

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 19.06.2020	Delivered on 30.06.2020
---------------------------	----------------------------

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.Nos.7720 & 8193 of 2020
and connected Miscellaneous Petitions

1. Dr.Sandeep.P.S
S/o. P. Shanmuga Sundaram,
3/148-A, madeshwaranagar Street,
Melappalyam, chennimalai, Erode - 638 051
NEET PG Roll No.2066028840
NEET PG Rank: 4897
... 1st Petitioner in
WP 7720/2020 and
Petitioner in WP 8193/2020
 2. Dr.Thenmozhi.R
D/o. Ravikumar 22, Annagalakurichi Street,
Malayandipattinam, Kottur, Coimbatore - 642 114
NEET PG Roll No: 2066148319
NEET PG Rank : 18734
 3. Dr.Rahul.M
S/o. Murugesan, No 15/A, kattusalai, Devarmalai,
Pidaramangalam post , Thottiyam Taluk, Trichy - 621 207
NEET PG Roll No.2066096143
NEET PG Rank: 5513
... Petitioners 2 & 3 in
WP 7720/2020
- Vs.
1. The Government of India,
Rep. By its Secretary to Government,
Ministry of Health and Family Welfare,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi - 110 011.
 2. National Board of Examinations,
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road),
New Delhi - 110 029.

3. Medical Council of India

Rep. By its Secretary General,
Pocket 14, Sector - 8,
Dwaraka, New Delhi - 110 077.

.. Respondents in
both petitions

Prayer in WP 7720/2020: Writ Petition filed under Article 226 of the Constitution of India praying for Writ of Certiorarified Mandamus, calling for the records relating to the impugned Clause No.4.5 of Handbook for Admission to DNB Board Specialty Courses (Post MBBS) 2020 Admission Session issued by the 2nd respondent dated 8th May 2020 and to quash the same in so far as it prevents the petitioners opting to freeze their allotment in the First round of counseling, to participate in the subsequent round of counseling is concerned and consequently directing the respondents to allow the petitioners to participate in the Second and subsequent round of counseling for upgradation of their choice of Course/Institute in the order of fresh choice filing of all the candidates before starting each round, based on merit in selection with reference to admission to Diplomate National Board (Post MBBS) 2020 Admission Session.

Prayer in WP 8193/2020: WRIT OF MANDAMUS forbearing the Respondents from conducting second round of counseling vide Notice dated 03.06.2020 without rectification of the Clause No.4.5 of Handbook for Admission to DNB Broad Specialty Courses (Post MBBS) 2020 Admission Session issued by the 2nd Respondent dated 8 th May 2020, to ensure merit in selection for DNB Broad Specialty Courses (Post MBBS) 2020 Admission Session and to pass such further or other orders

For Petitioners : Mr.G.Sankaran
(in both the petitions)

For Respondents : Mr.K.S.Jayaganesh,
(in WP 7720/20) Senior Panel Counsel, for R1

Mr.Maninder Singh, Senior Counsel
along with Kirtiman Singh, Waize Ali Noor,
Prabhas Bajaj, Rohan Anand
for M/s.Anand, Samy and Dhruva for NBE
2nd Respondent

M/s.V.P.Raman and M.S.Seshadri for MCI
-3rd Respondent

(in WP 8193/20)

: Mr.K.S.Jayaganesh,
Senior Panel Counsel, for R1

Mr.Maninder Singh, Senior Counsel
along with Kirtiman Singh, Waize Ali Noor,
Prabhas Bajaj, Rohan Anand
for V.P.Raman and M.S.Seshadri for NBE
-2nd Respondent

M/s.V.P.Raman and M.S.Seshadri for MCI
-3rd Respondent

COMMON ORDER

These cases are taken up for hearing through Video-Conferencing.

1. These two writ petitions relate to counselling for post MBBS diploma courses conducted by the National Board of Examinations at New Delhi. While the challenge in the first writ petition namely WP No: 7720 of 2020 is to clause 4.5 of the Handbook for admission issued by the National Board of Examinations for the academic session 2020-21 the second petition namely WP No: 8193 of 2020 seeks issuance of a writ of mandamus forbearing the respondents from conducting the second round of counselling without rectifying the said clause. The first petitioner in W.P.No: 7720 of 2020 is the sole petitioner in W.P.No: 8193 of 2020. The issues involved in both the writ petitions are identical; hence both the writ petitions were heard together and are disposed of by a common order.

2. The sum and substance of the case of the petitioners is as follows: The petitioners are MBBS graduates who had taken up the National Eligibility cum Entrance Test for Postgraduate Medical Education 2020 hereinafter referred to as NEET-PG-2020. Having secured the required minimum marks, the petitioners became eligible for admission to postgraduate Medical courses for the academic session 2020-21. The National Board of Examinations an autonomous academic body under the Ministry of Health and Family Welfare is conducting post - doctoral examinations in approved specialities and is awarding Postgraduate Diplomate commonly called as DNB. The decree awarded by the second respondent is equivalent to a postgraduate qualification awarded by any other Indian University and is considered to be a super speciality degree. The counselling for admissions to the said courses conducted by the second respondent, in various private as well as government multi-speciality hospitals, throughout the country is held based on the marks obtained by the candidates in NEET-PG-2020.

3. The second respondent, the National Board of Examinations, had issued a Handbook detailing the procedure to be adopted at the counselling. As per the procedure registration and filling up options/choices of available seats is to be made by 08-05-2020. During the said period candidates are expected to make their choices of seats and also rank their preferences. The counselling being done online, seats are allotted to the candidates in accordance with their choices depending on their marks and preferences. The petitioners are aggrieved by Clause 4.5 of the instructions which restricts the right of the candidate who has been allotted a seat in the first round of counselling to participate in the second round of counselling only if he or she relinquishes the seat so allotted. According to the petitioners the National Board of Examinations had introduced this procedure which was given up by it in 2016 again during this academic year. It is also the further case of the petitioners that all the other universities and boards which offer postgraduate Medical education under the umbrella of the Medical Council of India do not restrict participation of the candidates, who were allotted a seat in the first round of counselling, in the second round of counselling while retaining the seat allotted to them by paying the required fee. Inspiration is drawn, by the petitioners, from the procedure adopted by the National Board of Examinations for the academic years 2018-19 and 2019-20 to contend that the new procedure which curtails the right of the candidates, who freeze their seats allotted to them in the first round, from participating in the second round of counselling would deprive them of a right to choose a better course in a better institution if it is available in the second round of counselling.

