
(2001) 08 AHC CK 0046
In the Allahabad High Court
Case No : Special Appeal No. 364 of 2001

Prof.Y.C.Simhadri and Ors.

APPELLANT

Vs

Deen Bandhu Pathak

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 5, Chapter 7, 16
Constitution of India, 1950 — Article 215, 216

Citation : (2001) 08 AHC CK 0046

Hon'ble Judges : S.K.Sen, J and R.K.Agrawal, J

Judgement

S. K. Sen, C.J.—Head Mr. V.B. Upadhyaya, learned Senior Advocate assisted by Mr. V.K. Upadhyaya, learned Advocate for the appellant and Mr. D.K. Tiwari and Pankaj Srivastava learned Advocates for the respondent.

2. This special appeal is directed against an order passed by the learned Single Judge on 26th March, 2001 whereby the learned Single Judge entertained an application filed by the respondent writ petitioner under Article 215 of the Constitution of India on the allegation that the order passed by the learned Single Judge on 15th March, 2001 has not been complied with by the appellants. By the said order the learned Single Judge has permitted to add the present appellants as respondent Nos. 1 to 3 in the application under Article 215 of the Constitution. The learned Single Judge also directed notice to be issued to the said respondents appellants herein directing them to appear personally before the Court.

3. Mr. V.B. Upadhyaya, learned Senior Advocate assisted by Mr. V.K. Upadhyaya, learned Advocate for the appellants have submitted before us that the learned Single Judge had no jurisdiction to pass such an order under Article 215 of the Constitution of India. Mr. Upadhyaya has further submitted that the learned Judge, who has been assigned the determination in respect of matters relating to Contempt, is only competent to exercise such jurisdiction. The learned Judge at the material time not having conferred with such determination by the Chief

Justice, has exceeded his jurisdiction in passing the order on the application under Article 215 of the Constitution in respect of matters relating to contempt and by directing issuance of notice to respondents therein. He has further submitted that Contempt in respect of High Court means the Contempt of the entire composite High Court comprising of the Chief Justice and all other Judges of the High Court under Article 216 of the Constitution of India. It is the Chief Justice alone who has the power to determine as to who shall take up which matter, who will comprise the Division Bench and who shall sit singly. It has further been submitted by Mr. V.B. Upadhyaya, that the order passed by the learned Judge on 26th March, 2001 in exercise of jurisdiction of Contempt under Article 215 of the Constitution is without jurisdiction. He has further submitted that it is the totality of Judges including the Chief Justice, which constitute High Court under Article 216 of the Constitution and not a particular Judge alone. The power to punish for Contempt has been conferred upon every High Court comprising of the Chief Justice and all the Judges taken together and not on one single Judge alone. Mr. Upadhyaya has further submitted that it is for proper and convenient administration of justice that the Chief Justice has been conferred the power under the constitution for making determination and assigning matters to the Judges and the Chief Justice having the sole power for the purpose of allotment of work to the Judges, no Judge can sit and take matters according to his own desire. In support of his contention Mr. Upadhyaya cited the following decisions :

- (1) Statev. Devi Dayal, AIR 1959 Alld. 421.
- (2) Sohan Lal Baidv. State of West Bengal & others, AIR 1990 Cal. 168.
- (3) Raj Kishore Yadavv. Principal, Kendriya Vidyalaya, Bamrauli, 1997 (1) UPLBEC 26.
- (4) High Court of Judicature at Allahabadv. Raj Kishore Yadav and others, 1997 (3) SCC 11.
- (5) State of Rajasthanv. Prakash Chand & others, 1998 (1) SCC 1.
- (6) Dr. L.P. Misrav. State of U.P., 1998 (7) SCC 379.

4. Sri Pankaj Srivastava and Sri D.K. Tiwari learned Advocates for the respondentwrit petitioner submitted that jurisdiction of the High Court to initiate proceedings under Article 215 of the Constitution of India cannot be taken away by any statutory provision or any other law including the Allahabad High Court Rules. They have further submitted that no rule or procedure has been framed by this High Court in respect of the proceedings for contempt under Article 215 of the Constitution of India and the rules framed under Chapter XXXVE of the High Court Rules do not provide for any procedure to be followed under Article 215 of the Constitution of India. It has also been urged on behalf of the respondentpetitioner that Rule 7 of Chapter XXXVE provides the procedure on the basis of which a learned Single Judge is empowered to issue contempt. The

learned Counsel has also referred to Section 19 of the Contempt of Courts Act and has submitted that the special appeal is barred in the instant case. For the purposes of defining the word "contempt of Court" he has also referred to Jowitt's Dictionary of English Law Vol. I, page 441 wherein the expression "contempt of Court" is defined in the following manner :

?Contempt of Court, where a person who is a party to a proceeding in a superior Court of record fails to comply with an order made against him or an undertaking given by him (R.V. Barnardo, (1889) 23 Q.B.D. 305), or where person, whether a party to a proceeding or not, does not act which may tend to hinder the course of justice or show disrespect to the Court's authority. Contempts are either direct, which only insult or resist the powers of the Court, or the persons of the judges who preside there; or consequential which, without such gross insolence or direct opposition, plainly tend to create a universal disregard to their authority. Contempts may be divided into acts of contempt committed in the Court itself (in facie curiae) and out of Court.?

