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

+ **W.P.(C) 7972/2023**

UJJWALA SRIVASTAVA

.....Petitioner

Through: **Mr. Ajay Vikram Singh, Adv.**

versus

**THE DIRECTOR (ADMIN) NATIONAL TESTING AGENCY &
ORS.**

.....Respondents

Through: **Mr. Sanjay Khanna, SC, Mr. Pragya
Bhushan and Mr. Karandeep Singh,
Advs. for NTA
Mr. Arjun Mitra, Adv. R-2
Mr. Lokesh Kumar Chaudhary, Adv.
R-3
Mr. Gaurav Sharma, SPC for UOI
with Mr. Siddhartha Nagpal, Adv**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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26.09.2024

1. The instant petition has been filed seeking the following reliefs:-

i. *Quashing the 26.09.2022 order issued by Joint seat W.P.(C)-7972 2023 Allocation Authority cancelling the seat allocated to the petitioner in National Institute of technology, Rourkela and;*

ii. *Quashing Verification Certificate issued on 21.09.21 issued at MNNIT, Allahabad declaring that the Petitioner is not eligible to claim to be Person with Disability thus denying her right to Reservation under section 32 of the Rights of person with Disabilities Act 2016.*

iii. *Pass any other or further order or orders as this Hon'ble Court may*



deem fit and proper in the facts and circumstances of the case in the interest of justice and to meet the ends of justice.

2. Learned counsel appearing on behalf of respondent no.2, at the outset, raises objection with respect to maintainability of the instant writ petition. He submits that the petitioner resides in the State of Uttar Pradesh and respondent no.2, which is the contesting respondent, has taken the decision in Rourkela, Orissa which is situated outside the territorial jurisdiction of this Court. According to him, the seat in question came to be cancelled at Rourkela, Orissa and the said cancellation was mainly on account of the opinion of the Medical Board which also met and took decision at Prayagraj. He, therefore, submits that just because the office of respondent no.1-National Testing Agency (NTA) is situated in Delhi, this Court lacks territorial jurisdiction.

3. Learned counsel appearing for respondent no.1 submits that the case does not relate to the examination conducted by respondent no.1-NTA, however, the grievance relates to the admission, which essentially has been rejected on the ground of non-fulfilment of the criteria for admission under Persons with Disability Quota. According to him, once the examination has been conducted and result has been declared, respondent no.1-NTA becomes *functus officio*.

4. *Per contra*, learned counsel appearing for the petitioner submits that he is relying on Chapter 18 of the information bulletin, more specifically Clause 18.4 therein, published by respondent no.1-NTA and submits that the said Clause specifically envisaged that all the disputes pertaining to the conduct of JEE Main-2022 Examination, including results thereof, shall fall within the territorial jurisdiction of Delhi only. He further submits that the



parties have already been given due notice and they have already filed their counter-affidavits and therefore, instead of relegating the petitioner at this stage to the jurisdictional High Court, this Court may continue to hear the petition on merits.

5. I have considered the submissions made by learned counsel for the parties and have perused the record.

6. Undisputedly, the controversy raised in the instant petition relates to the ineligibility for admission against Persons with Disability Quota. Admittedly, the physical examination of the petitioner for his admission and the rejection took place at Prayagraj, Uttar Pradesh. The petitioner resides outside the territorial jurisdiction of this Court. Respondent no.2, which conducted the counselling, is also situated outside the territorial jurisdiction of this Court.

7. Therefore, merely because the information bulletin of respondent no.1-NTA stipulates that the jurisdiction of Delhi Courts would be attracted in case of any dispute pertaining to conduct of examination, including the result thereof, would not constitute essential, material and integral facts to confer jurisdiction upon this Court. The said position is further fortified in light of the fact that there does not appear to be any dispute either with respect to conduct of examination or the result thereof.

8. Furthermore, after declaration of result and publication of merit, respondent no.1-NTA becomes *functus officio* and the counselling takes place as per the prescribed procedure laid down by the concerned authority.

