



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 25052 OF 2024 (GM-TEN)

BETWEEN:

MYSORE SALES INTERNATIONAL LIMITED
NO. 36, MSIL HOUSE,
CUNNINGHAM ROAD,
BANGALORE - 560 052
REPRESENTED BY ITS MANAGING DIRECTOR
REGISTERED UNDER COMPANIES ACT, 1956.

...PETITIONER

(BY SRI. SHASHI KIRAN SHETTY, SR. COUNSEL FOR
SRI. ADITYA VIKRAM BHAT, ADVOCATE;
KUM. RACHEL RAJU ALICE, ADVOCATE AND
KUM. RACHEL THOMAS, ADVOCATE)

AND:



1. THE DIRECTOR
DEPARTMENT OF MINES AND GEOLOGY
GOVERNMENT OF KARNATAKA
KHANIJA BHAVANA,
RACE COURSE ROAD,
BENGALURU - 560 001.
2. ADANIKRISHNAPATNAM PORT LTD.,
POST BAG NO. 1, MUTHUKURU MANDAL
SPSR, NELLORE DIST. - 524 344
ANDRA PRADESH, INDIA
REPRESENTED BY ITS
CHIEF EXECUTIVE OFFICER,



REGISTERED UNDER COMPANIES ACT, 1956.

...RESPONDENTS

(BY SMT. SARITHA KULKARNI, AGA FOR R1;
SRI. SHIVAPRASAD SHANTANGOUDAR, ADVOCATE
FOR R2)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE AUCTION NOTICE DTD. 06.08.2024 IN LETTER NO. AKPL/MARKETING / MYSORE SALES /50/24-25 ISSUED BY THE R2 WHICH IS AT ANNEX-P AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. Petitioner is before this Court seeking for the following reliefs:

- a. *A Writ or Order in the nature of certiorari quashing the auction notice dated 06.08.2024 in letter No.AKPL/Marketing/Mysore Sales/50/2024-25 issued by the Respondent No.2 which is at Annexure-P.*
- b. *Issue a Writ or Order in the nature of mandamus directing the respondents to permit to the petitioner company to auction the sand on "as is where is basis" and further restrain the Respondent No.2 continuing auction process.*
- c. *And grant any other order or relief which the Hon'ble Court deems fit to grant in the facts and circumstances of the case by allowing the writ petition as it is necessary in the interest of equity and justice.*



2. The brief facts leading to the filing of the present petition are as follows:

2.1. The petitioner, Mysore Sales International Limited (MSIL), is a Government of Karnataka undertaking incorporated in the year 1966 and engaged in the business of trading in various products and provision of allied services. Respondent No.2, Adani Krishnapatnam Port Limited (hereinafter referred to as "Krishnapatnam Port"), is the concessionaire presently entrusted with the operation and management of Krishnapatnam Port situated in the State of Andhra Pradesh.

2.2. It is the case of the petitioner that during the year 2016, there was an acute scarcity of sand in the State of Karnataka, resulting in substantial demand for construction-grade sand. In order to address the shortage and pursuant to the directions issued by the Government of Karnataka, the petitioner decided to procure natural river sand from overseas sources. For the said purpose, the petitioner resolved to invite global tenders for the import of natural river sand and accordingly



issued a global e-tender notification on 24.05.2017.

2.3. In response to the said tender notification, M/s. Poseidon FZE, United Arab Emirates (hereinafter referred to as "Poseidon"), submitted its bid and, having been found qualified in accordance with the tender conditions, was declared the successful bidder. Consequent thereto, the petitioner and Poseidon entered into an agreement dated 17.07.2017 for supply of 3,00,000 metric tonnes of natural river sand over a period of five years in a phased and staggered manner. Pursuant thereto, certain quantities of sand were supplied by Poseidon, in respect of which payments are stated to have been made by the petitioner.

2.4. Poseidon, in turn, entered into arrangements with M/s. Vishwasamudra Shipment Services Private Limited, Nellore, Andhra Pradesh (hereinafter referred to as "Vishwasamudra"), for handling and logistics operations in relation to the imported sand. As per the arrangements entered into between them, Vishwasamudra



was entrusted with various activities including coordination with Krishnapatnam Port, stevedoring operations, customs documentation, transportation, unloading, loading, bagging, weighbridge operations and other ancillary services connected with handling of the imported sand. It is also stated that Krishnapatnam Port had entered into an agreement dated 19.06.2017 with Vishwasamudra appointing it as the handling agent for the purpose of availing port-related services.

