

(2001) 11 KL CK 0037
In the High Court Of Kerala
Case No : O.P. No. 16688 of 2000

Cochin Malabar Estates and Industries	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 02-11-2001

Acts Referred:

Kerala High Court Act, 1958 — Section 4

Citation : (2001) 11 KL CK 0037

Hon'ble Judges : B.N. Srikrishna, C.J.;Kurian Joseph, J;K.A. Abdul Gafoor, J

Bench : Full Bench

Advocate : Jose Joseph, for the Appellant; Raju Joseph, Government Pleader, for the Respondent

Judgement

B.N. Srikrishna, C.J.—By an order of reference made on 11th April, 2001 by the Division Bench of S. Sankarasubban and A. Lekshmikutfy, JJ. this Original Petition is placed before this Full Bench. The exercise has apparently been done in exercise of power u/s 4 of the Kerala High Court Act, 1958. Section 4 of the Act pertains to the power of a Bench of two Judges and the material portion reads as under:

"4. Powers of a Bench of two Judges.-- The power of the High Court in relation to the following matters may be exercised by a Bench of two Judges, provided that if both Judges agree that the decision involves a question of law they may order that the matter or question or law be referred to a Full Bench."

Corresponding to this is the power of a single Judge which is delineated in Section 3 of the Act, the material portion of which reads as under.

"3. Power of single Judge.--The powers of the High Court in relation to the following matters may be exercised by a single Judge provided that the Judge before whom the matter is posted for hearing may adjourn it for being heard and determined by a Bench of two Judges."

2. The issue that has arisen this Full Bench is "whether every time a question of

law arises before a single Judge or before a Division Bench it can straight away be referred to a Full Bench?"

3. The interpretation of Section 3 was dealt with in a recent judgment of the Full Bench consisting of seven learned Judges reported in *Babu Premarajan v. Superintendent of Police* (2000 (3) KLT 177). Dealing with the word "adjourn" used in Section 3, the Full Bench took the view that every judicial order though discretionary, requires reasons to be stated, albeit in brief. An order of "adjournment" u/s 3 of the Act is an order of reference of a case for being heard and determined by a Bench of two Judges, and the word "adjourn" used in Section 3 must be construed narrowly only to mean "refer". In the concurring judgment of Radhakrishnan, J., the learned Judge observed that the powers conferred on a single Judge under Clause 1 to 13 of Section 3 of the High Court Act is a power coupled with duty. The only ground on which he could avoid discharging his duty when the matter comes up for hearing is by adjourning the matter to a Division Bench. The functions that he discharge under the substantive part of Section 3, as well as under proviso, are judicial functions. If a learned Judge abdicates his duties by avoiding the burden of discharging the duties under the substantive part of Section 3, on "unstated" and "undisclosed" grounds, he would be acting arbitrarily.

4. We now turn to Section 4 of the High Court Act. Does this section mean that every time a question of law arises before the Division Bench, merely because both Judges agree, the question of law should be referred to a Full Bench? After anxious consideration, we are of the view that the power of the Division Bench u/s 4 of the Kerala High Court Act cannot be construed thus. It is inconceivable, that, in any matter arising before the Division Bench, a question of law would not arise. Conversely, if every matter which arises before the Division Bench necessarily involves a question of law, it does not mean that, by agreement between the two Judges of the Division Bench every matter can be referred to a Full Bench. In our view. Section 4 of the Kerala High Court Act is intended to confer power on the Division Bench to refer a question of law to a Full Bench, where the Division Bench finds itself in a situation of being bound by the observations of an earlier Division Bench about the correctness of which it entertains serious doubt. In such a situation, the Division Bench is really in a dilemma. It cannot ignore the observations of a previous Division Bench which are binding on it; but it feels that the previous Bench has laid down law which is doubtful. It is to resolve this dilemma that Section 4 confers power on the Division Bench, provided both Judges agree, to refer the question of law to a Full Bench. Anything short would result in a situation of "abdication" as envisaged in *Babu Premarajan* (supra).

5. Another situation we may contemplate where the a Division Bench may refer the matter to a Full Bench is when there are conflicting views expressed by Division Benches and the state of law has become uncertain. In such cases, it may be necessary to refer the question of law to a Full Bench for an authoritative

statement of the law.

6. It is an elementary proposition of the doctrine of precedents that law laid down by a single Judge is capable of being dissented from or overruled by a Division Bench. Thus, if a Division Bench comes across a proposition of law laid down by a single Judge, and if it differs therefrom, nothing prevents the Division Bench from dissenting therefrom or overruling the judgment of a Single Judge.

7. In the case before us, we notice that there were no binding observations nor binding law laid down by a previous Division Bench, nor was it a situation where there were conflicting observations of previous Division Benches which required resolution by a Full Bench. In the judgment of a learned single Judge in *T.V.S. Srichakra Ltd. v. State of Kerala and Anr.* ((1999) 114 STC 220), certain proposition of law was laid down. The Division Bench was of the view that the reasoning given by the learned single Judge did not appear to be correct. If that be so, nothing prevented the Division Bench from differing and overruling the decision of the learned single Judge on the question of law. Merely because the question of law which arose was important, there was no necessity for reference to the Full Bench.

In the result, we decline to go into the question of law referred to us, as we find that the Division Bench is fully capable of deciding the question of law, however important it is. Therefore, we sent back the matter to be posted before the appropriate Division Bench for decision in accordance with law.