

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5704 OF 2015

SHOBHANA RAJESH NERLIKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. M.V. Ghatge
AGP for Respondents: Mr. G.K.Naik Thigale

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.
Dated: June 12, 2015

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PER COURT :-

1. The learned AGP raises a preliminary objection that territorial jurisdiction to entertain the present writ petition would vest with Principal Seat at Bombay.

2. Mr. Ghatge, learned counsel submits that advertisement is issued on the website which is available throughout the country. The petitioner is questioning the reservation factum of the seat being shown open and non-reserved. The de-reservation of the post is illegal and unconstitutional as such even this court can exercise its territorial jurisdiction. Learned counsel relies on the judgment of the Apex Court in a case of in case of **Alchemist Limited and another Vs. State Bank of Sikkim and others.** reported in AIR 2007 SC 1812.

3. The learned AGP relies on the judgment of the Apex Court in a case of **Oil and Natural Gas Commission Versus Utpal**

Kumar Basu reported in **1994 (4) SCC page 711.**

4. It would appear that the facts of the present case are more akin to the facts of the case of Oil and Natural Gas Commission's case referred supra. The Apex court in a case of Oil and Natural Oil Gas Commission in paragraph no.8 has observed as under :-

“8 . From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages, to EIL, ONGC, etc., at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on 27/1/1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the

execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of 15/1/1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27/1/1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court.”

5. It cannot be said that only because the petitioner has read advertisement on the website at Aurangabad, this court would be in a position to exercise the territorial jurisdiction. The relief is sought against the respondent No.3 which is situated at Mumbai. Post i.e. to be filled in and of which grievance is made is of respondent no.3, which is beyond the territorial jurisdiction of this Court. Matter would be within the realm of the Principal Seat at Bombay.

6. In light of that, writ petition is returned back to the petitioner for presentation before the appropriate court.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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aaa/-