- 2.5. The dispute arose when Krishnapatnam Port alleged that substantial amounts payable by Vishwasamudra towards port charges and other dues had remained unpaid. On account thereof, Krishnapatnam Port asserted a right over the cargo lying within the port premises and initiated steps to auction the imported sand stated to be lying in its custody. Contending that it is the owner of the imported sand and that Krishnapatnam Port has no authority in law to auction the same for recovery of alleged dues payable by Vishwasamudra, the petitioner has approached this Court challenging the



action initiated by Krishnapatnam Port and seeking appropriate reliefs.

3. A preliminary objection as regards the territorial jurisdiction of this Court having been raised, Sri Shashi Kiran Shetty, learned Senior Counsel appearing for the petitioner, addressed submissions on the issue of jurisdiction and contended as follows:

- 3.1. Learned Senior Counsel submits that the petitioner is a Government of Karnataka undertaking having its registered office at Bengaluru. The tender process was initiated by the petitioner from Bengaluru, the bid submitted by Poseidon was accepted by the petitioner at Bengaluru, and the agreement dated 17.07.2017 was executed between the petitioner and Poseidon at Bengaluru. He submits that the contractual relationship between the petitioner and Poseidon was thus concluded within the territorial limits of this Court.

- 3.2. He further submits that the imported sand was procured exclusively for supply and sale within the State of Karnataka and that the ultimate commercial purpose of the transaction was to



cater to the demand for sand within the State. According to him, the obligations undertaken by Poseidon under the agreement were intended to culminate in the supply of sand to the petitioner for distribution in Karnataka, and therefore, a substantial part of the cause of action has arisen within the territorial jurisdiction of this Court.

3.3. Learned Senior Counsel additionally submits that river sand constitutes a minor mineral within the meaning of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. He contends that the import, storage, transportation and sale of such sand within the State of Karnataka are regulated by the authorities functioning under the said enactment and the Rules framed thereunder. According to him, respondent No.1 exercises statutory control over the regulation and distribution of river sand within the State and is consequently concerned with the subject matter of the present proceedings.

3.4. It is his submission that the petitioner has not committed any violation of the terms of the



tender, the agreement entered into with Poseidon, or any statutory provision governing the import and sale of sand. The dispute, according to him, is essentially between Krishnapatnam Port and Vishwasamudra regarding alleged unpaid port and handling charges. The petitioner, being neither a party to such dispute nor liable for the alleged dues, cannot be deprived of its ownership rights over the imported sand.

- 3.5. Learned Senior Counsel therefore contends that the proposed auction of the sand by the respondents is wholly without authority of law. He submits that the respondents cannot seek to recover any alleged dues payable by Vishwasamudra by proceeding against goods belonging to the petitioner. According to him, the proposed auction directly affects the proprietary and commercial rights of the petitioner within the State of Karnataka and consequently furnishes a part of the cause of action within the territorial jurisdiction of this Court.



- 3.6. All the agreements which were entered into by the petitioner was with Poseidon in Bangalore. The services were to be rendered in Bangalore. River sand being a minor mineral is covered under the Mines and Minerals (Development and Regulation) Act of 1957, and therefore, it is respondent No.1 who would have control over the actions taken on the riversand. The action taken by respondent No.1 to auction the river sand is bad in law. There is no violation and/or default committed by the petitioner, and as such, the respondents could not bring the said sand for auction.
- 3.7. As regards the jurisdiction, he relies upon the decision of the Hon'ble Apex Court in the case of **Nawal Kishore Sharma Vs. Union of India and Others**¹ more particularly para '17' thereof, which is reproduced hereunder for easy reference:

"17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment.

¹ (2014) 9 SCC 329



Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscle disease). As a result, the Shipping Department of the Government of India issued an Order on 12-4-2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the district of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, the appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing problem which forced him to stay in his native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation."

- 3.8. By relying on the decision of **Nawal Kishore Sharma** supra, his submission is that the Hon'ble Apex Court held that where



communications giving rise to a grievance are received by a person within the territorial jurisdiction of a High Court and the consequences of the impugned action are suffered therein, a part of the cause of action can be said to have arisen within the jurisdiction of such High Court.

3.9. Referring to **Nawal Kishore Sharma**, learned Senior Counsel submits that the Hon'ble Apex Court has recognised that the expression "cause of action" occurring in Article 226(2) of the Constitution of India is to receive a broad and pragmatic interpretation. According to him, even where the impugned action may have originated outside the territorial jurisdiction of a High Court, if a part of the bundle of facts giving rise to the lis has arisen within such jurisdiction, the High Court would be competent to entertain the proceedings.

