***THE HON'BLE MR JUSTICE G. BIKSHAPATHY**

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

+WRIT APPEAL NO : 1512 of 2004

-

% 7-12-2004

S.K.Mahaboob Ali .. Appellant

Vs.

$ The Director General of Police,

Central Reserve Police Force,

Block No.1, CGO complex, Lodhi Road,

New Delhi

and two others

..Respondents

<GIST:

>HEAD NOTE:

! Counsel for appellant : Mr.V.Jagapathi

^ Counsel for respondents : Mr.A.Rajasekhar Reddy, Standing

Counsel for Central Government

?CASES REFERRED

2001(9) SCC 525

[2] AIR 2004 S.C. 2321

[3] (2003) 7 SCC 410

[4] 1953 S.C.R. 1145

[5] 1954 S.C.R. 738

[6] AIR 191 S.C. 532

[7] AIR 1963 S.C. 1124

[8] AIR 1967 Bombay 355 (DB)

[9] AIR 1971 Madras 155 (DB)

[10] AIR 1983 Calcutta 253

[11] AIR 1977 Kerala 4

[12] 2001(2) ALT 603 (DB)

[13] AIR 1985 S.C. 1289

[14] (1994) 4 SCC 711

[15] (1994) 4 SCC 710

[16] 2002(1) SCC 567

[17] JT 2004(4) SC 508

[18] AIR 1980 Bombay 341 (DB)

[19] AIR 1980 Karnataka 92 (FB)

[20] AIR 1986 S.C. 468

[21] 1976 Crl.L.J. 1648 (FB)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT APPEAL NO : 1512 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 16/08/2004 in WP NO : 27485 OF 2003 on the file of the High Court.)

Between:

S.K. Mahaboob Ali, (Force No. 830761756) S/o. Shaik Mohd. Saheb,

Aged 38 years, Ex-CRPF Constable, R/o. Nandyal, Kurnool District.

..... APPELLANT

AND

1 **The Director General of Police, Central Reserve Police Force, Block No. 1, CGO Complex, Lodhi Road, New Delhi.**
2 **The Inspector General of Police, Central Reserve Police Force, Special Sector, Old Secretariat, Block No. 11, Civil Lines, Delhi - 54.**
3 **Addl. Deputy Inspector General of Police, Central Reserve Police Force, Group Centre, A.B.Road, Shivpuri, Madhya Pradesh.**

.....RESPONDENTS

Counsel for the Appellant:MR.V.JAGAPATHI

Counsel for the Respondent No.: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

ORDER: (*per* P.S.Narayana.,J)

Heard the Counsel on record.

The core question argued in elaboration by both the Counsel, Counsel for appellant/writ petitioner and the Standing Counsel for Central Government at the stage of admission of this Writ Appeal is the question whether the High Court of Andhra Pradesh has jurisdiction to entertain Writ Petition. Incidentally, the merits and demerits of the matter also had been touched by the respective Counsel. The Counsel for appellant contended that since part of cause of action arose at Kurnool District in State of Andhra Pradesh, the Andhra Pradesh High Court has jurisdiction to entertain the Writ Petition and dismissal of the same on the ground of maintainability cannot be sustained and hence the Writ Petition may have to be remitted back to the learned Single Judge to decide the matter afresh on merits. Strong reliance was placed on **DINESH CHANDRA GAHTORI Vs. CHIEF OF ARMY STAFF** and the learned Counsel also made an attempt to distinguish the decision in **KUSUM INGOTS & ALLOYS LTD. Vs. UNION OF INDIA** on facts.

On the contrary, the learned Central Government Standing Counsel while controverting the same however would maintain that there is no factual foundation even relating to the part of the cause of action. The Counsel also would maintain that in the light of the specific stand

taken in the counter affidavit the learned Judge arrived at the correct conclusion relating to the maintainability of the Writ Petition and dismissed the Writ Petition as not maintainable. The Counsel also pointed out that neither the affidavit filed in support of the Writ Petition nor the reply affidavit had explained anything in this regard on the aspect of want of jurisdiction though the same was specifically pleaded in the counter affidavit filed by the respondents. The learned Counsel further submitted that as far as the retiral benefits are concerned, the same are being processed.