4) The relevant clause namely Clause 4.5 reads as follows:

"4.5 Additionally, while a candidate may participate in the various rounds of counselling in accordance with the specific eligibility criteria there for and various terms and conditions for each round of counselling given below, if at any stage a candidate "freezes" his/her allotment (i.e. confirms that he/she wishes to take the seat allotted to him/her) he/she will not be permitted to participate in any subsequent rounds of counselling and shall stand exited from the counselling process. This ineligibility will also be attracted if, after opting to freeze his/her allotment, he/she either does not pay the requisite course fee or does not join the Institute concerned within the stipulated time."

The effect of the above Clause 4.5 is that a candidate with higher marks who is allotted a seat of his/her choice number five cannot take part in the second round of counselling even if

any of the seats in his/her choices 1 to 4 becomes actually available for the second round of counselling. According to the petitioners if candidates who had scored higher marks and allotted seats in the first round of counselling are prevented from participating in the second round of counselling while preserving the seat allotted to them in the first round of counselling, the seats which are available in the second round of counselling or the new seats that are added in the second round of counselling would go to less meritorious candidates who were unsuccessful in getting an allotment during the first round of counselling. This leads to merit being sacrificed. Relying upon the notification which states that fresh seats are also likely to be added during the second round of counselling the petitioners would contend that they cannot be prevented from having a go at the new seats that are made available during the second round of counselling merely because they had already been allotted a seat in the first round of counselling. Claiming that Clause 4.5 is arbitrary and it sacrifices merit the petitioners would seek a writ of certiorari quashing Clause 4.5 and direct the second respondent, National Board of Examinations to resort to the practice that was followed during the previous academic year and enable the candidates who are allotted seats in the first round of counselling to retain those seats and participate in the second round of counselling. Even during the pendency of the first writ petition the first round of counselling was completed and this necessitated the second writ petition which is for a simple mandamus forbearing the second respondent from proceeding with the second round counselling without rectifying Clause 4.5.

5. The claim of the petitioners is opposed by the second respondent, National Board of Examinations, mainly on two grounds. The second respondent would contend that this court does not have jurisdiction to entertain the writ petitions since Clause 4.13 of the Handbook specifically provides that jurisdiction will be confined to New Delhi only. Clause 4.13 reads as follows:

"Jurisdiction for disputes, if any, shall be at New Delhi only"

Relying upon the above clause the second respondent would contend that this court cannot exercise jurisdiction under Article 226 of the Constitution of India when no part of the cause of action had arisen within the territorial jurisdiction of this court. The second respondent would also contend that the writ petitions are ill-conceived and the petitioners cannot be allowed to challenge the Regulations after the process of admission had begun. It is also the contention of the second respondent that the petitioners cannot claim that the second respondent should also adopt the same procedure that is being adopted by other universities and boards which offer

postgraduate medical education. It is also claimed that the second respondent being an autonomous body is entitled to have its own rules and regulations as far as admission to the diplomate courses conducted by it is concerned. It is the further contention of the second respondent that it is not bound by the Regulations of the Medical Council of India and there are pronouncements of the Delhi High Court which conclude that the second respondent namely the National Board of Examinations being an autonomous and independent body is not bound by the Medical Council of India's regulations.

6. It is also pointed out that the court which lacks the expertise cannot sit in judgement over the actions of the authorities particularly those dealing with education in matters relating to standard of education and the procedure for admission unless it is shown that such procedure is in violation of any Statute or Rules. Certain factual statistics has also been placed before the Court to show that if the candidates who were allotted seats in the first round of counselling are allowed to retain those seats by paying a fee for the first year and participate in the second round of counselling more number of seats end up in the mop up round of counselling and they go to candidates with lesser comparative merit.

7. The third respondent namely the Medical Council of India would in effect support the claim of the second respondent. The third respondent had made it very clear that the Post Graduate Regulations, 2000 framed by it would not apply to the Post MBBS diploma courses offered by the second respondent/National Board of Examinations. It is also pointed out that though this court by an interim order dated 26/05/2020 had permitted the petitioners 1&2 in WP 7720 of 2020 to participate in the second round of counselling even after freezing their choice in the first round of counselling they had not chosen to avail themselves the benefit of the interim directions instead both of them had relinquished their seats that were allotted to them in the first round of counselling and had chosen to participate in the second round of counselling. Therefore according to the third respondent the petitioners are not entitled to any relief in these writ petitions.

8. I have heard Mr.G.Sankaran, learned counsel appearing for the petitioners in both the writ petitions, Mr.K.S.Jayaganesh, Senior Panel Counsel for the first respondent, Mr Maninder Singh, Senior Advocate assisted by M/s.Kirtiman Singh, Waize Ali Noor, Prabhas Bajaj and Rohan Anand for the second respondent and M/s.V.P.Raman and M.S.Seshadri for the third respondent.

