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

Decided on: 4th June, 2021

+ **W.P.(C) 6007/2019**

RIDDHIMA SINGH (MINOR) THROUGH HER
FATHER SHAILENDRA KUMAR SINGH Petitioner
Through: Mr. Shailendra Kumar Singh,
father of the petitioner.

versus

CENTRAL BOARD OF SECONDARY
EDUCATION AND ORS. Respondents
Through: Ms. Seema Dolo, Advocate for
R-1/CBSE.
Mr. Mukesh K. Verma,
Advocate for R-2.
Ms. Aishwarya Rao and Ms.
Renika Nim, Advocates for R3.

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CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. The petitioner is a minor child. At the time the writ petition was filed, she was studying in Class VII in the respondent no.3 - Indirapuram Public School, Ghaziabad, Uttar Pradesh [“the School”], which is affiliated to respondent no.1/Central Board of Secondary Education [“CBSE”]. The petition has been filed through the petitioner’s father, Mr. Shailendra Kumar Singh, who has also appeared throughout in person.

2. The reliefs sought in the petition are as follows: -

“1. to issue an writ of mandamus to the respondent no 1 to allow Petitioner to appear in Secondary and senior secondary Examinations conducted by respondent without any level of discrimination in examination or result with respect to regular students, failing which the applicant shall suffer irreparable loss and injury.

2. to issue such further order/s to respondents as this Hon’ble court may deem fit and proper in the facts and circumstances of the case.”

3. On a reading of the petition, as filed, it appears that the principal grievance of the petitioner is with regard to the new fee structure as introduced by the School from the academic year 2017-18 onwards. The case made out in the petition is that on 02.04.2018, the School denied permission to the petitioner to attend classes on account of non-payment of fees which, according to the petitioner, was charged arbitrarily, without consulting the parents of the students of the School, and without giving any reasons for the same. Several other allegations have also been levelled against the School.

4. On 27.05.2019, this Court issued notice in the petition while recording a *prima facie* finding that the petition raised serious issues of territorial jurisdiction, as the grievance of the petitioner was essentially against the School, which is situated beyond the territorial jurisdiction of this Court. It was further noted that the pleadings in the petition did not relate to the reliefs sought.

5. Even while the issue of territorial jurisdiction remained pending, the petitioner filed several interlocutory applications in these proceedings.

6. By an order dated 27.11.2019, the Court directed the School to readmit the petitioner and to permit her to attend classes, subject to the deposit of fees and annual charges demanded by the School with the Registry of the Court. It was recorded in the order dated 23.12.2019 that, according to the School, an amount of ₹2,32,833 was due towards fees for the academic sessions 2017-18, 2018-19 and 2019-20, and that Mr. Singh had deposited an amount of ₹79,560/- as fee for the academic session 2017-18, since the petitioner was home-schooled since Class VII. As per the School, the petitioner had not attended any classes or qualified in any examination for Class VII, due to which she could not have been permitted to attend classes for Class VIII at that stage. By the said order, the Court directed the School to conduct an examination for the petitioner for Class VII, to which Mr. Singh agreed.

7. By a further order dated 10.02.2020, this Court passed directions to the petitioner and the School, with regard to the conduct of the examination for the petitioner, to the following effect: -

“2. After having heard the father of the petitioner child, who appears in person, as well as Ms. Aishwarya Rao, who appears for respondent No.3 school, it is agreed by both sides that the applications can be disposed of with the following directions:

(i) The petitioner child will appear in Grade VII examination, which commences from 17.2.2020.

(ii) In case the petitioner child passes Grade VII examination, respondent No.3 school will hold Grade VIII examination for the petitioner child on 7.4.2020.

(iii) In case the petitioner child clears Grade VIII examination, she will be upgraded to Grade IX.

3. Furthermore, the Registry is directed to release Rs.79,560/- along with accrued interest to respondent No.3 school, which was deposited by the petitioner's father (i.e. Mr. Shailendra Kumar Singh) pursuant to the order dated 27.11.2019."

