

(2013) 03 GAU CK 0030
In the Gauhati High Court
Case No : Writ Petition (C) No. 128 of 2012

Anup Kumar Roy and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Constitution of India, 1950 — Article 135, 215, 226, 227
Pharmacy Act, 1948 — Section 10, 11, 31, 32, 32(1)

Citation : AIR 2013 Guw 123

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : Somik Deb, D.C. Nath, S. Pal, S. Datta and S. Ghosh, for the Appellant; N.C. Pal, G.A. and A. Bhattacharjee, for the Respondent

Judgement

S.C. Das, J.—By this writ petition, the petitioners, who were registered/enrolled as Pharmacists in the State of Tripura for carrying on profession or business of pharmacy, prayed for issuing a writ, restraining and/or prohibiting the official respondents from acting in any manner in furtherance of the impugned decision, not to renew the licences of the petitioners, in furtherance of the judgment and order, dated 15-9-2006, passed by single Bench of this Court in Civil Rule No. 400 of 1996 (Annexure-P4 to the writ petition), which was affirmed by the Division Bench of this Court in an appeal filed by the official respondents vide judgment and order dated, 14-11-2011, in WA No. 66 of 2006 (Annexure-P5 to the writ petition).

In this writ petition, the petitioners virtually challenged the decisions of this Court in the earlier writ petition and writ appeal, inter alia on the ground that the writ petition and writ appeal were not maintainable and the decisions thereof were not binding on them since the cases have been decided without impleading them as parties to the proceeding. Therefore, the State respondents cannot take any action in respect of the renewal of licences, detrimental to the interest of the petitioners, in furtherance of the judgment and order passed by this Court in the

aforementioned writ case and writ appeal.

Heard learned counsel, Mr. Somik Deb for the petitioners and learned GA., Mr. N.C. Pal for respondent No. 1 and learned counsel, Mr. Arindam Bhattacharjee for respondent No. 2. Other respondents have chosen to remain absent.

2. Let us now have a glimpse to the facts, in short:

2.1. By a notification vide No. F.1(11)TSPC/96, dated 24-7-1996, the Registrar of Tripura State Pharmacy Council (for short, TPSC) invited applications for issuance of pharmacist registration u/s 32(1) of the Pharmacy Act, 1948 read with Rule 72 of the Tripura State Pharmacy Council Rules, 1975 and the Notification reads thus:

No. F.1 (11) TSPC/96 Office of the Registrar Tripura State Pharmacy Council
Gorkhabasti Office Complex Agartala

Dated, Agartala, the 24/7/1996.

To

The Director, IACT, Govt. of Tripura, Agartala,

The Director, All India Radio, Agartala,

Subject:-- Press release for wide publicity.

Sir,

Kindly arrange to publish/broadcast the following matters for wide publicity.

"The Tripura State Pharmacy Council will receive applications from persons having the following qualifications for issue of pharmacist registration u/s 32(1) of the Pharmacist Act, 1948 read with Rule 72 of the Tripura State Pharmacy Council Rules, 1975", only upto 23rd August, 1996.

(i) A matriculate with five years experience in dispensing/compounding of drugs.

(ii) A graduate with three years experience in dispensing/compounding of drugs.

(iii) A matriculate and compoundership certificate holders.

The application forms may be collected from the office of the Tripura State Pharmacy Council, Health Directorate Building, Gorkhabasti, Agartala.

Yours faithfully Sd/- Illegible (M.K. Pal) Registrar

2.2 Challenging the above notification and further challenging the amendment made by the State Government by Notification No. F.1(157-DC) DHS/94/2653-55 dated 15-12-1995, which was published in Tripura Gazette, Extraordinary Issue, dated, January 18, 1996, the private respondents herein, i.e. respondent No. 4, represented by 4(i) and 4(ii) filed Civil Rule No. 400 of 1996 before this Court, inter alia, praying for the following relief:

...i. Admit the petition of the petitioners and to call for records from the custody of the office-respondents relevant to the subject-matter.

ii. Issue writ declaring the amendment of Rule 72 of the Tripura State Pharmacy Council Rules, 1975 as sought to be incorporated by Tripura State Pharmacy Council (Amendment) Rules, 1995 as ultra vires the Pharmacy Act, 1948 without authority vis-a-vis the powers conferred by Section 46 of the Pharmacy Act, 1948 as inoperative and void-ab-initio forthwith and in no time,

iii. Issue writ striking down the Amendment of Rule 72 as sought to be incorporated by Tripura State Pharmacy Council (Amendment) Rules, 1995,

iv. Issue writ directing the official respondent and each of them to set-aside the quash and/or cancel the Notification dated 24-7-1996 forthwith and in no time.