9. I shall first deal with the question of jurisdiction raised by Mr.Maninder Singh, learned Senior Counsel appearing for the second respondent. Mr. Maninder Singh, would contend that this court does not have jurisdiction to entertain the writ

petitions basically on two grounds. Placing reliance on Clause 4.13 of the 2020 Handbook issued by the National Board of Examinations the learned Senior Counsel would contend that the said clause restricts the jurisdiction, in case of disputes, to New Delhi only and therefore this court cannot exercise jurisdiction under Article 226 of the Constitution of India. In support of the said submission he would rely upon the judgements of the Honourable Supreme Court in ABC Laminart (P) Ltd & another -Vs- A.P.Agencies, reported in (1989) 2 SCC 163 and Angile insulations-Vs-Davy Ashmore India Ltd, reported in (1995) 4 SCC 153. It is also claimed that the petitioners having accepted the said clause found in the Handbook cannot now turn around and invoke the extraordinary jurisdiction of this court under Article 226 of the Constitution of India.

10. Of course, it is open to the parties to agree upon or to choose a particular court as a jurisdictional court in matters of contract when two or more Courts would have jurisdiction. Both the judgements, cited supra, are cases arising out of commercial contracts where the parties had consciously agreed upon or submitted themselves to the jurisdiction of a particular court to the exclusion of others. The cases on hand are not matters of contract where the parties had equal bargaining power. The Handbook is a unilateral document issued by the second respondent and any stipulation therein particularly with reference to jurisdiction of courts cannot be said to be absolutely binding on the petitioners. Apart from the above the petitioners have invoked the extraordinary jurisdiction of this court under Article 226 of the Constitution of India. It is fundamental position of law that even the legislature cannot abridge or take away the jurisdiction of a High Court under Article 226 of the Constitution of India. That being so, I do not think, the second respondent can effectively, by its unilateral act, exclude or prevent this court from exercising jurisdiction under Article 226 of the Constitution of India which has been held to be a part of the basic structure of the Constitution of India in L.Chandrakumar -Vs- Union of India, reported in (1997) 3 SCC 261. In view of the above the first limb of the contention relating to jurisdiction stands rejected.

11. Mr. Maninder Singh, learned Senior Counsel appearing for the second respondent would however contend that this court does not have jurisdiction to entertain the writ petitions since no part of the cause of action had arisen within the jurisdiction of this court. He would submit that the second respondent being a small organisation with limited staff having its office at New Delhi alone cannot be drawn to contest litigations all over India particularly when no relief is sought in such writ petitions against any of the local authorities. He would also contend that the principles of "forum convinienis" would apply and any petition challenging the action of the second respondent

could be filed only before the Honourable Courts at New Delhi. In support of his submission the learned Senior Counsel would also draw my attention to the lack of pleadings in the writ petitions with reference to the cause of action having arisen within the jurisdiction of this court. He would also rely upon the judgement of the Honourable Supreme Court in Oil and Natural Gas Commission -Vs- Utpal Kumar Basu reported in (1994) 4 SCC 711. Drawing my attention to paragraph 6 of the said judgement Mr. Maninder Singh, would contend that the Supreme Court having regard to the amended provisions of Article 226 had made it obligatory for the High Courts, while examining the question of jurisdiction, to necessarily examine the pleadings with reference to cause of action and also consider the objections relating to territorial jurisdiction. He would vehemently argue that there is no pleading in the writ petitions to the effect that any part of the cause of action had arisen within the jurisdiction of this court to enable this court entertain the writ petitions. Citing the lack of pleadings the learned Senior Counsel would persuade me to refuse to entertain the writ petitions and direct the petitioners to approach the courts at New Delhi. Reliance in this regard is also placed on Union of India and others -Vs- Adani Exports Ltd and another, reported in (2002) 1 SCC 567 and Union of India and others -Vs- Sure Safety Solutions (P) Ltd and another, reported in (2019) 1 GLR 57. It is also further contended that even if I am to come to the conclusion that a fraction of the cause of action had arisen within the jurisdiction of this court the principal of "forum convinienis" should be applied and I should refuse to exercise the jurisdiction. Reliance in this regard is placed on the following judgements of the Honourable Supreme Court.

- a. Kusum Ingots & Alloys Ltd. Vs. Union of India - (2004) 6 SCC 254.
- b. Sterling Agro Industries (P) Ltd. Vs. Union of India & Ors. - 2011 SCC Online Del 3162.
- c. Bharat Bhogilal Patel Vs. Union of India - 2014 (6) CTC 285.
- d. Nawal Kishore Sharma Vs. Union of India & Ors. - (2014) 9 SCC 329.

12. Responding to the contentions of Mr Maninder Singh, on the question of jurisdiction, Mr.G.Sankaran, learned counsel appearing for the petitioners would submit that the second respondent, though a society registered under the Societies Registration Act at New Delhi, is entrusted with the job of imparting quality postgraduate Medical education all over India and as such has a Pan- India presence. Its actions are likely to affect aspirants to postgraduate Medical education all over India. He would also point out that the second respondent offers postgraduate Medical education in hospitals situate throughout the length and breadth of the country and as such it cannot be

said that the second respondent is confined only to New Delhi solely on the ground that it has its office at New Delhi. It is the further contention of Mr.G.Sankaran that the petitioners being residents of the State of Tamil Nadu, affected by the actions of the second respondent, are entitled to invoke the jurisdiction of this Court in as much as a part of the cause of action, however minuscule it may be, had arisen within the jurisdiction of this court. He would also rely upon the judgement of the full bench of this court in B.Stalin -Vs- The Registrar, Supreme Court of India and others, reported in 2012-3-LW 489. He would also draw my attention to the observations in some of the judgements relied upon by Mr. Maninder Singh, in support of his contention that if it is shown that a part of the cause of action had arisen within the jurisdiction of this court this court can entertain the writ petitions. I have considered the rival submissions.

13. Before advertng to the judgements cited at the bar it will be useful to refer to the language of Article 226 of the Constitution of India. Article 226 of the Constitution of India reads as follows:

"226. Power of the High Courts to issue certain writs: (1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any government within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any government, authority or any 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."

