

(2012) 10 DEL CK 0337
In the Delhi High Court
Case No : WP (C) No. 4553 of 2012

M/s. Chinteshwar Steel Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G, 35G(9), 36
Companies Act, 1956 — Section 10, 10(1)(a), 10E, 10E(6), 10F
Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 108, 130, 131C
Income Tax Act, 1961 — Section 256, 256(1), 256(2), 257, 260
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(2), 11(4)

Citation : (2012) 10 DEL CK 0337

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Ravi Gupta, with Mr. Rajneesh and Mr. Harpuneet, for the Appellant; Amrit Pal Singh, CGSC with Ms. Gurjinder Kaur and Mr. Rupinder Pal Singh, Advocates for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.—The captioned writ petition was moved before me on 31.07.2012 when it had been put to learned counsel for the petitioner as to whether he would want to press the present writ petition in view of the fact that a substantive part of the cause of action had arisen in the state of Maharashtra. Consequently, the petition was made returnable on 09.08.2012, to enable the learned counsel for the petitioner to obtain instructions.

1.1. On the returnable date, the learned senior counsel sought to press the writ petition. To be noted on both dates, the Union of India as well as respondent No. 5 were represented by counsels.

1.2 On the counsel being queried, what came through was, that the only reason, which apparently, propelled the petitioner to move this Court was the situs of the

Revisional Authority. The Revisional Authority is situate in Delhi, and one of the orders impugned in the writ petition is the order of the Revisional Authority. Apart from the order of the Revisional Authority, the other order which is impugned is the order of the State Government of Maharashtra/Respondent No. 2 dated 28.08.2009, by which respondent No. 3 has been declared; Ad-interim stay is also sought of this very order.

Briefly, the petitioner alongwith certain other entities had applied for a Prospecting Licence (P.L.) qua Iron Ore in the area situate at Mauze Malermeta, Tehsil Etapalli, District Gadchiroli in the State of Maharashtra.

2. It is the case of the petitioner that on 15.12.2005, it had applied for grant of P.L. over an area admeasuring 1056.010 hectare, in the aforementioned area.

3. It appears that on 12.10.2006, the area in issue was notified to be recommended for grant of P.L. by the Director (Geology and Mining), Nagpur i.e., Respondent No. 5 u/s 11(2) and 11(4) of the Mines and Minerals (Development and Regulation Act), 1957 (in short MMDR Act). The petitioner, however, claims that this notification was issued on 09.11.2006; though the date of the notification, at present, is not a material fact, the fact that a notification was issued is material.

4. The petitioner further avers that on 08.12.2006, time was extended for filing applications till 31.01.2007, contrary to the provisions of the MMDR Act. It is thus the stand of the petitioner that the said extension enabled respondent No. 3, i.e., one Mrs. Kalpana S. Agarwal to enter the fray.

5. The petitioner claims that respondent No. 2/State Government of Maharashtra issued a notice dated 02.05.2009 fixing a date for hearing the applications filed, for seeking P. Ls. The date fixed for hearing was 07.05.2009. The petitioner claims that it received the notice only on 13.05.2009; a date which was well beyond the date fixed for hearing. It is, however, admitted by the petitioner, in its averments made in the petition that, respondent No. 2/State Government of Maharashtra fixed the applications for hearing also on 04.08.2009 and 14.08.2009. The petitioner's representatives evidently did not make it to these hearings. According to the petitioner, one of the reasons for adjourning the applications to 14.08.2009 was, the poor attendance at the hearing held on 04.08.2009, in Mumbai. The petitioner states that, although notices were issued to 54 applicants, only 27 applicants attended the hearing on all three occasions.

6. It is the stand of the petitioner that respondent No. 2/State Government of Maharashtra passed the impugned order dated 28.08.2009, with a predetermined mindset. The beneficiary of the said order was respondent No. 3, since the recommendation for grant of P.L. was made in favour of respondent No. 3. It is this order, which the petitioner challenged before the Revisional Authority.

7. It is averred that upon completion of pleadings before the Revisional Authority, the matter was listed for final hearing on 22.03.2012. However, notice of the said

hearing reached the petitioner only in the evening of 22.03.2012 that is, the date of hearing.

