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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 19.05.2021

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W.P.(C) 7249/2017 & CMs 23290/2020, 28582/2019, 32232/2019, 33233/2019, 39742/2019 and 53707/2019.

DR. RAKESH DWIVEDI

..... Petitioner

Through: Mr. Satyajit Sarna,
Mr. Rahul Kukreja and
Ms. Bhavini Srivastava, Advocates

versus

COAL INDIA LTD. THROUGH

THE CHAIRMAN-CUM-MD & ORS.

..... Respondents

Through: Mr. Vaibhav Agnihotri,
Mr. Karanjot Singh Mainee and
Mr. Arjun Rekhi, Advocates
for R-1-4

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Petitioner has filed the present writ petition seeking a writ of mandamus directing Respondents No. 1 to 4 (hereinafter referred to as '**the official Respondents**') to promote the Petitioner to the post of Chief Manager (E&M) in E-7 Grade, retrospectively, with effect from 01.04.2013, the date when his juniors were promoted, with consequential benefits such as restoration of seniority, arrears of pay, etc., from the said date.

2. It is the case of the Petitioner that he joined Respondent No. 1 on 16.12.1987 and at the time of filing the present writ petition, on 18.08.2017, he was working as Senior Manager (E&M) at Delhi, on deputation. A Departmental Promotion Committee (DPC) was convened on 07.03.2013 to consider promotion of executives from E-6 to E-7 Grade and Petitioner was duly recommended for promotion. However, his promotion order was not issued due to lack of Vigilance/ Departmental/Security Clearance.

3. As per the Petitioner, a large number of executives junior to him in E-6 Grade, including Respondents No. 5 to 19 herein, were promoted, as their promotion orders were issued, without any delay, between 01.04.2013 and 16.04.2013. Aggrieved by the non-issuance of his promotion order, despite recommendations of the DPC and adequate vacancies, Petitioner made several representations to Respondent No.1 on 23.12.2013, 27.06.2014 and 01.09.2016.

4. For the first time, responding to the representations of the Petitioner, Respondent No. 1, vide letter dated 03.05.2016, informed him that his promotion order could not be issued for want of requisite vigilance clearance. Several representations were made thereafter by the petitioner between 06.02.2017 to 24.05.2017, seeking promotion with notional seniority w.e.f 01.04.2013, but to no avail.

5. Finally, Petitioner was promoted to E-7 Grade, vide promotion order dated 26.05.2017, but without notional seniority, leading to a representation dated 21.07.2017 for restoration of his seniority from 01.04.2013. Being unsuccessful in getting any relief from the official Respondents, Petitioner approached this Court.

6. Mr. Satyajit Sarna, learned counsel for the Petitioner contended that once the Petitioner was duly recommended for promotion by the DPC held on 07.03.2013, subject to vigilance clearance, mere lapse or delay on the part of the official Respondents in obtaining the requisite clearance, should not put the Petitioner to a disadvantage. Inaction on the part of the official Respondents has resulted in delayed promotion and loss of seniority, adversely affecting the career prospects of the Petitioner and juniors stealing a march over him.

7. Learned counsel submitted that the Supreme Court affirmed the principle of retrospective promotion and held that executives should not be made to suffer due to administrative lapses, in the case of P.N. Premachandran vs. State of Kerala (2004) 1 SCC 245. Reliance was also placed on the judgement of a Division Bench of this Court in Satish Kumar Khetarpal vs. Director General CISF 2017 SCC OnLine Del 7491, wherein the Court held that in case of unjustified delay in granting promotions for reasons not attributable to the employee, promotion ought to be given a retrospective effect.

8. Official Respondents opposed the writ petition raising several grounds on merits and also twofold preliminary objections viz.; (a) lack of territorial jurisdiction of this Court to entertain the present petition and (b) petition suffers from delay and laches.

9. Mr. Vaibhav Agnihotri, learned counsel for the official Respondents, at the outset, vehemently contended that this Court lacks the territorial jurisdiction to entertain the present petition as no part of the cause of action has arisen within its territorial limits. Entire case of the Petitioner hinges on non-promotion despite recommendation of the DPC

held on 07.03.2013. The said DPC was held at the Headquarters of Respondent No. 1 at Kolkata, promotion orders of juniors were issued from Kolkata, all correspondences made by the Petitioner have been addressed to Kolkata office, more so the authority blamed for inaction as well as the final decision making authority for promotions, is also at Kolkata. In case the Petitioner succeeds, mandamus can only be issued to the authority at Kolkata, which is competent to issue promotion orders. Therefore, not even a fraction of cause of action has arisen at Delhi and petition deserves to be dismissed on this ground alone. It is no more *res integra* that only those facts pleaded by a Petitioner which are necessary to adjudicate upon the *lis*, constitute cause of action conferring territorial jurisdiction upon a Court. Learned counsel also took the plea of *Forum non conveniens*, premised on the aforesaid facts and pressed for dismissal of the petition.