(Clauses 3 and 4 of Article 226 or not very germane for our purposes)

Clause 2 of Article 226 empowers the High Courts to issue writs even against Government or Authority or Persons whose seat or residence is not within the territorial jurisdiction of the concerned High Court. The only condition being that a part of the cause of action should have arisen within the jurisdiction of the High Court concerned. It has also been held by the

Honourable Supreme Court that the principle of "forum conveniens" would apply to the exercise of jurisdiction under Article 226 of the Constitution of India. Therefore, it has to be seen as to whether any part of the cause of action for these writ petitions had arisen within the jurisdiction of this Court and what should be the basis for applying the principle of "forum conveniens" in the case on hand, should the Court look into the convenience of the petitioners or that of the second respondent in deciding the said question. Mr. Maninder Singh, learned Senior Counsel appearing for the second respondent would vehemently contend that there is no pleading in the writ petitions to the effect that a part of the cause of action had arisen within the jurisdiction of this court and therefore this court must refuse to exercise the jurisdiction. No doubt, true, that the petitioners in the writ petitions have not specifically alleged that this court would have jurisdiction in view of the fact that a part of the cause of action had arisen within the jurisdiction of this court. It is settled law that strict rules of pleadings applicable to civil proceedings cannot be extended to pleadings in a writ petition. If the cumulative effect of the allegations made in the affidavits filed in support of these writ petitions show that a part of the cause of action had arisen within the jurisdiction of the this court, this court would be justified in entertaining the writ petitions. I am unable to subscribe to the contention of the learned Senior Counsel appearing for the second respondent that a microscopic examination of the pleadings should be made before this Court exercises its jurisdiction under Article 226 of the Constitution of India. After all courts exist for providing remedy and not for throwing out writ petitions on hyper- technical grounds.

14. In M.K.Ranganathan -Vs- Madras Electric Tramways, reported in AIR 1952 MADRAS 659, Honourable Mr. Justice Subba Rao considered the scope of the jurisdiction under Article 226 to issue a writ of certiorari. While dealing with the challenge to an order of the Labour Appellate Tribunal of India situate at Bombay (now known as Mumbai) the Honourable Judge held as follows:

"The jurisdiction to issue a writ does not depend upon the mere location of a tribunal but depends upon the subject matter and the parties to a dispute in regard to which such a tribunal purports to exercise jurisdiction. To put in other words though the tribunal is situated outside the territorial jurisdiction of the High Court if it purports to exercise jurisdiction in regard to the parties or the subject matter which are within the territorial jurisdiction of the High Court the tribunal must be deemed to function within the jurisdiction of the High Court. The jurisdiction

conferred by Article 226 of the Constitution is to protect the fundamental and other rights of the parties within the jurisdiction of the High Court. The Article does not expressly say that the authority or tribunal interfering with such rights should reside physically within the territorial jurisdiction."

This judgement was rendered prior to the amendment of Article 226. The scenario after the amendment is vastly different and there is an express provision enabling High Courts to issue writs even against Governments or Authorities whose seat is situated outside the territorial jurisdiction of the concerned High Court. In *Oil and Natural Gas Commission-Vs- Utpal Kumar Basu*, reported in (1994) 4 SCC 711, the Honourable Supreme Court had an occasion to consider the scope of the jurisdiction of the High Courts under Article 226 of the Constitution of India with reference to the cause of action. The Honourable Supreme Court while restating the law that the term cause of action is a bundle of facts which are to be proved by a party to enable such party to succeed in the suit are proceeding, concluded that whatever was stated as cause of action in the said writ petition was wholly insufficient to constitute cause of action in order to enable the Calcutta High Court to exercise jurisdiction under Article 226 of the Constitution of India. The Honourable Supreme Court also reiterated the settled position of law that the averments made in the writ petition should form the basis for determination of the question as to the territorial jurisdiction of the High Court without embarking upon an enquiry as to the correctness or otherwise of such averments. On the facts of the said case the Honourable Supreme Court found that the Calcutta High Court did not have jurisdiction to entertain the writ petition as no part of the cause of action had arisen within the jurisdiction of the Calcutta High Court. Very strong reliance is placed by Mr. Maninder Singh, learned Senior Counsel appearing for the second respondent, on the judgement of the Supreme Court in *Union of India and others -Vs- Adani Exports Ltd and another*, reported in (2002) 1 SCC 567. The question of territorial jurisdiction in the said case arose in a proceeding before the Gujarat High Court which was initiated by the respondents before the Honourable Supreme Court claiming benefits of the passbook scheme found in the import-export policy introduced with effect from 1-4-1995. Objection was taken to the jurisdiction of the Gujarat High Court on the ground that the passbook in question, the benefit of which the respondents sought in the writ petitions, was issued by an authority stationed at Chennai. The entries in the passbook under the scheme concerned were made by authorities at Chennai. The export of prawns made by the respondents and the import of inputs, benefit of which the respondents had sought in the applications, also were to be made

through Chennai. It was under the said circumstances the Honourable Supreme Court came to the conclusion that the Gujarat High Court would not have territorial jurisdiction since no part of the cause of action had arisen within its territories even though the respondent had its registered office at Ahmadabad. Here again it was found that none of the facts which are projected as ones that would cloth the Gujarat High Court writ jurisdiction were found to constitute the cause of action. After referring to Utpal Kumar Basu, supra, the Honourable Supreme Court concluded that unless it is shown that part of the cause of action had arisen within the jurisdiction of the High Court concerned it will not be proper for the High Court to entertain a writ petition particularly against respondents who are either residing or having their office outside the territorial jurisdiction of the said High Court.

15. However, subsequently the in Kusum Ingots & Alloys Ltd -Vs- Union of India and others, the Honourable Supreme Court considered the question of territorial jurisdiction. While doing so the Honourable Supreme Court pronounced on the scope of a challenge to a parliamentary legislation before a High Court as follows:

"A parliamentary legislation when it receives the assent of the President of India and is published in the official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of legislation gives rise to a cause of action a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner."

