

(1964) 09 BOM CK 0003

In the Bombay High Court

Case No : Civil Application No's. 747 and 827 of 1964

Salubai Ramchandra

APPELLANT

Vs

Chandu Sadhu

RESPONDENT

Date of Decision : 17-09-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 110, 111
Constitution of India, 1950 — Article 133, 14, 145, 183, 225
Government of India Act, 1935 — Section 223

Citation : (1965) 67 BOMLR 69 : (1965) MhLj 203

Hon'ble Judges : Wagle, J;V.S. Desai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.S. Desai, J.—By these applications, the petitioners challenge Rule 15-A in Chapter XVII of the Bombay High Court Appellate Side Rules, 1960. Chapter XVII, in which the said rule¹ appears, contains rules made by the High Court for dealing with the applications under the jurisdiction and powers conferred upon it by Articles 226, 227 and 228 of the Constitution. The impugned rule which was published in Part IV-C of the Maharashtra Government Gazette, Extraordinary, on July 2, 1964, is as follows:

Rule 15-A. Notwithstanding anything contained in Rules 1, 4 and 15 of this Chapter, applications under Article 226 or 227 of the Constitution or under Article 227 read with Article 226 of the Constitution arising out of the orders passed by the Maharashtra Revenue Tribunal under any enactment or out of the orders passed by any other authority or tribunal under the Bombay Tenancy and Agricultural Lands Act, 1948 or the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 or the Hyderabad Tenancy and Agricultural Lands Act, 1950 may be heard and finally disposed of by a single Judge to be appointed in this behalf by the Chief Justice.

2. The position under the rules, before this rule was added, was that under Rule

1 of the said rules, an application for the issue of a direction, order or writ under Article 226 of the Constitution, if the matter in dispute was or had arisen substantially outside Greater Bombay, was to be heard and disposed of by a Division Bench to be appointed by the Chief Justice. Under Rule 4, such application had to be heard and disposed of by a Division Bench, but a single Judge was entitled to grant a rule nisi though he could not pass any final order on that application. Under Rule 15, an application invoking the jurisdiction of the High Court under Article 227 of the Constitution or under Article 227 read with Article 226 of the Constitution was required to be filed on the Appellate Side of the High Court and was to be heard and disposed of by a Division Bench to be appointed by the Chief Justice. It will thus be seen that, under the said rules, applications coming to the High Court under Article 227 or under Article 227 read with Article 226 of the Constitution from decisions of the Maharashtra Revenue Tribunal, or from decisions under various Tenancy Acts in force in the State, were required to be heard and disposed of by a Division Bench of the High Court on the Appellate Side. By the added Rule 15-A, such matters are made capable of being heard and finally disposed of by a single Judge to be appointed in that behalf by the Chief Justice. Under para, 2 of the Notification, the amendment effected by the rule is made to take effect from July 15, 1964, and has been made applicable to all applications heard on and after July 15, 1964, notwithstanding that the applications were instituted prior to July 15, 1964, or that the applications arose out of proceedings instituted prior to that date. The grounds, on which the rules are challenged, may be summarised as follows:

(1) The power of the High Court to make rules is subject to the provisions of the Constitution. The High Court, therefore, cannot make any rule which is inconsistent with any of the provisions of the Constitution. The present rule made by the High Court is inconsistent with Article 133 of the Constitution inasmuch as it interferes with and affects the right given under the said article. The rule, therefore, is invalid.

(2) Even assuming that the High Court could have made a rule, like r, 15-A, when it first made its rules relating to the disposal of applications under Article 227 of the Constitution, having once made the rule differently, it could not now alter it in the present form. The reason advanced for this argument is, when the rule was first made, it brought in the impact of Article 133 on all proceedings of the nature contemplated by the said rule and thus had the rights under the said article fastened to all such proceedings. The High Court thereafter could have no power to alter the rule, because that will have the effect of affecting the impact of Article 133 on proceedings of the nature to which the rule relates.

