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

% ***Date of Decision : 29.01.2025***

\+ **W.P.(C) 966/2025**

SMT ANJU GULLA & ORS. .....Petitioners

Through: Mr. Vikas, Adv.

versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF ROAD TRANSPORT AND HIGHWAY, GOVERMENT OF INDIA & ANR. .....Respondents

Through: Mr. Himanshu Pathak, SPC, Mr. Vedansh Anand, GP, Mr. Amit Singh and Mr. Rajat Yadav, Advs. for UOI.

Ms. Gunjan Sinha Jain, Adv. for R-2/NHAI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*Oral*)

1. The present petition has been filed seeking directions to the respondents to pay damages / compensation of Rs. 4.5 crores along with interest to the petitioners on account of the accidental death of one Shri Umesh Gulla on 15.07.2018 in a road accident, while driving a motorcycle on National Highway 44 on the Kanipala Over Bridge before Khanpur Kolian, Kurukshetra, Haryana.

2. The petitioners are the legal heirs of Shri Umesh Gulla (decd.); petitioner no.1 is the wife and petitioner nos. 2 & 3 are the daughters. The

respondent no.1 is the Ministry of Road Transport and Highways and respondent no.2 is the Chairman, National Highways Authority of India.

3. The petitioners have filed the present petition claiming damages / compensation on the basis that the accident which led to the death of Shri Umesh Gulla was caused due to the negligence of the respondents in maintaining the national highway pursuant to Section 16(1) National Highways Authority of India Act, 1988.

4. Learned counsel for the respondents, who appear on advance notice, object to the maintainability of the present petition. It is submitted that this Court lacks jurisdiction to entertain the present petition inasmuch as the cause of action in the present petition has arisen entirely outside the territorial limits of this Court. Reliance in this regard is placed on the judgment in ***Aryans College of Education v. National Council for Teacher Education*** 2024 SCC OnLine Del 7165.

5. Learned counsel for the petitioner submits that the present petition is maintainable and relies on the judgment in ***H.S. Rai v. Union of India & Ors.*** bearing W.P.(C) 700/2005. In the said judgment, it has been stated that one of the conditions for exercising jurisdiction under Article 226 of the Constitution of India is the *situs* of the authority, against whom the writ petition has been preferred. The relevant portion of the said judgment reads as under:-

> *"27. Under Article 226 of the Constitution of India, the power to issue writ is with respect to any person, authority or any Government which falls within the territory of a High Court. The jurisdiction of the High Court also extends to matters where the cause of action arises, whether wholly or in part. Hence, it is clear that the power to exercise writ jurisdiction*

has its own limitations. These limitations would also apply to the case at hand as it would to any other matter before this Court under Article 226.

28. The first situation under which this Court can exercise its jurisdiction is when the person or authority to which the writ is to be issued, is falling within the territory of this Court. The petitioner herein is seeking issuance of writ against an authority, that is, the PDIL, which does not have any office, much less its registered office, in Delhi. The order of penalty which has been assailed before this Court was passed in Jharkhand after enquiry proceedings and the report thereto was made in Sindri, Jharkhand. Hence, the respondent no. 2 and 3, as representatives of the PDIL, are not amenable to the jurisdiction of this Court. Therefore, the instant matter does not satisfy the condition under Article 226 (1) of the Constitution of India.

29. The second condition under Article 226 (2) of the Constitution extends the writ jurisdiction of this Court to matters where cause of action has arisen within the territory of this Court. The petitioner was posted at Sindri, Jharkhand at the relevant time which the charges levelled against the petitioner pertain to. The enquiry proceedings against the petitioner were initiated at Jharkhand, the entire enquiry was conducted at Jharkhand and even the report made and the punishment imposed upon the petitioner was also at Jharkhand. All of the necessary cause of action arose within the territory of Jharkhand and not Delhi. The second alternative condition for exercise of writ jurisdiction under Article 226 also does not arise in favour of the petitioner and with this Court."

6. However, this Court does not find merit in the petitioner's submission.

7. In the present case, the accident of the deceased occurred at Kurukshetra, Haryana. The deceased was admitted to a hospital in Haryana. An inquest report dated 16.07.2018 under Section 174 CrPC was prepared at the Police Station Sadar Thanesar, District Kurukshetra, which is also located in Haryana. Only the *situs* of the respondents is within the territorial jurisdiction of this Court.