The brief facts of the case which led to the filing of the present Writ Appeal are as hereunder :

The appellant/petitioner filed Writ Petition praying for a writ, order or direction more particularly one in the nature of certiorari calling for records from the file of the 3rd respondent relating to order No.P.XII-22-23/2002, Estt-I, dated 24-6-2003 confirming the removal order No.P.VIII-10/2000 EC-II dated 26-10-2002 of the 4th respondent and quash the same by declaring it as arbitrary, discriminatory and violative of the principles of natural justice and consequently direct the respondents to reinstate the petitioner into service forthwith with all other consequential benefits, monetary and otherwise and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case. By order dated 16-8-2004

the learned single Judge dismissed the same on the ground that the Writ Petition in the Andhra Pradesh High Court is not maintainable.

The petitioner/appellant is a resident of Nandyal village and town of Kurnool District of Andhra Pradesh State and he enrolled as a General Duty Constable in Central Reserve Police Force (CRPF) on 10-6-1993 and after completion of initial training for a period of one year, he was posted to No.76 Battalion in Srinagar area in February 1995 and worked there till March 1997. Thereafter he was shifted to various units in C.R.P.F. and finally he was posted to Group Centre, C.R.P.F., Shivpuri of Madhya Pradesh State in the year 1998. On to the allegation that the petitioner/appellant had committed the offence of misconduct and disobedience while he was on duty from 10-6-2000 to 16-6-2000 in relation to recruitment of Constables, a Departmental enquiry was ordered by the Additional Director General of Police, Group Centre, C.R.P.F., Shivpuri of Madhya Pradesh State. A charge sheet dated 17-8-2000 was issued to the appellant/petitioner and also three others and after calling for explanation and after conducting enquiry in State of Madhya Pradesh it was held that the charge of misconduct was proved and Additional Deputy Inspector General of Police, C.R.P.F., Group Centre A.B., Road, Shivpuri, Madhya Pradesh had passed an order dated 26-10-2002 removing the appellant/petitioner from service and the said order was questioned by way of Appeal which appears to have

ended in dismissal. The competency of the Appellate Authority to entertain the Appeal also had been raised as a ground of attack.

It is pertinent to note that at para-16 of the counter affidavit on the aspect of jurisdiction it was specifically averred :

> "….. As regards jurisdiction of the Court it is stated that the official records of the case are available with Group Centre, CRPF, Shivpuri but the jurisdiction of this case does not fall within the Hon'ble High Court of Andhra Pradesh, Hyderabad. The petitioner had committed an offence as a member of the Armed Force while functioning as Constable (GD) in Group Centre, CRPF, Shivpuri located in Madhya Pradesh. Hence the jurisdiction of the Court comes in the region of Madhya Pradesh where cause of action occurred. It is brought to the kind notice of Hon'ble Court that a Writ Petition No.18045/2000 filed by Shri Firoj Ahmed of Group Centre, CRPF, Bhopal (M.P.) in the High Court of Judicature at Allahabad on the grounds that the petitioner is a resident of Uttar Pradesh but the order of dismissal was passed by the ADIGP, GC, CRPF, Bhopal (M.P.) has been dismissed by the Hon'ble Court on 17-4-2000 for want of jurisdiction. Similarly, the Hon'ble M.P. High Court at Gwalior bench in Writ Petition No.83/97 in respect of Mohinder Singh Vs. UOI has also dismissed the petition for want of territorial jurisdiction and for not filing appeal within time limit. Hence the present Writ Petition before the High Court of Judicature at Hyderabad filed by petitioner who committed an offence in Shivpuri (Madhya Pradesh) should have been filed petition in Madhya Pradesh High Court at Gwalior bench, Gwalior and not in Andhra Pradesh High Court. The petitioner has also not availed the opportunity of revision petition to the IGP, Special Sector, CRPF under rule 29 of CRPF Rules 1955 before filing the present Writ Petition. Hence, his Writ Petition liable to be dismissed at initial stage of hearing itself for want of territorial jurisdiction".

Despite the specific stand taken in the counter affidavit though a reply affidavit was filed, no serious attempt was made on the part of the appellant/writ petitioner either to controvert or to explain the same.

When the question of maintainability of the Writ Petition is raised, it is needless to say that the same may have to be decided at the threshold without touching the other merits and demerits of the matter.

