



2024/KER/57669

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE MR. A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE S.MANU

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

WP(C) NO. 18689 OF 2023

PETITIONER:

DR. VALSAMMA CHACKO
PROFESSOR OF OBSTETRICS & GYNAECOLOGY (RETD),
SENIOR CONSULTANT, OBSTETRICS AND GYNAECOLOGY,
KERALA INSTITUTE OF MEDICAL SCIENCES,
THIRUVANANTHAPURAM, PIN - 695029.

BY ADVS.
AJIT JOY
ANEESH JAMES
SAYUJYA

RESPONDENTS:

- 1 LEELAMMA JOSEPH
WIFE OF JOSEPH. J.,
SAROYA, LINK VALLEY KUSUMAGIRI P O,
EDACHIRA ROAD, KAKKANAD, KOCHI, PIN - 682030.
- 2 G.G. HOSPITAL, MEDICAL COLLEGE ROAD,
THIRUVANTHAPURAM, PIN - 695011,
REPRESENTED BY ITS MANAGING DIRECTOR.
- 3 *(DR.SASIKUMAR
SENIOR UROLOGIST, GG HOSPITAL,
THIRUVANANTHAPURAM-695011)
*(CORRECTED AS PER ORDER DATED 10/10/2023 IN IA
1/23 IN WP(C))
DR.SASIKUMAR, SENIOR UROLOGIST, GG HOSPITAL,
THIRUVANANTHAPURAM - 695011, PRESENTLY WORKING AS
SENIOR COUNSULTANT UROLOGIST, S.P FORT HOSPITAL,
TRIVANDRUM, RESIDING AT T.C. 14/420-3, SASIGIRI,
POONTHI ROAD, KUMARAPURAM, TRIVANDRUM - 695011.



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4 * (DR. VIKRAMAN K.R.
UROLOGIST, KIMS HOSPITAL, THIRUVANANTHAPURAM)

*(CORRECTED AS PER ORDER DATED 10/10/2023 IN IA
1/23 IN WP(C))

DR.VIKRAMAN.K.R, UROLOGIST, KIMS HOSPITAL,
THIRUVANANTHAPURAM - 695029, PRESENTLY WORKING AS
SENIOR CONSULTANT UROLOGIST, ANANTHAPURI HOSPITAL
& RESEARCH INSTITUTE, TRIVANDRUM, RESIDING AT
DEEPAM, No.28, NAVARANGAM LANE, MEDICAL COLLGE
P.O., TRIVANDRUM - 695011.

BY ADVS.
SHYAM PADMAN
A.AHZAR
ALEX M SCARIA
JOHNSON GOMEZ
C.M.ANDREWS
BOBY M.SEKHAR
LAYA MARY JOSEPH
HARISH ABRAHAM
NICHU WILLINGTON
ASHWATHI SHYAM
S.BIJU (KIZHAKKANELA)
SANJAY JOHNSON
JOHN GOMEZ
ABIN JACOB MATHEW
ARUN JOHNY
DEEBU R.
ARAVIND PRAKASH
KRISHNADEV K.
SARITHA THOMAS
PAVAN ROSE JOHNSON
ALEN J. CHERUVIL
SAHL ABDUL KADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23.07.2024, THE COURT ON 31.07.2024 DELIVERED THE
FOLLOWING:



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[CR]**A.MUHAMED MUSTAQUE, Acg.C.J. & S.MANU, J.**-----
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-----Dated this the 31st day of July, 2024**JUDGMENT****S.MANU, J.****Brief facts**

Appellant in First Appeal No.383/2013 of the National Consumer Disputes Redressal Commission (NCDRC) at New Delhi has preferred this writ petition under Article 227 of the Constitution. Her appeal was rejected by the NCDRC. The appeal was directed against judgment of the Kerala State Consumer Disputes Redressal Commission in C.C.No.10/2005. The State Commission, in the complaint filed by the 1st respondent herein, alleging medical negligence, found that the 1st respondent is eligible for compensation to the tune of Rs.22,00,000/- for the negligence and deficiency in service on the part of the petitioner herein and cost of the treatment undergone by



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the 1st respondent. As the NCDRC refused to interfere with the judgment of the State Commission, the petitioner is seeking interference by this court in exercise of the supervisory jurisdiction under Article 227.

