A OIL AND NATURAL GAS COMMISSION

v.

UTPAL KUMAR BASU AND ORS.

JUNE 23, 1994

B [M. N. VENKATACHALIAH, CJ., A.M. AHMADI AND B.P. JEEVAN REDDY, JJ.]

Constitution of India—Article 226—Territorial jurisdiction based on cause of action wholly or in part—Held, jurisdiction must be decided on facts
C *pleaded in the Petition, but facts must form integral part of course of action.*

Code of Civil procedure, 1908—Section 21—Held, cannot be invoked in favour of a party who deliberately invokes the jurisdiction of a court which has no jurisdiction whatsoever, for ulterior motives.

D *Practice and procedure—Exemplary costs—Awarded against party who did not act bona fide.*

Engineers India Limited (EIL) acting as Consultants for the Oil and Natural Gas Commission (ONGC) issued an advertisement dated 27th June, 1991, in all leading newspapers of the country including those in
E **circulation in West Bengal calling for tenders for setting up of a Kerosene Recovery Processing Unit at the Hazira Complex in Gujarat. The tenders were to be communicated to the EIL at New Delhi. All the bids were scrutinised by EIL at New Delhi and the final decision was taken by the Steering Committee on Junuary 27, 1993 at New Delhi, pursuant whereto**
F **it was decided to award the contract to M/s. CMMCO Ltd. Thereupon, NICCO, an unsuccessful tenderer having its registered office at Calcutta, filed a Writ Petition in the Calcutta High Court. In support of its plea that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court, NICCO averred that it had come to know of the**
G **tender from the publication in the Times of India, which was "issued and obtained " by it within the said jurisdiction, that it had submitted its tender from the registered office at Calcutta, that it had submitted its revised price bid from its registered office and that it had made various demands for justice from its registered office.**

H **A Single Judge of the High Court entertained the Writ Petition and**

disposed it of with a direction to consider the offer of NICCO and in the event of it being found valid and lowest, that the same should be accepted. A

ONGC appealed to the Supreme Court by Special Leave. The Court confined itself to the preliminary objection of ONGC that the Calcutta High Court had no jurisdiction in the matter.

B

Allowing the Appeal, this Court

HELD : 1. On a plain reading of Article 226(1) and (2) it becomes clear that 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 its territories. [258-E-F] C

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2. 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 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 case of action into consideration, albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. The question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averment made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. [258-H & 259-C-D] E F

3. Merely because NICCO read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta, these would not constitute facts forming an integral part of the cause of action. So also, the mere fact it sent Fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Thus even if the averments in the Writ Petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court. [253-F-G] G

4. While the spirit of Section 21 of the Code of Civil Procedure may H

A support the submission that the Supreme Court should, in the absence of proof of prejudice, refuse to interfere with the decision of the High Court unless it is found to be erroneous, the discretion conferred by the Section cannot be used in favour of a party which deliberately invokes the jurisdiction of a Court which has no jurisdiction whatsoever, for ulterior motives. The object underlying the provision in Section 21 is not to encourage such litigants but to avoid harassment to litigants who had *bona fide* and in good faith commenced proceedings in a Court which is later found to be wanting in jurisdiction. In the instant case NICCO did not act *bona fide* in moving the Calcutta High Court. [266-A-B-C]

C 5. Notwithstanding the strong observations made by the Supreme Court in previous decisions, it is distressing that the Calcutta High Court persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. If an impression gains ground even in cases which fall outside the territorial jurisdiction of the Court it would be willing to exercise jurisdiction on the plea that some event, however, trivial and unconnected with the cause of action had occurred within the E jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members, giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. [264-H; 265-A; B; 265-E; F]

F 6. Since NICCO had not invoked the jurisdiction of the Calcutta High Court *bona fide*, this is a fit case for granting exemplary costs to ensure that such abuse of the court's jurisdiction does not take place in future. [266-F]

G *Chand Kaur* v. *Pratab Singh*, ILR [1989] 16 Cal. 98, 102; *State of Rajasthan* v. *Swaika Properties*, [1985] 3 SCC 217 and *Subodh Kumar Gupta* v. *Shrikant Gupta*, [1993] 4 SCC 1, relied on.

