

(2001) 07 CAL CK 0035
In the Calcutta High Court
Case No : Writ Petition No. 17346 (W) of 1998

Ahamed Hossain Sk.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Calcutta High Court (Appellate Side) Rules — Rule 1
Constitution of India, 1950 — Article 141, 226
Limitation Act, 1963 — Section 5

Citation : (2001) 3 CALLT 335 : (2001) 2 CHN 762 : 107 CWN 521

Hon'ble Judges : Yad Ram Meena, J; Tarun Chatterjee, J; Mohammad Habeeb Sham Ansari, J

Bench : Full Bench

Advocate : D. Saha Roy, S. Raj and P. Chatterjee, for the Appellant; Sajal Kr. Chakraborty and Syed Nazmul Hossain, for the Respondent

Judgement

M.H.S. Ansari, J.—The facts in brief as can be gleaned from the order of the learned single Judge, are as under.

2. Pursuant to a notice dated November 5, 1996, petitioner applied for appointment as modified ration dealer (M.R. Dealer). Concerned Inspector (F & S) appears to have held spot enquiry with respect to the candidates including the petitioner and submitted the report before the Sub Divisional Controller. The Area Chief Inspector considered the report and expressed his opinion thereon. The Sub Divisional Controller then furnished the applications, annexure thereto, report of inspection, the opinion of Area Chief Inspector as well as his personal opinion to the Karmadakshya, Khadya-O-Sarabaraha Stayee Samity of Chapra Panchayat Samity. Though the said papers were placed before the said Samity in June, 1998, but no decision was taken thereon and, therefore, the writ application being W.P. No. 17346(W) of 1998 was filed.

3. The learned Judge was of the following opinion;

"In the normal course I would have disposed of this writ petition by directing the

concerned Khadya-O-Sarabaraha Stayee Samity and in its absence the Sabhapati thereof to decide upon the matter at an early date, but the petitioner relying on two judgments of this Court, one passed by a learned single Judge in W.P. No. 7034 (W) of 1997 and the other by a Division Bench in MAT No. 757 of 1999 submitted that the Khadyo-O-Sarabaraha Stayee Samity has no role to play in the matter of appointment of M.R. Dealers."

4. Learned single Judge thereafter proceeded to consider the matter on merits and expressed the view as under;

"..... I have not been able to accept the contentions of the petitioner based on the aforementioned two judgments of this Court and accordingly I request the Hon"ble Chief Justice to constitute a larger Bench for reconsideration of the matters indicated above."

5. The Hon"ble Acting Chief Justice was thereupon pleased to direct that "In view of the Judgment dated 5.10.99 passed by Justice Barin Ghosh, let the matter be now placed before the larger Bench" and that is how the matter has appeared before us.

6. It is the submission of the learned counsel for the petitioner that the learned single Judge should have followed the binding precedent of the Division Bench judgment of the same High Court. Reliance has been placed for the said proposition upon the judgment of the Supreme Court in Ram Jankijee Deities and Others Vs. State of Bihar and Others, .

7. On the other hand, it is the submission of the learned counsel for the State that the Chief Justice has inherent power to refer any matter of some importance to Full Bench. Reliance has been placed upon a Full Bench judgment of this High Court in Tara Dutta Vs. The State and Another, wherein it was held that even in the absence of rule as in Chapter II of the Appellate Side Rules of a provision corresponding to proviso (ii) Rule 1 which relates to civil matters, the Chief Justice has inherent power to refer any matter to a Bench of three Judges when the matter is some importance. The Chief Justice can exercise his inherent power to constitute a larger Bench in criminal matters in situation or circumstances as envisaged in civil matters by proviso (ii) Rule 1 of Chapter II of the Appellate Side Rules.

8. Chapter II and proviso (ii) Rule 1 of the Appellate Side Rules of this Court which specifically confer such power inherent in the Chief Justice reads as under:

"(ii) Provided also that, on the requisition of any Division Bench, or whenever he thinks fit, the Chief Justice may appoint a Special Division Bench, to consist of three or more Judges, for the hearing of any particular appeal, or any particular question of law arising in an appeal, or of any other matter."

