



IN THE HIGH COURT OF DELHI

Date of decision: December 23, 2005

I. WRIT PETITION (CIVIL) NO. 5133/2005

JAI GANESH PETROLEUM ... Petitioner
through Mr. A. Maitri, Advocate

VERSUS

UNION OF INDIA & ANR. ... Respondents
through Mr. Ruchir Mishra, Adv. for
respondent no. 1
Ms. Ira dhasmana with Ms. Mala Narayan,
Adv. for respondent no. 2

WITH

II. WRIT PETITION (CIVIL) NO. 5167/2005

KHUTAR FILLING STATION ... Petitioner
through Mr. A. Maitri, Advocate

VERSUS

UNION OF INDIA & ANOTHER ... Respondents
through Mr. M.M. Kalra with
Ms. Rubina Singh and Ms. Anisha
Kaushik, Advocates for respondent no. 2
Mr. Amit Bansal with Ms. Manisha, Advocate
for UOI

AND

III. WRIT PETITION (CIVIL) NO. 16946/2004

M/S ANNAPURNA FILLING STATION ...
Petitioner
through Mr. Kaushal Yadav, Advocate

VERSUS



INDIAN OIL CORPORATION LTD. & ANR.

... Respondents

through Mr. M.M. Kalra with
Ms. Rubina Singh and Ms. Anisha Kaushik,
Advocates for respondent no. 2

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL.

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J.

1. These three petitions are being taken up together for hearing inasmuch as in all the three petitions, the respondents have urged an objection to the effect that this court does not have the territorial jurisdiction to adjudicate upon the subject matter of the writ petition.

2. The petitioners are principally aggrieved by the action taken by the oil companies, who have granted dealership agreements to them, for alleged breaches and violations. The actions taken by oil companies against the three petitioners have been impugned by way of the present writ petitions.

The common factor relied upon the petitioners in all the three matters is that the principal office of the oil company in



question (Indian Oil Corporation in Writ Petition(Civil) 5167/2005 and Writ Petition(Civil) 16964/2004 and IBP Company Ltd. in Writ Petition(Civil) 5133/2005) is located in Delhi.

3. The other common factor, which is relied upon by the petitioners to assert maintainability of the writ petition and territorial jurisdiction of this court, is a clause in the agreement which according to petitioner, restricts jurisdiction to courts at Delhi in the eventuality of a dispute arising between the parties.

4. So far as the two agreements with the Indian Oil Corporation are concerned, the jurisdiction clause is contained in Clause 68 of the agreement which reads as under :-

“68. This Agreement has been made in Agra and all payments thereunder shall be due and made in New Delhi, unless otherwise directed by the Corporation. The Courts in the city of New Delhi alone shall have jurisdiction to entertain any suit, application or other proceeding in respect of any claim or dispute arising under this Agreement.”

5. So far as the IBP Company Ltd. is concerned, the jurisdictional clause is contained in Clause 32 of the agreement with the petitioners reads thus:-

“32. The agreement shall be deemed to have been granted in New Delhi and shall be construed according to the laws of India and the



performance by the Dealer/s of any agreement on their part herein contained shall be considered due in New Delhi for the purpose of jurisdiction.”

6. It is settled law that parties cannot confer jurisdiction upon a court of law by consent. However, in the event of more than one court having territorial jurisdiction upon the subject matter of the lis, parties can by consent restrict the territorial jurisdiction to one of such courts. It has been held that restriction to one of such courts to which the parties could take recourse in the event of disputes does not contravene Section 28 of the Contract Act in the pronouncement of the Apex Court in AIR 1971 SC 740 entitled Hakam Singh vs Jammon(India) Ltd.

7. The issue raised in this case relates not only to the disputes which have arisen between the parties, but reliance is being placed on a clause in the agreement whereby jurisdiction is restricted to this court in the above noted terms. Such question arose for consideration before the Apex Court in the judgment reported at AIR 1989 SC 1239 entitled ABC Laminart Pvt. Ltd. Vs Andhra Pradesh Agencies, Salem and was answered thus :-

“15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract,



and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have (been) performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.”

8. This issue has further been considered by the Apex Court in a later judgment reported at JT 1993(1) SC 617 entitled R.S.D.V.



Finance Company Pvt. Ltd. Vs Shree Vallabh Glass Works Ltd.

was held by the Apex Court as hereunder :-

“9. We may also consider the effect of the endorsement 'Subject to Anand jurisdiction' made on the deposit receipt issued by the defendant. In the facts and circumstances of this case it cannot be disputed that the cause of action had arisen at Bombay as the amount of Rs.10,00,000/- itself was paid through a cheque of the Bank at Bombay and the same was deposited in the bank account of the defendant in the Bank of Baroda at Nariman Point Bombay. The five post dated cheques were also issued by the defendant being payable to the plaintiff at Bombay. The endorsement 'Subject to Anand jurisdiction' has been made unilaterally by the defendant while issuing the deposit receipt. The endorsement 'Subject to Anand jurisdiction' does not contain the ouster clause using the words like 'alone', 'only', 'exclusive' and the like. Thus the maxim 'expressio unius est exclusio alterius' cannot be applied under the facts and circumstances of the case and it cannot be held that merely because the deposit receipt contained the endorsement 'Subject to Anand jurisdiction' it excluded the jurisdiction of all other courts who were otherwise competent to entertain the suit. The view taken by us finds support from a decision of this Court in *A.B.C. Laminart Pvt. Ltd. & Anr v. A.P. Agencies, Salem*(1989) 2 S.C.R. page1.”