10. It was further argued that mere residence or posting of the Petitioner in Delhi or the location of the Corporate office of Coal India Ltd. at Delhi, which are the factors pleaded in the writ petition to approach this Court, will not confer jurisdiction on this Court, as it is trite that these factors are neither decisive nor relevant to the issue of territorial jurisdiction, if no cause of action has arisen here.

11. Without prejudice to the above, it was urged that the petition is barred by delay and laches as the grievances raised pertains to a DPC held in the year 2013 and moreover, the petitioner slept over his rights, when litigations were pending in various Courts in connection with promotions made pursuant to the DPC. Arguments were addressed on merits as well but are not recounted at this stage in view of the

preliminary objection to the territorial jurisdiction of this Court, which requires to be decided first.

12. In rebuttal to the objection of territorial jurisdiction, Mr. Sarna, learned counsel for the Petitioner argued that under Article 226(2) of the Constitution of India, this Court can issue a writ against an Authority located outside its territorial jurisdiction, provided cause of action has arisen within its territorial jurisdiction, wholly or in part. In the present case, both, at the time of holding the DPC on 07.03.2013 as well as belated promotion in the year 2017, Petitioner was posted at the Delhi office of Respondent No. 1 and all communications and representations were addressed by the Petitioner within the local limits of this Court. The only response from Respondent No. 1 to the representations made by the Petitioner was also received by the Petitioner in Delhi on 03.05.2016. Thus infringement of the right of the Petitioner to timely promotion, gave rise to a cause of action within the territorial boundaries of this Court. That apart, Corporate office of Respondent No. 1 is located at Delhi and these bundle of facts confer territorial jurisdiction upon this Court to entertain the present petition. Arguments were addressed controverting the objection of delay and laches and on merits.

13. Having heard the learned counsels for the parties, the first and foremost issue which needs consideration is whether this Court has the territorial jurisdiction to entertain the writ petition and only if the answer is in the affirmative, necessity to consider other issues will arise.

14. Going through the Legislative history, it is apparent that by the Constitution (Fifteenth Amendment) Act, 1963, after Clause (1) in Article 226 of Constitution of India, Clause (1-A) was inserted and was thereafter

re-numbered as Clause (2) by the Constitution (Forty Second Amendment) Act, 1976 and the same 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.”

15. Prior to the amendment and insertion of Clause (2) in Article 226, time and again the question being raised was whether High Court could issue writs only for the reason that cause of action had arisen within its territorial boundaries. The Constitution Bench of the Supreme Court in Election Commission vs. Saka Venkata Rao **1953 SC 210** 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. The Supreme Court observed as follows:

“8. The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the

presence of the person or authority “within the territories” in relation to which the High Court exercises jurisdiction.”

16. Therefore the principles enunciated by the Supreme Court, for the High Courts to follow, while determining their territorial jurisdiction, was that a High Court can exercise jurisdiction under Article 226 of the Constitution only if the person or authority to whom the writ is sought to be issued is located within the territorial limits of its jurisdiction and cannot exercise jurisdiction on the plea that whole or part of the cause of action has arisen within its territorial limits.

17. The question as to whether on the ground of cause of action, a High Court can exercise jurisdiction, once again surfaced and was considered by a larger Bench of the Supreme Court in Lt. Col. Khajoor Singh vs. Union of India **AIR 1961 SC 532**. The Supreme Court approved the view of the two Constitution Benches in the case of Saka Venkata Rao (supra) and K.S. Rashid and Son vs. Income Tax Investigation Commission **1954 SCR 738** and the authoritative pronouncement was that a writ court cannot exercise jurisdiction beyond its territorial boundaries. Relevant para of the judgement is as follows:

“14. Therefore, the view taken in Election Commission, India v. Saka Venkata Subba Rao and K.S. Rashid and Son v. Income Tax Investigation Commission that there is two-fold limitation on the power of the High Court to issue writs etc. under Article 226, namely, (i) the power is to be exercised ‘throughout the territories in relation to which it exercises jurisdiction’, that is to say, the writs issued by the court cannot run beyond the territories subject to its jurisdiction, and (ii) the person or authority to whom the High Court is empowered to issue such writs must be “within those territories” which clearly implies that they must be

amenable to its jurisdiction either by residence or location within those territories, is the correct one.

