
(2011) 04 RAJ CK 0066

In the Rajasthan High Court

Case No : Civil Special Appeal No. 3 of 2010 in Civil Miscellaneous Appeal No. 1265 of 2009

Rajasthan High Court

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 122, 123
Constitution of India, 1950 — Article 225, 226
High Court Rules, 1952 — Rule 308
Rajasthan High Court Ordinance, 1949 — Section 46
States Reorganisation Act, 1956 — Section 51(2)

Citation : (2011) 8 RCR(Civil) 2212 : (2011) 3 RLW 1926

Hon'ble Judges : Arun Mishra, C.J.;Prakash Tatia, J

Bench : Division Bench

Judgement

Prakash Tatia, J.—This intra-court appeal has been preferred by the Rajasthan High Court being aggrieved against certain directions issued by the Single Bench of this Court in order dated 29.9.2009 in S.B. Civil Misc. Appeal No. 1265/2009 - State of Raj. v. Smt. Rekha Mahawar wherehy the Single Bench of this Court directed the Registrar of the High Court to scrutinize all the cases filed at Principal Seat of High Court at Jodhpur as well as the cases filed at the Bench of High Court at Jaipur and that too of past 5 years and find out the cause of action as explained in para No. 24 of the impugned judgment and then put a note about the territorial jurisdiction and put those cases in defect side with registration number of the cases, obviously as defect case and then such cases shall be transferred to the appropriate seat or bench. The directions as given in para No. 26 are as follows:

26. Since as aforesaid, this question keeps on cropping up at both the places oft and on and more often than not at Jaipur Bench causing undesirable imbalance, it is directed that the Registry shall scrutinize all the cases filed at both the places in past 5 years and if the cause of action as explained above in para 24

falls within the domain of the principal seat or bench other than the place where such cases are filed, a defect note pointing out this question as to territorial jurisdiction, as is made by the Registry in the present case, would be made and the defect side registration number of the case would also be given and such cases shall be transferred to the appropriate seat or bench, as the case may be, unless such defect or objection of Registry is determined otherwise by the concerned Bench for maintainability of the case at that place only before matter is proceeded further on merits. Such scrutiny of the cases should be completed within 6 months from today and report by the Registrar General of the Court may be placed before the Court in this file showing the number of cases so scrutinized and transferred or upon orders by the Bench, maintained at that seat or bench, as the case may be. A copy of this order may be circulated by Dy. Registrar (Judl.) and Registrar General in Stamp Reporter Section and all other Sections in the Registry at Principal seat and Bench at Jaipur immediately by way of circular particularly containing examples enumerated in para 24 of the judgment above.

2. The leave was granted to the High Court to prefer appeal against the said impugned judgment vide order dated 18.1.2010 and the directions issued in para No. 26 of the judgment dated 29.9.2009 were stayed vide order dated 19.3.2010. The matter was listed for final hearing as per the order dated 29.4.2010. An application was submitted by the Rajasthan High Court Advocates' Association, Jodhpur for being impleaded as party and it also submitted an application with copies of some orders (Ex.A/1 to A/3) and it has been prayed that directions given in above orders also deserve to be quashed. On 4.1.2011, the Coordinate Bench of this Court observed that since the matter pertains to the functioning of the High Court in relation to certain matters, the issue may be examined, keeping in view the provisions of Sections 122 and 123 of CPC read with Article 225 of the Constitution of India and the High Court Rules and orders already framed and which are in force and the decision of Supreme Court reported in AIR 2001 SC 416.

3. Today an application has been submitted on behalf of the Rajasthan High Court Advocates' Association for taking on record certain other orders, which have been passed by the Single Bench of this Court in various matters to point out that several directions have been issued by the Single Bench of this Court to the Registry of the High Court which virtually amounts to legislating through judicial process by passing the orders in judicial side, which is impermissible in law.

4. We perused the following orders passed by the Single Bench giving directions to the Registry, obviously, to the High Court also in relation to the procedure of filing of the matters in the High Court and how they should be dealt with and certain directions to the bar.

