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

+ **W.P.(C) 14268/2024 & CM APPL. 59752/2024**

SWATI HOSPITAL & AYURVEDIC MEDICAL COLLEGE

THROUGH ITS PRINCIPAL

MR. LUQUMAN ALI

S/O SHER MOHAMMED

R/O HOUSE NO. D/C 17, SECTOR C1, NEAR

MARIYAM HOSPITAL, ANSAL EAST END,

TRONICA CITY, LONI DEHAT, GHAZIABAD.

U.P.- 201102

....PETITIONER

(Through: Mr.Jay Savla, Sr. Advocate with Mr.Pankaj Kumar and Mr.Anuvrat Singh, Advvs.)

versus

UNION OF INDIA

(THROUGH ITS SECRETARY)

MINISTRY OF AYUSH

BARAPULLAH RD, INA COLONY, NEW DELHI

...RESPONDENT NO.1

**NATIONAL COMMISSION FOR INDIAN SYSTEM OF
MEDICINE**

MEDICAL ASSESSMENT AND RATING BOARD (MARB)

THROUGH ITS PRESIDENT

61-65, INDUSTRIAL AREA, JANAKPURI, D-BLOCK, NEW
DELHI.

...RESPONDENT NO.2

(Through: Mr.Farman Ali, SPC with Ms.Usha Jamnal and Mr.Krishan Kumar, Advocates for R-1.

Mr.Kumar Prashant, Ms.Purva Mehta and Ms.Simran Chabra, Advocates for R-2.)



CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER
% 14.10.2024

1. The petitioner in the instant petition has prayed for the following reliefs:-

“i) issue an appropriate writ, order or direction for setting aside/quashing the decision of the Respondent No. 2- Medical assessment and rating Board for Indian System of Medicine (NCISM) dated 10/08/2024 and 24/09/2024 imposing penalty amounting to INR 2,25,00,000 /- (Rupees Two crores and twenty-five lakhs) of on the institution;

ii) issue appropriate writ, order or direction increasing the intake capacity from 30 to 60 seats for the academic year 2024-25.”

2. Learned counsel appearing for the respondents raised a preliminary objection with respect to the lack of territorial jurisdiction of this Court to entertain the present petition. He submitted that essentially, the grievance of the petitioner pertains to an institution which is located in the State of Uttar Pradesh and therefore, this Court does not have the requisite territorial jurisdiction to entertain the instant writ petition solely on the ground that the situs of the office of the respondents is in Delhi.

3. Learned counsel further submitted that if mere presence of the respondents' offices within the territorial jurisdiction of this Court is deemed sufficient to establish jurisdiction, it would set a precedent where any dispute involving a respondent with an office in Delhi would compel parties to approach this High Court solely on the basis of the respondent's head office or registered office being located in the national capital. According to



learned counsel, this practice would inundate this Court with cases that should otherwise be adjudicated before the jurisdictional Courts, thereby, defeating the very principle of *forum conveniens*.

4. Learned counsel also asserted that a careful appreciation of the facts and circumstances, viewed in their proper contextual background, would reveal that the key aspects central to the controversy fall outside this Court's jurisdiction.

5. Expounding the regulatory activities and procedures such as the inspection, counselling and admission to be conducted at the location of the petitioner, learned counsel argued that the essential, material and integral cause of action has kickstarted in Uttar Pradesh and therefore, the same would not confer jurisdiction for adjudicating the present controversy.

6. In addition to the aforesaid, learned counsel submitted that the respondent authority, i.e., the Medical Assessment and Rating Board [**MARB**], exercises regulatory powers over all the medical colleges across India. Thus, the location of the respondent's office should not be misconstrued as the basis for jurisdiction.

7. Rejecting the submissions advanced by the learned counsel for the respondents, learned senior counsel for the petitioner placed reliance on Article 226 of the Constitution of India to submit that the High Courts are vested with the authority to issue writs in matters where the cause of action has arisen, either wholly or in part. Taking a cue from the said submission, he also emphasized that the grievance of the petitioner is not directed against the State of Uttar Pradesh, its authorities, or any functionaries operating within Uttar Pradesh.

8. The core issue, as articulated by learned senior counsel, lies in the fact



that the petitioner, an institution seeking approval for increased intake of 60 MBBS seats, has been granted sanction for only 30 seats by the respondents. He further clarified that although the inspection occurred in Uttar Pradesh, the processing of the application, its evaluation, and the consequential decisions were all carried out by authorities situated in Delhi, specifically the MARB. Thus, according to him, the cause of action substantially arises within the territorial jurisdiction of this Court.