(3) The High Court cannot make a rule which can have a retrospective effect, because no organ of the Government except the Legislature, which has the plenary power of legislation, can make a rule or law which can have retrospective effect unless power to make such rule or law is conferred upon it in express terms. The High Court is not a Legislature having plenary power to legislate and

the power to make rules, which has been conferred upon it by Article 225 of the Constitution, does not expressly give it the power to make rules having retrospective operation. Inasmuch as the present rule, which the High Court has made, has a retrospective operation, the High Court had no power to make it. It is also contended in this connection that even if the High Court could exercise the power to make a rule having retrospective operation, it could not make it so as to affect the rights created under Article 133 of the Constitution.

(4) The rule as framed is violative of Article 14 of the Constitution and is, therefore, void; and

(5) On the construction of the rule, if it is legal and valid, it can only apply to such matters as would come before the Court for hearing for the first time after July 15, 1964, and cannot apply to matters, which have been already heard for admission, though not finally disposed of before that date.

3. Before dealing with the several contentions, which are raised by the petitioners, it will be desirable to examine the source of the power of the High Court to make rules and the nature, scope and extent of the said power. The Act of the Parliament 24 & 25 Victoria, Chapter 104, passed on August 6, 1861, provided by Section 1 thereof for the establishment of the High Courts by grant of Letters Patent at Calcutta, Madras and Bombay. u/s 13 of the said Act, it was provided that the High Court established under the Act may by its 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. The power conferred by this section was in terms of the widest amplitude and was made subject only to laws or regulations which may be made by the Governor General in Council. The Letters Patent, which were granted with its subsequent modifications from time to time, provided in Clauses 36 and 37 of the said Letters Patent, that functions, which under the Letters Patent were directed to be performed by the High Court in exercise of its original and appellate jurisdictions, may be performed by any Judge or any Division Court thereof, appointed or constituted for such purpose, in pursuance of Section 108 of the Government of India Act, 1915, and that it would be lawful for the High Court from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty, intestate and matrimonial jurisdiction respectively. It may be pointed out that reference to Section 108 of the Government of India Act, 1915, in Clause 36 of the Letters Patent was because the Act of 1861 was repealed by the Government of India Act, 1915, and the latter Act provided for the matters, which were contained in the repealed Act. u/s 106, Sub-section (1), of the Government of India Act, 1915, the High Courts were constituted Courts of Record having such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and 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 were vested in them by Letters Patent, and, subject to the provisions of any such Letters Patent, all such jurisdiction, powers and authority as were vested in the Courts at the commencement of the Act. Section 108, Sub-section (1), of the Act provides:-

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.

Under Sub-section (2) of Section 108, the Chief Justice of each High Court was empowered to determine what Judge in each case was to sit alone, or what Judges of the High Court whether with or without the Chief Justice, were to constitute the several Division Courts.

4. Section 223 of the Government of India Act, 1935, provided that 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 High Court and of members thereof sitting alone or in Division Bench, shall be the same as immediately before the establishment of the Dominion. Finally, under Article 225 of the Constitution it is provided as follows:

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.

It will thus be seen that ever since the creation of the High Court, it has been given the power to make its own rules providing for the exercise of its original and appellate jurisdiction. It will also be seen that the conferment of the said power is in terms of widest amplitude and the only restrictions to which that power is subject, is firstly that it is subject to the provisions of the Constitution and subject to the provisions of any law of the appropriate Legislature made by virtue of the powers conferred on that Legislature by the Constitution. The power given u/s 108 of the Government of India Act, 1915, is preserved by reference to the said section in Clause 36 of the Letters Patent and has been kept alive and re-affirmed by the Government of India Act of 1935 and by the Constitution of India. u/s 108, the High Court has power to make rules, as it thinks fit, for the exercise, by one or more Judges, of the original and appellate jurisdiction vested in the Court. There can be no doubt whatsoever that the words "vested in the Court" occurring in Section 108 do not mean only such jurisdiction as was vested in the High Court when the Act of 1915 was enacted, but also such jurisdiction as

may be vested in it from time to time. As observed by Mahajan J., as he then was, in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, :

It is thus difficult to accept the argument that the power vested in the High Court under Sub-section (1) of Section 108 (of the Government of India Act, 1915), was a limited one, and could only be exercised in respect to such jurisdiction as the High Court possessed on the date when the Act of 1915 came into force. The words of the sub-section "vested in the court" cannot be read as meaning "now vested in the court."

