

Ramnath Singh Sikarwar vs Election Commission Of India on 4 July, 2024

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 8891/2024 & CM APPL 36170/2024
RAMNATH SINGH SIKARWAR

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ELECTION COMMISSION OF INDIA

Through: Mr. Sidhant Kumar,
and Mr. Sarthak Sa

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W.P.(C) 8900/2024 & CM APPLs. 36324-25/2
BIJENDRA SINGH

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ELECTION COMMISSION OF INDIA

Through: Mr. Sidhant Kumar,
and Mr. Sarthak Sa

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

ORDER

% 04.07.2024

1. The issue involved in both the writ petitions relates to the territorial jurisdiction of this Court to entertain these petitions and, therefore, they are This is a digitally signed order.

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2. For the sake of brevity, the facts are extracted from the writ petition being W.P.(C) 8891/2024.
3. Learned counsel who appears on advance notice on behalf of the respondent-Election Commission of India (hereinafter 'ECI') raises preliminary objection on the ground of territorial jurisdiction. He submits that the instant petition relates to the election conducted in 19-Fatehpur Sikri Lok Sabha Constituency, which is situated in Uttar Pradesh. He further asserts that the petitioner made an application dated 18.06.2024 (Annexure P-3) to the Returning Officer (hereinafter 'RO') of 19-Fatehpur Sikri Lok Sabha Constituency, Uttar Pradesh seeking supply of complete video recording pertaining to the said election. He, therefore, submits that the bundle of facts such as conduction of elections, recording thereof and non- supply of video footage etc. has taken place in the State of Uttar Pradesh and thus, there is no justification to entertain the instant petitions at Delhi.
4. While inviting the attention of this Court to the provisions of the Representation of the People Act, 1951 (hereinafter 'Act of 1951'), specifically Section 20A therein, he submits that the Chief Electoral Officer and the District Election Officer are independent to the respondent-ECI. According to him, they are only under the general superintendence and control of the respondent-ECI. He, therefore, submits that Chief Electoral Officer and District Election Officer are under an obligation to maintain the record and to deal with all the ancillary issues thereto.
5. Learned counsel has also pointed out from the memo of parties that the petitioner himself belongs to the State of Uttar Pradesh. He placed reliance on the decision rendered by a Full Bench of this Court in the case of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/07/2024 at 00:40:22 Sterling Agro Industries Ltd. v. Union of India and Others¹ and another decision of this Court in the case of Ardra Joseph v. Union of India & Ors.² He contended that even if a miniscule part of cause of action arises within the territorial jurisdiction of this Court, the same by itself will not be sufficient to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India when the forum conveniens for the petitioner lies within the jurisdictional High Court at Uttar Pradesh.

6. In response to the earlier orders passed by this Court in W.P.(C) 8710/2024 dated 26.06.2024 and W.P.(C) 6532/2024 dated 16.05.2024, he submits that in both the aforesaid cases, the Court has not dealt with the objection with respect to the territorial jurisdiction. He urges that, in any case, the jurisdictional issue cannot be waived off by the parties, and therefore, this Court must decide as to whether the petitioners under the facts of the present case can invoke the jurisdiction of this Court.
7. Learned counsel who appears on behalf of the petitioners vehemently opposes the submissions made by the learned counsel for the respondent- ECI. He submits that this Court has the requisite jurisdiction to entertain the instant writ petitions, not only bearing in mind the scheme encapsulated in Clause 1 of Article 226 of the Constitution of India but also Clause 2 of Article 226. He, therefore, submits that a slender part of cause of action does arise within the jurisdictional

limits of this Court inasmuch as the office of the respondent-ECI is situated within the territorial jurisdiction of this Court. He further submits that even if the application dated 18.06.2024 is to be construed in right perspective, the same would indicate that the grievance 2011 SCC OnLine Del 1385 W.P.(C) 14187/2023 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/07/2024 at 00:40:23 raised by the petitioner is with respect to the non-supply of the videography which is in violation of the provisions of Constitution of India as well as the Act of 1951. He, therefore, contends that it is the statutory responsibility of the respondent-ECI to conclude the election process, while adhering to the rules and regulations applicable to the said office. According to him, any violation of the concerned rules or regulations would certainly entitle the petitioner to invoke the jurisdiction of this Court as the infringement thereto has taken place only within the hands of the respondent-ECI, whose office situates in Delhi.

8. Learned counsel has also taken this Court to the aforementioned orders dated 16.05.2024 and 26.06.2024 to indicate that this Court has been entertaining similar writ petitions and therefore, there is no reason to reject the instant petitions on the ground of non-maintainability. He also relied upon the decision dated 08.04.2024 in W.P.(C) 5037/2024 to submit that the respondent-ECI cannot be allowed to adopt pick and choose method and to raise the objection of maintainability selectively. He hence, submits that in view of the principles laid down by the Supreme Court in plethora of decisions, when a part of cause of action arises within the jurisdictional limit of a particular High Court, the concerned High Court cannot shut its doors for the litigants.

