



2024:DHC:8718



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

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Judgment delivered on: 11.11.2024

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W.P.(C) 1340/2024 & CM APPL. 45721/2024

SAMAN KHANAM

.....Petitioner

Through: Mr. Rahimullah Ansari and
Mr. Mehvas, Advocates

versus

CENTRAL BOARD OF SECONDARY
EDUCATION

.....Respondent

Through: Mr. M.A. Niyazi, Standing
Counsel for CBSE with Ms.
Kirti Bhardwaj and Ms.
Nehmat Sethi, Advocates
(through VC).

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India by the petitioner, *inter alia*, praying as under:

“(B) ... issue a writ of mandamus directing the respondents to change/correct the name of father in secondary and higher secondary qualification certificates.



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(C) Issue a writ of mandamus directing the respondents to accept the request of the father's name change of the petitioner...”

2. The case set out by the petitioner is that she was born on 02.06.1999, and had lived with her maternal uncle (Mr. Diamond Khan) and maternal grandfather since childhood, as the parents of the petitioner had separated due to some reasons. The petitioner had completed her Class 10th from Goethal’s Public School, Bhagalpur, Bihar [hereafter ‘*the School*’] in the year 2015 and had received her Central Board of Secondary Education (CBSE) examination certificate/marksheet. Thereafter, she had completed her Class 12th and received her certificate from Council For the Indian School Certificate Examinations in the year 2017. She also pursued and completed her graduation in Bachelors of Arts from Jamia Millia Islamia University, Delhi in the year 2021. It is her grievance that while admitting her in the School, her maternal uncle (Mr. Diamond Khan) had written his name in place of the petitioner’s father’s name. It is, however, stated that the petitioner’s biological and real father’s name is Mr. Mirza Mabood Beg. It is stated that the petitioner, realizing this error in the said certificates/marksheet, had published the article in the The Gazette of India to declare that Mr. Mirza Mabood Beg is her real and biological father. It is stated that 14.03.2023, the petitioner approached the School and requested the School authorities to change the name of the petitioner’s father, but the School refused to do the needful. Thereafter, the petitioner also sent representations to the CBSE’s offices located in Bihar and Delhi,



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however, she did not receive any response. Therefore, the petitioner has been compelled to file the present petition.

3. Notice was issued in the present petition on 30.01.2024 by the learned Predecessor Bench. The respondent/CBSE has placed its short counter-affidavit on record.

4. At the outset, Mr. M.A. Niyazi, who appears on behalf of the CBSE, opposes the present writ petition on the ground that the same is not maintainable before this Court due to lack of territorial jurisdiction. It is contended on behalf of CBSE that the School, from which the petitioner has completed her schooling, is located in Bhagalpur, Bihar and since the Regional office of CBSE is also situated in Patna, Bihar, any remedy sought by the petitioner, in the given facts, would fall within the territorial jurisdiction of the Hon'ble High Court of Patna. It is also contended that the petitioner's case does not revolve around a mere correction but rather a substantive change in the name of her father, which is inconsistent with the existing School records. It is also stated that Mr. Diamond Khan had written a letter dated 02.05.2023 to the Principal of the School, wherein he had mentioned that he had married the petitioner's mother i.e. Ms. Soni Khanam in 1997 and out of the said wedlock, the present petitioner was born in 1999. In the said letter, he had also requested the Principal to initiate inquiry in this matter.

5. In rebuttal, Mr. Rahimullah Ansari, learned counsel appearing for the petitioner submits that since the grievance of the petitioner is primarily against the respondent i.e. CBSE, whose Head office is



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situated in Delhi, the petitioner has approached this Court. Mr. Ansari also states that he does not wish to address any further arguments on the issue of maintainability of the petition and this Court may decide the same.

6. This Court has heard arguments on behalf of both the parties and has perused the material placed on record.

7. It is noted that the School from which the petitioner has completed her education till Class 10th, i.e. Goethal's Public School, is situated in the State of Bihar. The petitioner, admittedly, had also approached the said School seeking correction of her father's name in the school records. She had also approached the Regional office of CBSE, located in Patna, Bihar for the said relief.

8. The ground on which the petitioner has approached this Court is that the Head office of CBSE is situated in Delhi and therefore this Court has the appropriate territorial jurisdiction to grant this relief. This Court, however, is of the opinion that merely for the reason that the Head office of CBSE is situated within the territorial jurisdiction of this Court, it cannot bestow territorial jurisdiction on this Court. Further, it is also not the case of the petitioner that any of her representations were rejected by the Head office of CBSE located in Delhi.