His Lordship further observed, that Section 108 of the Government of India Act, 1915, conferred power on the High Court which that Court could exercise from time to time with reference to its jurisdiction, whether existing at the coming into force of the Government of India Act, 1915, or whether conferred on it by subsequent legislation. With regard to the range and ambit of the power conferred on the High Court by Section 108 of the Government of India Act, 1915, his Lordship observed, (p. 361) :

... Section 108 is an enactment by itself and is unrestricted in its scope, and covers a much wider field than is covered by Section 106 of the Government of India Act.... It confers a power on the High Court to make rules in respect not only of the jurisdiction that it enjoyed in 1915 but it also conferred power on it to make rules in respect of jurisdiction which may hereafter be conferred on it by the enactments enacted by the Governor-General in Legislative Council.

As to the effect of the Government of India Act of 1935 and the Constitution of India on the said power conferred u/s 108 of the Government of India Act, 1915, his Lordship observed (p. 360) :

...the power that was conferred on the High Court by Section 108 (Government of India Act, 1915) still subsists, and it has not been affected in any manner whatever either by the Government of India Act 1935 or by the new Constitution. On the other hand it has been kept alive and reaffirmed with great vigour by these statutes. The High Courts still enjoy the same unfettered power as they enjoyed u/s 108 of the Government of India Act, 1915 of making rules and providing whether an appeal has to be heard by one Judge or more Judges or by Division Courts consisting of two or more Judges of the High Court.

In view of the provisions which we have referred to relating to the power of the High Court to make rules and in view of the observations of Mahajan J. in the Supreme Court case, there can be no doubt whatsoever that the High Court has an unrestricted and unfettered power to make its own rules for the exercise of its several jurisdictions, the only limitations to the power being that the rules will be subject to the provisions of the Constitution and subject to any law made by the State Legislature.

5. It cannot also be denied that the rules made under the powers possessed by

the High Court, are rules of internal management within the High Court and rules of procedure relating to the disposal of the matters which reach the High Court under its several jurisdictions. In *Har Prasad v. Bool Chand* [1937] All. 191. Sulaiman C.J. and Allsop J. observed (p. 192) :

...Under Section 108(1) of the Government of India Act, this High Court has made its own rules providing for the exercise of its appellate jurisdiction by one or more Judges or by Division Courts constituted of two or more Judges. This rule is exclusively for regulating the procedure in this Court as regards the constitution of Benches. We are unable to hold that the appellant has any vested right in such a constitution.

6. In *Mahendra Raut and Others Vs. Darsan Raut and Others*, it was observed:

A rule laying down the powers of a Single Judge is a rule of practice and procedure as to the internal arrangement within the Court for disposal of cases. No party can say that he has a right to be heard by a particular number of Judges. If, therefore, a change is made in the rules and an appeal is heard by a single Judge instead of by two Judges, no party can object unless some vested right is affected, it being clearly understood that there is no vested right that an appeal to the High Court must be heard by a particular number of Judges.

In First Appeal No. 32 of 1962 Decided on June 25, 1962 decided by a Division Bench of this Court, of which one of us was a member, it was observed:

There cannot be any doubt that whether or not an appeal should be heard by a single Judge or by a Division Bench is a matter of internal arrangement of the High Court.

The rules made by the High Court directing whether certain matters should be decided by a Division Bench or by a single Judge being thus rules of internal arrangement and rules of procedure, it cannot possibly be argued that these rules have the effect of creating any vested rights in the litigant. It is well settled that there can be no vested right in procedure. As was observed in *The Attorney General v. Sillem* (1864) 10 H.L.C. 704 :

The right of the suitor is to bring the action, and to have it conducted in the way and according to the practice of the Court in which he brings it; and if any act of the Parliament, or any rule founded on the authority of the Act of the Parliament, alters the mode of procedure, then he has a right to have it conducted in that altered mode. That, therefore, takes away nothing. The right of action does not constitute a title to keep all the consequences of the right as they were before. It gives the right to have the action conducted according to the rules then in force with respect to the procedure.