2. Preliminary objection

The learned Senior Counsel appearing for the 1st respondent raised an objection that a writ petition under Article 227 will not lie before this court against the order passed by the NCDRC at New Delhi. He contended that the jurisdiction vested with the High Court under Article 227 has to be exercised within the territorial limits of the High Court and a court or tribunal situated outside the territorial limits is not amenable to the supervisory jurisdiction vested with the High Court. He argued that the NCDRC, as a tribunal functioning at New Delhi, is not amenable to the supervisory jurisdiction of this Court. He hence submitted that the writ petition is to be dismissed as not maintainable. Per contra, the learned counsel for the petitioner Sri.Ajit Joy submitted that the matter arose from a judgment of the Kerala State



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Consumer Disputes Redressal Commission situated within the territorial limits of this Court and the cause of action arose within the jurisdiction of this Court. He therefore submitted that for the purpose of exercising jurisdiction under Article 227 this Court is the concerned court and consequently the writ petition is perfectly maintainable. Since counsel on both sides relied on various judgments of the Apex Court and also of a recent judgment of the Rajasthan High Court and made elaborate submissions on the issue of maintainability, we find it essential to address the said issue first.

3. Submissions of the learned Senior Counsel for the 1st respondent in detail

Sri.Syam Padman, learned Senior Counsel appearing for the 1st respondent argued that a bench of seven Judges of the Apex Court in **L. Chandrakumar v. Union of India** reported in [(1997) 3 SCC 261] considered the scope of jurisdiction of the High Courts under Article 227 of the Constitution over tribunals. Supreme Court held that the



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jurisdiction conferred upon the High Courts under Articles 226/227 are part of the inviolable basic structure of the Constitution and therefore this jurisdiction cannot be ousted. All decisions of the tribunals created under Articles 323A and 323B of the Constitution will be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the tribunal is situated. He stressed that declaration of law by the constitution bench is emphatic that the scrutiny by the High Court under Article 227 is permitted only if the concerned tribunal falls within the jurisdiction of the High Court. He pointed out a judgment of a Division Bench of the Rajasthan High Court in **Rajeev Chaturvedi v. Commissioner, Jaipur Development Authority & another** [2024 SCC Online Raj 365]. The Division Bench of the Rajasthan High Court considered an appeal arising from the judgment of a Single Judge by which orders passed by the NCDRC were quashed. Appellant contended that the learned Single Judge wrongly entertained the writ petition under Article 227. The



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argument was that the impugned orders challenged in the writ petition were passed by the NCDRC situated at New Delhi over which the Rajasthan High Court does not have superintendence under Article 227 of the Constitution. Heavy reliance was placed on the judgment of the Hon'ble Supreme Court in **Union of India v. Alapan Bandyopadhyay** [(2022) 3 SCC 133]. The Division Bench accepted the contention and held that the writ petition filed before the Rajasthan High Court against the orders passed by the NCDRC was not maintainable. The learned Senior Counsel argued that the view of the Rajasthan High Court is eminently correct and we may also follow the same view and reject this writ petition.

4. Counter submissions of the learned counsel for the petitioner

Sri.Ajit Joy, learned counsel appearing for the petitioner made the following submissions:-

In **Ibrat Faizan v. Om axe Buildhome Private Limited** [2022 SCC OnLine SC 620] the Apex Court has



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upheld the jurisdiction of the concerned High Court under Article 227 against orders of the NCDRC. The Apex Court in **Universal Sampo General Insurance Company Limited v. Suresh Chand Jain & another** [AIR 2023 SC 3699] ruled that parties may approach the jurisdictional High Court either by way of a writ application under Article 226 or by invoking the supervisory jurisdiction of the High Court under Article 227. He also submitted that the law laid down in **Union of India v. Alapan Bandyopadhyay** (supra) cannot be applied in the present case as the Apex Court, in it, was dealing with a case arising from order passed by the Principal Bench of the Central Administrative Tribunal in exercise of the power under Section 25 of the Administrative Tribunal Act for transfer of cases. He further submitted that arising of cause of action within it's jurisdiction is the basic factor to determine the jurisdiction of the High Court under Articles 226 and 227. He relied on **M/s.Kusum Ingots and Alloys v. Union of India** [AIR 2004 SC 2321] in this regard.



