

(2012) 09 CHH CK 0046
In the Chhattisgarh High Court
Case No : Writ Petition No. 4520 of 2000

Ratan Kumar Jain

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 3 CG.L.R.W. 5 : (2012) 4 CGLJ 1

Hon'ble Judges : Pritinker Diwaker, J;Gulam Minhajuddin, J;Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Ratan Kumar Jain Petitioner in person Mr. Ravish Agarwal with Mr. S.S. Agarwal Advocate as Amicus Curiae, for the Appellant; Sanjay K Agarwal Advocate General with Mr. A.S. Kachhwaha Dy Advocate General for the State Mr. U.N. Awasthy Senior Advocat, for the Respondent

Judgement

Abhay Manohar Sapre, J.

Writ Petition Under Article 226/227 of the Constitution of India

1. This reference is made to the Full Bench in the aforementioned pending writ petition pursuant to the order dated 04.07.2012 passed by the Division Bench in the said writ petition. In order to appreciate the issue involved that led to making of the reference, relevant facts need mention in brief infra.

2. In a pending writ petition, one by party interim order was passed on 09.08.2005 by the Division Bench comprising of Hon''ble Chief Justice Mr A.K. Patnaik (as His Lordship then was) and Hon''ble Mr. Justice S.K. Agnihotri. An application was then made by respondent No. 5 on 14.03.2012 (I.A. No. 19 of 2012) seeking clarification /modification of order dated 09.08.2005.The writ petitioner filed his reply on 16.04.2012 to the application. This application was listed for orders before the Division Bench comprising of Hon''ble Mr. Justice Sunil Kumar Sinha and Hon''ble Mr. Justice R. S. Sharma as per roster on 02.05.2012. This Division Bench referring to Rule 40 of the Chhattisgarh High Court Rules (for

short hereinafter referred to as "C.H. Rules") directed the Registry to place "this matter (I.A. No.19 /2012)" before the appropriate Bench.

3. Accordingly and in compliance to this order, the Registry placed the matter before the Chief Justice on administrative side for orders for its listing. The Chief Justice by order dated 08.05.2012, directed listing of I.A. No 19/2012 before the Bench comprising of Hon''ble Mr. Justice S K.Agnihotri and Hon''ble Mr. Justice R.N. Chandrakar. The order further said that the writ petition be thereafter placed before the appropriate Division Bench dealing with such matters.

4. Accordingly I.A. No 19/2012 was listed for orders before the Bench comprising of Hon''ble Mr. Justice S.K Agnihotri and Hon''ble Mr. Justice R.N. Chandrakar. This Bench was of the view that the application under consideration (I.A. No. 19/2012) should be heard by the "bench hearing the matter on merit". In other words, in the opinion of this Bench, the appropriate Bench for deciding I.A. No 19/2012 was the Bench which is hearing the matter (writ petition) on merits. This Bench, therefore, recommended for referring the matter before a larger Bench under Rule 35 of the C. H. Rules. The concluding para of order dated 04.07.2012 reads as under:

13. In view of the foregoing, we recommend Hon''ble the Chief Justice to place the matter before a Larger Bench under the provisions of Rule 35 of the Rules.

5. Accordingly and in compliance of the aforesaid order, the Registry placed the matter before the Chief Justice on administrative side for constitution of Full Bench for hearing the reference as per recommendation made by the referring Bench. The Chief Justice by order dated 26.07.2012 accordingly formed the Full Bench.

6. The order dated 26.07.2012 reads as under:

Post W.P. No. 4520/2000 & W.P. (C) No. 5354/2009 before Hon''ble Full Bench comprising Hon''ble Mr. Justice A.M. Sapre, Hon''ble Mr. Justice P. Diwaker & Hon''ble Mr. Justice G. Minhajuddin.

