

(2001) 10 AHC CK 0029
In the Allahabad High Court
Case No : C.M.W.P. No. 53453 of 2000

Anurag Pathak

APPELLANT

Vs

High Court of Uttaranchal and Others

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 246(1), 246(2), 3
Government of India Act, 1935 — Section 38(2), 46(2)
Uttar Pradesh Reorganisation Act, 2000 — Section 2, 26, 26(1), 28(1), 28(2)

Citation : AIR 2002 All 48 : (2001) 4 AWC 3045

Hon'ble Judges : G.P. Mathur, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Ravi Kiran Jain and K.K. Roy, for the Appellant; S.N. Srivastava and Subodh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The petitioner, an advocate, practising in Allahabad High Court, has filed this writ petition under Article 226 of the Constitution, praying that (a) a writ, order or direction in the nature of mandamus be issued declaring Section 35(2) of the U. P. Reorganisation Act, 2000, as ultra vires of the Constitution, and (b) a writ, order or direction in the nature of mandamus be issued declaring the power of the Chief Justice u/s 35 (2) of the Act to be judicial in nature and further that the Chief Justice should exercise the power of grant of certificate after hearing the parties who invoke such jurisdiction and after recording reasons and that too only in exceptional cases.

2. The Parliament enacted the Uttar Pradesh Reorganisation Act, 2000 (Act No. 29 of 2000) (hereinafter referred to as the Act) to provide for reorganisation of the existing State of Uttar Pradesh and for matters connected therewith. The Act came into force on August 25, 2000 and the "appointed day" as defined u/s 2 (a) of the Act, by virtue of notification issued by the Central Government in official gazette, is November 9, 2000. In view of Section 3 of the Act, a separate State

of Uttaranchal was formed from the "appointed day" which comprises the territories of certain districts of the erstwhile State of Uttar Pradesh.

3. Sections 26 and 35 of the Act read as under :

"26. High Court of Uttaranchal.-

(1) As from the appointed day, there shall be a separate High Court for the State of Uttaranchal (hereinafter referred to as "the High Court of Uttaranchal") and the High Court of Judicature at Allahabad shall become the High Court for the State of Uttar Pradesh (hereinafter referred to as the High Court at Allahabad).

(2) The principal seat of the High Court of Uttaranchal shall be at such place as the President may, by notified order, appoint.

(3) Notwithstanding anything contained in Sub-section (2), the Judges and division courts of the High Court of Uttaranchal may sit at such other place or places in the State of Uttaranchal other than its principal seat as the Chief Justice may, with the approval of the Governor of Uttaranchal, appoint."

"35. Transfer of proceedings from Allahabad High Court to Uttaranchal High Court.--(1) Except as hereinafter provided, the High Court at Allahabad shall, as from the appointed day, have no jurisdiction in respect of the transferred territory.

(2) Such proceedings pending in the High Court at Allahabad immediately before the appointed day as are certified, whether before or after that day, by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Uttaranchal shall, as soon as may be after such certification, be transferred to the High Court of Uttaranchal.

(3) Notwithstanding anything contained in Sub-sections (1) and (2) of this Section or in Section 28, but save as hereinafter provided, the High Court at Allahabad shall have, and the High Court of Uttaranchal shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court at Allahabad before the appointed day :

Provided that if after any such proceedings have been entertained by the High Court at Allahabad, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Uttaranchal, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court at Allahabad-

(a) before the appointed day, in any proceedings transferred to the High Court of Uttaranchal by virtue of Sub-section (2), or

(b) in any proceedings with respect to which the High Court at Allahabad retains jurisdiction by virtue of Sub-section (3), shall for all purposes have effect, not only as an order of the High Court at Allahabad, but also as an order made by the High Court of Uttaranchal."