7.1 On account of the absence of the petitioner, it is averred, the matter was adjourned to 26.03.2012, by the Revisional Authority.

7.2 The petitioner claims that since the notice was short, there was no representation on behalf of the petitioner before the Revisional Authority, and thus, the hearing on 26.03.2012 was concluded, without a representation on behalf of the petitioner.

7.3 Pursuant to the said hearing, the Revisional Authority passed the impugned order dated 30.03.2012.

8. To be noted, as indicated above, the petitioner has assailed the order of the Revisional Authority as well as that of respondent No. 2/State Government of Maharashtra, on various grounds, including the fact that they were passed in breach of the principles of natural justice. This charge is specifically directed qua the order of the Revisional Authority.

9. What would require particular notice, in the facts of this case, is that, respondent No. 2/State Government of Maharashtra was called upon to consider applications in respect of the area in issue, for recommendations to be made qua the grant of P.L. over an area admeasuring 463 hectares. In all 54 applicants, had applied for mineral concessions, though there were 65 applications before it, for consideration. Out of a total of 65 applications, 6 applications were made for grant of Mining Lease (in short M.L.), while 59 applications were made for grant of the P.L. Since recommendations had to be made only for grant of the P.L. as the area in issue was not available for grant of M.L., the 6 applications received for M.L. were rejected. On a perusal of list of applicants for grant of P.L., I find that applicants from all over the country including Kolkatta, Haryana, Andhra Pradesh, Gujarat, Tamil Nadu, apart from Maharashtra and Bihar appear to have applied for the grant of P.L.

10. Therefore, in the given aforementioned facts, in my view, the following scenario may emerge:-

(i). the Revisional Authority, being the Central Government, under the MMDR Act has a pan India jurisdiction which in respect of P. Ls examines the veracity of the orders passed by various State Governments depending on where the Mine in issue is located;

(ii). while the location of Mines may be at different places, the questions of law could be common. In other words, in respect of a Mine, which is say, in the State of Andhra Pradesh as against that which is in the State of Maharashtra, the decision taken by respective State Governments may raise a question of law or decide an issue which may be common;

(iii). if a situation such as the one referred to in point (ii) above arises, and if the

principle of dominus litus is applied, then the aggrieved party located in the State of Maharashtra and Andhra Pradesh would have the option of either approaching the High Court where the State Government is situated or where the situs of the Revisional Authority lies i.e., Delhi;

(iv). it is possible that the litigant, who is concerned with the Mine located in the State of Maharashtra may approach this court i.e., the Delhi High Court, while on the other hand, the litigant who is concerned with the Mine located in the State of Andhra Pradesh may approach the Andhra Pradesh High Court, to challenge the order of the Revisional Authority; and

(v). lastly, it is quite possible that the decision of this court, is diametrically opposite to that of the Andhra Pradesh High Court, on an issue of law arising from orders of the Revisional Authority.

11. The question which could arise: Is the Revisional Authority, which is a pan India tribunal, bound to follow the directions of this court or that of the High Court of Andhra Pradesh.

11.1 This example could also be further extended; for instance if on a point of law, this court, takes a particular view, which is favourable to an aggrieved party as against the view of High Court in their own State, then the aggrieved party would want to approach this court to the exclusion of the court in which the Mine is located; thus leading to, in a sense, misuse and forum shopping.

11.2 What would make the above example even more complex, if State authority, decides to follow the view of its own High Court which it is bound to follow and the Revisional Authority was to follow the view of this court.

11.3 The question then is: How are these situations to be dealt with?

12. In the context of certain other statutes such as the Income Tax Act where the Income Tax Appellate Tribunal (ITAT) operates in Benches, this court in a series of judgments, which has found approval of the Supreme Court in the case of *Ambica Industries Vs. Commissioner of Central Excise*, has taken the view that the ITAT would be bound by the judgment of the jurisdictional High Court in which the Assessing Officer is located [see *Seth Banarsi Das Gupta Vs. Commissioner of Income Tax*, which is cited with approval in *Suresh Desai and Associates Vs. Commissioner of Income Tax*]. The relevant observations made, in this behalf, in *Suresh Desai and Associates (supra)* are contained in paragraphs 8 to 14 of the said judgment, which for the sake of convenience are extracted here in below :-