8. On 30.09.2020, this Court recorded that the petitioner had cleared the examination for Class VII that was conducted by the School, and had been promoted to Class VIII. However, the petitioner had not appeared in the Class VIII examinations, scheduled to be held on 07.04.2020, as directed by the order dated 10.02.2020, in view of the lockdown necessitated due to the Covid-19 pandemic. Recording the consent of Mr. Singh that the petitioner would be willing to give the Class VIII examinations physically, the Court passed the following order:

"8. Keeping in view the wishes of the petitioner and the order dated 10.02.2020, let respondent No.3 school hold Class VIII exam within four weeks from today. In case of any issue while conducting the exam, the petitioner child will not claim any damage from respondent No.3 school. In case, the petitioner child clears the exam in question, she will be admitted in Class IX.

9. Respondent No.3 school is permitted to open the school for conducting of such exam."

9. The aforesaid order was taken in appeal by way of LPA 297/2020, which was dismissed by a judgment dated 12.10.2020 (to which I was a party). A contrary submission was advanced by Mr. Singh before the Division Bench, to the effect that the petitioner was not willing to appear in the Class VIII examinations to be convened by

the School, as she apprehended that the time for preparation for the same was insufficient.

10. By a subsequent order dated 26.11.2020, this Court modified the order dated 10.02.2020 to the effect that the School was directed to permit the petitioner to appear in the Class VIII regular examinations scheduled to be conducted in February-March, 2021. The matter was adjourned thereafter for hearing on the issue of territorial jurisdiction of the Court to entertain the petition.

11. The petitioner has also made an application for amendment of the writ petition, being CM APPL. 26540/2020, in which she relies *inter alia* upon a grievance raised by her father before the Government of NCT of Delhi [“GNCTD”]. The petitioner has also referred to correspondence between the State of Uttar Pradesh and the CBSE, as well as grievances regarding the list of books prescribed by the School. The petitioner raised a further grievance with the CBSE with regard to the alleged irregularities committed by the School, to which the CBSE has responded, stating that its jurisdiction is confined to the conduct of the examinations of Class X and Class XII, and the implementation of the Right of Children to Free and Compulsory Education Act, 2009 falls under the purview of the State/Union Territory government.

12. By way of the amendment application, the petitioner has sought to add several grounds, all relating to the alleged irregularities by the School. The contention of the petitioner, although not easy to discern from the meandering and vague averments in the pleadings, appears to

be that the CBSE and the State of Uttar Pradesh have not taken action against the School, despite these irregularities. The petitioner has sought to add ten prayers to the singular substantive prayer in the original writ petition, which are extracted below: -

“1. to issue direction to respondents to pay compensation to petitioner, an amount of 10% of annual income of respondent no3 school and Trust/Society running respondent no3 school for the period of 30 Months due to irrecoverable damage, or reasonable amount this Hon’ble court may deem fit and proper in the facts and circumstances of the case and irrecoverable damage in last 30months to petitioner.

2. to give punishment to respondent no3 for making such intentional crime as this Hon’ble court may deem fit and proper in the facts and circumstances of the case keeping view to prevent such cases in future.

3. to give direction to respondent No1 to ensure strict compliance of having mandatory provision for school management committee for its affiliated school, where parents representative to be selected as per procedure described by state in RTE rules in time bound manner.

4. to issue direction to respondents that in absence of school management committee and its members details on school website/public domain, respondent No1 affiliated schools will be prohibited to collect fee or issue any new rules or direction of school.

5. to issue direction that all rules/regulations/actions in school related to students, books, etc... will be valid only when such rules/actions is supported with details of minutes of meeting of school management committee along with attendance of school management committee members.

6. to issue direction to respondent No1 to pay compensation to petitioner for not fulfilling its duties/responsibilities which also stated by state in its

response, towards responsibility of state against respondent no1 affiliated unaided private schools.

7. to issue direction to respondent no1 to address irregularities reported against respondent no3/school including fixation of fee and take action, as existing state government fee regulation act is limited to scope of fee hike norms only and not for fee fixation.

8. to issue direction to respondent No1 to adhere, accept, and fulfill responsibility as mentioned by state response towards responsibility of state against respondent no1 affiliated unaided private schools.