2.3 Since Rule 72 of the Tripura State Pharmacy Rules, 1975 (for short, Rules of 1975) was in question in the earlier writ case the relevant rule before and after amendment may be quoted for ready reference thus:

Before amendment the relevant part of Rule 72 quotes thus:

Rule 72. Every person entitled u/s 32 to be registered under the Act and desiring to have himself registered shall apply to the Registrar in Form G duly filled in and signed. Every such application shall be accompanied by the fee prescribed in Rule 81.

After amendment of 1995 the following proviso was added:

Amendment of Rule 72-- In Rule 72 of the principal rules, the following proviso shall be inserted after the existing provisions, namely-

Provided that-

(i) every candidate who possesses qualification either under clause (b) or clause (d) of Section 31 of the Act and who is found eligible after scrutiny of the application may be required to undergo a written test to be conducted by the Council in such manner as the Council may deem fit;

(ii) the successful candidates may be required to attend an orientation course on payment of fees as specified in Rule 31.

(iii) on successful completion of the orientation course the names of the candidates shall be entered into the Register and certificate shall be issued in his favour.

(iv) A candidate shall get only one chance to appear in the written test; and

(v) Any dispute with regard to eligibility test and orientation course or the manner thereof shall be decided by the Council whose decision shall be final.

2.4 Admittedly, neither in the earlier writ case, nor in the writ appeal which was preferred by the State respondents, the present petitioners were made parties

though their right admittedly was substantially affected by the decision of the writ Court. By impugned judgment dated 15-9-2006 (Annexure-P4 to the writ petition), the writ Court allowed the petition and directed thus:

...

21. In the result and for the reasons discussed above, this writ petition succeeds. The impugned Notification, dated 15-12-1995, and the impugned order, dated 24-7-1996, are hereby set aside and quashed. All registration of persons as pharmacists made, pursuant to the impugned Notification, dated 15-12-1995, and/or the impugned order, dated 24-7-1996, shall stand set aside and quashed.

2.5 The writ appeal was also dismissed observing thus:

...

During the course of arguments, nothing substantive could be pointed out, so as to take a different view in the matter.

In view of the above, we do not find any merit in the appeal and accordingly it is dismissed, without however, any order as to cost.

Interim order, if any, operating in this proceeding stands vacated.

3. It is pertinent to mention here that myself was a party in the Division Bench of this Court, while disposing the writ appeal.

4. It is contended by the petitioners that pursuant to the provisions of the Pharmacy Act, 1948 (for short, Act of 1948), the Government of Tripura, by Notification vide No. 1(151-DC)DHS/92/1648-58, dated 24-8-1993, constituted Tripura State Pharmacy Council (TSPC) as per the provisions prescribed in Chapter III of the Act of 1948.

4.1 Chapter II of the Act of 1948 prescribes provision for Pharmacy Council of India and under that Chapter Section 10 prescribes "Education Regulations", which reads thus:

10. Education Regulations.-- (1) Subject to the provisions of this section, the Central Council may, subject to the approval of the Central Government, make regulations, to be called the Education Regulations, prescribing the minimum standard of education required for qualification as a pharmacist. (2) In particular and without prejudice to the generality of the foregoing power, the Education Regulations may prescribe-

(a) the nature and period of study and of practical training to be undertaken before admission to an examination;

(b) the equipment and facilities to be provided for students undergoing approved courses of study;

(c) the subjects of examination and the standards therein to be attained;

(d) any other conditions of admission to examinations,

(3) Copies of the draft of the Education Regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments, and the Central Council shall before submitting the Education Regulations or any amendment thereof, as the case may be, to the Central Government for approval under sub-section (1) take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(4) The Education Regulations shall be published in the Official Gazette and in such other manner as the Central Council may direct.

