



2024:DHC:4137



\$~64

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

% Judgment delivered on: 20.05.2024

+ W.P.(C) 7244/2024
MOHAMMAD ASIF RAMEEZ DAUDI Petitioner

versus

OBSERVER OF EMBASSY OF INDIA, RIYADH FOR
INTERNATIONAL INDIAN SCHOOLS & ORS.....Respondents**Advocates who appeared in this case:**

For the Petitioner : Mr. A. A. Chaush, Advocate

For the Respondent : Ms. Manisha Agarwal Narain, CGSC
with Mr. Sandeep Singh, Ms. Khushi
Mangla and Mr. Kamaldeep, GP.,
Advocate for UOI R-1 and 2**CORAM:**
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition under Article 226 of the Constitution of India, 1950, seeking *inter alia* the following reliefs:-

“a. Issue a writ of mandamus or any other appropriate writ, order or direction quashing the recruitment process for appointment of principals by the respondent no. 1 for Respondent no. 2, 3, and 4 school, being arbitrary, illegal and beyond authority of respondent no. 1; and



b. Pass an order thereby enabling the Respondent no. 2, 3 and 4 to conduct their independent recruitment process for appointment of principal in accordance with CBSE Rules; and/or

c. Pass an order directing the Respondent No. 1 to provide copy of the Agenda, Minutes of Meeting etc passed by the concerned School Management Committees, in relation to the impugned recruitment process; and/or

d. Pass an order directing the Respondent No. 6 i.e. CBSE to conduct an inquiry under clause 13.2 of Affiliation Bye-Laws, 2018 into the affairs of Respondent No. 2 and 4; and/or

e. Pass any other order deemed fit in the facts and circumstances of this case.”

2. From a perusal of the averments in the writ petition and the documents annexed thereto, it is clear that no cause of action at all has arisen within the territorial jurisdiction of this Court.

3. Before advertng to the facts as mentioned in the wit petition, it is relevant to note that the Supreme Court in its judgment in ***Kusum Ingots & Alloys Ltd. v. Union of India*** reported in (2004) 6 SCC 254 held as under:-

"27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact



that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

28. Lt. Col. Khajoor Singh v. Union of India [AIR 1961 SC 532 : (1961) 2 SCR 828] whereupon the learned counsel appearing on behalf of the appellant placed strong reliance was rendered at a point of time when clause (2) of Article 226 had not been inserted. In that case the Court held that the jurisdiction of the High Court under Article 226 of the Constitution of India, properly construed, depends not on the residence or location of the person affected by the order but of the person or authority passing the order and the place where the order has effect. In the latter sense, namely, the office of the authority which is to implement the order would attract the territorial jurisdiction of the Court was considered having regard to Section 20(c) of the Code of Civil Procedure as Article 226 of the Constitution thence stood, stating :

“The concept of cause of action cannot in our opinion be introduced in Article 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Article 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Article 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it.”

29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the



jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh [AIR 1961 SC 532 : (1961) 2 SCR 828] has, thus, no application.

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. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney, AIR 1941 Cal 670, Madanlal Jalan v. Madanlal, AIR 1949 Cal 495, Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd., 1997 CWN 122, S.S. Jain & Co. v. Union of India, (1994) 1 CHN 445 and New Horizons Ltd. v. Union of India, AIR 1994 Del 126 .J"]

4. That apart, the Full Bench of this Court in ***M/s Sterling Agro Industries Ltd vs. Union of India & Ors.*** reported in **2011 SCC OnLine Del 3162** held as under:-

“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...”

5. The learned Division Bench of this Court in ***Riddhima Singh Through Her Father Shailendra Kumar Singh versus Central Board Of Secondary Education Through Its Chairman & Ors., LPA 729/2023*** decided on 01.11.2023 held as under:-

"8. On an examination of the peculiar facts and circumstances that have led to the present appeal, it is evident that the grievance of the Appellant emerges from the actions of the Respondent School which is located in Uttar Pradesh. This Court had directed the Respondent School to conduct Grade VIII examinations for the Appellant, not the CBSE. Therefore, contrary to the contention of the Appellant, in effect, the Appellant is seeking compensation from the CBSE not for any decision/action taken by the CBSE but instead due to an alleged failure of the CBSE to regulate the actions of the Respondent School.