4. Sri Ravi Kiran Jain, learned senior advocate, has submitted at the very outset that this writ petition should have been heard by a Bench presided by Hon''ble the Chief Justice as question of interpretation of Section 35 (2) of the Act was involved. Learned counsel has submitted that on account of doctrine of necessity, the petition could only be heard by a Bench presided by Hon''ble the Chief Justice and not by any other Bench of which he was not a member. In support of his submission, he has placed reliance on Election Commission of India and another Vs. Dr. Subramanian Swamy and another, , where the Court ruled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of the judicial propriety. We are afraid that it is not open to us to go into the said question. The writ petition was listed for the first time before a Bench which was presided by Hon''ble the Chief Justice. The said Bench passed an order on December 11, 2000, that the petition be listed before a Bench of which Hon''ble the Chief Justice was not a member. Thereafter, Hon''ble the Chief Justice passed an order on December 12, 2000 that the writ petition be listed before a Bench presided by one of us (G.P. Mathur, J.). The petitioner also moved an application praying that the writ petition be heard by a Bench presided by Hon''ble the Chief Justice and in case the Hon''ble the Chief Justice has passed an order nominating another Bench, the same may be recalled. This application was dismissed as not maintainable by a Division Bench presided by Hon''ble the Chief Justice on December 15, 2000. In Sanjai Kumar Singh v. Acting Chief Justice 1996 AWC 644 , a Full Bench has held that a Chief Justice enjoins special status as he alone has jurisdiction to decide which case will be heard by a Judge sitting alone or by two or more Judges. In State of Rajasthan Vs. Prakash Chand and Others, , it was held that the Chief Justice is the master of the roster and he alone has a prerogative to constitute the Benches of the Court and allocate the cases to the Benches so constituted. Therefore, the jurisdiction to nominate the Bench which should hear the present writ petition is entirely with the Chief Justice and Hon''ble the Chief Justice having exercised that power on December 12, 2000, by nominating the present Bench, it is not open to us to direct or to pass any order that the writ petition should be heard by any other Bench. The application moved by the petitioner for recalling the order of nomination of our Bench has also been rejected. Therefore, the contention raised by Sri Jain cannot be entertained by us.

5. The principal prayer made in the writ petition is that Section 35 (2) of the U. P. Reorganisation Act, 2000, be declared as ultra vires of the Constitution. As the preamble shows, the Act has been enacted to provide for the reorganisation of the existing State of Uttar Pradesh and for matters connected therewith. Section 3 provides that from the appointed day, there shall be formed a new State to be known as the State of Uttaranchal comprising the territories of 13 districts of the

existing State of Uttar Pradesh. It further provides that the aforesaid territories shall cease to form part of the existing State of Uttar Pradesh from the appointed day. Article 3 of the Constitution lays down that the Parliament may by law form a new State by separation of territory from any State or by uniting two or more States or part of the State or by uniting any territory to a part of any State, increase the area of any State or diminish the area of any State. In view of this article, the Parliament had the authority to make a law to form a new State. Part IV of the Act deals with the High Court and Section 35 relates to transfer of proceedings from the Allahabad High Court to Uttaranchal High Court. In view of Article 246(1) of the Constitution, the Parliament has exclusive power to make laws with respect of any of the matters enumerated in List I in the Seventh Schedule. Entry 78 of List I (Union List) is "constitution and organisation including vacations of the High Courts except provisions as to officers and servants of High Courts : persons entitled to practise before the High Courts." It is well-settled that the entries in the three Lists of Seventh Schedule should be interpreted in a broad manner giving them their widest amplitude, and should not be interpreted in a narrow or pedantic fashion. Therefore, the Parliament had full competence to enact Section 35 of the Act. The other ground on which the constitutional vires of Section 35 may be challenged is that it violates Part III of the Constitution. Sri Jain has not been able to point out anything as to how Sub-section (2) of Section 35 violates any of the guarantees enshrined in Part III of the Constitution. The only contention raised by the learned counsel is that the power of the Chief Justice under Sub-section (2) of Section 35 has been held to be administrative in nature by a Division Bench in *Peoples Union for Civil Liberties v. State of U. P.* 2001 AWC 1 , and the said power may be exercised by the Chief Justice in an arbitrary manner. We are unable to accept the contention that when any statute confers administrative power on an authority, the said power shall be exercised in an arbitrary manner, and, consequently, the statute would violate Article 14 of the Constitution. Section 35 (2) of the Act provides that such proceedings pending in the High Court at Allahabad immediately before the appointed day as are certified, whether before or after that day, by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Uttaranchal shall, as soon as may be after such certification, be transferred to the High Court of Uttaranchal. The section itself gives sufficient guidelines for exercise of power of certification by the Chief Justice. This has to be done having regard to the place of accrual of the cause of action and other circumstances. Therefore, it cannot be said that the power of certification u/s 35 (2) of the Act shall be exercised in an arbitrary manner or that it is capable of misuse. We are, therefore, unable to hold that the provisions of Sub-section (2) of Section 35 of the Act are ultra vires of the Constitution of India. In *Seth Nand Lal and Another Vs. State of Haryana and Others*, , a Constitution Bench has held that a statute enacted by a Legislature falling within its competence which did not offend any fundamental rights guaranteed by Part III of the Constitution, which did not offend any other provisions of the

Constitution, could not be declared ultra vires on the ground that its provisions were vague, or uncertain or ambiguous or mutually inconsistent. Therefore, there is absolutely no ground to declare Section 35 (2) of the Act to be ultra vires of the Constitution and the first prayer made in the writ petition has to be rejected.