7. It is in compliance to this order and with this factual background, this matter was placed before the Full Bench.

8. On 09.08.2012, when this matter came up for hearing, we requested the Advocate General to assist the Court on myriad issues arising in the case. We also considered it proper to appoint amicus curiae to assist the Court and accordingly, requested Shri Ravish Agrawal, Senior Counsel to act as amicus curiae. We also granted indulgence to the members of Bar to address the Court, in case, if any one was interested in addressing on legal issues arising in the case. The matter was accordingly placed for hearing on 28.08.2012.

9. Having heard Shri Ravish Agrawal, Senior Advocate, Shri Sanjay K. Agrawal, Advocate General, Shri R.K Gupta, Advocate, Shri UN Awasthi, Senior Advocate and lastly the petitioner in person at length on various legal issues arising in the

case keeping in view the law laid down by the Supreme Court, the applicability of provisions of the Rules governing the field, and on perusal of the record of the case, we are inclined to dispose of this reference in the light of our reasoning mentioned infra.

10. At the outset, we consider it apposite to refer to Rule 2 (2), 3, 4 and 35 of C.H Rules which are relevant for this reference. These provisions read as under.

Rule 2(2) Terms, words or expressions not defined herein shall have the meaning assigned to them in Acts or Rules from which they draw their origin.

Rule 3.The General Clauses Act, 1897 (10 of 1897), and the Chhattisgarh General Clauses Act, 1957 shall apply for the interpretation of these Rules.

Rule 4 Unless otherwise expressly provided in these rules, the provisions contained in the Madhya Pradesh High Court Rules and Orders shall apply.

Rule 35 If a Bench of two Judges considers that the decision of the proceeding pending before them involves reconsideration of a decision of two or more Judges, they may refer the matter to the Chief Justice with a recommendation that it be placed before a Full Bench. The referring Judges may refer a stated question(s) or may recommend that the proceeding itself be heard and decided by the Bench to which it is referred. If the referring Judges refer a stated question(s), they shall dispose of the proceeding in accordance with the decision of the Full Bench on the question(s) referred to it.

11. Mere perusal of Rule 2 (2) and Rule 4 in juxtaposition would go to show that by virtue of these two rules and unless otherwise expressly provided in C.H. Rules, the provisions of the Madhya Pradesh High Court Rules and Orders (for brevity hereinafter called - M.P. Rules) are made applicable to the High Court of Chhattisgarh mutatis mutandis. In the light of applicability of M.P. Rules to the High Court of Chhattisgarh by virtue of principle known as "legislation by incorporation", whenever the question arise as to what is the true object, purport and interpretation of any provision/s contained in C.H. Rules, or when there are no express provisions made in C.H. Rules, then, recourse has to be taken by applying the provisions of the M.P. Rules to remedy the situation. In other words, in the event of any kind of difficulty or ambiguity noticed while interpreting the C.H. Rules, one has to look to the provisions of the M.P. Rule to find out its solution and to proceed accordingly. Indeed the sole objective behind such well known legislative incorporation made in CH Rules is to ensure that no difficulty is faced in implementation of the C.H. Rules. Since the M.P. High Court is a parent High Court of the Chhattisgarh High Court having inherited its legacy by virtue of M.P. Re- Organization Act and hence, Rule makers while drafting C.H. Rules very correctly considered proper to insert Rule 2 (2) and 4 in C.H. Rules.

12. We may also at the outset consider it proper to clarify that in Para 6 of the referring order dated 04.07.2012, there appears to be some typographical error crept while quoting in verbatim Rule 40 of C.H. Rules. In third line of quotation,

the word "of "is typed in place of word "or". In other words, it is the word "or", that should have been typed in place of word "of".

13. We, therefore, make it clear that whenever the referring order dated 04.07.2012 is read and referred to, it should be read and referred to with the aforesaid clarification.

14. Now coming to the issue involved in the reference, as would be clear from mere reading of the referring order dated 04.07.2012, the referring Judges made the reference to the Full Bench by taking recourse to Rule 35 of C.H. Rules.