9. Thus, there can be no dispute that making of a contract is a part of cause of action. However, in order to determine territorial jurisdiction of the court, what has to be considered is as to whether



such cause of action has a realm and substantial nexus with the matter in lis.

10. So far as the extraordinary writ jurisdiction of the High Court is concerned, the source of power is to be found in Article 226 of the Constitution of India. The relevant portion of this article reads as under :-

“Article 226. **Power of High Courts to issue certain writs** -(1) Notwithstanding anything in article 32, every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any or the rights conferred by Part III and for any other purpose.
 (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.]
 xxxx”

11. Therefore, this court is empowered to issue writs, orders or direction to any government, authority or person exercising



jurisdiction in relation to the territories within which cause action arises wholly or in part. The high court is constitutionally empowered to issue writs irrespective of the place of residence of such government or authority or person being without the territories.

12. In civil proceedings, 'cause of action' is understood to mean every fact, which, if traversed, would be necessary for the plaintiff to prove in order to support his right to the judgment of the court. It is that bundle of fact which, taken together with the applicable law, entitles the plaintiff to relief against the defendants.

13. In a judgment reported at AIR 1985 SC 1289 = (1985) 3 SCC 217 State of Rajasthan vs Swaika Properties, certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and the notice under Section 52 of the Rajasthan Urban Improvement were served upon the company at Calcutta. Basing its right to maintain the writ petition at Calcutta High Court, it had been contended that service of the notice within the territorial jurisdiction of the Calcutta High Court empowered that court to exercise jurisdiction in the matter. The Apex Court held that the entire cause of action for challenging the acquisition of the land under Section 152 of the Rajasthan Urban



Improvement Act had arisen within the territorial jurisdiction of the Rajasthan High Court. The factum of service of the notice at Calcutta was held unnecessary for grant of an appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government. It was thus held that the High Court at Calcutta had no jurisdiction to entertain the writ petition.

14. The law on this aspect has been authoritatively laid down by the Apex Court when it had occasion to examine this question further in its judgment reported at AIR 2002 SC 126 entitled Union of India vs Adani Export Ltd. & Ors. wherein it was held thus :-

“17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts gives rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis



or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in Paragraph 16 of the petition, in our opinion, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmadabad.”

15. Placing reliance on the pronouncement of the Apex Court in the State of Rajasthan (supra) and the Adani Export matter in its judgment reported at (2004) 9 SCC 786 entitled National Textile Corporation Ltd. & Ors. Vs Haribox Swalram & Ors., the Apex Court elucidated the applicable principles:-

“12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed.”

In this case as the parties had litigated upto the Apex Court. In order to put an end to the litigation, the Supreme Court however examined the matter on merits as well.

16. In a recent judgment reported at (2004) 6 SCC 254 entitled Kusum Ingots & Alloys Ltd. vs Union of India & Anr. the Apex



Court has considered this issue further and held thus :-

“26. The view taken by this Court in U.P. Rashtriya Chini Mill Adhikari Parishad that the situs of issue of an order or notification by the Government would come within the meaning of the expression “cases arising” in clause 14 of the (Amalgamation) Order is not a correct view of law for the reason hereafter stated and to that extent the said decision is overruled. In fact, a legislation, it is trite, is not confined to a statute enacted by Parliament or the legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instructions issued in this behalf shall also come within the purview thereof. Situs of office of Parliament, legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof.”

17. It is noteworthy that the doctrine of forum conveniens is also guiding the courts in adjudicating upon and deciding issues, objections relating to territorial jurisdiction. This doctrine find its base in convenience to parties and applies the principles that the court having the closest connection to the lis would guide the court in deciding as to the objections relating to territorial jurisdiction of the courts. In this behalf in (2004) 6 SCC 254 Kusum Ingots &



Alloys Ltd. vs Union of India, the court held thus :

“10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

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.*]”

18. This principle finds application in the rationale and reasoning of the Apex Court in the Adani Export matter. Thus, there may be some facts which may constitute a cause of action whereby the High Court would be enabled and empowered to decide the disputes. Yet, each and every such fact pleaded by a party does not by itself lead to the conclusion that the court would have the territorial jurisdiction to entertain the writ petition. It is only such facts which have a nexus or relevance with the issues raised in the litigation which vest the court with territorial jurisdiction. Thus, though an agreement may have been executed



within the territorial jurisdiction of the court, however in order to decide the issue of territorial jurisdiction in cases where the extraordinary jurisdiction of the High Court has been invoked under Article 226 of the Constitution of India, it has to be seen whether the execution of the agreement is such an integral part of the facts relating to the litigation and dispute that consideration of such fact is absolutely imperative and essential for deciding the disputes involved in the case.

