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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Decided on: 27<sup>th</sup> September, 2023*+ **W.P.(C) 443/2023 & CM APPL. 1741/2023**

NBCC (INDIA) LIMITED

..... Petitioner

Through: Mr. Arvind Minocha, Senior Advocate with Mr. Rajnish Kr. Jha, Ms. Aditi Yaduvanshi, Advocate with Mr. Vikas Kumar, Manager (Law).

versus

DAKSHIN HARYANA BIJLI  
VITRAN NIGAM & ORS.

..... Respondents

Through: Mr. Samir Malik, Mr. Akash Lamba, Ms. Nikita Chokse, Mr. Krishan Kumar, Advocates for R-1 &amp; 2.

Mr. A.K. Tiwari, Mr. Rahul Burman &amp; Ms. Yosha Dutt, Advocates for R-3.

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**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****J U D G M E N T**

1. The petitioner has approached this Court under Article 226 of the Constitution of India for the following reliefs:

“(a) to issue a writ of certiorari or any other suitable writ(s)/order(s)/direction(s) to quash and set aside the Letter dated 01.06.2022 issued by Respondent No. 2;

(b) to issue a writ of mandamus or any other suitable writ(s)/order(s)/direction(s) to direct Respondent No. 2 to provide electrification through the 33KV Switching Station at Sector 95, Gurugram, Haryana, situated at Respondent no.3's land to



*Petitioner's project, NBCC Heights, at Sector 89, Gurugram, Haryana; and*

*(c) to pass such other orders, or grant such other reliefs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."*

2. The petitioner is a Public Sector Undertaking, whose head office is situated in New Delhi. However, as the writ petition pertains to a project of the petitioner located in Gurugram, Haryana, notice was issued by an order dated 13.01.2023 on the limited aspect of territorial jurisdiction of this Court. By this judgment, I propose to deal with this aspect of the matter.

**A. Factual background and pleadings in the writ petition.**

3. The petitioner has impleaded three parties as respondents in the writ petition. Respondent No. 1– Dakshin Haryana Bijli Vitran Nigam [hereinafter, "the Nigam"], is a power distribution utility company owned by the Government of Haryana. It has been impleaded through its Chief Engineer (Operation) at its address in New Delhi. Respondent No. 2 is the Executive Engineer (OP) Division of the Nigam, who has been impleaded at an office address in Gurugram, Haryana. Respondent No. 3 is a society under the Societies Registration Act, 1860, which has been impleaded at an office in New Delhi.

4. The writ petition pertains to a housing project of the petitioner located in Gurugram, Haryana. On 09.03.2015, the petitioner, from its site office in Gurugram, applied to the Nigam, also at its Gurugram address, for approval of electrical load and scheme. By a communication dated 10.05.2016 addressed by the Chief Engineer of the Nigam, from his Delhi Office, to the Superintending Engineer, 'OP' Circle in Gurugram, sanction was accorded to the petitioner's project. The petitioner was copied on this letter, at its



Gurugram address. The petitioner relies upon this communication to establish its right to sanction.

5. It appears that the respondent No. 3 also had a housing project situated proximate to the petitioner's project in Gurugram. The petitioner, respondent No. 3 and other developers with projects in the same area, entered into certain arrangements for sharing of infrastructure for the electrification of their projects. These included a Memorandum of Understanding dated 05.11.2020 and a Gift Deed dated 10.08.2021, executed by respondent No. 3 in favour of respondent No. 1.

6. The petitioner's challenge in the writ petition is to a communication dated 01.06.2022 addressed by respondent No. 2, from the Nigam's Gurugram office, to respondent No. 3, also at its project in Gurugram. By the aforesaid letter, the Nigam observed that the petitioner's project is located at a distance of 3.5 kilometers from the switching station created by respondent No. 3, and decided that formation of a group between the petitioner and respondent No. 3, for sharing of the switching station, was not technically feasible. A copy of this letter was also forwarded to the petitioner at its Gurugram office. The petitioner has annexed further correspondence between it and respondent No. 3, which is not germane to the determination of the question of territorial jurisdiction with which we are presently concerned.