3.10. By relying on the aforesaid decision, learned Senior Counsel submits that in the present case several communications, correspondences and contractual documents have emanated from and have been received at Bengaluru,



where the petitioner is situated. The tender process was initiated by the petitioner from Bengaluru, the agreement with Poseidon was executed at Bengaluru, payments were processed from Bengaluru, and communications relating to the procurement and supply of sand were exchanged with the petitioner at Bengaluru. He submits that the consequences of the impugned action are also directly felt by the petitioner at Bengaluru, where the petitioner carries on its business and where its commercial and proprietary interests are affected.

3.11. Learned Senior Counsel therefore contends that, applying the principles laid down in **Nawal Kishore Sharma**, both the place from which communications emanate and the place where such communications are received constitute material facts giving rise to the cause of action. Since several such events have occurred within the State of Karnataka, a substantial and integral part of the cause of action has arisen within the territorial jurisdiction of this Court.



3.12. He therefore submits that merely because the sand is presently lying within the precincts of Krishnapatnam Port in the State of Andhra Pradesh or because the proposed auction is sought to be conducted from there, it cannot be said that this Court lacks territorial jurisdiction. According to him, the test under Article 226(2) is not where the entirety of the cause of action arose, but whether a part of the cause of action has arisen within the territorial jurisdiction of this Court. Since several material, essential and integral facts constituting the cause of action have arisen within the State of Karnataka, this Court would have jurisdiction to entertain and adjudicate the present petition.

3.13. In the present matter, he submitted that all contracts and correspondences with Poseidon have been issued by the petitioner from Bangalore. The responses have been received in Bangalore, and therefore, this Court has jurisdiction.

3.14. His further submission is that even the correspondence with Krishnapatnam Port has



also been sent and received in Bangalore.
Therefore, this Court would have jurisdiction.

3.15. He also relies upon the decision of the Hon'ble Apex Court in the case of **Navinchandran N. Majithia Vs. State of Maharashtra and others²**, more particularly paragraph '27' thereof, which is reproduced hereunder for easy reference:

"27. Tested in the light of the principles laid down in the cases noted above the judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition, on the ground of lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurise the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration

² (2000)7 SCC 640



in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High Court."

3.16. By relying on **Navinchandran N. Majithia's** case, his submission is that the Hon'ble Apex Court held that while considering the question of territorial jurisdiction under Article 226 of the Constitution of India, the Court is required to examine the entirety of the facts pleaded and the nature of the relief sought. The Hon'ble Apex Court observed that the place where the impugned proceedings originate cannot be the sole criterion for determining jurisdiction and that if a part of the cause of action has arisen within the territorial jurisdiction of a High Court, such High Court would be competent to entertain the proceedings.

3.17. By relying on the aforesaid decision, learned Senior Counsel submits that the relief sought in the writ petition is also a relevant factor while determining the question of territorial jurisdiction. According to him, though the relief sought cannot by itself confer jurisdiction, it is nevertheless one of the relevant circumstances



which has to be considered in conjunction with the other facts constituting the cause of action.

3.18. Learned Senior Counsel submits that in the present case the principal relief sought by the petitioner is for the issuance of a writ of certiorari to quash the auction notice issued by Krishnapatnam Port. He submits that the said auction notice was received by the petitioner at Bengaluru and the consequences flowing therefrom directly affect the petitioner at Bengaluru, where the petitioner carries on its business and where the contractual arrangements giving rise to the transaction were entered into.

3.19. He further submits that the proposed auction is not an isolated action disconnected from the petitioner. The auction relates to imported river sand procured pursuant to the global tender floated by the petitioner at Bengaluru and the agreement entered into between the petitioner and Poseidon at Bengaluru. The rights which the petitioner seeks to protect in the present proceedings arise out of and are intrinsically connected with the contractual relationship



which originated within the territorial jurisdiction of this Court.

3.20. Learned Senior Counsel therefore contends that merely because the sand is physically located at Krishnapatnam Port or because the impugned auction notice has been issued from Andhra Pradesh, it cannot be said that no part of the cause of action has arisen within the jurisdiction of this Court. According to him, the tender process, execution of the agreement, commercial dealings, exchange of communications, receipt of the auction notice and the impact of the impugned action upon the petitioner are all facts which constitute integral parts of the cause of action and have arisen within the State of Karnataka.

3.21. Placing reliance on the principles enunciated in **Navinchandra N. Majithia**, learned Senior Counsel submits that when the entirety of the facts pleaded in the writ petition are considered, it cannot be said that no part of the cause of action has arisen within the territorial jurisdiction of this Court. He therefore submits that this Court ought to



exercise jurisdiction under Article 226 of the Constitution of India and adjudicate the dispute on merits.

3.22. He also relies on Clause 2 of Article 226 of the Constitution of India, which is reproduced hereunder for easy reference:

"(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."

