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

+ **W.P.(C) 11121/2024, CM APPL. 45991/2024**

JHAJHARIA NIRMAN LTD

.....Petitioner

Through: Mr. Sunil Fernandes, Sr. Adv with
Mr. Rakesh Kumar, Mr. Ankit
Sharma, Ms. Diksha, Advs.

versus

UNION OF INDIA & ANR.

.....Respondent

Through: Mr. Mansi Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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12.08.2024

1. The petitioner has filed the instant writ petition seeking directions against respondent no.2 to refrain from proceeding with the penalty being imposed *vide* letter dated 20.07.2024 and other penalty proceedings until the petitioner avails the opportunity to submit its representation in terms of the work contract agreement.
2. The petitioner appears to be public limited company engaged in the business of construction of railway tracks having its registered office at Jhajharia Mansion, Jagmal Block, Bilaspur -495001, Chhattisgarh. The prayer clause would indicate that the petitioner is essentially seeking directions against respondent no.2 which situates at 18 Millers Road, Bangalore, 560046, Karnataka, India.
3. Upon a query put forth to the learned senior counsel for the petitioner



with respect to the maintainability of the instant petition in light of the territorial jurisdiction exercised by this Court, he seeks resort to Article 24.3.18 of the work contract to contend that in view of the aforesaid Article read in conjunction with Article 25.1, this Court would have the requisite jurisdiction to entertain the dispute in question. In his aid, he has referred paragraph no.37 of the writ petition, which reads as under:-

“37. That in terms of Article 24.3.18 and Article 25.1 of the work contract this Hon’ble Court has the jurisdiction to entertain the present petition, as the actions of Respondent No. 2 are wholly illegal and further, this Hon’ble Court has extra ordinary power of judicial review of the acts passed by the Parliament. The relevant portion of the Article 24.3.18 and Article 25.1 of the work contract is reproduced herein below:-

“24.3.18 The contract shall be governed by the law for the time being in force in the Republic of India. In case of any disputes/differences resulting in court cases between Contractor & Authority, the jurisdiction shall be of Courts at [Delhi]

25.1 Governing law and jurisdiction This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at [Delhi] shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.”

4. Admittedly, it is seen that in the case at hand (i) the Request for Proposal (RFP) was invited from Karnataka, (ii) the petitioner resides in Chhattisgarh and (iii) the work in question has been carried out in the State of Andhra Pradesh. The petitioner, thus, seeks to invoke the jurisdiction of this Court under Article 226 of the Constitution of India merely because the head office of one of the respondents is situated within the territorial jurisdiction of this Court and the work contract stipulates dispute resolution at Delhi. The Court is, however, unable to accede to the aforesaid prayer.

5. This Court, in W.P.(C) 8891/2024 titled as ***Ramnath Singh Sikarwar***



v. Election Commission Of India has considered various decisions passed by the Supreme Court and this Court 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.

10. A co-ordinate Bench of this Court in the case of Chinteshwar Steel Pvt. Ltd. v. Union of India, 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. If the facts of the present case are perused, the major grievance of the petitioner lies against respondent no.3 i.e., State Medical Council which is located in Kerala and therefore, the substantial cause of action would not arise within the jurisdiction of this Court.

13. It is seen that some of the arrayed official respondents have pan-India jurisdiction. The reason that the policies and circulars are issued from Delhi cannot be the sole ground to entertain the petition by this Court. Neither the petitioner is incapacitated to



approach the jurisdictional High Court nor the concerned High Court lacks jurisdiction to issue appropriate writ to the arrayed respondents. 14. In view of the aforesaid, this court is not inclined to entertain the instant writ petition as this Court would be a forum non-conveniens in the present case.”

[Emphasis supplied]

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 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]

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]



6. Further, in the case of *Kusum Ingots & Alloys Ltd. v. Union of India*¹, the Supreme Court has explicitly 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.

7. So far as the argument with respect to Articles 24.3.18 and 25.1 of the work contract conferring the courts at Delhi to have the jurisdiction is concerned, needless to state that the Constitutional Courts cannot be expected to exercise their powers on the basis of any mutually agreed terms of agreement entered into between the parties. The concerned Articles may have relevance for invoking arbitration clause or for resorting to any other civil remedy, but in no case the same can bind the Constitutional Courts for exercising the power of judicial review.

8. In view of the above, since no material, essential and integral part of cause of action which may confer territorial jurisdiction on this Court arises in the instant case, no interference is called for.

9. Accordingly, the writ petition stands dismissed. The petitioner, however, shall be at liberty to avail the appropriate remedy before the jurisdictional High Court.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 12, 2024/KG

¹ AIR 2004 SC 2321