7. The petitioner thereafter addressed a representation dated 06.06.2022 to the Chief Engineer (Operations) of the respondent No. 1 at Gurugram. Another communication annexed to the petition, between the petitioner and the Nigam, is a letter dated 21.09.2022 from the Nigam to the petitioner (both at Gurugram) which reiterated that the petitioner's proposal to share



the switching station with respondent No. 3 is not technically feasible, and an alternative arrangement was proposed. The petitioner (from its Gurugram office) reiterated its request for permission to share the feeder station with respondent No. 3, by a letter dated 27.10.2022 addressed to the Nigam in Gurugram.

8. It is in these circumstances, that the petitioner has instituted the present writ petition on 11.01.2023. The reliefs sought have been set out above.

9. With regard to the jurisdiction of this Court, the petitioner has pleaded in the writ petition as follows:

*“10. That the Petitioner submits that the present writ petition is maintainable before this Hon’ble Court since the Respondent Nos. 1 and 3 are situated in Delhi and the original sanction was granted to Petitioner by Respondent No. 1, situated in Delhi.”*

**B. Submissions.**

10. Mr. Arvind Minocha, learned Senior Counsel for the petitioner, submitted that the present case falls within the scope of Article 226(2) of the Constitution of India, as part of the cause of action has arisen within the jurisdiction of this Court. For this purpose, he submitted that the original sanction letter dated 10.05.2016 was issued by the Nigam from its office in Delhi. Mr. Minocha submitted that the Nigam had, by the said communication, examined the question of technical feasibility, and approved the electrification scheme proposed by the petitioner, whereas, the impugned letter dated 01.06.2022, held directly to the contrary.

11. Mr. Samir Malik and Mr. A.K. Tiwari, learned counsel for the respondents, on the other hand, submitted that the respondents are neither within the jurisdiction of this Court, nor has any part of the cause of action



arisen therein. They pointed out that the letter dated 10.05.2016, relied upon by the petitioner, was in fact a communication in favour of the petitioner, and not part of the bundle of facts on which its claim is constituted.

12. The judgments cited by learned counsel for the parties, to the extent necessary, are discussed in the latter section of this judgment.

### **C. Analysis.**

13. Article 226 (1) and (2) of the Constitution of India, which are relevant for the present purposes, are reproduced below:

*“226. Power of High Courts to issue certain writs.*

*(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

*(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.”*

14. The jurisdiction of the High Court to issue writs to any person or authority within its territorial jurisdiction thus flows from Article 226(1) of the Constitution. Additionally, Article 226(2)<sup>1</sup> extends the jurisdiction of the High Court to Government, authorities or persons seated outside its jurisdiction if the cause of action, wholly or in part, arose within the jurisdiction of the High Court. It has been held by the Supreme Court that,

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<sup>1</sup> Inserted by the 15<sup>th</sup> Amendment to the Constitution, 1963, and renumbered by the 42<sup>nd</sup> Amendment, 1976.



akin to Section 20(c) of the Code of Civil Procedure, 1908, “cause of action” for the purposes of Article 226(2) of the Constitution constitutes the bundle of facts which are required to be proved in order for the writ to be issued.<sup>2</sup>

15. In the present case, prayer (a) of the writ petition expressly seeks issuance of writs, orders and directions to quash the letter dated 01.06.2022 issued by respondent No. 2 and prayer (b) also seeks issuance of writs, orders and directions to respondent No. 2. Respondent No. 2 is located in Gurugram, outside the jurisdiction of this Court and Article 226(1) of the Constitution, therefore, has no application.

16. However, the petitioner’s grievance pertains to reversal of the stand taken by the Nigam in its communication dated 10.05.2016, which was issued from New Delhi, I, therefore, proceed on the basis that part of the cause of action asserted by the petitioner does arise within the jurisdiction of this Court.

17. Nonetheless, the matter requires further examination in the context of the doctrine of *forum conveniens*. This principle has been laid down in several decisions of the Supreme Court and this Court. It provides a key exception to the exercise of jurisdiction, even when it does vest in the Court, and essentially mandates that a High Court will not exercise jurisdiction if the proceedings are most intimately connected with another High Court.

18. In *Kusum Ingots & Alloys Ltd. vs. Union of India*<sup>3</sup>, which was cited by learned counsel on both sides, the question framed by the Supreme Court was whether the seat of Parliament or the State legislature would be a

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<sup>2</sup> *Kusum Ingots & Alloys Ltd. vs. Union of India*, 2004 (6) SCC 254; *Eastern Coalfields Ltd. vs. Kalyan Banerjee*, (2008) 3 SCC 456.