7. In *Anant Gopal Sheorey Vs. The State of Bombay*, it was observed:

No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the

Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective.

It would, therefore, follow that if the rules made by the High Court are merely rules of procedure which gives, no rise to any vested rights, the litigant will not be entitled to complain of any change made in the rules.

8. Having thus stated the source of the power of the High Court to make rules and the nature, scope and extent of the power, we will now come to the various grounds of attack which have been urged by the petitioners. With regard to the first complaint made by the petitioners with regard to the said rules, what is contended is that the power of the High Court to make rules is subject to the provisions of the Constitution, which necessarily include Article 133. The High Court, therefore, has no power to make a rule which is inconsistent with, or which affects the right given by Article 133 of the Constitution to the litigant. Since the impugned rule affects that right, the High Court has no power to make such rule. In order to understand the validity of this ground, it is necessary to consider the provisions of Article 133 of the Constitution. That provision, no doubt, relates to the" right of a litigant to go in appeal to the Supreme Court from a judgment, decree or final order of the High Court in a civil proceeding. A right of appeal to go to a particular forum is undoubtedly a substantive right. It is also now well-settled that such a right comes into existence and vests in the litigant as soon as the Us commences. It is, however, to be remembered that a right of appeal is not an inherent right but is a creation of the statute. The right, which is a creation of the statute, will be available to the litigant only in the manner in which the law relating to the right makes it avail-able. Now, the right of appeal to go to the Supreme Court, which is created by Article 133 of the Constitution, is conditioned by the very same article as being available only in the circumstances as mentioned therein. It is not, therefore, a clear and crystallised right, right from the inception of the commencement of the Us, but is a right which is made available only on the fulfilment of certain conditions. An examination of the article would show that, in order that the said right may be available, the civil proceeding must, in the first place, reach the High Court and a judgment, decree or final order in the said civil proceeding must be passed by the High Court. Secondly, the civil proceeding must satisfy one or more of the further conditions which are laid down in the said article, namely, that if it is a civil proceeding reaching the High Court in appeal from a decree in a suit in the subordinate Court, the value of the subject-matter in dispute in the Court of the first instance and in dispute on appeal, must be in excess of certain specified pecuniary limits; if it is a proceeding reaching the High Court otherwise than in appeal from a decree of the subordinate Court, the judgment, decree or final order of the High Court must, directly or indirectly, involve some claim or question respecting property of the value exceeding certain specified pecuniary limits; or else, it must be a case fit one for appeal to the Supreme Court, with