I n **NATIONAL HIGHWAYS AUTHORITY OF INDIA Vs. GANGA ENTERPRISES** the Apex Court held that the question whether the writ petition was maintainable in a claim arising out of breach of contract should have been answered first by the High Court as it would go to the root of the matter. In the present case, the learned Judge after recording reasons in detail came to the conclusion that the High Court of Andhra Pradesh has no jurisdiction to entertain the Writ Petition merely because it is contended that the order was communicated to the appellant/writ petitioner at Nandyal, Kurnool District when the whole proceedings had taken place in the State of Madhya Pradesh and especially in the absence of the factual foundation explaining at least arising the part of cause of action either in the affidavit filed in support of the writ petition or in the reply affidavit.

Article 226 of the Constitution of India deals with Power of High Courts to issue certain writs and Article 226 Clause (2) reads as hereunder :

> “The power conferred by Cl. (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, 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."

Clause (1A) which had been inserted by Constitution 15th (Amendment Act) 1963 had been renumbered as Clause (2) by the Constitution (42nd Amendment Act) 1976. The very Clause (1A) was inserted by the Constitution 15th (Amendment Act) 1963 in the light of the view expressed by the Apex Court in **ELECTION COMMISSION Vs. SAKA VENKATA , RASHID Vs. I.T. COMMISSIONER , KHAJOOR SINGH Vs. UNION OF INDIA** and **COLLECTOR OF CUSTOMS Vs. E.I. COMMERCIAL CO.** wherein it was held that it was location or residence of the respondent which gave territorial jurisdiction to a High Court under Article 226, the situs of the cause of action being immaterial for this purpose. The object of introducing Clause (1A) by Constitution (15th Amendment Act) 1963 was to provide that the High Courts within limits of which the cause of action may arise wholly or in part also would have jurisdiction to entertain a Writ Petition under Article 226 against the Union of India or any other body which was located at Delhi. In **DAMOMAL RAISINGHANI Vs. UNION OF INDIA** a Division Bench of Bombay High Court while dealing with Article 226 Clause (1-A) and the expression territorial jurisdiction of High Court at para-5 held :

“The next contention of Mr.Vaidya is that we have no jurisdiction to entertain this petition because the impugned order has been made by an authority located outside the jurisdiction of the Court. It is the argument of Mr.Vaidya that the third respondent’s office is in Jaisalmer House, New Delhi. The third respondent therefore is not an authority located in the territories in relation to which this Court exercises jurisdiction. This Court therefore has no jurisdiction to quash that order. It is indeed true that the office of the third respondent is located in New Delhi and in that sense the third respondent is not a person residing within the territory in relation to which this Court exercises jurisdiction. Article 226 has however been recently amended and clause (1-A) has been added to Article 226 after clause (1). It is in the following terms :

“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, wholly or in part, arises for the exercise of such powers, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories”.

The question that arises is whether the cause of action for the exercise of the power invoked by the petitioner arose wholly or in part within the territories in relation to which this Court exercises jurisdiction. The petitioner, as it appears, was a resident of Ullasnagar, a place situated in the District of Thana of Maharashtra State. The impugned order itself shows that the case was heard in Bombay. It is indeed true that the order on the face of it does not show the place where it was made. Even assuming that this order was made by the third respondent in New Delhi, there can hardly be any doubt that the effect of this order fell on the petitioner at Ullasnagar where he resides. It is also not in dispute that the proceedings that would be taken against the petitioner in consequence of the impugned order would be by officers located within the territories in relation to which this Court exercises jurisdiction. Though in different context, the question arose as to the place where the cause of action would arise, the question was considered by a Division Bench of which I was a member in W.W.Joshi Vs. State of Bombay, 61 Bombay L.R. 829 (AIR 1959 Bom. 363). A civil servant was removed from service and the question arose as to where the cause of action to get quashed the order of the removal from service arose, and it

was held that the cause of action would arise at the place where the order of termination of service was made and also at the place where the consequences fell on the servant. In view of this decision, there can hardly be any doubt that the place where the consequences of the order fell on the petitioner would be a place where at least the cause of action in part would arise. No good ground is shown to us by Mr.Vaidya to differ from the view taken by the Division Bench in the aforesaid case. The second ground also should fail."

