THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 02.07.2007

\+ **WP (C) 2103/2007**

JAYASWALS NECO LIMITED ...Petitioner

- versus -

UNION OF INDIA AND OTHERS ...Respondents

with

WP (C) 10480/2005

JAYASWALS NECO LIMITED ...Petitioner

- versus -

UNION OF INDIA AND OTHERS ...Respondents

with

WP (C) 10930/2005

JAYASWALS NECO LIMITED ...Petitioner

- versus -

UNION OF INDIA AND OTHERS ...Respondents

with

WP (C) 13144/2005

JAYASWALS NECO LIMITED ...Petitioner

- versus -

UNION OF INDIA AND OTHERS ...Respondents

with

WP (C) 19958/2005

JAYASWALS NECO LIMITED ...Petitioner

- versus -

UNION OF INDIA AND OTHERS ...Respondents

with

WP (C) 20189/2005

JAYASWALS NECO LIMITED ...Petitioner

- versus -

UNION OF INDIA AND OTHERS ...Respondents

with

WP (C) 2177/2007

SUNFLAG IRON & STEEL CO. LTD. ...Petitioner

- versus -

UNION OF INDIA AND OTHERS ...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Neeraj Kishan Kaul, Sr Advocate with Ms Sonia Dubey, Mr Biju Nayar, Ms Swati Grover, Mr Siddhartha Aggarwal, Mr Amit Kumar Singh and Ms Shikha Sarin

For the Respondent No.1. : Ms Manisha Dhir

For the Respondent Nos. 2 to 4: Ms Geetanjali Mohan

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

Judex tenetur impertiri judicium suum[1]

1 a judge must exercise jurisdiction in every case in which he is seized of it.

1. The issues raised in this batch of seven petitions pertain to the various letters of demand of punitive charges raised by the Railway Authorities in respect of alleged overloading of wagons. According to the petitioners, the demand for punitive charges must be made before the delivery of goods, otherwise they would not be in a position to challenge any weighment made by the Railways and would be obliged to pay any sum that is demanded by them. In these petitions, the demands have been raised after delivery of goods. The petitioners placed reliance on Sections 73 and 79 of the Railways Act, 1989.

2. The petitioners have also challenged para 1744 of the Indian Railways Commercial Manual as being violative of Section 79 of the Railways Act, 1989 inasmuch as it virtually takes away the statutory right of re-weighment. The said Indian Railway Commercial Manual has been formulated by the Railway Board constituted under the Indian Railway Board Act, 1905.

3. The petitioners have, therefore, essentially prayed for the quashing of the demand for punitive charges as well as for quashing of para 1744 of the Indian Railway Commercial Manual. On the other hand, the respondents have taken a strong objection to the maintainability of the present petitions on the ground that this Court lacks territorial jurisdiction to entertain these petitions. It is for this reason that the issue with regard to the territorial jurisdiction of this

court in these matters was heard as a preliminary issue and the same is being disposed of by the present judgment.

4. Ms Geetanjali Mohan, appearing on behalf of the respondents 2 to 4 (viz. the Railway authorities), referred to the jurisdiction paragraph in WP(C)2103/2007 to indicate as to how the petitioners sought to invoke the jurisdiction of this court. The paragraph in all the petitions is identical. The said paragraph reads as under:-

> "72. This Hon'ble Court has the jurisdiction to entertain this Writ Petition under Article 226 of the Constitution. The impugned demands have been issued, inter alia, by the Respondents from their offices situated within as well as outside the jurisdiction of this Hon'ble Court. The bills have been raised by the South East Central Railway, which is one of sixteen Railway zones constituted by the Central Government under Section 3 of the Railways Act, 1989. The general superintendence and control of a Zonal Railway is exercised by the Central Government. Thus, even on that score, this Hon'ble Court would possess the territorial jurisdiction to entertain the instant Writ Petition. In particular, it may be submitted that Respondent No.1 has framed paragraph 1744 of the IRCM within the jurisdiction and which has been challenged by the Petitioners herein. It may be submitted that the said paragraph is mandatorily required to be followed by all zonal Railways, including South East Railways. The said paragraphs admittedly having been framed by the Respondent No.1 within the jurisdiction of this Hon'ble Court, the present Writ Petition is maintainable."
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> (underlining added)

5. Ms Mohan submitted that all the demands of punitive charges have been raised by the Chief Station Manager, South East Central Railway, Mandhar, Chattisgarh. She submitted that not a single demand has been raised

in Delhi. She further submitted that the petitioners' registered office is situated in Nagpur, Maharashtra. Its integrated steel plant is at Sintara, Mandhar, Chattisgarh. The goods booked in all cases were at Noamundi (Jharkhand), Badampahar (Orissa), Visakhapatnam (Andhra Pradesh), Barbil (Orissa), Banspani (Orissa) and Jaroli (Orissa). The re-weighment of the goods en-route have been done at the Champa Weigh-Bridge (Chattisgarh) or at Simhachalam (Andhra Pradesh). The point of delivery of all the goods was Mandhar, Chattisgarh.

6. Ms Mohan, therefore, submitted that neither have the punitive demands been raised in Delhi nor have the goods been booked, re-weighed or delivered at Delhi. According to her, nothing has happened in Delhi in respect of the goods and, therefore, no part of the cause of action has arisen within the territorial limits of this court.

7. With regard to the challenge to para 1744 of the Indian Railway Commercial Manual, she submitted that although the same has been framed in Delhi by the Railway Board, this in itself would not give rise to a cause of action. The cause of action would arise only when and where the said paragraph effects a person. In other words, where the civil consequences are felt. Ms Mohan referred to the Supreme Court decision in the case of ***Union of India and Others v. Adani Exports Ltd and Another*****: 2002 (1) SCC 567**. With

reference to para 17 of the said decision, she submitted that for the purposes of determining its jurisdiction to entertain a writ petition, a High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. The Supreme Court also held that each and every fact pleaded in the petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial limits unless the facts pleaded are such that they have a nexus or relevance with the *lis* that is involved in the case. The facts which have no bearing with the *lis* or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. Based on these observations of the Supreme Court, Ms Mohan submitted that nothing has happened in Delhi with regard to the booking, weighment or delivery of the goods. In fact, even the demands for punitive charges have been raised outside Delhi. The petitioner's registered office is also not in Delhi and its integrated steel plant is at Mandhar, Chattisgarh. The dispute is with regard to the demands for punitive charges. None of the facts which have a nexus with this dispute have any relation to Delhi. Therefore, she pleaded that the writ petitions are not maintainable before this court.