(5) The Executive Committee shall from time to time report to the Central Council on the efficacy of the Education Regulations and may recommend to the Central Council such amendments thereof as it may think fit.

4.2 Section 11 prescribes the provision regarding application of Education Regulations to a State which reads thus:

11. Application of Education Regulations to States.-

At any time after the constitution of the State Council under Chapter III and after consultation with the State Council, the State Government may, by notification in the Official Gazette, declare that the Education Regulations shall take effect in the State:

Provided that where no such declaration has been made, the Education Regulations shall take effect in the State on the expiry of three years from the date of the constitution of the State Council.

5. According to the petitioners, the State Government, after constitution of TSPC never issued a notification giving effect to the Education Regulations, in the State of Tripura. Therefore, according to the proviso to Section 11, the "Education Regulations" shall come into force automatically in the State of Tripura, w.e.f. 24-8-1996, i.e. after expiry of three years from the date of constitution of the TSPC i.e. 24-8-1993.

5.1 It is also contended by the petitioners that the Government of Tripura by a notification No. F.1(71)-RPI/ADM/91-92, dated 22-2-1993 (Annexure-P2 to the writ petition) was pleased to give effect of the "Education Regulations" in the Regional Pharmacy Institute, Agartala, w.e.f. the academic session 1993-94. The said notification reads thus:

GOVERNMENT OF TRIPURA HEALTH AND FAMILY WELFARE DEPARTMENT

No. F.1(71)-RPI/ADM/91-92

Dated, Agartala, the 22 February, 1993.

NOTIFICATION

The Governor, Tripura, is pleased to order that with effect from 1993-94 academic session the Regional Pharmacy Institute, Agartala shall follow Education Regulations, 1991, substituting Education Regulations, 1981, framed by the Pharmacy Council of India u/s 10 of the Pharmacy Act, 1948.

This is issued in line with Notification in Gazette of India, Part III, Section 4, No. 28 dated 11th July, 1992.

By order of the Governor, (D.P. Datta) Joint Secretary to the Government of Tripura.

5.2 It is strenuously contended by the petitioners that the above notification, dated 22-2-1993, was neither carefully read nor brought to the notice of this Court at the time of hearing of earlier writ case and writ appeal pointing to the context that by the said notification the "Education Regulations" was only extended to the "Regional Pharmacy Institute, Agartala", and that it was never extended to the State of Tripura for all intents and purposes including that of the registration of pharmacists, etc.

5.3 It is further contended by the petitioners that by impugned notification, dated 24-7-1996, applications were invited from the eligible candidates for issuance of registration as pharmacist u/s 32(1) of the Act and all the petitioners were registered as pharmacists pursuant to that notification in due course of law and that was within the notice of the writ petitioners and the respondents of earlier writ case as well as the writ Court but the petitioners were not made parties whereas the writ Court by impugned judgment and order set aside and quashed all registrations of the petitioners as pharmacists made pursuant to notifications, dated 15-12-1995 and 24-7-1996 and, as a result, the petitioners' interest was adversely affected. Since the natural justice was denied to them, the petitioners challenged the judgments and orders passed in the earlier writ case and writ appeal.

6. Respondent Nos. 1 and 2 submitted counter-affidavit but they have not taken any particular stand as against the contentions of the writ petitioners. They have simply stated about the decisions of the earlier writ case and writ appeal and the stand taken by them in the earlier writ case. Respondent Nos. 4, 4(i) and 4(ii) have chosen to remain absent.

7. Following points emerged for consideration:

(i) Whether the writ petitioners were necessary parties in the earlier writ case and writ appeal?

(ii) Whether notification dated 22-2-1993 was properly read and/or brought to the notice of the writ Court?

(iii) Whether amendment of Rule 72 of Tripura State Pharmacy Rules, 1975 by Notification dated 15-12-1995 and subsequent Notification of TSPC dated 24-7-1996 were beyond jurisdiction and were liable to be interfered?

(iv) Whether the single Bench of this Court in exercise of writ jurisdiction, can review the decision of the earlier writ case/writ appeal?