Election Commission v. *Venkata Subba Rao*, [1953] SCR 1144 = AIR (1953) SC 210 and *R. Bejal* v. *Triveni Structurals Ltd.*, [1987] Supp. SCC H 279, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1359 of 1994. A

From the Judgment and Order dated 17.12.1993 of the Calcutta High Court in Matter No. 487 of 1993.

Dipankar Gupta, Solicitor General, R. Sasi Prabhu and A. Jayaram for the Appellant. B

Ashok H. Desai, G. Ramaswamy, C.S. Vaidyanathan, Pallav Shisodia, A. Mitra, G. Joshi, A.K. Sil, G. Kandpal, J. Savla, Ms. Nina Gupta and Vineet Kumar for the Respondents. C

The Judgment of the Court was delivered by

AHMADI, J. The short question to which we propose to limit ourselves in this appeal directed against the decision rendered by Shyamal Kumar Sen, J. of the Calcutta High Court on December 17, 1993 in Writ D Petition No. 487 of 1993, is whether any part of the cause of action for filing the petition had arisen within the jurisdiction of the said High Court to entitle it to entertain, hear and decide the said petition? The factual background in which the question of territorial jurisdiction arises may be noticed briefly. E

The Oil & Natural Gas Commission (ONGC), a Government of India Undertaking, has a Gas Processing Plant at Hazira in the State of Gujarat. Engineers India Limited (EIL) acting as Consultants for ONGC issued an advertisement dated June 27, 1991 in the leading newspapers of the country including those in circulation in West Bengal calling for tenders F for setting up of a Kerosene Recovery Processing Unit at the Hazira Complex in Gujarat. According to the said advertisement the tenders containing offers were to be communicated to EIL at New Delhi. NICCO, having its registered office in Calcutta, read and became aware of the tender notice printed in the Times of India circulated within the jurisdiction of the Calcutta High Court. The tenders were to be scrutinised by a G Tender Committee and the final decision was to be taken by a Steering Committee at New Delhi presided over by the Chairman of ONGC. NICCO, along with others, submitted their offer or bid in response to the tender notice. All the bids were scrutinised by EIL, at New Delhi. NICCO's bid was rejected on the ground that it did not fulfil the requisite H

A experience criteria stipulated in the tender. The recommendations made by the EIL were considered by the Tender Committee. The Tender Committee, however, expressed the view that NICCO satisfied the experience criteria and they too should be called for the clarificatory meeting proposed to be held by EIL at New Delhi. The said meeting was held by the EIL with various bidders including NICCO sometime in July-August, B 1992. After the said meeting EIL once again reiterated its earlier view that NICCO lacked the experience criteria. The Committee re-examined the view of EIL and agreed with the same some time in October, 1992. In view of the said development NICCO was not recommended for short-listing by the Tender Committee. NICCO represented and their reperesentations C were considered by the EIL as well as the Tender Committee but they saw no reason to depart from their earlier view. The final decision was taken by the Steering Committee on January 27, 1993 at New Delhi, pursuant whereto it was decided to award the contract to M/s. CIMMCO, Ltd. Thereupon NICCO filed the aforesaid Writ Petition in the High Court of D Calcutta. In the said Writ Petition CIMMCO was not made a party. On the application of CIMMCO this Court directed that it be joined in the appeal as a co-respondent. NICCO prayed that ONGC be restrained from awarding the contract to any other party and if awarded to cancel the same. The High Court by its impugned order dated December 17, 1993 directed as under :

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> "There will be an order directing the respondents to consider the offer of the petitioner along with the others and in the event the petitioner's offer is otherwise found to be valid and lowest and in the event petitioner otherwise complies with the formalities, petitioner's offer should be accepted by the respondent authorities.
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> F
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> The writ petition is accordingly disposed of."