15. Mere perusal of Rule 35 would go to show that it enables the Division Bench (referring Judges) to make a reference to the Full Bench to answer the "stated question/s" or to recommend for "deciding the entire matter itself", which is before the Division Bench. In other words, the reference can be made by the referring Judges to the Full Bench either for answering any specific stated question/s formulated by them arising in the case which is being heard or they can refer the entire matter itself. In the former case, after answering the stated question/s by the Full Bench, the matter has to be placed before the referring Bench to enable them to dispose of the proceedings in accordance with the opinion of the Full Bench, whereas, in the later case, the matter stands decided finally by the orders of the Full Bench without there being any need to send the case back to the referring Judges. However, in both the eventualities, it is obligatory upon the referring Judges to state in their reference order as to what they eventually intend to refer to the Full bench to answer out of the two eventualities provided in Rule 35 *ibid*. Indeed, in our view, it is *sin qua non* for invocation of Rule 35.

16. We may consider apposite to take note of law on this issue. It is firstly governed by the Rules framed in that behalf and secondly it is guided by judicial precedents of Supreme Court /High Courts. Some decisions may be noticed herein below.

17. In the case reported in 1981 (Supp) SCC 38 (Kesho Nath Khurana vs Union of India and others) Bhagwati J (as His Lordship then was and later became C.J.I.) while discussing the practise and procedure for making reference by one bench to larger Bench of the High Court held as under :

Practice and Procedure - High Court - Where only a question of law is referred by single Judge to Division Bench, held, the Bench must decide that question only and send the case back to the single Judge along with its answer to the question - After determining the question, held, the Bench is not entitled to proceed to dispose of the second appeal on merits and dismiss it with costs.

18. Again in one case reported in Kerala State Science and Technology Museum Vs. Rambal Company and Others, Pasayat, J. speaking for the Bench while discussing the same issue reiterated the earlier law laid down in aforementioned case and held as under :

8. It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench i.e. Division Bench or Full Bench or Constitution Bench, as the case may be, the larger Bench cannot adjudicate upon an issue which is not the question referred to. (See *Kesho Nath Khurana Vs. Union of India (UOI) and Others*, , and *Samaresh Chandra Bose and Others Vs. The District Magistrate, Burdwan and Others*, and *K.C.P. Ltd. Vs. State Trading Corporation of India and Another*,

19. Relying upon the aforementioned case, again the Supreme Court speaking through *T.A. Hameed Vs. M. Viswanathan*, while reiterating the same principle held as under :

12. In the case at hand also, almost an identical situation had taken place that a reference was made by the learned Division Bench of the Kerala High Court to the Full Bench and the Full Bench after answering the reference went on to decide the revision petition itself on merits, which the Full Bench had no jurisdiction to do as the revision petition was not referred to the Full Bench for decision. Since, only reference was made to the Full Bench, the Full Bench should have answered the question referred to it and remitted the matter to the Division Bench for deciding the revision petition on merits. Consequently, we set-aside that part of the impugned order dated 31-1-2003 whereby the Full Bench has dismissed the revision petition filed by the appellant herein.

20. Relying upon these decisions, the Full Bench of this High Court in a case reported in 2007 (1) BLJ 243 (*Alok Nigam vs Union of India and others*) held as under :

High Court Rules and Orders (Chhattisgarh) - Sec 1 Chap. I R. 12-----question referred to the Full Bench specific - Full Bench has to answer that question only -- --cannot enter into merits beyond that. 2006 (2) BLJ 1 (SC) and *Kerala State Science and Technology Museum Vs. Rambal Company and Others*, followed.

