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

% **Date of decision : 10.05.2021**

+ **W.P.(C) 5479/2020**

RAHUL YADAVPetitioner
Through **Ms. Saahila Lamba, Advocate**

versus

IDBI BANKRespondent
Through **Mr. Ritin Rai, Senior Advocate**
with Mr. Sidhartha Barua and
Mr. Praful Jindal, Advocates

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Petitioner has filed the present petition under Article 226 of the Constitution of India assailing letter dated 22.06.2020, whereby Respondent has cancelled the candidature of the Petitioner for admission to one year Post Graduate Diploma in Banking and Finance (PGDBF) at Manipal School of Banking, Bengaluru for the year 2019-2020, granted earlier, vide letter dated 04.03.2020.

2. Brief facts germane to the issue under consideration are in a narrow compass and are as follows: -

(a). Respondent issued Advertisement No.2/2019-2020 dated 21.06.2019 for admission to one year PGDBF, at Manipal School of Banking, Bengaluru for the year 2019-2020. Upon successful completion

of PGDBF, candidates were to be inducted in the Respondent Bank at the post of Assistant Manager Grade-‘A’, subject to fulfilling the eligibility criteria provided in the advertisement.

(b). Advertisement was issued from Mumbai requiring the candidates to apply online between 23.06.2019 to 03.07.2019 and no other mode of application was acceptable. The selection process comprised of online test, followed by personal interview.

(c). Desirous of getting admission in PGDBF, followed by appointment in IDBI, Petitioner applied in response to the advertisement and appeared in the online test and personal interview. Vide letter dated 04.03.2020, Petitioner was informed that he had been selected for admission and was directed to report on 16.03.2020.

(d). Relevant would it be to mention at this stage that prior to the submission of the application for admission to PGDBF, Petitioner had filed a petition, being HMA Petition No.1412/2019, for dissolution of marriage under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955, before the Family Court, Dwarka, New Delhi, on account of a marital discord. Petition was listed for the first time on 10.05.2019 and was pending on the date of application for PGDBF.

(e). The application form required the candidates to furnish details of any prosecution / detention / fine / conviction / sentence awarded by any Court of law for any offence. Petitioner responded by filling ‘No’ against the relevant column as on the date of the application, none of the above was applicable. FIR No. 355/2019 under Sections 498A/ 506 / 323 / 343/ 34 IPC was registered against the Petitioner and his family members on 15.12.2019, at the behest of his wife.

(f). On receipt of letter dated 04.03.2020, offering admission, Petitioner on his own volition wrote to the Respondent and disclosed registration of FIR against him. When Petitioner reported for training at Manipal Campus, Bengaluru, he was not allowed to join training and was informed that on account of the criminal case, decision to grant him admission was being re-considered and he would be informed of the outcome.

(g). Vide impugned letter dated 22.06.2020, Petitioner was informed of cancellation of his admission to PGDBF. Immediately on receipt of the letter, Petitioner sent an e-mail dated 14.07.2020, requesting the Respondent to revisit its decision, as the same was premised on mere allegations, which in any event were false and yet to undergo the test of judicial scrutiny. Getting no response, Petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

3. At the outset, twofold preliminary objections were raised by the Respondent to the maintainability of the present petition as follows :-

(a) Respondent/Bank is not a 'State' or its instrumentality or covered under the expression 'other authorities' under Article 12 of the Constitution of India. Respondent is not performing public function or discharging public duty to be amenable to the jurisdiction of this Court under Article 226 of the Constitution.

(b) Lack of territorial jurisdiction of this Court.

4. In support of one limb of the first objection, Mr. Rai, learned Senior Counsel argued that (a) Respondent/Bank is a Company under the Companies Act, 2013 engaged in the business of Banking; (b) State neither supports nor controls its Management; (c) Central Government

does not have any, leave alone deep or pervasive control over its functioning; (d) Policy decisions related to functioning and routine administrative matters are taken only by the Board, similar to other private sector companies and are not required to be referred to or approved or ratified by the Central Government; (e) Bank is not a Government Company as defined under Section 2(45) of the Companies Act, 2013; (f) Central Government is not a major or sole shareholder and does not provide exclusive budgetary support for the functioning or day-to-day activities, save and except, nominal contribution to the share capital of the Bank; (g) Respondent borrows from financial institutions/market and meets its expenditure by internal accruals; (h) Government has the power to nominate only two Directors in the Board out of 14, and does not exercise any functional control over the affairs of the Bank; (i) administration is through officers, independently selected for the purpose, not nominated by Government.