All the parties to the Writ Petition were directed to act in accordance with the signed copy of the aforesaid operative part of the order. A detailed G judgment giving reasons for the aforesaid operative part of the order was later rendered on 4th February, 1994.

Aggrieved by the Judgment & Order on the High Court in the aforesaid Writ Petition, ONGC moved this Court under Article 136 of the Constitution of India. This Court by its order dated January 31, 1994 H granted an ad-interim order for maintenance of status quo. Thereafter on

February 25, 1994 leave to appeal was granted and the status quo order was continued. As stated earlier by the said order CIMMCO was impleaded as party-respondent. A

At the hearing of this appeal we indicated to counsel that we would like to confine ourselves to the preliminary objection of ONGC that the High Court of Calcutta had no jurisdiction to entertain, hear and dispose of the Writ Petition in the manner it did as the averments in the Writ Petition, even if assumed to be correct, did not disclose that even a part of the cause of action for institution of the said Writ Petition had arisen within the jurisdiction of the Calcutta High Court. The Writ Petitioners averred in paragraph 43 of the Writ Petition that a part of the cause of action had arisen within the jurisdiction of the said High Court as pleaded in paragraphs 5, 7, 18, 22 and 26 of the Writ Petition. They further averred in the said paragraph that they were likely to suffer a loss at its registered office within the jurisdiction of the Calcutta High Court if the contract was not awarded to them. The averments in paragraphs 5, 7, 18, 22 and 26 in a nutshell are as under : B C D

> Para 5. NICCO came to know of the tender from the publication in the Times of India 'issued and obtained' by NICCO within the said jurisdiction;
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> Para 7. NICCO issued/submitted its tender on August 19, 1991 from its registered office within the jurisdiction of the Calcutta High Court which was received by EIL at New Delhi; E
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> Para 18. NICCO submitted its revised price bid by letter dated December 3, 1992 issued from its registered office within the aforesaid jurisdiction; F
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> Para 22. By Communication dated December 4, 1992 issued from its registered office, NICCO made demands for justice to various authorities; and
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> Para 26. By letters addressed to different agencies including the Steering Committee of ONGC in January/Feburary, 1993 from its registered office, NICCO made demands for justice. G

These are the averments in the body of the Writ Petition on the basis whereof NICCO contended that a part of the cause of action had arisen H

A within the jurisdiction of the Calcutta High Court. It may also be mentioned that in course of submissions before this Court counsel for NICCO referred to a fax message dated January 15, 1993 sent in answer to NICCO's fax message dated January 11, 1993 on the basis of which he contended that a part of the cause of action arose within the jurisdiction of the Calcutta High Court where the message was received. Although in the paragraphs disclosing the cause of action for the institution of the Writ Petition reference is not made to this fax message, we propose to deal with it to avoid technicalities. The question which, therefore, arises for consideration is whether the aforesaid averments made in the body of the Writ Petition taken individually or collectively, assuming them to be true, constitute a cause of action for the maintenance of the Writ Petition in the High Court of Calcutta?

Clause (1) of Article 226 begins with a *non-obstante* clause - notwithstanding anything in Article 32 - and provides that every High Court shall have power 'throughout the territorial 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, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under Clause (2) of Article 226 the High court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that 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 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. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

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 by the Court. In *Chand Kaur* v. *Pratap Singh*,

1889 (16) Calcutta 98 at 10, Lord Watson said : A

> "..... the cause of action has no relation whatever 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 in the plaint as the cause of action or in other words to the media upon which the plaintiff asks the B Court to arrive at a conclusion in his favour."