5. It has also been contended on behalf of the respondent writ petitioner that the special appeal is not maintainable being against an interim order and it is liable to be dismissed. It has also been pointed out before us that the appellant No. 1, who is the Vice Chancellor of the University, has violated the provisions of Chapter XXXV of the High Court Rules. The learned Counsel have further submitted that the provisions of the Contempt of Courts Act cannot circumscribe or limit the provisions under Article 215 of the Constitution of India, whereby, every High Court being the Court of record has been given inherent power to initiate proceedings for Contempt. The contention of the respondent writ petitioner that the jurisdiction of this Court under Article 215 of the Constitution of India to punish for contempt of itself is being curtailed by the provisions of the Contempt of Courts Act or by the Rules framed thereunder is not correct. Neither the Contempt of Courts Act nor the Rules framed thereunder restricts or curtails the powers of the High Court under Article 215 of the Constitution of India to punish for contempt of itself. The Rules only provide for the procedure for exercising such power.

6. Several important questions have been raised in this special appeal. However, before proceeding further or going into the details of the same, we have to first note the nature of the proceedings with which we are concerned in the instant case. On perusal of the order passed by the learned Single Judge dated 26th March, 2001 it appears that the learned Single Judge entertained an application filed by the respondent writ petitioner under Article 215 of the Constitution of India on the allegation that the order passed by the learned Single Judge on 15th March, 2001 has not been complied with by the appellants and on the said application the learned Single Judge directed notice to be issued to the appellants.

7. Under Article 215 of the Constitution of India every High Court is a Court of record and shall have all the powers, which are exerciseable as a Court of record

including the power to punish for contempt of itself. Under Article 216 of the Constitution of India every High Court shall consist of a Chief Justice and such other Judges of the High Court. Therefore, considering both the provisions of Articles 215 and 216 the power to punish for contempt lies with the entire High Court, meaning thereby that the High Court comprising of the Chief Justice and all other Judges can exercise the power of contempt of the High Court itself. The power exercisable by the High Court is, therefore, exercisable by the entire High Court comprising of the Chief Justice and other Judges and that includes as one of its powers to punish for contempt of itself.

8. The Rules of the Court provide for jurisdiction of Judges sitting alone or in Division Bench. Provisions contained in Rules 1, 6 and 17 of Chapter V and Rule 2 of Chapter VIII relate to Constitution of Benches and to the exercise of judicial power. The said provisions are set out herein below :

?Chapter V

1. Constitution of Benches. 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.

6. Reference to larger Bench. 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 or 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.

17. Places of sitting of Judges. The Chief Justice shall determine the permanent place of the sitting of a Judge and may from time to time give directions that a Judge at Allahabad may for such period as he may specify sit at Lucknow and vice versa.

Chapter VIII

2. Powers of a Single Judge and Division Court. Any function which may be performed by the Court in the exercise of its original or appellate jurisdiction may be performed by any Judge or by any Division Court appointed or constituted for such purpose in pursuance of Article 225 of the Constitution.?

9. The question that arises for consideration is how the jurisdiction of the High Court has to be exercised while carrying out its power. This position has been clarified in a Division Bench judgment in the case of *Statev. Devi Dayal*, AIR 1959 All. 421. In the said case the Division Bench which was concerned with the question of revisional jurisdiction in a criminal case has dealt with the said question in an appropriate manner. A Bench of this Court consisting of Mr. Justice James and Mr. Justice Takru had directed a notice to be issued to the opposite party, *Devi Dayal*, to show cause, within three weeks why the sentences which had been passed on him by the Magistrate by his order dated 29th October,

1957, be not enhanced. This notice was directed to be issued by the aforementioned Bench ostensibly in the exercise of as they said, "the High Court's power of Revision?". When the matter came in revision before the Bench consisting of Mr. Justice B. Mukerji and Mr. Justice H.P. Asthana it was held that on the facts of the case it was clear that the matter was not placed before the learned Judges, who directed notice to be issued, by either the Chief Justice or in accordance with any direction given by him and the case appears to have been taken by the Bench suo motu. The question that came for consideration was whether under the aforementioned circumstances of the case, the order of the Bench directing issue of notice to Devi Dayal to show cause why his sentence should not be enhanced, was within the jurisdiction of that Bench or not. While dealing with the said question, the Division Bench held that notice for enhancement can be issued by this Court under revisional jurisdiction. The relevant portion of the order reads as under :

Revisional Jurisdiction in criminal case is conferred on the High Court by Section 435 of the Code of Criminal Procedure. The jurisdiction that this section confers is on the "High Court" and not on any individual Judge of the Court or on any Bench of the Court. The powers which the High Court can exercise while exercising its revisional jurisdiction are provided for in Section 439 of the Code of Criminal Procedure and here too it may be noticed, the powers that are described there are the powers of the "High Court" and not of any individual Judge or any individual or particular Bench of the High Court.

If there is nothing else in the law then whenever any revisional power had to be exercised by the High Court that power could only be exercised by the entire Court and not by any Single Judge or a Division Bench of the Court.?