5. We perused the orders passed in under mentioned matters.

1. SBCWP No. 2284/2008 - Pramod Kumar Order dated 2.7.2008 Chhaparwal v.

Kanhaiya Lal

2. SBCWP No. 5639/2010 - Smt. Rupesh Order dated 7.7.2010 Kumari and Ors. v. State of Raj. and Ors.
3. SBCWP No. 2930/2009 - Vinod Kumar Order dated 24.4.2008 Pandey v. State of Raj.
4. SBCWP No. 1040/2000 - Amrit Lal and Ors. Order dated 19.2.2008 v. Board of Revenue and Ors.
5. SBCWP No. 8741/2009 -Brij Kishore Gopa Order dated 11.9.2009 v. Ashok Kumar and Ors.
6. SBCWP No. 1418/2008 - Surendar Singh Order dated 18.7.2008 v. The Addl. District Judge No. 2 Bhilwara and Anr.
7. SBCWP No. 7958/2010 - Kushwant Kumar Order dated 25.8.2010 v. State of Raj. and Ors.
8. SBCWP No. 9289/2009 - Swaroop Ram & Order dated 26.8.2010 Ors. v. State of Raj. and Ors.
9. SBCWP No. 4674/2010 - Rosamma Order dated 20.8.2010 Mathew v. State of Raj. and Ors.

6. It has been urged by learned Counsel Sh.V.K. Mathur appearing for the Rajasthan High Court that by above orders directions have been issued to the Registry to follow the procedure as provided in the directions issued by the court referred above, which includes the directions; even not to accept the pleading and reply etc. in certain circumstances like, if petition is not bearing complete signatures, names and statute and the court by order prescribed the manner of pagination and for obtaining certificate from the counsel about tile and proper pagination and the court also ordered how should be the internal and external paging and whether email I Ds of the learned advocates have been given. Direction also has been issued not to implead the court concerned as party in the matters (writs) filed in the High Court and further direction was issued that if the subordinate courts are impleaded as party then they should be put in defect side. According to learned Counsel for the Appellant and learned Counsel for the Advocates" Association, single bench of this Court could not have issued such direction when the complete procedure has been prescribed by rules framed by the High Court which are "Rules of the High Court of Judicature for Rajasthan, 1952" (hereinafter referred to as the Rules of 1952 for short). These Rules of 1952 have been framed by the Rajasthan High Court in exercise of powers conferred by Section 46 of the Rajasthan High Court Ordinance, 1949 as well as under Article 225 of the Constitution of India. It is submitted that once the procedure has been prescribed by statutory provisions of law that too in exercise of powers under Article 225 of the Constitution of India, the directions issued in above orders amount to legislation by judicial order, which is not permissible in

view of the law laid down by the Hon''ble Apex Court in the number of cases. It is also submitted by learned Counsel for the High Court that the Hon''ble Chief Justice is administrative head of the High Court and administrative control of the High Court vest in the Chief Justice alone as held by the Hon''ble Apex Court in the case of State of Rajasthan Vs. Prakash Chand and Others, and in exercise of powers vested in Hon''ble the Chief Justice, the Hon''ble Chief Justice can issue appropriate directions to the Registry which is in direct control of the Hon''ble Chief Justice of the High Court then in case if there is any difficulty in following the procedure or some improvement is required in the procedure like in the matter of procedure for filing and listing of the cases before the appropriate bench then those suggestions can be given to the High Court as well as to the Hon''ble Chief Justice through proper channel and that can be done in administrative side by Hon''ble Judges of the High Court instead of passing any judicial orders to regulate the procedure of High Court otherwise it may result into chaotic situation as several judges may prescribe different procedure for the High Court. It is also submitted that impugned order was passed in Civil Misc Appeal arising out of the matter relating to the accident claim case and the jurisdiction of the bench was limited to hear the appeal and while exercise the appellate jurisdiction under the Motor Vehicle Act, 1988, the bench could not have issued writ directions which can be issued only by exercising power under Article 226 of the Constitution of India. It is also submitted that in the matter wherein impugned order has been passed, the High Court was not party.