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 C correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a Writ Petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the the facts pleaded in the petition. Therefore, the question whether in the instant case the D Calcutta High Court had jurisdiction to entertain and decide the Writ Petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court. E

The learned counsel for ONGC contended that on these averments no part of the cause of action had arisen within the jurisdiction of the Calcutta High Court and hence the writ petition filed by NICCO and another was not entertainable by that High Court. He submitted that F ONGC had decided to set up a Kerosene Recovery Processing Unit at Hazira in Gujarat. EIL was appointed by ONGC as its consultant. In that capacity, EIL issued the advertisement from New Delhi calling for tenders and this advertisement was printed and published in all the leading newspapers of the country including the Times of India in circulation in West Bengal. The tenders or bids were to be forwarded to EIL at New G Delhi. EIL was expected to scrutinise the tenders and make its recommendations to the Tender Committee constituted by ONGC. The final decision was, however, to be taken by the Steering Committee at New Delhi presided over by the Chairman, ONGC. Accordingly, the tender of NICCO was examined by EIL at New Delhi and it recommended its rejection on the ground that NICCO did not satisfy the experience criteria requisite for H

A the grant of contract. On the first occassion, the Tender Committee did not agree with the said recommendation and directed the EIL to call NICCO at the clarificatory meeting proposed to be held in New Delhi. In obedience to the said direction, EIL invited NICCO along with the other bidders, but once again recommended its rejection on the ground that it did not satisfy the experience criteria. The Tender Committee which met B in New Delhi reviewed its earlier decision and accepted the recommendation of EIL which was also accepted by the Steering Committee at New Delhi on January 27, 1993. It was at this point of time that the decision to award the contract to CIMMCO was taken at New Delhi. Counsel for ONGC, therefore, contended that all these events took place outside the C jurisdiction of the Calcutta High Court and merely because NICCO had read the advertisement in the Times of India in circulation in West Bengal and had forwarded its tender from its registered office in Calcutta and followed it up by a revised offer, it cannot be said that any part of the cause of action had arisen within the jurisdiction of the Calcutta High Court for the simple reason that if these facts were to give a cause of action, every D tenderer would sue ONGC in the local court from where he forwarded the tender and that would make ONGC run about from court to court all over the country. Counsel further submitted that nor can the fact that NICCO sent representations including fax messages from its registered office to ONGC at Calcutta to which ONGC showed the courtesy of replying confer jurisdiction. In support of this contention, he placed strong reliance on the E decision in *State of Rajasthan* v. *Swaika Properties,* [1985] 3 SCC 217. Learned counsel for CIMMO buttressed these submissions by inviting our attention to certain other decisions of this Court, namely, *Election Commission, India* v. *Saka Venkata Subba Rao*, 1953 SCR 1144, *R. Bejal* v. *Triveni Structurals Limited*, [1987] Supp. SCC 279, *Subodh Kumar Gupta* v. F *Shrikant Gupta & Others,* [1993] 4 SCC 1 and certain decisions of different High Courts. On the other hand, counsel for NICCO, while reiterating that the averments made in paragraphs 5, 7, 18, 22, and 26 constituted an integral part of the cause of action, submitted that by the introduction of clause (2) in Article 226 of the Constitution, the legislature intended to widen the High Court's jurisdiction and thereby extend its beneficient G reach even to cases where a part of the cause of action arose within its territorial jurisdiction. In the alternative, he submitted that even if this court comes to the conclusion that the High Court of Calcutta lacked jurisdiction, this Court sitting in appeal should not interfere with the verdict of the High Court as ONGC had neither alleged nor showed that there had been a failure of justice. In this connection, he placed reliance on the

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spirit of section 21 of the Code Civil Procedure. He, therefore, contended that this Court should examine the appeal on merits and not confine itself to the question of territorial jurisdiction. Lastly, he submitted that on merits NICCO had made out a good case for the grant of relief sought by it.

From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages, to EIL. ONGC, etc. at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMO at New Delhi on January 27, 1993. 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 scrutinised 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 representations 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 massages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of January 15, 1993, can not be construed as conveying rejection of the offer as that fact occurred on January 27, 1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High court.

