

(1968) 10 AHC CK 0014
In the Allahabad High Court
Case No : First Appeal No. 29 of 1961

Maharaja Dharmendra Prasad Singh and Another	APPELLANT
Vs	
State of Uttar Pradesh and Others	RESPONDENT

Date of Decision : 11-10-1968

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 2
Uttar Pradesh General Clauses Act, 1904 — Section 13(2)

Citation : AIR 1969 All 484 : (1969) 39 AWR 66

Hon'ble Judges : Lakshmi Prasad, J; Jagdish Sahai, J; Gur Sharan Lal, J

Bench : Full Bench

Advocate : Naziruddin and Fakhruzaman, for the Appellant; Chief Standing Counsel, for the Respondent

Judgement

Sahai, J.—This case has come to us on a reference made by a Division Bench of this Court consisting of two of us. (Lakshmi Prasad and Gur Sharan Lal, JJ.).

2. In First Appeal No. 29 of 1961 the Stamp Reporter reported a deficiency of Rs. 6632.50 in Court fee. The report of the Stamp Reporter was contested by the learned counsel for the appellant before the Taxing Officer (Deputy Registrar). The Taxing Officer held by means of an order dated 5-9-1961 that the report of the Stamp Reporter was correct and in fact there was a deficiency of Rs. 6632.50. He however allowed a month's time to the appellant to make good the deficiency. A request was made to the Taxing Officer to make a reference to the Judge appointed by the Chief Justice to decide generally references made by the Taxing Officer u/s 5 of the Act, hereinafter called the Taxing Judge, (Sahgal, J.). This, the Taxing Officer refused to do. Dissatisfied with the refusal of the Taxing Officer to make a reference to the Taxing Judge under the provisions of Section 5 of the Court Fees Act the appellant filed writ petition no. 252 of 1961 and prayed that the order of the Taxing Officer be quashed. A Division Bench of this Court allowed the Writ Petition and quashed the order of the Taxing Officer dated 5-9-1961. It directed the Taxing Officer to make a reference to the Taxing Judge.

3. The Taxing Officer then made a reference to the Taxing Judge and the Taxing Judge by means of an order dated 27-10-1967 referred the question to a larger Bench as to what would be the correct court fee payable in the instant case. As already stated earlier, that matter came up before a Division Bench of this Court of which two of us were members (Lakshmi Prasad and Gur Sharan Lal, JJ.).

4. In view of the conflict of authority on the question whether a Taxing Judge acting under the provisions of Section 5 of the Court Fees Act (hereinafter referred to as the Act) can refer a question to a larger Bench for decision, the learned Judges constituting the Division Bench referred the case to a Full Bench. That is how the matter has come up before us.

5. Section 5 of the Act reads:--

"When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalfThe Chief Justice shall declare who shall be taxing Officer within the meaning of the first paragraph of this section."

The section embodies the general rule that the Chief Justice shall allot work to the various Judges -- a rule of necessity and of administrative convenience and one provided for in the High Court Rules, the Letters Patent and some of the earlier Government of India Acts. It does not create any persona designate. It only requires the Chief Justice to either hear the reference himself or nominate any other Judge of the Court to do so.

6. Section 5 of the Act gives the Taxing Officer a discretion in a case where he is of the opinion that the question raised before him is one of general importance, to refer the matter either to the Chief Justice or to such other Judge who has been appointed by the Chief Justice in that behalf either generally or specially in a case. In other words, he has the option to bypass the Taxing Judge and make a reference straightway to the Chief Justice or vice versa. If he makes the reference to the Chief Justice the latter can nominate any Judge to hear the reference even excluding the Taxing Judge. The submission that the Taxing Judge cannot make a reference to a larger Bench of the Court rests on the following two grounds:--

(a) The Taxing Judge is a persona designate.

(b) There is no provision for a reference in the Court Fees Act.

7. We proceed to consider the two grounds mentioned above seriatim.

8. (1) A persona designate is a person selected to act in his private capacity and not in his capacity as a Judge. (See K. Parthasarathi Naidu Garu Vs. C. Koteswara Rao Garu and Another, This decision was approved by the Supreme Court in The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad, .