8. She continued her submissions and placed strong reliance on the decision of the Supreme Court in the case of ***Kusum Ingots & Alloys Ltd v.***

Union of India and Another*: 2004 (6) SCC 254**. In the context of the challenge to para 1744 of the Indian Railway Commercial Manual, she referred to paragraphs 19, 20, 21 and 22 of the said decision to submit that the passing of a legislation by itself does not confer any right to file a writ petition unless a cause of action arises therefor, as observed in the said decision of the Supreme Court, "*if passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country, but it is not so done because the cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner"*. The Supreme Court observed that "*a writ court would not determine a constitutional question in a vacuum and that the court must have the requisite territorial jurisdiction"*. With further reference to the decision in ***Kusum Ingots *(supra)*, Ms Mohan submitted that a writ petition questioning the constitutionality of a Parliamentary Act shall not be maintainable in the High Court of Delhi "only" because the seat of the Union of India is in Delhi. Drawing analogy from this, she submitted that para 1744 of the Indian Railway Commercial Manual cannot be questioned in a writ petition in this High Court only because the seat of the Railway Board which formulated the said Manual is in Delhi. She finally referred to para 26 of the decision in ***Kusum Ingots*** *(supra)* wherein it is observed as under:-

> ".... In fact, a legislation, it is trite, is not confined to a statute enacted by Parliament or the Legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instructions issued in this behalf shall also come with within the purview thereof. Situs of office of the Parliament, Legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof. "
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> (underlining added)

9. She also made a passing reference to the decision of the Supreme Court in the case of ***M/s Patel Roadways Limited v. M/s Prasad Trading Company*****: AIR 1992 SC 1514** which pertains to Section 20 of the Code of Civil Procedure, 1908. However, since Section 20 CPC is not applicable, that need not be elaborated upon.

10. Lastly, she referred to a decision of a Division Bench of this court in the case of ***Ex. Rect./GD Vinod Kumar v. Union of India and Others*****: 2007 (I) AD (Delhi) 284**. She referred to paragraphs 12, 13, 14 and 15 of the said decision. She placed particular emphasis on the following passages from the said decision:-

> "14. However, in the later judgments, the Supreme Court has unambiguously taken the view that even if the seat of the Government or the concerned department is located within the territorial jurisdiction of the court, but no cause of action or any fraction or part thereof has arisen within the jurisdiction of that court, the court may not answer the issue of jurisdiction in favour of the petitioner. Constitutional

mandate is that the High Court would exercise jurisdiction in relation to the territories of which it is the High Court. Clauses (1) and (2) of Article 226 have to be read and construed in conjunction with each other but none of them would be capable of extending jurisdiction of the court normally beyond its prescribed territorial jurisdiction. To take benefit of this enlarged jurisdiction, it would be obligatory upon a petitioner to show that any cause of action or part thereof had arisen within the territorial jurisdiction of that court.

15. We are dealing with the cases where the Forces are operating under Special Statues like Army Act, CRPF Act, CISF Act & BSF Acts. These Acts have an inbuilt remedial system. They provide for statutory appeal provisions and representations. In fact, any order passed can be complained of to the higher authorities under the provisions of the Act. In the event, all these authorities are located beyond the territorial jurisdiction of the court and the petitioner has exhausted such remedies, then he can hardly invoke the jurisdiction of the court on the ground that the central or main office or seat of the department is located within the jurisdiction of this Court. Such an interpretation would result in prolongation of cases and also cause prejudice to the parties. The records of all the authorities whose jurisdiction the petitioner might have invoked during the pendency of departmental action or proceedings would be available in the offices of the authorities beyond the local limits of the court. We have already noticed that expeditious disposal is one of the underlining features of the amended provisions of Article 226 and to ensure balancing of convenience between the parties to the *lis*, it may be appropriate that the courts determine the question of jurisdiction at the very threshold of the proceedings. Proper exercise of jurisdiction would *ex facie* take in its ambit remedies which are effective and efficacious. If both or any of these ingredients are not satisfied, it would be a factor which will tilt the view of the court against exercising its jurisdiction. The court is expected to deal with the issue of jurisdiction right at the initial stages and normally while taking the petition as framed to be correct. Article 226 (2) opens with the words "The power conferred by Clause (1) to

> issue directions...” which clearly indicates amplification of jurisdiction and that the provision is meant to aid the powers vested in the High Court for issuance of writ, order or direction located within their territorial jurisdiction. The expression 'may also' would have to be given their true meaning while ensuring that such connotations are in consonance with the law enunciated by the Supreme Court and also spirit of constitutional territorial jurisdiction of a High Court.”
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> (underlining added)

11. Mr Neeraj Kishan Kaul, the learned senior counsel appearing on behalf of the petitioner, submitted that till date the Constitution Bench decision in the case of ***Lt. Col. Khajoor Singh v. Union of India & Another*****: AIR 1961 SC 532 = 1961 (2) SCR 828** with regard to Article 226 (1) is good law. He submitted that in ***Khajoor Singh****'s* case, it has been held that the High Court within whose limits the order is passed will have jurisdiction to entertain a writ petition *de hors* the question of where the cause of action arose. He submitted that the focus in Article 226 (1) of the Constitution is on the location of the authority or person or government to whom the writ is to be issued. He further submitted that Article 226 (2) which was introduced as sub-Article (1A) by virtue of the 15th amendment to the Constitution in 1963 and was subsequently renumbered as sub-Article (2) by virtue of the 42nd Amendment, is not a curtailment of the territorial jurisdiction of the High Courts, but an amplification of the same. The introduction of cause of action provides the High Courts with a sort of an extension of their territorial jurisdiction insofar as

writ petitions are concerned. He submitted that the decisions relied upon by Ms Mohan in the case of ***Adani Exports*** *(supra)*, ***Kusum Ingots*** *(supra)* and ***Ex. Rect. Vinod Kumar*** *(supra)* all relate to Article 226 (2) and not to Article 226 (1) which has not been effaced.