In *Subodh Kumar Gupta's* case (supra), the facts revealed that he had instituted a suit in the Court of Senior Judge, Chandigarh, for dissolu-

A tion of the firm in which he as partner had 20% share along with his father, brothers and one another. The head office of the firm was situate in Bombay where the firm was registered with the Registrar of Firms. Its factory was situate at Mandsaur where the father Rajaram Gupta lived with his sons and attended to the partnership business. The plaintiff - petitioner
B was also residing in Mandsaur till 1974 when he shifted to Chandigarh. He, however, visited Mandsaur often in connection with the business of the firm. The case pleaded by him was that after he shifted to Chandigarh, he used to call for and received the statements of accounts of the business carried on at Mandsaur. He had got letter heads printed indicating that the branch office of the firm was at Chandigarh and he claimed that he
C also booked orders for the firm at Chandigarh. It was also pleaded that certain disputes had arisen regarding the management of the partnership firm and in regard to the correctness of the accounts which were discussed at the meeting in Bhilai at the end whereof an agreement was drawn up for the dissolution of the partnership and for distribution of assets amongst
D the partners to which the plaintiff was a signatory. The suit filed in the Chandigarh Court was resisted on the preliminary contention that no part of the cause of action had arisen at Chandigarh and therefore that court had no jurisdiction. The Chandigarh Court upheld the contention and this court affirmed the said view. While dealing with the averment that the plaintiff was carrying on business of the firm from Chandigarh where the
E branch office of the firm was situate, this Court held that there is no averment that the branch at Chandigarh was started with the consent of the other partners an intimation thereof was given to the Registrar of Firms as required by Section 61 of the Partnership Act; the mere printing of stationery was neither here nor there and therefore no part of the cause of
F action could be said to have arisen within the territorial jurisdiction of the Chandigarh Court.

The submission of the learned counsel for NICCO was that clause (2) was introduced in Article 226 of the Constitution to enlarge the scope of the writ jurisdiction of the High Court. The Supreme Court in *Saka*
G *Venkata Subba Rao's* case (supra) while interpreting Article 226 as it then stood observed as under :

> "The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under
H Article 226 which makes no reference to any cause of action or

where it arises but insists on the presence of the person or authority "within the territories" in relation to which the High Court exercises jurisdiction." A

Thus, this Court ruled that in the absence of a specific provision in Article 226 on the lines of the Code of Civil Procedure, the High Court cannot exercise jurisdiction on the plea that the whole or part of the cause of action had arisen within its jurisdiction. This view was followed in subsequent cases. The consequence was that only the High Court of Punjab could exercise jurisdiction under Article 226 of the Constitution against the Union of India and other bodies located in Delhi. To remedy this situation, clause (1A) was inserted by the 15th Amendment Act, 1963 to confer on the High Court's jurisdiction to entertain a petition under Article 226 against the Union of India or any other body or authority located in Delhi if the cause of action has arisen, wholly or in part, within its jurisdiction. Clause (1A) was later renumbered as clause (2) of Article 226. Therefore, the learned Counsel for NICCO is right that this amendment was introduced to supersede the view taken by this Court in the aforesaid case. But as stated earlier, on a plain reading of clause (2) of Article 226, it is clear that the power conferred by clause (1) can be exercised by the High Court provided the cause of action, wholly or in part had arisen within its territorial limits. B C D E

Strong reliance was placed on the decision of this Court in the *State of Rajasthan case* (supra) by the learned counsel for ONGC. The facts of that case reveal that the respondent-company having its registered office at Calcutta owned a large chunk of land on the outskirts of Jaipur. The Special Officer, Town Planning Department, Jaipur, at the instance of the Improvement Trust, Jaipur issued a notice intimating that the State Government proposed to acquire a large part of the said parcel of land for a public purpose, namely, implementation of a development scheme. The said notice was duly served on the respondents at their Calcutta office. The respondents thereafter participated in the inquiry and contended that they proposed to use the land for constructing a three star hotel. The Special Officer, however, felt that the alleged need of the respondents was just a pretence and the land was not needed *bona fide* by them, but the real object was to get the land released from acquisition. Consequently, the requisite final notification for the acquisition of the land was issued. Thereafter an attempt was made to seek exemption in regard to the F G H