9. It is Chapter VII which deals with references to a Full Bench and for the sake of convenience, relevant rules are extracted hereunder;

"1. Whenever one Division Bench shall differ from any other Division Bench or a Special Division Bench constituted before the 1st of April, 1953 upon a point of law or usage having the force of law, the case shall be referred for decision by a Full Bench, unless the point has since been decided by a pre-Constitution decision of the Judicial Committee of the Privy Council or of the Federal Court of India or by a decision of the Supreme Court of India or of a Full Bench of this Court.

2. If the question arise in an appeal from an appellate decree or in an appeal under Clause 15 of the Letters Patent or in a Reference or in any case heard by a Bench of two or more Judges, not being a Full Bench the Court referring the case shall state the point or points upon which they differ from the decision of a former Division Bench and shall refer the appeal, the reference or the case for the final decision of a Full Bench."

10. In Prafulla Kumar Dutta Vs. Ganesh Chandra Bose and Another, two questions were referred to Full Bench of this High Court.

11. The first question was whether one Division Bench of this Court has authority to hold that another Division Bench did not correctly state that law or the effect of a prior Special Bench decision. It was held;

"Rule 1. Chapter VII of the Appellate Side Rules of this Court provides that whenever one Division Bench shall differ from another Division Bench or a Special Bench upon a point of law, the case shall be referred to for a decision of the Full Bench. Therefore, we answer the first question referred to us by saying that one Division Bench has not the authority to hold that another Division Bench did not correctly state the law, or the effect of a prior Special Bench decision. But this statement has to be qualified by stating if a Division Bench has held contrary to the clear, unambiguous finding of the Special Bench, and has on the plea of interpretation of the Special Bench decision held contrary to what has been held by the Special Bench, a subsequent Division Bench is entitled to ignore the decision of the Division Bench and rely on the clear and unequivocal pronouncement of law in any Special Bench decision."

12. The second question referred to Full Bench was whether the learned Judges in Punamchand Daga Vs. Subhkaran Dosani, had authority to override as they purported to do, the Bench decision in M.K. Bhimani v. K.C. Basu ILR (1966) 2 Cal 1. The Full Bench held that the Division Bench had authority and indeed was bound to follow the Special Bench Judgment on the question of law decided by the Special Bench and for that purpose, to hold contrary to the Division Bench inasmuch as it was contrary to clear pronouncement of the majority of Judges of the Special Bench of this Court.

13. Under Chapter VII, a Division Bench of two Judges" can differ from any other Division Bench upon point of law if that Division Bench has taken a view contrary to Full Bench Judgment on the point of law and in every other case they shall state the point or points of their difference and can refer the matter for decision

of a Full Bench. We may not be understood as stating that the Hon"ble Chief Justice has no power to make a reference to a larger or Special Bench/Full Bench except on a requisition or reference by a Division Bench. Apart from the specific powers in that behalf conferred under Chapter II, the Chief Justice is invested with and has the inherent power to refer any matter of some importance to a Special Division Bench consisting of three or more Judges".

14. The question that has been raised by the petitioner before us is as to whether a learned single Judge can refer a matter for decision of a larger Bench when the learned single Judge is bound by the judgment of a larger Bench and there being no judgment either of a larger Bench or Superior Court to the contra on the subject matter of controversy.

15. In other words, what has been contended before us is that the principles of stare decisis is fully applicable to the present case and that the order of reference at the instance of the learned single Judge infringes the principles of judicial propriety as he was bound by the law settled by a larger Bench, in the instant case Division Bench of two Judges of the same High Court.

16. The doctrine of stare decisis does not emanate from any statutory rule but has been accepted as a principle of judicial jurisprudence. The underlying principle being that normally the Courts should maintain the finality of judicial decisions and finality of binding precedents.

17. Governed as we are by the rule of law, it need hardly be emphasized that law has to be both certain and uniform. In *Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., , Krishna Iyer J*, speaking for the Supreme Court, observed as under :

"Certainty of the law, consistency of rulings and comity of Courts - all flowering from the same principle-converge to the conclusion that a decision once rendered must later bind like cases."