the additional condition that it must also involve a substantial question of law when the decree or final order of the High Court affirms the decision of the Court immediately below. Clause (5) of this article further provides that even though the other conditions specified in Article 133(1) are satisfied, there would be no right of appeal to the Supreme Court if the matter in the High Court is decided by a single Judge of that Court. It will be clear from the provisions of this article that although a right to go in appeal to the Supreme Court has been provided to the litigant, he will not be in a position to say, as soon as the is commences, that the right will be available to him. It is a right, which he may have or he may not have, depending upon circumstances which exist at the time when the availability of that right or the exercise of that right comes to be considered. Article 133 provides for the circumstances in which the right to go in appeal to the Supreme Court will be available to the party. It says nothing with regard to how or in what manner the conditions entitling the litigant to go to the Supreme Court will be secured for him. It says that if a matter is decided by a Division Bench of the High Court, a right of appeal may be available to the party under this article. But if the matter is decided by a single Judge of the High Court, the right will not be available. It gives no directions as to which matters will be decided by a single Judge and which will h& decided by a Division Bench. As we have already seen, that matter is left entirely to the High Court to be determined by rules made by the High Court as it deems fit. No doubt, the making of the rules is subject to the provisions of the Constitution and also subject to Acts of the appropriate Legislature. Indeed, some of the Acts of the Legislature have made such provisions, for instance, the Income Tax Act, the Press Emergency Act, the Stamp Act and the Divorce Act. The Constitution undoubtedly could make a provision with regard to the matter, and a reference to Article 145 will show that it has made such a provision in Clause (3) of the said article. There is no such provision made by the Constitution so far as the hearing of matters in the High Court is concerned. It is, however, argued on behalf of the petitioners that although no express provision is made by Article 133 providing that civil proceedings of any kind or type should be heard by a Division Bench of the High Court, it is implicit in the provisions of Article 133 that, matters of certain kinds should only be heard by a Division Bench. The argument in that connection is that the items (a), (b) and (c), enumerated in Clause (1) of Article 133, are matters where the Constitution has given a right to the litigant to go to the Supreme Court, as of right. Such a right exists where the value of the subject-matter in dispute, both in the original Court and on appeal, exceeds Es. 20,000, or where the judgment, decree or final order, sought to be appealed from, involves directly or indirectly some claim or question in respect of property worth more than Rs. 20,000, or where a. case is a fit one for appeal. The Constitution having intended that a right of appeal, as of right, should exist in such cases, any rules, which the High Court can make, must be so made as to effectuate and carry out that intention and not to frustrate it. A rule made by the High Court, leaving even such, matters to be decided by a single Judge, would have the effect of denying the right of appeal to the litigant and thus frustrating the

intention clearly indicated by the provisions of the article. It is argued that, in matters coming to the High Court from the Maharashtra Revenue Tribunal or under the several Tenancy Acts, claims and questions involving, directly or indirectly, amounts exceeding Rs. 20,000 are quite capable of being involved, and inasmuch as the rule made by the High Court by allowing such matters to be disposed of by a single Judge, deprives the litigant of his right under Article 133, the rule is inconsistent with the said article and is, therefore, such as the High Court could not have made. In our opinion, the argument is not sound. The intention of Article 133 must be gathered by a perusal of the whole of the article. It is no doubt true that in Clause (1) of the said article, the conditions, on the fulfilment of which the right of appeal may be made available to a party, have been specified. Ordinarily, therefore, if the conditions in Clause (1) are satisfied, the party could have a right of appeal. Clause (3), however, is an overriding provision which starts with the non obstante clause "notwithstanding anything contained in this article". By Clause (3) of the said article, it has been made clear that notwithstanding the fulfilment of the conditions under Clause (1) of the same article, a party will have no right to go to the Supreme Court if his case is decided by a single Judge of the High Court. As we have already pointed out above, the right of the High Court to make rules, deciding which matters will be decided by a single Judge or by a Division Bench, is an unfettered right unless fetters are to be found on the said right, either in the Constitution or in any law made by the appropriate Legislature. So long as there is nothing said, either in the Constitution or in any law of the appropriate Legislature limiting the said right, the right could be exercised by the High Court as it deems fit for the convenience of administration of justice. At the time of drafting the Constitution, the Constitution makers could not be said to be unaware of this very wide power of the High Court, and the possibility of the High Court making rules assigning any matters before it for decision and disposal to a single Judge. Even then, by Clause (3) of Article 133, it has been provided that there would be no appeal to the Supreme Court if the matter is decided by a single Judge of the High Court. If it was intended that, in any kind of specified matters, the right of the litigant to go to the Supreme Court should be secured and preserved for him, an appropriate provision could have been made providing that matters of any specific kind may not be heard by a single Judge. Having regard to the provisions of Clause (3) of Article 133, we do not think that it is possible to say that it is intended under the said article that in every case where the conditions specified in (a), (b) and (c) of Clause (1) of Article 133 are satisfied, a right, as of right, is intended to be conferred on the litigant. The conditions specified in (a), (b) and (c) are, no doubt, intended to specify the category of cases in which the right of appeal to go to the Supreme Court may be available to the litigant. But in view of Clause (3) of the article,- from the said category are expressly excluded cases which are decided by a single Judge. The rules made by the High Court for disposal of cases, either by a single Judge or a Division Bench, are rules made for the purpose of administration of justice and are made after having due regard to the considerations which are relevant in that connection. It would not,