In **VEERI CHETTIAR Vs. S.T. OFFICER, BOMBAY** a Division Bench of Madras High Court while dealing with cause of action in the context of Article 226(1-A) of the Constitution of India held at para 8 as hereunder :

"One other incidental contention is that this Court has no jurisdiction to issue a writ because no part of the cause of action has arisen within the jurisdiction of this Court. We do not agree. Under Article 226(1-A) of the Constitution of India, the High Court has the power to issue directions, orders or writs to any Government, authority or person provided the cause of action for the issuance of such a rule under Article 226(1-A) wholly or in part, arises, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. What then is the cause of action that is referred to in this sub-clause of Article 226 of the Constitution ?

"Cause of action" has always been understood as referable to the bundle of facts in a legal proceeding and if a limb of that bundle of facts is available, seen or discernible in one particular place which is a seat of the High Court, then such High Court has the power to exercise all the powers conferred on it under Article 226(1-A) notwithstanding the fact that the authority against whom the ultimate rule has to be issued and whose act has created a cause of action as a whole or in part, is situate outside its territorial limits. The person primarily affected by the respondent issuing the notices from time to time to the petitioners and calling upon them to produce the accounts of their business carried on in the State of Tamil Nadu and again by proposing to assess them to the best of his judgment on the assumption relief certain jurisdictional facts, is the addressee of such notice and such affection relates to the

bundle of facts in the totality of the lis or proceeding concerned, and such impact necessarily gives rise to a cause of action, though it may be in part. It is established that in fiscal laws a proposal to assess forms part and parcel of the machinery of assessment and thus understood, the service of notice to assess and calling upon the petitioner to explain has given rise to a cause of action as is popularly and legally understood and the machinery of assessment has been set in motion and the impact of that motion is felt by the petitioners within the territorial limits of this State. We have therefore no hesitation in holding that a part of the cause of action has arisen in the State of Tamil Nadu."

In **INDUSTRIAL FUEL MARKETING CO. Vs. UNION OF INDIA** a learned single Judge of Calcutta High Court at para-15 observed :

"Before proceeding to decide upon the merits of the contentions raised on behalf of the parties it is necessary to deal with and dispose of the preliminary objections raised on behalf of the respondents as to the maintainability of the instant writ petition in this forum. In deciding this question it is apposite to refer to the provisions of Article 226(1) and (2) of the Constitution which run as follows :

1. Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

2. The power conferred by Cl.(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, 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".

It appears from the aforesaid provisions that every High Court can issue writs in the nature of mandamus or of certiorari or of quo warranto etc., to any person or authority including in any appropriate case on Government within the territories in relation to which such High Court exercises jurisdiction. Thus the writs can be issued by the High Court to any person or authority or Government when such person, authority or Government is either resident or located within the territorial jurisdiction of the High Court. Secondly, sub-art. (2) of the said Article also empowers the High Court to issue directions, orders or writs to any Government, authority or person when the cause of action either wholly or in part arises within the territories in relation to which the High Court exercises its jurisdiction. In the instant case the impugned criminal proceedings which have been challenged in the writ petition has undoubtedly been started or commenced outside the territorial jurisdiction of this Court and the action taken by the respondent No.3 in interfering with the rights of the petitioners to win and remove the sludge/slurry, that is, the coal wastes coming out of the limits of the washeries belonging to the respondent No.3 also took place outside the territorial limits of this Court. No part either of the cause of action nor the cause of action has arisen within the territorial jurisdiction of this Court. So under sub-art.(2) of the Article 226 of the Constitution this application cannot be maintained in this jurisdiction. The other preliminary objection on behalf of the respondent No.3 that the application will fail as it involves disputed questions of fact cannot be sustained as, in my view, the principle issue and/or questions that have been raised in this writ petition involves substantial questions of law necessitating the issuance of the Rule and the determination of those questions by this writ Court. For determining these questions it is not necessary to launch into a detail investigation of facts though, of course some investigation into facts are necessary for this purpose. But merely on this plea it will be unjust and unfair to dismiss this application on this preliminary ground. I therefore, cannot uphold the contention made on behalf of the respondent No.3 on this score and in my view this writ application is maintainable. As regards the question whether the respondent No.3 against whom the writs have been prayed for is located within the territorial jurisdiction of this Court as required under sub-article (1) of Article 226, it has been contended on behalf of the petitioners that the respondent

