



APPELLATE & WRIT JURISDICTION OF HIGH COURTS : JURISDICTIONS & LIMITATIONS

Sujit Ghosh

**Advocate, Delhi High Court & other
Constitutional Courts in India**

January 10, 2021



Index

S.No.	Topic	Slide No.
1.	Challenge to Legislative Action – <i>“In Vacuum”</i>	3 – 4
2.	Doctrine of <i>Forum Conveniens</i>	5 – 7
3.	Doctrine of <i>“Approbate & Reprobate”</i>	8 – 9



Challenge to Legislative Action - “In Vacuum”

Challenging Legislation in Vacuum

- Principle laid down in **Kusum Ingots (2004) 6 SCC 254 – para 21**
 - “a writ court it is well settled would not determine a constitutional question in a vacuum”
- What would constitute “in vacuum”?
- Passing of a legislation itself does not confer any such right to file writ petition – unless there is a cause of action (**para 19 – Kusum Ingots Supra**)
- What therefore is “Cause of action” in this context?
- Can Legislation be challenged without a tax payer having received any Notice/ Order /Overt act?

Challenging Legislation in Vacuum

- Doctrine of **Imminent Threat** – permits maintainability of writ petitions, without there being any overt act of the Revenue
 - Imminent threat of violation of fundamental rights - **Maganbhai Ishwarbhai AIR 1969 SC 783**
 - Immediately on passing of a legislation if it takes away or abridges the fundamental rights of a person by its very terms and without any further overt act being done - **K.K. Kochunni AIR 1959 SC 725**
 - Challenge to Bombay Sales tax Act, 1952 on grounds of violation of 19(1) (g)etc on its mere passing without there being any notice, assessment or demand, held as maintainable - **State of Bombay v United Motors AIR 1953 SC 252 (Constitution Bench) read with the HC decision 1953 BOM LR 246**
 - Anticipatory, threat by the authority of law using coercive machinery under the impugned legislation (ie illegal assessment) was sufficient infringement of ones fundamental rights which gives a Petitioner right to seek relief under 226 – **Himmatlal Harila Mehta V State of MP 1954 SCR 1122**



Forum Conveniens

Forum Conveniens

- **Article 226 - prior to the 42nd Constitutional Amendment :**
 - Respondent must be located within the Territory of the High Court
 - Plea of cause of action & convenience of the parties to determine jurisdiction not accepted – **Lt Col Khajoor Singh v. UOI AIR 1961 SC 532**
- **Post 42nd Amendment- (insertion of clause (2) to Article 226)**
 - Doctrine of Cause of Action determinative of jurisdiction inserted
 - Thus High Court can now take up petitions if **cause of action arises**
 - ❑ ***wholly or in part in its territory***
 - ❑ notwithstanding the seat / residence of government / authority / persons
 - ❑ is not within those territories
- **Aimed at widening the jurisdiction of the High Courts for issuance of writs under Article 226**

Forum Conveniens

- **What is cause of action ?**

- Implies Right to sue
- Material Facts which are imperative for a suitor to allege and prove
- Every fact which would be necessary for the suitor to prove, if traversed in order to support his right to a judgment
- These facts should be material, essential and integral to cause of action

- **Other relevant ingredients**

- Jurisdiction assumed basis facts pleaded – no enquiry on its correctness needed
- Part of the Cause action good enough – even if it is miniscule
- Location of the Head office not a basis, unless decision making qua the impugned action takes place there
- Seat of Parliament in Delhi
- Location of Appellate & Original Authority

Forum Conveniens

- **What if cause of action in two States – How to determine which High Court to access**

- *Judex tenetur impertiri judicium summ*

- ☐ Judge must exercise discretion in every case which he is seized of

- Doctrine of Forum Conveniens

- ☐ Even if part of cause of action arises, same not a determinative factor compelling HC to entertain on merits
- ☐ Discretion may be exercised by HC not to assume jurisdiction - invoking doctrine of forum conveniens
- ☐ Blacks' Law dictionary - The court in which action is most brought, considering the best interests and convenience of the parties and witnesses.
- ☐ Applicable only where Court finds it totally inconvenient & other HC to be better equipped to entertain W.P
- ☐ Forum non conveniens not to be stretched so as to interfere with this principle

Forum Conveniens

- Whose Convenience & how to determine ?