9. to issue direction to respondent No1 to audit irregularities of respondent no3 school and also to check if Trust/Society running this school is really fit to run school.

10. to issue direction to respondent no2 to take action against respondent no3/school, as city magistrate investigation already given report that respondent no3 debarred petitioner from school.”

13. In the amendment application, the petitioner has referred to several circulars issued by the CBSE. She has also adverted to the views of the GNCTD, and some correspondence between Mr. Singh and the GNCTD. However, the material relating to the GNCTD is entirely irrelevant to the disputes between the petitioner and the School, as the School is located in the State of Uttar Pradesh, and not within the jurisdiction of the GNCTD.

14. On the issue of territorial jurisdiction, I have heard Mr. Singh, on behalf of the petitioner, Ms. Seema Dolo, learned counsel for the CBSE, Mr. Mukesh Verma, learned counsel for respondent no.2/the State of Uttar Pradesh, and Ms. Aishwarya Rao, learned counsel for the School.

15. Mr. Singh contended that the present petition is maintainable and ought to be entertained by this Court, on account of the fact that the relief sought is directed against the CBSE, the head office of which is situated within the territorial jurisdiction of this Court. He further argued that the CBSE is empowered to pass directions *inter alia* regarding fee hike to affiliated schools like the respondent/School. This, according to Mr. Singh, attracts the jurisdiction of this Court to entertain the present petition.

16. Ms. Seema Dolo, learned counsel appearing for the CBSE, on the other hand, submitted that although the reliefs in the present petition have been sought against the CBSE, the averments in the petition pertain to the School, including *inter alia* with regard to the increase of fees. According to her, since the School is situated in Ghaziabad, Uttar Pradesh, and since the principal grievances of the petitioner are against the School, this Court would not be the appropriate forum to entertain the present petition. In any event, she further contended that the CBSE has no role to play with regard to the issues ventilated in the petition, inasmuch as the petitioner has not yet been promoted to Class IX, without which the prayers concerning the conduct of the Class X and XII examinations by the CBSE cannot be considered. It was further submitted that the petitioner had failed to show any material from the CBSE barring her from taking any exams, so as to necessitate the reliefs sought in this petition.

17. Ms. Dolo also drew my attention to a letter dated 18.12.2017/03.01.2018 issued by the CBSE, annexed to the writ petition as

Annexure - 16, wherein it has clarified that it is an examination conducting body, and that it does not possess any regulatory powers in the matter of fee hike in schools. It was stated therein that the limited role of the CBSE with regard to fees is to ensure that its affiliated schools charge fees as per the regulations enacted by the respective State Governments, and that the appropriate authority to decide the issue would be the State of Uttar Pradesh.

18. Ms. Dolo further contended that, even if the petitioner seeks reliefs against the CBSE, as per the Affiliation Bye-laws of the CBSE dated 18.10.2018, there is no specific provision laying down the jurisdiction of any Court to entertain writ petitions against the CBSE or challenges to its bye-laws. She stated that the CBSE has regional offices for schools in each jurisdiction, and that the jurisdiction of this Court is not attracted on any ground.

19. Mr. Mukesh Sharma, learned counsel appearing for the State of Uttar Pradesh, submitted that no relief has been sought against the State in the present petition, and that even if the amendment application of the petitioner is allowed, the amended prayers sought to be added would also pertain to the School, and not to the State of Uttar Pradesh. It was further submitted that the Uttar Pradesh Self Financed Independent Schools (Fee Regulation) Act, 2018 was enacted by the State, under which action is being taken by the District Fee Regulatory Committee on complaints against Schools in its jurisdiction regarding irregular fee fixation.

20. On behalf of the School, Ms. Aishwarya Rao, learned counsel, submitted that not only are the reliefs claimed in the petition of a generic nature, but also that the petitioner has not sought any specific relief as against the School. It was contended that, in any event, if the petitioner was aggrieved by the actions of the School, this Court ought not to entertain the petition, since the School is situated beyond the territorial jurisdiction of this Court. She further submitted that a perusal of the petition as well as the orders passed by this Court make it apparent that the core issue in the petition, as opposed to the prayers made, relates to the increase of fees by the School which, according to her, was in consonance with the laws enacted by the State of Uttar Pradesh in this regard.