21. Similarly, the Allahabad High Court in a case reported in *Committee of Management, Lal Bahadur Shastri Laghu Madhyamik Vidyalaya, Deoria and Another Vs. Assistant Registrar, Firms, Societies and Chits, Gorakhpur and Another*, in explicit terms held as under :

5. The requirement of law, in the opinion of this Bench, is that the Bench hearing a case must formulate the question and refer the same to a larger Bench as and when such occasion arises. In the absence of any question or questions, specifically formulated, the Bench to which the matter is referred shall be groping in dark.

6. The learned Counsels appearing for the parties, very fairly, concede that framing of question of law is a condition precedent for making reference to a larger Bench for decision; and that in the instant case no question or questions of law having been formulated, it will be an exercise in futility to probe and proceed in the matter further.

22. If any other authorities are needed on the subject then we can take help from the decisions of the Supreme Court /High Courts where Their Lordships while examining the scope and extent of the reference jurisdiction of High Court arising in income tax matters {Section 256(1)} reiterated the same principle holding inter alia therein that it is for the Tribunal to state the question for being answered by the High Court in its reference jurisdiction u/s 256(1) and not for the High Court to frame any question arising in the case whose jurisdiction is confined to only answer the stated question sent by the Tribunal and not beyond it.

23. We need not quote the principle laid down in these matters again except to refer to the authorities laying down this principle (See 157 ITR Page 676 - Commissioner of income tax, Delhi Vs. Banshi Dhar & Sons, 82 Income Tax Reports 872, Commissioner of Income Tax, West Bengal, Calcutta Vs. Smt. Anusuya Devi, - Commissioner of Income Tax, West Bengal II Vs. Smt. Anusuya Devi, 14 Income Tax Reports, 470 Income Tax Appellate Tribunal Bombay v. Managing Trustee, Shri Radha Madho Trust, Saugor, 165 Income Tax Reports 712 S. Rajendra Singh Vs. Commissioner of Income- Tax).

24. Though several issues were urged by the learned counsels including the one that this Bench should frame the question/s as required under Rule 35 and answer them on merits but with respect we cannot entertain these submissions.

25. In the light of well settled legal principle quoted supra, it is clear to us that since the referring Judges while making the reference though made reference of Rule 35 but did not formulate any question/s to enable this Bench to answer them and hence, it does not appear possible for this bench to answer the reference.

26. Indeed, if this bench in its limited advisory reference jurisdiction probe to discern as to what question/s could have been possibly referred to the bench by the referring Judges or after reading the entire reference order, proceed to formulate the question/s and answer them, as urged by one of the learned counsel then perhaps we would be travelling beyond our advisory reference jurisdiction. It is not for this Bench to exercise the powers conferred by Rule 35 ibid and nor even advise as to what question could be or should be framed and referred to Full Bench. Such issues in our considered view are not in our province. In other words, the law does not permit us to exceed our jurisdiction while exercising the advisory reference jurisdiction which as observed supra is confined to answer only specific stated questions referred or to decide the matter itself, if referred in specific terms but not beyond it. As a matter of fact, our advisory reference jurisdiction would arise only when the stated question/s is referred but not otherwise.

27. Now so far as Rules on the issues are concerned, suffice it to say, the M.P. Rules takes care of all situations arising in the case. A reference to Rule 8 to 12 of Chapter 4 which deal with reference to larger Bench may be sufficient to

mention in this regard.

28. In the light of foregoing discussion, judicial discipline demand that we should not probe into any legal debate arising in the case and nor should embark upon any exercise for deciding issues which may have arisen except to decline to answer the reference that being the only option left in such circumstances. We accordingly decline to do so.

29. Before parting with the case, we place on record our words of due appreciation for the able assistance rendered by Shri Ravish Agrawal, Senior Advocate as amicus curie who with his usual fairness and erudition deeply went into all legal issues arising in the case including its all legal consequences. So was the case with Shri Sanjay Agrawal Advocate General who rendered valuable assistance in searching case laws on the subject. We also place on record the assistance rendered by Shri UN Awasthi, Senior Advocate and Shri R.K. Gupta Advocate who argued myriad issues with clarity. No cost.