..8. In our opinion, the question of territorial jurisdiction of the High Court who would be competent to hear a reference u/s 256(1) of the Act or an application u/s 256(2) of the Act is no more res integra in view of the law settled by a Division Bench decision of this Court in the case of *SETH BANARSI DASS GUPTA Vs. COMMISSIONER OF Income Tax, DELHI (CENTRAL)*. In that case, the assessee a Hindu undivided family resided and carried on business in Meerut. The

assessment orders were passed by the income tax Officer at Meerut and appeals therefrom were heard by the Appellate Assistant Commissioner at Meerut. Further appeals were heard by Delhi Bench of ITAT. Later, a reference u/s 256 was made to the High Court of Delhi. A preliminary objection to the competence of the High Court of Delhi by reference to its territorial jurisdiction was raised on behalf of the Revenue which was upheld by the Division Bench. It was pointed out that there were no statutory provisions determining the proper High Court to which the reference should be made by the Tribunal. The Division Bench having analysed several provisions of income tax Act, held that the reference was maintainable only before the Allahabad High Court and not before High Court of Delhi. A perusal of the judgment, extensively dealing with all the relevant aspects, reveals the following reasonings given and observations made by the Division Bench:

(i) Section 64 which has relevance for determining jurisdiction of Assessing Officer by reference to place where assessee carries on business, profession or vocation, has no relevance for determining jurisdiction of Appellate Authority/Tribunal;

(ii) In considering the question as to the High Court to which a Bench having jurisdiction over more than one State has to make a reference, the basis adopted for determining the jurisdiction of the Bench of the Tribunal would be more appropriate than the basis adopted for determining the jurisdiction of the ITO;

(iii) It would be quite appropriate for the Bench to refer the question of law arising out of its own order in appeal to the High Court of the State from which the appeal had come.

(iv) The suggestion that the place of the location of the Bench which heard and determines an appeal may be adopted as the basis for the determination of the jurisdiction of the High Court to which question of law arising out of the order should be referred cannot be accepted. Reference cannot be made to the High Court of Delhi merely because Delhi Bench of Tribunal situated within the territorial jurisdiction of High Court heard the appeal.

9. The above said view has been followed and reiterated again by a Division Bench of High Court of Delhi in *Birla Cotton, Spinning and Weaving Mills Ltd. Vs. Commissioner of Income Tax*, . It has been held that the Court to which the reference should be made would be the Court having jurisdiction over the territory in which the office of the Assessing Officer was situated.

10. Not only we are bound to follow the view taken by two Division Benches of High Court of Delhi referred to hereinabove, which have held the field for about two decades, we too find ourselves in entire agreement with the view so taken.

11. There is yet another reason why the above said view should prevail. The territorial jurisdiction of the ITAT extends over several States though each of such States has its own High Court. There is unanimity of opinion amongst

different High Courts that decisions of the High Court are binding on the subordinate Courts and Authorities or Tribunal under its superintendence throughout the territory in relation to which it exercises jurisdiction. The Binding Authority does not extend beyond its territorial jurisdiction. The decision of one High Court is not a binding precedent for another High Court or for Courts or Tribunals outside its territorial jurisdiction. (See. Commissioner of Income Tax Vs. Thana Electricity Supply Ltd., ; CIT v. Ved Parkash, 178 ITR 332 Pb & Har; Bhopal Co-operative Central Bank Vs. Commissioner of Income Tax, ;CIT v. Mohan Lal Kansal, 114 ITR 583 P & H and Benoy Kumar Sahas Roy Vs. Commr. of Income Tax, West Bengal,).

12. In the case of CIT v. Thana Electricity Supply Ltd. (supra), the Division Bench of Bombay High Court has held:

A conjoint reading of Sections 257 and 260 of the income tax Act, 1961, shows that the Act itself contemplates independent decisions of various High Courts on the question of law referred to them. It has visualised the possibility of conflict of opinion between different High Courts on the same question of law and has also made specific provision to take care of such a situation in suitable cases. In fact, in the light of the clear language of Section 260 of the Act, every High Court is required to give its own opinion on a particular question of law. It should not follow, as a matter of course, only with a view to achieve uniformity in the matter of interpretation, the decision of another High Court, if such decision is contrary to its own opinion. Such action will be contrary to the clear mandate of Section 260 of the Act. It will amount to abdication of its duty by the High Court to give "its decision" on the point of law referred to it.