6. Sri Jain next submitted that the power of the Chief Justice u/s 35 (2) of the Act to grant certificate is judicial in nature and such a certificate should be granted only if a party invokes the said jurisdiction. Learned counsel has also urged that before grant of certificate, an opportunity of hearing has to be afforded to a party and reasons have to be recorded. An identical question was considered in *Peoples Union for Civil Liberties (supra)*, where it was held as under :

"..... There can be no manner of doubt that if grant of certificate is a judicial act, then the same can be done only after affording an opportunity of hearing to the parties and order to that effect has to be passed in each individual case on the basis of the relevant consideration and by a speaking order. If it is an administrative order, neither any opportunity of hearing is required to be given to the parties nor any elaborate reasons are to be recorded and "place of accrual of cause of action" can be the sole criteria for exercise of such a power.....

At the stage of grant of certificate under Sub-section (2) of Section 35 of the Act, there is no lis between the parties and respective cases of the parties have not to be examined. The parties are not to be heard on merits of their case either on questions of fact or on questions of law nor a finding is to be recorded nor a decision is to be given on these matters. The certificate has absolutely no bearing of any kind touching the merits of the case of the parties.

Therefore, the act of certifying that proceedings ought to be heard and decided by the High Court of Uttaranchal as contemplated by Sub-section (2) of Section 35 of the Act is purely an administrative act. There is no fetter on the power of the Chief Justice or in the manner such power is to be exercised and the only relevant consideration is the place of accrual of the cause of action or any other circumstances which the Chief Justice may consider proper."

7. The contention raised by Sri Jain has already been considered and decided in *Peoples Union for Civil Liberties (supra)* and it has been held therein that the power of the Chief Justice under Sub-section (2) of Section 35 of the Act is an administrative power and neither any opportunity of hearing is required to be given to the parties nor reasons have to be recorded.

8. Learned counsel lastly contended that those proceedings which were pending in Allahabad High Court immediately before November 9, 2000, should be heard and decided by this Court and they cannot be transferred to the High Court of Uttaranchal as it will amount to change of forum during the pendency and continuance of the proceedings. In support of this submission, Sri Jain has placed reliance on *Madappa Chidri v. Apparao and Ors* AIR 1960 Mys 310 ; *M.A. Jaleel*

and Ors. v. State of Mysore and Ors AIR 1961 Mys 210 and Commissioner of Income Tax, Orissa Vs. Dhadi Sahu, A similar contention was made in Peoples Union for Civil Liberties (supra), which was also argued by Sri Jain and it was held as under:

"..... The transfer of proceedings from High Court at Allahabad to High Court of Uttaranchal does not take away any vested right of the litigant. He will continue to have the same right of appeal or revision or under Article 226 of the Constitution for issuance of a writ of the nature enumerated in the said Article even after the proceedings are transferred to Uttaranchal High Court. This position will also be clear from Section 28 of the Act which lays down that the High Court of Uttaranchal shall have, in respect of any part of the territories included in the State of Uttaranchal, all such jurisdiction, powers and authority as, under the law in force immediately before the appointed day, are exercisable in respect of that part of the said territory by the High Court at Allahabad. Thus, no right of a litigant will be affected in any manner by mere transfer of the proceedings to Uttaranchal High Court. Neither the Statutes dealing with procedure nor the Constitution confer any right on a litigant to pursue remedy in a particular High Court but the right is given to approach a High Court. The transfer of proceedings do not at all impinge upon such a right of a litigant and he will continue to get the same reliefs which he would have got from the High Court at Allahabad, had the proceedings been not transferred. Therefore, the contention of Sri Jain is wholly without substance and must be rejected."

