

GAHC010006682024



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/163/2024

THE NAVODAYA VIDYALAYA SAMITI AND ANR
DEPARTMENT OF SCHOOL EDUCATION AND LITERACY, GOVERNMENT
OF INDIA, REPRESENTED BY THE COMMISSIONER, B-15, INSTITUTIONAL
AREA, SECTOR-62, NOIDA, DIST- GAUTAM BUDH NAGAR, UTTAR
PRADESH-201309

2: THE DEPUTY COMMISSIONER NAVODAYA VIDYALAYA SAMITI
SHILLONG REGION TEMPLE ROAD BARIK POINT
LACHUMIERE SHILLONG-79300

VERSUS

SALMA SULTANA D/O LT. SHAMSUL HAQUE, R/O VILL-TUKRAPARA,
P.O.-TUKRAPARA, DIST-KAMRUP, ASSAM, PIN-781136

Advocate for the Petitioner : MRS. R S CHOWDHURY

Advocate for the Respondent : MR SHREYAS DAS

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 14-05-2024

Date of Judgment & Order : 25-06-2024

JUDGMENT & ORDER(CAV)

(N. Unni Krishnan Nair, J.)

Heard Ms. R. S. Choudhury, learned counsel for the petitioners. Also heard Mr. H. K. Das, learned counsel for the sole Respondent.

2. The petitioners by way of instituting the present proceeding, have presented a challenge to an order, dated 24.05.2023, passed by the learned Central Administrative Tribunal, Guwahati Bench, in Original Application No: 040/00105/2023 and Misc. Application No: 040/00053/2023.

3. In view of the nature of the order presently under challenge in the present proceeding; we are limiting the consideration as made by the present order only to the decision as arrived at by the learned Tribunal pertaining to its jurisdiction to entertain the dispute involved in the original application being Original Application No: 040/00105/2023.

4. The facts, in brief, requisite for the purpose of adjudication of the issue arising in the present proceeding, is noticed as under:

The petitioner No. 1 issued an advertisement in the issue of the Employment News, dated 09-15 July, 2022, inviting online applications under a Special Recruitment Drive 2022-23 for filling-up vacancies in various cadres as available in Jawahar Navodaya Vidyalayas situated in the North Eastern Region.

The advertisement, in question, under Clause 6 - "GENERAL INSTRUCTIONS TO THE CANDIDATES", more specifically, in Clause 6(23) contained a stipulation to the effect that any dispute with regard to this recruitment shall be subject to the Court having its jurisdiction in New Delhi only.

The sole respondent in pursuance to the said advertisement, submitted her application for recruitment against the post of Post Graduate Teacher (Chemistry).

The qualifications of the petitioner having found to meet the eligibility criterias prescribed, she came to be issued with a call letter for appearing in a written examination scheduled on 16.12.20022 in the premises of the North Eastern Hill University, Shillong.

The results of the said written examination was so published and amongst candidates short-listed against the post of Post Graduate Teacher (Chemistry), the name of the sole respondent, herein, figured at serial No. 60, with further stipulation that the respondent was to appear in an interview scheduled on 21.03.2023.

Accordingly, a call letter, dated 17.03.2023, came to be issued to the sole respondent to appear in the interview on 23.03.2023 and the venue of the same was reflected as Jawahar Navodaya Vidyalaya, Paschim Marg, Sector-25(West), Chandigarh. The call letter further stipulated the documents, the sole respondent was required to produce at the time of her interview. It was also stipulated that in the event, the respondent is claiming equivalence of the qualification possessed by her with the notified qualification, documents relevant for the purpose issued by the authorities so mentioned, would also be required to be produced.

The respondent, herein, in terms of the call letter issued to her, proceeded to appear in the interview on 21.03.2023, however, on verification of her documents, the qualification as possessed by her not found to be satisfying the notified qualifications, she was not allowed to participate in the said interview. It is projected by the sole respondent that she had subsequently produced before the petitioners, documents towards establishing the equivalence of the qualification as possessed by her with the notified qualification.

The respondent being aggrieved by the non-consideration of her case, approached this Court by way of instituting a writ petition being WP(c)2083/2023. This court, on being apprised about the existence of a Notification, dated 17.12.1998, issued by the Ministry of Personnel, Public Grievances & Pension (Department of Personnel and Training) conferring jurisdiction upon the Central Administrative Tribunal(CAT) under Section 14(3) of the Administrative Tribunals Act, 1985, to entertain matters relating to recruitment and matters concerning recruitment, etc., pertaining to Navodaya Vidyalaya Samity, proceeded, vide order, dated 11.04.2023, to grant liberty to the respondent, herein, to approach the appropriate forum.