9. In Osborn Concise Law Dictionary It is stated that a persona designate is a person who is pointed out or described as an individual as opposed to a person ascertained as a member of a class, or as filling a particular character. This definition was accepted as correct in The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad, .

10. u/s 5 of the Act the taxing Officer is required to make a reference to the Chief Justice or the Taxing Judge both of whom are members of a class, that is of judges and fill a particular character, that is, of a judge. A reference u/s 5 is made in respect of court fee matter. Whether or not proper court fee has been paid would be determinative of the question as to whether an appeal filed in the High Court is competent or not. Thus the matter is purely judicial and to decide such a question is one of the judicial functions of the High Court. Therefore, while discharging this judicial duty cast by Section 5 of the Act the Chief Justice or Taxing Judge necessarily function as judges of the High Court and not persona designate. It may also be pointed out that if the Taxing Officer makes a reference to the Chief Justice, the Chief Justice instead of hearing the case himself may refer the case to another judge of the High Court for decision. Inasmuch as he can make a reference only to a sitting Judge of the High Court, it follows that both he and the Judge nominated by him act as Judges of the Court. For these reasons we are of the opinion that the Chief Justice and the Taxing Judge while deciding a reference u/s 5 of the Act are not persona designate. We find support for this view also from the provisions of Section 6-C of the Act which reads:--

"(1) When the Chief Controlling Revenue Authority is of opinion that the court fee paid on any document filed in any Civil Court in a pending suit, appeal or other proceeding is insufficient, and that "the question is one of general importance and no action u/s 6-B has been taken, it may refer the case, with its own opinion thereon, to the High Court to which such Civil Court is subordinate.

(2) Every such case shall be decided by not less than two Judges of the High Court to which it is referred.

(3) The High Court upon the hearing of any such case shall decide the question raised thereby and shall deliver its judgment thereon containing the grounds on which the decision is founded.

(4) If the High Court finds that the court fee paid was insufficient, the procedure prescribed by Sub-section (4) of Section 6-B for realization of the deficiency shall be followed as if the decision of the High Court were a declaration under that section."

This section clearly provides that a reference in respect of deficiency paid in a

subordinate court shall be heard by the High Court. There cannot, therefore, be any doubt that the Judge or the Judges who hear the reference u/s 6-C of the Act, act in their official capacity and are not persona designata. The object and the purpose of Section 6-C is the same as that of Section 5 of the Act. The two provisions find place in the same statute. That being the position it is only logical and proper to hold that while hearing a reference u/s 5 of the Act the Chief Justice or the Taxing Judge, act as Judges of the Court and not as persona designata. Reliance was placed upon *Gangaram Tillockchand Vs. The Chief Controlling Revenue Authority*, in support of the view that the Chief Justice or the Taxing Judge is a persona designata. With great respect to the learned Single Judge who decided the Bombay case, referred to above, we find ourselves unable to agree, for the reasons which we have already given in this judgment.

11. (2) It is urged that whereas a reference by the Taxing Officer to the Chief Justice or the Taxing Judge is provided there is no provision expressly providing that the Chief Justice or the Taxing Judge can make a reference to a larger Bench, but this argument loses sight of the circumstance that there is nothing in Section 5 of the Act which prohibits the Chief Justice from nominating a Division Bench to hear a reference made to him by the Taxing Officer. Clearly, instead of hearing the reference himself he can nominate more than one Judge to hear it. By virtue of Section 13 (2) of the U. P. General Clauses Act we can read the word "Judge" occurring in Section 5 of the Act as "Judges" with the result that the Chief Justice can appoint more than one Judge, in other words, a Division Bench, to hear a reference u/s 5 of the Act. Inasmuch as the Chief Justice can assign a reference for decision to two or more Judges we see no reason why the Taxing Judge cannot refer the case to a larger Bench.