9. Sri Jain has urged that the aforesaid view of the Division Bench is not correct in view of AIR 1943 24 (Federal Court) We have carefully gone through the authority cited by the learned counsel. The question involved in the said case was whether a suit instituted in a Court at Trichinopoly with regard to certain properties situate there and also in Burma could be continued even with regard to the properties in Burma after the same ceased to be a part of India with effect from 1st April, 1937. After referring to Section 46 (2) and paragraph (e) of Sub-section (2) of Section 38 of the Government of India Act, 1935, it was held as under :

"A right to continue a duly instituted suit is in the nature of a vested right and it cannot be taken away except by a clear indication of intention to that effect. In the absence of such a clear indication in the Constitution/Act, a British Indian Court continues to have jurisdiction to proceed with trial of a suit already pending before it even with respect to properties situated in Burma."

10. Section 26 (1) of the Act provides that from the appointed day, there shall be a separate High Court in the State of Uttaranchal and the High Court at Allahabad shall become the High Court for the State of Uttar Pradesh. Section 28 provides that the High Court of Uttaranchal shall have in respect of any part of the territories included in the State of Uttaranchal, all such jurisdiction, powers and authorities as, under the law in force immediately before the appointed day, are exercisable in respect of that part of the said territories by the High Court at

Allahabad. Sub-section (1) of Section 35 provides that except as hereinafter provided, the High Court of Allahabad shall, as from the appointed day, have no jurisdiction in respect of the transferred territory. Sub-section (2) of Section 35 provides that such proceedings as are certified by the Chief Justice having regard to the place of accrual of the cause of action and other circumstances to be the proceedings which ought to be heard and decided by the High Court of Uttaranchal shall, as soon as may be after such certification, be transferred to the High Court of Uttaranchal. The language of the statute is absolutely clear that in respect of any part of the territories included in the State of Uttaranchal it is the High Court of Uttaranchal which shall have the jurisdiction and the said High Court shall have all such jurisdictions and powers and authorities as were exercisable in respect of that part of the territory by the High Court of Allahabad. In view of the clear and explicit provisions in the Act, all pending proceedings, after they have been certified by the Chief Justice, have to be transferred to the Uttaranchal High Court and they cannot be heard by the High Court at Allahabad. The ratio of the decision of the Federal Court cited by the learned counsel for the petitioner has no application here.

11. Sri Satish Trivedi, who has also appeared for the petitioner, has raised an additional plea that a special court of Sessions Judge was created at Dehradun for trying such cases under the Prevention of Corruption Act, which had been investigated by the Central Bureau of investigation and the said Court was exercising jurisdiction over a large number of districts of western Uttar Pradesh. Learned counsel has submitted that the appeals or revisions against the decision of the aforesaid special court at Dehradun which were pending in Allahabad may also have been transferred to the High Court of Uttaranchal as the judgment and orders under challenge were that of a Court at Dehradun, which is now part of the Uttaranchal. According to Sri Trivedi, the transfer of such appeals or revisions where the offence had been committed in those districts which are still part of the State of Uttar Pradesh is wholly illegal. Chapter XIII of the Code of Criminal Procedure deals with jurisdiction of the criminal courts in enquiries and trials. It is trite that High Court of Uttaranchal shall have power to decide only such cases over which it has jurisdiction. If a pending proceeding has been wrongly certified by the Chief Justice and has been transferred to the High Court of Uttaranchal, the said Court is not bound to hear it. The order of the Chief Justice u/s 35 (2) being administrative in nature, it is not binding upon the High Court of Uttaranchal on the judicial side. The High Court of Uttaranchal shall hear only those cases which clearly fall within its jurisdiction. If any such appeal or revision has been transferred to the High Court of Uttaranchal which in law it has no jurisdiction to hear, it can always direct the record of the case to be sent back to the High Court of Allahabad and the certificate of the Chief Justice will not come in its way. Therefore, the difficulty pointed out by Sri Trivedi is not such which may have any substantial bearing.

12. The petitioner has also moved an application for adding certain reliefs, viz., that the Registrar be directed to give the list of those cases which have been

transferred from Allahabad High Court to High Court of Uttaranchal without certification of the Chief Justice, a writ of mandamus be issued to the High Court of Uttaranchal to send back the record of those proceedings which had been sent from Allahabad High Court without certification and a writ of mandamus to the Registry of the Allahabad High Court not to transfer the record of any proceedings to the High Court of Uttaranchal unless a certificate has been obtained from the Hon''ble the Chief Justice. As mentioned earlier, the petitioner is a practising advocate of this Court. He himself is not a litigant. He has no locus standi to seek the aforesaid reliefs. These reliefs can be claimed only by a litigant who is aggrieved and has suffered some prejudice.

13. With the observations as above, the writ petition is dismissed summarily at the admission stage.