21. Furthermore, learned counsel for the respondents pointed out that Mr. Singh has already, prior to filing the present petition, filed a petition on the issue of fee increase by the School, before the Allahabad High Court, alongwith parents of other students of the School, being Writ - C No. 46207/2017 [*Shailendra Kumar Singh & Ors. vs. State of Uttar Pradesh & Ors.*]. According to them, that petition was last listed on 15.03.2018, when issues were framed for consideration by the Allahabad High Court. They submitted that the present petition may be dismissed on this count alone, as Mr. Singh has filed the present petition in addition to a similar petition pending before a Court of appropriate jurisdiction, and that the respondents impleaded in the present petition have also been impleaded in that petition. It was contended that when the Allahabad High Court is *in seisin* of similar issues as raised in the present petition, this Court

ought not to entertain the same, and the petitioner's grievances ought to be agitated through her father's pending petition in the Allahabad High Court.

22. Mr. Singh accepted that the aforesaid writ petition remains pending before the Allahabad High Court, but disputed the fact that the petition is on the same issue as raised in the present petition. He contended that the present petition is directed against the CBSE, whereas the petition before the Allahabad High Court is directed against schools and officials of the State of Uttar Pradesh.

23. Ms. Dolo placed a copy of Writ - C No. 46207/2017, filed by Mr. Singh before the Allahabad High Court, before the Court, the prayers in which read as follows: -

“i) To issue an appropriate writ, order or direction in the nature of mandamus commanding the opposite party no. 6, 7 and 8 not to hike any fee for the academic year 2017-18 on the wards studying in their schools.

ii) To issue appropriate writ, order or direction to the respondents 1 and 4 to constitute a Committee headed by a Retired High Court Judge to carry out an audit of the Books of Account of Respondents-Schools as an audit of the Books of Account of the Respondent no.5 and 6 inasmuch as they relate to the Respondent-Schools in order to check into acts of profiteering and commercialization;

iii) To issue appropriate writ, order or direction to the Respondent no. 4 to constitute a Committee headed by a Retired High Court Judge to conduct an inspection into the Respondent-Schools as well as the Respondent no.5 and 6 in relation to Respondent -School to check if the fees payable commensurate the facilities provided by the Respondent-School;

- iv) *To issue appropriate writ, order or direction to the Respondent no. 2 and 4 to form a Committee to look into the reasonableness of the fee and the increase for the academic year 2017-18 in respect of Respondent-School;*
- v) *To issue appropriate writ, order or direction to the Respondent no. 1 State to expedite the enactment of a Statute regulating fees in the State of Uttar Pradesh.*
- vi) *To issue such further and other orders as the circumstances of the case may require and the Hon'ble Court may deem fit.*
- vii) *To award costs of this petition to the petitioners.”*

24. The only ground upon which the petitioner seeks to invoke the jurisdiction of this Court is the location of the head office of the CBSE. However, although the petitioner has impleaded the CBSE as a respondent in the present petition, and formulated the prayers in a manner that they appear to be directed against the CBSE, it is clear from the facts pleaded that the matter principally concerns the petitioner's grievances against the School.

25. The original prayer in the writ petition concerns the petitioner's right to take the CBSE examinations at the end of Class X and Class XII. However, the petitioner has just finished Class VIII. The CBSE's position is that the question of permission to appear in the Class X or Class XII examinations does not arise until a candidate has at least cleared Class IX. Mr. Singh has been unable to demonstrate that the CBSE has stopped the petitioner in any way, at this stage, from taking the Class X and Class XII examinations, as and when she is eligible for the same. The present petition therefore contains no basis for the

original prayer sought against the CBSE, with regard to permission to appear in the Class X or Class XII examinations.

26. During the pendency of the petition also, the petitioner has moved the Court for several interlocutory reliefs. A perusal of the orders passed shows that the disputes raised by the petitioner principally concerned payment of fees to the School, and the holding of Class VII and Class VIII examinations by the School for the petitioner. These are not matters with which the CBSE is concerned.

