judgment has been referred with approval by the Supreme Court in **Musaraf Hossain Khan's case** (supra).

(19) To similar effect has been the judgment of this Court which has been relied upon by counsel representing the respondents. Mr. Anil Malhotra has referred to the judgment in the case of **Gurnam Singh versus Union of India (12)**, to urge that mere service of notice where the petitioner has settled after his dismissal from service, does not constitute any part of cause of action to challenge his order of dismissal as also the judicial proceedings.

(20) Similarly, this Court in the case of **Baldev Singh versus Union of India through Secretary, Ministry of Defence, New Delhi and others (13)**, held that the Court would have no jurisdiction to entertain a petition in respect of summary Court Martial proceedings held at Pune and the sentence imposed upon the petitioner by the respondents when the unit of the petitioner was stationed at Pune. He has also referred to a Division Bench judgment of this Court titled **Harvinder Singh versus Food Corporation of India (14)**. This was a case where an inquiry was started against the petitioner during the extended period of probation. While the inquiry proceedings were going on, the petitioner was discharged from service by an order which he impugned. This order was received by the petitioner in the said case at his residential address at Kapurthala. The petitioner had been present at Kapurthala on L.T.C. which had been duly sanctioned. The Division Bench held that the order having been served at the address of the employee where he was on L.T.C. would only confer a right of action and accordingly held that the Court had no territorial jurisdiction to entertain the writ petition.

(21) In view of the judgments noted above, it cannot be said that mere service of an impugned order on the petitioner under the jurisdiction of this Court would be enough for him to invoke the territorial jurisdiction of this Court. Besides, it is a case where the order

(12) Vol. CIX-(1995-1) P.L.R. 381

(13) Vol. CXV-(1997-1) P.L.R. 655

(14) 2003(2) S.C.T. 706

was passed by an Authority outside the jurisdiction of this Court. It was to be served to the petitioner while he was serving outside the jurisdiction of this Court. The petitioner apparently managed to get the orders served upon him under the jurisdiction of this Court by remaining absent from his station of duty. Taking every thing stated by the petitioner at a face value, it cannot be said that any 'cause of action or part of cause of action' has arisen under the territorial jurisdiction of this Court. The petitioner might have a right of action when he was served the order which is a right to enforce the cause of action. A Full Bench of Kerala High Court in **Nakul Deo Singh's** case (*supra*) also observed that a person residing elsewhere in the country being aggrieved of the order of the Government, Central or State or Authority or a person may have a right of action at law but jurisdiction under Article 226 of the Constitution can be invoked in that High Court only within whose territorial limits a cause of action, wholly or in part arises. As stated, the cause of action arises by the action of the government or Authority and not by the residence of the person aggrieved and that receipt of a communication itself does not constitute a fact in the bundle of facts constituting the cause of action. At best, receipt of the order or a communication only gives a party a right of action' based on the cause of action arising out of the action complained of. Accordingly, the contention of the petition that service of order at Naya Gaon, Chandigarh or his place of residence in Chandigarh would entitle him to invoke jurisdiction of this Court cannot be accepted. At best, the service of order only gave him 'right of action' but not the 'cause of action'. No part of cause of action has accrued to the petitioner under the territorial jurisdiction of this Court which can entitle him to maintain the present petition before this Court.

(22) Consequently, we are of the considered opinion that this Court would not have territorial jurisdiction to entertain the present writ petition and the same is accordingly dismissed. However, we leave it open to the petitioner to approach the Court of appropriate jurisdiction for the same relief as claimed in the present petition.

(23) In the circumstances of this case, there shall be no order as to costs.

R.N.R.