19. This question has arisen before a division Bench of this court in its judgment reported at (2003) 69 DRJ 98 entitled A.K. Surekha & Ors. Vs The Pradeshiya Investment Corporation of U.P. Ltd & Anr. In this case, the court was concerned with a challenge to the issuance of an recovery certificate against the petitioner at Delhi. The recovery certificate was issued pursuant to exercise of power under the statute on account of default of payments under an agreement between the parties at Lucknow. The agreement was entered at Lucknow and all disbursements were made from U.P. The agreement also contained a clause restricting territorial jurisdiction to the courts at Lucknow alone. In these facts, the court held as under :-

“28. We have examined the relevant clauses of



the agreement and decided cases of various courts on question of territorial jurisdiction. If the principles which have been crystallized by the various courts are made applicable to the facts of this case, the conclusion would be irresistible that the court has no territorial jurisdiction to entertain this petition because in the instant case the respondent had entered into an agreement with the company of the petitioner at Lucknow and in the loan agreement, it was clearly stated that for the purposes of litigation relating to this agreement the territorial jurisdiction shall be of Lucknow courts alone. The petitioner on behalf of the company was signatory to the agreement. Thereafter a separate bond of guarantee was executed. In the bond of guarantee it was clearly agreed that the guarantors herein waive all rights which the Guarantors may become entitled to as surety/sureties to compete with the Corporation in obtaining payment of the moneys due or to become due to the Corporation in respect of the said loan in favour of the Corporation, as against the said Company. In clause 9, the petitioner has agreed that in order to give effect to the guarantee herein contained the corporation shall be entitled to act as if the Guarantors were the principal debtors to the Corporation for all payments and Covenants guaranteed by them as aforesaid, to the Corporation.

29. In this view of the matter, there was no justification or propriety on behalf of the petitioner to have filed a petition in this court for the relief of staying the recovery certificate. It is indeed unfortunate that most of the companies despite all kinds of clear and unequivocal agreements with the public sector undertakings and banks adopt delaying tactics whenever a case of re-payment of loans or dues arises. Unless the Courts adopt strict view of



the matter it would be difficult to effectively curb this tendency.”

20. A similar question had fallen for consideration before this court in a judgment reported at (2004) 73 DRJ 104 entitled Callipers Naigai Ltd. & Ors. vs Government of NCT of Delhi & Ors. and it was held as under :-

“8. In this particular case, we have to examine, therefore, what is the actual grievance of the petitioner. The petitioners, in view of Section 3 (3) of the said Act, cannot have any grievance with regard to the issuance of notices dated 02.07.1998 because these have been issued merely in compliance of the recovery certificate received by the respondent no. 2 from the Haryana Financial Corporation at Chandigarh. The respondent no. 2 had no option in the matter. He was not in any manner enjoined with any duty to examine the correctness or otherwise of the recovery certificate issued under Section 3 (2) of the said Act. The issuance of the recovery certificate is conclusive proof of the matters stated therein. In fact, the actual cause of action is in respect of the recovery certificate which is the *causa causea* and it is well-known that *causa causea est causa causati* (the cause of a cause is the cause of the thing cause) and the cause of the cause is to be considered as the cause of the effect also (see: Black's Law Dictionary 6th Edition, p.220). Thus, the recovery notices are nothing but the effect and the cause, in point of fact, is the issuance of the recovery certificate. In other words, the recovery certificate is the *causa sine qua non* (a necessary or inevitable cause); a cause without which the effect in question could not have happened (see: Black's Law Dictionary 6th Edition, p.221. Sans the



recovery certificate, the recovery notices could not have been issued. Thus, it is clear that the recovery notices dated 02.07.1998 cannot be set aside without the recovery certificate dated 21.10.1998 also being set aside. The recovery notices have no life of their own and must necessarily depend for their sustenance on the existence of the recovery certificate and the cause of action for which arose entirely in Chandigarh. The recovery notices do not form an integral part of the cause of action. Thus, this court does not have territorial jurisdiction to entertain the present writ petition.

9. In the aforesaid decision, which clearly dealt with a similar situation, it was held that recovery notices such as the one impugned herein do not form an integral part of the cause of action and, therefore, this court would not have territorial jurisdiction to entertain the writ petition challenging the recovery notice. I see no reason to depart from this view. The lis is with PICUP. Consequently the cause of action is qua PICUP. Unfortunately that has entirely arisen outside the territorial jurisdiction of this court. The issuance of the recovery notice has no relevance with this lis that is involved in the case. It is the result of a purely ministerial act on the part of Respondent No. 1 who cannot be faulted for acting in the manner he did. The statute required him to do so. He had no discretion in the matter. He had no lis to decide. The recovery notice is merely an effect and not the cause. It is the cause which confers jurisdiction and not the effect. Then, the answer to question No. 2 is that the mere issuance of the impugned recovery notice at Delhi does not clothe this court with the territorial jurisdiction to entertain this petition.”