13. In CIT v. Ved Parkash (supra) the Division Bench of Punjab & Haryana High Court have held:

as the decision of a High Court is binding only upon the authorities, Tribunals and Courts functioning within its territorial jurisdiction, no Tribunal beyond such jurisdiction can treat or hold as constitutionally invalid any provision of the income tax Act solely for the reason that the High Court of another State may have declared the said provision to be ultra vires. To grant such a power to the Tribunal or even to a High Court, in a reference u/s 256 of the income tax Act would again amount to conferring jurisdiction upon them to pronounce upon the constitutional validity of the provisions of the statute creating them, which would clearly be contrary to the well-settled position in law." "unless and until the Supreme Court or the High Court of the State in question, under Article 226 of the Constitution, declares a provision of the Act to be ultra vires, it must be taken to be constitutionally valid and treated as such.

14. On account of the above said doctrine of precedents and the rule of binding efficacy of the law laid down by the High Court within its territorial jurisdiction. The questions of law arising for decision in a reference should be determined by the High Court which exercises territorial jurisdiction over the situs of the

Assessing Officer, else it would result in serious anomalies. An assessee affected by an assessment order at Bombay may invoke the jurisdiction of Delhi High Court to take advantage of the law laid down by it and suited to him and thus get rid of the law laid down to the contrary by the High Court of Bombay not suited to the assessee. This cannot be allowed...

(emphasis supplied)

13. The Supreme Court in *Ambika Industries* (supra) examined this problem in the context of Section 35G(9) of the Central Excise Act, 1944. In terms of section 35G, an appeal lay to the High Court against an order passed by the Central Excise and Service Tax Appellate Tribunal (in short CESTAT). Sub section (9) of section 35G provided for appeals from CESTAT to the High Court. This court had dismissed the action preferred against the order of the CESTAT. The aggrieved party filed an appeal which was dismissed by the Supreme Court. The Supreme Court made some pertinent observations in paragraphs 12 to 15.

..12. The said decision proceeded on the basis that part of the cause of action may arise at the forum where the appellate order or the revisional order is sourced. If, thus, a cause of action arises within one or the other High Court, the petitioner shall be the dominus litis. Indisputably, if this set of reasoning is to be accepted, the impugned judgment as also the decision rendered in *Bombay Snuff* (supra) would not be correct. Before dilating on the said proposition of law it may be noticed that the decision of a Tribunal would be binding on the Assessing Authority. If the situs of the appellate Tribunal should be considered to be the determinative factor, a decision rendered by the Tribunal shall be binding on all the authorities exercising its jurisdiction under the said Tribunal.

13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or Courts or Tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.

14. Furthermore, when an appeal is provided under a statute, Parliament must have thought of one High Court. It is a different matter that by way of necessity, a Tribunal may have to exercise jurisdiction over several States but it does not appeal to any reason that Parliament intended, despite providing for an appeal

before the High Court, that appeals may be filed before different High Courts at the sweet will of the party aggrieved by the decision of the Tribunal.

15. In a case of this nature, therefore, the cause of action doctrine may not be invoked....

(emphasis supplied)

14. A Division Bench of this court in the case of Dharampal Premchand Ltd. Vs. Commissioner of Central Excise, 182 (2011) DLT 654 following the said principle enunciated in Ambica Industries (supra), rejected the writ petition on the ground of lack of territorial jurisdiction. Also see the decision of another Division Bench of this court in the case of Commissioner of C. Ex., Delhi-III Vs. Enkay HWS India Ltd., .