It was further observed "Therefore a writ petition questioning the constitutionality of a parliamentary act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi." The Honourable Supreme Court went on to conclude that a decision of the High Court on the constitutional validity of a parliamentary enactment will have effect throughout the territory of India subject of course to the applicability of the Act. It would be pertinent to point out at this juncture that the Honourable Supreme Court had also noticed the change in law after the amendment introducing clause (2) to Article 226 of the Constitution of India.

16. In Om Prakash Srivatsava -Vs- Union of India, reported in (2006) 6 SCC 207, the Honourable Supreme Court while considering the scope of Clause 2 of Article 226 had held as

follows:

"The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226. In order to maintain a writ petition a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondents within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof."

In *Alchemist limited versus State Bank of Sikkim*, reported in (2007) 11 SCC 344, the scope of the term 'cause of action' was again considered by the Honourable Supreme Court. After referring to various cases on the issue the Honourable Supreme Court had said

"In our judgement, the test is whether a particular fact (s) is (are) of substance and can be said to be a 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 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." It was further observed that "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." (Emphasis Supplied)

In *Rajendran Chingaravelu -Vs- R.K.Mishra*, Additional Commissioner of Income Tax and others, reported in (2010)1 SCC 457, the Honourable Supreme Court held that the High Court of Andhra Pradesh would have jurisdiction to entertain a writ petition in a case where the Genesis for the entire episode of search, seizure and detention stemmed out of the action of the intelligence officials at Hyderabad airport who alerted their counterparts at Chennai even though the actual search and seizure were carried out at Chennai. Referring to clause 2 of Article 226 of the Constitution of India the Honourable Supreme Court held that part of the cause of action namely the genesis for the search, seizure and detention having taken place at Hyderabad airport in Andhra Pradesh the High Court of Andhra Pradesh was not justified in refusing to exercise jurisdiction. In *Nawal Kishore Sharma -Vs- Union of India and others* reported in (2014) 9 SCC 329 the Honourable Supreme Court pointed out

that in order to maintain a writ petition the petitioner has to establish that his legal right has been infringed by the respondents within the territorial limits of the High Court's jurisdiction. On facts the Honourable Supreme Court concluded that the fact that the appellant was residing in Bihar and all correspondence with reference to disability compensation was addressed by him from his native place at Bihar and all replies were received by him at the address in Bihar would cloth the Patna High Court with jurisdiction to decide the question of disability compensation even though the respondent namely Shipping Corporation of India did not have any office within the jurisdiction of the Patna High Court.

17. Adverting to the plea of forum conveniens raised by Mr. Maninder Singh, in support of which he seeks to rely upon the judgement of a Division Bench of this court in Bharat Bhogilal Patel -Vs- Union of India and others, reported in 2014-5-LW 289, I must at once point out that the Division Bench had in fact held that in deciding the question of forum conveniens the choice would be, normally of the litigant approaching the court as to where he would initiate the litigation if there are two High Courts which would have jurisdiction. After referring to almost all the decisions cited at the bar, in the case on hand, and other cases also the Honourable Division Bench concludes as follows:

"8 Conclusion.

On an analysis of the aforesaid judgements, the principles which emerge can be summarised as under:-

- i) In view of the 42nd constitutional amendment and the wordings of clause (2) of Article 226 of the Constitution of India even a part of cause of action would confer jurisdiction on the court.
- ii) The choice would be normally of the litigant approaching the court as to where he would initiate the litigation if there were two High Courts which would have jurisdiction
- iii) Merely because the original order was passed within the jurisdiction of another court it would not exclude the jurisdiction of the court which is the situs of the appellate authority.
- iv) The principle of forum conveniens though applicable to international law as a principle of comity of nations, would apply to the discretionary remedy under Article 226 of the Constitution of India."

After having observed as above the Honourable Division Bench had held, on the peculiar facts of that case, that it would be the High Court of Bombay which would be the forum *convinien*s taking into account the fact that both the parties were from Bombay and the dispute relating to a trademark was decided by the Intellectual Property Appellate Board at Chennai by an agreement of parties for early disposal of the case. The narration will not be complete if I do not refer to the judgement of the five judge bench of the Delhi High Court in *Sterling Agro Industries Ltd -Vs- Union of India*, reported in AIR 2011 Delhi 174. The said judgement arose out of a reference made by a full bench of the Delhi High Court to a larger bench since the ratio in *New India Assurance Co Ltd -Vs- Union of India*, reported in AIR 2010 Delhi 43 (FB), was doubted by the full bench. Honourable Justice Deepak Misra, as he then was, speaking for the bench concluded as follows:

"33. In view of the aforesaid analysis we are inclined to modify the findings and conclusions of the full bench in *New India Assurance Co Ltd* (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/revisional 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/revisional authority totally ignoring the concept of *forum convinien*s.

(b) Even if a minuscule part of the cause of action arises within the jurisdiction of this court a writ petition would be maintainable before this court, however the cause of action is to be understood as per the ratio laid down in the case of *Alchemist Ltd.* (Supra). (Emphasis Supplied)

(c) An order of the appellate authority constitutes a part of cause of action to make a writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet the same may not be the single 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 convinien*s.

(d) The conclusion that where the appellate or

revisional 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 on the facts in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is involved in a mala fide 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 scrutinised 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 Co Ltd (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 herein above stands overruled."

