

(2016) 09 DEL CK 0030

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5497 of 2016 and CM No. 22909 of 2016

Dina Nath Public School

APPELLANT

Vs

Assistant P.F. Commissioner

RESPONDENT

Date of Decision : 09-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 151 FLR 1024 : (2017) LabLR 137 : (2016) LabLR 1166 : (2017) 1 LLN 387

Hon'ble Judges : Mr. Najmi Waziri, J.

Bench : Single Bench

Advocate : Mr. Mohak Bhadana, Advocate, for the Petitioner; Mr. R.C. Chawla, Advocate, for the Respondent No.1; Ms. Nazia Hasan, Advocate, for the Respondent No.2; Mr. O.P. Ahuja, Advocate, for the Respondent No.3; Ms. Nazia Hasan, Advocate, for the Petitioner; Mr.

Final Decision : Dismissed

Judgement

Mr. Najmi Waziri, J.—It is not in dispute that the petitioners are located in another State. The entire proceedings, apropos this assessment, under The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 were initiated in Faridabad (Haryana). All their records, normal activities, the school children and the teachers are in Haryana and the proceedings were conducted in that State. The only reason why the petitioners seek to exercise jurisdiction of this Court under Article 226 of the Constitution is that the impugned order was passed by the EPF Appellate Authority, which is located in Delhi.

2. This Court is of the view that this by itself would not be the singular factor for this Court to exercise the discretionary jurisdiction under Article 226 of the Constitution. This issue is no more res integra in view of the decision of the Court dated 01.08.2011 passed in WP(C) No. 6570/2010, titled: Sterling Agro Industries Ltd. v. Union of India & Ors., which held as under:

"..... 31. The concept of forum conveniences 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 convenience 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 conveniences 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 conveniences. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniences 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 conveniences. We are unable to subscribe to the said view.

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 conveniences.

(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 conveniences.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniences 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 conveniences and the nature of cause of action are required to be scrutinised 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 conveniences" is not correct.

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

34. Ex consequenti, we answer the reference by partially overruling and clarifying the decision in *New India Assurance Company Limited* (supra) in the above terms. Matters be listed before the appropriate Division Bench for appropriate consideration...."

3. The learned counsel for the petitioner relies upon an order of this Court dated 28.01.2013 passed in WP(C) No. 4795/2010, titled: *BSNL v. APFC Employees Provident Fund Organization, Jabalpur* in similar issue. However, what must be borne in mind that the facts of each case will have to be examined to assess the convenient forum in terms of *Sterling Agro Industries Ltd.* (supra), especially para 33(b).

4. In the facts and circumstances of the present case, this Court would not be the most convenient forum to determine the lis sought to be raised in the writ petition. It is, accordingly, dismissed as not maintainable on account of forum non-conveniences. The petitioners may prefer redressal of their grievances before appropriate forum, if they are so advised.