5. Article 227

Article 227 of the Constitution is a replica of S.224 of the Government of India Act, 1935. The provision is akin to the provisions of the Charter Act, 1861 and the Government of India Act, 1915 and 1935. The Apex Court in **Waryam Singh v. Amarnath** [AIR 1954 SC 215] explained the legislative history of conferment of power of superintendence on High Courts, culminating with incorporation Article 227 in the Constitution. The power of superintendence is judicial as well as administrative. Primarily, the power is conferred to ensure that courts and tribunals within the territorial jurisdiction of the High Court discharge their duties and obligations in accordance with law. There are many common features in the matter of exercising the jurisdiction under Article 226 and supervisory jurisdiction under Article 227. However, the jurisdictions under these Articles have fine distinctions. We are concerned in this case, only about the extent of jurisdiction under Article 227, as the petitioner has specifically invoked



the same to institute this writ petition. Therefore, to be precise, the question to be deliberated is as to whether the High Court can exercise supervisory jurisdiction under Article 227 over a tribunal situated outside its territorial limits.

6. Indications regarding jurisdiction, in the plain language of Articles 226 & 227.

Comparative reading of Articles 226 and 227, focusing on the jurisdictional facet, shows that there is substantial difference between Articles 226 and 227. Article 226(1) confers every High Court with power to issue directions, orders or writs to any person or authority, including in appropriate cases, any Government throughout the territories in relation to which it exercises jurisdiction. There is a specific mention about "territories in relation to which it exercises jurisdiction" in this provision. However, Article 226(2) broadens the jurisdiction by empowering the Court to exercise jurisdiction when cause of action, wholly or in part, arises within its territories notwithstanding that



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seat of Government or Authority or the residence of such person mentioned in Article 226(1) is not within its territories. It is to be noted that accrual of cause of action was added as an additional ground to confer jurisdiction in Article 226 by way of 15th Amendment Act of 1963. Article 227(1) confers superintendence to the High Court over all courts and tribunals "throughout the territories in relation to which it exercises jurisdiction". Article 227 was not noticeably chosen for such a broad conferment of jurisdiction on the basis of cause of action, as was provided to Article 226 through the 15th Amendment Act. Therefore, plain reading of the provision gives us the impression that when the High Court exercises power under Article 227, it can be only over courts and tribunals situated within the territorial limits of the High Court and whether the cause of action has arisen within its jurisdiction is not a germane consideration. Of course, normally, the courts and tribunals situated within the jurisdiction of a High Court would be entertaining cases in which the cause of action arose within



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their respective jurisdictions and in that sense, within the jurisdiction, correspondingly of the High Court too. However, the pertinent consideration, revealed from the language of the Article appears as to whether the situs of the court or tribunal is within the territories of the High Court.

7. Relevant case law

A) **L.Chandrakumar v. Union of India [(1997) 3 SCC 261] :-**

Regarding the jurisdiction under Article 227 over tribunals, judgment of the Apex Court in **L.Chandrakumar v. Union of India [(1997) 3 SCC 261]** is the leading authority. A bench of seven Judges of the Apex Court considered the realm of power of judicial review conferred on the High Court under Articles 226/227 in relation to tribunals constituted either under Article 323A or Article 323B of the Constitution, in this case. The Apex Court, unequivocally held that power of judicial review vested in the High Court and in the Supreme Court under Articles 226/227 and 32 is part of the basic structure of the



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Constitution. It was held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. Apex Court further held that all decisions of tribunals will be subject to the jurisdiction of the High Courts under Article 226/227 of the Constitution, before a Division Bench of the High Court within whose jurisdiction the tribunal concerned falls. Thus, the judgment in **Chandrakumar** settled the proposition that all decisions of the tribunals will be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned tribunal is situated. We will extract the conclusions in **Chandrakumar** available in paragraph 99 of the judgment as reported in SCC :-

“99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the



Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid



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and constitutional and is to be interpreted in the manner we have indicated.”