21. My attention has been drawn to several decisions of this



court wherein the court had specifically considered similar dealership agreements as in the instant cases and have answered objections relating to territorial jurisdiction. Perusal of clause 32 in the agreement with IBP Company Ltd. shows that the same is concerned with the performance of the agreement and jurisdiction has been restricted to Delhi only in such concerns. Clause 68 in the agreement with IOC further stipulates that the courts in the city of New Delhi alone shall have jurisdiction to entertain any suit, application or other proceedings in respect of any claim or dispute arising under this agreement.

22. The question therefore to be considered is as to whether the disputes raised by the petitioners in the instant case relate to any claim or dispute arising under the agreement and as to whether the dispute relates to performance by the dealer of the terms of the agreement.

23. In Phool Service Station vs Indian Oil Corporation 2003 (4) AD(Delhi) 6 the agreement between the parties restricting jurisdiction was contained the aforementioned clause 68. The petitioner, Phool Service Station, was located in the state of Uttar Pradesh. Being aggrieved by the action of the respondents in taking a sample, a challenge was laid by it relating to the sampling



procedure which was adopted by the Indian Oil Company. The writ petition was filed at Delhi against a show cause notice issued by the respondents to the petitioner. Inasmuch as the matter was at the show cause notice stage, apart from holding that no cause of action had arisen in favour of the petitioner as yet, the court further held that the grievance with regard to the sampling was outside the scope of the agreement and the reliance placed on the jurisdiction cause was misconceived.

The Bench therefore held as under :-

“10. In all the present case, first of all, no cause of action as such has arisen inasmuch as a final decision is yet to be taken by the respondent in response to the reply filed by the petitioner on 26.07.2003. Where the cause of action itself has not arisen, the question of territorial jurisdiction obviously cannot arise. However, assuming that any cause of action has accrued in favour of the petitioner, such a cause of action is not one which could be said to have arisen under the said Dealership Agreement. This being the case, clause 68 of the said Dealership Agreement would not come into play at all. The grievance with regard to the sampling procedures and non-compliance with the mother sample are all outside the domain of the contract between the petitioner and the respondent and has entirely arisen in U.P. No part of it has arisen within the territorial jurisdiction of this Court.”

(emphasis supplied)

24. Considering a similar objection as to want of territorial



jurisdiction in yet another judgment, reported at 109(2004) DI
410 entitled Hilal Filling Station vs Indian Oil Corporation Ltd.,
 this court has held thus:-

“5. xxxx

The learned Counsel for the petitioner seeks to apply the aforesaid observations of the Division Bench to the facts of the present case to show that the Courts in Delhi alone would have jurisdiction. The learned counsel for the respondent, however, submitted that the fact situation is entirely different. In the case before the Division Bench the party was being proceeded against in terms of the agreement. In the present case, no action has yet been taken in terms of the agreement. What has happened is that a surprise inspection was carried out on 5.7.2003 which has been followed by the show-cause notice dated 16.8.2003 to which the petitioner has replied by his Advocate's letter dated 19.8.2003. Nothing more has happened. As such, clause 68 of the said agreement does not come into play at all.

6. I am in agreement with the submission of the learned Counsel for the respondent. Clause 68 specifically speaks of a suit, application or other proceeding in respect **of any “claim or dispute” arising under the agreement. There is no claim or dispute which has arisen under the agreement.** In construing the expression “arising out of” in the context of an arbitration clause contained in an agreement, the Supreme Court in the case of *Union of India v. Salween Timber Construction(India) & Ors., 1969 (2) SCR 224* laid down the following test :

“In our opinion the claim made by the respondent firm was a claim arising out of the contract.



The test for determining the question is whether recourse to the contract by which both the parties are bound is necessary for the purpose of determining whether the claim of the respondent firm is justified or otherwise. If it is necessary to take recourse to the terms of the contract for the purpose of deciding the matter in dispute it must be held that the matter is within the scope of the arbitration clause and the arbitrators have jurisdiction to decide the case.”

Do the issue raised in the present petition fall within the expression “claim or dispute arising under this agreement” appearing in Clause 68 of the said agreement? The test for determining the question is whether recourse to the said agreement is necessary for the purpose of deterring these issues? **Recourse to the agreement is not necessary for considering the incident of the inspection.** Recourse to the agreement is not necessary while taking up the issue of drawing of samples and the correct procedure therefor. Recourse to the agreement is also not necessary for deciding the question as to whether the show cause notice dated 16.8.2003 is valid and legal. Clause 68 of the said agreement is not at all attracted. Consequently, the judgment of the Division Bench in the case of *A.T. Surekha (supra)* would not be applicable to the facts of the present petition.