18. In his concurring judgment in *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, , the observation of Sahai J.* on this aspect is as under;

"Uniformity and consistency are the core of judicial discipline."

19. That is why the doctrine of stare decisis is part of our judicial system. This doctrine means "to abide by former precedents." Blackstone elucidated the doctrine thus:

"For it is an established rule to abide by former precedents, where the same points come again in litigation: as well as to keep the scale of justice even and steady and not liable to waver with every new judge's opinion, as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from, according to his

private sentiment"

20. We must, however, hasten to add that in the instant case, the learned single Judge has acted with utmost propriety in that the single Judge did not decide the matter before him contrary to the decision of the Division Bench. We are however, required to examine when and under what circumstances a learned single Judge can refer a matter for consideration by a larger Bench.

21. In *K. Sahdev v. Suresh Bir .* , Supreme Court opined as under;

"In our opinion the learned single Judge in recording the finding that the decision in *Ataur Rahaman* 1(1998) 1 SCC 366] was no more a good law, did not act properly as unless the decision in *Ataur Rahaman* was set aside by a larger Bench the declaration given by it that Section 4 was ultra vires could not be put at naught by a decision given by this Court in respect of another Act. The proper course for the learned single Judge was to refer the matter to the Division Bench. In the absence of any such decision by a larger Bench the section could not revive."

22. In that case, a single Judge of that Court in *Md. Ataur Rahaman Khan v. Mohd. Kamaluddin Ahmed* (1987 (1) ALT 216) held that section 4 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 was unconstitutional. In a subsequent matter, which came before another learned single Judge of that High Court in revision, it was observed that similar provision under the East Punjab Urban Rent Restriction Act having been held valid and reasonable by the Supreme Court in *Sant Lal Bharatt v. State of Punjab* (1998 (1) SCC 366), the learned single Judge held that the decision of the High Court in *Ataur Rahaman Khan's* case (supra) was no longer a good law. It was in these circumstances and on those facts that the observations, quoted supra, were made by the Supreme Court.

23. The observations of the Supreme Court in the above case are significant in that they lay down that Bench of co-ordinate jurisdiction cannot set at naught the decision of another Bench of co-ordinate jurisdiction of the same High Court. The said observations also signify as to when a matter ought to be referred to a larger Bench.

24. In various judgments of the Supreme Court it has been stated that the learned single Judge ought to have referred the matter to a larger Bench instead of deciding to the contra when there was a judgment of larger Bench on the point. The said observations, in our view, have to be understood in their proper perspective and should not be taken as laying down a general proposition that whenever in the opinion of a learned single Judge, a judgment of a larger Bench is not in conformity with the view of the learned single Judge, the matter can be referred to a larger Bench.

25. In the said context, it would be useful to make a reference to some judgments of the Supreme Court.

26. In the case of Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, , the Supreme Court observed as under;

"We have noticed with some regret that the earlier decision of two judges of the same High Court in Deorajin Debi and Another Vs. Satyadhyan Ghosal and Others, was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing it is the quality of certainty. That quality would total disappear if Judges of coordinate jurisdiction in a High Court start overruling one another"s decision."

27. In the case of Shri Bhagwan and Another Vs. Ram Chand and Another, , the Supreme Court observed as under;

"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view, that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench or in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned single Judge departed from this traditional way in the present case and chose to examine the question himself."

28. In the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , the Supreme Court held as under;

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a Court."

29. In the case of Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, , the Supreme Court observed, as under;

"It would be difficult for us to appreciate the judgment of the High Court. One must remember that pursuit of the law, however, glamorous it is, has its own limitation on the Bench. In a multi Judge Court, the Judges are bound by precedents and procedure, They would use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned single Judge of a Division Bench does not agree with the decision of a Bench of coordinate jurisdiction, the matter

shall be referred to larger Bench. It is a subversion of judicial process not to follow this procedure."

