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

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***Reserved on: 26.07.2024
Pronounced on: 07.08.2024***+ **W.P.(C) 9995/2024 & CM APPL. 40941/2024****DATTATREYA MUKHOPADHYAY**PetitionerThrough: Mr. Vishwendra Verma and
Ms. Shivali Archit Verma,
Advocates

versus

**UNION OF INDIA MINISTRY OF SOCIAL JUSTICE AND
EMPOWERMENT. DEPARTMENT OF EMPOWERMENT
OF PERSONS WITH DISABILITIES DIVYANGJAN AND
ANR.**RespondentsThrough: Ms. Arti Bansal, Ms. Vidhi
Gupta and Ms. Pinky Yadav,
Advds for UOI.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present writ petition has been filed under Article 226/227 of the Constitution of India by the petitioner seeking direction to the respondents to allow the petitioner 'for choice filling and locking period (preference of course and institutes)' and thereafter, consider the petitioner for the first round seat allotment in Common Entrance Test 2024 ['CET 2024'].



2. Facts of the case, as disclosed from the petition, are that the petitioner is a person with Benchmark Disability ['PwBD'] and it is his case that he had applied for the CET 2024, for admission in various disability institutes. For the purpose of admission, a test was conducted by Swami Vivekanand National Institute of Rehabilitation Training and Research ['SVNIRTAR'] i.e., respondent no. 2. It is stated that the petitioner had received a Provisional Admit Card for CET 2024 as the exam was to be conducted on 23.06.2024. Thereafter, the petitioner had appeared in the examination and secured 6th Rank in Special Category i.e., Divyangjan while his common rank was 1182. The petitioner was thus selected. It is stated that the selected candidates get admission for various courses i.e., Bachelor of Physiotherapy (BPT), Bachelor of Prosthetics & Orthotics (BPO), Bachelor of Occupational Therapy (BOT), & Bachelor in Audiology & Speech Language Pathology (BASLP) in various disability institutes, subject to choice filling and compliance to the locking period by the candidates, after which the candidates can participate in the first round seat allotment. The grievance of the petitioner is that he failed to fill the choices and comply with the locking period, and subsequently, he could not participate in the first round seat allotment. Thus, the petitioner is before this Court praying that the respondents be directed to allow the petitioner to fill the choices and participate in the first round seat allotment.

3. Learned counsel appearing on behalf of the petitioner argues that the petitioner is aggrieved by the action of the respondents wherein the respondent had failed to communicate the result of the



examination to the petitioner. It is stated that the respondent had failed to provide information as the petitioner is a person with Benchmark Disability and is suffering from Dyslexia, as diagnosed as a Specific Learning Disability of mixed skilled scholastic skill with moderate severity (>40%) and, thus, he requires special treatment and that he could not obtain the information about the result of the examination in correct form and manner because of his disability. It is stated that the petitioner had tried to contact the respective authorities and they intimated that they had extended time till 12.07.2024 and now the first round has already been closed and therefore, the petitioner could not apply for the first round seat allotment and respective choice filling and locking period. It is further submitted that the petitioner is visually handicapped and thus, in all the examinations, the petitioner was allotted a writer and even for CET 2024, his request was accepted. It is stated that the petitioner jumbled up and could not properly read the instructions in question. Thus, it is prayed that the present petition be allowed.

4. At the outset, learned counsel on behalf of respondent no. 1 opposes the present writ petition on the issue of maintainability. It is argued that the petitioner is seeking directions to Swami Vivekanand National Institute of Rehabilitation Training and Research which is situated in Cuttack, Odisha and any remedy sought by the petitioner against the respondents will fall within the territorial jurisdiction of the Hon'ble Orissa High Court. To substantiate his argument, learned counsel has placed reliance on the order dated 01.11.2023 passed by the Coordinate bench of this Court in W.P. (C). 14187/2023 titled as



Ardra Joseph v. Union of India & Ors., and order dated 21.11.2023 also passed by the Co-ordinate bench in W.P. (C). 15028/2023 titled as *The White Medical College and Hospital formerly known as Chintpurni Medical College and Hospital v. Union of India & Ors.*

5. In rebuttal, learned counsel appearing for the petitioner submits that since the grievance of the petitioner is primarily against respondent no. 2, who falls under the Central Ministry of Social Justice and Empowerment, which is situated in Delhi, and all the communications with the petitioner have been made by respondent no. 2 from Delhi itself, the petitioner has approached this Court. Thus, it is argued that the present writ petition is maintainable.