9. It is a settled position of law that where only a small part of the cause of action arises in the territorial jurisdiction of a Court, the same cannot automatically clothe the Court with jurisdiction under Article 226 of the Constitution of India. In such cases, the Court is obligated to follow the doctrine of forum conveniens...”

6. After examining all the relevant judgments on the issue, it is clear that it is not only the substantial cause of action which has to be considered by the Court under Article 226 of the Constitution of India, but also the ***doctrine of forum conveniens*** has to be kept in mind.

7. Though a part of cause of action as stipulated in Clause (2) of Article 226 of the Constitution of India would confer jurisdiction on a High Court where such part cause of action arose, however, in the



2024:DHC:4137



present case, even that is not available to the petitioner on facts. That will become clear by referring to the facts on record.

8. To make things more clear, it is noted that the respondent no.1, as per the memo of parties is located in Riyadh, Kingdom of Saudi Arabia; respondent nos. 2, 3 and 4 which are schools are also admittedly located in Jeddah, Kingdom of Saudi Arabia. The respondent no.5 the Higher Board through its Secretary is also stated to be located in the Embassy of India in Riyadh. The respondent no.7-Ex-Observer for International Indian Schools, Indian Consulate is also at Jeddah. Only the respondent no.6-CBSE and respondent no.8-UOI through its Secretary, Ministry of External Affairs, South Block, Central Secretariat, are located in Delhi and have been impleaded without any cause of action.

9. From the aforesaid, it is apparent that the main contesting respondents are beyond the territorial jurisdiction not only of this Court alone but also of the country itself.

10. On facts, it is submitted that respondent no.1 had published an advertisement dated 10.01.2024 in a newspaper, that is the Times of India, in Bengaluru Edition, calling for prospective candidates to submit their applications along with documents for the post of Principal of respondents no. 2, 3 and 4. The application were to be submitted online on the email edu.riyadh@mea.gov.in.

11. It is stated by the petitioner that on 23.01.2024, the petitioner had applied for the said post *vide* the said email ID provided above and had attached all the relevant documents. Despite waiting till 16.03.2024, it is stated that there was no response to the said application. Petitioner also



2024:DHC:4137



stated that he had, times without number tried to contact the respondents through email which are stated to have been replied in vague terms.

12. That apart, on 13.03.2024, the petitioner approached the respondent no.1-Observed of Embassy of India, Kingdom of Saudi Arabia, being the patron of International Indian Schools in the said country.

13. Learned counsel for the petitioner claims that the said patron of the said school is not involved in the process of recruitment at all. That apart, he submits that on 16.03.2024, the petitioner was informed that interviews were being conducted for certain candidates and that petitioner was not part of the shortlisted candidates. The said interview was supposed to be conducted apparently in the Embassy of India at Riyadh in Saudi Arabia. Being aggrieved of the aforesaid, the petitioner has filed the present writ petition.

14. Apart from the aforesaid facts, it is relevant to note that the petitioner in the memo of parties states himself to be a resident of Jeddah in Saudi Arabia. The affidavit in support of the present writ petition also deposes him to be a permanent resident of Village and Post Office Jalakaura, District Khagaria, Bihar, India and presently residing near International Indian School Girls Section, Azizia, Jeddah, Saudi Arabia.

15. In the entire writ petition, there is no reference to any action being taken by the petitioner in Delhi so far as the respondent nos. 6 and 8 are concerned. It is apparent that the petitioner has arrayed respondent no.6-CBSE and respondent no.8 UOI through Ministry of External Affairs only for the purpose of claiming jurisdiction before this Court.



2024:DHC:4137



16. Knowing fully well that no cause of action, much less a part of cause of action at all had arisen in the territory of Delhi, the petitioner has still filed the petition before this Court.

17. It is apparent from the entire conspectus of the facts as considered by this Court that no cause of action at all has arisen before this Court. It appears to be an attempt of forum shopping.

18. This Court deprecates such attempts by a party.

19. Without having any cause of action arising in Delhi, the present writ petition has been filed.

20. In view of the above as also the overwhelming law on this subject, this Court is constrained to dismiss the writ petition for lack of territorial jurisdiction.

21. However, as this Court has not considered the matter on merits, the petitioner would be at liberty to approach the jurisdictional High Court for redressal of his grievances, if any.

22. The petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 20, 2024

ms