
(1987) 12 MP CK 0002
In the Madhya Pradesh High Court
Case No : M. P. No. 1025 of 1987

Bhagwati Prasad Singhal

APPELLANT

Vs

M. P. High Court

RESPONDENT

Date of Decision : 09-12-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 139, 139(b)
Constitution of India, 1950 — Article 225

Citation : (1988) J LJ 367

Hon'ble Judges : T.N. Singh, J; Ram Murti Rustogi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dr. T. N. Singh, J.—Petitioner in person.

2 Petitioner has appeared in person and has placed before us the relevant statutory provisions to assail the validity of Annexure P-2 (1).

3. On 24th September, 1987 the Registrar of this Court had issued a "Memorandum" to all District and Sessions Judges within the jurisdiction of this Court dealing with the subject of administration of oath by Oath Commissioners to deponents. In para 2 of that "Memorandum" occur Clauses (iii) and (iv) as respects field of entitlement of Oath Commissioners of swearing affidavits. We extract them;

(iii) in High Court of Madhya Pradesh with reference to Rule 1, Chapter III, under the Madhya Pradesh High Court Manual;

(iv) in upreme Court pursuant to authority, if any, issued under Rule 7 of Order XI of the Supreme Court Rules, 1966.

4. Petitioner's submission is that the provisions afore extracted are ultra vires the Rules framed by this Court u/s 139 C.P.C. which are called "Commissioner of Oath's Rules, 1976". He has relied on Rules 2 (b), 5 and 34 of the said Rules.

According to Rule 5 the jurisdiction of Commissioner of Oaths is meant to be used for verifying affidavits to be used in "Courts" and the word "Court" is defined u/s 2(b) to mean -- "only Civil Court under superintendence of the High Court". Rule 34 is indeed a "saving" clause. It saves expressly the power of the High Court to make other provisions in respect of the same subject matter and it says that "These Rules shall apply to the affidavits to be filed in Civil Courts subordinate to the High Court and shall not in any way effect the M. P. High Court Rules in Chapter III of M. P. High Court Rules, 1957". In our view this clause clinches the issue decisively.

5. True it is, in Chapter III, Rule 1 of the Rules of this Court the provision is that the persons authorised to administer oath or receive the solemn affirmation in the case of affidavits to be used in this Court and the Supreme Court inter alia are such persons as are empowered u/s 139 of the Code of Civil Procedure. There is no doubt that Oath Commissioners, whose jurisdiction is to receive oath under the Rules, 1976 aforesaid, are persons appointed by the High Court in terms of section 139(b) C.P.C. However, the real question is that of the scope and ambit of saving clause itself to be read in Rule 34 of the self-saved Rules of 1976, framed u/s 139 C.P.C. That saving clause itself excepts the operation of 1976 Rules in cases dealt with by the Rules framed by this Court and specifically the Rules framed in Chapter III of the Rules of this Court. Needless also to say the obvious that the saving clause conforms to the constitutional position that the rules framed by this Court under Article 225 of the Constitution must have primacy over others.

6. In that view of the matter we do not see how it can be at all urged that Clauses (iii) and (iv) aforequoted are ultra vires either 1976 Rules or even the Rules of this Court to be read in Chapter III. That will suffice for the day.

7. The petitioner prays for certificate for leave to appeal to the Supreme Court but we do not think if any case is made out for such a certificate. Indeed, no substantial question of law at all is involved which may require consideration of their Lordships of the Supreme Court Accordingly, the prayer is rejected.

8. In the result, the petition fails and is dismissed and the Certificate prayed is also refused.