Accordingly, the sole respondent, herein as an Applicant, instituted an Original Application being O.A. No. 040/00105/2023 before the learned Central Administrative Tribunal(CAT), Guwahati Bench.

As per the projection made in the writ petition, it is seen that when the said O.A. was moved before the learned Central Administrative Tribunal(CAT),

Guwahati Bench, an objection came to be raised by the petitioners, herein, to the effect that the page containing the provisions of Clause 6(23) was not annexed with the said O.A.. It was submitted that the said act amounted to suppression of material facts, with a view to mislead the learned Tribunal.

From the materials available on record, it is seen that the learned Tribunal, Guwahati Bench, had proceeded to hear the learned counsels for the parties on the issue of jurisdiction and on conclusion of the hearing held, the order came to be reserved. However, on a mention of the matter being made, the said O.A. No. 040/00105/2023, again came to be listed on 02.05.2023, under the heading "To be Spoken To".

On 02.05.2023, upon hearing the learned counsels for the parties and granting liberty to the respondent, herein, to file a Miscellaneous Application in the matter, the case was de-reserved and directed to be listed on 16.05.2023 for Admission hearing. The matter was then re-heard on 16.05.2023 and again, the order, thereon, came to be reserved.

Thereafter, the order in the matter, came to be so passed by the learned Central Administrative Tribunal(CAT), Guwahati Bench, on 24.05.2023, and therein, held that the Guwahati Bench of the learned Tribunal, had the jurisdiction to entertain the Original Application, over the issue; as part of the cause of action had arisen within the jurisdiction of the learned Tribunal, with a further conclusion that no cause of action in the matter had arisen within the jurisdiction of the Principal Bench of the learned Tribunal at Delhi. Further, the

said order also proceeded to allow the Misc. Application filed by the sole respondent, herein, to bring on record of the Original Application, the page containing Clause 6(23) of the General terms and conditions as provided in the Advertisement, in question.

Being aggrieved by the order, dated 24.05.2023, as passed by the Central Administrative Tribunal(CAT), Guwahati Bench, in O.A. No. 040/00105/2023 and Misc. Application No: 040/00053/ 2023, that the petitioners, herein, have instituted the present proceeding.

5. Ms. Choudhury, learned counsel for the petitioner, at the outset, has submitted that in the normal course of the matter, the Central Administrative Tribunal(CAT), Guwahati Bench, would have jurisdiction to consider issues arising in connection with the recruitment process as initiated vide the Advertisement, in question. However, the learned counsel for the petitioners has submitted that the said recruitment process initiated for filling-up vacancies in various cadres in Jawahar Navodaya Vidyalayas situated in the North Eastern Region, being a pan India recruitment process and with a view to prevent institution of proceedings in connection with the said recruitment process at various locations; the authorities after due deliberation had in the said Advertisement, under Clause 6(23), proceeded to make a stipulation to the effect that any dispute with regard to the recruitment shall be subject to the Court having its jurisdiction in Delhi only.

6. Ms. Choudhury, learned counsel for the petitioners, has further submitted that the sole respondent having submitted her application for recruitment against the post of Post Graduate Teacher(Chemistry) as available after having so perused the various stipulations made in the said Advertisement, it has to be held that the sole respondent had also agreed to the stipulations with regard to the jurisdiction as conferred upon the competent Court/Tribunal at Delhi for the purpose of redressal of any dispute arising in connection with the recruitment process.

7. Ms. Choudhury, learned counsel, in support of her said submissions, has placed reliance primarily upon the decisions of the Hon'ble Supreme Court in the case of **A.B.C. Laminart Pvt. Ltd. & anr. v. A. P. Agencies, Salem**, reported in **(1989) 2 SCC 163**; and in the case of **Maharashtra Chess Association v. Union of India & ors.**, reported in **(2020) 13 SCC 285**.

8. Ms. Choudhury, by placing reliance on a decision of the High Court of Gujarat at Ahmedabad rendered in the case of **Yuvrajsingh Dilipsingh Zala v. Union of India & ors.**, in Special Civil Application No. 4528/2016, has contended that the issue arising in the present proceeding is also covered by the said decision.

9. Ms. Choudhury, learned counsel, has also relied upon the decision of the learned Central Administrative Tribunal(CAT), Jaipur Bench, in the case of **Satyanarayan Meena v. Navodya Vidyalay Samiti**[order, dated 11.01.2023 in Original Application No. 51/2021]; relating to the same very recruitment

process as involved in the present proceeding before this Court and has contended that the learned Tribunal, Jaipur Bench, had by following the decision of the High Court of Gujarat at Ahmedabad in the case of ***Yuvrajsingh Dilipsingh Zala***(supra), proceeded to hold that in view of the stipulation as made in Clause 6(23) of the Advertisement, in question; the original application filed before the learned Central Administrative Tribunal (CAT), Jaipur Bench, would not be maintainable and the same was accordingly returned to the applicant therein, enabling him to present it before the Principal Bench of the learned Central Administrative Tribunal(CAT) at Delhi. It was contended that the decision of the Jaipur Bench of the learned Tribunal, was binding on the Guwahati Bench of the learned Tribunal, being a co-ordinate Bench.