The jurisdiction of the High Court and the powers are provided for by Article 225 of the Constitution. The perusal of that article necessitates the consideration of the provisions contained in Section 223 of the Government of India Act, 1935 and Section 108 of the Government of India Act, 1915. In pursuance of the power vested in the High Court by these provisions, Rule 1 of Chapter V of the Rules of the Allahabad High Court has been made. On a consideration of the aforementioned constitutional position and the rules, the Court came to the conclusion that it is only the Chief Justice who has the right and the power to decide which Judge is to sit alone and what cases such Judge can decide; further, it is again for the Chief Justice to determine which Judge shall constitute Division Benches and what work those Benches shall do. Under the rules of the High Court, 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 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 order 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, if made, is without

jurisdiction.

In the aforesaid case when the Bench of the High Court purported to make an order directing a notice to issue under Section 439, C.P.C. to an accused to show cause why his sentences should not be enhanced even though it was not a case that had been directed by the Chief Justice to be placed before that Bench for order, it was held that the Bench had no jurisdiction to issue to the accused to show cause for the enhancement of the sentences passed against him.

10. The power conferred under Article 215 of the Constitution of India has to be exercised by the entire High Court and not by a Single Judge or by a Division Bench of the High Court. The manner in which the High Court exercised such power has been explained in the Division Bench judgment in the case of *State v. Devi Dayal* (supra). It is therefore, clear that such power as contemplated cannot be exercised by a Single Judge without being conferred such authority or jurisdiction by the Chief Justice.

11. Similar view has been expressed by the Division Bench of the Calcutta High Court (of which I was a party) in the case of *Sohan Lal Vaid v. State of West Bengal and others*, AIR 1990 Cal. 168. In that case the Chief Justice P.D. Desai assessed how the power to be exercised by the High Court. The relevant portion of the said judgment is quoted below :

“(11) The High Court Act or the Charter Act, 1861 (24 and 25 Vict., C. 104), hereinafter called the Charter Act, which received the Royal assent on August 6, 1861, the parent legislation which authorised the establishment of High Courts of Judicature in India. Section 1 of the said Act providing, inter alia, that it shall be lawful for Her Majesty, by Letters Patent, to erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William and, by like Letters Patent, to erect and establish like High Court at Madras and Bombay for those Presidencies respectively, and that the High Court to be established under such Letters Patent shall be deemed to be established from and after the publication of such Letters Patent in the same Presidency, or such other time as in such Letters Patent may be appointed in this behalf. Section 13 of the Charter Act provided that subject to any laws or regulations which may be made by the Governor-General in Council, the High Courts established in any presidency under the said Act may, by their own rules, provide for the exercise, by one or more Judges or by Division Courts constituted by two or more Judges of the said High Court, of the original and appellate jurisdiction vested in such Court, in such manner as may appear to such Court to be convenient for the due administration of justice. Section 14 provided that the Chief Justice of each High Court shall, from time to time, determine what Judge in each case shall sit alone, and what Judges of the Court, whether with or without the Chief Justice, shall constitute the several Division Courts.

(12) The Letters Patent dated May 14, 1862 for the High Court of Judicature to be established in Bengal in accordance with the provisions of the Charter Act was

transmitted to the GovernorGeneral of India in Council by the despatch dated May 14, 1862 from Sri Charles Wood, Secretary of State. The said Letters Patent were afterwards revoked by further Letters Patent dated December 28, 1865. Clause 36 of the Letters Patent dated December 28, 1865 in its original form provided, inter alia that any function which was thereby to be performed by the High Court of Judicature at Fort William in Bengal, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose ?under the provisions of the thirteenth section of the aforesaid Act of the twenty fourth and twentyfifth years of our region.? Reference in the extracted portion aforesaid is to Section 13 of the Charter Act. The said extracted portion was substituted by the words ?in pursuance of section one hundred and eighty of the Government of India Act, 1915? by the amended Letters Patent of March 11, 1919.

(13) Paragraph 35 of the despatch from the Secretary of State accompanying the former Letters Patent mentioned, inter alia, that Clause 36 referred to the powers of single Judges and Divisional Courts appointed or constituted under the provisions of Section 13 of the Charter Act and that by Section 14 of the said Act, the power of determining from time to time what Judge in each case shall sit alone, and what Judges shall constitute Division Courts, was placed in the hands of the Chief Justice.

(14) The Charter Act was repealed and reenacted with slight modifications by the Government of India Act, 1915. Section 106 of the said Act provided, inter alia, that several High Courts are Courts of record and have all such powers and authority over or in relation to the administration of justice, including power to make rules for regulating the practice of the Court, as are vested in them by Letters Patent, and, subject to the provisions of any such Letters Patent all such jurisdiction, powers respectively at the commencement of the said Act. Section 108 of the said Act reads as follows :

?108(1) Each High Court may by its own rules provide as it thinks fit for the exercise, by one or more Judges or by Division Courts constituted by two or more Judges of the High Court of the original and appellate jurisdiction vested in the Court.

(2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts.?

(15) The Government of India Act, 1915, was repealed and reenacted with modifications by the Government of India Act, 1935. Section 223 of the said Act read as follows :

?(223). Subject to the provisions of this Part of this Act, to the provisions of any order in Council made under this or any other Act, to the provision of any order made under the Indian Independence Act, 1947, and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that

legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of Justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the establishment of the Dominion.?

(16) The Government of India Act, 1935, was repealed by the Constitution of India. Article 225 of the Constitution of India, in so far as it is relevant for the present purposes, reads as follows :

225. Jurisdiction of existing High Courts. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of Justice in the Court, including any power to make Rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :?