(Emphasis added)

B) **Union of India v. Alapan Bandyopadhyay** [(2022)

3 SCC 133]:-

(i) In this case, the Apex Court examined the legality of a judgment passed by the High Court at Calcutta by which the High Court set aside an order of the Central Administrative Tribunal (Principal Bench), New Delhi, transferring an original application which was pending before the Kolkata Bench to the Principal Bench (New Delhi). The Calcutta High Court interfered with the order passed by the Principal Bench of the Administrative Tribunal. The Apex Court examined the propriety and legality of the interference made by the Calcutta High Court. Supreme Court considered the question as to whether the Calcutta High Court enjoyed jurisdiction to interfere with the order of the Principal Bench of the Tribunal situated at New Delhi, even though the proceeding was originally pending before



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the Kolkata Bench of the tribunal. Apex Court specifically noticed that bundle of facts constituting cause of action for filing the O.A. before the tribunal conferred jurisdiction on the Kolkata Bench of the tribunal. Apex Court held that the High Court should have confined its consideration firstly to decide its own territorial jurisdiction for exercising the power of judicial review. Reference was made to the law laid down in **Chandrakumar's** case. Thereafter, it was held thus:-

“When once a Constitution Bench of this Court declared the law that “all decisions of Tribunals created under Article 323A and Article 323B of the Constitution will be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls”, it is impermissible to make any further construction on the said issue.”

(ii) It was further held as follows:-

“The law thus declared by the Constitution Bench cannot be revisited by a Bench of lesser quorum or for that matter by the High Courts by looking into the bundle of facts to ascertain whether they would confer territorial jurisdiction to the High Court within the ambit of Article 226(2) of the Constitution. We are



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of the considered view that taking another view would undoubtedly result in indefiniteness and multiplicity in the matter of jurisdiction in situations when a decision passed under Section 25 of the Act is to be called in question especially in cases involving multiple parties residing within the jurisdiction of different High Courts albeit aggrieved by one common order passed by the Chairman at the Principal Bench at New Delhi.”

(iii) Apex Court applied the above principles and held with respect to the factual issues arising for consideration as follows:-

“On applying the said factual position to the legal exposition in L.Chandra Kumar's case (supra) it is crystal clear that the Principal Bench of the Central Administrative Tribunal at New Delhi, which passed the order transferring O.A.No.1619/2021 vide order in P.T.No.215/2021 falls within the territorial jurisdiction of High Court of Delhi at New Delhi. Needless to say, that the power of judicial review of an order transferring an Original Application pending before a Bench of the Tribunal to another Bench under Section 25 of the Act can be judicially reviewed only by a Division Bench of the High Court within whose territorial jurisdiction the Bench passing the same falls.”



(iv) The order passed by High Court at Calcutta was found to be without jurisdiction and the same was hence declared as ab initio void.

(v) We note that the Apex Court has held in unmistakable terms that the High Court of Calcutta, within whose jurisdiction the bench of the tribunal which originally considered the O.A. was situated, was not correct in exercising its jurisdiction under Article 227 to interfere with the order of transfer passed by the Principal Bench situated at New Delhi. Hence, despite the part of cause of action arising within the jurisdiction of the Calcutta High Court, it was found that only the High Court within whose jurisdiction the bench which passed the impugned order could exercise the jurisdiction under Article 227.

(vi) Another bench of two judges of the Apex Court, in **Union of India v. Sanjiv Chaturvedi and others** [(2023)



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5 SCC 706], has referred the issue of territorial jurisdiction of the High Court, with reference to the law laid down in **Alapan Bandyopadhyay** for consideration by a larger bench. However, as far as we are concerned, the law as explained in **Alapan Bandyopadhyay** is binding as the precedential efficacy would not erode on account of a reference, unless it is varied by a larger bench of the Apex Court on the basis of the reference. In this regard it is relevant to note that another bench of two judges of the Apex Court, in **Rajnish Kumar Rai v Union of India and others** [(2023) SCC OnLine SC 1222] upheld the judgment of the High Court of Gujarat, by which it rejected a challenge against an order passed by the Principal Bench of the Central Administrative Tribunal, Delhi relying on **Alapan Bandyopadhyay**. The Bench of two judges of the Apex Court noticed the reference in **Sanjiv Chaturvedi and others** and held that judicial propriety demands following the law laid down in **Alapan Bandyopadhyay** as no decision has come from the larger Bench.