9. Point No. (i)

Whether the writ petitioners were necessary parties in the earlier writ case and writ appeal?

8.1 Learned counsel, Mr. Deb has strenuously argued that the earlier writ petition was filed in the year 1996 (CR No. 400 of 1996) and it was decided on 15-9-2006. Pursuant to notification dated 24-7-1996 (Annexure-P3), a selection process of the pharmacists according to the existing provision of the Act of 1948 and the Rules of 1975 was taken up and the writ petitioners were registered as Pharmacists in the State in terms of the provision prescribed in Section 32(1) of the pharmacy Act and they have been practicing their profession and/or business as such pharmacists continuously from 1996 till today and when the writ petition was heard and the judgment, impugned, was passed, it was within the knowledge of the State respondents as well as the writ petitioners of CR No. 400 of 1996 that the present writ petitioners already have been registered as pharmacists and so they ought to have been made parties to the writ case to say their grievances and since the writ case was heard and decided in absentia of the present petitioners, they cannot be held bound by the said decision of this Court, and this Court in exercise of its plenary jurisdiction under Article 226 of the Constitution, has a right to correct the earlier wrong decision in view of the provisions prescribed under Article 215 of the Constitution of India.

8.2 Learned G.A., Mr. Pal for the State respondent and learned counsel, Mr. Bhattacharjee for TSPC have admitted the fact that all the writ petitioners were already registered and/or enrolled as pharmacists when the writ petition was heard and decided. However, they have contended that it was not their duty to mention for making them as party to the writ case and that it was the duty of the writ petitioners of the earlier writ case to make appropriate prayer for making the present petitioners as parties to the earlier writ case.

8.3 A meticulous reading of Annexure-4, i.e. judgment dated 15-9-2006, passed in earlier writ case, I find in paragraph 15 of the judgment, the learned single Judge noted in respect of order dated 21-8-1996 passed in Civil Misc. Appln. No. 451 of 1996, arising out of the writ case, wherein, an interim order was passed stating that the operation of the impugned rules and notification challenged in that writ case could not be stayed, but if any benefit is accrued to anyone by virtue of the said rules and notification, that will be subject to the decision of the writ petition. In view of that interim order, the writ Court, while allowing the writ petition, passed the order directing that all registrations of persons as pharmacists made pursuant to the rules and notifications challenged in the case were set aside and quashed. That interim order was passed on 21-8-1996 and it was well within the knowledge of the writ petitioners and the respondents of that case that the present petitioners were already enrolled/registered in due process

as pharmacists and so they were obviously necessary parties in that writ case and, even the State respondents cannot wash their hands by simply stating that it was the responsibility of the writ petitioners of that case only to bring it to the notice of the Court that they were necessary parties. The present petitioners were/are practicing and/or doing their business as pharmacists for more than ten years and without hearing them and/or giving them an opportunity of being heard, sudden decision of the State respondents in view of the judgments of this Court in the writ case and writ appeal not to renew their licences issued pursuant to notification dated 24-7-1996 has definitely put the petitioners in great shock and disadvantageous position and therefore, in my considered opinion, the petitioners have a right to agitate their grievances before this Court by filing the present writ petition.

8.4 The Supreme Court in the case of Pohla Singh @ Pohla Ram (d) by Lrs. and Others Vs. State of Punjab and Others, , has considered almost a similar circumstance and held that the right of some of the allottees praying for the relief in a subsequent writ case that the decision of the earlier writ case was not binding upon them was found to be justified and upheld by the Apex Court observing as follows:

18. Shri P.P. Rao, learned Senior Counsel for the respondents (landholders) has also submitted that Civil Writ Petition No. 3213 of 1968 filed by Dhanna Singh had been allowed by the High Court by the judgment and order dated 9-1-1980 and the orders passed by the Collector on 9-6-1961 and that by the Financial Commissioner on 2-3-1967 were set aside. This order of the learned single Judge of the High Court having not been challenged by the allottees by preferring an appeal, became final and consequently it was not open to another learned single Judge to entertain another Writ Petition (Civil Writ Petition No. 1287 of 1980) at the instance of the allottees and to make a declaration that they (allottees) were not bound by the decision rendered on 9-1-1980 in CWP No. 3213 of 1968 and also that they cannot be dispossessed from the land in dispute in compliance therewith. It may be mentioned here that the final order regarding declaration of surplus land of Dhanna Singh was passed by Collector on 9-6-1961 and thereafter the surplus land was allotted to the allottees on 5-3-1962 and a Sannad was issued in their favour and they were also put in possession thereof. The allottees had deposited the compensation amount of Rs. 13,882.53, which was received by Dhanna Singh. However, in the Writ Petition filed by Dhanna Singh in 1968 which came to be decided on 9-1-1980, the allottees were not impleaded as parties. The decision in the writ petition clearly affected their rights, Civil Writ Petition No. 1287 of 1980 was filed by the allottees under Articles 226 and 227 of the Constitution, wherein they claimed several reliefs and prayers (ii) and (v) read as under:

(ii) that the decision contained in the judgment dated 9-1-1980 in CWP 3213 of 1968 be declared to be not binding on the petitioners as they had deliberately been omitted from being impleaded as parties in the writ petition.

(v) that the decision dated 9-1-1980 in CWP 3213 of 1968 be recalled and the case be re-decided after hearing the petitioners who are necessary parties to the said writ petition.

18.1 In this petition Gurcharan Singh son of Dhanna Singh was arrayed as Respondent 4 and the judgment shows that the petition was contested only by the said respondent. If a decision rendered in a writ petition adversely affects the interest of a third person who was not impleaded as party in the writ petition, it is always open to him to ask for recall of the judgment which has been rendered without affording any opportunity of hearing to him. An identical question has been examined by a Constitution Bench in *Shivdeo Singh and Others Vs. State of Punjab and Others*, . Here in a writ petition filed by A for cancellation of the order of allotment passed by the Director of Rehabilitation in favour of B, the High Court cancelled the order in favour of B though he was not a party to the writ proceedings. Subsequently, B filed a petition under Article 226 of the Constitution for impleading him as a party to A's writ petition and rehearing the whole matter. The High Court allowed the writ petition. It was held by this Court that the second writ petition filed by B was maintainable and the High Court had not acted without jurisdiction in reviewing its previous order at the instance of B, who was not a party to the previous proceedings. It was further held that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave or palpable errors committed by it. In entertaining B's petition, the High Court thereby did what the principles of natural justice required it to do.

19. The recourse taken to the second writ petition by the allottees, therefore, cannot be said to be illegal as their basic grievance was that though they were in possession since 1962 i.e. for nearly 18 years, but the order declaring the land as surplus had been set aside in a writ petition, wherein they were not impleaded as parties. In these circumstances we are of the opinion that the writ petition filed by the allottees was rightly allowed by the learned single Judge.

8.5 Learned counsel, Mr. Deb referring to the case of *M.M. Thomas Vs. State of Kerala and Another*, has submitted that the High Court being a Court of record has inherent power to correct its wrong which is apparent on the face of the record.

8.6 In the present case at hand, submitted, learned counsel, Mr. Deb, the rights of the writ petitioners have been infringed without hearing them. They were deliberately not made parties in the proceeding. Such a wrong cannot be allowed to continue and the Supreme Court in the case of *M.M. Thomas (supra)* has clearly laid down the law that the High Court can take appropriate action to correct its records. In paragraphs 13, 14 and 15 of the judgment the Supreme Court held that:

13. In this case we are not concerned with the power of review of the Forest

Tribunal. It was the High Court which reviewed its own judgment and so the question is whether the High Court has such power dehors Section 8-C(2) of the Act. Power of review conferred on the Supreme Court under Article 135 of the Constitution is not specifically made applicable to the High Courts. Does it mean that the High Court has no power to correct its own orders, even if the High Court is satisfied that there is error apparent on the face of the record?

14. The High Court as a Court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A Court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual, memorial and testimony. A Court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a Court of record, has duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regards is plenary. In *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, , a nine Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a Court of plenary jurisdiction being a Court of record.