3.23. Learned Senior Counsel further places reliance on Clause (2) of Article 226 of the Constitution of India, which provides that the power of a High Court to issue directions, orders or writs may be exercised where the cause of action, wholly or in part, arises within its territorial jurisdiction, notwithstanding that the seat of the Government, authority or person against whom such relief is sought is situated outside such territorial limits.

3.24. Referring to the aforesaid constitutional provision, learned Senior Counsel submits that



Article 226(2) was specifically incorporated to expand the territorial jurisdiction of High Courts beyond the traditional concept of the situs of the authority against whom relief is sought. According to him, the emphasis under Article 226(2) is not on the location of the respondent but on the place where the cause of action, wholly or in part, has arisen.

3.25. Learned Senior Counsel submits that the constitutional mandate is clear that even where the seat of a Government, authority or person is situated outside the territorial jurisdiction of a High Court, the High Court would nevertheless possess jurisdiction if any integral, material or substantial part of the cause of action arises within its territorial limits. He submits that the decisions of the Hon'ble Apex Court in **Nawal Kishore Sharma and Navinchandra N. Majithia** are a reiteration of the aforesaid constitutional principle.

3.26. Learned Senior Counsel further submits that the mere fact that Krishnapatnam Port is situated in the State of Andhra Pradesh cannot



be determinative of the issue of jurisdiction. Once a part of the cause of action has arisen within the territorial jurisdiction of this Court, Article 226(2) expressly empowers this Court to issue appropriate directions, orders or writs even against a person or authority located beyond its territorial limits.

3.27. He additionally contends that Krishnapatnam Port, though a private entity, is engaged in the operation and management of a major public port under a concession granted by the competent governmental authority and is discharging functions having a significant public character. According to him, insofar as the impugned action concerns the exercise of powers relatable to port operations, storage, handling and disposal of cargo, Krishnapatnam Port performs functions imbued with public duties and is therefore amenable to the writ jurisdiction of this Court.

3.28. On the aforesaid basis, learned Senior Counsel submits that this Court possesses territorial jurisdiction under Article 226(2) of the Constitution of India and is fully competent to



issue appropriate directions against Krishnapatnam Port notwithstanding that its registered office and port operations are situated outside the territorial jurisdiction of this Court.

4. Sri Shivaprasad Shantangoudar, learned counsel appearing for respondent No.2, opposing the petition, submits as follows:

- 4.1. Learned counsel submits that there is no contractual relationship whatsoever between the petitioner and respondent No.2- Krishnapatnam Port. According to him, Krishnapatnam Port has neither entered into any agreement with the petitioner nor undertaken any obligation in favour of the petitioner. The contractual arrangements relied upon by the petitioner are between the petitioner and Poseidon on the one hand and between Poseidon and Vishwasamudra on the other. Krishnapatnam Port is not a party to either of those arrangements.

- 4.2. Learned counsel submits that the only agreement entered into by Krishnapatnam Port is with Vishwasamudra, which had been



appointed as the handling agent for the purpose of availing port-related services. In terms of the said arrangement, Krishnapatnam Port rendered various services including berthing, cargo handling, storage, stevedoring and other allied port services in relation to the imported sand.

4.3. It is his submission that substantial amounts became due and payable to Krishnapatnam Port towards charges incurred for the services rendered. Despite repeated demands, Vishwasamudra failed and neglected to clear the outstanding dues. Consequently, in exercise of its rights available under the applicable contractual terms, port regulations and governing law, Krishnapatnam Port initiated proceedings for recovery of the amounts due to it.

4.4. Learned counsel submits that the impugned auction proceedings have not been initiated arbitrarily or without authority of law. The same have been resorted to only after the dues remained unpaid for a considerable period of time and after affording sufficient opportunity



to the concerned parties to clear the outstanding amounts.

4.5. He further submits that the grievance projected by the petitioner is misconceived inasmuch as Krishnapatnam Port has no independent dispute with the petitioner. The only concern of Krishnapatnam Port is recovery of the legitimate charges payable for the services rendered by it. According to him, if the outstanding dues are cleared, whether by Vishwasamudra, Poseidon or even by the petitioner claiming ownership over the cargo, there would be no necessity for Krishnapatnam Port to proceed further with the auction.

4.6. Learned counsel therefore submits that even as on date, if the petitioner is willing to discharge the outstanding dues payable in relation to the cargo lying within the port premises, respondent No.2 would not proceed with the auction of the sand. According to him, the auction proceedings have been initiated only as a measure for recovery of the amounts lawfully due and payable to Krishnapatnam Port and



not with any intention of depriving the petitioner of its property.