5. Succinctly put, the argument was that Bank is administratively, financially and functionally controlled by its Board and is not a State or its instrumentality or 'other authority' under Article 12 of the Constitution. To substantiate the argument, reliance was placed on the judgments of the Supreme Court in the case of Ramana Dayaram Shetty vs. International Airport Authority of India, (1979) 3 SCC 489; Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 and Pradeep Kumar Biswas and Ors. vs. Indian Institute of Chemical Biology and Ors., (2002) 5 SCC 111.

6. Mr. Rai, relied on the judgment of the Supreme Court in GM, Kisan Sahkari Chini Mills Ltd. vs. Satrugan Nishad, (2003) 8 SCC 639,

wherein it was held that a Cooperative Society manufacturing sugar was not amenable to the writ jurisdiction despite the fact that in the said case the State held 50% shares in the Mill and nominated one-third of the Directors in the Management Committee. Judgment of the Bombay High Court in the case of Vassudev Madkaikar and Ors. vs. State of Goa, through its Chief Secretary and Ors., (2021) SCC Online Bom 479, was cited where the Court held that Goa State Cooperative Bank is not a State as the entire shareholding is not held by the Government and presence of two nominee Directors does not indicate a deep and pervasive control by the Government.

7. Learned Senior Counsel relied on the following judgments, where High Courts have held that no writ shall lie against IDBI Bank :-

- (a). *judgment of Kolkata High Court in Kundan Prasad v. UOI and Ors., W.P. No.8736/2019, decided on 11.06.2019.*
- (b). *judgment of the Bombay High Court in Mrinmayee Rohit Umrotkar vs. Union of India and Ors., WP (L) No.6704/2020, decided on 08.12.2020;*
- (c). *judgment of Kerala High Court in Unimoni Financial Services Ltd. vs. IDBI Bank Ltd., WP (C) No.17635/2020, decided on 16.12.2020; and*
- (d). *judgment of Kolkata High Court in Debasis Mukherjee vs. IDBI Bank Ltd. and Ors., W.P.A No.5016/2020, decided on 11.02.2021.*

8. The argument of the learned Senior Counsel *qua* the second limb of the first objection was that the Respondent is not performing any public function or discharging a public duty and therefore no writ can lie against a private Body and that too, for enforcing a contract, which in this

case is a letter of admission to the one-year PGDBF. It was also argued that it is settled law that even if a Body is performing public duty and amenable to writ jurisdiction, all its decisions are not necessarily subject to judicial review and only those decisions which involve public element, can be judicially reviewed. In support of the proposition, reliance was placed on the judgments of the Supreme Court in K.K. Saksena vs. International Commission on Irrigation and Drainage, (2015) 4 SCC 670 and Ramakrishna Mission's vs. Kago Kunya and Ors., (2019) 16 SCC 303 and a judgment of this Court in A.R. Joshi vs. State Bank of India, (1977) SCC Online Del 17 as well as of the Bombay High Court in Vassudev Madkaikar and Ors. (supra).

9. It was next contended that the advertisement was issued from Mumbai and the decision to cancel the admission was also taken in the office of the Respondent at Mumbai. No cause of action has arisen at Delhi and thus this Court lacks the territorial jurisdiction to entertain the petition. Reliance was placed on the judgments of the Supreme Court in Oil and Natural Gas Commission vs. Utpal Kumar, (1994) 4 SCC 711 and Kusum Ingots & Alloys Ltd. vs. Union of India and Anr. (2004) 6 SCC 254.

10. Elaborating the argument, Mr. Rai submitted that Petitioner approached this Court premising jurisdiction on receipt of impugned communication and participation in the online test and personal interview at Delhi. However, none of these can be determinative factors to decide the territorial jurisdiction of this Court. Writ of certiorari is sought to quash the letter dated 22.06.2020, which merely communicates a decision taken in the office of the Respondent at Mumbai. It is the decision, which

gives rise to a cause of action, if any, and not the online test or interview or receipt of the cancellation letter.

11. Additionally, it was submitted that as the admission process was on all India basis and the centers for interview were spread across the country, Respondent had cautiously stipulated in the advertisement that with respect to disputes arising out of the advertisement or selection, only Courts at Mumbai shall have jurisdiction, in order to avoid multiplicity of proceedings before different High Courts as also conflicting decisions. Relevant exclusive jurisdiction clause is as under :-

“xxv. Any resultant dispute arising out of this advertisement and the selection process shall be subject to the sole jurisdiction of the Courts situated in Mumbai only”

12. For enforcing the exclusive jurisdiction clause, judgment of the Supreme Court in the case of Maharashtra Chess Association vs. Union of India and Ors., (2020) 13 SCC 285, was referred to by learned senior counsel.

