

Ramesh Chand Koundal vs Indian Bank & Anr on 3 April, 2024

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 1078/2024 & CM APPL.10351/2024 (RAMESH CHAND KOUNDAL
Through: Mr. Akash Vajpai a
Shandiyal, Advoc
versus
INDIAN BANK & ANR.
Through: Mr. Bipin Chandra
Jasbir Bidhuri,
CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA
ORDER

% 03.04.2024 (The proceeding has been conducted through Hybrid Mode)

1. The arguments have been heard on the issue of maintainability of the present petition before this Court. Mr. Vajpai, learned counsel for the petitioner admits that though the issue of irregularities etc. which are subject matter of the disciplinary proceedings against the petitioner had arisen in Jaipur, however, the fact that a part of cause of action had arisen within the territorial jurisdiction of this Court, would make the chargesheet as also the order directing cessation of service, amenable to the writ jurisdiction of this Court.

2. He draws attention of this Court to page 41 of the present petition which is the covering letter dated 29.01.2022 enclosing therewith the chargesheet containing the Articles of Charge levelled against the petitioner. He submits that the same was received by the petitioner while he was serving the respondent-bank as a Senior Manager posted at Delhi. He, subsequently, invites attention of this Court. 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 10/04/2024 at 20:48:36. The Court to the order dated 31.01.2022 issued by the respondent-bank from Chennai though was served to the petitioner at Delhi invoking the Regulations 20(3) (iii) of the Indian Bank (Officers) Service Regulations, 1979 directing cessation of the services from the bank on attaining the age of superannuation. He submits that the said cessation of services was served upon the petitioner while serving the respondent-Indian Bank as a Senior Manager at Delhi.

3. He submits that consequent thereto, commencement and the proceedings of disciplinary authority at Jaipur would not preclude the petitioner from challenging the Articles of Charge communicated to the petitioner vide the letter dated 29.01.2022 at Delhi. That apart, he submits

that the petitioner is an ordinary resident of Delhi. In that view of matter, according to learned counsel for the petitioner, this Court would have the necessary territorial jurisdiction to adjudicate the present writ petition. He relies upon the judgment of the Supreme Court in the case of Nawal Kishore Sharma vs. Union of India and others reported in (2014) 9 SCC 329 whereby the Supreme Court had, in respect of an employee, the place where he settled and where several letters / responses were received by him from the employer, held such place to have jurisdiction.

4. According to learned counsel para 9 and 10 of the said judgment would be squarely applicable to the facts of the present case.

5. Per contra, learned counsel for the respondent-bank submits that admittedly it is not disputed that the office where from the Articles of Charge and the letter dated 31.01.2022 directing cessation of service was issued, was located at Headquarters at Chennai. He 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 10/04/2024 at 20:48:36 submits that the mere service of said chargesheet or the letter of cessation of service of the petitioner from the bank, being served at Delhi would not give the territorial jurisdiction to this Court to entertain the present writ petition. He submits that even according to the memo of parties, the petitioner has not even impleaded the office at Delhi and as such that would be another reason as to why this Court would not entertain such writ petition . He relies upon the judgment of Supreme Court in Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others reported in (1994) 4 SCC 711 in support of his submissions.

6. That apart he also relies upon the judgment of learned Single Judge of this Court in O.P. Bansal vs. Union Bank of India reported in 2019 SCC OnLine Del 8152 to buttress his aforesaid arguments. Lastly, Mr. Barthwal, learned counsel for the respondent relies upon the judgment of learned Division Bench of Punjab and Haryana High Court at Chandigarh in LPA 488/2018 captioned as UCO Bank and another vs. Raj Kumar delivered on 10.08.2022 to submit that the mere service of the chargesheet as also the letter of cessation of service would not fall within clause (2) of Article 226 of the Constitution of India. He submits that as such the present writ petition be dismissed for want of jurisdiction.