12. Mr Kaul submitted that the issue has been dealt with succinctly by a learned single Judge of this court (B.N. Kirpal, J, as he then was) in the case of ***Girwar v. Union of India and Others*****: 1982 (2) All India Service Law Journal 56**. It was observed by the learned single Judge that Article 226 (2) is in addition to Article 226 (1). Para 12 of the said decision is relevant and the same is reproduced hereinbelow:-

> "12. At the time of arguments Mr. Dhir has raised a contention that this Court has no territorial jurisdiction. His contention is that the cause of action arose in Rajasthan and, therefore, by virtue of sub-Article (2) of Article 226 it is only that Court which has the jurisdiction. I am unable to agree with this contention. Under Article 226 (1) this Court has jurisdiction to issue writ against the Union of India. Prior to the insertion of sub-Article (2) it was only the Punjab High Court, at that time, which had the jurisdiction to issue writs to Union of India as had been held by the Supreme Court in the case of *Election Commission, India, v. Saka Venkata Subba Rao: 1953 S.C.R. 1144* and *K.S. Rashid and Son v. The Income-tax Investigation Commission, etc.: 1954 S.C.R. 738.* At that time some of the High Courts were of the opinion that where the cause of action arose writ petition could be filed in those High Courts also. This view was not approved by the Supreme Court. Subsequently Article 226 was amended and sub-Article (2) was inserted. In the statement of objects and reasons as well as in the notes on clauses it was stated that the amendment was being made so that when any relief sought against any Government the High

> Court within whose jurisdiction the cause of action arose may also have jurisdiction to issue appropriate directions, writs or orders. It is for this reason that in sub-Article (2) the word used is "also" which clearly shows that the jurisdiction conferred by sub-Article (2) in addition to the jurisdiction conferred on the Courts under Article 226(1). In other words, with regard to writ petitions against the Union of India it is not only the High Court within whose jurisdiction the cause of action arose which would have jurisdiction to entertain the petition but this Court would also have jurisdiction to entertain such a petition under Article 226 (1). The jurisdiction of this Court is not ousted by reason of the insertion of sub-Article (2) of Article 226."
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> (underlining added)

13. Mr Kaul then referred to the Supreme Court decision in the case of ***Navinchandra N. Majithia v. State of Maharashtra and Others*: 2000 (7) SCC 640** to submit that Article 226 (2) widened the width of the area for issuance of writs by different High Courts. He referred to paragraphs 34 to 37 thereof which chronicle the events leading to the introduction of Article 226 (2).

14. Mr Kaul then referred to the decision in the case of ***Khajoor Singh*** *(supra)* to submit that the seat of the Government of India is in Delhi as it is located in Delhi and that so far as an authority is concerned, there can be no doubt that if its office is located within the territory of the court, then, since the writ is to be issued to such an authority, that court would have jurisdiction. Jurisdiction depends only on the location of the person or authority against

whom the writ is sought. It must be remembered that ***Khajoor Singh's*** decision was rendered at a time when Article 226 (2) in its present form was not there and was based on an interpretation of Article 226 (1) alone in the absence of the extended meaning given by Article 226 (2) by the introduction of the concept of cause of action. It is in this context that the Supreme Court, in ***Khajoor Singh*** *(supra),* held that the view taken in ***Election Commission, India v. Saka Venkata Subba Rao*****: 1953 SCR 1144** and ***K.S. Rashid & Son v. The Income Tax Investigation Commission, etc.*****: 1954 SCR 738** was correct. The Supreme Court had held in those decisions that there is a two-fold limitation on the power of High Courts to issue writs under Article 226, namely**,** (i) the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the court cannot run beyond the territories subject to its jurisdiction and; (ii) the person or authority to whom the High Court is empowered to issue such writs must be "within those territories" which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories. Mr Kaul submitted that the first limitation has been done away with, subsequently, by the introduction of Article 226 (2) which introduces the element of cause of action. He submitted that prior to the 15th Amendment to the Constitution, the High Court could only issue writs to persons or authorities or Governments which were located within the territories of those High Courts, but after the 15th Amendment to the Constitution, High Courts could even issue writs to persons,

authorities or governments which were not located within their territories provided the cause of action, in whole or in part, arose within the territory over which the High Courts normally exercised jurisdiction. He submitted that there is an apparent conflict between the decisions of the Supreme Court in the case of ***Kusum Ingots*** *(supra)* and ***Khajoor Singh*** *(supra)* but, this can be easily reconciled by reference to the decision of the Supreme Court in the case of ***Navinchandra Majithia*** *(supra)* which has clarified that the introduction of Article 226 (2) is to be regarded as a widening of the arena of territorial jurisdiction of the High Courts. He further submitted that the decision in ***Kusum Ingots*** *(supra)* was entirely with reference to Article 226 (2), whereas the decision in ***Khajoor Singh's*** case would have bearing only on Article 226 (1).

15. Mr Kaul, with reference to the Division Bench decision of this court in the case of ***Vinod Kumar*** *(supra),* submitted that the said decision was contrary to the decisions of the Supreme Court and, in any event, was on different facts. He submitted that there has been some confusion with regard to the concept of cause of action. The question of cause of action, according to Mr Kaul, arises only in the context of Article 226 (2) and has no relevance under Article 226 (1). If the person, authority or government to whom the writ is to be issued is located within the territory of a High Court, then the question of where the cause of action arose is irrelevant. The High Court would have

jurisdiction to entertain such writ petitions. However, if the person, authority or government to whom the writ is to be issued is located outside the normal territorial limits over which the High Court exercises jurisdiction, then the question of where the cause of action arose comes into prominence. If the whole or part of cause of action arose within the jurisdiction of the High Court, then, even if the person, authority or government to whom the writ is to be issued was outside the jurisdictional territory of the State over which the High Court presides, a writ could still be issued and a writ petition seeking such a writ would be maintainable.

16. On a pointed question as to whom is the writ to be issued in the present petitions, Mr Kaul replied that insofar as the question of challenge to para 1744 of the Indian Railways Commercial Manual is concerned, the writ is to be issued to the Railway Board / Union of India, both of which are located in Delhi. Insofar as the demands for punitive charges are concerned, the writs are to be issued to the South East Central Railway which, of course, is not located in Delhi, but since the demands are based on para 1744 of the Indian Railways Commercial Manual which have been framed by the Railway Board, this court would have jurisdiction.

17. In rejoinder, Ms Mohan reiterated her earlier submissions and also referred to para 30 of the decision in the case of ***Kusum Ingots*** *(supra)* which pertains to *forum conveniens* and the same reads as under:-

> "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 Bhagar Singh Bagga v. Dewan Jagbir Sawhany, AIR 1941 Cal; Mandal Jalan v. Madanlal,; Bharat Coking Coal Limited v. Jharia Talkies & Cold Storage Pvt. Ltd.; S.S. Jain & Co. and Anr. v. Union of India and Ors. (1994) CHN 445; New Horizon Ltd. v. Union of India, AIR 1994 Del 126)."

In this context, she submitted that the entire record is with the South East Central Railway, the Headquarters of which are at Bilaspur, Chattisgarh. To this, Mr Kaul immediately retorted that the concept of *forum conveniens* is also relatable to the situs of cause of action and Article 226 (2), whereas he is invoking the jurisdiction of this court on the basis of Article 226 (1).