(17) In *National Sewing Thread Co. Ltd.v. Jamesh Chadwick & Bros*, AIR 1953 SC 357, it was ruled that power that was conferred by Section 108 of the Government of India Act, 1915 could be exercised from time to time with reference to jurisdiction whether existing at the time of the coming into force of the said Act or whether conferred by subsequent legislation, and that the said power still subsists and that it has not been affected in any manner whatever either; by the Government of India Act, 1935 or by the Constitution. On the other hand, it has been kept alive and reaffirmed with great vigour by those statutes. It was further observed that the power is there and continues to be there and can be exercised in the same manner as it could be exercised when it was originally conferred subject, of course, to the alternation by an appropriate legislation.

(18) It is thus clear that the Chief Justice of the High Court has the constitutional power to determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts. In other words, the function of assignment of judicial business amongst the Judges of the High Court, whether sitting singly or in Division Courts, is entrusted by law to the Chief Justice and the Judge or Judges derive jurisdiction to deal with and decide the cases or class of cases assigned to them by virtue of the determination made by the Chief Justice. This power is derived not only from the provisions of Section 108 subsection (2) of the Government of India Act, 1915, which still subsists and the power where under still continues to be there, as held in *National Sewing Thread Co. Ltd.*"scase, but also inheres in the Chief Justice.

(23) 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 has 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 cases 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 parheard 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. The following observations of Basudeva Mukherjee, J. in the Division Bench case of *Statev. Devi Dayal*, AIR 1959 Allahabad 421 at 432 being pertinent on this point are quoted 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 what cases such Judge can decided, 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 cases 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.?

(24) It is pertinent to remember that the jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus the jurisdiction may have to be considered with reference to value, place, nature of the subjectmatter

and age of the case. The power of the Court may be exercised within the defined territorial limits. It may be qualified or confined to subjectmatter of prescribed value. The Court may have competence to deal only with the cases of a specified character, for instance, testamentary or matrimonial appeals, revisions or writs, or specified subjects, such a, land or service, and so on and so forth. The jurisdiction may be further restricted with reference to the age of cases if the authority concerned directs the hearing of cases to take place before the Court according to the date of filing. This classification as to territorial jurisdiction, pecuniary jurisdiction and jurisdiction over the subjectmatter is obviously of a fundamental character. The cardinal position cannot be overlooked that before jurisdiction over the subjectmatter is exercised, the case must be legally brought before the concerned Court for the hearing and determination and that a judgment pronounced by Court without investment of jurisdiction is void.?

12. In the case of *State of Maharashtra v. Narayan*, AIR 1982 SC 1198 the power of the Chief Justice has been clearly elaborated. The relevant portion of the said judgment is quoted below :

?The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in subsection (3) of Section 51 of the Act, but inheres in him in the very nature of things.?

13. In the case of *Raj Kishore Yadav v. Principal, Kendriya Vidyalaya, Bamrauli and others*, (1997) 1 UPLBEC 26 it was held that Rule 4(a) is repugnant to the Constitution of India to the extent that it places a case of civil contempt before a Bench or a Division of a Court which may not have passed the order, direction or judgment. The relevant portion of the judgment is set out herein below :

?The Rules of the Allahabad High Court dislocate the civil contempt jurisdiction, inconsistent with the understood concept of a Court of Record. This has resulted in adding arrears to the already pending cases. Of every contempt case, civil contempt, two proceedings are born. The main case and the contempt case. Each is registered separately. It is monitored separately right from notice to Judge. The records of the two cases are strangers to each other. This is not all. On record there are several instances of more than one contempt case and more than one case itself (out of which the contempt arises) pending on the same subjectmatter, between the same parties. Statistics reveal that on the same controversy, Counsel intimated the Court, of there existing three, four, five or even six cases, between the case and contempt proceedings. In a Court of record this is not meant to happen. This had caused concern to Chief Justice Hon"ble B.P. Jeevan Reddy, as he then was.

In the circumstances, it is found that Rule 4(a) is repugnant to the Constitution of India to the extent and it places a case of civil contempt before a Bench or a Division of a Court which may not have passed the order, direction or judgment. A matter of civil contempt may be placed before a learned Judge, but this would

be a jurisdiction so nominated by the Hon"ble the Chief Justice, of cases referred by the Subordinate Courts to the High Court. But of contempt, that is, civil contempt alleged for the violation of an order, direction or judgment of the High Court, as a Court of Record, the only Court would be the Court which passed such an order, direction or judgment and no other.

Consequently and for the reasons given in this order subclause (a) of Rule 4 of Chapter XXXVE of the Rules framed under Section 23 of the Contempt of Courts Act, 1971, and appended to the Allahabad High Court Rules, for the presentation and hearing of civil contempt case, in so far as they relate to the examination and allegation of a civil contempt on the breach or violation of an order, direction or judgment of a Bench of the High Court, but misplaces the case before a Court which may not have passed the order, direction or judgment, render this particular Rule inconsistent in its concept to a Court of Record and specifically ultra vires, to Article 215 of the Constitution of India. This rule as is contained in subclause (a) of Clause 4, to Chapter XXXVE is struck off accordingly.?