A notified land under Section 20 of the Urban Lands (Ceiling and Regulation) Act, 1976, but in vain. Having failed to get the land released from acquisition, the respondents filed a writ petition under Article 226 of the Constitution in the High Court of Calcutta challenging the acquisition wherein *rule nisi* issued and an ad-interim *ex-parte* prohibitory order was granted restraining taking of possession of the acquired land, etc. The question which arose for consideration in the backdrop of the said facts was whether the High Court of Calcutta had jurisdiction to entertain the petition and grant ex-parte ad-interim relief. This Court observed that upon the said facts, the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Judge had no jurisdiction to issue *Rule nisi* or to grant the ad-interim *ex-parte* prohibitory order. After extracting the definition of the expression 'cause of action' from Mulla's Code of Civil Procedure, this Court observed as under :

> "The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Broabourne Road, Calcutta i.e., within the territorial limits of the State of West Bengal, could not give rise to 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."

Pointing out that after the issuance of the notification by the State Government under Section 52(1) of the Act, the notified land became vested in the State Government free from all encumbrances and hence it was not necessary for the respondents to plead the service of notice under Section 52(2) for the grant of an appropriate direction or order under Article 226 for quashing the notification acquiring the land. This Court, therefore, held that no part of the cause of action arose within the jurisdiction of the Calcutta High Court. This Court deeply regretted and deprecated the practice prevalent in the High Court of exercising jurisdiction and passing interlocutory orders in matters where it lacked territorial jurisdiction. Notwithstanding the strong observations made by this Court in the aforesaid decision and in the earlier decisions referred to therein, we are distressed that the High Court of Calcutta persists in exercising

jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made time and again, some of the learned Judges continue to betray that tendency. Only recently while disposing of appeals arising out of SLP Nos. 10065-66 of 1993, *Aligarh Muslim University & Anr.* v. *M/s. Vinny Engineering Enterprises (P) Ltd. & Anr.,* this Court observed:

> "We are suprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction."

In that case, the contract in question was executed at Aligarh, the construction work was to be carried out at Aligarh, the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction, the Arbitrator was appointed at Aligarh and was to function at Aligarh and yet merely because the respondent was a Calcutta based firm, it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation.

The submission of the learned counsel for NICCO based on Section 21 of the Code of Civil Procedure that even if this Court comes to the conclusion that the High Court of Calcutta had no jurisdiction, this Court

A should, in the absence of proof of prejudice, refuse to interfere with the decision of the High Court unless it is otherwise found to be erroneous. While the spirit of Section 21 of the Code of Civil Procedure may support such a submission, we are afraid, the discretion cannot be used in favour of a party which deliberately invokes the jurisdiction of a Court which has no jurisdiction whatsoever for ulterior motives. That would only encourage B such type of litigation. The object underlying the provision in Section 21 is not to encourage such litigants but to avoid harassment to litigants who had *bona fide* and in good faith commenced proceedings in a court which is later found to be wanting in jurisdiction. In the instant case, we are convinced, beyond doubt, that NICCO did not act *bona fide* in moving the C Calcutta High Court and, therefore, the submission based on section 21 must fail.

Before we part we must clarify that we have confined ourselves to deciding whether on the averments made in the petition any part of the cause of action is shown to have arisen within the jurisdiction of the D Calcutta High Court. Even if we had come to the conclusion that the averments disclosed that a part of the cause of action had arisen within the jurisdiction of the said court and therefore the petition could be entertained by that Court, it would still have been open for the opposite party to dispute the said averments and if the opposite party were to succeed E in showing that the averments were not true and correct, the petition, though entertained, would fail for want of jurisdiction.

In the result, we allow this appeal, set aside the order of the High Court and direct that the writ petition will stand disposed of for want of jurisdiction. Since we are satisfied that NICCO had not invoked the juris- F diction of the Calcutta High Court *bona fide*, we think that this is a fit case for granting exemplary costs to ensure that such abuse of the court's jurisdiction does not take place in future. We, therefore, direct NICCO to pay Rs. 50,000 by way of costs.

R.R. Appeal allowed.