12. The Letters Patent and after its repeal the rules of the Court provide for the manner in which the hearing of the cases is to be regulated. The proviso to Rule 2 Chapter V of the Rules of the Court reads:--

"(a) provided that the Chief Justice may direct any case or class of cases which may be heard by a Judge sitting alone shall be heard by a Bench of two or more Judges and vice versa.

(b) A Judge may, if he thinks fit, refer a case which may be heard by a Judge sitting alone or any question of law arising therein for decision to a larger Bench.

The proviso applies to all the cases heard in the High Court. There is no doubt that the Chief Justice or a Judge hearing a case has the power to make a reference to a larger Bench and there is no reason for holding that this power can be exercised in respect of other cases but not in a reference u/s 5 of the Act.

13. *Kachera v. Kharag Singh* ILR All 20, *Murari Lal Vs. Chhidda and Others*, and *Dr. L. Raymond Vs. Florence Bessie Yakchee*, were cited before us. In the report of the first case the judgment of the Taxing Judge Tudball J. has been published. He makes a mention of the judgment of *Knox and Karamat Hussain, JJ.* without reproducing that judgment. It is stated in the judgment of Tudball, J. that it was

held by the Division Bench that the reference made to them by the Taxing Judge was not competent. We do not know the reasons why Knox and Karamat Hussain, JJ. held so. In the second Allahabad case mentioned above Malik, C. J., who spoke for the Division Bench hearing the reference observed:--

"The scheme of Section 5, Court-fees Act, which deals with this matter is that the question of determination of the amount payable as court-fee on a memorandum of appeal filed in the High Court is to be decided by a Taxing Officer nominated by the Chief Justice. The decision of such an Officer is final. But when a question is, in the opinion of the Taxing Officer, one of general importance, he can refer it to the final decision of the Chief Justice, or the Taxing Judge nominated by the Chief Justice. It is thus on reference by the Taxing Officer that the jurisdiction of the Chief Justice or of the Judge arises. There is no provision for say further reference either by the Chief Justice or by the Taxing Judge. Learned Counsel for the appellant has, however, urged that the words "such Judge" in Section 5 may mean "such Judges" and he has relied on the provisions of Sub-section (2) of Section 13, General Clauses Act, that singular includes plural. That might, however, cover a case where more than one Judge have been nominated as Taxing Judges, and the Taxing Officer makes a reference to the Judges or Bench of Judges so nominated. The jurisdiction of the Taxing Judge or Judges arises on a reference by the Taxing Officer. The point is no longer *res integra*. In (1911) All 20: 7 Ind Cas 315 a reference was made by a Taxing Officer to Tudball J. who referred the case to a Bench of two Judges. The case came up before Knox and Karamat Hussain JJ. whose attention was drawn to a decision of this Court in the reference *u/s* 23 of Act VII (7) of 1870 1895 CWN 56 : ILR All 238 and the learned Judges held that they had no jurisdiction to decide the reference and returned the papers to the Taxing Judge.

In the first two cases referred by us above the learned Judges did not consider the provisions of the Act or the High Court rules and decided them solely on the ground that there is no provision in the Act under which a reference to a larger Bench can be made by the Chief Justice or the Taxing Judge. While basing their decision on the consideration stated above the learned Judges who decided the aforesaid two cases, with great respect, ignored the circumstance that there is hardly a statute containing an express provision that a Judge hearing the case can refer it to a larger Bench. There are statutes where there is provision that if a case is heard by a Division Bench or by more than one Judge and there is difference of opinion the case shall be referred to a third Judge.

14. The normal rule is that a court sits as a whole and is one unit but on grounds of convenience it splits itself up and forms a single Judge or larger Benches. This was done under the Letters Patent formerly and now under the rules of the court. How the internal working of the High Court shall be arranged is a matter which was controlled by the Letters Patent formerly and now by the rules of the court. Consequently, it is the rules of the Court which would determine whether a case by a single Judge can be referred to a larger Bench and inasmuch as the rules of

the Court permit such a reference generally it is not possible to hold that they exclude the hearing of a case u/s 5 of the Act from the amplitude of this power enjoyed by the Chief Justice or the Judge hearing the reference.