8. It is settled law under Article 226(2) of the Constitution of India that merely a part of the cause of action having arisen within the territorial limits

of this Court would not, by itself, be a determining factor for exercise of jurisdiction and the Court must also take into consideration the doctrine of *forum conveniens*. In support of the said proposition, the Supreme Court in ***Kusum Ingots & Alloys Ltd. v. Union of India,*** (2004) 6 SCC 254 has held as under:-

> "***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 [AIR 1941 Cal 670 : ILR (1941) 1 Cal 490] , Madanlal Jalan v. Madanlal [(1945) 49 CWN 357 : AIR 1949 Cal 495], Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. [1997 CWN 122] , S.S. Jain & Co. v. Union of India [(1994) 1 CHN 445] and New Horizons Ltd. v. Union of India [AIR 1994 Del 126] .]*"

9. Following the said decision, a five-judge bench of this Court in ***M/s Sterling Agro Industries Ltd. vs. Union of India & Ors***. 2011 SCC OnLine Del 3162, has expounded upon the doctrine of *forum conveniens* and held as under:-

> *"33. 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.*

> *34. 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.*

10. The Supreme Court in ***State of Goa v. Summit Online Trade Solutions (P) Ltd.*** 2023 7 SCC 791, while relying upon the decision in ***Kusum Ingots & Alloys Ltd. v. Union of India*** (supra), held that facts, which do not constitute "*material, essential or integral part of the cause of action*", would not attract the jurisdiction of the Court under Article 226(2) of the Constitution of India. In this regard, it was held as under:-

> ***"16.*** *The expression "cause of action" has not been defined in the Constitution. However, the classic definition of "cause of action" given by Lord Brett in Cooke v. Gill [Cooke v. Gill, (1873) LR 8 CP 107] that "cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court", has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such "cause of action" is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed.*
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> ***17.*** *Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that, at least,*

> *a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject-matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.*
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> ***21.*** *Even otherwise, the High Court was not justified in dismissing the interim applications. Assuming that a slender part of the cause of action did arise within the State of Sikkim, the concept of forum conveniens ought to have been considered by the High Court. As held by this Court in Kusum Ingots & Alloys Ltd. v. Union of India [Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254] and Ambica Industries v. CCE [Ambica Industries v. CCE, (2007) 6 SCC 769], even if a small part of the cause of action arises within the territorial jurisdiction of a High Court, the same by itself could not have been a determinative factor compelling the High Court to keep the writ petitions alive against the appellant to decide the matter qua the impugned notification, on merit."*

11. In the present case, the mere '*situs*' of the respondents being situated in Delhi is not sufficient to attract the jurisdiction of this Court under Article 226(2) of the Constitution of India inasmuch as the same does not constitute "*material, essential or integral part of the cause of action*".

12. In this regard, reference is made to the judgment of a co-ordinate bench of this Court in ***Aryans College of Education v. National Council for Teacher Education*** (supra), which has also been relied upon by the respondents. The relevant portion of the said judgment is as under:-

> *"**73.** 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 authorities concerned 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) of the Constitution of India. Therefore, the need has arisen to effectively ascertain the territorial jurisdiction of this Court in light of the bona fide intent of Article 226 of the Constitution of India as envisaged by the draftsmen.

74. *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.*

75. *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 the 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 the 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.*

76. 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.

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81. Thus, it is manifestly evident that just because the NRC and the appellate authority of NCTE are situated within the territorial jurisdiction of this Court, this Court would not have better jurisdiction to entertain the petition as the material, essential and integral part of the cause of action lies outside the State of Delhi i.e. beyond the territorial

> *jurisdiction of this Court. Therefore, the dictum laid down by the Supreme Court in Kusum Ingots & Alloys Ltd. case*[7] *that even if a slender part of the 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 merits, applies in full force in the present case*."
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> (emphasis supplied)

13. In the circumstances, this Court is not inclined to entertain the present petition. The same is, consequently, dismissed.

14. However, this order shall not be construed as an expression of opinion of this court on the merits of the matter. The petitioners are at liberty to approach the appropriate Court having competent jurisdiction for redressal of their grievances, in accordance with law.

SACHIN DATTA, J

JANUARY 29, 2025/*dn*