9. It is the settled exposition of law that the cause of action does not comprise of all the pleaded facts; rather it has to be determined on the basis of the integral, essential and material facts which have a nexus with the *lis*.



The location where the tribunal/appellate authority/revisional authority etc. is situated would not be the sole consideration to determine the situs of the accrual of cause of action, ignoring the concept of forum conveniens *in toto*.

10. This Court, *vide* order dated 04.07.2024 in W.P (C) 8891/2024 titled as ***Ramnath Singh Sikarwar v. Election Commission Of India***, has considered multiple judgments passed by the Supreme Court and this Court on the aspect of territorial jurisdiction and has held as under:-

*“14. While dealing with the decision in the cases of **Alchemist Limited and Anr. (supra)** and **M/s Kusum Ingots (supra)**, this Court in the case of **Ardra Joseph (supra)** vide order dated 01.11.2023 has held as under:-*

*“8. It is seen that the petitioner is the resident of District Malappuram, Kerala and her principle cause of action is against respondent no.3-State Medical Council of Kerala. The petitioner has approached this court only for the reason that the offices of respondent no.1-Union of India and respondent no.2-National Medical Commission are situated within the territorial jurisdiction of this court. **However, merely because the offices of some of the respondents are situated within the territorial jurisdiction of this Court cannot be the sole reason to entertain the instant writ petition.***

*9. The Hon''ble Supreme court in the case of **Kusum Ingots & Alloys Ltd. v. Union of India** has held 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. Recently, a similar view has been reiterated by the Hon''ble Supreme Court in the case of **State of Goa v. Summit Online Trade Solutions (P) Ltd.***

*15. In the case of **Ardra Joseph (supra)**, the Court has held that some of the arrayed official respondents therein had pan-India jurisdiction, however, the reason that the policies and circulars were issued from Delhi could not be the sole ground to entertain the petition by this*



Court. It has also been held that neither the petitioner therein was incapacitated to approach the jurisdictional High Court nor the concerned High Court lacked jurisdiction to issue appropriate writ to the arrayed respondents.

16. In another decision in the case of **Bharat Nidhi Limited v. Securities and Exchange Board of India & Ors.**, while dealing with the aspect of entertainability of a writ petition and the territorial jurisdiction, this Court, while taking into consideration catena of judicial pronouncements and analysing the law pertaining to Article 226(1) and 226(2) of the Constitution of India, has held as under:-

“67. Thus, the salient aspects which emerge out of the aforesaid discussion can be delineated forthwith as:

(i) Article 226(2) does not take away the right of a High Court to dismiss a case on grounds of forum non-conveniens. The principles of forum non-conveniens and that of Article 226(2) operate in different field, where Article 226(2) (originally Article 226(1A)) was inserted to solve the problem of a litigant needing to go to a High Court where the seat of government authority was present.

(ii) In other words, merely because Article 226(2) allows jurisdiction to be conferred on a High Court in the absence of the seat of a government authority being under its jurisdiction; this does not in itself mean that the presence of a seat shall automatically grant jurisdiction.

(iii) Article 226(2) allows jurisdiction to be conferred if the cause of action, either in part or whole, had arisen in the jurisdiction of a High Court, however, where the purported cause of action is so minuscule so as to make a particular High Court non-convenient, it is then that the concept of forum non-conveniens applies.

91. On the above conspectus, it is clearly seen that the question whether cause of action has arisen within the territorial jurisdiction of a court, has to be answered based on the facts and circumstances of the case. **The cause of action, thus, does not comprise of all the pleaded facts; rather it has to be determined on the basis of the integral, essential and material facts which have a nexus with the lis.**



92. It is also a settled proposition of the law that the location where the tribunal/appellate authority/revisional authority is situated would not be the sole consideration to determine the situs of the accrual of cause of action, ignoring the concept of forum conveniens in toto. **Hence, even if a small part of the cause of action is established, and the same is found to be non-integral or non-material to the lis, the court may invoke the doctrine of forum non-conveniens and decline to exercise its writ jurisdiction, if an alternative, more efficacious forum for the same exists.**