7. Thus, the question of territorial jurisdiction will have to be decided *de hors* Clause 68 of the said agreement. The Supreme Court in the case of *Union of India v. Adani Exports Ltd.*, VII (2001) SLT 612=(2002) 1 SCC



567, observed as under :

“17. xxxx

In the present case the facts that have a nexus with the lis are those with regard to the inspection which took place on 5.7.2003 and the show cause notice that was issued by the respondent on 16.8.2003. In this petition the petitioner has submitted that the respondent's said letter dated 16.8.2003 is absolutely vague. It is also submitted that, while it has been alleged that the HSD samples drawn from the petitioner's pump on 5.7.2003 failed to meet the BIS specifications, it has not been disclosed as to when and where and in which laboratory, the samples were tested . The petitioner has further submitted that the respondent's impugned letter dated 16.8.2003 does not even point out any illegality or irregularity on the part of the petitioner. It is also alleged that the said letter dated 16.8.2003, without supplying any test report, cannot be termed as a show-cause notice at all. In the absence of a test report, the petitioner is unable to rebut any allegations made against it. Finally the petitioner has stated that the issuance of the purported show-cause notice dated 16.8.2003 by the respondent is merely an eye wash and the petitioner has reasons to believe that the respondent intends to terminate the petitioner's dealership. From these averments and submissions, it is clear that the petitioner's grievance is essentially with respect to the inspection of 5.7.2003, the show-cause notice dated 16.8.2003 and the sampling and testing procedure adopted by the respondent. These are the facts which constitute the cause of action. They have entirely arisen in U.P., beyond the territorial jurisdiction of this Court. Hence, this Court would not have the territorial jurisdiction to entertain the present writ petition.”



25. This court had occasion to consider a challenge to the actio of the Indian Oil Corporation in drawing samples and issuance of a show cause threatening imposition of fine and suspension of supplies to the service station in the judgment reported at 109(2004) DLT 400 entitled Amar Filling Station vs Indian Oil Corporation.

In Arun Service Station vs IOC LIMITED 109 (2004) DLT 400, the petrol retail outlet was located at Meerut, U.P. and everything was done outside the territorial jurisdiction of this court. Having regard to these facts, it was held that :

“4. It is clear, only those facts which have a bearing with the lis or the dispute involved in the case give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. All other facts which have no nexus or relevance with the lis are to be ignored for the purposes of territorial jurisdiction. In the present case, the facts which have a nexus with the lis or the dispute, have all arisen in Meerut, beyond the territorial jurisdiction of this Court. Accordingly, in view of the aforesaid decision of the Supreme Court, since no part of the cause of action has arisen in Delhi, this Court does not have territorial jurisdiction to entertain the present writ petition.

5. Moreover, the writ petition itself is premature as no action has been taken by the Indian Oil Corporation. Mr. Kalra's submission that the writ petition is also premature is well founded. In any event, if



any action is taken, the same will be taken by Indian Oil Corporation as may be available to it under law.”

In writ petition (Civil) 14820/2004 entitled Naresh Kumar Sharma vs Union of India & Ors. on the 15th December, 2004 for the reason that the matter in question dealt with dealership of LPG in Uttar Pradesh and all records were available in Lucknow alone, this court dismissed the writ petition for want of territorial jurisdiction.

26. The petitioners have placed reliance on an Apex Court decision reported at (2003) 2 SCC 107 Harbans Lal Sahnia vs IOC. In this case the petitioners had assailed the High Court dismissing its writ petition on the ground of availability of an appropriate remedy under the contract which contained an arbitration clause. The petitioner contended that the procedure of drawing the sample was illegal and that the dealership of the petitioner was terminated on irrelevant and non-existent grounds and therefore the petitioner was entitled to issuance of a writ. In this case, the court held as under :-

“ 7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it



to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn. Vs Registrar of Trade Marks.*) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioner's dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

27. From a careful consideration of the aforestated decisions, the following principles emerge:-

- (i) making and signing of a contract is part of cause of action;
- (ii) parties cannot by consent confer jurisdiction on a court
- (iii) In the case of several courts having jurisdiction, parties can legally agree to exclude the jurisdiction of any of such courts and elect to restrict territorial jurisdiction to one out of such courts



which otherwise has jurisdiction.

(iv) the high court must be satisfied from the entire facts pleaded in support of the cause of action that those facts which constitute the cause or are necessary to decide the dispute have wholly arisen within its territorial jurisdiction, or, in any case, which have, atleast in part, arisen within its jurisdiction;

(v) each and every fact pleaded in the petition does not ipsofacto lead to the conclusion that those facts constitute cause of action vesting territorial jurisdiction upon the court to adjudicate upon the lis.

(vi) only those facts pleaded which have a nexus or relevance with the issues involved in the lis confer territorial jurisdiction on the court;

(vii) in determining an objection relating to lack of territorial jurisdiction, the court must take all the facts pleaded in support of the cause of action as pleaded in the petition into consideration without embarking upon an inquiry as to the correctness or



otherwise to the fact that.

(viii) A question of territorial jurisdiction must be apparent on the facts pleaded in the petition, the source or otherwise of the averments made in the writ petition being immaterial. In matters where the parties have agreed to restrict jurisdiction to one or the other court out of several courts which may have territorial jurisdiction, such clause would be enforceable only if the litigation which has arisen falls within the domain of the subject matter which is being provided in such clause. The parties may have confined jurisdiction to litigation arising only under the agreement. In such cases, the court has to arrive at a finding that the litigation between the parties was within the domain of the clause confining jurisdiction. If it does not, then the territorial jurisdiction of the court could be barred.