10. In the above premises; Ms. Choudhury, learned counsel, has submitted that the respondent authorities with a view to have the litigations arising in connection with the said recruitment process to be so concentrated in the Court of competent jurisdiction at Delhi, had not caused any prejudice to any of the intending candidates and the same was so done so as to ensure the proceedings so initiated, are analogously heard and disposed of and thereby facilitate the conclusion of the recruitment process involved, expeditiously.

11. Ms. Choudhury, learned counsel, accordingly, has contended that in view of the provision of Clause 6(23) of the Advertisement, in question, the learned Central Administrative Tribunal(CAT), Guwahati Bench, would not have any jurisdiction to entertain any dispute pertaining to the recruitment as initiated vide the said Advertisement. Accordingly, the learned Tribunal, Guwahati Bench,

ought to have returned the original application to the sole respondent, herein, for presenting it before the learned Central Administrative Tribunal(CAT), Principal Bench, Delhi, as was so done by the learned Central Administrative Tribunal(CAT), Jaipur Bench, in the matter.

12. Ms. Choudhury, by referring to the contentions made by the petitioners, herein, before the learned Tribunal, Guwahati Bench, had submitted that the respondent, herein, while instituting the proceedings in the matter before this Court as well as before the learned Central Administrative Tribunal(CAT), Guwahati Bench, had deliberately not annexed the last page of the Advertisement, in question, wherein, the provision of Clause 6(23) was set-out. It was contended that the same amounted to suppression of fact with a view to mislead the learned Tribunal, in the matter and thereby, tried to obtain a favourable order in favour of the sole respondent.

13. Ms. Choudhury, learned counsel, has submitted that the said issue was raised before the learned Central Administrative Tribunal (CAT), Guwahati Bench, and in support thereof; the judgments of the Hon'ble Supreme Court as rendered in the case of ***K. D. Sharma v. Steel Authority of India Ltd.***, reported in **(2008) 12 SCC 481**, and in the case of ***Kishore Samrite v. State of U.P. & ors.***, reported in **(2013) 2 SCC 398**, was relied upon. However, the learned counsel for the petitioners has submitted that the learned Tribunal, Guwahati Bench, had ignored the said contentions as made before it by the petitioners, herein, and by permitting the sole respondent, herein, to bring on record the last page of the Advertisement, in question, containing the

provision of Clause 6(23); proceeded to reject the contentions made by the petitioners, herein.

14. Ms. Choudhury, learned counsel, has further submitted that the learned Tribunal, Guwahati Bench, had exceeded its jurisdiction in the matter by entertaining the said original application and accordingly, the orders as passed by the said Tribunal in the matter and impugned in the present proceeding, requires to be interfered with by this Court.

15. Ms. Choudhury, learned counsel, has further submitted that the sole respondent, herein, not having been able to satisfy that she possessed the qualifications as mandated in the said Advertisement, at the time of her interview, inspite of specific stipulations made in this connection in the call letter issued to her on 17.03.2020; the petitioner having failed to produce the materials so mandated in the matter and her qualification having been held to be not conforming to the qualifications as prescribed in the Advertisement, in question, even on merits, the petitioner has not made-out a case for any interference by the learned Tribunal, Guwahati Bench, in the matter and accordingly, the original application as instituted by the sole respondent; even on merits, calls for dismissal.

16. Per contra, Mr. Das, learned counsel for the sole respondent, has contended that due to an inadvertent mistake, the page containing the provision of Clause 6(23) of the said Advertisement, was not annexed, either, in the proceedings initiated by the petitioners before this Court in WP(c)2083/2023, or,

before the learned Tribunal, Guwahati Bench, in the original application, so filed.

17. Mr. Das, learned counsel, has further contended that although the sole respondent had not furnished the said page of the Advertisement, however, the petitioners, herein, on the first day of the consideration of the said original application, had produced before the learned Tribunal, a copy thereof, and the proceedings in the matter was so held after the learned Tribunal had perused the provision of Clause 6(23) of the Advertisement, in question.

18. Mr. Das, has further submitted that in terms of the liberty as granted by the learned Tribunal, Guwahati Bench; a Misc. Application was so filed by the sole respondent herein in the proceedings of the original application before the learned Tribunal, praying for bringing on record of the Original Application, the page containing Clause 6(23) of the Advertisement, in question and the said application on consideration, was allowed.

