

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.1897/2016**

% **10th March, 2017**

SHOBHA RAM AHIRWAR Petitioner

Through: Mr. F.S.Chauhan, Advocate.

versus

NTPC LIMITED & ORS. Respondents

Through: Mr. Puneet Taneja and Ms.
Shaheen, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. With respect to this Court lacking territorial jurisdiction, as also being a *forum non-conveniens*, a detailed order was passed on 25.1.2017, which reads as under:-

“1. It is seen that this Court would not have territorial jurisdiction to entertain this writ petition because petitioner’s services were not at Delhi but were at Dadri, Uttar Pradesh. Petitioner was posted from Dadri, Uttar Pradesh to Auraiya, Uttar Pradesh and again back to Dadri, Uttar Pradesh. Even the impugned letters which the petitioner is challenging, dated 6.7.2015 and 30.7.2015, have been issued by the employer/NTPC Limited from its Dadri office. There is also an issue of forum convenience and forum non-convenience and this court is forum non-convenience in view of the Full Bench judgment of this Court in the case of *Sterling Agro Industries Ltd. etc. etc. Vs. Union of India (UOI) and Ors. etc. etc., AIR 2011 (Delhi) 174*, and the relevant paragraph of the same reads as under:-

“33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in *New India Assurance Company Limited* (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate

authority/revisonal authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisonal authority totally ignoring the concept of *forum conveniens*.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of ***Alchemist Ltd.*** (supra)

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*.

(d) The conclusion that where the appellate or revisonal authority is located constitutes the place of *forum conveniens* as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of *forum conveniens* and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in ***Ambica Industries*** (supra) and ***Adani Exports Ltd.*** (supra)

(g) The conclusion of the earlier decision of the Full Bench in ***New India Assurance Company Limited*** (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."

2. Merely because the head office of the employer is in Delhi will not confer this Court's territorial jurisdiction once the entire cause of action is outside Delhi.

3. Though, counsel for the petitioner also argued that the impugned letters have been communicated at Delhi, I, *prima facie*, do not find that the impugned letters dated 6.7.2015 and 30.7.2015 have been communicated to the petitioner at Delhi because the letter dated 6.7.2015 shows that the same was communicated to the petitioner at his office at Dadri and the same would also be the position of the letter dated 30.7.2015.

4. Though, the respondents have not taken up a plea of territorial jurisdiction or the issue of forum non-convenience, but since this issue

goes to the root of the matter, I have put counsel for the petitioner to notice of this aspect.

5. List on 10th March, 2017.”

2. The impugned letters/orders which are challenged by means of the present writ petition are dated 6.7.2015 and 30.7.2015, which read as under:-

Order dated 06.07.2015

“Ref. No.:08/HR/EB/80344/2015

Dated:06.07.2015

To

Shri Shobha Ram Ahirwar,

S/o Late Shri Babu Lal

Dy. Supdt. (O&M)

Employee No. 080344

NTPC-Dadri

Through: AGM (Th-EM)I/C

Sub: **W.P.(C) 5334/2015-Shobha Ram Ahirwar Vs. NTPC & Ors.**

This has reference to the Order dated 26.05.2015 of the Hon’ble High Court of Delhi passed in the captioned Writ Petition which was filed by you.

As per the directions of the Hon’ble High Court, the Writ Petition filed by you has been treated as your representation by the competent authority.

The Competent authority has gone through all the averments made by you in the Writ Petition.

Further, as per the directions of Hon’ble High Court, the competent authority has called you for personal hearing on 04.07.2015 at 2.00 pm in his office located at Core-6, 7th Floor, Scope Complex, Lodi Road, New Delhi. However, you did not come for the personal hearing and the competent authority waited for almost 01 hour.

The Competent authority has carefully considered all your averments made in the Writ Petition and also taken your representation for treating the transfer order dated 04.06.2014 as a recall or cancellation of transfer order dated 04.10.2013.

After considering all the aspects and submission made by you in your representation dated 03.06.2015 and Writ Petition No. W.P.(C) 5334/2015, the competent authority has now decided and advised undersigned to inform you as under:-

1. You have rendered service in NTPC Dadri for almost 25 years and vide transfer order dated 04.10.2013, you were transferred to NTPC Auraiya. Your transfer was purely on administrative grounds. After being released from NTPC Dadri, you did not join at Auraiya within stipulated period. Repeated reminders were issued to you

for reporting and join duty at Auraiya but you failed to join at transferred place. Your salary therefore could not be processed for the period of unauthorized absence.