7. This Court has heard the learned counsel for the parties on the preliminary objection.

8. The issue needs to be considered from the aspect of Clause (2) of Article 226 of the Constitution of India. For clarity, the said provision is extracted hereunder:-

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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 10/04/2024 at 20:48:37 "2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be

exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories"

9. It is apparent from the plain reading of clause (2) that the said provision confers jurisdiction on a particular High Court where cause of action, wholly or in part, arises for the exercise of such jurisdiction. The said provision is further qualified by the non-obstante clause used whereby it is categorically stipulated that the seat of the Government or the Authority against which such high prerogative writ is sought, may not be within the territorial jurisdiction of a particular High Court for the writ to be maintainable. The aforesaid provision clearly indicates that it is not necessary that the entire cause of action ought to have arisen in a particular High Court for it to exercise such jurisdiction, subject to a part of cause of action arising in such High Court.

10. Coming to the facts of the present case, it is clear that the petitioner at the time of issuance and service of chargesheet was posted at Delhi as a Senior Manager in the respondent-bank. The said chargesheet was served upon him on 29.01.2022. That apart it is not just the mere service of the chargesheet that has propelled this Court to consider the aforesaid argument, but the fact that following the said chargesheet, the bank had, by the letter dated 31.01.2022, 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 10/04/2024 at 20:48:37 directed the cessation of service from the bank upon attaining the age of superannuation. Even at that time, the petitioner was, in fact, in service of the respondent-bank as a senior manager posted at Delhi. Consequent thereto, the petitioner being an ordinary resident of Delhi, has continued to reside in Delhi only.

11. In order to appreciate the arguments on law which have been addressed before this Court, this Court would first consider the judgment of the learned coordinate Bench of this Court in VK Malhotra vs. Union Bank of India and Others., reported in 2021 SCC OnLine Del 2815. The factual and legal position as arising in such cases has been succinctly noted by the learned Single Judge in para 11 and 12 of the said judgment. The same are extracted here under:-

"11. Having heard the learned Counsel for the parties, the first issue that needs to be decided is the issue of maintainability of this petition in this Court as raised by Mr. Gaggar. Mr. Gaggar had stated that the subject matter of the charges are with regard to the petitioner's functioning in Jabalpur and Jalandhar. The Disciplinary and the Appellate Authority both are posted in the Central Office of the Bank in Mumbai. Hence, no part of cause of action has arisen in Delhi and this Court has no territorial jurisdiction to entertain the petition. I am unable to agree with the submission of Mr. Gaggar for the reason as conceded by Mr. Gaggar that some proceedings in the inquiry were held in Delhi. It is the outcome of the proceedings, which has been challenged by the petitioner in this writ petition. That apart, what is important is the

fact that the petitioner after he ceased to be an employee of the Bank, has settled in Delhi and various communications like the one dated February 20, 2014, whereby the inquiry report was sent to the petitioner and also show-cause notice dated October 23, 2015 for forfeiting the gratuity were sent to the petitioner's 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 10/04/2024 at 20:48:37 address in Delhi. In other words, a part of cause of action has arisen in Delhi. Mr. Chaturvedi is justified in relying upon the Judgment in the case of Nawal Kishore Sharma (supra) which is applicable to the facts of this case. The Supreme Court in Para 17 of the said Judgement has held as under:

"17. In *Om Prakash Srivastava v. Union of India* (2006) 6 SCC 207, answering a similar question this Court observed that on a plain reading of Clause(2) of Article 226 it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose if the cause of action in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territory.

In para 7 this Court observed:-- "7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof." 18. In the case of *Rajendran Chingaravelu v. R.K. Mishra, Additional Commissioner of Income Tax*, (2010) 1 SCC 457, this Court while considering the scope of Article 226(2) of the Constitution, particularly the cause of action in maintaining a writ petition, held as under:

"9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in 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 10/04/2024 at 20:48:37 Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within

which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.