19. Mr. Das, learned counsel, has further contended that it is settled position of law that when two or more Courts have jurisdiction to entertain a dispute; the parties may by agreement, confine the jurisdiction to a particular Court. In the case on hand; it is submitted that no cause of action, even in part, having arisen at Delhi, no Court at Delhi would have the jurisdiction to entertain the dispute in connection with the recruitment process set in motion vide the Advertisement, in question, and accordingly, the prescription made in the said Advertisement to the effect that the Courts at Delhi only would have jurisdiction to consider the dispute arising in connection with the recruitment process set in

motion vide the Advertisement, in question, cannot be sustained and is non est in the eye of law.

20. Mr. Das, learned counsel for the sole respondent, has submitted that a perusal of the Advertisement, in question, would bring to the forefront that the recruitment process has been so initiated for vacancies available in the various cadres in Jawahar Navodaya Vidyalayas situated in the North Eastern Region and the sole respondent having so applied in pursuance of the said Advertisement from Guwahati and having appeared in the written Examination at Shillong, a part of the cause of action in the matter had arisen within the jurisdiction of the learned Central Administrative Tribunal(CAT), Guwahati Bench. Accordingly, in the above premises, Mr. Das, learned counsel, has submitted that the order passed by the learned Central Administrative Tribunal(CAT), Guwahati Bench, impugned in the present proceeding, would not call for any interference by this Court.

21. We have heard the learned counsels appearing for the parties and also perused the materials available on record.

22. At the outset, it is not disputed that the Advertisement, in question, was so issued by the petitioner No. 1, herein, inviting applications for posts lying vacant in different cadres in various Jawahar Navodaya Vidyalayas situated in the North Eastern Region. The Advertisement, in question, was so issued in the form of a Special Recruitment Drive 2022-2023 for Jawahar Navodaya Vidyalayas situated in the North Eastern Region. It is also not disputed that the

said Advertisement under Clause 6 i.e. "GENERAL INSTRUCTIONS TO THE CANDIDATES" and more specifically, under Clause 6(23), had incorporated the following stipulation:

"Any dispute with regard to this recruitment, shall be subject to the Court having its jurisdiction in Delhi only."

23. The learned counsel for the petitioners, herein, by referring to the provision of the said Clause 6(23), has submitted that the Advertisement, in question, having been issued with the said prescription and the sole respondent without raising any dispute with regard to the provision of Clause 6(23), having submitted her application in pursuance to the Advertisement, in question, it was contended that the respondent, herein, had accepted all the terms and conditions mentioned in the said Advertisement including the stipulation as made in Clause 6(23) of the Advertisement, in question.

24. The learned counsel for the sole respondent, on the other hand, had contended that the stipulation as made in the provision of Clause 6(23) having been so made without considering the fact that no cause of action with regard to the recruitment process set in motion vide the Advertisement, in question, having arisen in Delhi, it was not open for the petitioners to proceed to identify the Courts at Delhi to be a forum wherein any dispute pertaining to the recruitment process could be raised. Accordingly, it was contended that the stipulation as made in Clause 6(23) was *non-est* in the eye of law.

25. The nature of the dispute arising in the present proceeding and the submissions as made by the learned counsels appearing for the parties, the

following issues arise for consideration:

(i). Whether in the given facts and circumstances; the learned Central Administrative Tribunal(CAT), Guwahati Bench, would have jurisdiction to entertain a dispute arising out of the recruitment process as set in motion, vide the Advertisement, in question?

(ii). Whether the prescription as contained in the provision of Clause 6(23) of the Advertisement, in question, would be sustainable?

26. The above issues have received consideration of the Hon'ble Supreme Court in various cases.

27. The Hon'ble Supreme Court in the case of ***Hakam Singh v. M/s. Gammon (India) Ltd.***, reported in ***(1971) 1 SCC 286***, held that where two or more Courts have jurisdiction to try a suit or proceeding, an agreement between the parties that the dispute between them, shall be tried in one of such Courts, was held to be not contrary to public policy and that such an agreement was also held to not contravene the provisions of the Section 28 of the Contract Act, 1872.

The relevant conclusion of the Hon'ble Supreme Court in the above-noted case, is extracted hereinbelow for ready reference:

“4. The Code of Civil Procedure in its entirety applies to proceedings under the Arbitration Act. The jurisdiction of the courts under the Arbitration Act to entertain a proceeding for filing an award is accordingly governed by the provisions of the Code of Civil Procedure. By clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the city of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the courts at Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act.”