9. With respect to the non-maintainability of a writ petition on the ground of forum conveniens, he submits that it is the petitioner who has to decide the jurisdictional High Court according to its convenience. He asserts that for the petitioners in the instant case, the High Court of Delhi is the most convenient forum and the respondent-ECI cannot guide the petitioners with respect to the appropriate forum to ventilate their grievance. He has This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/07/2024 at 00:40:24 specifically placed reliance on the decisions of the Supreme Court in the cases of Alchemist Limited and Anr. v. State Bank of Sikkim and Ors.³, Nasiruddin v. State Transport Appellate Tribunal⁴ and M/s Kusum Ingots and Alloys Ltd. v. Union of India and Anr.⁵ to submit that this Court has ample jurisdiction to entertain the instant writ petitions.

10. I have heard the learned counsel appearing on behalf of the parties and perused the record.

11. It remains undisputed that the petitioners in the case at hand essentially seek to obtain the videography and CCTV footage pertaining to the elections which have been conducted within the State of Uttar Pradesh with respect to the parliamentary constituencies namely, 19-Fatehpur Sikri and 15-Aligarh.

12. Admittedly, the election has taken place in the State of Uttar Pradesh. The video recording has also been carried out in the State of Uttar Pradesh. The petitioners in both the writ petitions belong to the State of Uttar Pradesh. It is also noticed that even the application seeking copies of the video recording has been made to the RO in the State of Uttar Pradesh. Therefore, the solitary reason for invoking the jurisdiction of this Court appears to be the situs of the office of the respondent-ECI within the jurisdiction of this Court.

13. According to the petitioners' understanding, since the office of the respondent-ECI is situated within the jurisdiction of this Court, therefore, atleast if not wholly, then a part of cause of action does arise here, which gives them a right to approach this Court. It is well settled that the situs of (2007) 11 SCC 335 (1975) 2 SCC 671 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/07/2024 at 00:40:25 head office of any authority alone is not a sufficient ground to determine the place of accrual of cause of action. (See: Chinteshwar Steel Pvt. Ltd.v. Union of India⁶; Sector Twenty-one Owners Welfare Association (STOFWA) v. Air Force Naval Housing Board⁷ and Eastern Coalfields Ltd. & Ors. v. Kalyan Banerjee⁸). Rather, the important factors which need to be considered are the integral, material and essential part of cause of action or the bundle of facts, which enable a party to seek redressal of its grievance.

14. While dealing with the decision in the cases of Alchemist Limited and Anr. (supra) and M/s Kusum Ingots (supra), this Court in the case of Ardra Joseph (supra) vide order dated 01.11.2023 has held as under:-

"8. It is seen that the petitioner is the resident of District Malappuram, Kerala and her principle cause of action is against respondent no.3- State Medical Council of Kerala. The petitioner has approached this court only for the reason that the offices of respondent no.1-Union of India and respondent no.2-National Medical Commission are situated within the territorial jurisdiction of this court. However, merely because the offices of some of the respondents are situated within the territorial jurisdiction of this Court cannot be the sole reason to entertain the instant writ petition.

9. The Hon ble Supreme court in the case of Kusum Ingots & Alloys Ltd. v. Union of India has held 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. Recently, a similar view has been reiterated by the Hon ble Supreme Court in the case of State of Goa v. Summit Online Trade Solutions (P) Ltd.

10. A co-ordinate Bench of this Court in the case of Chinteshwar Steel Pvt. Ltd. v. Union of India, has held that in case of pan India Tribunals, or Tribunals/statutory

authorities having jurisdiction over several (2004) 6 SCC 254 2012 SCC OnLine 5264 1996 SCC OnLine Del 42 (2008) 3 SCC 456 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/07/2024 at 00:40:25 States, the situs of the Tribunal would not necessarily be the marker for identifying the jurisdictional High Court.

12. If the facts of the present case are perused, the major grievance of the petitioner lies against respondent no.3 i.e., State Medical Council which is located in Kerala and therefore, the substantial cause of action would not arise within the jurisdiction of this Court.

13. It is seen that some of the arrayed official respondents have pan- India jurisdiction. The reason that the policies and circulars are issued from Delhi cannot be the sole ground to entertain the petition by this Court. Neither the petitioner is incapacitated to approach the jurisdictional High Court nor the concerned High Court lacks jurisdiction to issue appropriate writ to the arrayed respondents.