4.7. On the aforesaid basis, learned counsel submits that the petitioner cannot seek to restrain respondent No.2 from recovering its legitimate dues while simultaneously refusing to discharge the liabilities attached to the cargo for which extensive port services have been rendered. He therefore submits that the petition is liable to be dismissed.

4.8. There is no contract or the like that has been entered into by Krishnapatnam Port with the petitioner. Krishnapatnam Port has entered into an agreement only with Vishwasamudram for port services. The payments have not been made by Vishwasamudram, resulting in Krishnapatnam Port initiating auction proceedings. If the petitioner had made payment of the amounts, which the petitioner can still make payment of to the respondents, the Krishnapatnam Port will not auction any of the sand available with Krishnapatnam.

4.9. Insofar as the jurisdictional aspect is concerned, he relies upon a decision in the



case of **Union of India and Others Vs. Adani Exports Ltd. and Another³**, more particularly para '17' and '18' thereof, which are reproduced hereunder for easy reference:

17. *It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.*

18. *As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has*

³ (2002) 1 SCC 567



no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denial of credit in the passbook having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants.

4.10. By relying on the decision of **Adani Export Ltd.**, he submits that the Hon'ble Apex Court held that every fact pleaded in a writ petition does not automatically constitute a part of the cause of action. Only those facts which have a direct nexus and relevance to the lis involved in the proceedings can be taken into consideration for determining territorial jurisdiction. Facts which are incidental or unconnected with the dispute do not confer jurisdiction merely because they have occurred within the territorial limits of a particular High Court.

4.11. Referring to the aforesaid decision, learned counsel submits that the test is not whether certain facts have arisen within the jurisdiction



of the Court, but whether such facts form an integral part of the cause of action giving rise to the dispute. According to him, the Court is required to identify the real controversy between the parties and ascertain whether the facts relied upon have a direct bearing on the adjudication of that controversy.

4.12. Learned counsel submits that the dispute in the present case is a narrow one, namely, whether Krishnapatnam Port is entitled to retain the cargo and proceed with the auction thereof for recovery of the dues allegedly payable in relation to the port services rendered. The lis, according to him, arises entirely out of the relationship between Krishnapatnam Port and Vishwasamudra and the rights claimed by Krishnapatnam Port in respect of the cargo lying within the port premises at Krishnapatnam.

4.13. He contends that the facts relied upon by the petitioner, namely, the issuance of the global tender at Bengaluru, execution of the agreement between the petitioner and Poseidon at Bengaluru, processing of payments



from Bengaluru and the internal commercial arrangements of the petitioner, have no nexus whatsoever with the impugned action initiated by Krishnapatnam Port. According to him, those facts may explain how the petitioner claims ownership over the cargo, but they do not constitute facts giving rise to the dispute regarding the legality of the auction proceedings.

4.14. Learned counsel further submits that Krishnapatnam Port is not a party to the agreement between the petitioner and Poseidon. Nor is Krishnapatnam Port concerned with the contractual arrangements entered into between Poseidon and the petitioner. The rights asserted by Krishnapatnam Port are founded upon the services rendered by it in relation to the cargo and the alleged non-payment of the charges payable therefor. Thus, the contractual dealings relied upon by the petitioner have no direct nexus with the impugned auction proceedings.

4.15. Learned counsel submits that the correspondence exchanged between the



petitioner and Poseidon or between the petitioner and other entities at Bengaluru cannot constitute a part of the cause of action insofar as the present *lis* is concerned. Such correspondence does not relate to the exercise of the alleged right by Krishnapatnam Port to retain and auction the cargo. Therefore, the same cannot be relied upon for the purpose of conferring territorial jurisdiction on this Court.

4.16. He further contends that all material events relating to the impugned action have occurred within the State of Andhra Pradesh. The cargo is lying at Krishnapatnam Port in Andhra Pradesh; the services giving rise to the alleged dues were rendered at Krishnapatnam Port; the alleged default occurred there; the decision to proceed against the cargo was taken there; and the proposed auction is also sought to be conducted there. According to him, these are the only facts which have a direct nexus with the present *lis*.

4.17. Learned counsel therefore submits that the principles laid down in Adani Exports Ltd. squarely apply to the present case. Merely



because the petitioner carries on business at Bengaluru or because certain antecedent contractual transactions took place at Bengaluru would not confer territorial jurisdiction upon this Court when those facts have no direct bearing on the dispute sought to be adjudicated. He therefore submits that no part of the cause of action relevant to the present lis has arisen within the territorial jurisdiction of this Court and, consequently, the writ petition is liable to be rejected on the ground of lack of territorial jurisdiction.

