
(2000) 12 AHC CK 0035
In the Allahabad High Court
Case No : Special Appeal No. 734 of 2000

Chandra Bhushan Tiwari

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 1, 6, 73
Constitution of India, 1950 — Article 225

Citation : (2001) 1 AWC 383 : (2001) 3 UPLBEC 2551

Hon'ble Judges : Shyamal Kumar Sen, C.J.; S. Rafat Alam, J

Bench : Division Bench

Advocate : Ashwani K. Misra, for the Appellant; S. C., for the Respondent

Judgement

Shyamal Kumar Sen, C.J.—We have heard Sri Ashwani Kumar for the appellant and Sri B. N. Misra, learned standing counsel for the State.

2. In the instant special appeal, the appellant has challenged the jurisdiction of the learned single Judge to take up the matter and pass order dismissing his writ petition. It has been submitted by Sri Ashwani Kumar, learned advocate for the appellant that the order was passed on 11th October, 2000, when the learned single Judge was taking up service writs relating to cooperative societies and matter for orders, admission and hearing.

3. The appellant was working as a driver in the office of Assistant Sugar Commissioner, respondent No. 4 who admittedly was not working with the cooperative societies. It is well-settled that the Chief Justice alone has power to confer jurisdiction on the Judges as to what matter a Judge shall take up. In this connection Mr. Ashwani Kumar has relied upon a decision of the Supreme Court in State of Rajasthan Vs. Prakash Chand and Others, . The relevant portion of the said judgment is set out hereinbelow :

"15. A careful reading of the aforesaid provisions of the Ordinance and Rule 54 (supra) shows that the administrative control of the High Court vests in the Chief

Justice of the High Court alone and that it is his prerogative to distribute business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted; which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work only as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore in the scheme of things judicial discipline demands that in the event a single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the advocates of the parties for listing of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the Chief Justice and obtain appropriate order. This is essential for smooth functioning of the Court. Though, on the judicial side the Chief Justice is only the "first amongst the equals", on the administrative side in the matter of constitution of Benches and making of roster he alone is vested with the necessary powers. That the power to make roster exclusively vests in the Chief Justice and that a daily cause list is to be prepared under the directions of the Chief Justice as is borne out from Rule 73, which reads thus :

"Rule 73. Daily Cause List.--The Registrar shall subject to such directions as the Chief Justice may give from time to time cause to be prepared for each day on which the Court sits, a list of cases which may be heard by the different Benches of the Court. The list shall also state the hour at which and the room in which each Bench shall sit. Such list shall be known as the Day's List."

16. This is the consistent view taken by some of the High Courts and this Court which appears to have escaped the attention of Shethna, J., in the present case, when he directed the listing of certain part-heard cases before him as a single Judge by providing a separate board for the purpose, while sitting in a Division Bench."

4. A Division Bench of this Court in State Vs. Devi Dayal, , considered the scope and powers of the Chief Justice under the Constitution with particular reference to Rule 1, Chapter V of the Rules of the Court which is set out herein below :

".....It is clear to me, on a careful consideration of the constitutional position, that it is only the Chief Justice who has the right and the power to decide which Judge is to sit alone and which cases such Judge can decide : further it is again for the Chief Justice to determine which Judges shall constitute Division Benches and what work those Benches shall do. Under the Rules of this Court, the Rule that I have quoted above, it is for the Chief Justice to allot work to Judges and

Judges can do only such work as is allotted to them.

It is not, in my view, open to a Judge to make an order which could be called an appropriate order, unless and until the case in which he makes the order has been placed before him for orders either by the Chief Justice or in accordance with his directions. Any order which a Bench or a single Judge may choose to make in a case that is not placed before them or him by the Chief Justice or in accordance with his directions is an order which, in my opinion, if made, is without jurisdiction." (Emphasis ours)

18. In his separate but concurring opinion H. P. Asthana, J., observed (Paras 19 and 20 of AIR) :

"Rule 1. Chapter V of the Rules of this Court, provides that Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

It will appear from a perusal of the above provisions that the High Court as a whole consisting of the Chief Justice and his companion Judges has got the jurisdiction to entertain any case either on the original side or on the appellate or on the revisional side for decision and that the other Judges can hear only those matters which have been allotted to them by the Chief Justice or under his directions. It, therefore, follows that the Judges do not have any general jurisdiction over all the cases which the High Court as a whole is competent to hear and that their jurisdiction is limited only to such cases as are allotted to them by the Chief Justice or under his directions."

5. A Full Bench of this Court has also considered this question in *Sanjay Kumar Srivastava v. Acting Chief Justice*. (1996) AWC 644, and held as follows :

"27.The Full Bench precisely dealt with an objection raised in that case to the effect that since the writ petition was a part-heard matter of the Division Bench, it was not open to the Chief Justice of the High Court to refer that part-heard case to a Full Bench for hearing and decision. It was argued before the Full Bench, that once the hearing of the case had started before the Division Bench, the jurisdiction to refer the case or the question involved therein to a larger Bench vests only in the Judges hearing the case and not in the Chief Justice. It was also argued that the Chief Justice could not, even on an application made by the Chief Standing Counsel, refer the case which had been heard in part by a Division Bench for decision by a Full Bench of that Court.

