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

+ W.P.(C) 13613/2024, CM APPL. 56991/2024

DR NEHA CHANDRAPetitioner

Through: Ms. Sriparna Chatterjee, Mr.Soumitra
Chatterjee, Adv.

versus

UNION OF INDIA AND ORSRespondent

Through: Ms. Anushkaa Arora, SPC fir UOI
with Mr. Gokul Sharma, GP, for R-1.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **30.09.2024**

1. The instant matter was earlier taken up for consideration on 27.09.2024. On the said date, an objection with respect to the territorial jurisdiction was raised by the learned counsel for respondent no. 1. Today, the learned counsel appearing for the petitioner is called upon to make her submission regarding the aforesaid aspect.

2. Learned counsel appearing for the petitioner submits that the instant petition is maintainable as the crux of the challenge and the core cause of action is against the impugned order dated 19.09.2024, which has been issued by the National Board of Examination in Medical Sciences ["NBEMS"], an autonomous body under the Ministry of Health and Family Welfare. NBEMS is stated to be situated in Delhi. Learned counsel, therefore, submits that the entire controversy and subsequent adverse orders



were passed only as a consequential action to the impugned order dated 19.09.2024 and the entire dispute is predicated solely on the decision which is stated to have been taken in the territorial boundaries of Delhi. Learned counsel, therefore, submits that the Writ Court under Article 226 of the Constitution of India is empowered and capable of adjudicating the controversy involved in the captioned writ petition.

3. Substantiating her submissions, learned counsel has placed reliance on the decisions of the Division Bench of this Court in the cases of ***Riddhima Singh v. CBSE***¹ and ***Sumit Kumar v. UOI***² and a decision of the Co-ordinate Bench of this Court in the case of ***H.S. Rai v. Union of India***³.

4. Learned counsel who appears for the respondent, on the other hand, reiterates the objection and she seeks to distinguish the instant case from the decisions relied upon by the learned counsel for the petitioner. She submits that in the instant case, the consequential orders have been passed, and upon an examination of the same, it is seen that the same are passed by authorities which are situated outside the territorial jurisdiction of this Court. Therefore, learned counsel rests her submissions by submitting that the integral part of the cause of action has arisen beyond the territorial jurisdiction of this Court and thus, this Court lacks the territorial jurisdiction to entertain the instant writ petition.

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

6. The facts of the case would clearly indicate that the petitioner was

¹ 2023 SCC OnLine Del 7168.

² W.P. (C) 96/2017.

³ 2022 SCC OnLine Del 2803.



selected through the Uttar Pradesh Provincial Medical Services in the year 2017 and was given the appointment on 27.12.2017 as a medical officer in Bareilly (UP). She, thereafter, appears to have joined the Community Health Centre, Meerganj, Bareilly. She was then transferred to Community Health Centre, Shergarh, Bareilly in the year 2023. While working as a medical officer, the petitioner is stated to have appeared for the NEET PG Examination 2023 and had qualified the same. The petitioner, thereafter, participated in the UP NEET PG (DNB) Counselling 2023 and was allotted a seat in Ophthalmology post MBBS diploma on the basis of the MOP UP Allotment on 09.10.2023. On the basis of the recommendation dated 07.10.2023 from the Chief Medical Officer, Bareilly and the contract letter signed by the petitioner, she was granted permission to pursue post MBBS diploma in Ophthalmology at Balrampur Hospital, Lucknow by the Office of Director General of Medical and Health, Uttar Pradesh, Lucknow, subject to certain terms and conditions as outlined in various Government orders.

7. The petitioner, thereafter, appears to have joined the said Balrampur Hospital, Lucknow to pursue the PG Diploma Course in Ophthalmology. However, respondent no.2 *vide* letter dated 19.09.2024, directed the cancellation of admission of the petitioner to pursue the NBEMS Diploma Course at the concerned Hospital for 2023 admission session. The reason assigned in the order dated 19.09.2024 is that the petitioner did not join the concerned course as per the scheduled date of 12.10.2023, but has actually joined the program on 06.03.2024, which is almost after a five month delay from the scheduled date of joining.

8. Be that as it may, since at this stage the Court is not concerned about the veracity of the order dated 19.09.2024, the facts have only been



indicated to understand the background of the controversy to adjudicate the objection raised by the respondent herein as to whether this Court has the territorial jurisdiction to decide the controversy in hand.

9. This Court, at this stage, also takes note of the decision in the case of ***Bharat Nidhi Ltd. v. SEBI***⁴. The relevant paragraphs of the said decision are culled out, hereunder, for reference:-

“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.