13. Responding to the objection of lack of territorial jurisdiction of this Court, Ms. Saahila Lamba, learned counsel for the Petitioner, contended that reliance of the Respondent on Clause 14(xxv) of the advertisement, the exclusive jurisdiction clause, is misconceived. It was argued that jurisdiction of a High Court cannot be ousted on the basis of such a clause, inserted in an advertisement, if otherwise cause of action arises within the territorial jurisdiction of that High Court. The objection is contrary to the very scheme and scope of Article 226(2) of the Constitution of India and judicial pronouncements in that regard. For the proposition of law, reliance was placed on judgments of the High Court

of Patna in Binod Kumar Sharma vs. Union of India & Ors. in **Civil Writ Jurisdiction Case No. 22888/2012** decided on 08.04.2013 and Sunil Kumar Yadav vs. Union of India & Ors. in **Civil Writ Jurisdiction Case No. 2998/2013** decided on 17.05.2016.

14. It was urged that a part of the cause of action, if not the entire, has arisen within the territorial jurisdiction of this Court, in as much as Petitioner had appeared for the online test and personal interview, leading to his selection, within the territorial boundaries of this Court. This apart, letter dated 22.06.2020, communicating cancellation of the candidature of the Petitioner was received at Delhi.

15. To counter the second preliminary objection that writ is not maintainable as IDBI is not a State or its instrumentality or 'other authority' under Article 12 of the Constitution, it was asserted that writ petition is maintainable as (a) 51% of shareholding of IDBI is held by Life Insurance Corporation of India, a 100% Government owned Corporation; (b) 47% of shareholding is held by Government of India; (c) 96.78% numbers of shareholders of IDBI are the public and (d) Board of IDBI comprises of two Non-Executive Directors nominated by the Government and one Non-Executive Director nominated by the LIC.

16. The argument, as it unfolds is that 98% shares of the IDBI are owned by the Government or Government controlled Corporation i.e. LIC and thus the financial control vests with the Government. With two Government nominated Directors on Board, Government also exercises administrative control. It was argued that the Supreme Court in Ajay Hasia (supra) in the context of Article 12 of the Constitution of India held that if the entire share capital of a Corporation is held by the Government,

it would go long way in indicating that the Corporation is an instrumentality or an agency of the Government and the said case therefore squarely covers the present case. The Supreme Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust vs. V.R. Rudani (1989) 2 SCC 691 held that Article 226 confers wide powers on the High Courts to issue writs to any person or authority for enforcement of fundamental rights and for any other purpose and the words ‘any person or authority’ in Article 226 are not confined only to statutory authorities and instrumentalities of the State, but may cover any other person or body, performing public duty.

17. Reliance was placed on the judgement of Division Bench of this Court in Sagrika Singh vs. Union of India & Ors. in **WP(C) 3850/2010**, decided on 29.08.2011, wherein it was held that AGIF performs a public duty by providing insurance cover to army personnel and their families, deducting premium from their salaries and is amenable to the writ jurisdiction of the High Court. Reliance was also placed on the judgment in Bernard D’Mello vs. Industrial Finance Corporation Limited & Ors. in **W.P.(C) 6571/2003** decided on 05.07.2004, wherein this Court, considering the fact that MDI receives grant from IFCI, which in turn is substantially owned by the Government, held that MDI is amenable to writ jurisdiction.

18. Distinguishing the judgements relied upon by the Respondent, learned counsel for the Petitioner submitted that in the judgement of the Bombay High Court in Mrinmayee Rohit Umrotkar (supra), the Court held that IDBI is not an undertaking of the Government of India. This cannot be cited to support a proposition that IDBI is not amenable to writ

jurisdiction of this Court, as the said decision has not examined the issue of maintainability in the context of Article 226 of the Constitution of India. Judgments of the Kerala High Court in Unimoni Financial Services Ltd. (supra) and that of the Kolkata High Court in Debasis Mukherjee (supra) were also distinguished on the same premise.

19. I have heard learned counsel for the Petitioner and learned Senior Counsel for the Respondent and examined their contentions.

20. The foremost legal nodus required to be addressed is whether this Court has the territorial jurisdiction to entertain the present petition.

21. In order to address this issue it would be pertinent to understand the legislative history of Article 226 of the Constitution of India and the amendments thereto. Under Article 226, as it originally stood, only the situs of the Central Government and its agencies was the determining factor for deciding the territorial jurisdiction and cause of action was not conceived as a relevant or material factor for entertaining a writ petition. The unamended Article reads as under:

“226. Power of High Court 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 warrant 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 on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme

Court by Clause (2) of Article 32.”

22. The Constitution Bench of the Supreme Court in Election Commission vs. Saka Venkata Rao, **1953 SCR 1144**, interpreting the said provision held that writ court would be bound by the territories for its jurisdiction and the Government or an authority or a person affected by the issuance of writ, would be amenable to the jurisdiction, either by location or residence within its territory. The Court observed that ‘cause of action’ gives jurisdiction in suits and this principle finds basis in statutory enactments but cannot apply to writs as Article 226 has no reference to ‘cause of action’ or when it arises.