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16. Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Article 226 are not suits; they provide for extraordinary remedies by a special procedure and give powers of correction to the High Court over persons and authorities and these special powers have to be exercised within the limits set for them. These two limitations have already been indicated by us above and one of them is that the person or authority concerned must be within the territories over which the High Court exercises jurisdiction. Is it possible then to overlook this constitutional limitation and say that the High Court can issue a writ against a person or authority even though it may not be within its territories simply because the cause of action has arisen within those territories? It seems to us that it would be going in the face of the express provision in Article 226 and doing away with an express limitation contained therein if the concept of cause of action were to be introduced in it.”

18. A bare reading of the judgements of the Supreme Court makes it palpably clear that as per the Supreme Court, there were twofold limitations on the powers of the High Courts to issue writs under Article 226 - (a) seat of the person or authority to whom the writ is to be issued must be within its territorial limits and (b) cause of action by itself will not be a sufficient ground to assume jurisdiction.

19. There was, however, a transition when Clause (2) was inserted in Article 226 as aforementioned and by virtue of the said amendment, the

High Courts could now issue writs, if the cause of action arose within their territorial limits, wholly or in part. The fall out was that even if the seat of the Government or the concerned authority or person, to whom the writ is to be issued, was not located within the territorial limits, writ jurisdiction could be exercised, provided the cause of action arose before the said High Court. The converse was that if no cause of action arose before the High Court, it did not have the power to exercise the writ jurisdiction, even if the seat of the Government or the authority was located within its territorial jurisdiction.

20. A three-Judge Bench of the Supreme Court in Oil and Natural Gas Commission vs. Utpal Kumar, (1994) 4 SCC 711, after a detailed examination of Clause (2) of Article 226, held as under:

“5. Clause (1) of Article 226 begins with a non obstante clause — notwithstanding anything in Article 32 — and provides that 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, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that 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. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

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.....”.

21. In the case of Naveenchandra N. Majithia vs. State of Maharashtra & Ors. (2000) 7 SCC 640, the Supreme Court, relying on the judgement

in ONGC (supra), reiterated that maintainability of the writ petition in the High Court will depend upon whether the cause of action arose within the territorial jurisdiction of the Court or not. The principle enunciated was in no uncertain terms reaffirmed in Union of India & Ors. vs. Adani Exports Ltd. & Anr. (2002) 1 SCC 567, where the Supreme Court also observed that the High Court must be satisfied from the facts pleaded in support of the cause of action that they constitute a cause empowering the Court to exercise the writ jurisdiction 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)

22. In Kusum Ingots & Alloys Ltd. vs. Union of India and Anr., (2004) 6 SCC 254, the Supreme Court held that even if a small part of the cause of action accrues within the territorial jurisdiction of a High Court, the Court will have the jurisdiction to entertain the petition under Article 226 of the Constitution. Relevant paras are extracted as under :

“16. In Union of India and Others v. Adani Exports Ltd. and Another [(2002) 1 SCC 567] it was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction.

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18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the court.

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Forum conveniens

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.”

23. From the conspectus of the judgements, the conclusion is that in order to determine the territorial jurisdiction of this Court what is required to be seen is whether cause of action, either in whole or in part, has arisen within its territorial limit and this in turn would entail examining the meaning and connotation of the expression ‘cause of action’.

24. ‘Cause of action’ has not been defined in any Statute or the Civil Procedure Code and has only been judicially interpreted over the years in several judgements and broadly understood, means every fact which the Plaintiff would be required to prove, if traversed, to support his right and claim to a judgement of the Court. Black’s Law Dictionary defines ‘cause of action’ as follows:

“A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; ...”

25. In Advanced Law Lexicon, 3rd Edn. Vol. 1, the expression has been described in the following words:

“Cause of action” has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact

which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of the grievance founding the action, not merely the technical cause of action."

