

JURISDICTION UNDER ARTICLE 226 OF THE CONSTITUTION

The Constitution of India, under Chapter V part 6, constituted Hon'ble High Courts as the apex court in the concerned State, for the protection and safeguard of the fundamental as well as the legal rights of a person irrespective of the citizenship of the person¹.

Article 226 of the Constitution empowers the Hon'ble High Courts to exercise power through issuance of writs – *habeas corpus, mandamus, quo warranto, prohibition* and *certiorari* or any appropriate writ. However, Article 323-A and 323-B of the Constitution² has excluded the jurisdiction of the Hon'ble High Court with regard to the enlisted subject matters. Therefore, the exercise of jurisdiction is discretionary in nature and subject to the availability and exhaustion of the alternative remedy by the petitioner.

The Hon'ble Apex Court in *Radha Krishan Industries v. State of Himachal Pradesh*³, on placing reliance on *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*⁴ and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*⁵ has observed in para 27 of the judgment as:

“27 The principles of law which emerge are that :

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural

¹ *Hong Kong & Shanghai Banking Corporation Ltd. v. Union of India*, Hon'ble Calcutta High Court, WP No. 388 of 2003.

² Inserted by the 42nd Constitutional Amendment.

³ 2021 SCC OnLine SC 334.

⁴ (1998) 8 SCC 1.

⁵ (2003) 2 SCC 107.

justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

The aforesaid principles have been upheld by the Hon’ble Supreme Court in ***Seth Chand Ratan v. Pandit Durga Prasad***⁶, ***Babubhai Muljibhai Patel v. Nandlal Khodidas Barot***⁷ and ***Rajasthan SEB v. Union of India***⁸. Therefore, the jurisdiction of the Hon’ble High Courts are not completely ousted by the insertion of Article 323-A and 323-B of the Constitution of India.

The jurisdiction of Hon’ble High Court as stated under clause (2) of Article 226, reads as:

*“(2) 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 power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”*

⁶ (2003) 5 SCC 399

⁷ (1974) 2 SCC 706

⁸ (2008) 5 SCC 632

In *Om Prakash Srivastava v. Union of India*⁹, the Hon'ble Supreme Court was pleased to observe with regard to 'cause of action' vis-à-vis the jurisdiction of the Hon'ble High Court, in paragraph 7, 8 and 14 as under:-

- “7. *The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.*
8. *Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order 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.*
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14. *The expression “cause of action” is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a “cause of action” is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase “cause of action” in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra).”*

The Hon'ble Supreme Court in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu*¹⁰ has observed in paragraph 5 and 6 as:

⁹ (2006) 6 SCC 207

- “5. *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 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, 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 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.*
6. *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 Kour v. Partab Singh, Lord Watson said:*
- “... 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 ground set forth in the plaint 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.”*

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. 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

¹⁰ (1994) 4 SCC 711.

facts pleaded in the petition. Therefore, the question whether in the instant case the 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.”

In light of the observations and directions of the Hon’ble Supreme Court of India, the Hon’ble High Court may exercise their discretion in exercising power under Article 226 of the Constitution of India and safeguarding and protecting the fundamental rights of the persons.

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