93. A perusal of paragraph no. 10 of the decision in the case of State of Goa (supra), would signify that one of the prayers related to a challenge against the notification issued by the State of Sikkim. Also, in the said case, the petitioner company's office was also located in the State of Sikkim. However, the Hon'ble Supreme Court while considering that a slender part of the action has arisen, held that the High Court of Sikkim was not clothed with the requisite jurisdiction to entertain the petition as the major part of the cause of action has arisen in another High Court. It can be safely concluded that neither the notification issued by the concerned government, nor the location of the office were considered to be the material facts to determine the cause of action.

113. Merely because some of the writ petitions were entertained by this court relating to certain violations of norms and regulations of respondent-SEBI by the respondent companies therein and issues arising out of consequential settlement application, that in itself would not determine the integral, essential and material part of the cause of action as the pendency of the writ petition before this court has no relation with the impugned revocation order which has taken place subsequent to the said writ petition. The law relating to the doctrine of forum conveniens, as discussed above, already makes it explicitly clear that the jurisdiction has to be determined on the facts and circumstances of each case.

114. With respect to the averment that this court is the most convenient forum for the petitioners, it would be inappropriate and myopic to assume that while determining the jurisdiction, only the convenience of the aggrieved party approaching the court has to be looked into. In fact, with the advent of technology in contemporary times, the courts have transcended the geographical barriers and are now accessible from remote



corners of the country. Therefore, the convenience of the parties cannot be the sole criterion for the determination of jurisdiction considering the broader perspective of dynamism of technology and increased access to justice. The determination of cause of action and territorial jurisdiction has to be in line with the constitutional scheme envisaged under Article 226 of the Constitution of India.” [Emphasis supplied]

17. In the case of **Pune Buildtech (P) Ltd. v. Bank of India**, this Court took a view that the substance of a matter is significant in determining the material, essential or integral part of the cause of action and the Constitutional Courts are saddled with a duty to prevent the abuse of jurisdiction by the parties. The relevant paragraphs of the said decision read as under:-

“56. Considering the discussion hereinabove, it is crystallised that in order to confer jurisdiction to the constitutional courts under Article 226 of the Constitution, a material, essential or integral part of the cause of action must arise within their jurisdiction. To determine a material, essential or integral part of the cause of action, it is the substance of the matter that becomes relevant. Also, the objection to the jurisdiction of this court can be raised at any stage of proceedings, as has been held by the Hon'ble Supreme Court in the case of Jagmittar Sain Bhagat v. Health Services, Haryana.

57. It is to be noted that the germane issue in both the petitions is the decision of the petitioners' accounts being declared as „fraud“. It is seen that the impugned action is taken from the respondent-BOI's Mumbai branch. Also, the communication of the said decision to the RBI regional office in Bengaluru also occurred outside the jurisdiction of this court. Furthermore, all the consequent actions under the provisions of the SARFAESI Act were also taken from the Mumbai branch of the respondent-BOI.

62. It is pertinent to mention that as per the legislative intent and constitutional scheme enshrined under the provisions of Article 226 of the Constitution of India, it is crystallised that the cardinal duty imposed on the constitutional courts is to prevent the abuse of their jurisdiction by the parties and relegate back the parties to the forum where a material, essential or integral part of cause of action has arisen.”

[Emphasis supplied]



18. It is reckoned from the aforementioned decisions that the question whether the cause of action has arisen within the territorial jurisdiction of a Court has to be answered based on the facts and circumstances of each case. The cause of action does not comprise of all the pleaded facts rather, it has to be determined on the basis of the integral, essential and material facts which have a nexus with the lis.