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11. Normally, we would have set aside the order and remitted the matter to the High Court for decision on merits. But from the persuasive submissions of the appellant, who appeared in person on various dates of hearing, two things stood out. Firstly, it was clear that the main object of the petition was to ensure that at least in future, passengers like him are not put to unnecessary harassment or undue hardship at the airports. He wants a direction for issuance of clear guidelines and instructions to the inspecting officers, and introduction of definite and efficient verification/investigation procedures. He wants changes in the present protocol where the officers are uncertain of what to do and seek instructions and indefinitely wait for clearances from higher-ups for each and every routine step, resulting in the detention of passengers for hours and hours. In short, he wants the enquiries, verifications and investigations to be efficient, passenger-friendly and courteous. Secondly, he wants the Department/officers concerned to acknowledge that he was unnecessarily harassed."

19. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.

20. We have perused the facts pleaded in the writ petition and This is a digitally signed order.

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medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation."

12. Even the Judgment of the Supreme Court in the case of Kusum Ingots and Alloys Ltd. (supra) as relied upon by Mr. Gaggar shall not be of any help to him for the simple reason even in the said Judgment, the Supreme Court held if a part of cause of action has arisen within the territorial limits of a High 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 10/04/2024 at 20:48:37 Court, that High Court will have the jurisdiction. Even the reliance placed by Mr. Gaggar on the Judgment of the Supreme Court in Eastern Coal Field Ltd. (supra) is misplaced, as the Judgment is distinguishable on facts inasmuch as, it was the conclusion of the Supreme Court that entire cause of action arose in State of Jharkhand and merely because, the Head office of the appellant was situated in State of West Bengal, by itself will not confer jurisdiction upon the Calcutta High Court. It is not such a case here, in view of my findings above. Hence, the plea of Mr. Gaggar that this Court lacks territorial jurisdiction is rejected."

12. Learned Single Judge in that case also had an occasion to consider the ratio laid down by the Supreme Court in Nawal Kishore Sharma (Supra). Placing reliance on the aforesaid judgment, learned counsel for petitioner had argued therefore that the ratio laid down by the Supreme Court in Oil and Natural Gas Commission (Supra) would not be applicable to the facts of the present case.

13. In order to appreciate the aforesaid, this Court would now also consider the reliance placed upon several judgments by the learned counsel for the respondent.

14. So far as the judgment of Oil and Natural Gas Commission (Supra) is concerned, this Court observes that in the said case the Supreme Court had concluded, on the facts obtaining therein, that not even a part of cause of action had arisen in the Calcutta High Court and as such the filing of a writ petition before that Court was without jurisdiction. The Supreme Court in that case had examined the advertisement based whereon such writ petition was filed. The relevant paragraph for the consideration of this Court would be para para 8 which is extracted hereunder:-

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Server on 10/04/2024 at 20:48:37 "8. From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction . According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently.

When it learnt that it was considered ineligible it sent representations, including fax messages, to Ell, ONGC, etc., at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on 27-1-1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to Ell at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in GUJarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of 15-1- 1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27-1-1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court This is a digitally signed order.

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15. In fact the Supreme Court in that case also had found as a fact that the respondent therein had not exercised the jurisdiction of Calcutta High Court in a bona fide manner and as such, imposed exemplary costs upon the respondent appearing therein.

16. That apart learned counsel relied upon the judgment of learned Division Bench of the Punjab and Haryana High Court in UCO Bank and another (supra) particularly to page 13 where the judgment of Supreme Court Oil and Natural Gas Commission (Supra) was referred and page 16 whereby the learned Division Bench had referred to two more coordinate Bench judgments of the Punjab and Haryana High Court and lastly to para 17 where the learned Division Bench had applied the law on the facts obtaining in that particular case.

17. In that case too, the learned Division Bench was dealing with a case where an employee was issued a chargesheet at a particular place where he was posted and had held that mere service of the chargesheet at a particular place would not confer jurisdiction to that particular Court.

Consequently, the learned Division after relying upon the judgment of Supreme Court in Oil and Natural Gas Commission (Supra) allowed the Letters Patent Appeal filed by the respondent.