- **Kusum Ingots (2004) 6 SCC 254**

- ☐ Convenience of the Litigant – **Dominus Litus**
- ☐ Litigant does not choose- choice is by reason of existence of jurisdiction of that other court existence of more appropriate forum

- **Sterling Agro 2011 SCC Online Del 3162** – Larger Bench DHC

- ☐ Convenience of all the parties
- ☐ Convenience would include
 - ❖ existence of more appropriate forum
 - ❖ expenses involved & law relating to lis
 - ❖ verification of facts necessary for just adjudication of dispute
 - ❖ Balance of convenience

Forum Conveniens

- Whose Convivence & how to determine ?

- **Vishnu Security Service LPA 960 of 2011 (Delhi HC)**

- ❑ Convenience of the Litigant – Dominus Litus – Reiterates Kusum Ingots
 - ❑ Only in extreme case where it finds that it is totally inconvenient for a court to entertain the writ and other High court may be better equipped to deal with such a case, then the doctrine of forum conveniens has to be applied



Doctrine of Approbate & Reprobate

Acquiescence, Estoppel & doctrine of Approbate & Reprobate



CHAMBERS OF SUJIT GHOSH

- There is no estoppel in law - **Metlex 2004 (165) ELT 129 SC**
- But an assessee cannot approbate and reprobate i.e. change its stand when
 - Having availed a benefit under a scheme, assessee cannot change its option even at a later stage and seek to avail another scheme - **Indian Rayon 2008 (229) ELT 3 SC**
 - Contention that an article does not fall in a given classification rejected when in an earlier proceeding party has accepted such classification - **Tractors and Farm Equipment Ltd 1997 (91) ELT 254 SC**
- Bias, if waived/acquiescence – Can't be raised as a defense at a later stage – **Indore Development Authority AIR 2019 SC 5482 , P M Kurien AIR 1970 Ker 142**

Acquiescence, Estoppel & doctrine of Approbate & Reprobate



CHAMBERS OF SUJIT GHOSH

- However, there can be no waiver of Constitutional Right of mandatory character
 - Doctrine of Election/ approbate – reprobate cannot take away statutory right or constitutional right - **PR Deshpande 1995 Supp 2 SCC 539**
 - Pre-consent from an assessee does not clothe authority with powers which the statute does not provide for- **Alstom 2014 (301) ELT 446 Guj.**
 - Fundamental rights cannot be waived before SC, even if the advocate gave a statement in the HC that certain grounds wont be pressed - **Olga Tellis 1985 3 SCC 545**
- Decree passed by a court without jurisdiction is void – cannot be cured by consent or waiver by the Party – **Chiranjilal (1993) 3 SCC 507**
- An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel – Court declines to interfere for the assistance of persons who seeks its aid to relieve them against express statutory provisions – **Ramadas Shenoy (1974) 2 SCC 506**



CHAMBERS OF SUJIT GHOSH

THANK YOU

Sujit@lawchambersofsg.com

CHAMBERS

D 71, First Floor, Saket, New Delhi -
110017

Disclaimer: Pursuant to the Bar Council of India rules, we are not permitted to solicit work and advertise. You, the reader acknowledges that there has been no advertisement, personal communication, solicitation, invitation or inducement of any sort whatsoever from us or any of our members to solicit any work herein. The information provided is solely available at your request and is for informational purposes only, it should not be interpreted as soliciting or advisement. We are not liable for any consequence of any action taken by the reader relying on material/ information provided herein. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice. Any information obtained or materials used from this presentation is completely at the reader's volition and any transmission, receipt or use of the contents of this presentation would not create any lawyer-client relationship.

© 2020 Chambers of Sujit Ghosh. All rights reserved.