30. The Court further proceeded to add at pp. 1899 and 1900 of AIR as under;

"In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of Judges of the Superior Courts and Tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons, which carry convictions within the Courts profession and public. Otherwise, the lawyers would be in a predicament and would not know to advise their clients. Subordinate Court would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute."

31. It is the ratio decidendi of a judgment that is a binding precedent. The hierarchy of authority with regard to binding precedent is summed up in paragraph 28 at page 158 of Salmond on Jurisprudence. Twelfth Edition, as follows;

"The general rule is that a Court is bound by the decisions of all Courts higher than itself. A High Court Judge cannot question a decision of the Court of Appeal, nor can the Court of Appeal refuse to follow judgments of the House of Lords. A corollary of the rule is that the Courts are bound only by decisions of Higher Courts and not by those of lower or equal rank. A High Court judge is not bound by a previous High Court decision, though he will normally follow it on the principle of judicial comity, in order to avoid conflict of authority and so secure certainty and uniformity in the administration of justice. If he refuses to follow it, he cannot overrule it; both decisions stand and the resulting antimony must wait for a higher Court to settle."

32. A precedent, however, ceases to be a binding precedent.

(i) if it is reversed or overruled by a larger Bench or the Supreme Court.

(ii) when it is affirmed or reversed on a different ground,

(iii) when it is inconsistent with the earlier decisions of the Bench of the same rank of that High Court, (iv) when it is sub silentio, and (v) when it is rendered per incuriam.

33. Subba Rao, J. (As His Lordship then was) in Dr. K.C. Nambiar Vs. State of Madras and Others, laid down certain salutary principles that were later also approved by a Full Bench of the Andhra Pradesh High Court in M. Subbarayudu and Others Vs. The State, . They are as follows :

"A single judge is bound by a decision of a Division Bench exercising appellate jurisdiction. If there is a conflict of Bench decisions, he should refer the case to a Bench of two judges who may refer it to a Full Bench. A single judge cannot

differ from a Division Bench unless a Full Bench of the Supreme Court overruled that decision specifically or laid down a different law on the same point. But he cannot ignore a Bench decision, as I am asked to do on the ground that some observations of the Supreme Court made in a different context might indicate a different line of reasoning. A Division Bench must ordinarily respect another Divisional Bench of co-ordinate jurisdiction but if it differs, the case should be referred to a Full Bench. This procedure would avoid unnecessary conflict and confusion that otherwise would prevail."

34. The principles that emerge from the decisions, cited supra, are that the decisions of the Supreme Court are binding on all the Courts, Article 141 of the Constitution embodies the rule of precedent. A Special Bench/ Full Bench judgment of that High Court is binding on the question of law decided by it and despite the same if any Division Bench holds to the contrary then a Division Bench has the authority to differ with the Division Bench which has taken a view contrary to the Special Bench judgment. A single judge of a High Court is bound by the judgment of another single Judge and a fortiori judgments of Benches consisting of more judges than one. So also, a Division Bench of two judges of High Court is bound by judgments of another Division Bench of two Judges and Full Bench. A single Judge or Benches of High Courts cannot differ from the earlier judgments of co-ordinate jurisdiction merely because they hold a different view. When a Division Bench of two Judges differs from the judgment of another Division Bench of two Judges, it has to refer the case to a Full Bench. A single Judge cannot differ from a decision of a larger Bench except when that decision or a judgment relied upon in that decision is specifically overruled by a Full Bench or the Supreme Court. However, if the decision of the larger Bench is inconsistent with the law laid down by a Full Bench or the Supreme Court, the proper course to the single Judge would be to refer the matter to the Division Bench.

35. In my considered view, therefore, it is only within the narrowest field that a judgment of a larger Bench can be referred for reconsideration.

