
(2015) 01 MP CK 0034

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11082 of 2014

Anukriti Mishra

APPELLANT

Vs

Gujrat National Law University

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20(c)
Constitution of India, 1950 — Article 226, 226(2), 227, 32

Citation : (2015) 1 JLJ 196 : (2015) 2 MPJR 35 : (2015) 2 MPLJ 143

Hon'ble Judges : S.K. Gangele, J.;Rajendra Menon, J.

Bench : Division Bench

Advocate : Umesh Trivedi, for the Appellant; Sankalp Kochar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—The grievance of the petitioner in this writ petition is that she was selected in the test named as B.A. LL.B (Hon.) Admission Test of 2014 for Five Years Law Degree Course. However she was not given admission in the college. By way of the amendment, the petitioner has also sought quashment of the provision of eligibility criteria contained in the Information Brochure, (Ann. R-1) for dependents of Freedom Fighters on the basis of residents or domicile in the State of Chhattisgarh.

2. The respondent no.1, Gujarat National Law University Gandhinagar had conducted a Common Law Admission Test (CLAT) for admission for five years B.A. LL.B (Hon.) Course for seventeen National Law Universities. The petitioner appeared in the examination. She was placed at sl. No. 3102 rank because she had got marks 107.75. The petitioner had received an e-mail message to the effect that "her candidature has been selected for the first exercise of counselling process". She was directed to log in account and do the needful. The petitioner was allotted Hidayatullah National Law University, Raipur. She was placed at sl. No. 95 in the selected candidates of that college. The respondent no. 4 was

placed at sl. No. 129 and respondent no. 5 was placed at sl. No. 147. They received 61.75 marks and 32.25 marks.

3. When the petitioner reached at Raipur to get admission, she received a phone call from Gujarat National Law University, Gandhinagar and received information that it was not necessary for her to appear in the interview because her name has been deleted. The grievance of the petitioner in this petition is that she was eligible to get admission under the quota of Freedom Fighters and the same has been denied to her illegally.

4. The respondent nos. 1, 2, 3 and 5 in their reply pleaded that Gujrat Law University conducted the Entrance Examination for admission to Under Graduates and Post Graduates Degree Programme for fourteen participants National Law Universities. There is no reservation in other Universities to the dependents of freedom fighters except at Hidayatullah National Law University, Raipur. In accordance with the enactment, Hidayatullah National Law University, Raipur has made provision of reservation to the dependents of freedom fighters belonging to the State of Chhattisgarh only. It means that the freedom fighters must be a resident of Chhattisgarh and the candidates belonging to the category of dependents of Freedom Fighters are eligible to get admission if the freedom fighter is resident of Chhattisgarh State. Because the grand father of the petitioner Shri Sheetal Prasad Mishra was not freedom fighter belonging to the State of Chhattisgarh, hence the petitioner is not eligible to get admission. Alongwith the reply, the respondents also filed an application for dismissal of the writ petition. It is pleaded in the application that this court has no jurisdiction to entertain the writ petition.

5. There is reservation to the candidates in Common Law Admission Test (CLAT). It is divided in two categories. The first category is under the heading of All India Seats and second category is under the heading of Chhattisgarh domicile seat. It is clear from the Information Brochure, copy of which has been filed as Annexure R-1 alongwith the return following is the eligibility criteria for admission in Hidayatullah National Law University, Raipur in accordance with the brochure:-

Candidates who are appearing or have appeared in the 10+2 examination and are awaiting results are also eligible to appear in the test. However, such candidates are required to have passed the qualifying examination at the time of their admission and must be able to submit the proofs of their claims.

Note :-As per the Chhattisgarh Educational Institutions (Reservation in Admission) Act 2012.

6. The dependents of freedom fighters have been provided 3% reservation. However, condition for reservation to get reservation is that he must be a domicile of the State of Chhattisgarh. The provision of reservation to the dependants of freedom fighter has been provided in accordance with the two enactments named as Gujarat National Law University, Raipur (HNLU) and Chhattisgarh Educational Institution (Reservation and Admission) 2012.