28. The Hon'ble Supreme Court in the case of **A.B.C. Laminart Pvt. Ltd.** (supra); while considering a similar provision existing in an agreement entered between the parties therein to the effect that any dispute arising out of the same, shall be subject to Kaira jurisdiction; proceeded to examine the matter and on such consideration, further proceeded to draw the following conclusions:

“8. The next question is whether clause 11 is valid, and if so, what would be its effect? As clause 11 formed part of the agreement it would be valid only if the parties could have validly agreed to it. It is common knowledge that the law of contract only prescribes certain limiting principles within which parties are free to make their own contracts. An agreement enforceable at law is a contract. An agreement which purports to oust the jurisdiction of the court absolutely is contrary to public policy and hence void. Each of the citizens has the right to have his legal position determined by the ordinary tribunal except, of course, in a contract (a) when there is an arbitration clause which is valid and binding under the law, and (b) when parties to a contract agree as to the jurisdiction to which disputes in respect of the contract shall be subject. "It has long been established", say Cheshire and Fifoot, "that a contract which purports to destroy the right of one or both of the parties to submit questions of law to the courts is contrary to public policy and is void pro tanto." However, arbitration is a statutory mode of settlement; and as a matter of commercial law and practice parties to a contract may agree as to the jurisdiction to which all or any disputes on or arising out of the contract shall be subject.

9. Section 28 of the Indian Contract Act, 1872, provides that every agreement by which any party thereto is restricted absolutely from enforcing his rights

under or in respect of any contract, by the usual legal proceedings in the ordinary tribunal, or which limits the time within which he may thus enforce his rights, is void to that extent. This is subject to exceptions, namely, (1) contract to refer to arbitration and to abide by its award, (2) as a matter of commercial law and practice to submit disputes on or in respect of the contract to agreed proper jurisdiction and not other jurisdictions though proper. The principle of Private International Law that the parties should be bound by the jurisdiction clause to which they have agreed unless there is some reason to contrary is being applied to municipal contracts. In Lee v. Showmen's Guild of Great Britain' Lord Denning said:

[P]arties cannot by contract oust the ordinary courts of their jurisdiction. They can, of course, agree to leave questions of law, as well as questions of fact, to the decision of the domestic tribunal. They can, indeed, make the tribunal the final arbiter on questions of fact, but they cannot make it the final arbiter on questions of law. They cannot prevent its decisions being examined by the courts. If parties should seek, by agreement, to take the law out of the hands of the courts and put it into the hands of a private tribunal, without any recourse at all to the courts in cases of error of law, then the agreement is to that extent contrary to public policy and void.

12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

16. So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court. If under the law several courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would

otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case?"

29. The Hon'ble Supreme Court in the case of ***Harshad Chimanlal Modi v. D.L.F. Universal Ltd. & anr.***, reported in **(2005) 7 SCC 791**, while considering a similar issue, proceeded to hold that a clause vesting jurisdiction on a Court which otherwise does not have the jurisdiction to decide the matter, would be void as being against the public policy. Accordingly, it was held that even if there is an agreement between the parties to the contract to the above effect; it would have no effect and cannot be enforced. The relevant conclusions in the matter, being relevant, is extracted hereinbelow:

*"23. Earlier, more than thirty years ago, such a question came up for consideration before this Court in **Hakam Singh v. Gammon (India) Ltd.** It was the first leading decision of this Court on the point. There, a contract was entered into by the parties for construction of work. An agreement provided that notwithstanding where the work was to be executed, the contract "shall be deemed to have been entered into at Bombay" and the Bombay Court "alone shall have jurisdiction to adjudicate" the dispute between the parties. The question before this Court was whether the court at Bombay alone had jurisdiction to resolve such dispute.*

25. Hakam Singh was followed and principle laid down therein reiterated in several cases thereafter. [See *Globe Transport Corpn. v. Triveni Engg. Works, A.B.C. Laminart (P) Ltd. v. A.P. Agencies, Patel Roadways Ltd. v. Prasad Trading Co., R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd., Angile Insulations v. Davy Ashmore India Ltd., Shriram City Union Finance Corpn. Ltd. v. Rama Mishra and New Moga Transport Co. v. United India Insurance Co. Ltd.*]

29. Ms Malhotra, then contended that Section 21 of the Code requires that the objection to the jurisdiction must be taken by the party at the earliest possible opportunity and in any case where the issues are settled at or before

settlement of such issues. In the instant case, the suit was filed by the plaintiff in 1988 and the written statement was filed by the defendants in 1989 wherein jurisdiction of the court was "admitted". On the basis of the pleadings of the parties, issues were framed by the Court in February 1997. In view of the admission of jurisdiction of the court, no issue as to jurisdiction of the court was framed. It was only in 1998 that an application for amendment of the written statement was filed raising a plea as to the absence of jurisdiction of the court. Both the courts were wholly wrong in allowing the amendment and in ignoring Section 21 of the Code. Our attention in this connection was invited by the learned counsel to Hiralal Patni v. Kali Nath and Bahrein Petroleum Co. Ltd. v. P.J. Pappu.