18. In the context of the arguments advanced by the counsel for the parties, it would be appropriate if the genesis of the High Courts' territorial jurisdiction under Article 226 is traced from its inception. Article 226 of the Constitution originally read as under:-

> "226. (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 on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."
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> (underlining added)

This came up for consideration in the case of ***Election Commission, India v. Saka Venkata Subba Rao*** *(supra)*. In that case, the Madras High Court had issued a writ of prohibition restraining the Election Commission, a statutory authority located at New Delhi, from enquiring into the alleged disqualification of the respondent for membership to the Madras Legislative Assembly. The Constitution Bench of the Supreme Court held that the Madras High Court did not have the power to issue such a writ. The court observed that *"the rule that cause of action attracts jurisdiction in suits is based on a statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises, but insists on the presence of the person or authority 'within the territories' in relation to which the High Court exercises jurisdiction"*. The argument of inconvenience was also not accepted because the plain meaning of Article 226 was clear. In ***Hari Vishnu Kamath v. Syed Ahmed Ishaque & Others:*** **1955 (1) SCR 1104**, a 7 Judge Bench of the Supreme Court observed that:-

> "jurisdiction to issue writ is co-extensive with the territorial jurisdiction of the court."

19. Two questions were raised before the Supreme Court in the case of ***Khajoor Singh*** *(supra)* in the following terms:-

> "The two main questions which arise, therefore, are : (i) whether the Government of India as such can be said to have a location in a particular place, viz., New Delhi, irrespective of the fact that its authority extends over all the States and its officers function throughout India, and (ii) whether there is any scope for introducing the concept of cause of action as the basis of exercise of jurisdiction under Art.226."

The Supreme Court in respect of the first question observed as under:-

> "This brings us to the first question, namely, whether the Government of India as such can be said to be located at one place, namely, New Delhi. The main argument in this connection is that the Government of India is all-pervasive and is functioning throughout the territory of India and therefore every High Court has power to issue a writ against it, as it must be presumed to be located within the territorial jurisdiction of all State High Courts. This argument in our opinion confuses the concept of location of a Government with the concept of its functioning. A Government may be functioning all over a State or all over India; but it certainly is not located all over the State or all over India. It is true that the Constitution has not provided that the seat of the Government of India will be at New Delhi. That, however, does not mean that the Government of India as such has no seat where it is located. It is common knowledge that the seat of the Government of India is in New Delhi and the Government as such is located in New Delhi. The absence of a provision in the Constitution can make no difference to this fact. What we have to see, therefore, is whether the words of Art.226 mean that the person or authority to whom a writ is to be issued has to be resident in or located within the territories of the High Court issuing the writ ? The relevant words of Art.226 are these -

"Every High Court shall have power... to issue to any person or authority... within those territories....". So far as a natural person is concerned, there can be no doubt that he can be within those territories only if he resides therein either permanently or temporarily. So far as an authority is concerned, there can be no doubt that if its office is located therein it must be within the territory. But do these words mean with respect to an authority that even though its office is not located within those territories it will be within those territories because its order may affect persons living in those territories ? Now it is clear that the jurisdiction conferred on the High Court by Art. 226 does not depend upon the residence or location of the person applying to it for relief; it depends only on the person or authority against whom a writ is sought being within those territories. It seems to us therefore that it is not permissible to read in Art. 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Art. 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Art. 226. The introduction of such a concept may give rise to confusion and conflict of jurisdictions. ....”

(underlining added)

The Supreme Court also observed as under:-

“Therefore, the effect of an order by whomsoever it is passed can have no relevance in determining the jurisdiction of the High Court which can take action under Art. 226. Now, functioning of a Government is really nothing other than

> giving effect to the orders passed by it. Therefore it would not be right to introduce in Art. 226 the concept of the functioning of Government when determining the meaning of the words "any person or authority within those territories". By introducing the concept of functioning in these words we shall be creating the same conflict which would arise if the concept of the place where the order is to have effect is introduced in Art. 226. There can, therefore, be no escape from the conclusion that these words in Art. 226 refer not to the place where the Government may be functioning but only to the place where the person or authority is either resident or is located. So far therefore as a natural person is concerned, he is within those territories if he resides there permanently or temporarily. So far as an authority (other than a Government) is concerned, it is within the territories if its office is located there. So far as a Government is concerned it is within the territories only if its seat is within those territories."
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> (underlining added)

The first question was, therefore, conclusively answered by the Supreme Court in the following manner:-

> "The seat of a Government is sometimes mentioned in the Constitutions of various countries but many a time the seat is not so mentioned. But whether the seat of a Government is mentioned in the Constitution or not, there is undoubtedly a seat from which the Government as such functions as a fact. What Art. 226 requires is residence or location as a fact and if therefore there is a seat from which the Government functions as a fact even though that seat is not mentioned in the Constitution the High Court within whose territories that seat is located will be the High Court having jurisdiction under Art. 226 so far as the orders of the Government as such are concerned. Therefore, the view taken in Election Commission, India v. Saka Venkata Subba Rao ([1953] S.C.R. 1144.) and K. S. Rashid and Son v. The Income-tax Investigation Commission ([1954] S.C.R. 738.) that there is two-fold limitation on the power of the High Court to issue writs etc. under Art. 226, namely, (i) the power is to be exercised 'throughout the territories in

> relation to which it exercises jurisdiction', that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction, and (ii) the person or authority to whom the High Court is empowered to issue such writs must be "within those territories" which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories, is the correct one."
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> (underlining added)

As regards the second question in respect of cause of action, the Supreme Court held:-

> "Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Art. 226 are not suits; they provide for extraordinary remedies by a special procedure and give powers of correction to the High Court over persons and authorities and these special powers have to be exercised within the limits set for them. These two limitations have already been indicated by us above and one of them is that the person or authority concerned must be within the territories over which the High Court exercises jurisdiction. Is it possible then to overlook this constitutional limitation and say that the High Court can issue a writ against a person or authority even though it may not be within its territories simply because the cause of action has arisen within those territories ? It seems to us that it would be going in the face of the express provision in Art. 226 and doing away with an express limitation contained therein if the concept of cause of action were to be introduced in it.....
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> ....The concept of cause of action cannot in our opinion be introduced in Art. 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to person residing far away from New Delhi who are aggrieved by

> some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Art. 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Art. 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it."
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> (underlining added)

