

(2016) 05 DEL CK 0131
In the Delhi High Court
Case No : W.P.(C) 8710 of 2015

Amit Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 230 DLT 567

Hon'ble Judges : Hima Kohli and Sunil Gaur, JJ.

Bench : Division Bench

Advocate : Mr. Suresh Chand, Advocate, for the Appellant; Mr. Rajan Sabharwal, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. The present petition has been filed by 18 petitioners praying inter alia for issuing directions to the respondents/Railway Protection Force (in short the ? RPF?) to call them for training after having been finally selected for the post of Constables in the RPF, in terms of Employment Notice No.1/2011.

2. In their counter affidavit, the respondents have raised a preliminary objection with regard to the maintainability of the present petition in Delhi. Counsel for the respondents states that the petitioners are re-agitating the pleas that were already taken by them before the High Court of Allahabad and subsequently, the petitioners herein along with 116 others had sought leave of the said court to approach the respondents with a representation to ventilate their grievances. As a result, vide order dated 28.4.2015 passed by the High Court of Allahabad, the said joint petition was disposed of. We are informed that the petitioners No.5, 11 and 17 had again approached the High Court of Allahabad out of whom two petitioners had subsequently withdrawn their petitions after they had filed the present petition in this Court.

3. We have perused the order dated 28.4.2015, passed by the High Court of

Allahabad in WRIT-A No. 53935/2014 entitled Shiv Mangal Prasad and 116 Ors. v. Union of India and 3 Ors., which had recorded that at the outset that counsels for the parties had agreed that in the first instance, the grievance of the petitioners could be disposed of by the respondent No.3 impleaded therein. Incidentally, respondent No. 3 has been impleaded as respondent No.4 in the present petition and he is an officer based in Gorakhpur, U.P.

4. It is an admitted position that in this petition, the petitioners have sought to assail the order dated 03.6.2015, subsequently passed by the respondent No.4 at Gorakhpur, U.P. In these circumstances, it had been enquired from learned counsel for the petitioners as to why should the present petition not be entertained for want of territorial jurisdiction.

5. On 10.5.2016, learned counsel for the petitioners had stated that he may be permitted to obtain instructions from his clients as to the place where each one of the petitioners had sat for their written examination conducted for recruitment to the post of Constables.

6. Today, counsel for the petitioners states that out of the 18 petitioners, petitioners No.1, 6, 7, 9, 10, 16 and 17 had taken their written examinations in Delhi. However, he does not deny the fact that pursuant to the order dated 28.4.2015 passed by the High Court of Allahabad, they had also submitted representations to the respondent No.4, whose office is at Gorakhpur, U.P. He submits that at least some part of the cause of action has arisen in Delhi in respect of the petitioners No. 1, 6, 7, 9, 10, 16 and 17 and therefore, the present petition is maintainable qua them, in this Court.

7. It is settled law that merely because a fraction of the cause of action has arisen before a particular Court, should not be the only guiding factor to entertain a petition and the Court, by invoking the doctrine of forum conveniens can decline to entertain a petition on the ground that a large part of the actionable cause has arisen elsewhere. A Full Bench of five Judges of this Court in the case of Sterling Agro Industries Ltd. v. Union of India and Ors reported as AIR 2011 Delhi 174 had the occasion to examine the doctrine of 'forum conveniens' and the concept of cause of action in view of the conflicting judgments on the issue that were referred to them. After examining a number of decisions of the Supreme Court on this issue including those in the cases of Sri Nasiruddin v. State Transport Appellate Tribunal, (1975) 2 SCC 671, Kishore Rungta and Ors. v. Punjab National Bank & Ors., 2003 (151) ELT 502 (Bom), Alchemist Limited (supra), National Textile Corporation Ltd. v. Haribox Swalram, (2004) 9 SCC 786, the Full Bench had observed as below :

"31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the conveniens 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."

8. The Full Bench of this Court had finally summarized their discussion in the following words:-

"33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in

question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated herein above stands overruled."

9. Having noted the relevant facts of the case as above and taking into consideration the fact that the petitioners had themselves approached the High Court at Allahabad for appropriate orders in the first round of litigation and yet again, and keeping in mind the fact that the order dated 3.6.2015 impugned by them has been passed by the respondent No.4, an officer based in Gorakhpur, U.P., it is deemed appropriate to dispose of the present petition with liberty granted to them to approach the same Court for appropriate orders.

10. The present petition is disposed of.