32. In Bahrein Petroleum Co. this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well settled and needs no authority that "where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice.

33. In Kiran Singh v. Chaman Paswant this Court declared : (SCR p. 121)

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction... strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

(emphasis supplied)"

30. The decisions of the Hon'ble Supreme Court as noticed hereinabove, brings to the forefront the fact that where two or more courts have jurisdiction to entertain a proceeding and the parties have agreed to submit to the jurisdiction of one of such courts, in the event of any dispute arising between them; such an agreement would not be contrary to the public policy and would also not be hit by the provision of Section 28 of the Contract Act, 1872. It would be a valid, legal and enforceable contract. However, it was further provided that

such a provision would apply to those cases where two or more courts have jurisdiction to entertain a suit and the parties have agreed to submit to the jurisdiction of one of such courts. A clause vesting jurisdiction on a court which otherwise does not have the jurisdiction to decide the matter, would be void as being against the public policy. It was also held that even if there is an agreement between the parties to the contract, to confer jurisdiction upon a court which otherwise would not have the jurisdiction to entertain the matter, such a contract would have no effect and cannot be enforced. It is further brought to the forefront that the parties neither by consent nor by waiver or by acquiescence, can confer jurisdiction upon a court otherwise incompetent to try the suit.

31. The Hon'ble Supreme Court in the case of reported in ***Maharashtra Chess Association***(supra), has reiterated the position as noticed hereinabove. Paragraph No. 10 of the said judgment being relevant, is extracted hereinbelow:

“10. Parties cannot by agreement confer jurisdiction on a court which lacks the jurisdiction to adjudicate. But where several courts would have jurisdiction to try the subject-matter of the dispute, they can stipulate that a suit be brought exclusively before one of the several courts, to the exclusion of the others. Clause 21 does not oust the jurisdiction of all courts. Rather, the appellant and the second respondent have agreed to submit suits or legal actions to the courts at Chennai. So long as the courts at Chennai have proper jurisdiction over a dispute involving the appellant and the second respondent, Clause 21 is not in violation of the principle set out in ABC Laminart³. However, the decision in ABC Laminart³ was made in the context of an original suit and the jurisdiction of an ordinary civil court. The present case is materially different. The appellant approached the Bombay High Court under Article 226. The second respondent seeks to rely on Clause 21 to oust the writ jurisdiction of the High Court of Bombay.”

32. A perusal of the conclusions as drawn by the Hon'ble Supreme Court in paragraph No. 10 of the said judgment; brings to the forefront that the Hon'ble

Supreme Court has again reiterated that parties cannot by agreement, confer jurisdiction on a court which lacks the jurisdiction to adjudicate the matter.

33. At this stage; it is to be noted that the Central Administrative Tribunal(CAT) is a creature of a statute i.e. Administrative Tribunals Act, 1985. The jurisdiction to entertain matters pertaining to recruitment and also matters concerning recruitment to any service or posts pertaining to Navodaya Vidyalaya Samiti was conferred upon the Central Administrative Tribunal(CAT) in terms of the provisions of Section 14(3) of the Administrative Tribunals Act, 1985, vide Notification, dated 17.12.1998.

34. The Central Administrative Tribunal(Procedure) Rules, 1987, was framed under the relevant provisions of the Administrative Tribunals Act, 1985, and Rule 6, thereof, mandates that an application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction the applicant is posted for the time being or the cause of action, wholly, or, in part, has arisen. The provision of Rule 6 mandates that the learned Tribunal before which an original application pertaining to a dispute covered by the provisions of Section 14 of the Administrative Tribunals Act, 1985, would be so identified basing on the determination of the cause of action, either, wholly, and/or, in part, so arising in the matter.

35. It is a settled position of law that the term cause of action means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of

facts which taken with the law applicable to them, gives the applicant a right to seek relief against the defendant. It has been held to include some act done by the defendant since in the absence of any such act, no cause of action can possibly accrued. Cause of action is not limited to the actual infringement of the right sued but includes all the material facts on which it is founded.

36. The jurisdiction of the various Benches of the learned Central Administrative Tribunal(CAT) being based also on the cause of action arising through connecting factors, it is now required to examine as to whether any cause of action had arisen within the jurisdiction of the learned Central Administrative Tribunal(CAT), Guwahati Bench.

37. The said inquiry need not detain this Court any further in-as-much as the Advertisement, in question, having been specifically issued for a special recruitment drive 2022-2023 for the vacancies available in various cadres in Jawahar Navodaya Vidyalayas situated in the North Eastern Region, considering that the learned Central Administrative Tribunal(CAT), Guwahati Bench, in terms of the provision of Section 14 of the Administrative Tribunals Act, 1985, also has the jurisdiction to consider matters concerning recruitment, it has to be held that the learned Tribunal, Guwahati Bench, would have jurisdiction in the matter to consider disputes arising in connection with the said recruitment exercise, on part of the cause of action arising within its territorial jurisdiction.