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C) **Ibrat Faizan v. Om axe Buildhome Private Ltd.**

[2022 SCC OnLine SC 620]

(i) In this case an order of stay passed by a learned Single Judge of the High Court of Delhi in a writ petition filed under Article 227 of the Constitution against an order of the NCDRC was under challenge before the Apex Court. The specific issue considered by the Apex Court was the jurisdiction of the High Court under Article 227 of the Constitution against the order passed by NCDRC in an appeal under Section 58(1)(a)(iii) of the Consumer Protection Act. After referring to the judgment of a Constitution bench of the Apex Court in **Associated Cement Companies Ltd. v. P.N.Sharma** [AIR 1965 SC 1595] and **L.Chandrakumar's** case (supra) the Apex Court held as follows:-

“22. Therefore, the National Commission can be said to be a 'Tribunal' which is vested by Statute the powers to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them. Therefore, as observed herein above in the aforesaid decision, it



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satisfies the test of an authority vested with the judicial powers of the State and therefore may be regarded as a 'Tribunal' within the meaning of Article 227 and/or 136 of the Constitution of India. Also, in a given case, this Court may not exercise its powers under Article 136 of the Constitution of India, in view of the remedy which may be available to the aggrieved party before the concerned High Court under Article 227 of the Constitution of India, as it is appropriate that aggrieved party approaches the concerned High Court by way of writ petition under Article 227 of the Constitution of India.”

(ii) About the propriety of entertaining the writ petition and exercising jurisdiction under Article 227, which was under challenge in the case, the Apex Court held thus:-

“27. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58(1)(a)(iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigor of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227



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within the parameters within which such jurisdiction is required to be exercised.”

(iii) While understanding the law laid down by the Apex Court in this case, it is to be kept in mind that the challenge was against an order passed by a learned Single Judge of the Delhi High Court within whose territorial jurisdiction the NCDRC falls. The expression 'concerned High Court' employed by the Apex Court in this judgment, as it seems to us, is a reference to the High Court which enjoys the jurisdiction under Article 227 in the particular case.

D) **Universal Sompo General Insurance Company Limited v. Suresh Chand Jain & another** [AIR 2023 SC 3699]

(i) Apex Court considered a petition seeking leave to appeal under Article 136 of the Constitution by the party who sought to challenge the order of the NCDRC in a first appeal. The Supreme Court made extensive reference to the judgment in the case of **Ibrat Faizan v. Om axe**



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Buildhome Private Limited [2022 SCC OnLine SC 620].

Finally, the Apex Court concluded as follows:-

“38. In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution,”

(ii) Concerning the factual matrix, it is to be noted that the original proceedings in this case arose before the State Consumer Disputes Redressal Commission, New Delhi.

E) **Rajeev Chaturvedi v. Commissioner, Jaipur Development Authority & another** [2024 SCC OnLine Raj 365].

In this case, a learned Single Judge of the Rajasthan High Court, in a writ petition filed under Article 227 of the



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Constitution, set aside an order of the NCDRC. In the intra court appeal challenging the judgment of the Single Bench, the Division Bench, mainly relying on **Alapan Bandyopadhyay**, held that the Rajasthan High Court lacked jurisdiction under Article 227 to review orders passed by the NCDRC seated at Delhi. Judgment of the learned Single Judge was set aside and the writ petition was dismissed on the ground of lack of jurisdiction.

8. Analysis of the contentions

(i) We shall now deal with the contentions raised by Sri.Ajit Joy, the learned counsel appearing for the petitioner regarding maintainability. He placed reliance over the judgment of the Apex Court in **M/s.Kusum Ingots and Alloys Limited v. Union of India & another** [(2004) 6 SCC 254] to contend that even if a part of cause of action arises within the territorial jurisdiction of the High Court, the same would confer jurisdiction to issue writs. He referred to the extensive discussion on "cause of action" available in the judgment. However, the opening paragraph of the judgment



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shows that the specific question considered by the Hon'ble Supreme Court in **M/s.Kusum Ingots and Alloys Limited** (supra) is as to whether the seat of the parliament or legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India. The entire analysis in the case proceeds with reference to clause (2) of Article 226. Therefore, we are of the view that the principles discussed and laid down in **M/s.Kusum Ingots and Alloys Limited** (supra) cannot be considered as an authority to understand the scope and ambit of the jurisdiction, precisely under Article 227. As we noted in the beginning, there is substantial difference between the jurisdictional features of Articles 226 and 227 as revealed from a comparative reading of the provisions. Arising of cause of action wholly or in part within the jurisdiction is a factor which enables a High Court to exercise the jurisdiction under Article 226 by virtue of clause (2) of Article 226. Conspicuously, such a provision is absent



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in Article 227. Therefore, arising of cause of action wholly or in part within the jurisdiction is not the decisive factor to determine the jurisdiction under Article 227. The only aspect relevant is the situs of the court or tribunal concerned, within the territorial jurisdiction of the High Court, as discernible from the plain language of the Article.