9. The solitary question that falls for consideration of this Court, at this stage, is whether the Court is clothed with the requisite territorial jurisdiction to entertain the instant writ petition and most importantly, whether this Court is the most convenient forum for the parties to agitate their grievance.

10. Recently, the Court had an occasion to extensively deal with a similar grievance as raised by the petitioner-College herein, in W.P. (C) 14233/2024 titled as ***Shri Siddhi Vinayak Medical College and Hospital Sambhal UP v. Union of India & Anr.***, wherein, almost similar arguments were advanced by the petitioner therein. In the said case, the petitioner was seeking for approval from NMC for increase of intake capacity in a medical college situated in Sambhal (Uttar Pradesh) for the academic session 2024-25. The petitioner therein was also aggrieved by the decision of the appellate authorities which considered the case of the petitioner and passed the order in Delhi and therefore, it had approached this Court for the redressal of its grievance.

11. The Court, while sustaining the objection raised by the respondents, therein *qua* lack of territorial jurisdiction, dismissed the writ petition holding that the material, integral and essential part of cause of action has arisen



beyond the territorial jurisdiction of this Court and the jurisdictional High Court of Judicature at Allahabad shall be a comparatively convenient forum for the petitioner to seek redressal of the controversy.

12. The Court, while deciding upon the contention as to whether the *dominus litis* has an indefeasible right to approach the forum of his/her choice where jurisdiction is conferred upon more than one forum by virtue of cause of action arising at different places, has held that the said liberty granted to the *dominus litis* is circumscribed by the judicial oversight which has to be undertaken in each case. The relevant paragraph of the discussion on the concept of *dominus litis* is reproduced as under:-

*“22. It is thus safely discernible from the aforesaid discussion that as per the aforesaid doctrine, the petitioner’s role as dominus litis includes the right to initiate litigation in a forum of his choice if the cause of action arises in more than one jurisdictions, provided that the chosen forum falls within the bounds of legally permissible jurisdictions. The choice made by the petitioner cannot be predicated on flimsy grounds, rather the same must adhere to the rules governing territorial jurisdiction and in event that the chosen forum does not satisfy the jurisdictional criteria, it can be challenged by the opposite party and accordingly, the Court is duly empowered to review the same. The underlying rationale behind the said rule of prudence is to eliminate any form of manipulation in choice of jurisdiction and to align the choice of the petitioner with the principles of justice, fairness and convenience. **Therefore, the petitioner’s right to choose a forum is not etched in stone, rather the same is subject to legal impediments that serve the larger interest of justice.**”*

13. While surveying a catena of decisions passed by the Supreme Court and the High Courts, the Court delved into the analysis of settled jurisprudence on the doctrine of *forum conveniens* to reach the following conclusions in ***Shri Siddhi Vinayak Medical College:-***

“Driving home the contours of forum conveniens

68. The salient aspects which emerge from the line of precedents discussed above can be delineated as under:-



a. The litigant initiating a legal proceeding in the capacity of dominus litis is entitled to approach the jurisdiction of his choice if the cause of action arises in two different jurisdictions, however, the same shall remain subject to judicial scrutiny by the Court. The Court shall find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action.

b. While determining jurisdiction to hear a writ petition under Article 226 of the Constitution of India, the Court must consider two key factors i.e., whether any part of the cause of action falls within its territorial jurisdiction and whether the Court serves as a suitable forum, ensuring convenience and fairness for all the parties involved in the case.

c. The mere situs of any authority, original or appellate, would not be a sole determinative factor in conferring jurisdiction upon a High Court.

d. The Court has to adjudicate the objection raised on the territorial jurisdiction bearing in mind the overarching principle of comparative conveniens i.e., the Court must not only be satisfied that it is a non-convenient forum, rather it must also be reckoned that the other forum is more convenient.

e. The doctrine of forum conveniens is applied to identify the most suitable forum for resolving a dispute, taking into account not only the convenience of the parties but also ensuring that the interests of justice are served. The question as to which would be the determinative or non-determinative factors to be considered in arriving at a conclusion about the forum conveniens or non-conveniens, will depend upon the facts of each case. However, a standalone factor would not weigh in determining the same, rather a cumulative result of the bundle of facts having nexus to the lis deserve to be appreciated. The following illustrative aspects, though not exhaustive, may be borne in mind while determining the applicability of the principle of forum conveniens or non-conveniens:-