38. At this stage; it is also to be noted that the sole respondent had submitted her application in pursuance of the said Advertisement from Guwahati and had

participated in the written Examination from the campus of NEHU situated at Shillong which again falls within the territorial jurisdiction of the learned Central Administrative Tribunal(CAT), Guwahati Bench. Accordingly, the first issue arising in the present proceeding as to whether the learned Tribunal, Guwahati Bench, would have jurisdiction to entertain disputes pertaining to the recruitment process, in question, is answered in the affirmative.

39. Having so held that the learned Tribunal, Guwahati Bench, would have jurisdiction to entertain the proceedings in the matter; it has to be now considered as to the effect that would occasion to such jurisdiction in view of the stipulation as made in the provision of Clause 6(23) of the said Advertisement.

40. Clause 6(23) stipulates that any dispute arising in connection with the process of recruitment, in question, would be subject to the Court having jurisdiction in Delhi only.

41. The said stipulation when viewed in the light of the Notification, dated 17.12.1998, conferring jurisdiction pertaining to the matters as covered under Section 14 of the Administrative Tribunals Act, 1985, pertaining to Navodaya Vidyalaya Samity, upon the learned Central Administrative Tribunal(CAT); it has to be held that the court as finding mention in the provision of Clause 6(23), would be the Central Administrative Tribunal(CAT), Principal Bench at Delhi.

42. The above, having been noted, it is to be seen now as to whether the learned Central Administrative Tribunal(CAT), Principal Bench at Delhi, would have had the jurisdiction in the absence of Clause 6(23) to entertain any dispute pertaining to the recruitment process, in question, in accordance with Rule 6 of the Central Administrative Tribunal(Procedure) Rules, 1987.

43. The materials brought on record, reveal that the Advertisement, in question, was so issued by the petitioner No. 1, which has its Head Office at B-15, Institutional Area, Sector-62, Noida, District Gautam Budh Nagar, Uttar Pradesh. The selection as involved were admittedly for posts figuring in Jawahar Navodaya Vidyalayas situated in the North Eastern Region. The petitioners have not demonstrated that any cause of action even, in part, had arisen in Delhi i.e. within the jurisdiction of the Principal Bench of the learned Central Administrative Tribunal (CAT) at Delhi.

44. The contention of the petitioners in the matter in this connection is that such a stipulation was so made to avoid multiplicity of litigation by candidates assailing different causes pursuant to the recruitment process which would have the affect of derailing the recruitment process itself and to avoid such discrepancies due to the orders that may be passed by different forums from different parts of the country, the stipulation as contained in the provision of Clause 6(23) of the said Advertisement that any such dispute, would be so subject to the jurisdiction of the courts at Delhi only; came to be so incorporated. It was also further highlighted that although the posts, in question, put-up for advertisement, were available in various cadres in Jawahar

Navodaya Vidyalayas situated in the North Eastern Region but the recruitment process was a pan India one and candidates from different parts of the country had applied for the posts.

45. It was further highlighted that the interview in the matter, was also held at Chandigarh where all the candidates so qualifying in the written Examination, were required to appear. The above contention of the learned counsel for the petitioners brings to the forefront the fact that the learned Central Administrative Tribunal (CAT), Principal Bench at Delhi, admittedly, did not have any jurisdiction in the matter and even in the absence of the stipulation as made in Clause 6(23) of the Advertisement, in question; it would not have been open for a candidate so participating in the recruitment process to institute proceeding before the learned Central Administrative Tribunal(CAT), Principal Bench, Delhi, in the matter, in the absence of any cause of action, even, in part arising within its territorial jurisdiction.

46. Applying the decisions of the Hon'ble Supreme Court in the cases of: ***Hakam Singh v. M/s. Gammon (India) Ltd.***, reported in **(1971) 1 SCC 286**; ***A.B.C. Laminart Pvt. Ltd. & anr. v. A. P. Agencies, Salem***, reported in **(1989) 2 SCC 163**; ***Harshad Chimanlal Modi v. D.L.F. Universal Ltd. & anr.*** reported in **(2005) 7 SCC 791**; and ***Maharashtra Chess Association v. Union of India & ors.***, reported in **(2020) 13 SCC 285**; to the facts of the present case; it is seen that the petitioners, herein, have conferred jurisdiction upon the court at Delhi for the purpose of redressal of any dispute arising in connection with the recruitment process, in question, without the court/ tribunal

at Delhi having an original jurisdiction to consider such dispute that may arise in the matter. Further, no cause of action, even in part, having arisen in the matter within the territorial limits of the Principal Bench of the learned Tribunal, under the provision of Rule 6 of the Central Administrative Tribunal(Procedure) Rules, 1987, no proceeding in the matter could be instituted before it.