(ii) The next contention of the learned counsel for the petitioner is on the basis of the judgment in **Ibrat Faizan** (supra). The learned counsel argued that the Hon'ble Supreme Court has held that the orders passed by the NCDRC can be challenged before the 'concerned High Court'. However, after scanning the judgment thoroughly, we do not find anything to the effect that the expression 'concerned High Court' is used by the Apex Court in relation to 'any High Court' within whose jurisdiction the cause of action arose, as canvassed by the learned Counsel. On the other hand, as we pointed out earlier, the facts of the case would show that the Apex Court was considering a case arising



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from Delhi High Court within whose jurisdiction the NCDRC is situated. Therefore, we are of the view that the Apex Court, in **Ibrat Faizan** (supra) has upheld the jurisdiction of the Delhi High Court over the NCDRC and no further inference in this regard is possible. Observations of courts are to be read and understood in context in which they have been stated. Context of the reference to 'concerned High Court' in this judgment has to be understood, keeping in mind that the Hon'ble Supreme Court was considering a case arising from Delhi High Court.

(iii) In **Universal Sompo** cited by Sri.Ajit Joy, the Apex Court made elaborate reference to **Ibrat Faizan** and relegated the parties to go before the jurisdictional High Court. As already noticed, that was a case arising from the proceedings before the NCDRC, Delhi. In, **Universal Sompo** the Apex Court has followed the principles laid down in **Ibrat Faizan**, which we have discussed already. This judgment is also not helpful to the petitioner to contend that



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the writ petition under Article 227 is maintainable before this Court.

(iv) The learned Counsel further submitted that the Rajasthan High Court in **Rajeev Chaturvedi** has decided the case relying on **Alapan Bandyopadhyay**. According to the learned counsel, the issue considered in **Alapan Bandyopadhyay** was arising from an order of transfer passed under the provisions of the Administrative Tribunal Act and the principles laid down cannot be imported and applied in deciding the issue of exercising jurisdiction over the NCDRC and its proceedings which are governed by another Act. We cannot agree with the attempt of the learned Counsel to distinguish **Alapan Bandyopadhyay** on such a ground. Principles laid down in the judgment are clear and apply in the case of all Tribunals. As we stated supra, despite the fact that the same is under a reference for consideration by a larger bench, its precedential value does not fade and we are bound to follow the same. We are



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of the view that the Rajasthan High Court has rightly followed it in **Rajeev Chaturvedi**.

(v) We therefore find worth in the contentions raised by learned Senior Counsel Sri.Syam Padman on the basis of the law laid down by the Apex Court in **L.Chandrakumar** and by the Rajasthan High Court in **Rajeev Chaturvedi**.

9. Conclusions

On an analysis of the above precedents, we find that the Hon'ble Supreme Court in **Alapan Bandyopadhyay** (supra) has categorically held that the law laid down by the Constitution Bench in **L.Chandrakumar's** case is to the effect that the power under Article 227 can be exercised only over the courts and tribunals situated within the territorial limits of the respective High Courts. True, another bench of two judges of the Apex Court has made a reference to larger bench about the conclusions in **Alapan Bandyopadhyay** as we find in **Union of India v. Sanjiv Chaturvedi and others** (supra).



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Nevertheless, the proposition laid down in **Alapan Bandyopadhyay** is still binding on us despite the reference. Nothing contrary to the said proposition is laid down either in **Ibrat Faizan** or **Universal Sampo General Insurance Company Limited**. Obviously, Apex Court, in the judgment in **Alapan Bandyopadhyay** cautions that when a Constitution Bench lays down the law it is impermissible to make any further construction on the said issue. This was said after specifically referring to the following elucidation by the Constitution Bench in **Chandrakumar** – “All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls.” As we have referred above, in **Ibrat Faizan** it has been held that NCDRC can be regarded as a tribunal within the meaning of Article 227. Hence, a close reading and comprehensive analysis of the precedents leads us to the conclusion that this Court can exercise the jurisdiction under Article 227 only over those courts and tribunals situated within the territorial limits of this Court.