<sup>3</sup> 2004 (6) SCC 254.



relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition. The Supreme Court held that even a small part of the cause of action arising within the jurisdiction would vest jurisdiction under Article 226(2) of the Constitution. For this purpose, the averments in the writ petition must be taken at face value, subject to the condition that they bear a nexus to the prayers sought. However, it was held that passing of a legislation at a particular place, by itself, does not confer jurisdiction. The Court then referred to the concept of *forum conveniens* in the following terms:

**“Forum conveniens**

*30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney<sup>4</sup>, Madanlal Jalan v. Madanlal<sup>5</sup>, Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.<sup>6</sup>, S.S. Jain & Co. v. Union of India<sup>7</sup> and New Horizons Ltd. v. Union of India<sup>8</sup>.]”<sup>9</sup>*

19. The recent decision of the Supreme Court in *State of Goa vs. Summit Online Trade Solutions (P) Ltd.*<sup>10</sup> has elaborated upon the concept of “cause of action” in the context of Article 226(2) of the Constitution. The Court held that the writ petitioner in that case had not shown that any part of the cause of action had arisen in the State of Sikkim, so as to avail of the writ

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<sup>4</sup> AIR 1941 Cal 670.

<sup>5</sup> AIR 1949 Cal 495.

<sup>6</sup> 1997 CWN 122.

<sup>7</sup> 1993 SCC OnLine Cal 306.

<sup>8</sup> AIR 1994 Del 126.

<sup>9</sup> Supra (note 3); paragraph 30. Emphasis supplied.

<sup>10</sup> (2023) 7 SCC 791.





jurisdiction of the High Court of Sikkim. Having so held, the Supreme Court further observed as follows:

“21. Even otherwise, the High Court was not justified in dismissing the interim applications. Assuming that a slender part of the cause of action did arise within the State of Sikkim, the concept of forum conveniens ought to have been considered by the High Court. As held by this Court in *Kusum Ingots & Alloys Ltd. v. Union of India*<sup>11</sup> and *Ambica Industries v. CCE*<sup>12</sup>, even if a small part of the cause of action arises within the territorial jurisdiction of a High Court, the same by itself could not have been a determinative factor compelling the High Court to keep the writ petitions alive against the appellant to decide the matter qua the impugned notification, on merit.”<sup>13</sup>

20. A Five-Judge Full Bench of this Court in *Sterling Agro Industries vs. Union of India*<sup>14</sup> has reiterated the principles laid down in *Kusum Ingots*<sup>15</sup>. The following extracts from the conclusions recorded by the Full Bench provide useful guidance in dealing with the present case:

“33. In view of the aforesaid analysis, we are inclined to modify, the findings and conclusions of the Full Bench in *New India Assurance Company Limited (supra)*<sup>16</sup> and proceed to state our conclusions in seriatim as follows:

xxxx                      xxxx                      xxxx

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of *Alchemist Ltd.*<sup>17</sup>.

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(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide

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<sup>11</sup> Supra (note 3).

<sup>12</sup> *Ambica Industries vs. CCE*, (2007) 6 SCC 769.

<sup>13</sup> Emphasis supplied.

<sup>14</sup> 2011 SCC OnLine Del 3162.

<sup>15</sup> Supra (note 3).

<sup>16</sup> *New India Assurance Co. Ltd. vs. Union of India*, 2009 SCC OnLine Del 1764.

<sup>17</sup> *Alchemist Ltd. vs. State Bank of Sikkim*, (2007) 11 SCC 335.





*manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.*

xxxx                      xxxx                      xxxx

*(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra)<sup>18</sup> and Adani Exports Ltd. (supra)<sup>19</sup>,”*

21. Other than the judgments referred to above, in the written submissions filed by the petitioner, reference has been made to the judgment in *Maharashtra Chess Assn. v. Union of India*<sup>20</sup>. In the said judgment, the Supreme Court has emphasised the broad nature of the principles which inform the exercise of the Court’s writ jurisdiction. However, for the purposes of the present case, it is significant that even while so doing, the Court has acknowledged both the discretionary nature of the jurisdiction and the limitations of territoriality which the writ Court must be conscious of, including the concept of *forum non-conveniens*<sup>21</sup>.