15. In Halsbury's Laws of England (4th Edn. Vol. 10, para 713) it is stated thus:

The chief distinctions between superior and inferior Courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court. An objection to the jurisdiction of one of the Superior Courts of general jurisdiction must show what other Court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendence in certain classes of actions, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular action." (Though the above reference is to English courts the principle would squarely apply to the superior courts in India also.)

8.7 It is the fundamental principle of natural justice that "no man should be condemned unheard". The writ petitioners definitely, were/are being condemned without affording them an opportunity of being heard. Admittedly, the writ petitioners were registered as pharmacists and were practicing as such when the writ petition came for hearing and for decision in the year 2006. It was the duty of the writ petitioners as well as the State respondents, who were parties in the earlier writ case, to bring it to the notice of the writ Court about the right of the present writ petitioners of being heard and, since they were not brought on record and were not heard, a valuable right of the petitioners were infringed and, therefore, the petitioners have a right to agitate the same before this Court, seeking direction that the State respondents in view of the decision of the writ

Court in which they were not made parties, cannot take a decision not to renew their licences.

9. Point No. (ii)

Whether notification dated 22-2-1993 was properly read and/or brought to the notice of the writ Court?

9.1. It is an undisputed rather an admitted fact that TSPC was constituted by the State Government on 24-8-1993 and no notification was issued by the State Government giving effect of the "Education Regulations" throughout the State for all intents and purposes except that of notification, dated 22-2-1993 (Annexure-P2).

9.2. A careful reading of Annexure-P2 makes it abundantly clear that it was issued only in respect of "Regional Pharmacy Institute, Agartala", stating that the Education Regulations, 1991 shall apply in that institute from the academic session 1993-94. The said notification was issued, admittedly, before the constitution of Tripura State Pharmacy Council. So there was no question of having consultation with the State Council since before the State Council came into existence the said notification was issued. For all intents and purposes Annexure-P2 was issued only in respect of the Regional Pharmacy Institute and not for any other purpose. As it appears, it was never argued or brought to the notice neither before the writ Court nor before the appellate Court. The writ Court referring to that notification simply arrived at a conclusion that the "Education Regulations" was given effect in the State of Tripura from 22-2-1993 in respect of registration of pharmacists, which was not the correct position as admitted by learned G.A., Mr. Pal and learned counsel, Mr. Bhattacharjee too.

9.3. It is clearly contended by learned G.A., Mr. Pal and learned counsel, Mr. Bhattacharjee that the judgment does not reflect that, any such argument was made on behalf of the respondents that the notification was simply applicable to the "Regional Pharmacy Institute" and not otherwise.

9.4. Therefore, I am of the considered opinion and find sufficient force that it was not properly addressed before the writ Court, and also, at the time of hearing of the writ appeal, that Notification, dated 22-2-1993 was issued before constitution of TSPC and that it was simply applicable to the "Regional Pharmacy Institute, Agartala" with effect from the academic session 1993-94 and that notification should not be construed as a notification giving effect of the "Education Regulations" for all intents and purposes in the State of Tripura.

10. Point No. (iii)

Whether amendment of Rule 72 of Tripura State Pharmacy Rules, 1975 by Notification dated 15-12-1995 and subsequent notification of TSPC dated 24-7-1996 were beyond jurisdiction and were liable to be interfered?

10.1. Learned counsel, Mr. Deb has contended that in the earlier writ case vires

of the Amendment Rule of 1995, under which Rule 72 was amended, was challenged and since the validity of the Rule was challenged, the writ petition ought to be heard by a Division Bench of this Court as stipulated in Rule 2 of Chapter V-A of Gauhati High Court Rules. Rule 2 of Chapter V-A reads thus:

2(1) Every such applications shall be made and heard before the single Judge except where the Chief Justice otherwise directs:

Provided that such application falling within any one or more of the following categories shall be heard by a Division Bench except where the Chief Justice otherwise directs:

(a) Public Interest Litigations;

(b) Habeas Corpus Application;

(c) Application relating to externment or deportation;

(d) Any application which a single Judge may refer to the Chief Justice for placing it before the Division Bench having regard to the importance or complexity of the case.

[(e) Writ petitions in which constitutional validity of any Act, Rules or any provisions thereof have been challenged.]