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Hence, over the NCDRC, falling within the territorial jurisdiction of the Delhi High Court, this Court has no supervisory jurisdiction under Article 227.

Therefore, the writ petition, filed under Article 227 of the Constitution of India is dismissed as not maintainable.

Sd/-

**A.MUHAMED MUSTAQUE,
ACTING CHIEF JUSTICE**

Sd/-

**S.MANU,
JUDGE**

skj



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APPENDIX OF WP(C) 18689/2023

PETITIONER'S EXHIBITS

- Exhibit P1 JUDGMENT OF THE HON'BLE SUPREME COURT IN IBRAT FAIZAN V. OMAXE BUILDHOME PVT. LTD. 2022 SCC ONLINE SC 620.
- Exhibit P2 CERTIFIED COPY OF THE ORDER OF THE NCDRC DATED 27.03.2023.
- Exhibit P3 TRUE COPY OF THE ORDER DATED 22.02.2013 PASSED BY THE KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION.
- Exhibit P4 REFERENCE LETTER OF THE MUMBAI BASED SURGEON DATED 02.09.2003.
- Exhibit P5 (a) CASE RECORD OF TREATMENT AT THE 2ND RESPONDENT GG HOSPITAL.
- Exhibit P5 (b) REPORT OF THE PHYSICIAN OF 2ND RESPONDENT HOSPITAL DATED 16.09.2003.
- Exhibit P6 CASE RECORD OF KIMS HOSPITAL, THIRUVANANTHAPURAM.
- Exhibit P7 COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT IN THE SCDRC.
- Exhibit P8 COPY OF THE VERSION FILED BY THE PETITIONER IN THE SCDRC.
- Exhibit P9 COPY OF THE VERSION FILED BY THE 2ND RESPONDENT IN THE SCDRC.
- Exhibit P10 TRUE COPY OF THE VERSION FILED BY 3RD RESPONDENT IN THE SCDRC.
- Exhibit P11 ENGLISH TRANSLATION OF THE DEPOSITION OF PW1 MRS.LEELAMMA JOSEPH BEFORE THE SCDRC AS PRODUCED BEFORE THE NCDRC.
- Exhibit P12 ENGLISH TRANSLATION OF THE DEPOSITION OF PW2 SRI. JOSEPH J BEFORE THE SCDRC AS PRODUCED BEFORE THE NCDRC.
- Exhibit P13 ENGLISH TRANSLATION OF THE DEPOSITION OF DW1 DR. HARIDAS BEFORE THE SCDRC AS PRODUCED BEFORE THE NCDRC.



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- Exhibit P14 ENGLISH TRANSLATION OF THE DEPOSITION OF DW2 DR. VALSAMMA CHACKO BEFORE THE SCDRC AS PRODUCED BEFORE THE NCDRC.
- Exhibit P15 ENGLISH TRANSLATION OF THE DEPOSITION OF DW3 DR. N.P. SASIKUMAR BEFORE THE SCDRC AS PRODUCED BEFORE THE NCDRC.
- Exhibit P16 ENGLISH TRANSLATION OF THE DEPOSITION OF DW4 DR. NAZEEMA BEFORE THE SCDRC AS PRODUCED BEFORE THE NCDRC.
- Exhibit P17 ENGLISH TRANSLATION OF THE DEPOSITION OF DW5 DR. VIKRAMAN K.R. BEFORE THE SCDRC AS PRODUCED BEFORE THE NCDRC.
- Exhibit P18 TRUE COPY OF THE FIRST APPEAL FA. 383 OF 2013 FILED BY THE PETITIONER BEFORE THE NCDRC.
- Exhibit P19 TRUE WEB COPY OF ARTICLE TITLED "LAPAROSCOPIC HYSTERECTOMY VERSUS TOTAL ABDOMINAL HYSTERECTOMY: A RETROSPECTIVE STUDY AT A TERTIARY HOSPITAL" BY MAHMOUD ELMORSI ABOUFOTOUH ET AL IN GYNECOLOGICAL SURGERY (2020).