6. This Court has heard arguments on behalf of both the parties and has perused the material placed on record. The present matter was reserved on 26.07.2024 only on the point of maintainability of present writ petition.

7. This Court notes that the ground on which the petitioner has approached this Court is that respondent no. 2 institute falls under the Ministry of Social Justice and Empowerment, which is a central ministry situated in Delhi. However, this Court is of the considered opinion that merely because the Ministry concerned, under which an institute falls, is situated within the territorial jurisdiction of this Court, the same cannot be a ground to file the instant writ petition before this Court, when the respondent no. 2 institute, against whom the grievance of petitioner essentially lies, is situated in the State of Odisha.



8. In this regard, it will be useful to refer to the judgment of Hon'ble Apex Court in case of *Kusum Ingots & Alloys Ltd. v. Union of India* (2004) 6 SCC 254. The observations which are relevant to the facts of the present case are extracted hereunder:

“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.** [See *Bhagat Singh Bugga v. Dewan Jagbir Sawhney*, *Madanlal Jalan v. Madanlal*, *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.*, *S.S. Jain & Co. v. Union of India* and *New Horizons Ltd. v. Union of India.*.]”

(Emphasis supplied)

9. Thus, as per the abovesaid judgment, in case a small part of cause of action arises within the territorial jurisdiction of a High Court, the same by itself may not be considered to be a determinative factor to compel that particular High Court to exercise its jurisdiction. Further, in appropriate cases, the Court may decline to exercise its discretion by invoking the doctrine of *forum conveniens*.

10. A similar view was also taken by the Hon'ble Apex Court in the case of *State of Goa v. Summit Online Trade Solutions (P) Ltd.* (2023) 7 SCC 791, wherein it has been held as under:

“14. While dealing with an objection as to lack of territorial jurisdiction to entertain a writ petition on the ground that the cause of action has not arisen within its jurisdiction, a High Court essentially has to arrive at a conclusion on the basis



of the averments made in the petition memo treating the contents as true and correct. That is the fundamental principle. Bearing this in mind, we have looked into the petition memo of WP (C) No. 38 of 2017 and searched in vain to trace how at least part of the cause of action has been pleaded by the petitioning company, to have arisen within the territorial jurisdiction of the High Court.

15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. **The constitutional mandate of clause (2) is that the “cause of action”, referred to therein, must at least arise in part within the territories in relation to which the High Court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories.**

16. The expression “cause of action” has not been defined in the Constitution. However, the classic definition of “cause of action” given by Lord Brett in *Cooke v. Gill* [*Cooke v. Gill*, (1873) LR 8 CP 107] that “*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*”, has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. **However, in the context of a writ petition, what would constitute such “cause of action” is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed.**

17. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject-matter of challenge based on which the prayer can be granted.



Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests”

(Emphasis Supplied)

11. A Coordinate Bench of this Court in the case of *Chinteshwar Steel Pvt. Ltd. v. Union of India* 2012 SCC OnLine Del 5264, has held that in case of pan India Tribunals, or Tribunals/statutory authorities having jurisdiction over several States, the *situs* of the Tribunal would not necessarily be the marker for identifying the jurisdictional High Court.

12. This Court also notes, based on judicial precedents, that Courts have the power under Article 226 of the Constitution of India to exercise or decline their discretion to entertain writ petitions when the petitioner has an alternative, more appropriate, and convenient High Court to approach. As mentioned above, it is reiterated that it is a settled position of law that if only a part of the cause of action arises within the territorial jurisdiction of the Court, the Court may decline to entertain the case if it is of the opinion that it is not the *forum conveniens*.

13. In view of the aforesaid position of law, when the respondent no. 2 institute i.e. Swami Vivekanand National Institute of Rehabilitation Training and Research is situated in the State of Odisha, the appropriate remedy for the petitioner would be to approach Hon’ble High Court of Odisha.

14. Therefore, the present petition is dismissed along with pending application, on the ground of lack of territorial jurisdiction. The



petitioner would be at liberty to approach the appropriate Court of jurisdiction for redressal of his grievance, in accordance with law.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 7, 2024/zp