therefore, be unreasonable to suppose that when Article 133, by Clause (3) thereof, made a provision that in matters decided by a single Judge, no appeal shall lie to the Supreme Court, it was intended that the fact that the matter was decided by a single Judge of the High Court was sufficient to characterise it as a matter not worthy of going in appeal to the Supreme Court as of right. In our opinion, therefore, the argument advanced on behalf of the petitioners that the provisions of Article 133 of the Constitution impliedly indicate that the High Court shall not make a rule, so as to assign a case which may fulfil the conditions in Clause (1) of the said article for disposal to a single Judge cannot be sustained. The first contention raised by the petitioners, therefore, that the impugned rule made by the High Court is inconsistent with the provisions of Article 133 of the Constitution, and, therefore, invalid, cannot be accepted.

9. The second objection raised is that although the High Court may have the power to make a rule assigning applications arising under Article 227, or Article 227 read with Article 226, for hearing and disposal to a single Judge, at the time when it first makes the rule, if it once makes a rule assigning such matters to a Division Bench, it cannot subsequently change the rule because of the impact of Article 133 on the matters of the nature governed by the rule already made. The argument advanced in this connection is that once a rule assigning any such matters to a Division Bench is made, the civil proceedings of the nature covered by the said rule become categorised as civil proceedings which when they reach the High Court must be disposed of by a Division Bench. They thus acquire a character of being free of the disability which is introduced by Sub-clause (5) of Article 133 which attaches to matters decided by a single Judge of the High Court. A subsequent change in the rule has the effect of destroying the character obtained by the proceedings which qualifies them for being taken in appeal to the Supreme Court under Article 133 and this the High Court has no power to do. We think that the argument is much too ingenuous to deserve any serious consideration. A right of appeal, as we have already stated, is a creature of statute. It comes into existence at the earliest when the Us commences but at no time earlier than that. It is impossible to say that a right of appeal exists in the litigant in respect of proceedings which he has not even commenced. The question whether the change of rule affects the right of appeal can be considered only in respect of the right of appeal, then existing. There is no right of appeal until the proceedings, in which the right of appeal arises, has commenced. The argument, therefore, that a rule once made cannot be thereafter altered because it affects the right of appeal under Article 133 in respect of the civil proceedings of the nature to which the rule applies, cannot be accepted.

10. It is then argued that even if the High Court has power to make a change in the rule, the change which it can make, can have only prospective operation and cannot be made so as to have retrospective effect. In other words, it is argued that the new rule made by the High Court can only apply to applications coming to the High Court in proceedings in which lis commences after the making- of the rule. If it is argued that the right of appeal is a substantive and vested right and

the point of time when it gets vested is the commencement of the lis. The right of appeal, which thus vests at the commencement of the lis, is governed and regulated by the law in existence at the time when the lis commences. Any change in the law made subsequently cannot affect that right unless the change of law could be made retrospectively. It is argued that the rule by providing that it will apply to all matters which will be heard in the High Court on or after July 15, 1964, has given the rule a retrospective operation inasmuch as it will apply to a large number of proceedings in which the Us had commenced before July 15, 1964, and in which the right of appeal had already accrued to and vested in the party. The argument that the High Court cannot make a rule having retrospective operation, is advanced on two different grounds. It is said in the first place that the rule made by the High Court has the force of law and, therefore, is law made by the High Court. The only organ of the Government, which can make a law which could have retrospective or retroactive operation, is the Legislature which has the plenary power to legislate. No other organ of the Government can have such power unless such power is expressly conferred upon it. The High Court, it is said, is not a Legislature, and Article 225 of the Constitution, which confers the power to make rules on the High Court, does not in express terms give it a power to make rules retrospectively. The High Court, therefore, cannot make the present rule, The second line of argument advanced in this connection is that the High Court, by making a rule which has a retrospective or retroactive operation, can only affect the rights "which have been created under its own rules. It cannot, however, by such rules affect any rights which the party affected by the rules, has under any other statute. The rule made by the High Court has the effect of affecting the rights of the litigant, not only under the rules made by it formerly but under Article 133 of the Constitution, and therefore, the High Court cannot make such a rule.