27. Turning now to the prayers which the petitioner proposes to add by way of her pending amendment application, once again, the petitioner's substantive grievances are against the School. Her claims against the CBSE and the State of Uttar Pradesh arise out of allegations of ineffective oversight and dereliction of duty. The adjudication of those allegations is also dependent upon an examination of the petitioner's allegations against the School.

28. Seen in this perspective, the present case falls within the category of cases where the Court may decline to entertain its discretionary writ jurisdiction on the ground of *forum non conveniens*.

29. The principle of *forum non conveniens*, in its applicability to writ proceedings, was recognized by the Supreme Court in its judgment in *Kusum Ingots & Alloys Ltd. vs. Union of India & Anr.*, (2004) 6 SCC 254: -

“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* [AIR 1941 Cal 670 : ILR (1941) 1 Cal 490] , *Madanlal Jalan v. Madanlal* [(1945) 49 CWN 357 : AIR 1949 Cal 495] , *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.* [1997 CWN 122] , *S.S. Jain & Co. v. Union of India* [(1994) 1 CHN 445] and *New Horizons Ltd. v. Union of India* [AIR 1994 Del 126] .]”

(Emphasis supplied.)

30. The judgment in *Kusum Ingots* and several other authorities were considered by a five-Judge bench of this Court in *M/s Sterling Agro Industries Ltd. vs. Union of India & Ors.*, (2011) 181 DLT 658 (LB): AIR 2011 Del 174. The Court was called upon to consider the correctness of the view taken by a Full Bench in *New India Assurance Company Ltd. vs. Union of India & Ors.*, AIR 2010 Del 43 (FB), which held that this Court was dutybound to entertain a challenge to an order of a tribunal situated within its territorial jurisdiction. The Bench in *Sterling* overruled the view of the Full Bench with the following observations: -

“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)*¹ and *Ambica Industries (supra)*² 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.

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

¹ *Mosaraf Hossain Khan vs. Bhagheeratha Engineering Ltd & Ors.*, (2006) 3 SCC 658

² *Ambica Industries vs. Commissioner of Central Excise* (2007) 6 SCC 769

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.³ (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)⁴.

(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.

³ *Alchemist Ltd. & Anr. vs. State Bank of Sikkim & Ors.*, (2007) 11 SCC 335

⁴ *Union of India & Ors. vs. Adani Exports Ltd. & Anr.*, (2002) 1 SCC 567

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

(Emphasis supplied.)

31. Having regard to the principles distilled in the judgment in *Sterling*, I am of the view that the mere presence of the CBSE as a respondent in the petition is not sufficient to enable this Court to exercise jurisdiction under Article 226 of the Constitution. The Court may decline to entertain a writ petition, if it comes to the conclusion that it is not the most appropriate Court for the purpose. In arriving at such a conclusion, the Court will consider *inter alia* the existence of a more appropriate forum where a petitioner could effectively agitate her grievances.

32. In the present case, the petitioner is resident in the State of Uttar Pradesh, where the School is also located. The School is also recognized by the State of Uttar Pradesh. As stated above, the foundation of the grievances ventilated in the petition is based upon allegations against the School. Further, the petitioner's contentions regarding improper or inadequate oversight by the respondent authorities implicate not just the CBSE, but even more importantly, the State of Uttar Pradesh. The issues which the petitioner has raised in this Court can very well be raised before the jurisdictional High Court, which is entertaining allied grievances in the writ petition filed by Mr. Singh in his own name, alongwith other parents. Such a course will not prejudice the adjudication of the petitioner's disputes, as the CBSE is a central body, and can defend proceedings anywhere in the

country. Indeed, the CBSE has been made a respondent to the petition filed by Mr. Singh and others before the Allahabad High Court.

33. For the reasons aforesaid, I am of the view that this Court is not the appropriate Court to agitate the grievances ventilated in the present petition. The petition is therefore dismissed. The petitioner will, however, be at liberty to agitate her grievances before the appropriate Court, if she is so advised.

34. Pending applications also stand disposed of.

PRATEEK JALAN, J.

JUNE 04, 2021

HJ



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