2. You submitted and requested the management that you were unable to join at Auraiya because of your medical/health conditions and requested vide your letter dated 23.05.2014 for transfer from Auraiya to Dadri. Considering your request, you were transferred from Auraiya to Dadri.
3. After the issuance of transfer order dated 4.6.2014 from Auraiya to Dadri, you were advised to get released from Auraiya to facilitate your joining at Dadri as per the rules and procedure of the Company. However, you did not do so.
4. Subsequently, vide your letter dated 26.12.2014, you requested that you were not in a condition to join at Auraiya due to health related issues and may be allowed to join at Dadri as a special case. Considering your request, you were exempted from joining & getting released from NTPC Auraiya as special case and you joined on 27.12.2014 at Dadri.
5. Thus the transfer Order dated 04.06.2014 has been issued only on your request which is mentioned in the aforesaid Order. Therefore, the Transfer Order dated 04.06.2014 is neither a cancellation order nor a recall order. It is a transfer order that too on your request. So far as your salary for the period of your absence from 15.10.2013 to 26.12.2014 is concerned, as stated above, since you are allowed to join at Dadri exempting the normal procedure of joining and getting released from transferred place as special case considering your request on medical ground, you are directed to apply for leave to regularize the period in which you did not report and perform the duty vide our letters dated 27.04.2015 & 28.04.2015.

The above is issued in compliance with the Order of Hon'ble High Court.

Sd/-

(A.K. Ojha)
AGM (HR)

Order dated 30.07.2015

REF.NO.:08/HR/EB/080344

DATE: 30.07.2015

Sh. Shobha Ram Ahirwar

Dy Manager (Th-EM)

E.No.080344

Through: AGM(Th-EM)I/c

Dear Sir,

Please refer to our letters dated 07.01.2015, 29.01.2015, 17.02.2015, 10.03.2015, 02.04.2015, 27.04.2015, 28.04.2015 and 15.06.2015 advising you to apply for leaves to regularize the period of unauthorized absence from 15.10.2013 to 26.12.2014 (438 days). It is observed that despite repeated reminders you have failed to regularize the said period of unauthorized absence.

Since you are about to superannuate on 31.07.2015, we have been left with no other option but to regularize the 438 days of unauthorized

absence by way of applying the HPLs (425 days) and ELs (13 days) to your credit. This shall facilitate in settlement of your terminated dues on your superannuation.

This is for your information please.

Thanking you,

Yours faithfully,
Sd/-
(Sudha Rao)
Sr.Mgr. (HR)”

3. Territorial jurisdiction of a Court exists if either whole or a part of cause of action arises within its territory, and the cause of action arises in the present case on account of challenge to the impugned letters dated 6.7.2015 and 30.7.2015. These letters however achieve finality by their communication, and which communication is admittedly done to the petitioner not at Delhi but at Dadri, UP vide ***Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, 2009 (1) SCC 180.*** The entire cause of action therefore with respect to challenge to the impugned letters dated 6.7.2015 and 30.7.2015 arises outside Delhi, and at Dadri, UP and therefore, this Court does not have territorial jurisdiction. Once this Court does not have territorial jurisdiction because neither whole nor a part of the cause of action has not arisen in Delhi, accordingly, the writ petition has to be and accordingly liable to be dismissed for lacking territorial jurisdiction.

4. Learned counsel for the petitioner argues by placing reliance upon the judgment of the Supreme Court in the case of ***Madan Lal Vs. State of Punjab AIR 1994 SC 647*** that since the impugned orders have been passed in the present case pursuant to disposal of the earlier writ petition filed in this Court being W.P. (C) No. 5334/2015, vide order dated 26.5.2015, this Court therefore has the territorial jurisdiction. For the sake of convenience the order dated 26.5.2015 passed in W.P.(C) No. 5334/2015 filed by the petitioner reads as under:-

“1. At the request made on behalf of the petitioner, this writ petition is treated as a representation to the employer/respondent no.1 that the employer should treat the order dated 4.6.2014 of the petitioner not as a re-transfer but an order for recall of the first order of transfer dated 4.10.2013.

2. Accordingly, let the competent authority of the respondent no.1 consider the petition as a representation so as to consider the order dated 4.6.2014 not an as order of re-transfer but as an order of recall or cancellation of the first order of transfer, and which aspect will be decided by the competent authority of the respondent no.1 in accordance with law and the extant circulars/guidelines/office memorandums etc of the respondent no.1. Competent authority of the respondent no.1 is requested to dispose of the representation of the petitioner as expeditiously as possible and to the extent possible within a period of six weeks of receipt of the copy of the present order. Competent authority may preferably, and if possible, give petitioner a personal hearing before deciding the matter.

3. Writ petition stands disposed of in terms of aforesaid observations.”

5. A reading of the order dated 26.5.2015 shows that the issue of territorial jurisdiction did not come up when the order dated 26.5.2015 was passed. The order dated 26.5.2015 is an innocuous

order for treating the writ petition as a representation and for the competent authority to pass appropriate orders and decide as to whether the petitioner has been re-transferred or whether the earlier order of the transfer was recalled. Therefore, since the issue of territorial jurisdiction did not come up in earlier W.P.(C) No. 5334/2015, accordingly, it cannot be argued that merely because earlier W.P.(C) No. 5334/2015 was disposed of by this Court, therefore, this Court should hear and dispose of the present writ petition because the Court must be held to have territorial jurisdiction.