23. Another Constitution Bench of the Supreme Court in K.S. Rashid and Son vs. Income Tax Investigation Commission **1954 SCR 738** took the similar view and finally in Lt. Col. Khajoor Singh vs. Union of India **(1961) 2 SCR 828**, a larger Bench of the Supreme Court approved the view in the two Constitution Bench judgements and the authoritative pronouncement was that a writ court cannot exercise jurisdiction beyond its territorial boundaries.

24. Subsequently, by the Constitution (Fifteenth) Amendment Act, 1963, Clause (1-A) was inserted in Article 226, which was later re-numbered as Clause (2) by the Constitution (Forty-Second) Amendment Act, 1976. Amended Clause (2) reads as under:

“226. Power of High Court to issue certain writs:

(1)

(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.”

25. The underlying intent of the amendment manifests itself from a plain reading of Clause (2) of Article 226 that the High Court can issue a writ to an authority or person or Government, notwithstanding that the seat of such Government or authority or the residence of such person is beyond its territorial jurisdiction, so long as ‘cause of action’ arises within its territory, wholly or in part.

26. Therefore, it is palpably clear that after the amendment to Article 226, ‘cause of action’ is a relevant and germane factor to decide the territorial jurisdiction of a High Court. Through several judicial pronouncements, it is also settled that even if a small fraction of ‘cause of action’ arises within the jurisdiction of a particular High Court, the said High Court may in its discretion entertain the writ petition, with a cautious caveat that the facts arising in the case form an integral part of the ‘cause of action’.

27. A three-Judge Bench of the Supreme Court in Oil and Natural Gas Commission (supra), held as under :

“6. It is well settled that the expression “cause of action” means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour v. Partab Singh [ILR (1889) 16 Cal 98, 102 : 15 IA 156] Lord Watson said:

“... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set

forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.”

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.”

28. In Kusum Ingots & Alloys Ltd. (supra), a three-Judge Bench of the Supreme Court reiterated the principles laid down in Oil and Natural Gas Commission (supra) as well as in the case of State of Rajasthan v. Swaika Properties (1985) 3 SCC 217. In Om Prakash Srivastava v. Union of India (2006) 6 SCC 207 the Supreme Court held as under:-

8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority

or the residence of the person against whom the direction, order or writ is issued is not within the said territories.

12. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in “cause of action”.

17. It would be appropriate to quote para 61 of the said judgment, which reads as follows:

61. (1) The correct test in cases falling under Order 2 Rule 2, is ‘whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit’. (Moonshee Buzloor Ruheem v. Shumsoonnissa Begum)

(2) The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. (Read v. Brown)

(3) If the evidence to support the two claims is different, then the causes of action are also different. (Brunsden v. Humphrey)

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. (Brunsden v. Humphrey)

(5) The cause of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers ... to the media upon which the

plaintiff asks the court to arrive at a conclusion in his favour. (Chand Kour v. Partab Singh) This observation was made by Lord Watson in a case under Section 43 of the Act of 1882 (corresponding to Order 2 Rule 2) where plaintiff made various claims in the same suit. (IA pp. 139-40)”

29. A year later, in the case of Alchemist Ltd. & Anr. vs. State Bank of Sikkim & Ors. (2007) 11 SCC 335, the Supreme Court after tracing the legislative history of Article 226 and its amendment, held that accrual of ‘cause of action’ is an additional ground for conferring jurisdiction on the High Court to exercise power under the said Constitutional provision. Relevant paras of the judgment in are as follows :-

20. It may be stated that the expression “cause of action” has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.

21. The classic definition of the expression “cause of action” is found in Cooke v. Gill wherein Lord Brett observed:

“‘Cause of action’ means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.”

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.

35. Negating the contention and upholding the order passed by the High Court, this Court ruled that passing of a legislation by itself does not confer any such right to file a writ petition in any court unless a cause of action arises therefor. The Court stated: (Kusum Ingots case, SCC p. 261, para 20)

“20. A distinction between a legislation and executive action should be borne in mind while determining the said question.”

Referring to ONGC, it was held that all necessary facts must form an “integral part” of the cause of action. The fact which is neither material nor essential nor integral part of the cause of action would not constitute a part of cause of action within the meaning of Clause (2) of Article 226 of the Constitution.

36. In National Textile Corpn. Ltd. v. Haribox Swalram referring to earlier cases, this Court stated that: (SCC p. 797, para 12.1)

“12.1 ... the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained.”

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.

38. In the present case, the facts which have been pleaded by the appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of “cause of action” within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition.