15. We would also like to point out that even Malik, C. J., admitted that if the Chief Justice nominated more than one Taxing Judge, the reference by the Taxing Officer shall be heard by those Judges, that is, more than one Judge. We have already stated earlier that if the Chief Justice can direct the hearing of a reference u/s 5 of the Act by more than one Judge we see no reason, why the Taxing Judge cannot do so under the rules of the Court.

16. The third Allahabad case, mentioned above, lends support to the view that we are taking. The facts of the case were that there was a dispute with regard to the adequacy of the Court fee paid. The taxing Officer considered the question to be one of general importance and referred the case to the Taxing Judge for final decision. The Taxing Judge was of the opinion that the proper court fee payable on the petition was only Rs. 803-3-0 and not Rs. 31,553-3-0. He, however, directed that the file of the case be placed before the Chief Justice so that in view of the importance of the question involved the matter may be decided by a Division Bench. The Chief Justice thereupon referred the case to a Division Bench. Preliminary objection was taken that the Bench was not properly constituted and u/s 5 of the Act a reference to a larger Bench could not be made. That submission was repelled by the Division Bench.

17. We also find support for our view from *Megh Raj v. Rupchand Uttamchand*. AIR 1946 Lah 280 (FB). Munir J. who spoke for the Full Bench observed:

"The point sought to be made by the learned counsel for the plaintiff-respondents is that the taxing officer can refer the case only to the Chief Justice or to such Judge of the High Court as the Chief Justice shall appoint whose decision shall be final and that there is no provision in the Section for reference by the Chief Justice or such a judge to another Judge or judges. This, to our mind, is a complete miscomprehension of the position. The Administration Judge of this Court has been appointed by a general order of the Chief Justice as the Judge to whom references by the taxing-officer have to be made. The matter can, therefore, be said to have been referred by the Chief Justice to the Administration Judge u/s 5, Court-fees Act. But the Administration Judge did not himself determine the question and requested the Chief Justice to constitute another Bench and the Chief Justice did so. There is, in our opinion, no bar to the Chief Justice appointing a Judge or Judges for hearing a reference from the taxing officer, in a special case. The general order appointing the Administration Judge to hear such references can always be recalled by the Chief Justice in a particular case and he can constitute another judge or judges to hear the reference in that case. The singular includes the plural, and we are unable to accept the contention that because the words used in Section 5 are "such Judge", the Chief Justice has no jurisdiction to constitute a Bench of more judges than one to hear a reference. We, therefore, repel the preliminary objection."

The decision of the Patna High Court in Deoji Goa and others Vs. Tricumji Jivan Das and others also supports the view that we are taking. The learned judges who decided that case disagreed with the two earlier Patna cases, that is, Kuldip Sahay and Others Vs. Harihar Prasad Jha and Others, and Dhanukdhari Prashad Pandey and Others Vs. Ramadhikari Missir, in which cases the decision of this court in (1911) ILR 33 All 20 (supra) was followed.

18. The next case relied upon for the proposition that the Taxing Judge cannot make a reference to a larger Bench is Haribunsha Singh Deo Vs. Sudhanshu Sekhar Singh Deo and Others, . In the case the learned judges of the Orissa High Court held that the juxtaposition of the phrase "such Judge" with the phrase "Chief Justice" in that section indicates that single Judge is meant and that it can have no reference to a Bench of Judges. With great respect to the learned Judges of the Orissa High Court we are unable to agree with them in their conclusions.

19. For the reasons mentioned above-we are of the opinion that the Taxing Judge or the Chief Justice if he hears the reference himself can make a reference u/s 5 of the Act to a larger Bench.

20. Our answer to the question referred to us is in the affirmative and we hold that in the instant case the reference made by the Taxing Judge (Sahgal J.) to the Division Bench was competent. We direct that the papers of this case shall be returned to the Bench consisting of Lakshmi Prasad and Gur Sharan Lal JJ. to whom the reference was made by the Taxing Judge.