36. A Full Bench of the Punjab High Court in *Krishna Kumar Singla v. State of Haryana*, reported in 2000 (2) ICC 385 has referred to an earlier Full Bench judgment of that Court *DES RAJ Angra v. Oriental Fire and General insurance Com. Ltd.*, Chandigarh ILR 1985 (1) 593" which laid down the parameters within which a smaller Bench may suggest a reconsideration of the judgment of a larger Bench and not otherwise. They are as under:

"....One of the obvious reasons is, where it is unequivocally manifest that its ratio has been impliedly overruled or whittled down by a subsequent judgment of the Superior Court, or a larger Bench of the same Court. Secondly, where it can be held with certainty that co-equal Bench has laid the law directly contrary to the same. And thirdly, where it can be conclusively said that the judgment of the larger Bench was rendered per incuriam by altogether falling to take notice of a clear-cut statutory provisions or an earlier binding precedent. It is normally

within these constricted parameters that a smaller Bench may suggest a re-consideration of the earlier view and not otherwise....."

37. In *G.C. Gupta and Ors. v. N.K. Pandey and Ors.* 1088 (1) SLR 706 (SC) the apex Court cautioned as under;

"In legal matters, some degree of certainty is as valuable a part of justice as perfection. One reason for consistency is that people often regulate their conduct with reference to existing rules, which makes it important for Judges to abide by them. Innovations can be unsettling and lead to a loss of confidence: *Dias*" Jurisprudence, 4th Edn., p. 286. In the present case, the High Court was obviously wrong in proceeding upon the basis that the matter was still *res integra*. The decision of the earlier Division Bench was arrived at" keeping in view all the aspects and it was held that the claim for re-determination for inter se seniority between direct recruits and promotees could not be agitated after a lapse of 16 years. It is sufficient for invoking the rule of *stare decisis* that a certain decision was arrived at on a question or was argued, no matter on what reason the decision rests or What is the basis of the decision in other words, an earlier decision may be overruled if the Court comes to the conclusion that it is manifestly wrong and not upon a mere suggestion that if the matter was *res integra*, the Court on a later occasion could come to a different conclusion; It cannot be doubted that an unlimited and perpetual threat of litigation leads to disorder, sense of insecurity and uncertainty."

38. In a recent judgment of three Judges Bench of the Supreme Court in *Vijay Laxmi Sadho v. Jagdish* AIR 2000 SCW 223, it was observed at paragraph 28 as under:

"As the learned single Judge was not in agreement with the view expressed in *Devilal*'s case, it would have been proper, to maintain Judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting Judgments to operate creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

39. The Supreme Court, as noticed from the various Judgments, cited *supra*, has expressed either distress, anguish or regret whenever a Bench of co-ordinate Jurisdiction of a High Court has disagreed with another Bench of co-ordinate Jurisdiction. It is in that context that the observations have been made to the effect that "it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate creating confusion."

40. Reverting now to the case on hand, the learned counsel for the respondent State has not been able to satisfy us that any case is made out in terms of the aforesaid guidelines and principles for this reference at the instance of a learned single Judge.

41. Also, it is pertinent to note that the respondent-State was a party to the earlier Judgments in W.P. No. 7034 (W) of 1997 decided by a learned single Judge as also in MAT 757 of 1999 decided by the Division Bench. The Respondent-State though had, yet failed to avail of the remedy of appeal against the Judgment of the learned single Judge as also with respect to , the judgment of the Division Bench which could, have been taken to Supreme Court by way of Special Leave Petition. The respondent-State allowed the said matters to attain finality and cannot for that reason be allowed to question the same in collateral proceedings by seeking a reference to a larger Bench.

42. May be, as contended on behalf of the State which found favour with the learned single Judge the materials, the pleadings and arguments which ought to have been raised IN the earlier matters, were not raised. The respondent State is not precluded from raising the same. The learned single Judge before whom the instant matter came up for hearing is also not precluded from considering the new pleas or materials in the case placed before him or submissions on questions of law urged before him. However, the learned single Judge, in such circumstances, cannot treat the matter as if it was res integra as was held in G.C. Gupta's case by the apex Court (cited supra). The learned single Judge, in such circumstances can consider the pleadings and material on record and also express his opinion thereon but would, on the principles of judicial propriety, hold himself bound by the Judgment and decision of the larger Bench on the doctrine "of stare decisis. It would thereafter be open to the aggrieved party to appeal against the decision and test the correctness of the earlier Division Bench judgment before the Appellate Bench. If, in the opinion of, the later Division Bench the decision of the earlier Division Bench requires re-consideration, it can seek reconsideration of the same by a larger Bench.