4.18. He relies on the decision of the Hon'ble Apex Court in the case of **Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others⁴**, more particularly para '12' thereof which is reproduced hereunder for easy reference:

"12. 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

⁴ (1994) 4 SCC 711



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 v. Vinay Engineering Enterprises (P) Ltd. [(1994) 4 SCC 710] , this Court observed:

"We are surprised, 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."

- 4.19. By relying on **Utpal Kumar Basu's case**, his submission is that the Hon'ble Apex Court emphatically reiterated that territorial jurisdiction under Article 226 of the Constitution of India cannot be assumed merely because the petitioner resides, carries on business or maintains a registered office within the territorial limits of a particular High Court. The Hon'ble Apex Court cautioned against entertaining proceedings on the basis of facts which are trivial, incidental or unconnected with the real dispute and



emphasised that only those facts constituting an integral part of the cause of action can confer jurisdiction.

4.20. Referring to **Utpal Kumar Basu**, learned counsel submits that the Hon'ble Apex Court has consistently held that the question of territorial jurisdiction must be determined on the basis of the facts constituting the cause of action and not on the convenience of the litigant or the place where the litigant carries on business. According to him, the situs of the petitioner or the place where the petitioner may suffer the consequences of an impugned action cannot, by itself, furnish a cause of action unless such facts have a direct nexus with the dispute involved.

4.21. Learned counsel submits that the petitioner has sought to place considerable reliance on the fact that it is situated at Bengaluru, that the tender process was initiated from Bengaluru, and that agreements were entered into from Bengaluru. According to him, these facts are wholly irrelevant for determining the legality of the action taken by Krishnapatnam Port and



cannot therefore be treated as facts constituting the cause of action for the present proceedings.

4.22. It is his submission that the impugned action which is under challenge is the decision of Krishnapatnam Port to proceed against the cargo lying within its custody and to bring the same for auction on account of the alleged non-payment of port-related dues. The entirety of such action has arisen within the State of Andhra Pradesh. The cargo is situated at Krishnapatnam Port; the services giving rise to the alleged dues were rendered there; the default is alleged to have occurred there; the decision to exercise the right of retention and sale was taken there; and the proposed auction is also sought to be conducted there.

4.23. Learned counsel therefore submits that the mere fact that the petitioner carries on business in Bengaluru or that certain antecedent transactions took place in Bengaluru would not confer territorial jurisdiction upon this Court. According to him, acceptance of such a contention would be



contrary to the principles laid down in **Utpal Kumar Basu, Adani Exports Ltd.** and other decisions of the Hon'ble Apex Court, which have repeatedly held that jurisdiction cannot be founded upon facts having no real nexus with the *lis*.

4.24. He further submits that the petitioner cannot create jurisdiction by relying upon facts which merely explain the background of the transaction but do not form part of the cause of action relating to the impugned auction proceedings. The focus of the inquiry, according to him, must be on the legality of the action taken by Krishnapatnam Port and not on the antecedent contractual arrangements entered into by the petitioner with third parties.

4.25. On the aforesaid basis, learned counsel contends that no part of the cause of action relevant to the present dispute has arisen within the territorial jurisdiction of this Court. He therefore submits that this Court ought not to entertain the petition and the petitioner, if aggrieved by the impugned auction



proceedings, would have to seek appropriate relief before the Court having territorial jurisdiction over Krishnapatnam Port and the subject matter of the dispute.

5. Heard Sri Shashi Kiran Shetty, learned Senior Counsel appearing for the petitioner, Sri. Shivaprasad Shanthangoudar, learned Counsel appearing for respondent No.2 and perused papers.
6. In view of the preliminary objection raised by respondent No.2, the first and foremost question which arises for consideration is:

"Whether this Court has territorial jurisdiction under Article 226(2) of the Constitution of India to entertain and adjudicate the present writ petition?"

7. Since the issue goes to the very root of the matter, it is necessary to examine the same before considering the rival contentions on merits. If this Court lacks territorial jurisdiction, any adjudication on the merits of the controversy would be impermissible.
8. Article 226(2) of the Constitution of India empowers a High Court to exercise jurisdiction where the cause of action, wholly or in part, arises within its territorial



jurisdiction notwithstanding that the seat of the Government, authority or person against whom relief is sought may be situated outside such territorial limits. The expression "cause of action" occurring in Article 226(2) has received extensive judicial interpretation. It is now well settled that the expression refers to those material, essential and integral facts which a petitioner must establish in order to obtain the relief sought.