26. Mulla on Code of Civil Procedure, in the context of Section 20 CPC defined 'cause of action' as under:

"12. Cause of action.—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 action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact by which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

27. Apposite it would be at this stage to allude to the judgement of the Supreme Court in Alchemist Ltd. & Anr. vs. State Bank of Sikkim & Ors. (2007) 11 SCC 335, where the Supreme Court held that "the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or an essential part of the *lis* between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the 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." In this context, Court may also refer to the judgement of the

Supreme Court in National Textile Corp. Ltd. and Ors. v. Haribox Swalram and Ors. (2004) 9 SCC 786, relevant para of which is as under:

“10. Under clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person 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. Cause of action as understood in the civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. To put it in a different way, it is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. In Union of India v. Adani Exports Ltd. [(2002) 1 SCC 567] in the context of clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ petition 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 dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. A similar question was examined in State of Rajasthan v. Swaika Properties [1985] 3 SCR 598. Here certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and a notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for consideration was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in

Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land under Section 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52 of the Act. It was thus held that Calcutta High Court had no jurisdiction to entertain the writ petition.

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12. In the present case, the textile mills are situated in Bombay and the supply of cloth was to be made by them ex-factory at Bombay. According to the writ petitioners, the money was paid to the mills at Bombay. The learned Single Judge after a detailed discussion of the matter held that the Calcutta High Court had no jurisdiction to entertain the writ petition. The Division Bench has reversed this finding on the ground that concluded contract had come into existence which could be cancelled only after giving an opportunity of hearing and consequently, the question of revocation of the contract at its Calcutta address would constitute a cause of action. In our opinion, the view taken by the Division Bench is wholly erroneous in law. It was nowhere pleaded in the writ petition that the appellant herein had initiated any action under Section 11 of the Act by issuing any notice to the writ petitioner for cancellation of the contract. In fact, it is stated in para 18 of the petition that the Central Government did not follow the procedure prescribed in Section 11 for cancellation of contract. Regarding the jurisdiction of the Calcutta High Court, the relevant statement was made in para 73 of the writ petition wherein it was stated as under:

“73. Your petitioner carries on business and maintains all accounts at the aforesaid place of

business within the jurisdiction. Your petitioner states that by reason of the aforesaid, your petitioners have suffered loss and damage at its said place of business within the jurisdiction. All notices and correspondences referred to hereinabove addressed to your petitioner has been received by your petitioner at your petitioner's place of business within the jurisdiction. In the circumstances, this Hon'ble Court has the jurisdiction to entertain the present application.”

12.1. As discussed earlier, 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. In view of the above finding, the writ petition is liable to be dismissed. However, in order to avoid any further harassment to the parties and to put an end to the litigation, we would examine the matter on merits as well.”

28. Apt would it be to refer to a passage from the judgement of the Supreme Court in Rajasthan High Court Advocates Association vs. Union of India (2001) 2 SCC 294, where the Supreme Court held as under:

“17. 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 action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously 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”. It has to be left to be determined in each individual case as to where the cause of action arises.”

29. The uniform and unambiguous view of the Supreme Court with respect to the territorial jurisdiction of the High Court is that if the seat of the Government or the concerned Department is located within the territorial jurisdiction of the Court, but no cause of action or even a fraction has arisen within the jurisdiction of that Court, it shall have no jurisdiction to entertain the writ petition.

30. 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.

31. A Division Bench of this Court in Ex-Rect./GD Vinod Kumar vs. Union of India & Ors. **2006 SCC OnLine Del 1401**, categorically observed as follows:

“20. Constitutional mandate is that the High Court would exercise jurisdiction in relation to the territories of which it is the High Court. Clauses (1) and (2) of Article 226 have to be read and construed in conjunction with each other but none of them would be capable of extending jurisdiction of the Court normally beyond its prescribed territorial jurisdiction. To take benefit of this enlarged jurisdiction, it would be obligatory upon a petitioner to show that any cause of action or part thereof had arisen within the territorial jurisdiction of that Court.”

32. Taking a cue from the dicta of the decisions of the Supreme Court and the observations of the Division Bench of this Court, there is not a shadow of doubt that for deciding as to whether the facts pleaded by the Petitioner herein would or would not constitute a part of the cause of action, the Court would only be required to examine whether such facts constitute a material, essential or integral part of the cause of action in the light of the *lis* between the parties and then to determine if the cause of action, wholly or in part, arises within the jurisdiction of this Court.