47. The sole respondent having submitted her application in terms of the Advertisement, in question, even if it is held that on her such submission of the application, she had also agreed to all the stipulations as made in the said Advertisement; applying the decisions of the Hon'ble Supreme Court noticed hereinabove; the petitioners, herein, could not have conferred jurisdiction on a court/Tribunal for redressal of the disputes in connection with the recruitment process, in question, which court/Tribunal, admittedly, lacked the jurisdiction to adjudicate the same. Such conferment of jurisdiction being impermissible; the stipulation as made in the provision of Clause 6(23) of the said Advertisement, would be *non-est* in the eye of law.

48. Accordingly, it is to be held that even in the absence of a challenge to the provision of Clause 6(23) by the sole respondent, herein, the said conferment of jurisdiction being clearly void and against public policy; the sole respondent, herein, cannot be required to comply with the said stipulation in Clause 6(23) of the said Advertisement.

49. Having reached the above conclusions; this Court would now consider the decision relied upon by the learned counsel for the petitioners in the case of

***Yuvrajsingh Dilipsingh Zala*(supra).** A perusal of the facts as involved in the said decision, would reveal that in the Advertisement, involved, therein, applications were invited from eligible candidates for filling up of vacancies in various regions, divisions, and workshops of the Western Railway. In the said Advertisement, under clause 11, it was provided that any legal dispute arising in the matter would be maintainable only before the learned Central Administrative Tribunal(CAT), Bombay, and the High Court of Bombay.

50. The applicant, therein, had submitted his application from Vadodara and had appeared in an examination at Vadodara. On his case for recruitment not being so considered, the said petitioner had instituted proceedings before the learned Central Administrative Tribunal(CAT), Ahmedabad. The said learned Tribunal, on considering the matter as well as the intent of Clause 11, as noticed above; had returned the original application to the applicant for institution of the same before the learned Central Administrative Tribunal(CAT), Mumbai Bench.

51. The decision of the learned Central Administrative Tribunal (CAT), on being assailed; the High Court of Gujarat at Ahmedabad, vide the judgment, dated 14.06.2016, in the case of ***Yuvrajsingh Dilipsingh Zala*(supra)**; upheld such decision by holding that both the learned Central Administrative Tribunal(CAT), Ahmedabad Bench, and the learned Central Administrative Tribunal(CAT), Mumbai Bench, had jurisdiction to decide and consider the dispute arising between the parties with regard to the recruitment process involved. However, in view of the provision of Clause 11 in the Employment Notice and the learned

Central Administrative Tribunal(CAT), Mumbai Bench, having been designated as the appropriate forum in the matter; the court proceeded to hold that it would be only the learned Central Administrative Tribunal(CAT), Mumbai Bench, which would have jurisdiction to consider the matter.

52. What is relevant to be noted in the above-noted decision is that therein, both the learned Central Administrative Tribunal (CAT), Ahmedabad Bench and learned Central Administrative Tribunal(CAT), Mumbai Bench, had jurisdiction to try the matter in view of the part cause of action in the matter arising within the jurisdiction of the said two Benches of the learned Central Administrative Tribunal(CAT) and there being a prescription choosing the learned Central Administrative Tribunal(CAT), Mumbai Bench, to be the appropriate forum for institution of such proceedings; the High Court had permitted the said stipulation to hold the field. However, the said decision would not advance the cause of the petitioners, herein, in-as-much as vide the provision of Clause 6(23) of the Advertisement, in question; the jurisdiction so conferred upon the learned Central Administrative Tribunal (CAT), Principal Bench, Delhi, was so conferred without any cause of action arising within the territorial jurisdiction of the Principal Bench at Delhi.

53. Likewise, the decision of the learned Central Administrative Tribunal(CAT), Jaipur Bench, being so solely based on the decision of the Gujarat High Court in the case of ***Yuvrajsingh Dilipsingh Zala***(supra), and it having not examined the issue as to whether any cause of action had arisen within the territorial jurisdiction of the Principal Bench of the Central Administrative Tribunal(CAT) at

Delhi; the said decision also cannot be held to be binding on the learned Central Administrative Tribunal(CAT), Guwahati Bench.

54. In view of the conclusions reached hereinabove; thus, we find no error in the order, dated 24.05.2023, impugned in the present proceeding, and accordingly, we hold that the same does not call for any interference. The writ petition accordingly stands dismissed. However, there shall be no order as to costs.

55. Interim order passed, if any, stands vacated.

JUDGE

CHIEF JUSTICE

Comparing Assistant