30. ‘Cause of action’ as understood from judicial pronouncements, can be described as a bundle of essential facts necessary for the Petitioner to prove, before he can succeed and is therefore a foundation of any suit or a writ petition. The expression ‘cause of action’ has been defined tersely in ***Mulla’s Code of Civil Procedure*** as follows:

“The “cause of action” means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.”

31. In Union of India vs. Adani Exports Ltd. (2002) 1 SCC 567, the Supreme Court observed that jurisdiction of the High Court to entertain a writ petition would be conferred only when the Petitioner discloses that the integral facts pleaded to support a ‘cause of action’ constitute a cause empowering the High Court to decide the controversy and if not the entire, at least some part arises within its jurisdiction. The Court observed

as follows:

“16. It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this regard, it would suffice for us to refer to the observations of this Court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu [(1994) 4 SCC 711] (SCC at p. 713) wherein it was held:

“Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression „cause of action“ means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial.”

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 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.”

(emphasis added)

32. From the conspectus of the judgements and the affirmation of the Supreme Court that ‘cause of action’ is a significant factor for conferring territorial jurisdiction on a High Court, it is now crystal clear and no more obscure that a writ court can exercise jurisdiction where the Respondent

is located in its territories and also where the Government or authority is located outside its territorial boundaries, but in the latter case, the prerequisite to exercise the power shall be the arising of 'cause of action' in its territorial boundaries. The said expression as clearly defined and amplified in various judgments would take in its ambit, partial cause of action as well. The converse, however is not correct. Where not even a miniscule part of the cause of action has arisen within the territorial boundaries of the Court, it shall lack the territorial jurisdiction to entertain a petition and to issue directions to the Respondents who are located outside its boundaries. The Constitutional Amendment introducing Article 226 (2) with a non-obstante clause highlights the position aforesaid and needless to state that this Constitutional mandate would govern the considerations to decide the territorial jurisdiction of this Court.

33. The Supreme Court has also unambiguously reiterated that before entertaining a writ petition, High Court must satisfy itself from the facts pleaded before it that they have a nexus or relevance with the *lis* involved in the case and facts having no bearing with the *lis* would not give rise to 'cause of action' to confer territorial jurisdiction. In other words, the bundle of facts so mentioned must give rise to an actionable wrong within the territories of the Court. Clause (1) of Article 226 deals with both the source of power of Court and its territorial jurisdiction, while clause (2) amplifies the jurisdiction with respect to the 'cause of action'. Thus, there is a clear bifurcation in the clauses and from a close reading what unveils, in the opinion of this Court, is that the power of a Court is certainly not synonymous to the jurisdiction of a Court. The conclusion that can be

safely drawn is that ‘cause of action’ is the keyword to decide the territorial jurisdiction.

34. Keeping this in the backdrop, it needs to be examined in the case in hand (a) if any ‘cause of action’, wholly or in part, has arisen within the territorial jurisdiction of this Court and (b) the impact and effect of the exclusive jurisdiction clause mentioned in the advertisement.

35. Taking up the second question first, the answer in the opinion of this Court lies in a recent judgement of the Supreme Court in Maharashtra Chess Association (supra). The conundrum before the Supreme Court in the said case was whether a private agreement between two parties in the form of their Constitution and Bye-laws, conferring exclusive jurisdiction on the Courts at Chennai, ousted the writ jurisdiction of the Bombay High Court under Article 226 of the Constitution. Appellant therein had filed a writ petition before the Bombay High Court and the second Respondent objected to the maintainability on the ground that Clause 21 of the Constitution and Bye-laws conferred exclusive jurisdiction on Courts at Chennai, with respect to disputes involving the second Respondent or any other party to the said Bye-laws, including the Appellant. Bombay High Court held that Clause 21 ousted the jurisdiction of all other Courts except the Courts at Chennai.

36. Referring to an earlier decision of the Supreme Court in Aligarh Muslim University & Anr. vs. Vinay Engineering Enterprises (P) Ltd. (1994) 4 SCC 710, the Supreme Court observed as under:

“23. This brings us to the question of whether Clause 21 itself creates a legal bar on the Bombay High Court exercising its writ jurisdiction. As discussed above, the writ jurisdiction of

the High Court is fundamentally discretionary. Even the existence of an alternate adequate remedy is merely an additional factor to be taken into consideration by the High Court in deciding whether or not to exercise its writ jurisdiction. This is in marked contradistinction to the jurisdiction of a civil court which is governed by statute. In exercising its discretion to entertain a particular case under Article 226, a High Court may take into consideration various factors including the nature of the injustice that is alleged by the petitioner, whether or not an alternate remedy exists, or whether the facts raise a question of constitutional interpretation. These factors are not exhaustive and we do not propose to enumerate what factors should or should not be taken into consideration. It is sufficient for the present purposes to say that the High Court must take a holistic view of the facts as submitted in the writ petition and make a determination on the facts and circumstances of each unique case.