14. The matter went up to the apex Court. The apex Court in the case of High Court of Judicature at Allahabadv. Raj Kishore Yadav and others, (1997) 3 SCC 11 allowed the appeal and reversed the decision of the Division Bench. The finding of the apex Court in this connection may be summarized as follows :

?Clause (a) of Rule 4 of Chapter XXXVE of the Rules of the High Court of Judicature at Allahabad is valid and legal and not inconsistent with Article 215 of the Constitution of India.

A conjoint reading of Section 108 of the Government of India Act, 1915, Section 223 of the Government India Act, 1935 and Article 225 of the Constitution of India makes it clear that every High Court by its own rules can provide for exercise of its jurisdiction, original or appellate, by one or more Judges or by Division Courts consisting of two or more Judges of the High Courts and it is for the Chief Justice of each High Court to determine what Judge in each case is to sit alone or what Judges of the Court whether with or without the Chief Justice are to constitute several Division Courts. In exercise of the aforesaid rulemaking power which inhered in all existing High Courts at the time of the advent of the Constitution of India and which was expressly saved by Article 225 of the Constitution of India, the Full Court of the High Court had framed these Rules in 1952. The procedure for exercise of contempt jurisdiction can be laid down by the High Court concerned by framing suitable Rules under Section 23 of the Contempt of Courts Act, 1971. Pursuant to Rule 4 (a) of the said Rules the Chief Justice was entitled to nominate a learned Single Judge to decide civil contempt cases arising under the Contempt of Courts Act, 1971. The aforesaid Rule, therefore, clearly falls in line with the constitutional scheme in connection with the exercise of jurisdiction of the High Court. Thus enactment of the impugned Rule squarely falls within the administrative power of the High Court well preserved by the aforesaid provisions.

All that Article 215 states is that every High Court shall be a Court of record meaning thereby all the original record of the Court will be preserved by the said Court and it shall have all the powers of such a superior Court of record including the power to punish for contempt of itself. As a superior Court of record the High Court is entitled to preserve its original record in perpetuity. Even apart from the aforesaid attribute of a superior Court of record the High Court as such has twofold powers. Being a court of record the High Court (i) has power to determine the question about its own jurisdiction and (ii) has inherent power to punish for its contempt summarily.

As regards the contention that the Full Court of the Allahabad High Court by framing the impugned Rule had enacted a provision which fell foul on the touchstone of Article 215 of the Constitution it may be stated that the High Court as an institution has the seisin of the relevant record pertaining to all the cases tried before it. Record cannot be said to be in the custody of the author of the order giving rise to contempt proceedings. The cases may be pending or might have been disposed of. Civil contempt might be alleged in connection with interim orders in pending matters and can also be alleged in connection with final orders in matters which are already disposed of. The record of such matters would be available in the High Court. All that the impugned Rule has done is to entitle the Chief Justice to assign the work of hearing civil contempt matters to one of the Judges. Such an exercise is perfectly legal and valid in the light of the constitutional scheme. When civil contempt is alleged in connection with breach of any order of the High Court, whether final or interim, while deciding the said question the learned Judge to whom this work is assigned is entitled to look into the relevant record which obviously is available in the High Court and thereby the learned Judges is not depriving any other Judge of the said record. So far as matters which are finally disposed of are concerned, such an eventuality can never arise but even in pending matters where breach of interim orders is alleged, when contempt proceedings in connection with such orders are placed for examination and scrutiny before the learned Judge to whom the work is assigned by the Chief Justice under the Rules it cannot be said that the record of the case in any way gets adversely affected or disturbed. It is the question of internal arrangement and transmission of record from Court to Court as per the exigencies and necessities of the case.

The civil contempt alleged is the contempt of the High Court as such and not the contempt of the author of the order being the Judge concerned who might have passed the said order, whether interim or final. When civil contempt by way of breach of such an order is alleged it is the institution of the High Court as such which is said to have been contemptuously dealt with by the contemnor concerned. For upholding the majesty of the institution as such, therefore, the High Court as a Court of record can look into the grievance centering round the alleged breach of its order and it is this power to punish the contemnor that flows from Article 215 of the Constitution of India as well as from the relevant provisions of the Contempt of Courts Act. But how this grievance of the

aggrieved party is to be processed and examined pertains to the realm of distribution of work and jurisdiction of the High Court amongst different Division Benches and that exercise is permissible to the Chief Justice of the High Court as per the rules framed by the High Court on its administrative side. That exercise has nothing to do with Article 215. Article 215 saves the inherent powers of the High Court as a Court of record to suitably punish the contemnor who is alleged to have committed civil contempt of its order. Order might have been passed by any of the learned Judges exercising the jurisdiction of the High Court as per the work assigned to them under the Rules by the orders of the Chief Justice, but once such an order is passed by a learned Single Judge or a Division Bench of two or more Judges the order becomes the order of the High Court. Breach of such an order which gives rise to contempt proceedings also pertains to the contempt of the High Court as an institution. At that stage Article 215 does not operate, but it is only Article 225 read with the Rules framed by the High Court on administrative side and the power inhering in the Chief Justice, of assigning work to the appropriate Bench of Judge or Judges, under Section 108 of the Government of India Act, 1915 read with Section 223 of the Government of India Act, 1935 which would have its full play. Consequently if under the impugned Rules the task of considering the grievances of the aggrieved party in connection with civil contempts of High Court's orders is assigned to one of the Judges of the High Court it cannot be said that thereby the impugned Rule has in any manner affected the status of the High Court as a Court of record.