18. The principles that emerge, on an analysis of the aforesaid judgements, can be summarised as follows:

i) The parties either by agreement or otherwise cannot give up their right to approach the High Court seeking the constitutional remedy under Article 226 of the Constitution of India.

ii) It is not open to any authority, which can be called the state within the meaning of Article 12 of the Constitution of India, or a limb of the state to prevent any person from knocking at the doors of a High Court seeking relief under Article 226 of the Constitution of India.

iii) When the action of an authority or the state affects an individual citizen he or she has a right to move the High Court, within whose jurisdiction he or she resides, seeking redressal.

iv) In view of the specific language of clause 2 of Article 226 jurisdiction of a High Court is not restricted to its territories only.

v) A High Court can issue writs even against persons or

authorities who do not reside or have their office or seat within its territorial jurisdiction.

vi) The only condition for exercise of such power is that at least a part of the cause of action must have arisen within the jurisdiction of such High Court.

vii) In order to determine whether any part of the cause of action had arisen within the jurisdiction of the High Court, the High Court has to look into the substance of the dispute and not the form.

viii) Strict rules of pleadings applicable to civil proceedings need not be extended to proceedings under Article 226 of the Constitution of India.

ix) Once it is found that even a minuscule part of the cause of action had arisen within the jurisdiction of a particular High Court, the said court may not be justified in throwing out the cause on the ground that some other High Court will be in a better position to decide the lis.

x) The principle of forum conveniens could be invoked in respect of proceedings under Article 226 also.

xi) Normally the choice of the forum would be available to the party who initiates the action.

19. If we are to analyse the facts of the case on hand in the backdrop of the principles stated supra there can be no doubt that this court will have jurisdiction to entertain the writ petitions. As already pointed out the second respondent is an authority entrusted with the functions of imparting super speciality postgraduate Medical education. It offers such Medical education in hospitals, both government and private, spread all over the country. Therefore its actions are likely to affect individuals residing throughout the country. The petitioners are questioning the legality of a particular provision in the handbook, released by the second respondent, containing the procedure for admission to such postgraduate courses conducted by the second respondent. As pointed out in *Kusum Ingots* (supra), if the action of the Parliament or an authority affects an individual citizen that citizen has got a right to approach the High Court within whose jurisdiction he or she resides seeking a writ against the organisation or challenging the parliamentary legislation. Mr. Maninder Singh, learned Senior Counsel appearing for the second respondent would however stress that there is no pleading in both the writ petitions to the effect that at least a part of the cause of action had arisen within the jurisdiction of this court. Of course on facts the learned Senior Counsel is right, but as I had already pointed out such a specific pleading is wholly unnecessary. The term "cause of action", as it is normally understood, is a bundle of facts which are required to be proved

by a party initiating the action in order to enable such party to succeed in the action. If we are to look at the bundle of facts in the case on hand the grievance of the petitioners is against a particular clause in the handbook for the year 2020 issued by the second respondent. The petitioners have also pleaded as to how that clause is likely to affect them or is likely to involve a civil consequence on their right to seek admission to a postgraduate course conducted by the second respondent. Once that is pleaded I do not think that it is necessary for the petitioners to aver that because they reside within the jurisdiction of this court the cause of action had arisen within the jurisdiction of this court. The fact that the petitioners are residing within the jurisdiction of this court is not denied. Therefore I am unable to countenance the argument of the learned Senior Counsel for the second respondent on the absence of relevant pleadings establishing cause of action.

20. For all the foregoing reasons I conclude that this court has got jurisdiction to entertain the writ petitions.

21. Adverting to the merits of the writ petitions, the challenge in W.P.No:7720 of 2020 is to Clause 4.5 of the handbook containing the procedure for counselling to be conducted for admission for the postgraduate diploma courses offered by the second respondent. The effect of Clause 4.5 is that a candidate who has been allotted a seat in the first round of counselling in compliance with his or her choice cannot retain the said seat and take part in the second round of counselling also. Similarly a candidate who is allotted a seat in the second round of counselling cannot take part in the third round of counselling while retaining the seat that was allotted. It is this prohibition against participation in the second or third round of counselling, according to the petitioners, deprives them of a choice to retain the seat allotted to them in the first or second round of counselling as the case may be and also participate with the second or third round of counselling in order to better their chances. It is also contended that such prohibition sacrifices merit in as much as it prevents meritorious candidates who are able to get a seat allotted even in the first round of counselling from opting for a better seat or a better institution by appearing in the second round of counselling while retaining the seat allotted to them in the first round of counselling. In support of his contentions Mr.G.Sankaran, learned counsel appearing for the petitioners would rely upon the Post Graduate Regulations 2000 which deal with admission to postgraduate courses offered by other universities and institutions which are subject to the control of the Medical Council of India as well as the admission procedure adopted by the second respondent in the previous years. Pointing out that the Regulations framed by the Medical Council of India which are applied by other universities and

institutions offering postgraduate Medical education enable candidates who are allotted a seat in the first round of counselling to participate in the second round of counselling even while retaining the seat allotted in the first round of counselling Mr.G.Sankaran, would vehemently contend that the second respondent which is also subject to the supervision of the Medical Council of India is bound to follow the Regulations of the Medical Council of India and any deviation there from will be in derogation of the powers of the Medical Council of India as a body supervising the Medical education in the country. It is also the contention of Mr.G.Sankaran, that the main object of the counselling procedure being adapted for admission, particularly, to professional courses is to ensure merit. The new procedure that has been initiated by the second respondent which will deprive the meritorious candidates from participating in the second round of counselling while retaining the seat allotted to them in the first round of counselling would in fact sacrifice merit. He would also draw my attention to the following judgements of the Honourable Supreme Court

- 1) Priya Gupta -Vs- State of Chhattisgarh and others, reported in (2012) 7 SCC 433.
- 2) Asha -Vs- PT.B.D.Sharma University of Health Sciences and others, reported in (2012) 7 SCC 389.
- 3) State of Uttar Pradesh and others -Vs- Dinesh Singh Chauhan, reported in (2016) 9 SCC 749.
- 4) DAR-US-SLAM Educational Trust and others -Vs- Medical Council of India.
- 5) Rachit Sinha and others -Vs- Union of India and others, reported in (2018) 16 SCC 655.
- 6 S.Krishna Saradha -Vs- State of Andhra Pradesh and others, reported in 2019 SCC Online SC 1609.

Mr.G.Sankaran, would also invite my attention to Sections 10A to 10D of the Indian Medical Council Act 1956 to contend that the second respondent is bound to follow the guidelines or regulations issued by the Medical Council of India from time to time.