28. After referring to the provisions of the Rules of the Allahabad High Court and in particular Rule 1 of Chapter V, which provides that Judges shall sit alone or in such division Courts as may be constituted by the Chief Justice from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions and Rule 6 of Chapter V which inter alia provides :

"The Chief Justice may constitute a Bench of two or more Judges to decide a

case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein."

and a catena of authorities, rejected the arguments of the learned counsel and opined that the order of the Chief Justice on an application filed by the Chief Standing Counsel, to refer a case, which was being heard by the Division Bench, for hearing by a larger Bench of three Judges because of the peculiar facts and circumstances as disclosed in the application of the Chief Standing Counsel, was a perfectly valid and a legally sound order. The Bench speaking through S. Saghir Ahmad. J. (As His Lordship then was) said :

"Under Rule 6 of Chapter V of the Rules of Court, it can well be brought to the notice of the Chief Justice through an application or even otherwise that there was a case which is required to be heard by a larger Bench on account of an important question of law being involved in the case or because of the conflicting decisions on the point in issue in that case. If the Chief Justice takes cognizance of an application laid before him under Rule 6 of Chapter V of the Rules of Court and constitutes a Bench of two or more Judges to decide the case, he cannot be said to have acted in violation of any statutory provisions."

29. The learned Judge then went on to observe :

"In view of the above, it is clear that the Chief Justice enjoys a special status not only under Constitution but also under Rules of Court, 1952, made in exercise of powers conferred by Article 225 of the Constitution. The Chief Justice alone can determine jurisdiction of various Judges of the Court. He alone can assign work to a Judge sitting alone and to the Judges sitting in Division Bench or to Judges sitting in Full Bench. He alone has the jurisdiction to decide which case will be heard by a Judge sitting alone or which case will be heard by two or more Judges.

The conferment of this power exclusively on the Chief Justice is necessary so that various Courts comprising of the Judges sitting alone or in Division Bench etc., work in a co-ordinated manner and the jurisdiction of one Court is not overlapped by other Court. If the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the Court would collapse and the judicial functioning of the Court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case. The nucleus for proper functioning of the Court is the "self and "judicial" discipline of Judges which is sought to be achieved by Rules of Court by placing in the hands of the Chief Justice full authority and power to distribute work to the Judges and to regulate their jurisdiction and sittings." (Emphasis ours)

6. In this connection, it may not be out of place to take note of the decision of Calcutta High Court in *Sohal Lal Baid v. State of West Bengal* AIR 1990 Col 168,

which had dealt with the same point. In the aforesaid decision, after referring to the provisions of the Government of India Act, 1935, the Calcutta High Court Rules and a number of decided cases, the Bench observed :

"The foregoing review of the constitutional and statutory provisions and the case law on the subject leaves no room for doubt or debate that once the Chief Justice had determined what Judges of the Court are to sit alone or to constitute the several Division Courts and has allocated the Judicial business of the Court amongst them, the power and Jurisdiction to take cognizance of the respective classes or categories of cases presented in a formal way for their decision, according to such determination, is acquired. To put it negatively, the power and jurisdiction to take cognizance of and to hear specified categories or classes of cases and to adjudicate and exercise any judicial power in respect of them is derived only from the determination made by the Chief Justice in exercise of his constitutional, statutory and inherent powers and from no other source and no case which is not covered by such determination can be entertained, dealt with or decided by the Judges sitting singly or in Division Courts till such determination remains operative. Till any determination made by the Chief Justice lasts, no Judge who sits singly can sit in a Division Bench nor can a Division Bench be split up and one or both of the Judges constituting such Bench sit singly or constitute a Division Bench with another Judge and take up any other kind of judicial business. Even cases which are required to be heard only by a particular single Judge or Division Bench, such as part-heard matters, review cases etc., cannot be heard, unless the Judge concerned is sitting singly or the same Division Bench has assembled and has been taking up judicial business under the extent determination. Such reconstitution of Benches can take place only if the Chief Justice specially determines accordingly." (Emphasis ours)

The Supreme Court in paragraph 30 of the said judgment held and observed as follows :

"30. The above opinion appeals to us and we agree with it. Therefore, from a review of the statutory provisions and the cases on the subject as rightly decided by various High Courts, to which reference has been made by us, it follows that no Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from it can be permitted, if every Judge of a High Court starts picking and choosing cases for disposal by him, the discipline in the High Court would be the casualty and the Administration of Justice would suffer. No legal system can permit machinery of the Court to collapse. The Chief Justice has the authority and the jurisdiction to refer even a part-heard case to a Division Bench for its disposal in accordance with law where the Rules so demand. It is a complete fallacy to assume that a part heard case can under no circumstances be withdrawn from the Bench and referred to a larger Bench, even where the Rules make it essential for such a case to be heard

by a larger Bench."

7. After considering all aspects of the matter and the law as settled by the aforementioned decisions, particularly of the Supreme Court, we are of the view that the learned single Judge has no jurisdiction to decide the said matter on that date.

8. Accordingly, we allow the special appeal only on the question of jurisdiction and set aside the order passed by the learned single Judge. The matter is required to be considered on merit and shall be listed before the appropriate Bench.