9. Equally well settled is the principle that every fact pleaded in a writ petition does not ipso facto constitute a part of the cause of action. Facts which are incidental, ancillary, consequential or merely explanatory in nature do not confer territorial jurisdiction. The Court is required to identify the real dispute between the parties and thereafter determine whether the facts relied upon by the petitioner have a direct nexus with the adjudication of that dispute. It is only those facts which constitute an integral part of the lis that are relevant for determining territorial jurisdiction.
10. The decisions of the Hon'ble Apex Court in **Adani Exports Ltd., Utpal Kumar Basu, Navinchandra N. Majithia and Nawal Kishore Sharma** are all



founded upon the aforesaid principle. The apparent divergence in outcomes in those decisions is attributable not to any difference in the governing legal principle but to the differing factual matrices involved therein. Thus, the present matter must be examined by identifying the true nature of the dispute and the facts which are material to its resolution.

11. The petitioner seeks to challenge the action of respondent No.2-Krishnapatnam Port in proposing to auction certain quantities of imported natural river sand lying within the precincts of Krishnapatnam Port. The petitioner contends that it is the owner of the said sand and that respondent No.2 lacks authority to proceed with the auction. Respondent No.2, on the other hand, asserts a right to proceed against the cargo on account of unpaid charges allegedly due in relation to services rendered by the port.
12. Thus, the controversy before this Court is not concerned with the validity of the global tender floated by the petitioner, the validity of the agreement entered into between the petitioner and Poseidon, the import of sand into India, or the



commercial arrangements entered into by the petitioner with its suppliers. The lis before this Court is confined to the legality and validity of the action initiated by Krishnapatnam Port in relation to the cargo lying within its custody.

13. Once the controversy is so identified, it becomes necessary to examine the facts having a direct nexus with such controversy. The material facts relevant to the present dispute are:

- 13.1. the execution of the agreement between Krishnapatnam Port and Vishwasamudra;

- 13.2. the rendering of port services by Krishnapatnam Port;

- 13.3. the accrual of the alleged dues payable in relation to such services;

- 13.4. the storage of the cargo within the port premises;

- 13.5. the assertion of a right of retention or lien over the cargo;

- 13.6. the decision to initiate auction proceedings;
and



13.7. the proposed conduct of the auction.

14. Significantly, every one of the aforesaid events has occurred at Krishnapatnam Port situated in Nellore District of the State of Andhra Pradesh. The agreement relied upon by respondent No.2 was entered into there. The services were rendered there. The alleged default occurred there. The cargo is lying there. The impugned action was taken there. The auction is proposed to be conducted there.

15. On the contrary, the facts relied upon by the petitioner are principally the following:

15.1. the petitioner is situated at Bengaluru;

15.2. the global tender was floated from Bengaluru;

15.3. the agreement with Poseidon was executed at Bengaluru;

15.4. payments under the agreement were processed from Bengaluru;

15.5. correspondence was exchanged from Bengaluru; and

15.6. the petitioner claims ownership over the cargo.



16. While these facts may establish the petitioner's commercial interest in the cargo and explain the background leading to the import of the sand, they do not constitute facts giving rise to the present dispute. The present dispute does not concern the contractual rights and obligations inter se between the petitioner and Poseidon. Nor does it concern the tender process initiated by the petitioner. Those transactions are merely antecedent events forming part of the factual backdrop.
17. It is trite that antecedent facts cannot be confused with facts constituting the cause of action. If every antecedent transaction were to be treated as giving rise to a part of the cause of action, Article 226(2) would become limitless in its application and a litigant would be able to invoke the jurisdiction of any High Court by merely pointing to some earlier transaction having a remote connection with the dispute. Such an interpretation has been repeatedly rejected by the Hon'ble Apex Court.
18. The decision in **Union of India v. Adani Exports Ltd.** is directly applicable in this regard. The Hon'ble Apex Court specifically held that facts relating to receipt of orders, dispatch of documents,



maintenance of accounts and carrying on of business at a particular place would not confer territorial jurisdiction unless such facts have a direct nexus with the dispute under consideration. The Court emphasised that only those facts having a bearing on the lis are relevant.

19. Applying the said principle, the tender floated by the petitioner from Bengaluru, the agreement executed with Poseidon at Bengaluru and the commercial arrangements entered into by the petitioner may constitute relevant facts for some other dispute. However, those facts do not have a direct bearing upon the legality of the auction proposed by Krishnapatnam Port. The dispute relating to the auction can be adjudicated without examining the validity of the tender process or the contractual relationship between the petitioner and Poseidon.
20. The submission of the petitioner that certain communications were received at Bengaluru is also insufficient to confer jurisdiction. Mere receipt of correspondence does not by itself constitute a part of the cause of action unless the communication itself forms an integral component of the dispute. What is relevant is not the place where the communication is



received but whether the communication constitutes a material fact necessary for adjudication of the controversy.