43. Reference needs to be made to the Judgment of Sudhamay Basu, J. in Hind Tin Industries and Others Vs. The State and Others, declining to refer the matter to the learned Chief Justice in the following terms and for the reasons stated therein which are as under;

"Some suggestions were made at the bar that the case might be referred to a larger Bench. It may be made clear that a Division Bench decision is binding on a Judge sitting singly. Moreover sitting singly I do not think that the existing rules would permit me to refer the case to the learned Chief Justice for constituting a larger Bench even if there would be an occasion to differ from the Division Bench judgment. The learned Chief Justice in exercise of inherent power may however constitute a larger Bench if he thinks that the points involved require consideration by such a Bench in view of the importance of the question (See Tara Dutta Vs. The State and Another,)."

44. U.C. Banerjee, J. (As His Lordship then was) in General Electric Co. of India Ltd. v. The Fifth Industrial Tribunal of West Bengal and Ors., reported in 1985 (2) CHN 417 relying upon the observations in the case of Hind Tin Industries (supra), observed as under;

"While it is true that while dealing with the matter in Graphite India's case (84 CWN 239) this Court's attention was not drawn to the decisions referred to earlier in this Judgment, but in any view a Judge, sitting singly, is bound by the Division Bench Judgment and as such I am unable to express any other opinion but to follow the opinion expressed in the case of Graphite India.

A suggestion has been made from the bar that the matter ought to be referred to a larger Bench, but I am not in a position to accept the contention as the rules of our High Court do not permit a judge sitting singly to refer the matter to the learned Chief Justice for constituting a larger Bench, even if there be an occasion to have a difference of opinion. In this context reference may be made to the decision of this Court in the case of Hind Tin Industries and Others Vs. The State and Others, ."

45. Apposite in this context is the statement in the case of J.F. Adair & Co. Ltd. Birnbaum 1938 (4) All ER 775 wherein Mac Kinnon, L. J. observed as under;

"I agree that, by reason of certain precedents, and in particular by reason of the decision, by a majority, of this Court in Lancaster v. Turner (J.F.) & Co., Ltd. (1), we are constrained to dismiss this appeal. If I were not hampered in that way, I should have decided otherwise. As I hope that this case may go to the House of Lords, and that this type of contract may there be considered for the first time, I desire to make some observations upon it."

46. In my respectful view, when there is a binding precedent of a larger Bench, the proper course to be adopted is the one as above.

47. In circumstances some what similar to the case on hand a Special Bench of this High Court to which I was a member in Ranjit Kumar Dey v. Dipti Rani Guchait and Ors.. 2000(2) CLJ 1, the Special Bench declined to answer the questions raised by a learned single Judge when the matter was covered by a Division Bench Judgment though rendered subsequent to the reference. The reference was accordingly disposed of with the following observations;

"In this view of the matter, we are of the opinion that it is not necessary to answer the question raised by a learned single Judge of this Court in his aforementioned order dated 17.6.98, in view of the fact that subsequent thereto, a Division Bench has already decided the matter. Prima facie, it appears that in some of the matters, even no application u/s 5 of the Limitation act, had been filed, and as such, we are of the opinion that in those cases reference was inappropriate,"

48. For the reasons aforesaid, I am of the considered view that it is not necessary to answer the questions raised by the learned single Judge in his

aforesaid orders dated October 5, 1999 in view of the fact that an earlier Division Bench has already decided the matter and there is no conflict of opinion with any other Division Bench or any Judgment to the contra of a larger Bench or of the Supreme Court.

The reference is accordingly disposed of. There shall, however, be no order as to costs.

Be it placed on record that we have not gone into the merits of the case and, therefore, no statement or observation in this judgment be construed as our opinion on the merits of the controversy involved in the writ petition.

Let the matter now be placed before appropriate Bench having the determination for decision on merits.

Y.R. Meena, J.

49. I agree.

T. Chatterjee, J.

50. I agree.

51. Reference disposed of