15. The principle which emerges on an analysis of the aforementioned judgments is that: keeping in mind, "the rule of binding efficacy of law laid down by the High Court within its territorial jurisdiction", the identification of the appropriate High Court in which the judgments of a Tribunal having jurisdiction over several States, could be assailed - is determined not by the situs of the Tribunal but by the situs of the original Authority. The reasons being that the decisions of the High Court are binding on subordinate courts, authorities or Tribunals under its superintendence, within the territory, over which it exercises jurisdiction. The binding authority of its decision does not extend beyond its territorial jurisdiction. The decisions of the High Court have only persuasive value qua other High Courts and subordinate courts, Tribunals and authorities beyond its territorial jurisdiction.

16. Given the aforesaid principle, let me examine in the argument put forth by the petitioner. The petitioner before me has contended that even if a miniscule part of the cause of action arises within the territorial jurisdiction of the court, that court would have the jurisdiction to entertain the writ petition. It is contended that in this case, one of the impugned orders is passed by the Revisional Authority, which has its situs within the territorial jurisdiction of this court, and therefore, this court would have the jurisdiction to entertain the writ petition. A reference was also made to various provisions of the MMDR Act, to contend that in respect of minerals which are included in Part A and B of the first Schedule, the involvement of the Central Government is crucial. In this regard, reliance is placed on Sections 4 to 7 and 11 of the MMDR Act.

17. In my view, the writ petitioner's case at the present juncture is positioned at the stage of recommendation by the State Government for grant of P.L., therefore, the stage for involvement of the Central Government has not, *stricto sensu*, reached at this point in time. The petitioner, however, relying on the Full Bench judgment of this court in Sterling Agro Industries Ltd. Vs. Union of India, 2011 AIR (Del) 174 and the judgments of the Supreme Court in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, and Alchemist Limited and Another Vs. State Bank of Sikkim and Others, contends that this

court has jurisdiction. Reference is also been made to Ambica Industries (supra).

19. In my view, the Full Bench decision of this court in Sterling Agro Industries Ltd. (supra), after examining a whole range of case law, including the Supreme Court judgments referred to by the petitioners, in no uncertain terms, came to the conclusion that the situs of a Tribunal is not a determinative factor. It also reiterated that the principle of forum conveniens which briefly put, permits a writ court to refrain from exercising jurisdiction in a given case, where a substantive part of the cause of action arises outside its territorial jurisdiction. In the words of the court: "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. vs. UOI AIR 2010 Del 43 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".

20. Upon making the aforesaid observations, the Full Bench arrived at the following conclusions :-

..(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 hereinabove stands overruled....

(emphasis supplied)

21. A reading of the aforesaid would show that the situs of the Tribunal is not necessarily determinative of the fact as to whether the High Court in which the writ petition is preferred is the convenient forum before which the litigant ought to agitate his grievance. The said judgment of the Full Bench of this court in Sterling Agro Industries Ltd. (supra) has been discussed by a Division Bench of this court in three cases :-

(i). Vishnu Security Services Vs. Regional Provident Fund Commissioner and Anr., LPA No. 960/2011, decided on 17.02.2012.

(ii). Jan Chetna Vs. Ministry of Environment and Forests and Others,

(iii). Vinod KR Bhora Vs. HDFC Standard Life Insurance Company Ltd. and Anr., LPA No. 797/2010, decided on 17.02.2012.

22. Before I proceed further, at the outset, I must record that none of the aforementioned three cases were cited by the learned counsel for the petitioner in support of his case. Since, these have come to my notice, I propose to briefly deal with them.

22.1 Vishnu Security Services was the case where an appeal had been preferred to the Division Bench against the order of the Single Judge, who dismissed the writ petition, by a brief order; following the decision of a five-Judge Bench judgment of this Court in Sterling Agro-industries Ltd. The Division Bench upon a careful analysis of the ratio of the judgment of the Full Bench of this Court in Sterling Agro-industries Ltd. came to the conclusion that no case of forum non conveniens was made out in the facts of that case. The Division Bench disagreed with the view taken by the learned Single Judge that merely because the appellate Tribunal was located in Delhi, which in that case was the Provident Fund Tribunal, a writ petition would not lie to this Court. The Court concluded

that the order of the appellate Tribunal, in that case, furnished a cause of action, and if, the Single Judge was of the view that he would not like to exercise discretionary jurisdiction, the learned Single Judge: "was required to furnish some reasons as to why it was not appropriate to exercise the discretion". Decidedly, the lack of reasons to support its conclusion resulted in the Single Judge's decision being overturned by the Division Bench.