- i. The location of the parties;*
- ii. The convenience of the parties;*
- iii. The interest of other relevant stakeholders;*
- iv. The place of the decision as well as the situs of the effect felt thereto;*
- v. The decision making authority has a pan-India jurisdiction or otherwise;*



- vi. *The nature of the authority taking the impugned action i.e., statutory, administrative or private;*
- vii. *The best interests of the general public at large;*
- viii. *The jurisdiction invoked by the parties is aligned with the principles of judicial consistency, fairness and propriety in adjudication of disputes;*
- ix. *The intentions behind invoking a particular jurisdiction viz. the parties approaching with malafide intentions or making surreptitious attempts of forum shopping may be identified;*
- x. *The resourcefulness of parties in approaching the jurisdiction to be considered immaterial etc.”*

14. On the touchstone of the aforementioned conclusions, the Court weighed in the following factors to determine the essential, material and integral cause of action which was found to be arising outside the territorial jurisdiction of this Court:-

“Analysis of facts in juxtaposition with the legal standpoint

69. Upon a perusal of the factual matrix of the present case alongwith the prevailing jurisprudence governing the controversy at hand, as already discussed above, it can be seen that the foundational facts which form the essential, material and integral part of cause of action, which gave rise to the lis in question have arisen in the State of Uttar Pradesh for the reasons enumerated as below:-

- a. *The petitioner-College has been found to be in defiance of certain compliances required to increase the intake capacity of the medical college in Sambhal (Uttar Pradesh). As a natural corollary, all the compliances—statutory, regulatory or administrative obligations—must be fulfilled in that location only. The compliances which need to be primarily fulfilled by the institution in question would also be predominantly governed by the authorities where the institution in question is located. Therefore, the primary events giving rise to the dispute occur in Sambhal (Uttar Pradesh), as that is where actions are taken and obligations are expected to be performed.*
- b. *The relief sought in the instant petition essentially relates to the admission of the students in the petitioner-College which is situated in Sambhal (Uttar Pradesh) and therefore, the ultimate effect, if the prayer of the petitioner-College is acceded to, would*



be felt in Sambhal (Uttar Pradesh) only. Admittedly, if any positive direction is issued by the Court, the same would be effectively enforced outside Delhi, thereby, creating a significant disconnect between the Court's territorial jurisdiction and the area where its orders have actual consequences, without there being any substantial cause arising in the periphery of Delhi.

- c. Though the petitioner-College has contended that the entire cause of action arises within the territorial jurisdiction of this Court, however, the said argument of the petitioner-College is entirely misplaced. Undoubtedly, the impugned order would give rise to a cause of action, but the same constitutes only a miniscule or slender part of entire cause of action, inasmuch as, it would not be a sole determinative factor in conferring the jurisdiction upon this Court. In the present case, the alleged deficiency has taken place at Sambhal (Uttar Pradesh). Thereafter, the inspection was carried out by the NMC at the said place only and pursuant to the information collected therein, the consideration of the relevant material took place at Delhi by virtue of statutory mandate stipulated under the NMC Act, 2019. If the chain of events in the present dispute is perused, the same would exhibit that the relevant facts that are necessary to prove the case have arisen at the situs of the petitioner-College only and all those facts have merely been considered at Delhi, which has resultantly culminated into the impugned order.*
- d. In case there is any alleged violation of the fundamental right to carry on any occupation, business or trade enshrined under Article 19(1)(g) of the Constitution of India, the same has been infringed at Sambhal (Uttar Pradesh), whereby, it can allegedly be said that any individual has been denuded from establishing occupation through medical college.*
- e. A perusal of the record and the rival submissions would only evince that the sole reason behind the conferment of jurisdiction on this Court is the situs of the authorities which have passed the order to be in Delhi. It is copiously settled by a series of judicial pronouncements, as already discussed above, that the situs of any authority within the territorial jurisdiction of any High Court would not be a sufficient ground in itself to clothe the Court with the requisite jurisdiction. Therefore, only because the head office of NMC and the appellate authority is situated in Delhi cannot be a cogent reason to entertain the present petition, in the absence of there being any material, essential or integral facts also arising in the same jurisdiction. It is observed that the facts*



which are most intimately connected with the controversy are situated outside the territorial jurisdiction of this Court.

