



2024:DHC:6697



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 02.09.2024**

+ **W.P.(C) 12041/2024**

SMT. MANJIRA DEVI AYURVEDA MEDICAL COLLEGE
AND HOSPITALPetitioner

Through: Mr. Anupam Lal Das, Senior
Advocate with Mr. Harmeet
Singh Ruprah and Mr. Kanishk
Sharma, Advocates.

versus

UTTRAKHAND UNIVERSITY OF AYURVEDA
& ORS.Respondents

Through: Mr. Farman Ali (SPC), Mr.
Vidur Dwivedi (GP) and Ms.
Usha Jamnal, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India on behalf of the petitioner-institute i.e. Smt. Manjira Devi Ayurveda Medical College and Hospital seeking the following relief:

“i a) Issue a writ of mandamus or any other appropriate Writ(s) and/or Order(s) and /or Direction(s) to allow the students of the batch of 2022 to appear for the regular as well as electives examinations for the entire course duration along with other relevant examinations for the course; and/or”.



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2. The case set out by the petitioner-institute i.e. Smt. Manjira Devi Ayurveda Medical College and Hospital, is that it is the sole Ayurveda medical college located within the nine hilly districts of Uttarakhand. This self-financed institution offers the B.A.M.S. (Bachelor of Ayurvedic Medicine and Surgery) course. It is stated that historically, admissions to the course were conducted based on the merit list prepared from candidates' qualifying examination scores, as directed by respondent no. 1 i.e. Uttarakhand Ayurveda University. However, since 2021, the institute has been required to admit students exclusively through the National Eligibility Entrance Test (NEET), posing significant challenges for students from these remote and economically disadvantaged regions. It is stated that many students were unaware of NEET's requirements or lacked the means to travel to distant examination centers, leading to a severe drop in admissions. For the academic year 2022-2023, only 04 out of the 60 available seats were filled through NEET, resulting in a 93% vacancy rate. In an attempt to address this, the petitioner-institute had admitted additional students who had appeared for but failed to qualify for NEET. Notably, some of these students had later qualified NEET. It is stated that the petitioner-institute, situated near the Indo-China border, faces unique challenges due to its remote location but has become a vital educational and healthcare hub, especially during the COVID-19 pandemic. It is the grievance of the petitioner-institute that despite its significant contributions, the respondents have not provided adequate support to address the challenges it faces.



Consequently, the petitioner seeks judicial intervention to ensure that its students can continue their education and provide essential healthcare services in these hilly regions.

3. Learned Senior Counsel appearing on behalf of the petitioner-institute argues that the refusal by the Uttarakhand University of Ayurveda to allow the students of the 2022 batch to appear for the first profession examinations violates their fundamental rights under Article 14 and Article 19(1)(g) of the Constitution of India. The students were admitted in good faith under the guidance and past practices, and they have a legitimate expectation to complete their education. It is further argued that the petitioner, being the only Ayurveda Medical College in the nine hilly districts of Uttarakhand, plays a crucial role in providing medical education and healthcare in this remote region. It is submitted that the arbitrary decision by the respondent University to prevent these students from taking their exams jeopardizes not only their futures but also the medical needs of the local population. It is also stated that the Ministry of AYUSH and other respondent authorities have failed to account for the unique geographical and infrastructural challenges faced by institutions like the petitioner in the hilly terrain of Uttarakhand.

4. On the other hand, Mr. Farman Ali, Senior Panel Counsel, who appears on advance notice on behalf of respondent no. 2 i.e. Union of India, at the outset, opposes the present writ petition on the issue of maintainability. It is argued that the petitioner-institute is located at Hitanu Dhanari, Dunda-Uttarkashi, Uttarakhand and any remedy sought by the petitioner-institute against the respondents will fall



within the territorial jurisdiction of the Hon'ble High Court of Uttarakhand at Nainital.

5. In rebuttal, learned Senior Counsel appearing for the petitioner-institute submits that since the grievance of the petitioner is also against respondent no. 2 i.e. Union of India/ Ministry of AYUSH, whose head office is situated in Delhi, the petitioner-institute has approached this Court and the present writ petition would thus be maintainable.

6. This Court has **heard** arguments on behalf of both the parties and has perused the material placed on record.

7. At the outset, this Court notes that on 30.08.2024, learned counsel for the petitioner, after addressing some arguments, had sought liberty to withdraw the present petition and approach the appropriate Court of law. However, at about 3:30 PM on the said date, learned counsel had again appeared before this Court and stated, on instructions, that he does not wish to withdraw the present petition and the matter may be heard and order be passed. Thus, the matter was listed today for further arguments on maintainability.

