

(2018) 02 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : 4 of 2018

Hindustan Petroleum Corporation Ltd. etc	APPELLANT
Vs	
M/s Amar Service Station & Another	RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court

Citation : (2018) 02 SHI CK 0006

Hon'ble Judges : Vivek Singh Thakur

Bench : Single Bench

Advocate : Puneet Jindal, Neha Anand Mahajan, Pawan Gautam, Balvinder Singh, Ashok Sharma, Rajat Chauhan

Judgement

1. By way of instant appeal, appellants have assailed interim order dated 22.1.2018 passed by Single Bench of learned Vacation Judge in CMP

No. 1125 of 2018 during adjudication of fresh CWP No. 239 of 2018 under Article 226 of Constitution of India, entertained by him at pre-

admission stage, exercising powers vested in him under Rule 2 of Chapter 2 in Part-I of. High Court of H.P. (Appellate Side) Rules, 1997 (herein

after referred to as "Appellate Side Rules").

2. Sub Rule (xii) of Rule 1 of Chapter 2 of Part-I of Appellate Side Rules provides that all writ petitions filed under Article 226 or 227 of the

Constitution of India, except writ petitions 1 Whether reporters of Local Papers may be allowed to see the judgment? yes mentioned in clauses (a)

to (f) of the said Sub Rule, shall be heard by Single Bench, however in proviso to the explanation to this Sub Rule (xii) it has been clarified that all

writ petitions which even though under this clause are to be heard and disposed

of by a Single Bench, shall first be listed for admission before a Division Bench and only if and after the Division Bench admits for hearing, these would be listed for hearing and disposal before a Single Bench.

3. Rule 2 of Chapter 2 of Part-I of Appellate Side Rules empowers Vacation Judge, sitting singly, to exercise original and appellate jurisdiction

vested in the Court including in any matter connected with, relating to or arising out of a writ petition under Article 226 of the Constitution for the

preliminary hearing or the admission of such a petition; and in any miscellaneous business, which in his opinion requires immediate attention.

4. Rule 2 of Chapter 2 of Part-I of Appellate Side Rules is very clear, wherein it is categorically worded that except in a case which the law

requires to be heard by a Bench of two or more Judges, a Single Judge as a Vacation Judge may exercise the original and appellate jurisdiction

vested in the Court. However, in view of office order No. HHC/JudI/LPA/2012, dated 23rd March, 2012, matter, under law, required to be listed

before Division Bench can be ordered by Hon"ble the Chief Justice to be listed before the Vacation Judge.

5. Rule 2 of Chapter 3 in Part-I of Appellate Side Rules provides roster of Single and Division Bench stating that judges will sit singly or in

Benches of two or more in accordance with the roster to be prepared from time to time by the Registrar on the directions of Hon"ble the Chief

Justice. According to roster in force, at present, all fresh writ petitions under Article 226 of Constitution of India are to be heard by the Division

Bench at first instance and it is only after admission of writ petitions, except writ petitions of certain categories notified to be heard by the Division

Bench only, the same are listed for adjudication before the Single Bench.

6. All matters, to be heard by the Division Bench, entertained by the Vacation Judge, exercising the powers under Rule 2 of Chapter 2 in Part-I of

Appellate Side Rules, shall be listed before appropriate Division Bench after vacation or on a date fixed by learned Vacation Judge. Accordingly,

CWP No. 239 of 2018 along with miscellaneous application and also present LPA, if entertained, shall be listed before the Division Bench as per

roster in force.

7. Learned counsel for the petitioner has referred Rule 11 of the High Court of Himachal Pradesh Case Flow and Management (High Court)

Rules, 2005, wherein it is provided that an appeal to Division Bench may lie from judgment of single judge in cases where interlocutory orders has been passed by single judge in original jurisdiction matter including writs and thus he has contended that present LPA against impugned order is maintainable.

8. This Court may entertain an LPA as a Vacation Judge, exercising the powers of Division Bench under Rule 2 of Chapter 2 in Part-1 of

Appellate Side Rules read with Rule 11 of High Court of Himachal Pradesh Case Flow and Management (High Court) Rules, 2005 if ordered by

Hon"ble the Chief Justice as notified vide officer order No. HHC/JudI/LPA/2012 dated 23rd March, 2012 which provides that the Division Bench

can be constituted with permission of Hon"ble the Chief Justice, if not otherwise ordered. In instant case this LPA has been listed today before me

as Vacation Judge by order of Hon"ble the Acting Chief Justice. However, the same is not maintainable for the reasons stated herein before and

after.

9. Impugned order in present appeal has been passed by learned Vacation Judge exercising powers of Division Bench and entertaining this appeal

by this Court against said order will amount to entertain an appeal by the Division Bench against the order passed by the Division Bench.

10. Rule 11 supra refers to a situation where Single Bench hears matter exercising original jurisdiction including the writ petitions after admission as

notified under Rules empowering him to adjudicate the same as referred supra. In such situation, against interlocutory orders passed by Single

Bench in original jurisdiction matters including writs, an LPA will definitely lie before the Division Bench. In present case impugned order has been

passed by learned Vacation Judge at pre-admission stage exercising the powers of Division Bench of this Court as writ petition at pre-admission

stage can be heard only by Division Bench in this Court and Single Bench is empowered to hear writ petitions after admission, barring specifically

mentioned in Rule 1(xii) supra. As explained herein before, impugned order has been passed by learned Vacation Judge exercising the powers of

Division Bench and not by exercising powers of Single Bench and there is no provision of filing an LPA against the order passed by Division

Bench.

11. Appropriate remedy for the appellants would be filing the counter to the writ petition including reply to CMP for interim stay and/or also any miscellaneous application, if required, for modification/alteration/vacation/clarification of the impugned order.

12. In view of above, present appeal is dismissed, being not maintainable. The appellants are at liberty to avail appropriate remedy available to them. Needless to say that any such application can also be entertained by the Vacation Judge in accordance with law, subject to urgency involved therein. The appeal stands disposed of so also the pending application(s), if any.