9. Conversely, the learned counsel for CBSE has drawn this Court's attention to the fact that the School had informed the Regional office of CBSE (Patna, Bihar), by way of letter dated



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02.05.2023, that a hand written application was tendered by Mr. Diamond Khan, urging that the petitioner herein is his daughter, born in the year 1999, and this is duly recorded in all her official documents. However, one Mr. Mirza Mabood Beg was trying to get his name substituted as petitioner's father. He had raised objections to the same. This document has been placed on record by CBSE.

10. In the background given above, this Court is of the opinion that the School in question, to which the present controversy pertains to, is situated in the State of Bihar, Bharat and therefore is the necessary party to adjudicate the controversy in question and grant of relief prayed for. Concededly, the entire School records in question have also not been placed before this Court.

11. In addition to the above, another controversy in this case is regarding who is the biological father of the petitioner herein i.e. Mr. Diamond Khan or Mr. Mirza Mabood Beg. It cannot be ignored that in view of the above mentioned facts, both will be necessary parties who would be required to be heard before passing an order as both claim to be the biological father of the petitioner and desire their name to be mentioned as father of the petitioner.

12. Further, undisputedly, no cause of action has arisen within the territorial jurisdiction of this Court. To be specific, the School in question is not within the territorial jurisdiction of this Court, but is located in the State of Bihar; the representations have been tendered by the petitioner to the said School, as well as the Regional office of the CBSE located in Bihar. Merely because the petitioner finds it



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easier or convenient to approach this Court, the territorial jurisdiction cannot be assumed on the said ground, neither on the ground that the Head office of CBSE is situated in Delhi. Undisputedly, the Regional offices and legal teams of CBSE function in every State across the country. Thus, the argument that the Head office of CBSE is situated in Delhi by virtue of which, this Court has territorial jurisdiction, is unmerited. In this regard, this Court is also guided by the decision of a Division Bench of this Court in case of *Smt. Manjira Devi Ayurveda Medical College and Hospital v. Uttrakhand University of Ayurveda* LPA No. 894/2024, wherein it was held as under:

"12. ...The mere presence by virtue of the location of their offices at Delhi would not, ipso facto, confer exclusive jurisdiction upon this Court to exercise its jurisdiction under Article 226 of the Constitution of India. It is apparent that no cause of action at all has arisen within the local limits of the territorial jurisdiction of this Court."

13. Further, it will also be useful to refer to the judgment of Hon'ble Apex Court in case of *Kusum Ingots & Alloys Ltd. v. Union of India* (2004) 6 SCC 254. The relevant observations which are relevant to the facts of the present case are extracted hereunder:

“Forum conveniens

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, Madanlal Jalan v. Madanlal, Bharat Coking Coal Ltd. v. Jharia Talkies*



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& Cold Storage (P) Ltd., S.S. Jain & Co. v. Union of India and New Horizons Ltd. v. Union of India.]”

(Emphasis supplied)

14. Thus, as per the abovesaid judgment, in case a small part of cause of action arises within the territorial jurisdiction of a High Court, the same by itself may not be considered to be a determinative factor to compel that particular High Court to exercise its jurisdiction. Further, in appropriate cases, the Court may decline to exercise its discretion by invoking the doctrine of forum conveniens.

15. A similar view was also taken by the Hon’ble Apex Court in the case of *State of Goa v. Summit Online Trade Solutions (P) Ltd.* (2023) 7 SCC 791, wherein it has been held as under:

“14. While dealing with an objection as to lack of territorial jurisdiction to entertain a writ petition on the ground that the cause of action has not arisen within its jurisdiction, **a High Court essentially has to arrive at a conclusion on the basis of the averments made in the petition memo treating the contents as true and correct. That is the fundamental principle.** Bearing this in mind, we have looked into the petition memo of WP (C) No. 38 of 2017 and searched in vain to trace how at least part of the cause of action has been pleaded by the petitioning company, to have arisen within the territorial jurisdiction of the High Court.

15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. **The constitutional mandate of clause (2) is that the “cause of action”, referred to therein, must at least arise in part within the territories in relation to which the High Court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories.**



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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.**

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”

(Emphasis Supplied)

16. This Court also notes, based on judicial precedents, that Courts have the power under Article 226 of the Constitution of India to exercise or decline their discretion to entertain writ petitions when the petitioner has an alternative, more appropriate, and convenient High Court to approach. As mentioned above, it is reiterated that it is a settled position of law that if only a part of the cause of action arises within the territorial jurisdiction of the Court, the Court may



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decline to entertain the case if it is of the opinion that it is not the forum conveniens.

17. In view of the aforesaid, the present petition is dismissed along with pending application solely on the ground of territorial jurisdiction. It is clarified that the case of the petitioner has not been decided on merit neither the merit was examined by this Court.

18. The petitioner would be at liberty to approach the appropriate Court of jurisdiction for redressal of her grievance, in accordance with law.

19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 11, 2024/zp