Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1700/2023
[ARISING OUT OF SLP(C) NO. 29890/2018]

THE STATE OF GOA — APPELLANT

VS.

SUMMIT ONLINE TRADE SOLUTIONS (P) LTD & ORS. — RESPONDENTS

WITH

CIVIL APPEAL NO. 1701/2023
[ARISING OUT OF SLP(C) NO. 29891/2018]

THE STATE OF GOA — APPELLANT

VS.

FUTURE GAMING AND SERVICES (P) LTD & ORS. — RESPONDENTS

WITH

CIVIL APPEAL NO.1702/2023
[ARISING OUT OF SLP(C) NO. 29892/2018]

THE STATE OF GOA APPELLANT

VS.

PAN INDIA NETWORK LTD & ORS. RESPONDENTS

JUDGMENT

DIPANKAR DATTA, J.

Leave granted.

2. The appellant is one of multiple respondents in W.P.(C) No. 36 of 2017, W.P.(C) No. 38 of 2017 and W.P.(C) No. 59 of 2017, pending on the file of the High Court of Sikkim (hereafter 'the High Court', for short). Separate applications in the said three writ petitions were filed by the appellant seeking its deletion from the array of respondents. The appellant had pleaded in the said applications that, inter alia, a notification issued by it was under challenge in the writ petitions and that if, at all, such notification could be made a subject matter of challenge, the High Court of Bombay at Goa is the appropriate court where remedy ought to be pursued. According to the appellant, a notification issued under a statute enacted by a State legislature cannot be subjected to judicial scrutiny within the jurisdiction of a high court of a different State, more so when no cause of action has arisen within the jurisdiction of that high court. It was further pleaded that since no part of the cause of action for invocation of the writ jurisdiction had arisen within the territorial limits of the High Court, the writ petitions ought not to proceed against the appellant. One other fact brought to the notice of the High Court by the appellant was that the same notification was under challenge in W.P.(C) No. 759/2017 instituted by Serenity Trades Private Limited before the High Court of Bombay at Goa and that such writ petition after admission was pending for final hearing. It was urged by the appellant that to avoid conflict of opinions, the writ petitioners could either independently challenge the notification before the High Court of Bombay at Goa or apply for intervention in W.P.(C) No. 759/2017.

3. The High Court, by a common judgment and order dated 6 th June, 2018, has dismissed the three applications. These three appeals, by special leave, are directed against such judgment and order.

4. Since a common judgment and order is under challenge, we propose to decide these appeals by this common judgment and order.

5. Various notifications issued under the Central Goods and Services Tax Act, 2017 (hereafter 'CGST Act', for short) and the Integrated Goods and Services Tax Act, 2017 (hereafter 'IGST Act', for short) are under challenge in all the three writ petitions together with rate-notifications issued by the States of Goa, Maharashtra, Punjab and Sikkim. Inter alia, the challenge is to a notification stated to bear "No.01/2017" dated 30th June, 2017 issued by the Government of Goa in exercise of

power conferred by sub-section (1) of section 11 of the Goa Goods and Services Tax Act, 2017 (hereafter 'GGST Act', for short) levying tax @ 14% on "(L)ottery authorized by State Governments". The writ petitioners have invoked the high prerogative writ jurisdiction of the High Court to seek a declaration that the impugned notification is unconstitutional and illegal.

6. The short question that arises for a decision on these appeals is, whether the High Court was justified in returning the finding that "at least a part of the cause of action has arisen within the jurisdiction of this Court" and premised on such a finding, to dismiss the applications.

7. Notice was issued by this Court on 12 th November, 2018, after condonation of delay in presentation of the petitions for special leave to appeal.

8. None has appeared for the writ petitioners despite service of notice. We have heard counsel for the appellant and the Additional Solicitor General appearing for the Union of India as well as counsel for the other appearing parties.

9. For the purpose of a decision on these appeals, the petition averments in W.P.(C) No. 38 of 2017 may be noticed. A private limited company, "engaged in the business of purchase and sale of lottery tickets run, conducted and organized by the Government of Sikkim both within the State of Sikkim as well as outside the State", is the writ petitioner. The petitioning company sells lottery tickets in the States of Sikkim, Punjab, Goa and Maharashtra. It is the pleaded case that the lottery tickets, which are supplied by the petitioning company, are "lotteries which is being run by the State Government of Sikkim, it is not a lottery authorized by the State Government requiring to discharge GST under a higher rate of taxation of 28%". The case sought to be set up is that if the distinction between "(L)ottery run by State Governments" and "(L)ottery authorized by State Governments" were made, as has been done by the impugned notification, the same would be ex facie illegal and result in wiping out competition.

10. The prayers in W.P.(C) No. 38 of 2017 are to the following effect:

> "(i) Set aside the impugned Notifications 01/2017 Central Tax(Rate), 01/2017 Integrated Tax (Rate), 01/2017, and the State rate Notifications of the States of Sikkim, Goa, Punjab and Maharashtra to the extent it levies differential rates of tax on the supply of Lottery tickets by creating an illusory sub-classification between 'Lottery run by the State Government' as discriminatory and violative of Article 14, 19(1)(g), 301, 304 of the Constitution of India and of the CGST, SGST and IGST Act, and further hold that only 12% ad valorem tax can be levied uniformly in cases of all State run lotteries irrespective of where the tickets are sold.
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> (ii) Direct refund of differential duty paid at the rate of 28% as against the liability of the Petitioner to pay duty only at the rate of 12% with interest.

> (iii) Set aside the impugned Notifications 01/2017 Central Tax (Rate), 01/2017 Integrated Tax (Rate) 01/2017 and the State rate Notifications of the States of Sikkim, Goa, Punjab and Maharashtra to the extent it levies tax on the face value of the lottery ticket without abating the prize money, component of the lottery ticket when the said amount never forms part of the income of the Petitioner the lottery trade."