22.2 Jan Chetna was again a decision delivered by the same Division Bench which followed the view taken in Vishnu Security Services. Importantly, in this case a challenge was made to the decision of the National Environmental Authority granting environmental clearance to one of the respondents for setting up an integrated steel plant in Chhatisgarh. The petitioner before the Division Bench asserted that this Court had jurisdiction as, not only was the decision by the National Environmental Authority delivered at Delhi but also the environment clearance, which was impugned before the Court, was also granted in Delhi. As is clear from the facts obtaining in the present case, in the said case, more than a miniscule part of the cause of action, arose within the territorial jurisdiction of this Court.

22.3 In Vinod KR Bhora's case, an inverse situation had arisen, which is that the Single Judge had repelled the objection taken by the Appellant (respondent before the Single Judge), that this Court, had no territorial jurisdiction to entertain the writ petition. It arose in the background of the following facts: The Appellant had taken a unit-linked insurance plan. The Appellant had suffered a heart condition. The insurance company had rejected the claim on the ground that the appellant had failed to disclose at the time of filing the proposal form with it, that he suffered from diabetes. The Appellant challenged the rejection of his claim before the insurance Ombudsman. The Division Bench found that under the rules governing its constitution the complaint qua the rejection of the claim by the Appellant could be made before that Ombudsman within whose jurisdiction the Branch Office or the office of the insurance company was situate. Incidentally, the Ombudsman for the States of Rajasthan and Delhi was common. The Division Bench, however, taking into account that the complaint was filed in Jodhpur i.e., in the State of Rajasthan, the hearing was concluded at Jodhpur and the Ombudsman was acting in his capacity as the Ombudsman for the State of Rajasthan, when adjudicating upon the complaint - concluded that no part of the cause of action lay within the territorial jurisdiction of this Court. As is clear, the facts of the present case are distinguishable.

23. In the facts of this case, as indicated above, potentially there are apart from the petitioner, fifty two (52) applicants who could be aggrieved by the decision of the State Government (respondent No. 2) in passing an order in favour of respondent No. 3. As noticed above, many of the applicants are from States other than the State of Maharashtra. There are several applicants also from the State of Maharashtra. It is not known as to whether any of these applicants also approached the Revisional Authority. Assuming that they did, and were unable to

persuade the Revisional Authority to reverse the decision of the State Government (Respondent No. 2), they could approach a High Court other than this High Court. Potentially, it could lead to a serious issue of conflict of orders. It is, therefore, in this context, that in a series of matters, to which I have made a reference above, various Division Benches of this court have taken a view that the High Court, which would have jurisdiction with regard to Tribunal's which have a pan India jurisdiction or at least jurisdiction over several states, the most appropriate High Court (which a litigant should approach) would be the one where the original authority is situate. The said judgments were delivered in the context of a statutory regime. However, while exercising power under Article 226 of the Constitution; in assessing as to whether in a given case, a High Court should or should not exercise power the test indicated in those judgments would be relevant. In other words, in ascertaining whether the High Court which a litigant has approached is a convenient forum qua all parties, will require, amongst others, cognizance of principle that judgment of a High Court would be binding only qua those Courts, Tribunal and Authorities which are situate within its territorial jurisdiction.

24. In this context of what is stated above, let me test the proposition by taking the present case further. Assume an eventuality where, one of the applicant's were to approach the Bombay High Court, and assume that the Bombay High Court were to take a view contrary to the one that this court would take, respondent No. 2/State Government of Maharashtra, would be bound to follow the view of the Bombay High Court. A writ issued by this Court would thus, in a sense, lose its efficacy. The entire exercise would be in vain. The judgment of this Court would neither be binding on the Bombay High Court nor the State Government of Maharashtra. At best it can only have a persuasive value. See observations in Commissioner of Income Tax Vs. Highway Construction Co. (P.) Ltd., , in which, the Division Bench of the Gauhati High Court has quoted with approval the judgment of the Bombay High Court in Commissioner of Income Tax Vs. Thana Electricity Supply Ltd., Also see observations of the Division Bench of this Court in Taylor Instrument Co. (India) Ltd. Vs. Commissioner of Income Tax, , wherein the said principle has been clearly articulated.