(ix) The court must be satisfied that all relevant facts which have merely a substantial nexus with the lis are located within its territorial jurisdiction.

(x) Even if it were to be held that a court has jurisdiction, yet



guided by principles of forum non-conveniens, the court may divert the parties to the court having a closer connection with the subject matter of the litigation. Residence of parties, location of evidence, situs of the dispute and such like considerations could guide the decision of the court to this effect.

28. Having thus set out the legal position which arises from consideration of the various decisions cited before me, it becomes necessary to deal with facts of the three cases individually :-

29. **Writ Petition(Civil) No. 5133/2005 entitled Jai Ganesh Petroleum vs Union of India & Anr.**

The undisputed facts in this writ petition are that the petitioner purchased the dealership for a retail outlet/petroleum pump of the Indian Oil Corporation. The retail outlet was to be commissioned at Mau, Mohamadabad Road, Mau Nath Bhanjan, U.P. The parties had entered into an agreement dated 26th April, 1999 in this behalf. The agreement contained the clause 32 as has been reproduced in the above discussion. The petitioner has placed reliance on clause 11(u) and 27(b) of the agreement which read as under :-

“11.(u). The Company shall be at liberty upon a breach by the Dealer/s or any covenant in this Agreement forthwith to stop all supplies



to the Dealer/s for such period as the Company may think fit, and such right of stoppage of supplies shall be without prejudice to any other right or remedy of the Company under this Agreement. For the purpose of this sub-clause the Manager of the Company for the time being in New Delhi shall be the sole judge as to whether a breach of any covenant or agreement has been committed by the Dealer/s.

27.(b). That the accounts of the dealer/s in respect of their dealings with the Company shall be kept in the name of the Dealer/s at each Branch of the Company where they have an account and any credit or deposit for the time being with one Branch of the Company may be utilised to adjust any debit in any other Branch of the Company. All amounts from time to time becoming due under this Agreement by the Dealer/s to the Company shall be paid to the Company at its office at New Delhi free of all charges to the Company.”

30. The respondents however have placed reliance on the beforestated agreement to contend that no part of the cause of action had arisen at Delhi. The dispute in the instant case is unrelated to payment or actions under the agreement.

31. I find that on the 30th January, 2005 officers of the Indian Oil Corporation undertook an inspection of the petitioner's retail outlet and drew MS/HSD/lube samples. The same were sent for testing and lsd/lube samples were found to be meeting specifications. However, the ms sample was not meeting the



specifications in respect of the rol test.

32. The respondents noticed that the petitioner had committed breach of the terms and conditions as contained in clause 9(e) of the dealership agreement and had violated the provisions of Marking Discipline Guidelines as well. Consequently, a notice to show cause was sent on 18th February, 2005 from the office of the Indian Oil Corporation at Allahabad. The petitioner was required to render an explanation to the Deputy Manager (Supply) at Varanasi.

33. Perusal of the test report also shows that the testing was undertaken at the quality control lab of the respondents at Amausi depot at Lucknow. The supplies are effected to the petitioner from the IBP Company Ltd. Depot at Noida, Uttar Pradesh. The petitioner sent its reply dated 26th February, 2005 to the respondents at Allahabad. The same was considered by the Indian Oil Corporation at Allahabad and the explanation was found unsatisfactory. Communication thereof was made by the divisional office at Allahabad vide a letter dated 4th March, 2005.

34. No part of the cause of action has admittedly arisen at Delhi in view of principles of law noticed hereinabove. Consequently, the present writ petition is not maintainable in this court and is



hereby dismissed.

35. It is noteworthy that all communications have been effected to the petitioners IBP Company Ltd. at Baragaon at Mau Nath Bhanjan, U.P. The respondents divisional office vide an order dated 4th March, 2005 from Allahabad imposed a fine of Rs.20,000/- upon the petitioner and also directed suspension of supplies for 30 days.

36. I find that all material and relevant facts having a nexus to the litigation, have arisen outside the territorial jurisdiction of this court in the State of Uttar Pradesh. The respondents have contended that all records relating to the instant case are available with their divisional office in Uttar Pradesh. The retail outlet is also admittedly located within the territorial jurisdiction of Uttar Pradesh. In my view, therefore, no part of the material facts giving rise to cause of action in the petitioner's case having arisen at Delhi. That this court does not have the territorial jurisdiction to entertain and adjudicate upon the subject matter of the present lis.

37. **Writ Petition (Civil) No. 5167/2005 entitled Khutar Filling Station vs Union Of India & Anr.**

The brief undisputed facts giving rise to this petition are that the Indian Oil Corporation entered into dealership agreement



with the petitioner at New Delhi for commissioning of a retail outlet/petrol pump at Khutar, Distt. Shahjahanpur, Uttar Pradesh on the 12th November, 2004. This agreement contains a jurisdictional clause which reads as follows :-

“68. This Agreement has been made in _____ and all payments thereunder shall be due and made in _____, unless otherwise directed by the Corporation. The Courts in the city _____ of _____ alone shall have jurisdiction to entertain any suit, application or other proceeding in respect of any claim or dispute arising under this agreement.”