11. The High Court, while delivering the impugned judgment and order, proceeded to hold that the writ petitioners were aggrieved not only by the impugned notification issued by the appellant under the GGST Act but also by the act of the Central Government in issuing the impugned notifications under the CGST Act as well as the IGST Act seeking to levy tax (GST) on lotteries organized, promoted and conducted by the State of Sikkim. The High Court further noted that it was not the actual incidence of GST under the GGST Act which is impugned in the writ petitions but the provisions of law made by the Parliament as well as the respective State Governments including the State of Goa by which they sought to levy GST on lotteries. Considering the prayers made in the writ petition, the High Court was further of the view that, at least, a part of the cause of action had arisen with its jurisdiction. The High Court was also of the view that since notice had been issued on W.P.(C) Nos. 36 and 38 of 2017 on 17 th July, 2017, much before Rule was issued by the High Court of Bombay at Goa on 28 th September, 2017 in W.P.(C) No. 759/2017, no ground had been set up by the appellant for deletion; hence, the interim applications seeking deletion stood dismissed.

12. In support of territorial jurisdiction of the High Court to entertain and try the writ petition, this is what the petitioning company has stated:

> "29. That his Hon'ble Court has jurisdiction to entertain the said writ petition as the cause of action arises in Sikkim only.
> Both the Petitioner and the Respondents are located within the territorial jurisdiction of this Hon'ble High Court."

Apart from these two sentences, nothing more has been averred in support of territorial jurisdiction of the High Court.

13. From the above, it is clear that according to the petitioning company the cause of action has arisen in Sikkim only, meaning thereby the whole of the cause of action and not part of it; additionally, it is stated that all the respondents are located within the territorial jurisdiction of the High Court which is factually incorrect.

14. While dealing with an objection as to lack of territorial jurisdiction to entertain a writ petition on the ground that the cause of action has not arisen within its jurisdiction, a high court essentially has to arrive at a conclusion on the basis of the averments made in the petition memo treating the contents as true and correct. That is the fundamental principle. Bearing this in mind, we have looked into the petition memo of W.P.(C) No. 38 of 2017 and searched in vain to trace how at least

part of the cause of action has been pleaded by the petitioning company to have arisen within the territorial jurisdiction of the High Court.

15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. The Constitutional mandate of clause (2) is that the 'cause of action', referred to therein, must at least arise in part within the territories in relation to which the high court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories. The expression 'cause of action' has not been defined in the Constitution. However, the classic definition of 'cause of action' given by Lord Brett in Cooke vs. Gill1 that "cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court", has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such 'cause of action' is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the high court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the high court to decide the dispute and that, at least, a part of the cause of action to move the high court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.

16. Here, tax has been levied by the Government of Goa in respect of a business that the petitioning company is carrying on within the territory of Goa. Such tax is payable by the petitioning company not in respect of carrying on of any business in the territory of Sikkim. Hence, merely because the petitioning company has its office in Gangtok, Sikkim, the same by itself does not form an integral part of the cause of action authorizing the petitioning company to move the High Court. We hold so in view of the decision of this Court in National Textile Corporation Ltd. vs. Haribox Swalram. The immediate civil or evil consequence, if at all, arising from the impugned notification is that the petitioning company has to pay tax @ 14% to the Government of Goa. The liability arises for the specific nature of business carried on by the petitioning company within the territory of Goa. The pleadings do not reflect that any adverse consequence of the impugned notification has been felt within the jurisdiction of the High Court. At this stage, we are not concerned with the differential duty as envisaged in Schedule II [@ 6%] vis-à-vis Schedule IV [@ 14%] of the impugned notification. That is a matter having a bearing on the merits of the litigation. The long and short of the matter is that the petitioning company has to bear the liability of paying tax @ 14% levied by the Government of Goa for selling

lottery tickets in the State of Goa under Schedule IV of the impugned notification. It does not bear out from the petition memo how the impugned notification levying tax for carrying on business in the State of Goa subjects the petitioning company to a legal wrong within the territory of Sikkim for the writ petition to be entertained by the High Court.

17. In our opinion, the High Court ought not to have dismissed the applications of the appellant without considering the petition memo which has no semblance of a case having been made out as to how part of cause of action arose within the territorial limits of the High Court or without any pleading as to how any right has been affected within the territory of Sikkim.

18. Even otherwise, the High Court was not justified in dismissing the interim applications. Assuming that a slender part of the cause of action did arise within the State of Sikkim, the concept of forum conveniens ought to have been considered by the High Court. As held by this Court in **Kusum Ingots Vs. Union of India and Ambica Industries Vs. CCE**, even if a small part of the cause of action arises within the territorial jurisdiction of a high court, the same by itself could not have been a determinative factor compelling the High Court to keep the writ petitions alive against the appellant to decide the matter qua the impugned notification, on merit.

19. For the reasons aforesaid, we have no hesitation to hold that the High Court erred in dismissing the applications filed by the appellant. Consequently, the impugned judgment and order dated 6th June, 2018 is set aside. The civil appeals are allowed, without costs.

20. The appellant shall stand deleted from the array of respondents in W.P.(C) Nos. 36, 38 and 59 of 2017.

21. Interim order staying the proceedings before the High Court stands vacated with the result that the High Court may proceed to decide the writ petitions against the other respondents according to law.

22. This order shall, however, not preclude the respective writ petitioners from approaching the appropriate court to assail the notification dated 30th June, 2017 in accordance with law, if so advised.

.....J
(S. RAVINDRA BHAT)

.....J
(DIPANKAR DATTA)

NEW DELHI;
14th MARCH, 2023.