11. With regard to the first submission in this connection, namely, that no organ of the Government, excepting the Legislature, has power to make a legislation having retrospective and retroactive operation, reliance is placed on the decision of the Mysore High Court reported in *Govindaraju v. State of Mysore* AIR [1963] Mys 265. In that case, it was held that a Governor acting under the proviso to Article 309 of the Constitution does not have the power to make a rule which takes away from Government servants a right already acquired by them under the pre-existing rules or previous transactions as from a date anterior to the promulgation of that rule or to make a rule validating what was invalid at its inception. The power to make rules under art 309 was derived by the Governor under the Constitution and not as a delegate of the Legislature. The exercise of the powers of the Governor was, therefore, an exercise of primary powers possessed by the Governor and not under powers derived by him through or delegated to him by the Legislature. It was held by the learned Judge of the Mysore High Court that even then there was a difference between the powers of a legislative body and those of any other rule-making body which was not a Legislature. Whereas the legislative body can always legislate retrospectively

unless there is any prohibition under the Constitution, any other rule-making body cannot exercise the power retrospectively unless the law conferring that power expressly mentions that such power can be exercised retrospectively. The principle on which this distinction is founded is that in democratic constitutions where the law-making power of the body politic is vested in Legislatures, the Legislatures acting within the sphere of legislative power allotted to them by the Constitution exercise a defined portion or part of the supreme sovereign power of the body politic. There was no such assumption possible in the case of non-legislative bodies or any other organ of Government by reason only of the fact that such bodies or organs may be invested with the power of making rules having the force of law although while exercising those powers they are really exercising the power of legislation. In taking this view, the learned Judges relied on an earlier decision of the Mysore High Court reported in *India Sugars & Refineries Ltd. v. State* A.I.R.[1960] Mys 326. That decision, however, related to powers of a delegate from the Legislature and did not deal with the case where the power exercised was not as a delegate of the Legislature but directly under the Constitution itself.

12. A Full Bench of the Allahabad High Court in *Bam Autar v. State of U.P.* AIR [1962] F.B 328 . has taken a contrary view. It has been held in that case:

The rule-making power conferred by Article 309 on the Governor or his nominee is not confined to prospective rule-making and appears to be wide enough to include the making of rules with retrospective effect. The Legislature can legislate prospectively as well as retrospectively. The powers of the Governor under the proviso to Article 309 being identical with that of the legislation under the main article the Governor can make rules with similar effect.

The Full Bench decision of the Allahabad High Court was cited before the Mysore High Court. The learned Judges, of the Mysore High Court, however, did not agree with the said decision. We do not propose to go into the conflict of decisions between the Mysore High Court and the Allahabad High Court on the question whether the legislative power of any other organ of the Government, apart from the Legislature, which is derived by it not as a delegate of the Legislature but directly under the Constitution is identical with that of the Legislature so far as it relates to the making of a law having a retrospective or retroactive effect, although we may observe that we feel ourselves inclined to agree with the view taken in the Allahabad High Court in preference to that enunciated by the Mysore High Court in the case referred to by us. Even if it were assumed that the rule made by the High Court has retrospective operation and that the High Court, not being a Legislature, does not possess the power to make a retrospective rule unless it is given such power, in our opinion, the power to make a retrospective rule has been given to it under Article 225 of the Constitution, if not expressly, at any rate, by necessary intendment.