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.

⁴ 2023 SCC OnLine Del 80733.



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.

115. Moreover, the litigation history of the present writ petitions reveals that the parties have, in fact, agitated their concerns before the Hon'ble High Court of Judicature at Bombay. Nothing has been put before this court, that shall allow the conclusion of the Hon'ble High Court of Judicature at Bombay being a non-convenient forum. The forum, in the considered opinion of this court, is available, convenient, as also approachable.”

10. The Court, in the aforesaid decision, has applied the doctrine of *forum conveniens* and has held that even if a fraction of cause of action has arisen within a jurisdiction of a particular High Court, still while applying the aforesaid doctrine, the party can be relegated to the concerned jurisdictional High Court where the material, essential and integral part of the controversy has arisen. The decision passed by this Court in the case of ***Bharat Nidhi (supra)***, was challenged by one of the parties in a Letters Patent Appeal in the case of ***Ashoka Marketing Limited & Anr v. SEBI & Ors***⁵. In the said decision, the Division Bench, *vide* its pronouncement dated 15.01.2024, while affirming the view taken by this Court in the case of ***Bharat Nidhi (supra)***, has discussed the concept of *forum conveniens* and has held as under:-

“21. The High Court while exercising its jurisdiction under Article 226

⁵ 2024 : DHC : 426 -DB



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). The following paragraphs of the judgment are instructive which are reproduced as under:

“30. From the aforesaid pronouncements, the concept of forum conveniens gains signification. In Black's Law Dictionary, forum conveniens has been defined as follows:

“The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses.”

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. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of



forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

(Emphasis Supplied)”

11. It would also be appropriate to take note of another decision passed by this Court in the case of ***Pune Buildtech (P) Ltd. v. Bank of India***⁶, wherein, while considering various decisions, including ***Kusum Ingots & Alloys Ltd. v. Union of India***⁷, ***Alchemist Ltd. v. State Bank of Sikkim***⁸, ***Sterling Agro Industries Ltd. v. Union of India***⁹ and ***Goa v. Summit Online Trade Solutions Pvt. Ltd***¹⁰, the Court has held 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

⁶ 2023 SCC OnLine Del 8112.

⁷ (2004) 6 SCC 25.

⁸ (2007) 11 SCC 335.

⁹ 2011 SCC OnLine Del 3162.

¹⁰ (2023) 7 SCC 791.



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.”

12. Reference can also be made to another decision in the case of ***Ramnath Singh Sikarwar***¹¹. In the said matter, a writ petition was filed before this Court, solely on the ground that the Head Office of Election Commission of India is situated within the territorial jurisdiction of this Court and therefore, the writ petition was sought to be maintainable. While dismissing the petition, this Court has again surveyed the decisions on the doctrine of *forum conveniens vide* order dated 04.07.2024. The relevant paragraphs, i.e. paragraph 19 to 24, are culled out hereunder for reference:-

“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

¹¹ W.P. (C) 8891 of 2024.



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.

21. As already noted hereinabove, the office of RO where the record is maintained and available to be furnished also situates outside the jurisdiction of this Court. Evidently, none of the facts put forth by the petitioners to establish jurisdiction upon this Court constitute essential, integral and material facts out of the bundle of facts in the present lis.

22. In view of the aforesaid, even this argument raised by the petitioners is bereft of merit and the same is, therefore, rejected. 23. Insofar as the reliance placed by the petitioners on the decisions of the Coordinate Bench of this Court in W.P.(C) 6532/2024, W.P.(C) 8710/2024 and W.P.(C) 5037/2024 is concerned, it is succinctly observed that in the said cases, neither the issue with respect to the territorial jurisdiction of this Court has been raised by the respondent therein nor the Court has dealt with the aforesaid aspect. Since those decisions do not deal with the issues involved in the instant writ petitions, therefore, they do have not any binding effect. The same cannot be treated to be precedent to rescue the case of the petitioners herein. 24. In view of the aforesaid, the preliminary objection raised by the respondent-ECI is accepted. The instant writ petitions stand dismissed. However, the petitioners are at liberty to take appropriate remedy before the competent Court/Forum”

13. In another case of **Manjira Devi Ayurveda Medical College & Hospital v. Uttarakhand University of Ayurveda**¹², the petitioner-Hospital sought to invoke the jurisdiction of this Court on the ground that the Head Office of respondent no.2, therein, was situated within the territorial

¹² 2024 SCC OnLine Del 6146.



jurisdiction of this Court. Rejecting the aforesaid contention, the Court, in paragraph nos.12 to 15 has held as under:-

“12. 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.