No.3 has got its office at 15, Park Street within the jurisdiction of this Court and as such this writ application is maintainable. It has been stated in para 7 of the affidavit in reply sworn on behalf of the petitioners on 12th Feb., 1982 that the administrative office of the Finance Department as well as office of the Managing Director of the respondent No.3 are situated at 15, Park St. Calcutta. It has also been stated that the law office of the respondent No.3 is also situated at 15, Park St. Calcutta. This statement in the affidavit-in-reply of the petitioner clearly goes to show that the respondent No.3 have some of its office located within the territorial jurisdiction of this Court. In these circumstances it will not be just and proper to reject this writ application as not maintainable on this preliminary ground. I am, therefore, constrained to hold in favour of the petitioner on this issue".

In **M.G. GEORGE Vs. ASST. DIRECTOR, S.I. BUREAU** a learned single Judge of Kerala High Court on this aspect held :

"What is contended for on behalf of the respondents by Sri Prabhakaran, learned Counsel for the Central Government is that it cannot be said that in this case the cause of action wholly or in part arises in any place in the jurisdiction of this Court. On the other hand, Sri Abraham Vakkanal, learned Counsel for the petitioner points out that as the petitioner has received the amount due to him consequent on the impugned order, in Kerala State it has to be said that part of the cause of action has arisen here and therefore this Court could well proceed with the O.P. Learned Counsel for the petitioner placed reliance on the decisions reported in Dammomal Kausomal Raisinghani v. Union of India (AIR 1967 Bom. 355); W.W.Joshi V. State of Bombay (AIR 1959 Bom. 363) and Veeri Chettiar v. Sales Tax Officer, Bombay (AIR 1971 Mad 155). In all these cases the order impugned though passed outside the jurisdiction of the particular court concerned, was served on the petitioners in these cases in a place within the jurisdiction of the courts in which the writ petitions had been filed. Therefore the effect of the order by Governmental authority fell on the petitioners at places where the Courts had jurisdiction. On the basis of that fact the courts held in these cases that they can exercise jurisdiction in respect of such matters as part of the cause of action had arisen within the territories over

which they could exercise jurisdiction. It is Mr.Abraham's case that the receipt of the amount by the petitioner in Kerala was then necessary consequence of the order of termination. In one sense it is certainly the consequence of the order of termination; but one cannot say that the effect of the order really fell on the petitioner in Kerala. The order took effect in Nagaland itself and on the basis of the order the petitioner received the amount in Kerala. By the receipt of the amount it cannot be said that part of the cause of action had arisen in Kerala. The cause of action as the Madras High Court pointed out in the decision referred to, has always been understood as referable to the bundle of facts in a legal proceeding and if a limb of that bundle of facts is available, seen or discernible in one particular place which is within the jurisdiction of the High Court, then the High Court has the power to exercise all the powers conferred on it under Art. 226(1A) notwithstanding the fact that the authority against whom the ultimate rule has to be issued and whose act has created a cause of action as a whole or in part, is situate outside its territorial limits. Can it be said on the basis of this principle that the receipt of the amount due to the petitioner as per the impugned order is a limb of the bundle of facts constituting the cause of action ? According to me it cannot be so said; because the order of termination became complete with the service of the order on the petitioner in Nagaland. In questioning that order of termination the petitioner's receipt of the amount based on the order of termination cannot be said to be an ingredient in the cause of action".

In **R.VENKATESWAR RAO Vs. UNION OF INDIA** a Division Bench of this Court while dealing with the challenge of vires of Sections 122 and 123 of Army Act 1950 and the territorial jurisdiction of the High Court in the context of service of summons on petitioner within the jurisdiction of High Court to appear in a Court of inquiry held at paras 2 and 3 :

"The offices of the respondents are outside the jurisdiction of this Court. The only cause of action which is said to have arisen within the jurisdiction of this Court, as stated in

paragraph 5(c) of the writ affidavit, is service of the notice dated 18-3-1997, which reads thus :

"(c) The initial cause of action having been arisen with the recall of the petitioner vide order No.346103/36/A dated 24. November 197 of the respondents herein served upon the petitioner herein at his village Kodair, THE: Kollapur, Dist. Mahaboobnagar (A.P.)".