14. In view of the aforesaid, this court is not inclined to entertain the instant writ petition as this Court would be a forum non-conveniens in the present case."

[Emphasis supplied]

15. In the case of Ardra Joseph (supra), the Court has held that some of the arrayed official respondents therein had pan-India jurisdiction, however, the reason that the policies and circulars were issued from Delhi could not be the sole ground to entertain the petition by this Court. It has also been held that neither the petitioner therein was incapacitated to approach the jurisdictional High Court nor the concerned High Court lacked jurisdiction to issue appropriate writ to the arrayed respondents.

16. In another decision in the case of Bharat Nidhi Limited v. Securities and Exchange Board of India & Ors.⁹, while dealing with the aspect of entertainability of a writ petition and the territorial jurisdiction, this Court, while taking into consideration catena of judicial pronouncements and analysing the law pertaining to Article 226(1) and 226(2) of the Constitution 2023 SCC OnLine Del 8073 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/07/2024 at 00:40:26 of India, has held as under:-

"67. Thus, the salient aspects which emerge out of the aforesaid discussion can be delineated forthwith as:

(i) Article 226(2) does not take away the right of a High Court to dismiss a case on grounds of forum non-conveniens. The principles of forum non-conveniens and that of Article 226(2) operate in different field, where Article 226(2) (originally Article 226(1A)) was inserted to solve the problem of a litigant needing to go to a High Court where the seat of government authority was present.

(ii) In other words, merely because Article 226(2) allows jurisdiction to be conferred on a High Court in the absence of the seat of a government authority being under its jurisdiction; this does not in itself mean that the presence of a seat shall automatically grant jurisdiction.

(iii) Article 226(2) allows jurisdiction to be conferred if the cause of action, either in part or whole, had arisen in the jurisdiction of a High Court, however, where the purported cause of action is so minuscule so as to make a particular High Court non-convenient, it is then that the concept of forum non-conveniens applies.

91. On the above conspectus, it is clearly seen that the question whether cause of action has arisen within the territorial jurisdiction of a court, has to be answered based on the facts and circumstances of the case. The cause of action, thus, does not comprise of all the pleaded facts; rather it has to be determined on the basis of the integral, essential and material facts which have a nexus with the lis.

92. It is also a settled proposition of the law that the location where the tribunal/appellate authority/revisional authority is situated would not be the sole consideration to determine the situs of the accrual of cause of action, ignoring the concept of forum conveniens in toto. Hence, even if a small part of the cause of action is established, and the same is found to be non-integral or non-material to the lis, the court may invoke the doctrine of forum non-conveniens and decline to exercise its writ jurisdiction, if an alternative, more efficacious forum for the same exists.

93. A perusal of paragraph no. 10 of the decision in the case of State of Goa (supra), would signify that one of the prayers related to a This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/07/2024 at 00:40:27 challenge against the notification issued by the State of Sikkim. Also, in the said case, the petitioner company's office was also located in the State of Sikkim. However, the Hon'ble Supreme Court while considering that a slender part of the action has arisen, held that the High Court of Sikkim was not clothed with the requisite jurisdiction to entertain the petition as the major part of the cause of action has arisen in another High Court. It can be safely concluded that neither the notification issued by the concerned government, nor the location of the office were considered to be the material facts to determine the cause of action.

113. Merely because some of the writ petitions were entertained by this court relating to certain violations of norms and regulations of respondent-SEBI by the respondent companies therein and issues arising out of consequential settlement application, that in itself would not determine the integral, essential and material part of the cause of action as the pendency of the writ petition before this court has no relation with the impugned revocation order which has taken place subsequent to the said writ petition. The law relating to the doctrine of forum conveniens, as discussed above, already makes it explicitly clear that the jurisdiction has to be determined on the facts and circumstances of each case.

114. With respect to the averment that this court is the most convenient forum for the petitioners, it would be inappropriate and myopic to assume that while determining the jurisdiction, only the convenience of the aggrieved party approaching the court has to be looked into. In fact, with the advent of technology in contemporary times, the courts have transcended the geographical barriers and are now accessible from remote corners of the country. Therefore, the convenience of the parties cannot be the sole criterion for the determination of jurisdiction considering the broader perspective of dynamism of technology and increased access to justice. The determination of cause of action and territorial jurisdiction has to be in line with the constitutional scheme envisaged under Article 226 of the Constitution of India."