38. The petitioner contends that on receipt of the message with regard to his sister-in-law having been shot dead at the Shahajahanpur on 18th July, 2003, he rushed there to attend the funeral. It is contended that there was a stock of 62 ltrs of HSD storage tank of the petrol pump. The petrol pump was also lying close as the petitioner had to attend the funeral. The officers of the respondents are stated to have visited the retail outlet in his absence on 18th July, 2003 when they are alleged to have taken samples from the tank which was almost dry. The petitioner is aggrieved by the method of taking sample and had stated that the same was in violation of the specific prescription in the petroleum and also was in violation of the Marketing Discipline Guidelines of 2001.



39. The Indian Oil Corporation issued a notice to show cause the petitioner from its office at Bareilly on the 22nd July, 2003 in respect of the sample of the HSD on the ground that the density variance was found beyond the permissible parameters. The petitioner addressed a reply dated 23rd December, 2004 to the U.P. State office of the respondents at District Shahajahanpur.

40. The respondents considered the reply received and an order was passed by the office of the Indian Oil Corporation at Lucknow dated 24th December, 2004 terminating the dealership. This decision has been impugned before by way of the present writ petition.

41. The respondents have vehemently contended that no part of the cause of action had arisen within the territorial jurisdiction of this court and as such the writ has to be dismissed on this court alone. Reliance has been placed on the pronouncement of the Apex Court in the case of Union of India vs Adani Exports (supra). The matter has been answered on merits itself and it is contended that the respondents have not violated the prescribed procedure and have also complied with principles of natural justice.

42. It is noteworthy that admittedly, the petrol pump/the retail outlet of the petitioner is located at Uttar Pradesh which is outside



the territorial jurisdiction of this court. Additionally, the inspection was carried out at the retail outlet. Notice to show cause was issued from Uttar Pradesh and his answered considered by authorities at Uttar Pradesh who passed the impugned order terminating the dealership. All these facts are such material facts having a direct nexus to the lis. The petitioner has not contended that any part of the cause of action has arisen at Delhi.

As noticed hereinabove, that it is well settled that in order to confer jurisdiction on this court, a part of the cause of action must have arisen at Delhi. This is not so in the instant case. Further as was held in the case of Hilal Service Station (supra), recourse to the agreement is not necessary for consideration of the inspection and the drawing of the sample. In the present case also there is no claim or dispute which has arisen under the agreement. Therefore, recourse cannot be made to clause 68 of the agreement to vest this court with the jurisdiction to adjudicate upon the dispute raised. I therefore, find that the jurisdiction of this court is barred on account of want of territorial jurisdiction.

The writ petition is accordingly dismissed.

43. **Writ Petition(Civil) NO. 16946/2004 entitled M/s Annapurna Filling Station vs Indian Oil Corporation Ltd.**



& Anr.

This writ petition has been filed by the petitioner impugning the order dated 15th October, 2004 of the respondents whereby the respondents suspended supply to the petitioner's retail outlet for 15 days i.e. with effect from 16th October, 2004 and also imposed a fine of Rs.5,000/-

44. The facts giving rise to the present petition are that the petitioner was appointed as a dealer of the petroleum products of M/s Indian Oil Corporation from its retail outlet in the name and style of M/s Annapurna Filling Station, Kurawali, G.T. Road, Mainpuri, Uttar Pradesh. An agreement dated 4th May, 1999 was executed between the parties which contain Clause 68 restricting the jurisdiction to the courts at Delhi. This clause reads as under :-

“68. This Agreement has been made in Agra and all payments thereunder shall be due and made in New Delhi unless otherwise directed by the Corporation. The Courts in the City of New Delhi alone shall have jurisdiction to entertain any suit, application or other proceedings in respect of any claim or dispute arising under this agreement.”

45. It is alleged that a sudden inspection of the petitioner's retail outlet was undertaken on 19th September, 2004. The



petitioner submits that at the time of inspection, the petitioner had enough stocks to covers 15 days supplies as he had almost 1129 kilo ltrs of petrol. The petitioner's monthly average sale is stated to go 323 kilo ltrs.

46. Despite the above, three shortcomings were pointed out in the petitioner's retail outlet. A show cause notice dated 20th September, 2004 was issued to the petitioner by the Senior Divisional Manager, Indian Oil corporation at Agra. The petitioner submitted a reply dated 29th September, 2004 to the authorities of the respondents at Agra. The same was considered and thereafter an order dated 16th October, 2004 was passed by the respondents office at Agra whereby sales and supplies of all products to the petitioner's retail outlet was suspended with immediate effect.