25. With reference to the above, I may allude to another judgment of the Supreme Court, in the case of Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., . In this case the Supreme Court was concerned with interpretation of the Section 10F of the Companies Act, 1956 (Companies Act) wherein, an appeal is provided to "the High Court" against any order of the Company Law Board (CLB). The question which arose for consideration was whether the High Court, which could entertain an appeal against the order of the CLB, would be the Delhi High Court, in view of the situs of the principal bench of the CLB, being in Delhi or the High Court wherein, the registered office of the company, which was involved in the litigation, was located. The Supreme Court after examining the scheme of the Companies Act, came to the conclusion that the expression "the High Court" in Section 10 would

have to be construed in line with the provisions of Section 2(11) and Section 10(1)(a) of the said Act. Section 2(11) of the Companies Act defines "court", in respect of any matter relating to a company, to mean, the court having jurisdiction under the said Act, with respect to that matter relating to that company, as provided in Section 10. Section 10(1)(a) of the Companies Act, states that the court having jurisdiction under the said Act shall be the High Court having jurisdiction in relation to the place at which the registered office of the company concerned, is situate. The appellant, before the Supreme Court, had raised a preliminary objection before this court (i.e., the Delhi High Court) that the appeal u/s 10 could not be entertained as the registered office of the company was situate in Madras (now Chennai). This court rejected the plea; which is how the matter travelled to the Supreme Court. As indicated above, the Supreme Court reversed the view of this court, by holding that the expression "the High Court" in Section 10F would be governed by the provisions of Section 2(11) read with Section 10(1)(a) of the Companies Act. It also repelled the submission of the respondent in that case, that Section 10(1)(a) only referred to those matters over which the High Court exercised original jurisdiction prior to the constitution of the CLB, to which, its jurisdiction got transferred, by virtue of the 1988 amendment to the Companies Act.

25.1 It is interesting to note that one of the many situations with which the Supreme Court was called upon to grapple, in the course of hearing, in the said matter, was with respect to the situation which could arise if another Bench of the CLB, were to hear the appeal as against the principal Bench, which is situated in Delhi. It was suggested on behalf of the respondents that, depending on the locus of the Bench of the CLB, the High Court within whose territorial jurisdiction, the Bench carried out its adjudicatory function, would have jurisdiction in the matter. The Supreme Court repelled this submission for the reason that this would result in "too nebulous" a concept for deciding the issue of jurisdiction. For the sake of convenience, the relevant observations made in paragraph 12 of the judgment are extracted here in below:

....The provision in Section 10E for the Company Law Board to have more than one Bench and the Company Law Board Regulations 1991 framed u/s 10E(6) of the Act providing for sitting of the Benches at different places in the country does not give any clue to the construction of the expression "the High Court" in Section 10F. On behalf of the respondents it was urged, that all appeals u/s 10F would lie to the Delhi High Court where the Principal bench of the Company Law Board ordinarily sits but if the order under appeal is made at any other place in the country where the Bench sits, then the High Court having jurisdiction over that place can entertain the appeal. In our opinion, this is too nebulous a concept for deciding the question of jurisdiction and determination of the forum of appeal and, if accepted would tend to empower the Company Law Board to determine the forum of appeal by the choice of place of sitting under the Regulations for making the order. We have no doubt that the forum of appeal indicated in Section 10F is a definite forum determined by the provisions of the Act and not

by the Regulations framed by the Company Law Board u/s 10E(6) or the place of its sitting under the Regulations. These Regulations framed by the Company Law Board to regulate its own procedure are, therefore, of no assistance for decision of the controversy.....