8. This Court notes that the petitioner-institute i.e. Smt. Manjira Devi Ayurveda Medical College and Hospital is situated in the State of Uttarakhand, and the said institute is affiliated with respondent no. 1 i.e. Uttarakhand University of Ayurveda. The petitioner- institute is also approved and recognized by the State Government of Punjab. The ground on which the petitioner-institute has approached this Court is that the Head Office of respondent no. 2 i.e. Union of India/Ministry of AYUSH is situated within the territorial jurisdiction



of this Court. However, merely because the office of respondent no. 2 or of respondent no. 4 i.e. National Commission for Indian System of Medicine is situated within the territorial jurisdiction of this Court, it cannot be a ground to entertain the instant writ petition.

9. In this regard, it will be useful to refer to the judgment of Hon'ble Apex Court in case of *Kusum Ingots & Alloys Ltd. v. Union of India* (2004) 6 SCC 254. The relevant observations which are relevant to the facts of the present case are extracted hereunder:

“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*, *Madanlal Jalan v. Madanlal*, *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.*, *S.S. Jain & Co. v. Union of India* and *New Horizons Ltd. v. Union of India.*.]”

(Emphasis supplied)

10. Thus, as per the abovesaid judgment, in case a small part of cause of action arises within the territorial jurisdiction of a High Court, the same by itself may not be considered to be a determinative factor to compel that particular High Court to exercise its jurisdiction. Further, in appropriate cases, the Court may decline to exercise its discretion by invoking the doctrine of forum conveniens.

11. A similar view was also taken by the Hon'ble Apex Court in the case of *State of Goa v. Summit Online Trade Solutions (P) Ltd.* (2023) 7 SCC 791, wherein it has been held as under:



“14. While dealing with an objection as to lack of territorial jurisdiction to entertain a writ petition on the ground that the cause of action has not arisen within its jurisdiction, a **High Court essentially has to arrive at a conclusion on the basis of the averments made in the petition memo treating the contents as true and correct. That is the fundamental principle.** Bearing this in mind, we have looked into the petition memo of WP (C) No. 38 of 2017 and searched in vain to trace how at least part of the cause of action has been pleaded by the petitioning company, to have arisen within the territorial jurisdiction of the High Court.

15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. **The constitutional mandate of clause (2) is that the “cause of action”, referred to therein, must at least arise in part within the territories in relation to which the High Court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories.**

16. The expression “cause of action” has not been defined in the Constitution. However, the classic definition of “cause of action” given by Lord Brett in *Cooke v. Gill* [*Cooke v. Gill*, (1873) LR 8 CP 107] that “*cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court*”, has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. **However, in the context of a writ petition, what would constitute such “cause of action” is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed.**

17. **Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a**



cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject-matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests”

(Emphasis Supplied)

12. A Coordinate Bench of this Court in the case of ***Chinteshwar Steel Pvt. Ltd. v. Union of India*** 2012 SCC OnLine Del 5264, has held that in case of pan India Tribunals, or Tribunals/statutory authorities having jurisdiction over several States, the situs of the Tribunal would not necessarily be the marker for identifying the jurisdictional High Court.

13. This Court also notes, based on judicial precedents, that Courts have the power under Article 226 of the Constitution of India to exercise or decline their discretion to entertain writ petitions when the petitioner has an alternative, more appropriate, and convenient High Court to approach. As mentioned above, it is reiterated that it is a settled position of law that if only a part of the cause of action arises within the territorial jurisdiction of the Court, the Court may decline to entertain the case if it is of the opinion that it is not the *forum conveniens*.

14. To sum up, the grievance of the petitioner-institute herein, which is situated in Uttarakhand, is essentially against the Uttarakhand Ayurveda University. The interim relief claimed in this petition is also against Uttarakhand Ayurveda University, which



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reads as follows: *“Issue directions to the Uttarakhand Ayurveda University to allow the students of the batch of 2022 to appear for the examinations of the first profession”*.

15. In view of the aforesaid, the present petition is dismissed alongwith pending application if any, solely on the ground of lack of territorial jurisdiction. The petitioner would be at liberty to approach the appropriate Court of jurisdiction for redressal of his grievance, in accordance with law.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 2, 2024/A