22. Responding to the said submissions of Mr.G.Sankaran, Mr. Maninder Singh learned Senior Counsel appearing for the second respondent would vehemently contend that the second respondent is an independent and autonomous body and it is free to make its own regulations regarding admissions. He would also highlight the fact that the writ petitions are belated having been filed after the process had begun. Therefore they are liable to be dismissed on the short ground of delay. It is the further submission of Mr.Maninder Singh learned Senior Counsel that the petitioners who have participated in the process of

counselling are precluded from challenging the rules regarding counselling contained in the handbook published by the second respondent. He would also submit that the procedure for admission particularly to a postgraduate speciality course is carefully designed by the experts in the field taking into account the prior experience as well as the current requirements. The courts which do not have the domain expertise should be slow to interfere with such process of admission. He would further submit that the Honourable Supreme Court has refused to interfere with the counselling process for the current year for postgraduate diploma courses conducted by the second respondent itself in Alapati Jyotsna & others -Vs- Union of India & others. He would also draw my attention to the stand taken by the Medical Council of India to point out that the second respondent is free to formulate its own procedure and it is not bound to follow the regulations of the Medical Council of India. Further arguing, the learned Senior Counsel, would submit that though the petitioners were given the benefit of participating in the second counselling without forgoing the seat allotted to them in the first counselling by way of an interim order by this court dated 26-05-2020, the petitioners 1 and 2 in W.P.No:7720 of 2020 had not availed the benefit of the said interim order. They had in fact relinquished the seats allotted to them in the first round of counselling to enable them to participate in the second round of counselling. The third petitioner was not allotted any seat in the first round of counselling and therefore he becomes automatically entitled to participate in the second round of counselling and hence his challenge to paragraph 4.5 does not survive. He would add that even as regards the petitioners 1 and 2 since they have surrendered the seats allotted to them in the first round of counselling they are free to participate in the second counselling and as such the very challenge in the writ petition does not survive. It is also his contention that the second writ petition which seeks only a Mandamus cannot be entertained as the regulations are not subject matter of challenge. He would also invite my attention to the judgement of the Honourable Supreme Court in Arvind Kumar Kankane -Vs- State of Uttar Pradesh and others, reported in (2001) 8 SCC 355, to buttress the submission that a stipulation in the admission process which is made with an object of meeting the time bound process cannot be subject to judicial scrutiny. He would also submit that the Delhi High Court has, on more than one occasion, upheld an identical stipulation contained in the handbooks issued by the second respondent during the academic years 2002-03 and 2015-16. He would also point out that in its recent pronouncement in Dr Divyesh J. Pathak and others -Vs- National Board of Examination and another dated 26-05-2020 the Delhi High Court has concluded that the Regulations of the Medical Council of India are not applicable to the counselling conducted by the second

respondent/NBE as the second respondent is an independent and autonomous body. In support of his submissions relating to the validity of the stipulation contained in Clause 4.5 of the handbook Mr. Maninder Singh would rely upon the judgements of the Delhi High Court in

a. Reema Chawala -Vs- University of Delhi MANU/DE/0147/2003 and

b. Priyanka Chaudhary & Others -Vs- National Board of Examinations MANU/DE/2863/2016.

23. Mr. V.P. Raman learned counsel appearing for the Medical Council of India would in effect support the stand taken by the second respondent namely National board of Examinations. He would also submit that the National board of Examinations is not bound to seek prior permission of the Medical Council of India under section 10 A of the Indian Medical Council Act 1956. It is also his submission that the Post Graduate Regulations 2000 framed by the Medical Council of India will not be applicable to the diplomates granted by the second respondent though they are deemed to be equal to the postgraduate qualification offered by other universities.

24. I have considered the rival submissions. I must, at the outset, point out that Clause 4.5 of the handbook which is under challenge does in fact affects the right of candidates who are allotted seats in the first round of counselling as per their choice to retain the seat and participate in the second round of counselling also in order to better their chances. The moot question therefore is as to whether such a provision could be subject matter of challenge by way of a writ petition under Article 226 of the Constitution of India. Various statistics have been relied upon by the respective counsel to justify their respective stand. Be that as it may, as pointed out by the Honourable Supreme Court in various decisions the attempt of the court should be to ensure that merit is not sacrificed while framing rules or procedure for counselling and admission to such super speciality courses particularly in the field of medicine. While the petitioners would contend that the second respondent which is offering super speciality postgraduate courses in medicine is bound to follow the procedure that is suggested by the Medical Council of India for admission to such postgraduate courses, the second respondent would claim that it is an autonomous body and it is free to adopt its own procedure.

25. It is settled law that the prospectus is the vital document which governs the admission procedure. A candidate who participates in the selection process based on the prospectus cannot turn around and challenge the very prospectus or a clause in the prospectus unless it is shown to be illegal or irrational. This court had in a number of cases relating to admissions to postgraduate Medical education has consistently held that the candidates who had applied for admission based on