Such service of summons on a witness to appear in a Court of inquiry, in our opinion, does not give rise to any cause of action, to question the order of punishment imposed upon him, particularly when at the relevant point of time, he was neither posted in the State of Andhra Pradesh nor was he charge sheeted; nor any disciplinary proceeding now before the Summary Court Martial was held; nor the order of punishment was passed and communicated within the territorial jurisdiction of this Court".

In **STATE OF RAJASTHAN Vs. M/s. SWAIKA PROPERTIES** a two

Judge Bench of the Apex Court at paras 7 and 8 held :

"Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure :

"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 other words, it is a bundle of facts which taken with the law

applicable to them gives the plaintiff a right to relief against the accused. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e., within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e., within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

In **OIL AND NATURAL GAS COMMISSION Vs. UTPAL KUMAR BASU AND ANOTHER** it was held :

"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 entitled 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".

The same view had been expressed in **ALIGARH MUSLIM UNIVERSITY Vs. VINAY ENGINEERING ENTERPRISES PRIVATE LIMITED , UNION OF INDIA Vs. ADANI EXPORTS LIMITED** and **NATIONAL TEXTILE CORPORATION LIMITED Vs. HARIBOX SWALRAM .** The Counsel for appellant placed strong reliance on the decision referred (1) supra on the ground that this is a decision of a three Judge Bench of the Apex Court involving service matter and made an attempt to distinguish yet another decision of three Judge Bench referred (2) supra**.** The three Judge Bench in the decision referred (1) supra decided on 19-1-2001 made the following order :

1. Leave granted.

2. The notice on the special leave petition stated that the matter might be disposed of at this stage by an order setting aside the order under challenge and restoring the writ petition to the file of the High Court to be heard and disposed of on merits.

3. The appellant filed a writ petition before the High Court at Allahabad to quash a communication sent to his wife which stated that the appellant had been tried by a

Summary Court Martial and had been found guilty of using criminal force against his superior officer and awarded the sentence of dismissal from service. The High Court dismissed the writ petition at the admission stage by holding :

> "In view of the fact that the summary court martial proceedings were conducted in the State of Punjab and orders were also passed in Punjab by the West Command, we are of the view that this Court has got no territorial jurisdiction to entertain this writ petition."

4. The writ petition was filed in 1992. The impugned order was passed in 1999. This is a fact that the High Court should have taken into consideration. More importantly, it should have taken into consideration the fact that the Chief of Army Staff may be sued anywhere in the country. Placing reliance only on the cause of action, as the High Court did, was not justified.

5. The appeal is allowed. The order under appeal is set aside. The writ petition (CMWP No.39209 of 1992) is restored to the file of the High Court to be heard and disposed of on merits, expeditiously.

6. No order as to costs.

While dealing with doctrine of forum conveniens, a three Judge Bench of the Apex Court in the decision referred (2) supra, decided on 28-4-2004, at paras 9, 10, 18 and 30 held :

> "Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to a writ proceeding, the phraseology used in Section 20(c) of the Code of Civil Procedure and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of C.P.C. shall apply to the writ proceedings also.

> Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.
>
> Keeping in view the expressions used in clause (2) of Article 226 of Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.
>
> ……
>
> 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.
>
> …..
>
> We must, however, remind ourselves that even if a small part of 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 merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens (See Bhagar Singh Bagga v. Dewan Jagbir Sawhany, AIR 1941 Cal. 670; Mandal Jalal v. Madanlal, (1945) 49 CWN 357; Bharat Coking Coal Limited v. M/s.Jharia Talkies and Cold Storage Pvt. Ltd. (1997) CWN 122; S.S.Jain and Co. and another v. Union of India and others (1994) CHN 445; M/s. New Horizon Ltd. Vs. Union of India, AIR 1994 Delhi 126).”