The position of law as obtaining after the decision of the Supreme Court in ***Khajoor Singh*** *(supra)* was that the place where the cause of action arose had no relevance for determining the territorial jurisdiction of the High Court. The only thing that was relevant was where the person, authority or government to whom the writ was to be issued was located. If the location was within the territory over which the High Court exercised jurisdiction, then such High Court would have territorial jurisdiction, but if the person, authority or government was located outside the territory over which the High Court had the jurisdiction, then a writ petition in respect of such person, authority or government was not maintainable before such High Court. It is interesting to observe that there was an indication given in the decision in ***Khajoor Singh*** *(supra)* with regard to the inconvenience argument that *"if any inconvenience is felt on account of this interpretation of Article 226, the remedy seems to be a constitutional amendment.*"

20. After the decision in the case of ***Khajoor Singh*** *(supra)*, the 15th Amendment to the Constitution introduced clause (1-A) to Article 226 which was subsequently renumbered as clause (2) by the Constitution 42nd Amendment and which now reads as under:-

> "226 (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."
>
> (underlining added)

This amendment introduced the concept of cause of action which the Supreme Court had earlier refused to read into Article 226 (1). However, this does not mean that the concept of territorial jurisdiction under Article 226 (1) was supplanted by Article 226 (2). The decision of the Supreme Court in ***Election Commission, India v. Saka Venkata Subba Rao*** *(supra)* and ***Khajoor Singh*** *(supra)* were rendered in the context of Article 226 (1) and in the absence of any provisions of the nature of Article 226 (2). The introduction of Article 226 (2), as observed in the case of ***Navinchandra N. Majithia*** *(supra)* widened the width of the area in respect of writs issued by different High Courts. In fact, Article 226(2) can be construed as an exception to the limitations mentioned in ***Election Commission, India*** *(supra)* and approved in ***Khajoor Singh*** *(supra)*. The power conferred on the High Courts under Article 226 could now be as

well exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, in whole or in part, arose and it was no matter that the seat of the authority concerned was outside the territorial limits of the jurisdiction of that High Court. This distinction between the provisions of Article 226 (1) and 226 (2) has to be maintained. While Article 226 (1) empowers a High Court to issue writs to a person, authority or government within its territorial limits *de hors* the question of where the cause of action arose, Article 226 (2) enables High Courts to issue writs to persons, authorities or governments located beyond its territorial limits provided a cause of action arises (in whole or in part) within the territorial extent of the said High Court. What Article 226 (2) has done is to extend the jurisdiction of the High Courts beyond their territories in cases where part of the cause of action arises within its territories. Therefore, Article 226 (2) extends and does not supplant Article 226 (1). The decision of the Supreme Court in the case of ***State of Rajasthan and Ors. v. Swaika Properties and Anr.*:1985 (3) SCC 217**, ***Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors.***: **1994 (4) SCC 711** as well as ***Adani Exports*** *(supra)* and ***Kusum Ingots*** *(supra)* all pertain to Article 226 (2) of the Constitution and have reference to the question of cause of action. It is true, as observed in ***Kusum Ingots*** *(supra)*, that the decision in ***Khajoor Singh*** *(supra)* would not be relevant insofar as the argument of cause of action is concerned inasmuch as ***Khajoor Singh*** *(supra)* was a decision rendered prior to the 15th Amendment of the Constitution. But, this does not

mean that what ***Khajoor Singh*** *(supra)* has decided in respect of Article 226 (1) can be whittled down or ignored. That is a decision of seven judges of the Supreme Court and, with regard to the provisions of Article 226 (1), it is definitive.

21. To illustrate the scope of territorial jurisdiction under Article 226, the following table may be referred to:-

S.No.	**Where is the Seat of Government or authority or residence of person to whom the writ is to be issued ?**	**Where does the Cause of action (whole or in part) arise ?**	**Which High Court would have jurisdiction ?**
1.	A	A	A [By virtue of Article 226 (1) as well as Article 226 (2)]
2.	A	B	A [Under Article 226 (1)] and B [Under Article 226 (2)]
3.	B	A	A [Under Article 226 (2)] and B [Under Article 226 (1)]
4.	B	B	B [Under Article 226 (1) as well as Article 226 (2)

An explanation of the above table is necessary. For the purpose of demonstrating the territorial jurisdiction of two High Courts in State 'A' and

State 'B', there are four possible situations[2] which have been set out in the table above. At S.No. 1, the person, authority or government to whom the writ is to be issued is located in State 'A'. The cause of action has also arisen in whole or in part in State 'A'. Therefore, it is the High Court of State 'A' alone which has jurisdiction both under Article 226 (1) as well as under Article 226 (2). In the case of S.No.2, the person, authority or government is located in State 'A', but the cause of action has arisen (in whole or in part) in State 'B', the territorial jurisdiction for the filing of a writ petition would lie both with the High Court of State 'A' and of State 'B'. The High Court of State 'A' would have jurisdiction by virtue of Article 226 (1) inasmuch as the location of the person, authority or government to whom the writ is to be issued is within that State. The High Court of State 'B' would have jurisdiction because, although the location of the person, authority or government is in State 'A', the cause of action (in whole or in part) has arisen in State 'B'. The next case is given under S.No.3. Here the location of the person, authority or government is in State 'B', but the cause of action has arisen in State 'A'. In such a situation, both the High Courts of State 'A' and 'B' would have jurisdiction. But the High Court of State 'A' would have jurisdiction under Article 226 (2) on account of cause of action and the High Court of State 'B' would have jurisdiction by virtue of Article 226 (1) on account of location. Lastly, at S.No.4 is a case which is the inverse of

2 On the assumption that there are two States 'A' and 'B' and that the seat of Government or location of the Authority or the residence of the person to whom the writ is to be issued is in either State 'A' or State 'B'. It is also assumed that cause of action also arises either in State 'A' or State 'B'. Relaxation of these assumptions would not make any difference to the analysis.

the situation in S.No.1, both the location and the cause of action arise in State 'B'. Therefore, it would be the High Court of State 'B' alone which would have jurisdiction to entertain the writ petition both under Article 226 (1) and 226 (2).

22. This clarifies the position with regard to the territorial jurisdiction of a High Court in respect of a writ petition.