- f. The recognition, affiliation and permission are pivotal in the process of setting up a medical college, and while they may seem distinct, they are intimately connected and interdependent for the proper functioning and legitimacy of a medical institution. Each of these elements—recognition, affiliation, and permission—plays a specific role, yet they work in tandem to ensure the medical college can admit students, provide education, and confer degrees that are valid and recognized by the Government and relevant medical bodies. Therefore, it is of utmost importance that endeavours should be made to ensure that all the relevant stakeholders are cognizant of any proceedings which are being carried out in respect of the petitioner-College. The said goal would have been best achieved if the present case was adjudicated in the State where the petitioner-College is located as it would give a convenient fora to the State, affiliating University, other relevant intervenors etc.
- g. The appropriate forum in the instant case should be the one which may allow all parties, including students, medical staff, government agencies etc. to raise their concerns without any undue obstacles. For example, if a medical college faces regulatory issues or non-compliance allegations, the most convenient jurisdiction would be the one that allows stakeholders to present their grievances effectively without there being any logistical or other constraints, which in the case at hand is possible in Uttar Pradesh.

70. Testing the jurisdictional aspect on the touchstone of the comparative conveniens, as has been envisaged in the case of **Vishnu Security**, except the fact that the documents are present in Delhi and the impugned order has been passed in Delhi due to the presence of head office of NMC, nothing substantial, integral and material facts to the lis can be seen to be arising in Delhi. On the other hand, the petitioner-College is situated in Sambhal (Uttar Pradesh), the affiliating University is also located in Uttar Pradesh, the students would be granted admission in Sambhal (Uttar Pradesh), the infrastructure being the hallmark of a quality education is situated in Sambhal (Uttar Pradesh) and the effect of the prayer sought for be ultimately felt in Uttar Pradesh, the High Court of Judicature at Allahabad shall be a convenient forum to adjudicate upon the controversy at hand. Interestingly, the entire purpose of bringing the amendment to Article 226 of the Constitution of India was to curb the hardships faced by the litigants and therefore, if the jurisdictional



issues are brushed aside without a due consideration and the petition is entertained because the parties are resourceful to approach the jurisdiction of this Court, the same would militate against the solemn objectives of the said amendment.

71. Furthermore, as already stated by the Division Bench of this Court in **Ridhima Singh** that the exercise of correcting the jurisdictional error is undertaken not only for the convenience of the parties but also in the interest of justice, the Court, while adjudicating upon jurisdiction, cannot sit in silos without realising the magnitude of public interest involved in the cases like the present one. In such cases where future of present students and upcoming doctors would be affected, the scales of justice are balanced when the Courts recognize the intricate relationship between individual rights and the collective good, besides the fact that ends of justice would demand striking a balance between individual interest of the litigants and the public at large. Afterall, the end goal of justice is not merely resolution of disputes between private litigants but to also ensure that the societal needs i.e., access to quality medical education, the availability of qualified healthcare professionals and the ability of stakeholders to raise grievances in the present case, are met. The Courts are, therefore, reasonably expected to act as stewards of public welfare, ensuring that jurisdictional decisions reflect a balance between convenience, justice and the broader interests of society.

72. Assumingly, if all the orders passed by the authorities which have their head offices in Delhi would attract jurisdiction of this Court, as has been quixotically argued by the petitioner-College to some extent in the case at hand, the same would amount to concentration of jurisdiction on one High Court. Undeniably, such a view cannot be countenanced by any prudent stretch of imagination and must be eschewed. The said practice would overshadow the judicial propriety which must be upheld at all times.

73. Further, Delhi being the national capital, is home to a major chunk of central regulatory bodies, central agencies, central Public Sector Undertakings etc., with their head offices/registered offices/regional offices located within the peripheral limits of the State and generally, the final decisions are either directly or indirectly taken by these authorities through their offices in Delhi. Notwithstanding the fact that some of the litigants may be resourceful in approaching this Court to challenge the action taken by these authorities merely because of their situs in Delhi, their resourcefulness shall not determine the course of justice. Considering a situation where any student is aggrieved by a decision taken by the NMC regarding derecognition of his/her degree, if the said student is asked to approach this Court only because any



adverse order is passed in Delhi, it would create an undue hardship, which is verily not the Constitutional mandate enshrined in Article 226.