24. At this juncture it is worth discussing the decision of this Court in Aligarh Muslim University v. Vinay Engg. Enterprises (P) Ltd. [Aligarh Muslim University v. Vinay Engg. Enterprises (P) Ltd., (1994) 4 SCC 710] In that case, the contract between the parties contained a clause conferring jurisdiction on the courts at Aligarh. When the High Court of Calcutta exercised its writ jurisdiction over the matter, this Court held: (SCC p. 711, para 2)

“2. 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. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of

jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable.”

25. The Court examined the facts holistically, noting that the contract was executed and to be performed in Aligarh, and the arbitrator was to function at Aligarh. It did consider that the contract conferred jurisdiction on the courts at Aligarh, but this was one factor amongst several considered by the court in determining that the High Court of Calcutta did not have jurisdiction.

26. In the present case, the Bombay High Court has relied solely on Clause 21 of the constitution and bye-laws to hold that its own writ jurisdiction is ousted. The Bombay High Court has failed to examine the case holistically and make a considered determination as to whether or not it should, in its discretion, exercise its powers under Article 226. The scrutiny to be applied to every writ petition under Article 226 by the High Court is a crucial safeguard of the rule of law under the Constitution in the relevant territorial jurisdiction. It is not open to a High Court to abdicate this responsibility merely due to the existence of a privately negotiated document ousting its jurisdiction.

27. It is certainly open to the High Court to take into consideration the fact that the appellant and the second respondent consented to resolve all their legal disputes before the courts at Chennai. However, this can be a factor within the broader factual matrix of the case. The High Court may decline to exercise jurisdiction under Article 226 invoking the principle of forum non conveniens in an appropriate case. The High Court must look at the case of the appellant holistically and make a determination as to whether it would be proper to exercise its writ jurisdiction. We do not express an opinion as to what factors should be considered by the High Court in the present case, nor the corresponding gravity that should be accorded to such factors. Such principles are well known to

the High Court and it is not for this Court to interfere in the discretion of the High Court in determining when to engage its writ jurisdiction unless exercised arbitrarily or erroneously. The sole and absolute reliance by the Bombay High Court on Clause 21 of the constitution and bye-laws to determine that its jurisdiction under Article 226 is ousted, is however one such instance.”

37. The principle reaffirmed in the judgement is that writ jurisdiction of the High Court is fundamentally discretionary and the Court must take a holistic view of the facts pleaded to determine if it would be proper to exercise the discretion. But what is not open to the High Court is to abdicate this responsibility due to the existence of a privately negotiated document, ousting its jurisdiction. High Court can take into consideration that the parties had consented to resolve their legal disputes before a particular Court, but only as *a factor* within the broader matrix of the case. It was also observed by the Supreme Court that High Court may decline to exercise jurisdiction under Article 226 invoking the principle of *Forum non-conveniens* in an appropriate case, but there cannot be a sole and absolute reliance on an ouster clause in declining to entertain the petition.

38. In view of the above, this Court cannot accept the contention of the Respondent that the exclusive jurisdiction clause in the advertisement is by itself a sufficient ground to oust the jurisdiction of this Court under Article 226. Certainly, this would be one amongst the other *factors* brought forth by the parties to the *lis* for consideration of the Court, as held by the Supreme Court in Maharashtra Chess Association (supra).

39. Coming now to the question, if any part of the ‘cause of action’ has arisen within the territorial jurisdiction of this Court. ‘Cause of action’ is not an abstract concept and will have to be seen in the light of the facts pleaded and the relief sought in the present petition. The Supreme Court in National Textile Corp. Ltd. and Ors. vs. Haribox Swalram and Ors. (2004) 9 SCC 786, held that each and every fact pleaded in the writ petition does not *ipso facto* lead to a conclusion that those facts give rise to a cause of action within the Court’s territorial jurisdiction and only those facts which have a nexus or relevance to the *lis* or the dispute involved in the case will determine the jurisdiction.

40. Challenge laid in the present petition is to a letter dated 22.06.2020 cancelling the candidature of the Petitioner for admission to PGDBF, with a consequential relief to direct the Respondent to grant admission to the Petitioner. As the pleadings go, there are three facets to the claim of jurisdiction of this Court (a) online test; (b) personal interview and (c) communication of rejection letter, all at Delhi. Seen and tested in the backdrop of the *lis* i.e cancellation of admission, the online test and personal interview cannot be factors to determine the territorial jurisdiction of this Court. The grievance of the Petitioner is not *qua* any illegality or irregularity in the online examination or the interview. Had that been the grievance, Petitioner was justified in contending that the cause of action has, in part, accrued at Delhi. In the present case, however, neither of the two are under challenge and thus do not give rise to a ‘cause of action’ which connotes a bundle of facts, the Petitioner must prove, if traversed, to entitle him to a judgment in his favour.