19. In the instant case, the integral and material facts which have the relation with the relief sought for would essentially include the place where the elections were conducted and the place where the infringement of any of the alleged right has taken place. It is to be noted that the decision rendered by this Court in the case of **Bharat Nidhi Limited (supra)** was carried in LPA 47/2024, wherein, the Division Bench of this Court in its final decision dated 15.01.2024 affirmed the view taken in **Bharat Nidhi Limited (supra)** and held as under:-

“21. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India to entertain a writ petition, in addition to examining its territorial jurisdiction also examines if the said Court is the forum conveniens to the parties. The issue of forum conveniens is seen not only from the perspective of the writ petitioner but it is to be seen from the convenience of all the parties before the Court. In the facts of this case, as is evident from the record that the forum conveniens for the both the parties is Mumbai. The Appellants since the year 2020 have been appearing in Mumbai before SEBI in the SCN proceedings. In W.P.(C) 15556/2023 (as well as the other writs) the writ petitioner has sought a direction for summoning the records of SEBI for examining the legality and validity of the Impugned Revocation Order. In these facts, therefore, the objection of SEBI that Mumbai is the forum conveniens for the parties has merit. The obligation of the Court to examine the convenience of all the parties has been expressly noted by the Full Bench of this Court in *Sterling Agro Industries Ltd. (supra)*...”

[Emphasis supplied]

20. It is thus seen that with regards to the arguments raised by the petitioners that since a part of cause of action arises within the jurisdictional limits of this Court and the forum conveniens has to be seen from the petitioners’ perspective, this Court has categorically rejected the aforesaid arguments and has held that the issue of forum conveniens is not to be observed only from the perspective of the petitioner but it depends on the convenience of all the parties before the Court.”



11. Recently, the Division Bench of this Court in the case of **Smt Manjira Devi Ayurveda Medical College and Hospital v. Uttrakhand University of Ayurveda & Ors.**¹ has also reiterated that mere presence of offices within the precincts of Delhi would not *ipso facto* confer the jurisdiction on this Court if no cause of action arises within the territorial jurisdiction of this Court. The relevant paragraphs of the said decision read as under:-

"12.....The mere presence by virtue of the location of their offices at Delhi would not, ipso facto, confer exclusive jurisdiction upon this Court to exercise its jurisdiction under Article 226 of the Constitution of India. It is apparent that no cause of action at all has arisen within the local limits of the territorial jurisdiction of this Court.

13. This Court is fortified in its aforesaid view by a catena of judgments of this Court as also of the Supreme Court. To cite a few, it would be apposite to refer to the judgment of the Supreme Court in *Kusum Ingots & Alloys Ltd. v. Union of India*, (2004) 6 SCC 254, Full Bench judgment of this Court in *Sterling Agro Industries Ltd. v. Union of India*, (2011) 124 DRJ 633(FB), as also the judgment passed by the learned Coordinate Bench in *Riddhima Singh v. CBSE*, 2023 SCC OnLine Del 7168. The ratio laid down by these judgments deals not only with the issue regarding the exercise of jurisdiction by a High Court under Article 226 of the Constitution of India but also succinctly laid down the law as to under what circumstances a High Court can exercise jurisdiction under Clause 2 of Article 226 of the Constitution of India. It would not be out of place to also observe that the aforesaid judgments also take note of the "Doctrine of Forum Conveniens".

12. It is also pertinent to lend credence on a decision of the Division Bench of this Court in the case of **Riddhima Singh v. CBSE**², wherein, the appellants therein, while strenuously relying on CBSE Affiliation Bye-Laws, contended that Clause 18.3.2 of the said Bye-Laws stipulated

¹ LPA 894/2024

² 2023 SCC OnLine Del 7168



jurisdiction on this Court. Taking into account the said submission, it was held that a strict interpretation of such Clause would essentially militate against the doctrine of *forum conveniens*, which is otherwise invoked to determine the most appropriate forum for adjudication of a dispute. It was further held that the said exercise has to be undertaken not only for the convenience of the parties but also in the interest of justice.

13. In view of the aforesaid, reserving liberty in favour of the petitioner to approach the jurisdictional High Court, the instant writ petition stands dismissed.

14. All rights and contentions are left open.

PURUSHAINDRA KUMAR KAURAV, J
SEPTEMBER 26, 2024/MJ