Kusum Ingots & Alloys Ltd vs Union Of India And Anr,

Whether the seat of Parliament or a State Legislature constitutes a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India challenging the constitutionality

Date of Order: April 28, 2004
Case Law No: GIB-SC-2004-01
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CASE DESCRIPTION / SUMMARY

Background

The appellant, a company with its registered office at Mumbai, had availed a loan from the Bhopal branch of State Bank of India. The respondent issued a notice for repayment of the loan from Bhopal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Questioning the constitutional validity of the said Act, the appellant filed a writ petition before the Delhi High Court. The Delhi High Court dismissed the petition on the ground of lack of territorial jurisdiction. The present appeal was filed before the Supreme Court challenging that dismissal.

Crucial Facts

The sole submission of the appellant, both before the High Court and the Supreme Court, was that since the constitutionality of a Parliamentary Act was under challenge, the Delhi High Court had requisite jurisdiction as Parliament sits in Delhi. No part of the cause of action — neither the loan, nor the notice of demand, nor any executive action — arose within the territorial jurisdiction of the Delhi High Court. The registered office of the appellant was in Mumbai and the demand notice was issued from Bhopal.

Court Observations (Verbatim)

"*A parliamentary legislation when receives the assent of the President of India and published in an*

Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner."

— S.B. Sinha, J.

"*A writ petition, however, questioning the constitutionality of a Parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi.*"

— S.B. Sinha, J. (Citing Abdul Kafi Khan vs. Union of India, AIR 1979 Cal 354)

"*Situs of office of the Parliament, Legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof.*"

— S.B. Sinha, J.

"*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.*"

— S.B. Sinha, J.

"*When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place.*"

— S.B. Sinha, J.

"*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.*"

— S.B. Sinha, J. (On Forum Conveniens)

Note — Overruled Decision

The view in *U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow vs. State of U.P. (1995) 4 SCC*

738 — that the situs of issue of an order or notification by the Government confers jurisdiction on the High Court — was expressly **overruled** to the extent it held otherwise.

Final Verdict

 Appeal dismissed. The Delhi High Court rightly declined jurisdiction as no cause of action — neither wholly nor in part — arose within its territorial limits. Mere location of Parliament in Delhi does not confer jurisdiction on the Delhi High Court to entertain a writ petition challenging a Parliamentary enactment. No costs.

Cases Referred by the Court

Mussummat Chand Kour v. Partap Singh — 15 IA 156 — Definition and scope of cause of action

Oil & Natural Gas Commission v. Utpal Kumar Basu & Ors. — (1994) 4 SCC 711 — Territorial jurisdiction; integral facts test

State of Rajasthan v. M/s. Swaika Properties & Anr. — (1985) 3 SCC 217 — Mere service of notice not integral cause of action

Aligarh Muslim University & Anr. vs. Vinay Engineering Enterprises (P) Ltd. & Anr. — (1994) 4 SCC 710 — Abuse of jurisdiction

Union of India & Ors. vs. Adani Exports Ltd. & Anr. — (2002) 1 SCC 567 — Integral facts must form cause of action for High Court jurisdiction

National Textile Corpn. Ltd. & Ors. vs. M/s. Haribox Swalram & Ors. — JT 2004 (4) SC 508 — Mere carrying on of business at a place not integral cause of action

Abdul Kafi Khan vs. Union of India & Ors. — AIR 1979 Cal 354 — Delhi HC not automatically having jurisdiction over Parliament seat

Nasiruddin vs. State Transport Appellate Tribunal — AIR 1976 SC 331 — Cause of action; appellate order situs (distinguished)

U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow vs. State of U.P. & Ors. — (1995) 4 SCC 738 — Overruled to the extent of holding situs of notification issuance as conferring jurisdiction

Lt. Col. Khajoor Singh vs. The Union of India & Anr. — (1961) 2 SCR 828 — Pre-Art.226(2) amendment; distinguished on facts

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