On a careful analysis of the decisions of the Apex Court in general referred to supra and also the three Judge Bench decisions referred (1) and (2) supra, it is needless to say that the decision referred (2) supra is later in point of time. Under Article 141 of the Constitution of India the law declared by the Supreme Court of India is binding on all Courts. Not only the three Judge Bench decision referred (2) supra is

later in point of time but it also decided the matter at length taking into consideration the prior decided cases on the point. In **VASANT Vs. DIKKAYA** a Division Bench of Bombay High Court held that where there is conflict between the earlier and later decisions of the Supreme Court consisting of equal number of Judges, the later decision prevails. The majority of the Full Bench in **GOVINDANAIK Vs. WEST PATENT PRESS CO.** held that if two decisions of the Supreme Court on a question of law cannot be reconciled and one of them is by a larger Bench while the other is by a smaller Bench, the decision of the larger Bench, whether it is earlier or later in point of time, should be followed by High Courts and other Courts. In **P.A. SHAH Vs. STATE OF GUJARAT** the Apex Court while dealing with what is precedent and the duty of the Court while applying the same observed :

> "A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation."

In **STATE OF PUNJAB Vs. TEJA SINGH** a Full Bench of Punjab and Haryana High Court while dealing with the precedential value of a later decision and an earlier decision of the Apex Court held :

> "When an earlier Judgment of the Supreme Court is only considered by a later Bench of that Court, then the view taken by the later as to true ratio of the earlier case is authoritative and in any case that view is binding on the High Courts."

It is no doubt true that in many a case when binding decisions are cited before the Court, in certain cases it would be difficult to arrive at a definite conclusion relating to which of the decisions of the coordinate Bench cited before the Court may have to be followed. At certain times the Courts would be placed in a dilemma in relation thereto while invoking the concept of just precedent and unjust precedent. This is a very delicate area where the Courts are expected to be more careful and cautious while following the binding decisions of the Apex Court. It is no doubt true that a later decision of the coordinate Bench normally may have to be followed but however there may be cases where the later decision might not have considered the relevant statutory provisions or the binding prior precedents on the point and would have decided the question without proper supporting reasons. It is no doubt true that the judicial propriety and judicial discipline requires that binding precedent shall be necessarily followed, but however, while adopting cautious approach in case of conflicting Judgments of the Apex Court of coordinate Benches cited before the Courts, Courts may have to carefully scrutinize whether reasons had been recorded while laying down the ratio and whether the concerned statutory provisions had been considered and whether the other prior decisions or the binding

decisions also had been referred to, if any available on the point by the Court while rendering such Judgments. These principles at any rate cannot be said to be exhaustive, but only just illustrative.

In the light of the legal position referred to supra, there cannot be any doubt or controversy that the learned Judge arrived at the correct conclusion in following the decision referred (2) supra which is of a three Judge Bench and also later in point of time wherein the question had been discussed in detail referring to the prior precedents governing the field. Hence there is no legal infirmity committed by the learned Judge in following the said decision.

Apart from this aspect of the matter, it is needless to say that the writ proceedings would be decided on the strength of the affidavits, counter affidavits and reply affidavits. When the specific stand taken by the appellant/writ petitioner is that part of cause of action arose in the State of Andhra Pradesh there must be some factual foundation to explain how the said part of cause of action arose within the jurisdiction of the Andhra Pradesh High Court. Absolutely there is no plea in this regard either in the affidavit in support of the writ petition or in the reply affidavit despite the specific stand taken by the respondents in the counter affidavit at para-16 of the counter affidavit referred to supra. Even in this view of the matter, the learned Judge arrived at the correct conclusion that the Writ Petition is not maintainable. It is needless to say that when the Writ Petition is being dismissed on the ground that the same is not maintainable the other questions touching the merits and demerits of the matter need not be adverted to. In view of the foregoing discussion, we do not see any reason to interfere with the findings recorded by the learned Judge on

the aspect of want of jurisdiction and the same are hereby confirmed.

The Writ Appeal shall stand dismissed being devoid of any merit. In the peculiar facts of the case since the Writ Petition itself had been dismissed on the ground of want of jurisdiction, costs made easy.

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G.Bikshapathy.,J

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P.S.Narayana.,J

Date : - -2004

L.R. copy to be marked : YES / NO

AM

To :

1. The Director General of Police, Central Reserve Police Force, Block No. 1, CGO Complex, Lodhi Road, New Delhi.
2. The Inspector General of Police, Central Reserve Police Force, Special Sector, Old Secretariat, Block No. 11, Civil Lines, Delhi - 54.
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