

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.916 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 7333 of 2008**

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Awadhesh Kumar, son of Jagdeo Sah, resident of Village + P.S. Pratapganj,
District- Supoul.

.... Appellant/s

Versus

1. The Union of India through the Director General, Border Road, at Seema Sarak Bhawan, Ring Road, New Delhi 1100010
2. The Secretary, B.R.D.B., third floor, Seema Sarak Bhawan, New Delhi 110001
3. The Commander, G.R.E.F. Centre, Dighi Camp, Pune, 411015

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar Singh, Advocate.

For the Respondent/s : Mr. S.D. Sanjay, Addl.S.G.

Mr. Rajesh Kumar Verma, C.G.C.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 07-09-2016

Re.:I.A. No. 3854 of 2015

The application is for condonation of delay of 281 days in
filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory
Application, we are satisfied that the appellant has shown sufficient
cause to seek condonation of delay of 281 days in filing the present
Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 3854 of 2015 is allowed and delay of 281 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 916 of 2015

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 16th of April, 2014 in C.W.J.C. No. 7333 of 2008 whereby, a writ application claiming appointment to the post of Driver Engine Static under Border Roads Organization remained unsuccessful on account of lack of territorial jurisdiction of this Court.

3. The appellant applied for the post of Driver Engine Static under the Boarder Roads Organization in pursuance of an advertisement (Annexure-1). The Application Forms were to be submitted before the Commander, GREF Centre, Dighi Camp, Pune.

4. The appellant was provisionally selected subject to suitability in the Medical Test. The Medical Test was conducted at GREF Centre, Dighi Camp, Pune but the appellant was not subjected to Medical Test for the reason that the appellant was in possession of Madhyama Certificate from Bihar Sanskrit Shiksha Board, Patna which is not recognized for Government jobs.

5. The learned Single Bench found that no cause of action

has arisen within the territorial jurisdiction of this Court as entire selection process was conducted outside the jurisdiction of this Court. The office of none of the respondents is situated within the territorial jurisdiction of this Court.

6. The argument of learned counsel for the appellant before the learned Single Bench as well as before this Court is that part of cause of action has arisen within the territorial jurisdiction of this Court as letters were received by the appellant within the limits of this Court.

7. We do not find any merit in the argument raised that this Court will have territorial jurisdiction only because the appellant was residing in the State and has been receiving communications from the respondents. The Application Form was submitted in Pune in the State of Maharashtra. The Medical Examination was required to be conducted at that place only. The receipt of some letters is not part of cause of action which would confer jurisdiction in terms of Article 226(2) of the Constitution of India. Reference may be made to *Alchemist Ltd. and another v. State Bank of Sikkim and others*, (2007) 11 SCC 335, wherein the court was examining the question of territorial jurisdiction when the appellant submitted its formal proposal for the strategic business partnership in response to an advertisement inviting offers for strategic partnership. Interested

parties, firms and companies having management expertise were asked to apply with detailed biodata at its Head Office at Gangtok. The High Court dismissed the writ petition on the ground of lack of territorial jurisdiction, which order was affirmed by the Supreme Court. It has been held to the following effect:-

"25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the *lis* between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.

27. In *State of Rajasthan v. Swaika Properties* (1985)3 SCC 217 the Company whose registered office was at Calcutta filed a petition in the High Court of Calcutta challenging the notice issued by the Special Town Planning Officer, Jaipur for acquisition of immovable property situated in Jaipur. Observing that the entire cause of action arose within the territorial jurisdiction of the High Court of Rajasthan at Jaipur Bench, the Supreme Court held that the High Court of Calcutta had no territorial jurisdiction to entertain the writ petition.

28. This Court held that mere service of notice on the petitioner at Calcutta under the Rajasthan Urban Improvement Act, 1959 could not give rise to a cause of action unless such notice was "an integral part of the cause of action".

37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the



appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a *material, essential, or integral* part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a “part of cause of action”, nothing less than that.”

8. In view thereof, mere receipt of some of the letters by the petitioner within the jurisdiction of this court is not material, essential or integral part of the cause of action of appointment with the respondents. We do not find any merit in the present Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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