(2) An appeal from the judgment and order of a single Judge disposing of an application shall lie to the Division Bench if preferred within thirty days of the date of such Judgment and Order. The Division Bench may condone the delay in filing any appeal, if good and sufficient cause is shown:

(3) The appeal shall be in form No. 3A in Appendix I, (see page No. 199)

[(4) In case of writ appeals, along with the Memorandum of Appeal, the certified copy of the judgment, authenticated copy of the Civil Rule/Writ Petition with relevant annexures, copy of affidavit-in-opposition, counter affidavits and all other relevant papers filed by the party concerned in the relevant Civil Rules/Writ Petition from which the Writ Appeal has arisen, must be included.]

10.2. Clause (e) of sub-rule (1) of Rule 2 clearly stipulates that the writ petition in which constitutional validity of any Act, Rule or any provisions thereof have been challenged shall be heard by the Division Bench except where the Chief Justice otherwise directs. Nothing is on record to show that the Chief Justice of the High Court directed hearing of Civil Rule 400 of 1996 by a single Bench where a rule was challenged and since the writ petition was heard by a single Bench of this Court where a particular rule was challenged, there is nothing before this Court to controvert the submission made on behalf of the writ petitioners.

I am of the considered opinion that the matter should be placed before the Hon"ble Chief Justice for reconsideration.

Regarding the constitutional validity of the Rule, I do not like to enter into further discussion sitting in the single bench.

11. Point No. (iv):

Whether the single Bench of this Court in exercise of writ jurisdiction, can review the decision of the earlier writ case/writ appeal?

11.1. Learned counsel, Mr. Deb has contended that the High Court being a Court of record has the power to determine question about its own jurisdiction and since the decision in the earlier writ case and the writ appeal was taken in absentia of the present petitioners affecting their legal and fundamental rights, this Court in exercise of its plenary jurisdiction as vested under Article 226 of the Constitution may entertain an application for correction of the records and may go for review of its earlier decision. He has referred the decision of the Apex Court in the case of Shivdeo Singh and Others Vs. State of Punjab and Others, . In paragraph 8 of the judgment the Court held thus:

8. The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla. J.

11.2. Learned counsel, Mr. Deb also referred the decision of the Apex Court in the case of Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, and in paragraph 60 of the judgment the Apex Court observed thus:

60. There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior Court of Record and under Art. 215, shall have all powers of such a Court of Record including the power to punish contempt of itself. One distinguishing characteristic of such superior Courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in Special Reference No. 1 of 1964, 1965-1 S.C.R. 413 at p. 499: In the matter of: Under Article 143 of the Constitution of India, . In that case, it was urged before this Court that in

granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such, the order was a nullity. Rejecting this argument, this Court observed that in the case of superior Court of Record, it is for the Court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. That is why this did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from Halsbury's Laws of England where it is observed that

prima facie, no matter is deemed to be beyond the jurisdiction of a superior Court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior Court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court.

(Halsbury's Laws of England, Vol. 9, p. 349).

If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law;

but until the adjudication by a superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court.

11.3. In the present case, the earlier writ petition was decided by the single Bench of this Court against which the State respondents preferred a writ appeal which was decided in the Division Bench, upholding the decision of the single Bench. The law has been settled by the Supreme Court that this Court in an appropriate case, on consideration of the facts, peculiar to the case, may exercise its powers under Article 215 of Constitution to correct an error apparent on the face of the record.

11.4. In the present case, I am of considered opinion that there was certain error apparent on the face of the record as indicated hereinabove, at least, it is manifest error that the present petitioners were not made parties in the earlier writ case, the decision of which affected their right substantially. In my considered opinion, sitting in the single Bench, an error apparent on the face of the record of a decision of single Bench may be corrected, but in the case at hand, the decision of the single Bench was heard and upheld by the Division Bench and, so, another Bench of this Court, sitting singly, cannot correct an error in the judgment, which was affirmed by the Division Bench. Therefore, I think, the matter may be referred to the Hon'ble Chief Justice for taking an appropriate decision for placing the same before an appropriate Division Bench for fair ends of justice.

Registry is directed to place the record before the Hon''ble the Chief Justice accordingly.