47. This action of the respondents has been impugned by way of the present writ petition on various grounds. The petitioner has placed strong reliances on the Marketing Discipline Guidelines. It has been contended that there was short supply from one one dispenser at the filling station of the petitioner. The petitioner places reliances on a record note of discussions dated 30th August, 2001 between the Director (Marketing) of the Oil



Companies and the representatives of the Federation of All India Petroleum Traders wherein it had been agreed that in the event of sales of dispensers being found intact and delivery is found to be either erratic or short or excess, only the sales from the particular dispenser unit would be suspended forthwith and the dealer would be advised to get the dispensing unit recalibrated.

48. It is contended that in the instant case, as per the inspection of the respondents, there was only short supply from one dispenser and that the action of the respondents in suspending supplies to the entire retail outlet and barring sales was contrary to these binding guidelines arrived at in the meeting held on 30th August, 2001. Even as per the envisaged penal action under the Marketing Discipline Guidelines, 2001 where the sales are found intact, it is submitted that the respondents could only stop sales and supplies from the dispensing unit till calibration is carried out by the weight and measure department.

49. The petitioner submits that the respondents have failed to consider all relevant factors while passing the impugned order and have failed to assign reasons in the order. The action and order of the respondents is stated to be vitiated for this reason. It is also contended that the allegations against the petitioner did not



match the inspection report. The petitioner has placed reliance on the decision of this court rendered in the judgment reported at 2003(67) DRJ 709 entitled S.K. Sharma vs Union of India in support of the submission that the penalties of suspension of sales, fine and termination would apply only if the weight and measure seals are tampered with. It is further contended that existence of an arbitration clause would not bar the jurisdiction of this court under Article 226 of the Constitution of India. In support of this submission, reliance is placed on the pronouncement of the Apex Court reported in 2003 (2) SCC 107 entitled Harbans Lal Sahnia & Ors vs IOC.

50. The respondents have challenged the maintainability of the writ petition on the ground that no part of the cause of action had arisen in Delhi and therefore the writ petition was liable to be dismissed on the ground of jurisdiction alone. Reliance has been placed on the aforementioned judicial pronouncement in contending that the writ petition is also not maintainable on the ground of availability of alternate efficacious remedy inasmuch as Clause 69 of the agreement provides that in case of any difference or dispute, the same would be referred by arbitration. The respondents have also placed reliance on the Marketing Discipline Guidelines, 2001



to contend that the action of the respondents in the instant case was as per prescribed procedure and applicable law and that the same cannot be faulted on any legally tenable grounds.

51. I have noticed the authoritative judicial pronouncements aforesaid to the effect that the dispute relating to violation of Marketing Discipline Guidelines, short supplies etc do not arise under the agreement and as such a party could not place reliance on Clause 68 of the agreement in support of the submission that the courts in the city of Delhi alone could have jurisdiction to entertain any suit, application or other proceedings in respect of such claim. Furthermore, the retail outlet of the petitioner is located on Mainpuri in the city of Uttar Pradesh which is beyond the territorial jurisdiction of this court. The show cause notice has been issued from Uttar Pradesh and the reply was sent by the petitioner to Uttar Pradesh. The order was passed after consideration thereof at Uttar Pradesh. Such order has been impugned in the present writ petition. I find, therefore that no material fact having a nexus with the lis has arisen within the territorial jurisdiction of this court.

For all the foregoing reasons and in view of the principles of law discussed hereinabove, I find that this court does not have



the territorial jurisdiction to entertain and adjudicate upon the subject matter of the dispute.

Accordingly, the writ petition is dismissed for want of territorial jurisdiction. It is made clear that nothing contained in the present judgment has any bearing on the merits of the dispute between the parties. The petitioner shall be at liberty to invoke his remedies in an appropriate forum having territorial jurisdiction.

This writ petition came up for hearing on 25th October, 2004 when the following order was passed.

“ Writ Petition 16946/2004 & CM No. 12558/2004

Notice to show cause as to the respondents as to why rule nisi be not issued, returnable on 01.01.2005

Learned counsel for the respondent accepts notice and as prayed for is granted four weeks time to file counter affidavit. Rejoinder be filed within two weeks thereafter.

In the meantime, it is directed that the operation of the impugned letter dated 15.10.2004 is stayed to the extent it directs suspension of sales and supplies for a period of 15 days with effect from 16.10.2004. However, this will not permit the petitioner to sell product from HSD DU No. 1 till re-calibration is done. This direction is passed specially taking into consideration the judgment of this Court in S.K. Sharma vs. Union of India & Others, 2003 (67) DRJ 709, where it was held that in terms of the Marketing Discipline Guidelines suspension of sales cannot take place where there is no tampering of meter and in the present case there



is no finding of tampering of meter. The seals, if any, put by the respondent on the other dispensing units/storage tanks be removed latest by 26.10.2004

Dasti to learned counsel for the parties under the signatures of the Court Master.”

It is directed that the order of stay dated 25th October, 2004 shall continue to operate for a period of eight weeks or till the filing of a petition in a court having jurisdiction, whichever is earlier.

**GITA MITTAL
JUDGE**

December 23, 2005
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