23. In ***Kusum Ingots*** *(supra),* the Supreme Court was considering the question whether the seat of Parliament or the Legislature of a State would be a relevant factor for determining the territorial jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution of India. The facts of the case were that a company registered under the Indian Companies Act having its registered office at Mumbai obtained a loan from the Bhopal Branch of the State Bank of India. A notice for repayment of the said loan was issued from Bhopal in terms of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Questioning the vires of the said Act, the writ petition was filed before the Delhi High Court by the said company which was dismissed by the High Court on the ground of lack of territorial jurisdiction. It was contended on behalf of the company that the High Court at Delhi had the requisite jurisdiction because the constitutionality of a Parliamentary Act was in

question. While repelling this argument, the Supreme Court made the following observations:-

> "19. Passing of a legislation by itself in our opinion do not confer any such right to file a writ petition unless a cause of action arises therefor.
>
> 20. A distinction between a legislation and executive action should be borne in mind while determining the said question.
>
> 21. A parliamentary legislation when receives the assent of the President of India and published in an Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled would not determine a constitutional question in vacuum.
>
> 22. The court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act."
>
> (underlining added)

24. The above observations indicate three things. Firstly, the passing of a legislation does not in itself give rise to a cause of action. Secondly, no writ can be entertained and no constitutional question can be determined in a vacuum, that is to say, in the absence of a cause of action. Thirdly, an order

passed in a writ petition questioning the constitutionality of a Parliamentary Act will have effect throughout the territory of India. No exception can be taken to these observations. But, they must be understood in the proper context. The first two observations indicate that before a petitioner approaches a High Court for the issuance of a writ, he must have a cause of action. The mere passing of a legislation does not provide a cause of action in itself. Unless the effect of the legislation is felt by the petitioner in the form of some consequences personal to him, he would not have a cause of action to challenge the legislation. And, unless the petition is founded on a cause of action, the High Court would not entertain the petition in a "vacuum". This is all that is said in paragraphs 19 to 22 of the decision in ***Kusum Ingots*** *(supra)*. In my respectful view, so far as these observations go, nothing is said about the place where the cause of action arises. They relate merely to the circumstance that there must be "a" cause of action before a legislation can be questioned in Court.

25. However, the Supreme Court also made the following observations with regard to the situs of office of the respondents:-

> "23. A writ petition, however, questioning the constitutionality of a Parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. (See *Abdul Kafi Khan v. Union of India and Ors.:AIR 1979 Cal 354)*
> xxxx xxxx xxxx xxxx xxxx
>
> 26. ...Situs of office of Parliament, legislature of a State or authorities empowered to make subordinate

> legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof."
> (underlining added)

The observation that 'a writ petition questioning the constitutionality of a Parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi' is apparently based upon the decision of a single judge of the Calcutta High Court in the case of ***Abdul Kafi Khan*** *(supra)*. Though the constitutional validity of a Parliamentary Act was not in challenge in that case, an examination of the said decision reveals that the petitioner therein had impeached the charge-sheet, enquiry report and show cause notice issued to him by Railway authorities in Bihar in the course of disciplinary proceedings. The court held that it would not have territorial jurisdiction to entertain the writ petition merely because the head office of the Railway was located in Calcutta when the cause of action (in whole or in part) did not arise within its territorial jurisdiction.

26. Furthermore, the observation must be construed as meaning that merely because the seat of the Union of India is in Delhi, a writ petition cannot be filed in the Delhi High Court challenging the constitutionality of a Central Act unless a cause of action has arisen for the same. As I see it, it does not matter where the cause of action arises. Once it arises, Delhi High Court would

have territorial jurisdiction. It is of course true that if the cause of action arises (in whole or in part) in another State, the Central Act could be challenged in the High Court of that State also.

27. With regard to the 'conflict', as Mr Kaul termed it, between ***Kusum Ingots*** *(supra)* and ***Khajoor Singh*** *(supra)*, there is no doubt that if there were such a 'conflict', the decision in ***Khajoor Singh*** *(supra)* would prevail as it was of a larger bench. But, it must be remembered that what ***Khajoor Singh*** *(supra)* held with regard to the place where an order has effect was in the context of the 'cause of action' argument. Clearly, the place where the cause of action arose was not a relevant consideration then (i.e., prior to the 15th Amendment). That part of ***Khajoor Singh*** *(supra)* with regard 'the place of cause of action' argument has no relevance now in view of Article 226 (2) introduced subsequently. But, this does not mean that what the Supreme Court held in ***Khajoor Singh*** *(supra)* and the earlier decisions with regard to Article 226 (1) has been washed away. The only difference made by the 15th Amendment is that location of the seat of Government or authority or residence of the person to whom the writ is to be issued, is not the sole criterion for conferring territorial jurisdiction and writs may also issue to governments, authorities or persons outside the territory of a High Court provided the cause of action (in whole or in part) arises within the limits of the normal territorial extent of the High Court. Not a single decision of the Supreme Court has been

pointed out which goes to the extent of saying that ***Khajoor Singh*** *(supra)* has been superseded in its entirety by the 15th Amendment. The change, as pointed out above, is that location is not the sole criterion and place of cause of action may also confer jurisdiction. It cannot be construed that place of cause of action alone will confer territorial jurisdiction. If it were to be so construed, it would mean that Article 226 (2) was not in extension of the powers under Article 226 (1) but in annihilation thereof. That was certainly not the intent.

28. It would be fruitful to refer to the Statement of Objects and Reasons appended to the Constitution (Fifteenth Amendment) Bill, 1962. With regard to the amendment in Article 226, the following statement is relevant:-

> "Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226 so that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arise may also have jurisdiction to issue appropriate directions, orders or writs."
>
> (underlining added)

The crucial words are "only" and "may also". The object was not to take away the jurisdiction of the High Courts which they had prior to the introduction of the amendment but, to enable other High Courts to also have jurisdiction provided the cause of action arose within their normal jurisdictional precincts.

29. The same view is taken in the celebrated text—***Constitutional Law of India***: ***H.M. Seervai: Fourth Edition: Volume 2, pages 1598***:-

> "The newly added sub-Article (1A) to Article 226 226 introduces an *additional* basis of jurisdiction, namely, the whole or in part of a cause of action arising within the jurisdiction of a court. This is clear from the use of the words, 'the power conferred by clause (1) ... *may also* be exercised...' Therefore jurisdiction to issue writs can be exercised (i) by a court within whose jurisdiction a person or authority (including, in appropriate cases, any government) resides or is located, and (ii) *also* by a court within whose jurisdiction the cause of action wholly or in part arises, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories."