7. We have heard the learned counsel for the petitioner and learned counsel for the respondents. In our opinion, it would not be proper to consider the merits of the case because the question of consideration before the court is that whether this court has jurisdiction to entertain the writ petition challenging the vires of provisions and the Act enacted by the Chhattisgarh Legislature. In the present case, the petitioner is a resident of State of M.P. She appeared in the examination conducted by the Gujarat National Law University, respondent no. 1. The petitioner was allotted the seat at Hidayatullah National law University, Raipur and she was informed at Raipur that she could not get admission at Raipur because she was not eligible to get admission under the freedom fighter category. The supreme Court in Nawal Kishore Sharma Vs. Union of India (UOI), has considered the question of exercise of writ jurisdiction by the High Court in the light of Article 226(2) of the Constitution of India and also the cause of action as envisaged under Section 20(c) of the Code of Civil Procedure. The court has held as under :-

7. The short question that falls for consideration in the facts of the present case is that as to whether the Patna High Court is correct in taking the view that it has no jurisdiction to entertain the writ petition. For answering the said question we would like to consider the provision of Article 226 of the Constitution as it stood prior to amendment. Originally, Article 226 of the Constitution read as under:-

"Art. 226. Power of High Courts to issue certain writs. - (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises 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 or the enforcement of any of the rights conferred by Part III and for any other purpose.

(2)The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32".

8. While interpreting the aforesaid provision the Constitution Bench of this Court in Election Commission, India vs. Saka Venkata Rao, held that the writ court would not run beyond the territories subject to its jurisdiction and that the person or the authority affected by the writ must be amenable to court's jurisdiction either by residence or location within those territories. The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issued under Article 226 of the Constitution which makes no reference to any cause of action or where it arises but insist on the presence of the person or authority within the territories in relation to which High Court exercises jurisdiction. In another Constitution Bench judgment of this Court in K.S. Rashid and Son vs. Income tax Investigation Commission, this Court took the similar view and held that the writ court cannot exercise its power under Article 226 beyond its territorial jurisdiction. The Court was of the view that the exercise of power conferred by Article 226 was subject to a two-fold limitation

viz., firstly, the power is to be exercised in relation to which it exercises jurisdiction and secondly, the person or authority on whom the High Court is empowered to issue writ must be within those territories. These two Constitution Bench judgments came for consideration before a larger Bench of seven Judges of this Court in the case of Lt. Col. Khajoor Singh vs. Union of India. The Bench approved the aforementioned two Constitution Bench judgments and opined that unless there are clear and compelling reasons, which cannot be denied, writ court cannot exercise jurisdiction under Article 226 of the Constitution beyond its territorial jurisdiction.

9. The interpretation given by this Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke writ jurisdiction. As a result, Clause 1(A) was inserted in Article 226 by the Constitution (Fifteenth) Amendment Act, 1963 and subsequently renumbered as Clause (2) by the Constitution (Forty -second) Amendment Act, 1976. The amended Clause (2) now reads as under:-

"226. Power of the High Courts to issue certain writs -

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises 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 of 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.

(3)- (4)

On a plain reading of the amended provisions in Clause (2), it is clear that now High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction , if the cause of action wholly or partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed. The term "cause of action" as appearing in Clause (2) came for consideration time and again before this Court.

10. A five Judges Benches of Delhi High Court in the case Sterling Agro Industries Ltd. Vs. Union of India (UOI) and Others, has further considered the concept of territorial jurisdiction and Forum conveniens. The Bench has held as under:-

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.

11. In the present case the petitioner wishes to challenge the vires of enactment enacted by the State of Chhattisgarh. The petitioner has also challenged the action of the University by which she has been denied the admission in B.A. LL.B. Five Years (Hon.) Course. The University has denied the admission to the petitioner on the basis of some statutory provisions, which were enacted by the State Legislature after considering the principles of law laid down by the Hon''ble Supreme Court in the judgment quoted above and the concept of forum conveniens as held by the Five Judges Bench of Delhi High Court. In our opinion, it would not be just and proper for this court to entertain the writ petition on the principle of forum conveniens. Consequently, the petition filed by the petitioner is hereby dismissed. However, the petitioner shall be at liberty to file appropriate proceedings or the petition before the appropriate court of jurisdiction. It is hereby clarified that this court has not opined any view on the merits of the case.

12. Learned counsel for the petitioner has also relied on a judgment of two Judges in Nihal Himthani Vs. State of Uttarakhand and Ors. Reported in 2013 AIR SCW 5368. However, it is not necessary to consider the aforesaid judgment in detail in this case.

13. The petition is hereby dismissed. No order as to cost.