The analogy of Order 39, Rule 2A, CPC cannot be pressed into service while judging the validity of the impugned Rule on the touchstone of Article 215. Rule 2A is mainly pressed into service before subordinate Courts which at most of the centers consist of sole presiding Judges of the Courts. In such cases where the subordinate Courts working at these centers consist of only one presiding Judge the applications under Order 39, Rule 2A, CPC will have to be; filed in the very same Court and would go to the same Judge or his successor in office. Such is not the case with the High Court functioning as a superior Court of record under Article 215 of the Constitution of India. The High Court consists of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint as laid down by Article 216. Consequently plurality of Judges appointed to the High Court collectively constitute the High Court.

Again, while exercising original jurisdiction under Contempt of Courts Act, 1971 in connection with civil contempt of its own orders the High Court is not exercising any review jurisdiction wherein statutorily the proceedings may have to be placed for decision of the same Judge or Judges if they are available. Contempt jurisdiction is an independent jurisdiction of original nature whether emanating from the Contempt of Courts Act or under Article 215 of the Constitution of India. How such original jurisdiction can be exercised is a matter which can legitimately be governed by the relevant Rules framed by the High Court on its administrative side by exercising its rulemaking power under Section 23 of the Act or under its general rule making power flowing from the relevant

provisions of the constitutional scheme. Consequently it cannot be said that the impugned Rule is violative of Article 215.?

15. In the case of *State of Rajasthan v. Prakash Chand and others*, (1998) 1 SCC 1, the Supreme Court while allowing the appeal held as follows :

?While on the judicial side the Chief Justice of the High Court is only the first amongst the equals, the administrative control of the High Court vests in the Chief Justice of the High Court alone and it is the prerogative to distribute business of the High Court both judicial and administrative.

The Chief Justice is the master of the order. 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 which Judges shall constitute a Division Bench and what work those Benches shall do.

The puisne Judge can only do that work which is allotted to them by the Chief Justice or under his directions. 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 High Court. No departure from it can be permitted.

Till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves, and one or both the Judges constituting such bench cannot sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

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 case, it is appropriate to direct the Counsel to make a mention before the Chief Justice and obtain appropriate orders. This is essential for smooth functioning of the High Court.

The Chief Justice can take cognizance of an application laid before him under the High Court Rules (Rule 55 herein) and refer a case to the larger Bench, for its disposal and he can exercise this jurisdiction even in relation to a part heard case. The Chief Justice has the authority and the jurisdiction to refer even a parheard 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 parheard 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 the heard by a larger Bench.

The puisne Judges cannot pick and choose any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

No Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

16. In the case of Dr. L.P. Misra v. State of U.P., (1998) 7 SCC 379 a Division Bench of the Allahabad High Court, Lucknow Bench at Lucknow, holding the appellants guilty under the Contempt of Courts Act, 1971 awarded a sentence to each one of them of imprisonment for one month and a fine of Rs. 1,000/-; in default of payment of fine to undergo further imprisonment for fifteen days. The matter came up before the Supreme Court. The facts as recorded in its judgment read as follows :

On 15/7/1994, the Division Bench comprising of Mr. Justice B.M. Lal and Mr. Justice A.P. Singh commenced its proceeding and in fact some of the case listed before it were heard. While hearing Writ Petition No. 157 of 1994 (Deoki Nandan Agarwal v. Commr., Faizabad Division), Dr. L.P. Misra, Advocate, the appellant in Criminal Appeal No. 483 of 1994 along with his associates entered in the courtroom raising slogans and asking the Court to rise and stop functioning. The Court, however, continued to function whereupon Dr. L.P. Misra along with Shri A.K. Bajpai, Sri Anand Mohan Srivastava, Sri Y.C. Pandey and Shri Shamim Ahmad (appellants in connected appeals) came on the dais and tried to manhandle and in that process Dr. L.P. Misra caught hold of Justice A.P. Singh forcing the Court to rise and then used abusive language against Justice B.M. Lal in the following words :

TUM SALE UTTH JAAO NAHIEN TO JAAN SE MAAR DAALENGE. TUMNE CHIEF JUSTICE SE KAHA HAI KI LUCKNOW KE JUDGES 5,000 RUPYA LEKAR STAY GRANT KARTE HAIN OUR STAY EXTEND KARTE HAIN. AAJ 2 BAJE TAK AGAR TUM APNA BORIYA BISTER LEKAR YAHAN SE NAHIEN BHAG JAATE TO TO TUMHE JAAN SE MAAR DAALENGE.

(4) In view of an alarming and threatening situation, the Court was forced to retire and consequently both the Hon'ble Judges retired to the chamber of Justice B.M. Lal. Dr. L.P. Misra then entered the chamber and repeated the same uncivilized language and extended the same threat. It was because of the intervention of Shri J.N. Bhalla, Additional Chief Standing Counsel, State of U.P. and some members of the staff of the Court who persuaded Dr. L.P. Misra and the others to leave the chamber. After some time, the Court reassembled and took a serious note of contemptuous conduct on the part of the appellants and in exercise of its power under Article 215 of the Constitution of India, passed the following order :

This clearly amounts to the grossest contempt of Court, interference in the administration of justice and insult to the Court as it scandalizes the Court and lowers the authority of the Court. Therefore, in our considered opinion, Dr. L.P.