13. 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.

14. To sum up, the grievance of the petitioner-institute herein, which is situated in Uttarakhand, is essentially against the Uttarakhand Ayurveda University. The interim relief claimed in this petition is also against Uttarakhand Ayurveda University, which reads as follows : “Issue directions to the Uttarakhand Ayurveda University to allow the students of the batch of 2022 to appear for the examinations of the first profession”.

15. In view of the aforesaid, the present petition is dismissed alongwith pending application if any, solely 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.”

14. The aforesaid decision passed in the case of **Manjira Devi (supra)** came to be challenged in a Letters Patent Appeal before the Division Bench of this Court in the case of **Manjira Devi Ayurveda Medical College & Hospital v. Uttrakhand University of Ayurveda**¹³. The Court, vide its judgment dated 05.09.2024 has affirmed the position of **Manjira Devi**

¹³ 2024 SCC OnLine Del 6303.



(supra) and held, in paragraph no. 14, as under:-

“14. Keeping in view the fact that the cause of action has arisen within the territorial jurisdiction of the Courts of Uttarakhand and the convenient forum to hear and decide the present writ petition would be the Uttarakhand High Court, this Court finds no merit in the instant appeal and the same is dismissed without any order as to cost. This Court, however, reiterates the liberty granted by the learned Single Judge to the appellant to approach the appropriate Court of competent jurisdiction for redressal of its grievance in accordance with law.”

15. Furthermore, it is pertinent to refer to the decision passed by this Court in the case of *Ardra Joseph v. Union of India*¹⁴, wherein, the petitioner, after completing her BS Psychology and MD Programme from abroad, had appeared for the Foreign Graduate Medical Examination and sought a provisional registration with the State Medical Council of Kerala. The writ petition was sought to be maintainable mainly on the ground that the agency which conducts the examination is situated within the territorial jurisdiction of this Court. The Court sustained the objection raised by the respondent, therein, on the ground of territorial jurisdiction and has rejected the petition. The relevant portion of the said decision is culled out below for reference:-

“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 W.P.(C) 14187/2023.



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.”

16. Upon an examination of the aforesaid decisions, it is seen that the Court has constantly taken a consistent view that solely because a fraction of the cause of action has arisen within the territorial jurisdiction of a particular High Court, the same would not be a sufficient ground to persuade the concerned High Court to entertain a writ petition. The doctrine of *forum conveniens* can be invoked by the concerned Court taking into consideration the various facts and circumstances involved.

17. With respect to the reliance placed by the learned counsel appearing on behalf of the petitioner on the decision of ***H.S. Rai (supra)***, it is seen that in the said decision, the objection raised by the respondent, therein, with respect to the maintainability on the ground of territorial jurisdiction was sustained and the writ petition was dismissed by the Court. The observations of the Court in paragraph no.27 to 29, which are sought to be relied upon by the learned counsel herein, it is seen that in the said paragraphs, the Court has discussed the scope of Article 226(1) & (2) of the Constitution of India. The same is an established legal position which stands valid even as on date. There is not an iota of doubt with respect to the discretionary powers of the Court under Article 226(1) & (2) to entertain a writ petition on the basis of the fraction of the cause of action arising within the territorial jurisdiction of the Court. However, the exercise of such discretion would depend on the peculiar facts and circumstances involved in each case. Therefore, the Court is of the considered opinion that the decision of ***H.S. Rai (Supra)*** would be of no assistance to the petitioner. Similarly, in all the other decisions relied



upon by the petitioner, only the aforesaid settled position of law as has been propounded and upheld by various Courts on the aspect of the scope of Article 226 of the Constitution, has been reiterated.

18. Moreover, in any of the decisions relied upon by the learned counsel, the doctrine of *forum conveniens* was not under consideration and therefore, on that score also, the said decisions would not render any assistance to the petitioner. As seen above, the essential, material and integral cause of action, i.e. admission of the petitioner, leave application, its acceptance, the joining and leave letter and the subsequent rejection of the candidature, all have arisen beyond the territorial jurisdiction of this Court. The effect of any directions which are sought to be passed in the instant petition would be felt in the State of Uttar Pradesh.

19. Having considered the aforesaid aspect, the Court is not inclined to entertain the instant writ petition and the same stands dismissed on the ground of lack of jurisdiction.

20. However, the petitioner is at liberty to approach the jurisdictional High Court to seek appropriate remedy. All rights and contentions are left open.

PURUSHAINDRA KUMAR KAURAV, J
SEPTEMBER 30, 2024/KG