[Emphasis supplied]

17. In the case of Pune Buildtech (P) Ltd. v. Bank of India¹⁰, this Court took a view that the substance of a matter is significant in determining the material, essential or integral part of the cause of action and the 2023 SCC OnLine Del 8112 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/07/2024 at 00:40:27 Constitutional Courts are saddled with a duty to prevent the abuse of jurisdiction by the parties. The relevant paragraphs of the said decision read as under:-

"56. Considering the discussion hereinabove, it is crystallised that in order to confer jurisdiction to the constitutional courts under Article 226 of the Constitution, a material, essential or integral part of the cause of action must arise within their jurisdiction. To determine a material, essential or integral part of the cause of action, it is the substance of the matter that becomes relevant. Also, the objection to the jurisdiction of this court can be raised at any stage of proceedings, as has been held by the Hon'ble Supreme Court in the case of Jagmittar Sain Bhagat v. Health Services, Haryana.

57. It is to be noted that the germane issue in both the petitions is the decision of the petitioners' accounts being declared as „fraud . It is seen that the impugned action is taken from the respondent-BOI's Mumbai branch. Also, the communication of the said decision to the RBI regional office in Bengaluru also occurred outside the jurisdiction of this court. Furthermore, all the consequent actions under the

provisions of the SARFAESI Act were also taken from the Mumbai branch of the respondent-BOI.

62. It is pertinent to mention that as per the legislative intent and constitutional scheme enshrined under the provisions of Article 226 of the Constitution of India, it is crystallised that the cardinal duty imposed on the constitutional courts is to prevent the abuse of their jurisdiction by the parties and relegate back the parties to the forum where a material, essential or integral part of cause of action has arisen."

[Emphasis supplied]

18. It is reckoned from the aforementioned decisions that the question whether the cause of action has arisen within the territorial jurisdiction of a Court has to be answered based on the facts and circumstances of each case. The cause of action does not comprise of all the pleaded facts rather, it has to be determined on the basis of the integral, essential and material facts which have a nexus with the lis.

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19. In the instant case, the integral and material facts which have the relation with the relief sought for would essentially include the place where the elections were conducted and the place where the infringement of any of the alleged right has taken place. It is to be noted that the decision rendered by this Court in the case of Bharat Nidhi Limited (supra) was carried in LPA 47/2024, wherein, the Division Bench of this Court in its final decision dated 15.01.2024 affirmed the view taken in Bharat Nidhi Limited (supra) and held as under:-

"21. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India to entertain a writ petition, in addition to examining its territorial jurisdiction also examines if the said Court is the forum conveniens to the parties. The issue of forum conveniens is seen not only from the perspective of the writ petitioner but it is to be seen from the convenience of all the parties before the Court. In the facts of this case, as is evident from the record that the forum conveniens for the both the parties is Mumbai. The Appellants since the year 2020 have been appearing in Mumbai before SEBI in the SCN proceedings. In W.P.(C) 15556/2023 (as well as the other writs) the writ petitioner has sought a direction for summoning the records of SEBI for examining the legality and validity of the Impugned Revocation Order. In these facts, therefore, the objection of SEBI that Mumbai is the forum conveniens for the parties has merit. The obligation of the Court to examine the convenience of all the parties has been expressly noted by the

Full Bench of this Court in Sterling Agro Industries Ltd. (supra)..."

[Emphasis supplied]

20. It is thus seen that with regards to the arguments raised by the petitioners that since a part of cause of action arises within the jurisdictional limits of this Court and the forum conveniens has to be seen from the petitioners' perspective, this Court has categorically rejected the aforesaid arguments and has held that the issue of forum conveniens is not to be observed only from the perspective of the petitioner but it depends on the This is a digitally signed order.

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21. As already noted hereinabove, the office of RO where the record is maintained and available to be furnished also situates outside the jurisdiction of this Court. Evidently, none of the facts put forth by the petitioners to establish jurisdiction upon this Court constitute essential, integral and material facts out of the bundle of facts in the present lis.

22. In view of the aforesaid, even this argument raised by the petitioners is bereft of merit and the same is, therefore, rejected.

23. Insofar as the reliance placed by the petitioners on the decisions of the Coordinate Bench of this Court in W.P.(C) 6532/2024, W.P.(C) 8710/2024 and W.P.(C) 5037/2024 is concerned, it is succinctly observed that in the said cases, neither the issue with respect to the territorial jurisdiction of this Court has been raised by the respondent therein nor the Court has dealt with the aforesaid aspect. Since those decisions do not deal with the issues involved in the instant writ petitions, therefore, they do have not any binding effect. The same cannot be treated to be precedent to rescue the case of the petitioners herein.

24. In view of the aforesaid, the preliminary objection raised by the respondent-ECI is accepted. The instant writ petitions stand dismissed. However, the petitioners are at liberty to take appropriate remedy before the competent Court/Forum.

PURUSHAINDRA KUMAR KAURAV, J JULY 4, 2024 p ma This is a digitally signed order.

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