74. Undoubtedly, the other High Courts of the country are also not incapacitated to issue writs against the authorities located in Delhi, particularly in light of the authority explicitly granted as per Article 226(2) of the Constitution of India. It is observed that in some cases, the entertainability of disputes by different High Courts in absence of there being any uniform approach adopted by the parties to agitate their grievance, leads to an inconsistency in the adjudication of disputes, which must be endeavoured to be avoided. It is significant to curb such an approach in context of a broader objective to eliminate any form of abuse of jurisdiction at the hands of litigating parties. In fact, this Court has come across several cases where the piousness of the writ jurisdiction is surreptitiously attempted to be compromised by the parties by making it susceptible to misuse by either non-disclosure of already pending proceedings before another High Court or through myriad other ways. For instance, recently, in a case where the petitioner had a chequered history of litigation in Kerala, filed a petition in this Court being aggrieved by a decision of the NMC, without impleading the necessary parties situated in Kerala, though only a miniscule part of cause of action arose in the jurisdiction of this Court. Upon being confronted by the respondents therein on various aspects, including an assertion that the same was an attempt to put the relevant stakeholders in dark and unaware of the proceedings, the petition was ultimately withdrawn by the petitioner.

75. It is also noteworthy that this Court is coming across numerous cases being filed from across the length and breadth of the country and clogging the docket of the Court merely on the ground that the impugned action has been taken by an authority having the situs in Delhi. In all such cases, an argument is made that since the concerned authorities are located in Delhi, the same would constitute essential, integral and material facts to confer jurisdiction. However, accepting such an argument would lead to jurisdictional overreach by this Court, thereby, contradicting and diluting the purport of the constitutional scheme outlined in Article 226(2).

77. Conversely, if the argument that for the purpose of avoiding confusion and inconsistency, only this Court must exercise jurisdiction over all the authorities located in the territorial jurisdiction of this Court, the same would also fail to muster support from the constitutional scheme enshrined in Article 226 of the Constitution of India, which does not intend any such restrictive interpretation.



78. Therefore, one of the factors which also merits consideration is which Court would be better placed to deal with the prayer and more appositely without facing any jurisdictional obstacle. A further scrutiny should also be made about the manner in which the prayer is couched so as to ascertain whether the same has been done in a clandestine manner to exclude the jurisdiction of other Court(s) or otherwise.”

15. If the facts of the present case are considered in right perspective, the same appear to be in congruity with the foundational facts which had the nexus with the *lis* as mentioned in paragraph no.69 in the case of ***Shri Siddhi Vinayak Medical College***, except the location of the college which is situated in Muzaffarnagar in the State of Uttar Pradesh, itself in the case at hand, and the authority passing the order being MARB.

16. It would, however, be also relevant to take note of the decision passed by the Coordinate Bench of this Court in the case of ***White Medical College & Hospital v. Union of India***¹⁸, wherein, the petitioner-College was intending to admit 150 MBBS students for the academic year 2024-25, however, the renewal permission was denied by the respondent therein i.e., NMC. The Court refused to entertain the said petition on the ground that the petitioner-College was based in Punjab and the affiliating University was also located in Punjab. It was also observed that merely because the head office of the NMC was situated in Delhi would not be a sufficient ground to maintain the petition in this Court. Paragraph no.7 of the said decision reads as under:-

“7. It is noted that the petitioner-institute is situated in the State of Punjab and the medical college is affiliated with Baba Farid University of Health Science and is under the administrative control of the Director, Medical Education and Research, Punjab, SAS Nagar, Mohali, Punjab. The petitioner-institute is also approved and recognized by the State Government of

¹⁸ 2024 SCC OnLine Del 4712



Punjab. The ground on which the petitioner-institute has approached this High Court is that the Head Office of National Medical Commission i.e., respondent no. 2 is situated within the territorial jurisdiction of this Court. However, merely because the office of respondent no. 2 is situated within the territorial jurisdiction of this Court, it cannot be a ground to entertain the instant writ petition.”

17. In view of the aforesaid, the Court is of the considered opinion that this Court is not comparatively convenient forum for the parties to effectively ventilate their grievance.

18. Accordingly, the petition stands dismissed alongwith the pending application(s), if any, with a liberty to the petitioner-College to approach the jurisdictional High Court.

19. All rights and contentions are left open.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 14, 2024/p