22. Mr. Minocha also cited a judgment of this Court in *Larsen & Toubro Limited vs. Punjab National Bank*<sup>22</sup>. Jurisdiction was accepted on facts, but, even in this judgment, it was acknowledged that the doctrine of *forum conveniens* and nature of the cause of action must be scrutinized by the Court while entertaining the writ petition.<sup>23</sup>

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<sup>18</sup> Supra (note 12).

<sup>19</sup> Union of India vs. Adani Exports Ltd., (2002) 1 SCC 567.

<sup>20</sup> (2020) 13 SCC 285.

<sup>21</sup> *Ibid.*; paragraphs 14 and 27.

<sup>22</sup> 2021 SCC OnLine Del 3827.

<sup>23</sup> *Ibid.*; paragraph 27.



23. Mr. Tiwari, learned counsel for respondent No. 3 cited two decisions of this Court which predate *Kusum Ingots*<sup>24</sup>, but lay down a similar principle. Like in the present case, the Division Bench in *Sector Twenty-one Owners Welfare Association (STOWFA) vs. Air Force Naval Housing Board*<sup>25</sup> was faced with a dispute with regard to a housing society outside Delhi. A welfare association of owners of flats in a society in Noida, Uttar Pradesh invoked the writ jurisdiction of this Court in respect of execution of registration of sale deeds and sub-lease deeds. Although one of the respondents was located within the jurisdiction of this Court, the Division Bench declined jurisdiction for the following reasons:

*“13. The law as reflected by the above said decisions is that the emphasis has shifted from the residence or location of the person or authority sought to be proceeded against to the situs of the accrual of cause of action wholly or in part. It is also clear that a trivial or insignificant part of the cause of action arising at a particular place would not be enough to confer writ jurisdiction; it is the cause of action mainly and substantially arising at a place which would be determining factor of territorial jurisdiction. So also it shall have to be kept in view who are the real persons or authorities sought to be proceeded against or against whom the writ to be issued by the Court would run. Joining of proforma or ancillary parties, and certainly not the joining of unnecessary parties, would be relevant for the purpose of Article 226(1).*

*14. Reverting back to the case at hand, it is clear that the cause of action has wholly arisen in NOIDA within the State of U.P. The principal and substantial grievance of the petitioner association is against the respondents No. 2 and 3. The writ to be issued by the Court shall run against the respondents No. 2 and 3 though incidentally, the respondent No. 1 may also be required to be bound by the writ. The reverse is not correct. The writ, if any, to be issued by the Court would not serve any purpose if issued against respondent No. 1 alone....”<sup>26</sup>*

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<sup>24</sup> Supra (note 3).

<sup>25</sup> 1996 SCC OnLine Del 42.

<sup>26</sup> Emphasis supplied.



24. Following the above judgment, in *Indo Gulf Explosives Ltd. vs. U.P. State Industrial Development Corpn. (UPSIDC)*<sup>27</sup>, this Court declined jurisdiction in the case of a writ petition with regard to setting up of an industrial unit in the State of Uttar Pradesh.

22. Applying these judgments to the facts of the present case, the cause of action pleaded by the petitioner is against a communication issued in Gurugram. The petitioner's grievance is entirely in respect of electrification of its project in Gurugram by the Nigam, which serves Southern Haryana alone. The case is thus connected most intimately with the State of Haryana. The issuance of the letter dated 10.05.2016 from Delhi can, at best, be said to constitute a "*slender part of the cause of action*"<sup>28</sup> and cannot be determinative of the question as to whether this Court ought to entertain the petition. For the aforesaid reasons, I am of the view that this case falls within the narrow category of cases in which it is appropriate to invoke the doctrine of *forum conveniens*, and decline to exercise jurisdiction.

**D. Conclusion.**

23. The writ petition is therefore dismissed, with liberty to the petitioner to approach the appropriate Court on the same cause of action. The pending application is disposed of.

**PRATEEK JALAN, J**

**SEPTEMBER 27, 2023/ 'pv' /**

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<sup>27</sup> 1999 SCC OnLine Del 60.

<sup>28</sup> Supra (note 10); paragraph 21.