30. Recently in ***Alchemist Limited and Another v. State Bank of Sikkim and Others: JT 2007 (4) SC 474***, the Supreme Court traced the legislative history of Article 226 (2) of the Constitution. It observed that the effect of the decisions in the case of ***Election Commission, India v. Saka Venkata Rao*** *(supra)* and ***Khajoor Singh v. Union of India*** *(supra)* was that no High Court other than the High Court of Punjab (before the establishment of the High Court of Delhi) had jurisdiction to issue any direction, order or writ to the Union of India, because the seat of the Government of India was located in New Delhi. Cause of action was a concept totally irrelevant and alien for conferring jurisdiction on High Court under Article 226 of the Constitution. The Court further observed that the earlier decisions had repelled the attempt to

import such a concept. It is in these circumstances that Article 226 was amended by the Constitution (15th amendment) Act, 1963. In ***Alchemist Ltd.*** *(supra)*, the Supreme Court also referred to the Statement of Objects and Reasons and highlighted and emphasised the following words:-

> "..... the High Court within whose jurisdiction the cause of action arise may also have jurisdiction to issue appropriate directions, orders or writs."

In this background the Supreme Court held:-

> "22. The effect of the amendment was that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under Article 226 of the Constitution."
>
> (underlining added)

Thus, it is clear that Article 226 (2) is in addition to Article 226 (1), implying thereby that the High Court within whose territorial limits the person, authority or government is located would have jurisdiction to entertain a writ petition directed against any of them irrespective of the fact as to where cause of action arose, provided that there was a cause of action for filing a writ petition. Additionally, High Courts within whose limits the person, authority or government to whom the writ is to be issued, is not located can also issue writs to such person, authority or government provided the cause of action, in whole or in part, arose within their territories.

31. Furthermore, in ***Mosaraf Hossain Khan v. Bhageeratha Engg. Ltd*: (2006) 3 SCC 658**, the Supreme Court explained what was held by them in ***Kusum Ingots*** *(supra)* in the following words:-

> "In that case it was clearly held that only because the High Court within whose jurisdiction a legislation is passed, it would not have the sole territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction."
>
> (underlining added)

By the use of the word 'sole', the Supreme Court clearly meant that the High Court within whose jurisdiction a legislation is passed would have jurisdiction though not necessarily the sole jurisdiction as other High Courts where the cause of action arose would also have jurisdiction. So, ***Navinchandra N. Majithia*** *(supra)*, ***Kusum Ingots*** *(supra)*, ***Mosaraf Hossain Khan*** *(supra)* and ***Alchemist Limited*** *(supra)* all say that Article 226 (2) is an extension of or in addition to the jurisdiction conferred under Article 226(1). The "discordant" note that was sought to be highlighted by counsel in the case of ***Kusum Ingots*** *(supra)* is only virtual, not real. Its true meaning having been explained in ***Mosaraf Hossain Khan*** *(supra)*.

32. The decision of a Division Bench of this Court in the Case of ***GD Vinod Kumar*** *(supra)* has to be read in the light of the interpretation of Article 226 (1) and 226 (2) as given by the Supreme Court. That interpretation has already been explained above. It may also be pointed out that Mr Kaul was

right in submitting that the said decision turned on its own facts and was inapplicable to the situation at hand. This would be clear from examining para 15 of the said decision which has been extracted earlier in this judgment wherein the Division Bench observed that they were dealing with cases where the forces were operating under special statutes like the Army Act, CRPF Act, CISF Act and BSF Act and that these Acts had inbuilt remedial systems as they provide for statutory appeal provisions and representations. Any order passed could be complained of before a higher / appellate authority under the provisions of the said Acts. As such, it was held, in the event such authorities were located beyond the territorial jurisdiction of the Court and the petitioner had exhausted such remedies, then he could hardly invoke the jurisdiction of the Court on the ground that the central or main office or seat of the department was located within the jurisdiction of the Court. This finding clearly demonstrates that the case before the Division Bench was decided on its special facts, which have no application to the present petitions. It may be also mentioned that the decision in ***Mosaraf Hossain Khan*** *(supra)* and ***Alchemist Ltd.*** *(supra)* were not noticed by the Division Bench.

33. Ms Mohan had placed reliance on the concept of *forum conveniens* to submit that, in any event, the Delhi High Court was not a 'convenient' forum. This is an argument different and distinct from the 'competency' argument. The application of the principle of *forum conveniens* assumes that the Court has

jurisdiction. In ***Kusum Ingots*** *(supra)*, the Supreme Court also underlined the use of the doctrine of *forum conveniens* and observed that *"in appropriate cases, the court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens"*.[3] It is apparent that *forum conveniens* was one of the factors which was taken into account by the Supreme Court in ***Kusum Ingots*** *(supra)* with regard to upholding the decision of the Delhi High Court in dismissing the writ petition. But, invocation of the doctrine of *forum conveniens* or *forum non conveniens* (as it is more common and interchangeably referred to) presupposes that the court refusing to entertain a case on the basis of this doctrine, otherwise has jurisdiction. This is another indication that in ***Kusum Ingots*** *(supra)*, the Supreme Court did not take the view that the Delhi High Court did not at all have any jurisdiction to entertain the writ petition. But, that it was not an appropriate forum inasmuch as nothing had happened in Delhi apart from the passing of the legislation by Parliament.

34. On the basis of the above discussion, it can be safely said that ***Kusum Ingots*** *(supra),* was definitive with regard to the following:-

3 A similar observation is to be found in Mosaraf Hossain Khan v. Bhageeratha Engg. Ltd: (2006) 3 SCC 658. The Supreme Court observed:-

> "The High Courts, however, must remind themselves about the doctrine of forum non conveniens also."

(1) Passing of a legislation by itself does not confer any right to file a writ petition unless a cause of action arises therefor.[4] [See: ***Kusum Ingots*** *(supra)*: para 19].

(2) Situs of office of Parliament, legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action.[5] [See ***Kusum Ingots*** *(supra)*: para 26].

(3) The High Court within whose jurisdiction a legislation is passed, would not have the sole territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction. [See: ***Mosaraf Hossain Khan*** *(supra)*: para 26].

(4) The question as to whether the court has a territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial. [See: ***Kusum Ingots*** *(supra)*: para 12 with reference to ***ONGC v. Utpal Kumar Basu*****: 1994 (4) SCC 711**].

4 Accrual of a cause of action is a pre-condition for filing a writ petition. But, this has nothing to do with where the cause of action arose. With regard to both sub-Article (1) and sub-Article (2) of Article 226, accrual of a cause of action is a relevant and essential factor. However, where Article 226(1) is applicable, the place where the cause of action arose is irrelevant. It is relevant only in the case of Article 226 (2) because that is an exception to the limitations under Article 226(1).

5 see previous footnote

(5) When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum. [See: ***Kusum Ingots*** *(supra)*: para 25].