7. Learned Counsel Sh. MC Bhoot also submitted that judicial legislation is impermissible, however, some rules are required to be framed or required to be amended and that can be done by the High Court and not by the judicial order.

8. Learned Counsel Sh. Anand Purohit, Addl. Advocate General and Sh. MR Singhvi also advanced their arguments, but so far as the legislation through judicial pronouncement is concerned, the learned Counsels frankly admitted that it is not permissible though they also submitted that they have some grievances'' because of the entertainment of the certain matters at Bench of the Rajasthan High Court at Jaipur.

9. We considered the above referred orders passed by the Bench of this Court as well as the impugned judgment.

10. It cannot be disputed that in view of the decision of the Hon''ble Apex Court in Rajasthan High Court Advocates'' Association (supra) issue of cause of action can be decided by the court and not by the'' office. This issue has been settled by the Hon''ble Supreme Court in the case of Rajasthan High Court Advocate's Association (supra) wherein it has been held as under:

The purpose of the Presidential Order is to carve out and define territorial jurisdiction between the principal seat at Jodhpur and the permanent bench seat at Jaipur. The cases are to be heard accordingly unless the Chief Justice may exercise in his discretion the power vested in him by the proviso to para 2 of the

Presidential order. Clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court. Although the said clauses do not deal with principal seat or permanent bench of any High Court but in our opinion, there is no reason why the principle underlying thereunder cannot be applied to the functioning of the bifurcated territorial jurisdiction between the principal seat and permanent bench seat of any High Court. In case of a dispute arising whether an individual case or cases should be filed and heard at Jodhpur or Jaipur, the same has to be found out by applying the test from which district the case arises, that is, in which district the cause of action can be said to have arisen and then exercising the jurisdiction under Article 226 of the Constitution.

11. Chapter VIII of the Rules of 1952 provides the procedure to be followed by the office of High Court upon presenting petitions, appeals or revision applications other than for original trial. In Chapter VIII under Rule 308, it is provided that what reports shall be made, obviously, by the Registry of the High Court on petition or appeal or application for revision when presented in High court. As per Rule 308 office is required to make report on various matters including on the question whether appeal or application for revision lies to this Court. Since the bench of the High Court was constituted subsequent to the framing of the Rules of 1952 and the jurisdiction has been distributed amongst the Principal Seat and the Bench of the Rajasthan High Court by Presidential notification, therefore, office can make report in any appeal or petition or application whether it lies to "this Court" and "this Court" means the Principal Seat of the High Court or the Bench at Jaipur. It will be in consonance with the subsequent development of creating of the Bench of the High Court at Jaipur as well as will be harmonious reading of the Rule 308 in the light of the Presidential order dated 31.1.1997 passed in exercise of power conferred by Sub-section (2) of Section 51 of the State Reorganization Act, 1956 creating the bench, that office will make report about territorial jurisdiction whether the appeal or petition is maintainable at place where it has been filed. Once there is a statutory provision then it was not necessary for the court to issue directions in judicial side to follow the procedure, which may be different than the procedure already provided by Rule and if there is any ambiguity, which apparently not, then at the most it could have been clarified.

12. There is no provision in the Rules of 1952 which empowers the Registry of the High Court to give defect number once regular number has been given to any matter and it has been registered as such. Therefore, the direction to Registry of the High Court to scrutinize all the cases filed at Principal Seat of the High Court and of the Bench in past 5 years to find out whether the matter has been filed at proper place or not and put a note of defect on each of the matter which has already been registered as a regularly presented petition or appeal, would be asking the Registry to look into the question of jurisdiction, which after entertainment of the petition or appeal can be decided by the court only in view of the above referred judgment of the Hon'ble Supreme Court delivered in the

case of Rajasthan High Court Advocates" Association (supra).