(emphasis supplied)

25.2. In this behalf regard may also be had to the judgment of this Court in Commissioner of Central Excise vs. Technological Institute of Delhi 76 (1998) DLT 862 wherein, the Division Bench, applied the principle set forth in Stride well leather (supra) and Suresh Desai and Associates (supra), while interpreting expression "High Court" appearing in Section 35G of the Central Excise Act, 1944. The Division Bench, in the said case, reached a conclusion which was in line with the later decision of the Supreme Court in the case of Ambika Industries (supra). The relevant observations of the court were as follows:

.... 6. A similar question came up for the consideration of this court in the context of the provisions of the Income Tax Act, 1961. The Income Tax Appellate Tribunal is situated at Delhi and hears the cases arising from all over the country. A question arose whether a reference application arising out of an appeal wherein the original order of assessment was passed by the assessing authority situated at Bombay- subject to the jurisdiction of the High Court of Bombay- could be heard by and is maintainable before the High Court of Delhi? In Suresh Desai & Associates vs. CIT 1991 (230) ITR 912 , following Madras High Court decision in Commissioner of Income Tax, Madras (Central), Madras Vs. S. Sivaramakrishna Iyer, and Delhi High Court judgment in SETH BANARSI DASS GUPTA Vs. COMMISSIONER OF Income Tax, DELHI (CENTRAL)., , the Division Bench has held that it is the High Court of that State wherefrom the matter arises which would only be competent to hear the reference petition.

7. A similar question arose u/s 130 of the Customs Act, 1962. Suraj Woollen Mills is situated at Panipat. It imported woollen waste from foreign countries which reached the Bombay seaport. There the proceedings u/s 108 of the Customs Act were initiated by the Intelligence Officer of DRI Bombay resulting into penalty being imposed which was appealed against to CEGAT New Delhi. A question arose which will be the High Court competent to hear a reference petition u/s 130 of the Customs Act. On a review of the law available on the point this Court has held in Suraj Woollen Mills vs. Collector of Customs Bombay, (supra). That the only High Court competent to hear the reference petition was the High Court of Bombay, within whose jurisdiction the case had originated, and not the High Court of Delhi.

8. The definition of High Court for the purpose of Chapter XV as given in Clause (b) of Section 131C of the Customs Act, 1962 is identical with the one given in clause (b) of Section 36 of the Central Excise Act, 1944. The ratio of the decision in Suraj Woollen Mills" case (supra) applies on all the fours to the case at hand.

9. We also derive strength from the law declared by the Supreme Court in

Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., . A question arose which is the High Court competent to hear an appeal u/s 10F of the Companies Act, 1956 from an order of the Company Law Board. The registered office of the Company was situated at Madras. The appeal was sought to be filed before the High Court of Delhi. Their Lordships held that jurisdictional competence of the High Court by reference to its territory cannot be determined by finding out the place of the sitting of the Company Law Board where it may choose to sit and make the order under appeal. Having analysed the provisions of the Companies Act and having determined the legislative intent behind, their Lordships held that the High Court for the purpose of that case was the Madras High Court which had jurisdiction in relation to the place at which the registered office of the Company concerned was situated and not the Delhi High Court merely because the order was made by the Company Law Board at Delhi.....

(emphasis supplied)

The enunciation of legal principles in the aforementioned judgments would show that in case of pan India Tribunals, or Tribunals/statutory authorities having jurisdiction over several States, the situs of the Tribunal would not necessarily be the marker for identifying the jurisdictional High Court. If the submission of the petitioner is accepted, it would potentially lead to conflict of orders and possible misuse by the litigants. In nutshell, applying the ratio of the judgment of the Full Bench of this Court in Sterling Agro-industries, in particular observations made in paragraphs 33(a), (c) and (d), as explained by various judgments of this Court, I am of the view that this Court would not be a convenient forum for the following reasons: the order impugned in the present writ petition is not only of the Revisional Authority but also of the respondent No. 2/State of Maharashtra. There are several applicants, as noticed above, who are potentially aggrieved by the decision of the respondent No. 2/State Government of Maharashtra. The petitioner, the State Government of Maharashtra and respondent No. 3 and other respondents except the Revisional Authority, are located outside the jurisdiction of this Court. At the stage at which, challenge has been laid before the Revisional Authority, the Central Government has little or no role to play. Therefore, for the foregoing reasons, I decline to entertain the captioned writ petition. The petitioner will, however, be free to approach the appropriate High Court in regard to the impugned orders.