41. In so far as the third factor is concerned, precedents indicate that the contention that place of receipt of the rejection/cancellation letters, gives territorial jurisdiction to the High Court has been invariably rejected by Courts. In fact, Patna High Court in Sunil Kumar Yadav (supra), the judgement relied upon by the Petitioner, has rejected this very contention and held that mere communication of a rejection notice will not give rise to a cause of action.

42. In Oil and Natural Gas Commission (supra), NICCO, one of the tenderers, whose bid was rejected on account of lack of eligibility criteria stipulated in the tender, filed a writ petition before the Calcutta High Court on the plea that part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it had read the advertisement concerning the tender in a newspaper, Times of India, at Calcutta and this gave rise to part of the cause of action. The writ petition was entertained by the Calcutta High Court. Being aggrieved, ONGC approached the Supreme Court. Allowing the appeal and setting aside the order of the High Court, the Supreme Court held that merely reading of an advertisement at Calcutta and submitting an offer in Calcutta and/or making representation therefrom would not constitute facts forming an integral part of the cause of action. The advertisement itself mentioned that tenders were to be submitted at Delhi and thereafter scrutiny and a final decision was also to take place at Delhi and thus, even if the averments in the writ petition are taken as true, no cause of action arose within the jurisdiction of the Calcutta High Court. Applying the judgement to the present case, receipt of the admission and impugned cancellation letter at Delhi will not give rise to a cause of action within

the jurisdiction of this Court.

43. The actionable claim in the present case is the impugned letter dated 22.06.2020 whereby the Respondent has cancelled the admission of the Petitioner to the one-year PGDBF. The letter undoubtedly emanates from the office of the Respondent at Mumbai and significantly is preceded by and is a consequence of a decision taken by the Respondent to cancel the admission, which has its genesis and origin in the office of the Respondent at Mumbai. Therefore, even assuming for the sake of argument that the online examination and interview give rise to a miniscule or a small fraction of a cause of action, this Court is not persuaded to entertain the present petition, applying the doctrine of *forum non-conveniens*, as larger part of the cause of action i.e. advertisement, decision to cancel the appointment and the cancellation letter, have all emanated from Mumbai. Relevant records wherein the decision was taken as well as the officers instrumental in taking the decision are also in Mumbai.

44. In this context I may refer to a judgement of the Co-ordinate Bench of this Court in somewhat similar circumstances in Neetu vs. Department of Financial Services, **2016 SCC OnLine Del 3549**, wherein Petitioner had challenged a letter cancelling her appointment to the post of Probationary Officer with the Respondent Bank. Maintainability of the petition was questioned by the Respondent on the ground *inter alia* that the impugned order was issued from the Corporate Office of the Respondents at Mumbai. The Court observed that an actionable cause of action had arisen in favour of the Petitioner based on the impugned letter of cancellation. Placing reliance on the principles enunciated by the Full

Bench of this Court in Sterling Agro Industries Ltd. vs. Union of India, **AIR 2011 Delhi 174** it was held that merely because a fraction of the cause of action has arisen before a particular Court, should not be the only guiding factor to entertain a petition and the Court, invoking the doctrine of *forum conveniens*, can decline to entertain a petition on the ground that a larger part of the actionable cause has arisen elsewhere. Relevant paras of the judgment in Neetu (supra) are as follows :-

“4. It is settled law that merely because a fraction of the cause of action has arisen before a particular Court, should not be the only guiding factor to entertain a petition and the Court, by invoking the doctrine of forum conveniens can decline to entertain a petition on the ground that a large part of the actionable cause has arisen elsewhere. A Full Bench of five Judges of this Court in the case of Sterling Agro Industries Ltd. v. Union of India reported as AIR 2011 Delhi 174 had the occasion to examine the doctrine of ‘forum conveniens’ and the concept of cause of action in view of the conflicting judgments on the issue that were referred to them. After examining a number of decisions of the Supreme Court on this issue including those in the cases of Sri Nasiruddin v. State Transport Appellate Tribunal, (1975) 2 SCC 671, Kishore Rungta v. Punjab National Bank, 2003 (151) ELT 502 (Bom), Alchemist Limited (supra), National Textile Corporation Ltd. v. Haribhaskar, (2004) 9 SCC 786, the Full Bench had observed as below:

“31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other

ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.”

5. The Full Bench of this Court had finally summarized their discussion in the following words:-

“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/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 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 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 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 malafide 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.”