Misra, Shri A.K. Bajpaie, Shri Anand Mohan Srivastava, Shri Y.C. Pandey and Sri Shamim Ahmad Advocates, are ex facie guilty of contempt of Court and accordingly in exercise of power conferred by Article 215 of the Constitution of India, this Court hereby sentences the aforesaid advocates, namely (1) Dr. L.P. Misra, Advocate, (2) Shri A.K. Bajpaie, Advocate, (3) Shri Anand Mohan Srivastava, Advocate and (4) Shri Shamim Ahmad, Advocate with; imprisonment for one month and fine of Rs. 1,000 (Rupees one thousand) each and in default of payment of fine, they shall undergo further imprisonment for 15 days.?

(5) The Court further directed the Additional Registrar of the said Court to take steps forthwith for execution of this Court.

(6) It is against this order dated 15/7/1994 passed by the High Court that the appellants have filed these criminal appeals under Section 19 of the Contempt of Courts Act, 1971.

(7) At the outset, we make it clear that the above recitals are taken from the impugned order which are denied by the appellants. In the view which we are inclined to take at this stage, we have refrained ourselves from going into the merits of the case.?

17. It was urged before the Supreme Court on behalf of the Counsel for the appellants that the Division Bench of the Allahabad High Court, Lucknow Bench at Lucknow while passing the said order did not follow the procedure prescribed by law. It was further urged that the Court had failed to give a reasonable opportunity to the appellants of being heard. It was also argued that assuming that the incident as recited in the impugned order had taken place, the Court could not have passed the impugned order on the same day after it reassembled without issuing a showcause notice or giving an opportunity to the appellants to explain the alleged contemptuous conduct. It was also urged that the minimal requirement of following the procedure prescribed by law had been overlooked by the Court. Learned Counsel for the appellants had referred to Section 14 of the Contempt of Courts Act, 1971 as also the provisions contained in Chapter XXXVE of the Allahabad High Court Rules, 1952 in support of his contention. Emphasis was laid to Rule 7 and 8, which read as under :

“(7) When it is alleged or appears to the Court upon its own view that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and at any time before the rising of the Court, on the same day or as early as possible thereafter, shall

(a) cause him to be informed in writing of the contempt with which he is charged, and if such person pleads guilty to the charge, his plea shall be recorded and the Court may in its discretion, convict him thereon.

(b) if such person refuses to plead, or does not plead, or claims to be tried or the Court does not convict him, on his plea of guilt, afford him an opportunity to make his defence to the charge, in support of which he may file an affidavit on

the date fixed for his appearance or on such other date as may be fixed by the Court in that behalf.

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed either forthwith or after the adjournment, to determine the matter of the charge, and

(d) make such order for punishment or discharge of such person as may be just.

(8) Notwithstanding anything contained in Rule 7, where a person charged with contempt under the Rule applies, whether orally or in writing to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of the opinion that it is practicable to do so and that in the interests of proper administration of justice, the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.?

18. It was also urged on behalf of the appellants" Counsel that the impugned order was totally opposed to the principles of natural justice and, therefore, unsustainable on this score alone. The Supreme Court after hearing the learned Solicitor General, who was requested to appear and assist the Court held as follows :

?(12) After hearing learned Counsel for the parties; and after going through the materials placed on record, we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law. It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. It is in these circumstances the impugned order cannot be sustained.?

19. Thus, the following principles emerge from the foregoing discussions :

(1) The administrative control of the High Court vests in the Chief Justice alone and it is his prerogative to distribute business of the High Court both judicial and administrative.

(2) The Chief Justice 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 which Judges shall constitute a Division Bench and what work those Benches shall do.

(3) The puisne Judge can only do what work which is allotted to them by the Chief Justice or under his directions. 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.

(4) Any order which a Bench or a Single Judge may choose to make a case that

is not placed before them or him by the Chief Justice or in accordance with his direction is an order without jurisdiction and void.

(5) Contempt jurisdiction is an independent jurisdiction of original nature whether emanating from the Contempt of Courts Act or under Article 215 of the Constitution of India.

(6) For exercising the jurisdiction under Article 215 of the Constitution of India the procedure prescribed by law has to be followed.

20. It appears that on 26/3/2001 when the learned Judge passed the said order, he was allotted and assigned the determination with regard to the following matters by the Chief Justice as appears from the pointed cause list :

?FRESH WRITS IN EDUCATIONAL MATTERS (EXCEPT SERVICE WRITS) FOR ORDERS, ADMISSION AND HEARING AND ALL SINGLE JUDGE WRITS FOR ORDER, ADMISSION AND HEARING INCLUDING BUNCH CASES.?

21. The learned Judge on the face of the record, therefore, had no determination assigned to him by the Chief Justice with regard to the matters relating to contempt and the said jurisdiction had been assigned to another Hon'ble Single Judge.

22. In view of the rule as already noted that the power to constitute Benches and allotment of work to the learned Judges vests absolutely in the Chief Justice and the Rules 1, 6 and 17 of Chapter V and Rule 2 of Chapter VIII of the Allahabad High Court Rules also clearly provide for the same. In that view of the matter the order passed by the learned Single Judge in the instant case appears to us to be without jurisdiction and void.