18. Lastly, the learned counsel relies upon the judgment of learned Single Bench of this Court in O.P. Bansal (Supra) particularly paras 11, 18 to 21, 25 and 27. The said paragraphs are extracted hereunder:-

11. The learned Trial Court based its findings on the factum 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 10/04/2024 at 20:48:37 that the appellant i.e. the plaintiff had been charge-sheeted on account of the alleged irregularity committed made whilst he was working as Branch Manager of the defendant bank at Shahibagh Branch in Ahmedabad, Gujrat and disciplinary proceedings were conducted at Ahmedabad, Gujrat for the inquiry, in which the appellant i.e. the plaintiff also participated, held that merely because the statement of allegations were served on the appellant i.e. the plaintiff at the Delhi address, the same did not confer any jurisdiction on the Court at Delhi as all the material facts had happened at Ahmedabad.

18. Reliance was placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in Kusum Ingots & Alloys Limited v. Union of India reported as (2004) 6 SCC 254 and on the verdict of the Hon'ble Supreme Court in Eastern Coalfields Ltd. v. Kalyan Banerjee reported as (2008) 3 SCC 456 to contend that the Courts at Delhi do not have territorial jurisdiction to hear the claim of the appellant i.e. the plaintiff.

19. Reliance was placed on behalf of the respondent on the verdict of this Court in Manohar Lal v. UOI reported as (2005) 116 DLT 469 (DB) and also placed reliance on the proceedings dated 07.02.2013 of this Court in WP(C) No. 15099/2004 in the case titled as AK Jain v. UOI where in a plea similar to that of the appellant i.e. the plaintiff of service of the orders of the disciplinary authority and the appellate authority, it was held to the effect that merely because the petitioner resides at Delhi where the orders have been communicated will not give territorial jurisdiction to this Court.

20. The verdict of this Court in Manohar Lal v. UOI (supra) relates to a case specifically where the departmental proceedings had taken place at Kanpur, the order of disciplinary was issued in Kanpur and the order of the appellate authority was passed in Allahabad and it was thus held that the cause of action did not arise within the territorial jurisdiction of this Court merely because the seat of the 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 10/04/2024 at 20:48:37 government is at Government, Delhi.

21. Apparently as rightly held by the learned Trial Court, no part of the cause of action in the instant case arises in Delhi. Undoubtedly, the pension is receivable by the appellant i.e. the plaintiff at the Rohini Branch at Delhi of the respondent. However, the same does not confer the jurisdiction on the Courts at Delhi in as much as the reason for withdrawal of pensionary benefits is based on allegations of misconduct against the appellant i.e. the plaintiff which resulted into withdrawal of 50% of the pensionary benefits to the appellant herein i.e. the plaintiff. Thus, the present suit even though couched in a manner to contend that the recoveries related to the claim of the full pensionary amounts to be made to the petitioner, is actually a suit that has been filed challenging the investigation of the withdrawal of 50% pension permanently on it having been found that there was misconduct committed by the appellant i.e. the plaintiff. It is undoubtedly true that the Hon'ble Supreme Court in the case titled as Nawal Kishore Sharma v. Union of India (2014) 9 SCC 329 has held that even where the part or fraction of cause of action arises within the jurisdiction of the Court, the Court would have jurisdiction. The appellant in that case had received a letter of refusal disentitling him from disability compensation. It was held in the facts and circumstances of that case that at the time when the writ petition had been considered by the Hon'ble High Court for grant of interim relief, the respondent in that case had not raised any objection with regard to the territorial jurisdiction but had opposed the prayer on the ground that they would have to pay the appellant a sum of Rs. 2.75 lakhs which the appellant had refused to accept and had challenged the order granting severance of compensation. It was held by the Hon'ble Supreme Court that in as much as there was no opposition on behalf of the respondent with regard to the territorial jurisdiction and that they had also submitted to the effect that the appellant/writ petitioner was offered an amount of Rs. 2.75 lakhs that he had refused to accept the same that the impugned order could not be sustained in the peculiar facts and circumstances of the This is a digitally signed order.