6. In the case in hand, not even a fraction of the cause of action can be stated to have arisen in Delhi for filing the petition in this court. Even if that was the case, then too this court is still vested with the discretion not to entertain a petition on the ground that a large part of the cause of action has not arisen within its territorial jurisdiction, but elsewhere.

7. Given the facts of the case, this Court is of the opinion that the present petition is not maintainable in Delhi for want of territorial jurisdiction. Accordingly, the petition is disposed of, while granting liberty to the petitioner to approach the competent court vested with territorial jurisdiction in that regard.”

45. In Maharashtra Chess Association (supra), the Supreme Court, while held that in the context of Article 226 of the Constitution of India, a High Court cannot abdicate its responsibility of entertaining a writ petition purely on the basis of an exclusive jurisdiction clause but also observed that this could be *a factor* to be taken into consideration. In light of the *lis* between the parties in the present case, the exclusive jurisdiction

clause in the advertisement does become relevant and additionally persuades this Court not to entertain the present petition *albeit* there cannot be a doubt on the proposition of law that parties cannot oust the writ jurisdiction by incorporating a privately negotiated ouster clause.

46. Cancellation letter indicates that Respondent has relied on clause 14 (xix) of the advertisement which prescribed background check as one of the conditions for appointment. On merits, the case of the Petitioner is that criminal cases arising out of marital discords should not be a reason enough to deny an appointment. In this context, the exclusive jurisdiction clause becomes relevant, stipulating that any dispute arising out of the advertisement, shall be subject to jurisdiction of Courts at Mumbai. The advertisement prescribed an online objective test with as many as 95 centres from where the candidates could attempt the examination. The centres, as is evident from a perusal of Annexure-I to the advertisement, were spread across the length and breadth of the country. Learned Senior counsel for the Respondent had sought to explain that given the large number of the centres, an exclusive jurisdiction clause was incorporated in the advertisement, to avoid litigation in different High Courts as well as obviate chances of conflicting decisions. Thus, examined holistically, this Court is of the view that the present petition cannot be entertained.

47. Learned counsel for the Petitioner has strenuously relied on the judgements of Patna High Court in Binod Kumar Sharma (supra) and Sunil Kumar Yadav (supra) in support of the contention that this Court has territorial jurisdiction. Having perused the said judgements, in my view, the same do not help the Petitioner.

48. In Binod Kumar Sharma (supra) challenge was to a selection process initiated by the Staff Selection Commission for recruitment of Constables (GD) in the various Para-Military Forces. Be it noted that in the said batch of petitions, after expressing its view, the Court had finally placed the matter before Hon'ble the Chief Justice for referring to a Division Bench or for constituting a Larger Bench, in view of earlier decisions of the Court, taking a view contrary to the view the Court dealing with the petitions, was inclined to take.

49. In Sunil Kumar Yadav (supra), the issue before the Court was a challenge to an order whereby the Petitioner therein had been informed that his name had been withdrawn from the select list due to non-submission of the OBC certificate in the required format. Petitioner was an aspiring candidate to the post of Sub-Inspector (Fire) pursuant to an advertisement issued by the Staff Selection Commission. In the said case, Staff Selection Commission, Bangalore had issued the advertisement and the notifications were published in the State of Bihar. The preliminary test was conducted at Allahabad and the final written test at Lucknow. Due to non-production of a proper caste certificate, Petitioner's candidature was rejected. Patna High Court on an objection by the Respondent to its territorial jurisdiction, held that mere communication of a rejection notice will not give rise to a 'cause of action' before the said Court and in that context, observed that either cause of action would arise where the notification was published or where the test was held.

50. In the aforesaid case, petition was filed before the Patna High Court based on communication of the rejection notice and disagreeing with the Petitioner on this issue the writ petition was dismissed. This in

fact goes against the Petitioner herein. Place of examination was not a point for adjudication before the Court and suffice would it be to state that in view of the binding dicta of the Supreme Court in the judgements referred above as well as the principles laid down by the Full Bench of this Court, the observations of the Court in Sunil Kumar Yadav (supra) cannot help the Petitioner.

51. For all the aforesaid reasons, the present petition is not maintainable before this Court and thus Court is not delving into the second preliminary objection raised by the Respondent questioning the maintainability under Article 12 of the Constitution of India and/or on the touchstone of public function or public duty. The question is left open to be decided by the Court having territorial jurisdiction to decide the matter.

52. The writ petition is accordingly dismissed granting liberty to the Petitioner to approach the competent Court vested with territorial jurisdiction.

53. It is made clear that this Court has not expressed any opinion on the merits of the case.

54. No orders as to costs.

JYOTI SINGH, J

MAY 10, 2021

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