the conditions set out in the prospectus cannot challenge the conditions. Of course in the case on hand the petitioners had approached the court before the first round of counselling had commenced. However the counselling in effect commenced on 01-05-2020 and the candidates were required to furnish their online choices by 08-05-2020. The first counselling was done on 22-05-2020. The petitioners had filed the first writ petition on 17-05-2020 and were favoured with an interim order on 26-05-2020. The petitioners were aware of the existence of Clause 4.5 in the handbook even when they had applied for admission. They had chosen to apply and also indicate their choices in compliance with the requirements of the instructions in the handbook. Only after exercising their choices the petitioners chose to challenge Clause 4.5 on 17-05-2020. Mr.G.Sankaran, would vehemently contend that since the petitioners had approached the court before the first round of counselling itself, there is no delay and they cannot be non-suited on the ground of delay. I am unable to accept the said submission of the learned counsel for the petitioner for more than one reason. As rightly pointed out by the learned Senior Counsel appearing for the second respondent if the petitioners' challenge is accepted the entire counselling process will have to be restarted in the sense all the candidates who had been allotted a seat in the first round of counselling and who had frozen their seats should also be given an opportunity to take part in the second round of counselling which would necessarily result in further delay in the process which has already been delayed by the pandemic. There are about 700 candidates who had frozen the seats allotted to them in the first round of counselling. If Clause 4.5 is tweaked and they are also allowed to participate in the second round of counselling while retaining the seats allotted to them in the first round those 700 seats should also be shown as seats available in the second round of counselling. The second respondent in its counter affidavit has explained as to how this process accumulates more seats in the mop up round of counselling which go to candidates with lesser comparative merit. The Honourable Supreme Court in Alapati Jyostna and others (Supra) has considered the prevalent situation and after taking note of the fact that nearly 700 candidates had been allotted seats and have frozen their seats had refused to issue any directions for the present year. The Honourable Supreme Court in the said decision has also recorded the assertions made in the response filed by the Medical Council of India that a common counselling or a single online counselling in the coming years would definitely take care of the grievances. I am therefore of the considered view that it would not be appropriate for this court to interfere with the counselling at this stage for the present year.

26. Even on the merits of the challenge, as pointed out by

the Honourable Supreme Court in Arvind Kumar Kankane, a freak circumstance by which a candidate with a lesser comparative merit gets a better choice by virtue of operation of Clause 4.5 cannot be the test for reasonableness of the rule itself. Apart from the above observation of the Honourable Supreme Court, the Delhi High Court in at least two judgements referred to supra namely in Reema Chawala -Vs- University of Delhi MANU/DE/0147/2003 and Priyanka Chaudhary & Others -Vs- National Board of Examinations MANU/DE/2863/2016, has upheld a similar clause found in the handbooks issued by the second respondent for the relevant academic years. I am unable to persuade myself to disagree with the reasons assigned by the Honourable Delhi High Court in support of its conclusions reached in the above two decisions. I must point out that the decisions relied upon by Mr.G.Sankaran relate to the Rules or Regulations framed by the Medical Council of India in respect of admissions to graduate and postgraduate courses offered by institutions and universities under the control of the Medical Council of India. Therefore the principles laid down in those decisions cannot be applied to test the reasonableness of the rule adopted by the second respondent. In Dr Divyesh J. Pathak and others -Vs- National Board of Examination and another, the Delhi High Court has concluded that the second respondent herein is an independent body and it cannot be contended that it is bound by the advisories of the Medical Council of India. It has also been pointed out that the Medical Council of India and the National Board of Examinations are independent and autonomous bodies, neither can be made bound by the policy decisions taken by the other. I am therefore constrained to conclude that the challenge to Clause 4.5 of the handbook cannot succeed and both the writ petitions deserve to be dismissed.

27. In fine both the writ petitions are dismissed however in the circumstances there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

सत्यमेव जयते
Sd/-

Assistant Registrar(CO)

//True Copy//

WEB COPY
Sub Assistant Registrar

jv
To

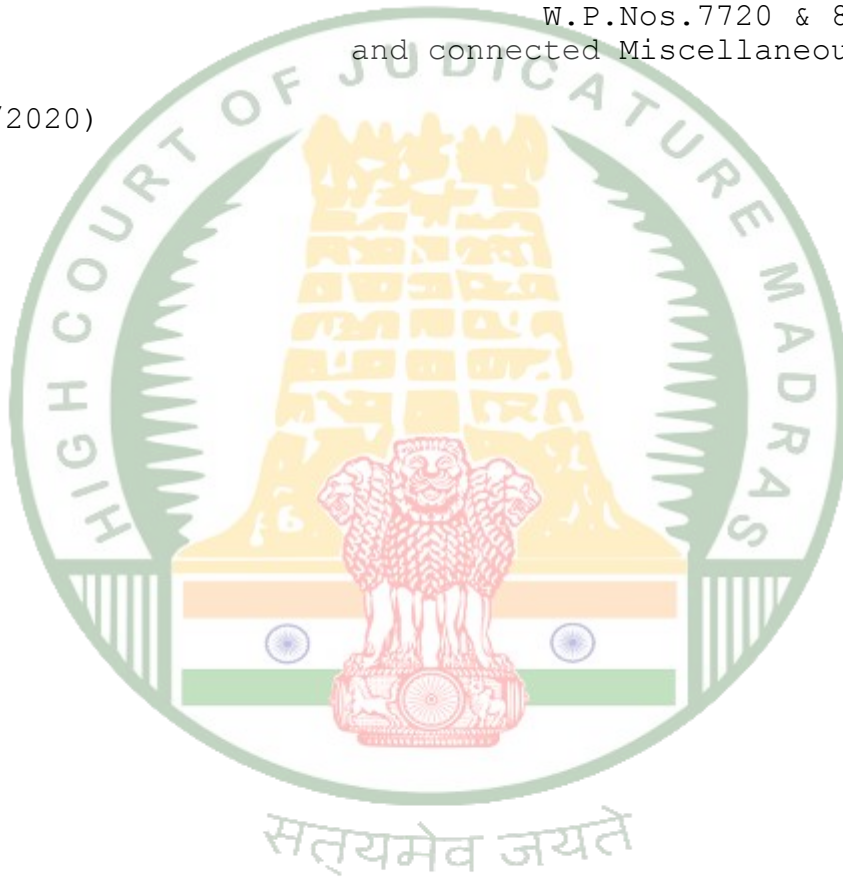
1. The Secretary to Government,
Government of India,
Ministry of Health and Family Welfare,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi - 110 011.

2. National Board of Examinations,
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road),
New Delhi - 110 029.

3. The Secretary General,
Medical Council of India
Pocket 14, Sector - 8,
Dwaraka, New Delhi - 110 077.

W.P.Nos.7720 & 8193 of 2020
and connected Miscellaneous Petitions

RSV(CO)
RMP(16/07/2020)



WEB COPY