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25. Thought undoubtedly there are verdicts also of the Hon'ble High Court of Kerala at Ernakulam in K.T. Sudharshanan v. Union of India 2018 SCC OnLine Ker 4003 and in G. Madhavan Nair v. Union of India 2016 SCC OnLine Ker 327 which relate to the aspect that in relation to the disability pensions which had not been paid the place where the retired employees live, is the place where the Court would have jurisdiction to try the suit, it cannot be overlooked that the said two petitions relate to the aspects of non payment of pensionary benefits per se and do not relate to the aspect involved in the case of the appellant i.e. the plaintiff whose reliefs for pensionary benefits is based on the claim seeking declaration that the order of the Disciplinary Authority dated 14.09.2005 was erroneous. The ratio of the aforementioned two cases is thus to be confined to institution of the petitions under Article 226 and 227 of the Constitution of India to cases where pensionary benefits simplicitor are not paid and the ratio thereof cannot relate to the facts and circumstances in the instant case where the appellant seeks the same pensionary benefits as received by him earlier and that the pensionary benefits are not being paid to him with inappropriate deduction, the same cannot thus in any manner be termed to be on the facts pari materia to the facts of the instant case in as much as the appellant herein i.e. the plaintiff was found guilty of grave misconduct, which resulted into permanent withdrawal of the 50% of the pension payable to him vide order dated

14.09.2005 of the Competent Authority of the General Manger (HRM) of the respondents.

27. In the instant case it is thus held that the learned Trial Court had rightly observed to the effect that this Court at Delhi has no jurisdiction to try the suit. In the circumstances the appeal is dismissed."

19. Additionally, the learned counsel had also indicated that the petitioner is receiving his pension at an account maintained in This is a digitally signed order.

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20. After having perused the judgments relied upon by the learned counsel for the respondent, this Court is unable to agree with the said contention for the reason that (i) that the petitioner, at the relevant point of time, was posted at Delhi in the capacity of senior manager;

(ii) the order directing the cessation of services dated 30.01.2022 was also served upon the petitioner at Delhi. That apart, the judgment of V. K. Malhorta (supra) whereby the learned Single Judge had taken note of the judgment of the Supreme Court in Nawal Kishore Sharma (Supra) and found it applicable to the facts of the case negating the arguments put forward by the respondent-bank therein appeals to this Court. The facts which have arisen in this case, that is, the issuance of chargesheet followed by cessation of the petitioner's services at Delhi would also give rights to cause of action or at least a part cause of action for this Court to entertain the present writ petition. The cessation of the services is intertwined and interlinked with the disciplinary proceedings which have been initiated by the respondent- bank at Jaipur. For the same reason the judgment of this Court in V.K. Malhotra (supra) and UCO Bank (supra) of learned Division Bench of Punjab and Haryana High Court (Supra) and O.P. Bansal (Supra) too would not be applicable and are distinguishable on facts.

21. That apart, the issue in respect of Forum Conveniens has also not been considered in any of the aforesaid judgments. Since the This is a digitally signed order.

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22. In that view of the matter, this Court is of the opinion that the present writ petition would be maintainable before this Court and as such, the said objection is rejected.

23. Issue notice.

24. Notice is accepted by learned counsel for the respondents.

25. Counter affidavit, if any, be filed within four weeks with an advance copy to learned counsel for the petitioner. Rejoinder, thereto if any, be filed within four weeks, thereafter, with an advance copy to learned counsel for the respondent.

26. Notice on the stay application as well.

27. Reply be filed within the same timeline.

28. List before the Registrar for completion of pleadings on 29.07.2024.

29. List before this Court on 03.10.2024.

TUSHAR RAO GEDELA, J APRIL 3, 2024/ms This is a digitally signed order.

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