6. The judgment in the case of *Madan Lal (supra)* cited by the petitioner has no applicability to the facts of the present case because the ratio of *Madan Lal's* case (*supra*) is only that once an earlier judgment is passed between the parties, that earlier judgment is final and cannot be questioned on any ground, and the earlier final judgment has only to be implemented. The issue as regards the territorial jurisdiction of a Court was not in issue and not decided in the case of *Madan Lal (supra)*, and which judgment is only on the issue that the earlier judgment between the same parties is the binding precedent between the parties. In *Madan Lal's* case (*supra*), it was held that since there was an earlier judgment between the parties which bound the parties, accordingly, the earlier judgment had to be

implemented. Therefore, the judgment in the case of *Madan Lal (supra)* cannot help the petitioner to argue that this judgment entitles the petitioner to file the present writ petition in this Court allegedly because this Court has territorial jurisdiction.

7. (i) Learned counsel for the petitioner then argued that the Memo of Parties of the earlier writ petition W.P. (C) No. 5334/2015 and the present writ petition shows that the respondent no.1 was sued through the Chairman and Managing Director at Delhi, and therefore, this Court would have territorial jurisdiction. It is further argued that the direction in the earlier case was against the respondent no.1 through the Chairman and Managing Director, Delhi, and therefore this Court would have territorial jurisdiction. Reliance in support of this argument is placed upon the judgment of the Supreme Court in the case of *Morgan Stanley Mutual Fund Vs. Kartick Das (1994) 4 SCC 225*.

(ii) I cannot agree with this argument urged on behalf of the petitioner because when an employer, being the NTPC Ltd. in this case, is sued through its Chairman and Managing Director, then the Chairman and Managing Director only represents the competent authority of the employer. It is not as if the impugned orders were directed to be passed by the Chairman and Managing Director and

simply because the employer as per the Memo of Parties is sued through its Chairman and Managing Director. The argument urged is completely frivolous and this argument cannot be accepted simply because in a Memo of Parties when a company is said to be represented through the Chairman and Managing Director, it would not mean that it is only the Chairman and Managing Director who has to pass orders, and not the requisite competent authority in the respondent no.1/NTPC/employer. Such stretched reading of description of a party in a Memo of Parties is absolutely unacceptable and is therefore rejected.

8. (i) Learned counsel for the petitioner then sought to place reliance upon the judgment of the Supreme Court in the case of ***Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and Another (2005) 7 SCC 791*** to argue that since only this Court has jurisdiction, and accordingly once only a particular Court has jurisdiction because the provision of CPC only applies, only this Court should exercise territorial jurisdiction. To amplify further, the counsel for the petitioner argues that Section 19 of CPC will apply, and therefore, this Court has territorial jurisdiction.

(ii) Once again the argument urged on behalf of the petitioner is misconceived because the provisions of CPC with respect to existence

of cause of action and territorial jurisdiction is on account of existence of whole or part of the cause of action, and which are also the principles applied under Article 226 (2) of the Constitution of India, but since, and as already stated above, neither whole nor a part of cause of action accrues at Delhi, this Court would not have territorial jurisdiction.

9. I may note that merely because Head Office of respondent no.1/employer is situated at Delhi would not mean that even if whole or part of cause of action does not arise at Delhi, on account of Head Office being at Delhi, it confers jurisdiction on this Court. The judgment in the case of *Morgan Stanley Mutual Fund (supra)* relied upon by the petitioner has not dealt with the issue of entitlement to file a suit where the Head Office situated, although, neither whole nor part of cause of action has accrued where the Head Office of a company is situated. On the contrary, I may note that the Supreme Court in its judgment in the case of *Patel Roadways Limited, Bombay Vs. Prasad Trading Company (1991) 4 SCC 270* has held that a suit cannot be filed at the Head Office or Principal Office, if the company has a Branch Office where the cause of action arises wholly or in part. In the present case, as already stated above, whole and/or part of cause of action has arisen at Dadri in UP and not at Delhi, and consequently,

applying the ratio of the judgment of the Supreme Court in the case of ***Patel Roadways Limited (supra)***, it is held that this Court has no territorial jurisdiction.

10. I finally would like to note that even for the sake of arguments if I assume that a part of cause of action has accrued at Delhi, although it is not, assuming so, yet, the principle of *forum conveniens* and *forum non-conveniens* since applies to writ petitions as held by a Full Bench of five judges in the case of ***Sterling Agro Industries Ltd. (supra)*** as referred to in the order dated 25.1.2017, surely therefore, this Court is a Court of *forum non-conveniens* because neither the petitioner has served at Delhi nor the impugned orders are passed at Delhi, nor the evidence with respect to the impugned orders is available at Delhi, and therefore, it is held that this Court is not the *forum conveniens* but a *forum non-conveniens*, and that the *forum conveniens* will be the Court which will have territorial jurisdiction as regards Dadri in UP.

11. In view of the above said discussion, this writ petition is dismissed as this Court does not have territorial jurisdiction. Also, this writ petition is dismissed, even assuming a part of cause of action arises at Delhi, by applying the principle of *forum non-conveniens*. Parties are left to bear their own costs.

MARCH 10, 2017/tp/ib

VALMIKI J. MEHTA, J