21. The reliance placed on **Nawal Kishore Sharma** is therefore misplaced. In that case, the very claim for disability compensation arose from the petitioner's medical condition and the representations made by him from Bihar. The rejection of his claim was communicated to him in Bihar and the consequences of such rejection were directly suffered there. Those facts constituted an integral part of the cause of action itself. It was in that context that the Hon'ble Apex Court held that a part of the cause of action had arisen within the territorial jurisdiction of the Patna High Court.
22. In the present case, the receipt of communications by the petitioner at Bengaluru does not form the foundation of the dispute. The dispute would remain exactly the same irrespective of where such communications were received. Hence, the ratio of Nawal Kishore Sharma does not assist the petitioner.
23. Similarly, the decision in **Navinchandra N. Majithia** is distinguishable. In that case, the Hon'ble Apex Court considered the entire factual matrix and found



that material parts of the cause of action had arisen within the jurisdiction of the Bombay High Court. Furthermore, one of the reliefs sought was transfer of investigation to authorities situated within Maharashtra. Thus, the facts constituting the cause of action extended beyond the mere place where the complaint had been lodged.

24. In the present case, no part of the impugned action has occurred within the State of Karnataka. The relief sought is directed against an auction proposed to be conducted in Andhra Pradesh in relation to goods situated in Andhra Pradesh by a port situated in Andhra Pradesh pursuant to rights claimed under agreements executed in Andhra Pradesh. The factual foundation present in **Navinchandra N. Majithia** is therefore wholly absent.
25. The principles laid down in **Oil and Natural Gas Commission v. Utpal Kumar Basu** are, in the considered opinion of this Court, most apposite to the facts of the present case. The Hon'ble Apex Court emphatically cautioned against the tendency of invoking jurisdiction merely because the petitioner carries on business or maintains its office within the territorial jurisdiction of a particular High Court. The



Court observed that jurisdiction cannot be conferred by relying upon facts which are trivial, incidental or unconnected with the real dispute.

26. The observations of the Hon'ble Apex Court in **Utpal Kumar Basu** assume particular significance in the present case. The petitioner seeks to invoke the jurisdiction of this Court primarily because it is located in Bengaluru and because the antecedent commercial transactions originated from Bengaluru. However, the impugned action is entirely disconnected from those transactions. The dispute concerns the exercise of rights claimed by Krishnapatnam Port in respect of cargo lying within its premises in Andhra Pradesh.
27. The reference made in **Utpal Kumar Basu** to the decision in **Aligarh Muslim University v. Vinay Engineering Enterprises (P) Ltd.** is equally instructive. There also, notwithstanding the location of the petitioner within the territorial jurisdiction of the Calcutta High Court, the Hon'ble Apex Court held that the Calcutta High Court lacked jurisdiction since all material events had occurred elsewhere. The ratio of the said decision applies with equal force to the present matter.



28. Another aspect which cannot be lost sight of is that respondent No.2 is not a party to the agreement entered into between the petitioner and Poseidon. The rights claimed by respondent No.2 arise independently of that agreement. Thus, the petitioner cannot seek to confer jurisdiction upon this Court by relying upon a contract to which respondent No.2 is not even a party.
29. Even assuming that the petitioner may suffer financial or commercial consequences at Bengaluru if the auction is permitted to proceed, the same would not confer territorial jurisdiction. Consequences flowing from an impugned action cannot be equated with the cause of action itself unless such consequences constitute an integral part of the dispute. If every commercial consequence suffered at the place of business of a litigant were treated as conferring jurisdiction, the limitations imposed by Article 226(2) would stand rendered otiose.
30. Therefore, upon a holistic consideration of the pleadings, the relief sought, the nature of the controversy and the principles laid down by the Hon'ble Apex Court, this Court is of the considered opinion that no integral, material or essential part of



the cause of action has arisen within the territorial jurisdiction of this Court.

31. The facts relied upon by the petitioner are, at best, antecedent or incidental facts which explain the background of the transaction. They do not constitute facts giving rise to the present lis. The material facts constituting the cause of action are all located in Nellore, Andhra Pradesh.
32. This Court therefore holds that it lacks territorial jurisdiction to entertain the present writ petition. In view of the said finding, it is unnecessary to examine the rival contentions on merits. All contentions of the parties are kept open.
33. Accordingly, the writ petition stands **dismissed** as not maintainable for want of territorial jurisdiction. Liberty is reserved to the petitioner to avail such remedies as may be available in law before the competent forum having territorial jurisdiction over the subject matter of the dispute.

SD/-
(SURAJ GOVINDARAJ)
JUDGE