33. Coming to the facts of the case in hand, as discernible from the plain reading of the petition, it is clear that the Petitioner has in so many words in para (R) averred in the writ petition that the Petitioner is working and residing at New Delhi and that the Respondent Company

has its office at New Delhi and hence this Court has jurisdiction to entertain this petition. Relevant para is as under:

“R. That the petitioner is working and residing New Delhi and that the respondent Company has its office in New Delhi and hence this Hon'ble Court has Jurisdiction entertain this petition.”

34. On an objection being taken by the official Respondents in the counter affidavit to the territorial jurisdiction of this Court, Petitioner again reiterated in the rejoinder, that the jurisdiction of this Court arises as the Respondent has its office at Delhi and the Petitioner was posted at Delhi at the time of filing the present petition. In the written submissions filed by the Petitioner, an additional point in support of the territorial jurisdiction has been taken by the Petitioner that all communications and representations were addressed by the Petitioner from the territorial limits of this Court and the only response to the Petitioner's representations was also addressed to the Petitioner in Delhi.

35. In the light of the principles enunciated in a catena of judgements, it has to be seen whether these bundle of facts constitute a cause of action in the manner judicially interpreted. In other words, do these facts have a nexus or relevance with the *lis* involved in the present case if seen in the light of the alleged infraction of the rights of the Petitioner or the injury caused to him. The grievance of the Petitioner as pleaded and articulated by Mr. Sama is that despite having been recommended by the DPC held on 01.04.2013 to the post of Chief Manager (E&M), promotion order was not issued, due to inaction of the official Respondents in obtaining the Vigilance Clearance, on time. Petitioner has sought direction to the official Respondents to promote him w.e.f. 01.04.2013 with

consequential benefits, such as seniority and arrears of salary and emoluments. It is an undisputed fact between the parties that the DPC was held at Kolkata; the decision making Authority against whom the relief is claimed is at Kolkata and the alleged delay or inaction also has its genesis at the Headquarters of the official Respondents at Kolkata. Seen in the light of the grievance raised and the relief claimed, it is evident that the facts which give rise to a cause of action, if any, in favour of the Petitioner would be the holding of the DPC, the alleged inaction of the Competent Authority in obtaining Vigilance Clearance on time and non-issue of promotion order within a timeline.

36. When the reasons set out to support the argument of territorial jurisdiction are seen in the backdrop of the grievances ventilated and allegedly giving rise to a cause of action, the inexorable conclusion is that this Court has no territorial jurisdiction, as no cause of action has arisen within the territorial limits of this Court and the petition cannot be entertained.

37. Plea of the Petitioner that this Court has territorial jurisdiction is primarily based on three factors - (a) one of the offices of the official Respondents is located at Delhi; (b) Petitioner is posted and works for gain at Delhi and (c) the communications with regard to his grievances were addressed to the official Respondents from Delhi and the response to one of the representations was received by the Petitioner at Delhi. In the opinion of this Court, none of the three factors can confer territorial jurisdiction upon this Court.

38. Insofar as the location of one of the offices of the official Respondents is concerned, first and foremost, it is an admitted position

that the Headquarter of Coal India Limited is located at Kolkata and even as per the understanding of the Petitioner, the Competent Authority empowered to take a decision for promotions is at Kolkata, which is evident from the representations addressed by the Petitioner to the Chairman at Kolkata. No doubt that the Corporate office of the official Respondents is located at Delhi but that by itself will not clothe this Court with jurisdiction to entertain the petition. As held in number of judgements, some of which have been referred and alluded to above, no High Court shall have territorial jurisdiction to entertain a petition unless a cause of action arises in its territorial limits and the location of the office of the Authority or Department will not be enough to confer the jurisdiction. This is in fact the letter and spirit of the amendment to Article 226 of the Constitution whereby Clause (2) was inserted. Acceding to the contention of the petitioner would violate the postulates of Article 226(2) and the judicial pronouncements on the subject.

39. This Court may, at this stage, refer to a judgement of this Court in Kensoft Infotec Ltd. vs. R.S. Krishnaswami & Ors. **2007 (35) PTC 627 (Delhi)**, where it was categorically held that the mere fact that one of the branch offices of the Defendant therein was located at Delhi, would not *ipso facto* confer jurisdiction on the Court in the absence of a cause of action arising therein. Relevant para of the judgement is as under:

“61..... In my view, the mere fact that one of the branch offices of the Defendant No. 3 is located at Delhi would not ipso facto confer jurisdiction on this Court. As stated above, no cause of action, much less a substantial or integral part of

the cause of action, has arisen within the territorial jurisdiction of this Court.