23. As noted above, arguments have been advanced by the learned Counsel for the respondent/petitioner that the special appeal is not maintainable. Moreover it has also been submitted that the direction, issued in the instant case by the learned Single Judge, is in the nature of a proceeding initiated by virtue of the power vested in the High Court to punish for contempt and it does not amount to a judgment or a final order.

24. It is wellsettled that an appeal lies from a judgment within the meaning of Clause 10 of the Letters Patent as continued by Clause 15 of the United Provinces High Courts (Amalgamation) Order, 1948 and Rule 5 of Chapter VIII of the Allahabad High Court Rules.

25. In the case of *Shah Babulal Khimji v. Jayaben D. Kania* and another reported in AIR 1981 SC 1786, although not cited by any of the parties appears to be relevant. What is judgment, under the Letters Patent has been considered, taking into account Clause 15 of the Letters Patent of the Bombay High Court which corresponds to Clause 10 of the Letters Patent of Allahabad High Court, at length in the aforesaid judgment of the apex Court. It was held that the interlocutory order in order to be a judgment must contain the traits and

trappings of finality either when the order decides the question in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings. It has further been held that every interlocutory order cannot be regarded as a judgment but only those orders would be judgment which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. The Supreme Court in this connection, in Paragraph 86 of the said judgment has quoted a portion of the judgment of Calcutta High Court in the case of Shorab Merwanji Modiv. Mansata Film Distributors, reported in AIR 1957 Cal. 727, inter alia, as follows :

?On a strict construction of the Calcutta test, the right or liability must mean some right or liability which is a subjectmatter of controversy in the suit or proceeding, but in its application to individual cases, that strict construction has not been adhered to and was indeed often departed from by Couch, C.J., himself who was the author of the test. Orders concerning the jurisdiction of the Court to entertain a suit, as distinguished from matters of the actual dispute between the parties, were held by him to come within the category of judgment.?

(Emphasis supplied).

26. In the instant case the learned Judge has exercised the jurisdiction not vested in him and as such the order concerning the jurisdiction to entertain the contempt proceeding clearly falls within the definition of "judgment" and is accordingly appealable. It is also affects the right of the appellants and the order in the instant case also causes injustice to the appellants and, as such, has the trapping of judgment.

27. In the case of Shah Babulal Khimji(supra) the Supreme Court also dealt with the case of Asrumati Debiv. Kumar Rupendra Deb Raikot, AIR 1953 SC 198. While considering the case Shah Babulal Khimji(supra) the Supreme Court in Paragraph 101 of the said judgment had observed as follows :

?(101) Thus, from this case an important test that can be spelt out is that where an order which is the foundation of the jurisdiction of the Court or one which goes to the root of the action, is passed against a particular party, it doubtless amounts to a judgment.(Emphasis supplied). As we have already pointed out apart from these observations this Court refused to embark on an enquiry as to in what cases an order passed by a trial Judge would be a `judgment" for purposes of appeal before a larger Bench.?

28. In Paragraph 106 of the said judgment the Supreme Court had held as follows :

?(106) Thus, the only point which emerges from this decision is that whenever a trial Judge decides a controversy which affects valuable right of one of the parties, it must be treated to be judgment within the meaning of the Letter Patent.?(Emphasis supplied).

29. Amrendra Nath Sen, J. in a separate judgment dealt with the expression

"judgment" which reads as follows :

?In finding out whether the order is a `judgment" within the meaning of Clause 15 of the Letters Patent it has to be found out that order affects the merits of the action between the parties by determining some right or liability. The right or liability has to be found out by a Court. The nature of the order will have to be examined in order to ascertain whether there has been a determination of any right or liability?. In my opinion, an exhaustive or a comprehensive definition of `judgment" as contemplated in Clause 15 of the Letters Patent cannot be properly given and it will be wise to remember that in the Letters Patent itself, there is no definition of the word `judgment. That expression has necessarily to be construed and interpreted in each particular case. It is, however, safe to say that if any order has the effect of finally determining any controversy forming the subjectmatter of the suit itself or any part thereof or the same affects the question of Court's jurisdiction or the question of limitation, such an order will normally constitute `judgment" within the meaning of Clause 15 of the Letters Patent.?

(Emphasis supplied).

30. In the instant case, admittedly, the question of jurisdiction is involved and, as such, the order falls within the meaning of "judgment" under the relevant clause of Rule 5 of Chapter VIII of the High Court Rules and accordingly appears to us to be appealable.

31. In the instant case since the order passed by the learned Single Judge was beyond his competence or jurisdiction to pass such order, it is void and nonstand is accordingly appealable. The appellant being ViceChancellor of the Banaras Hindu University, who is holding a responsible position, issue of notice by the order impugned, which is without jurisdiction, has adversely affected his rights and the rights of the appellant having been adversely affected the appeal appears to be maintainable.

32. Considering the facts on record as also the principle of law as laid down in various decisions noted hereinbefore, we are of the view that the learned Single Judge on the face of record has exercised the jurisdiction not vested in him and as such, the order passed by him is void and is liable to be set aside.

33. Accordingly the special appeal is allowed and the impugned order passed by the learned Single Judge is set aside. However, it is made clear that we have not decided the issue as to whether the appellants have violated the order passed by this Court or not and this order shall not preclude the Court having determination to take appropriate decision in accordance with law. Accordingly, we direct the matter to be listed before the learned Single Judge having determination to hear contempt matters within a week from date.