13. So far as other directions given in different orders, referred above, about the complete signatures, about the pagination, submitting of certificate from the counsel about the title and pagination, about Email I Ds and who should not be party are concerned, certainly these directions are not in accordance with the Rules of 1952 or any other order passed by Hon"ble Chief Justice and are in excess to jurisdiction of Single Bench as it amounts legislating by judicial order in view of the ratio of decisions given in the cases of Divisional Manager, Aravali Golf Club v. Chander Hass 2008 1 SCC 683 , P. Ramachandra Rao Vs. State of Karnataka, and State of Rajasthan v. Prakash Chandra and Ors. (supra). In P. Ramchandra Rao's case it has been held that when judges by judicial decisions lay down the new principles of law of the nature specifically reserved for the legislature, they legislate, and not merely declare the law. In the case of Divisional Manager, Aravali Golf Club (supra) the Hon"ble Apex Court held that judges can enforce an existing law but cannot create law and enforce the same. As we have already noticed that what should be the procedure in High Court is required to be regulated by the rule of law by framing the law/rules and for which power has been given to the High Court under Article 225 of the Constitution of India and before that by Section 46 of the Rajasthan High Court Ordinance, 1949 (now repealed). As we have already noticed that in Prakash Chandra's case it has been held that the Hon"ble Chief Justice can issue appropriate directions to the Registry which is in direct control, of Hon"ble the Chief Justice of the High Court. At this juncture, it will be relevant to mention here that the proprietary demands that whenever difficulty comes before any court/bench in relation to the procedure or practice followed in the High Court then always it is better to give suggestion in administrative side to Hon"ble the Chief Justice orally or in writing instead of passing any order or giving directions in judicial order so that the court may function as per rules and directions. This further necessary to ensure uniform procedure for entire High Court and to avoid prescribing procedure as per the view of bench and not as decided by the High Court.

14. Golden rule of law is principles of natural justice which requires opportunity of hearing to a person, institution or body before passing any order against such person, institution or body. In absence of such opportunity, the order may be void and also unenforceable. We found that the impugned order was passed in civil misc. appeal and that was not passed within the bench's jurisdiction and such an order could have been in writ jurisdiction where High Court should have been party and in other matters High Court was neither party nor any opportunity of hearing was given to the High Court, who alone could have brought to the notice of the court that the High Court is bound by its own rules and till the rules are there, directions contrary to the rules, would be per-incurium being contrary to the statutory provisions.

15. In view of the above reasons, the appeal is allowed. The directions issued in

the impugned order dated 29th Sept., 2009 in para No. 26 are quashed and set aside. The office will be free to make report in accordance with the Rules of 1952 including as per Rule 308 of the Rules of 1952 and need not to insist for compliance of the directions given in Order dated 2.7.2008 passed in SBCWP No. 2284/2008 - Pramod Kumar Chhaparwal v. Kanhaiya Lal, Order dated 7.7.2010 passed in SBCWP No. 5639/2010 - Smt. Rupesh Kumari and Ors. v. State of Raj. and Ors., order dated 24.4.2008 passed in SBCWP No. 2930/2009 - Vinod Kumar Pandey v. State of Raj., order dated 19.2.2008 passed in SBCWP No. 1040/2000 - Amrit Lal and Ors. v. Board of Revenue and Ors., order dated 11.9.2009 passed in SBCWP No. 8741/2009 - Brij Kishore Gopa v. Ashok Kumar and Ors., order dated 18.7.2008 passed in SBCWP No. 1418/2008 - Surender Singh v. The Addl. District Judge No. 2, Bhilwara and Anr., Order dated 25.8.2010 passed in SBCWP No. 7958/2010 - Kushwant Kumar v. State of Raj. and Ors., order dated 26.8.2010 passed in SBCWP No. 9289/2009 - Swaroopa Ram and Ors. v. State of Raj. and Ors. and order dated 20.8.2010 passed in SBCWP No. 4674/2010 - Rosamma Mathew v. State of Raj. and Ors.-15

16. Though we have held those directions to be contrary to statutory provisions and per incuriam and quashed and set aside the same, but they may be treated to be suggestions, which may be considered by the High Court if High Court deems it proper and necessary.