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It will be too far-fetched to argue that the location of subordinate offices of one of Defendants, per se, will vest jurisdiction in Courts all over India, particularly in the absence of any specific averment made by the Plaintiff relating to any act of infringing the rights of the Plaintiff.”

40. Useful it would be to refer to another judgement of a Coordinate Bench of this Court in Shristi Udaipur Hotels and Resorts (P) Ltd. vs. Housing and Urban Development Corporation Limited in **W.P.(C) 1517/2014** decided on 06.05.2014, where the Court held as follows:

“30. In the present case, the mere location of the registered office of the respondent/Corporation in Delhi, cannot be a ground to canvass that the cause of action has arisen within the territorial jurisdiction of this Court, unless and until the petitioner has been able to point out that some material decision had been taken at the office of the respondent that would have a bearing on the present petition. A bald submission made to the effect that ordinarily a decision to recall a loan from a client is taken at the head office of the respondent/Corporation would not be of much assistance to the petitioner. As would be apparent from a bare perusal of the writ petition, the petitioner’s grievance is directed against the act of the regional office of the respondent/Corporation in issuing the impugned loan recall notice dated 20.01.2014 and admittedly, the said regional office is not located within the territorial jurisdiction of this Court, but is based at Jaipur. Similarly, the Sub-Lease Deed dated 11.1.2008 in respect of the project land was executed by the petitioner with the sublessor at Udaipur and the project land is also located in Udaipur.

31. To conclude, this Court is of the view that the facts relating to jurisdiction that have been pleaded in the application and for that matter, in the writ petition, can hardly be stated to be either essential or material, much less integral for constituting a part of the cause of action, as envisaged under Article 226(2) of the Constitution of India, for vesting territorial jurisdiction on this Court. On the contrary, as noted above, the most vital parts of the cause of action have arisen in Jaipur and the mere presence of the registered office of the respondent/Corporation in Delhi or the facility extended to the petitioner to address any correspondence to the respondent/Corporation and/or remit moneys due or payable under the Loan Agreement at Delhi, would have to be treated as irrelevant factors, being a miniscule part of the cause of action. By no stretch of imagination can these factors be treated as conclusive for determining the territorial jurisdiction of this Court.”

41. Insofar as the ground that the Petitioner was posted at Delhi at the time of filing of the petition, again in my view, can be of no avail to the Petitioner, as mere posting of an officer to a particular place, in the absence of a cause of action, is not enough to confer territorial jurisdiction on the High Court, within whose boundaries the officer is posted or resides or works for gain. To analyze this argument further, it would be relevant to refer to Section 20 of the Code of Civil Procedure and the said Section is extracted hereunder for ready reference:

"20. Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and

voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

42. A plain reading of Section 20 CPC reflects the use of words ‘resides’ or ‘carries on business’ or ‘personally works for gain’, by the Legislature. The Section therefore envisages three conditions in which a suit can lie in the territorial jurisdiction of a Court. While Clauses (a) and (b) refer to the residence or business or work of the Defendant(s), Clause (c) pertains to cause of action, wholly or in part. Compared and contrasted with Clause (2) of Article 226 of the Constitution, the only conclusion that can be drawn is that while determining the territorial jurisdiction of a High Court under Article 226, the factors referred to in Clauses (a) and (b) of Section 20 CPC are irrelevant. In Kusum Ingots (supra), the Supreme Court clearly held that unless a cause of action arises within its territorial limits, even if it is a small part of the cause of action, the High Court will not have the jurisdiction to entertain a petition under Article 226 of the Constitution of India. ‘Cause of action’ is the only determining factor to decide the territorial jurisdiction of a High Court has been succinctly brought out by the Division Bench of this Court in Vinod Kumar (supra), wherein the Court also considered the

interplay between Section 20 CPC and Clause (2) of Article 226 of the Constitution. Relevant paras are as under:

“1. Cause of action determines the Court of competent jurisdiction when a party invokes extraordinary jurisdiction of the Court under Article 226 of the Constitution of India. In discern contradistinction to the provisions of Sections 16 to 20 of the Code of Civil Procedure, Article 226(2) restricts the principle of territorial jurisdiction only to ‘cause of action’. The expression would take in its ambit partial or entire cause of action. Part of cause of action is again a term of wide magnitude and thus, has to be construed liberally. However, once the element of cause of action or any part thereof in its minutest form is absent, the Court may not have territorial jurisdiction, only on the basis of the residence/location of the party. The provisions of Section 20 of the Code states that subject to the limitation contained in the preceding sections, a suit could be instituted in a Court within the local limits of whose jurisdiction, the defendant or each of the defendants voluntarily resides or where the cause of action wholly or in part arises. Thus, there are two factors which independent of each other, can grant jurisdiction for a party to institute a suit in the Court of competent jurisdiction. However, these provisions would not be applicable to writ jurisdiction stricto sensu. It is a settled principle of law that provisions of the Civil Procedure Code would not apply in full vigour or strictly to the writ proceedings. They are not applicable of their own force to such proceedings but nonetheless the writ proceedings could be governed by principles analogous to those contained in the Code particularly when they are not inconsistent with the writ rules of this Court or the constitutional mandate contained in Article 226. Unlike the provisions of Section 20 of the Code which specifies different grounds for vesting jurisdiction in the Court, Article 226 contemplates location of the authorities and arising of cause of action partly or wholly within the territorial jurisdiction of that Court. By introduction of Article 226(2), great emphasis has been laid on the concept of cause of action. Even this

statement is further clarified by use of non obstante clause that it would be so notwithstanding the fact that seat of such Government or authority or residence of such person is not within those territories. This manifestly shows that residence of the party is not really a relevant consideration for determining jurisdiction of a Court under these provisions. In view of this constitutional mandate, the provisions of the High Court Rules and Orders relating to exercise of writ jurisdiction have to be read ejusdem generis to the constitutional provisions.

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4. The 'cause of action' is an expression which is well-explained and well-understood in the legal parlance. The analogous principles of the Code can be applied to the writ jurisdiction but not in contradistinction or in conflict with the specific constitutional provisions. If residence alone is contemplated under Section 20 of the Code so as to vest jurisdiction in a Court, then it would amount to adding words to a Statute, which is not permissible. Normally, the provisions relating to jurisdiction should be construed strictly as they vest or divest jurisdiction in the Court. To vest jurisdiction in a Court where the law does not intend, would be impermissible as jurisdiction in a Court can neither be vested by consent of the parties nor by implication. Jurisdiction is conferred by a Statute. We have already stated that the expression 'cause of action' or any part thereof appearing in Article 226(2) of the Constitution is of significant meaning and consequences. To further analyse this expression in proper concept of law, we may refer to some judgments of this Court as well as the Supreme Court which have explained the concept of 'cause of action' ”

43. In Rajendra Kumar Mishra vs. Union of India **2002 (5) SCT 606**, a Full Bench of the Allahabad High Court also took the view that factum of

residence of the Petitioner could not determine jurisdiction, therefore this plea of the Petitioner cannot be accepted.

44. This Court cannot agree with the plea of the Petitioner that merely because some communications were addressed by the Petitioner or a communication was received at Delhi, this Court ought to entertain the present petition. It is no longer *res integra* that mere service of notice or communication at the residence of a person will not give rise to a cause of action, unless the service of notice or communication forms an integral part of the cause of action. In the present case, entire cause of action starting from the holding of the DPC to the alleged inaction in obtaining Vigilance Clearance and the follow-up decisions has arisen beyond the territorial limits of this Court and a mere communication or representation cannot be held to be even a miniscule part of cause of action. In this context, I may refer to a judgement of the Supreme Court in State of Rajasthan v. Swaika Properties (1985) 3 SCC 217, relevant paras of which are as follows:

“7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

8.In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.”

45. Having examined the pleadings and the facts, the Court is of the opinion that no cause of action much less a substantial or integral cause

of action has arisen within the territorial jurisdiction of this Court. The factors brought out in the writ petition, as mentioned above, cannot vest territorial jurisdiction on this Court and thus it must be held that the present petition is not maintainable in this Court. Since this Court lacks the territorial jurisdiction to entertain the petition, I refrain from delving into the other preliminary objection raised by the official Respondents regarding delay and laches, much less into the merits of the case.

46. The writ petition is accordingly dismissed as not maintainable with liberty to the Petitioner to approach the Court vested with the territorial jurisdiction.

47. At the cost of repetition, it is made clear that this Court has not expressed any opinion either on the merits of the case or the preliminary objection of delay and laches.

48. The writ petition is disposed of, along with the pending applications.

MAY 19, 2021
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JYOTI SINGH, J