(6) In appropriate cases, the court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*. [See: ***Kusum Ingots*** *(supra)*: para 30].

35. Some comment is called for on the issue of *forum conveniens* (or *forum non conveniens* as it is more commonly known). The principle was stated by ***Lord Kinnear*** in ***Sim v. Robinow***: (1892) 19 K. 665 thus:-

> "The general rule was stated by the late Lord President in Clements v. Macaulay, 4 Macph. 593, in the following terms: 'In cases in which jurisdiction is competently founded, a court has no discretion whether it shall exercise its jurisdiction or not, but is bound to award the justice which a suiter comes to ask. Judex tenetur impertiri judicium suum;[6] and the plea[7] under consideration must not be stretched so as to interfere with the general principle of jurisprudence.' And therefore the plea can never be sustained unless the court is satisfied that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of all the parties and for the ends of justice... In all these cases there was one indispensable element present when the court gave effect to the plea of *forum non conveniens*, namely, that the court was satisfied that there was another court in which the action ought to be tried as being more convenient for all the parties, and more suitable for the ends of justice."

6 a judge must exercise jurisdiction in every case in which he is seized of it.
7 of *forum non conveniens*

(underlining added)

36. In a recent decision of the House of Lords [***Tehrani v. Secy of State for the Home Department***: **[2006] UKHL 47**] it was observed:-

> "The doctrine of *forum non conveniens* is a good example of a reason, established by judicial authority, why a court should not exercise a jurisdiction that (in the strict sense) it possesses. Issues of *forum non conveniens* do not arise unless there are competing courts each of which has jurisdiction (in the strict sense) to deal with the subject matter of the dispute. It seems to me plain that if one of the two competing courts lacks jurisdiction (in the strict sense) a plea of *forum on conveniens* could never be a bar to the exercise by the other court of its jurisdiction."

Thus, the doctrine of *forum non conveniens* can only be invoked where the court deciding not to exercise jurisdiction, has jurisdiction to decide the case. The U.S. Supreme Court also held in ***Gulf Oil Corp. v. Gilbert: 330 U.S. 501*** that "*[I] ndeed, the doctrine of forum non conveniens can never apply if there is absence of jurisdiction or mistake of venue"*.

In this very decision (viz. ***Gulf Oil Corp***.) the doctrine is stated as follows:-

> "The principle of *forum non conveniens* is simply that a court may resist imposition upon its jurisdiction even where jurisdiction is authorised by the letter of a general venue statute. These statutes are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy. But the open door may admit those who seek not simply justice but perhaps justice blended with some

> harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself."

37. From the above discussion, it is clear that the doctrine of *forum non conveniens* can only be invoked where the court deciding not to exercise jurisdiction, has jurisdiction in the strict sense. So, if the Supreme Court directs the High Courts as it did in the case of ***Kusum Ingots*** *(supra)* and ***Mosaraf Hossain Khan*** (supra) to be mindful of the doctrine of *forum non conveniens*, the same would clearly be applicable only in cases where the High Court otherwise has jurisdiction. The argument of *forum non conveniens* cannot be raised in conjunction with the argument of lack of jurisdiction. It is also worthwhile to note that in ***Om Prakash Srivastava v. Union of India and Another: (2006) 6 SCC 207***, the Supreme Court did not find favour with the approach of the High Court in not dealing with the question as to whether it had or did not have jurisdiction and by merely observing that the Court may have jurisdiction but the issues could be more effectively dealt with by another High Court. The Supreme Court while remanding the matter to the High Court made the following observations:-

> "18. In the instant case the High Court has not dealt with the question as to whether it had jurisdiction to deal with the writ petitioners. It only observed that the Delhi High Court may have jurisdiction, but the issues relating to conditions of prisoners in the State of U. P. can be more effectively dealt with by the Allahabad High Court. As noted supra, there were two grievances by the appellant. But

> only one of them i.e the alleged lack of medical facilities has been referred to by the High Court. It was open to the Delhi high Court to say that no part of the cause of action arose within the territorial jurisdiction of the Delhi High Court. The High Court in the impugned order does not say so. On the contrary, it says that jurisdiction may be there, but the Allahabad High Court can deal with the matter more effectively. That is certainly not a correct way to deal with the writ petition. Accordingly, we set aside the impugned order of the High Court and remit the matter to it for fresh hearing on merits. ....."

38. It must also be kept in mind that the doctrine of *forum non conveniens* is essentially a common law doctrine originating from admiralty cases have trans-national implications. It is clear that the doctrine of *forum non conveniens* is only available when a Court has the jurisdiction but the respondent is able to establish the existence of an adequate alternative forum. In this context, the doctrine of *forum non conveniens* would be appropriate only when an adequate alternative forum is available but again this doctrine is a common law doctrine which cannot override statutory or constitutional provisions.

39. In the light of the discussion above, it has now to be determined as to whether in the present case this Court has territorial jurisdiction to entertain the writ petitions. As noticed above, the question as to whether the Court has territorial jurisdiction to entertain a writ petition has to be arrived at on the basis of the averments made in the petition, the truth or otherwise thereof being

immaterial. [see ***Kusum Ingots*** *(supra)* and ***ONGC v. Utpal Kumar Basu*** *(supra)*]. It has been averred in the petitions that paragraph 1744 of the Indian Railways Commercial Manual, which is an executive instruction issued by the Railway Board, is the root cause for the raising of the punitive demands, which are challenged in this petition. Mr Kaul submitted that if paragraph 1744 had not existed then the demands challenged herein would not have been raised. He submits that paragraph 1744 is violative of Section 73 and 79 of the Railways Act, 1989. Without going into the question of truth or otherwise of these averments and without examining the merits of the challenge to paragraph 1744 of the Indian Railways Commercial Manual, it is clear that the challenge exists and that the said paragraph 1744 forms part of the Indian Railways Commercial Manual, which was issued by the Railway Board at New Delhi. A writ striking down the said paragraph would have to be issued to the Railway Board which is in New Delhi. Therefore, from the standpoint of Article 226 (1) of the Constitution, this Court would have jurisdiction inasmuch as the authority to whom the writ is to be issued is located within the normal territorial limits of this Court. It is true that if the case rested only on a challenge to the demands *de hors* the question of validity of para 1744 then, only Article 226(2) would be applicable and this Court would not have territorial jurisdiction as no part of the cause of action has arisen in Delhi. But, that is not the case.

40. For the reasons stated above, this Court has territorial jurisdiction to entertain the writ petitions. A separate order is being passed for proceeding with the petitions on merits.

BADAR DURREZ AHMED
(JUDGE)

July 02, 2007
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