13. In *Indramani v. W.R. Natu* AIR [1963] S.C. 65: Bom. L.R. 378 the view of the Court as per the majority of the Judges, who decided that case, is that even

when a rule making authority which derives its power to make rules by an Act of the Legislature exercises that power it can make a rule having retrospective effect if such power is delegate to it under the Act not only by express words but even by necessary implication. The argument advanced before the Court was that while the Legislature, which had plenary power, could enact a statute having a retrospective operation subordinate legislation, be it a rule, a bye-law or a notification, could not be made so as to have retrospective operation and that to that extent the rule, bye-law or notification would be ultra vires and would have to be struck down, and reliance was sought to be placed on *Indian Sugars & Refineries Ltd, v. State* which was the case relied upon by the Mysore High Court in a subsequent decision to which we have already referred. In the majority judgment, their Lordships observed (p. 286);

...We do not, however, consider it necessary to canvass the correctness of this decision or the broad propositions laid down in it. It is clear law that a Statute which could validly enact a law with retrospective effect could in express terms validly confer upon a rule-making authority a power to make a rule or frame a bye-law having retrospective operation and we would add that we did not understand Mr. Pathak to dispute this position. If this were so the same result would follow where the power to enact a rule or a bye-law with "retrospective effect" so as to affect pending transactions, is conferred not by express words but where the necessary intendment of the Act confers such a power.

14. When a rule making body which does not derive its power directly under the Constitution but has the power entrusted to it by an Act of the Legislature can exercise the power so as to make a rule having a retrospective effect if the Act of the Legislature confers such power either in express words or even by necessary implication there can be no doubt whatever that a body deriving its power to make rules directly under the Constitution could have the power to make rules having retrospective effect if the provision of the Constitution confers such power upon it either by express words or by necessary intendment. Mr. Natu has invited our attention to the observations in the dissenting judgment of Justice Subba Rao in the said case. His Lordship has observed as follows (p. 290):

...Learned Counsel for the respondents contends that, as the Legislature can make a law with retrospective operation, so too a delegated authority can make a bye-law with the same effect. This argument ignores the essential distinction between a Legislature functioning in exercise of the powers conferred on it under the Constitution and a body entrusted by the said Legislature with a power to make subordinate legislation. In the case of the Legislature, Article 246 of the Constitution confers a plenary power of legislation subject to the limitations mentioned therein and in other provisions of the Constitution in respect of appropriate entries in the Seventh Schedule. This Court, in *The Union of India Vs. Madan Gopal Kabra*, held that the Legislature can always legislate retrospectively, unless there is any prohibition under the Constitution which has created it. But the same rule cannot obviously be applied to the Central

Government exercising delegated legislative power, for the scope of their power is not co-extensive with that of the Parliament.

Mr. Nattu has relied on these observations of Subba Rao J. in support of his proposition that the powers of the Legislature are different from the powers of any other rule-making body, and while the Legislature can legislate retrospectively, no other rule-making body can do so. We are afraid that the observations relied on by Mr. Nattu do not yield the result, such as is contended for by him. The difference in the powers considered by Subba Rao J. was a difference in the power possessed by the Legislature and the delegate from the Legislature. It has been pointed out by his Lordship that while the Legislature derives its power under the Constitution, the delegate from the Legislature derives its power not primarily but as subordinate to the Legislature, and the view expressed is that while a legislative body deriving its power to legislate directly under the Constitution can exercise such power retrospectively unless there is any prohibition under the Constitution which has conferred the power upon it, a delegate from the Legislature cannot do so unless that power is given to it in express words. According to Subba Rao J., therefore, while legislative power derived directly under the Constitution can be exercised retrospectively, in the absence of prohibition, delegated legislative power cannot be so exercised unless it is given in express words. The source of the power possessed by the High Court is, after the Constitution, under Article 225 of the Constitution. That is the primary power possessed by the High Court and flows directly from the Constitution and not as the delegate of the Legislature. There is nothing in Article 225 or any other provision of the Constitution, which prohibits its exercise with retrospective effect. Even on the view taken by Subba Rao J., therefore, the High Court can make a rule-"having a retrospective effect under its power under Article 225 of the Constitution.

15. Secondly, as we have already said, Article 225, which confers the power on the High Court, by necessary implication and intendment, gives power to make rules having¹ retrospective effect. As we have already pointed out earlier, Article 225 preserves and reaffirms the power possessed by the High Court u/s 108 of the Government of India Act, 1915. That power is unfettered and unrestricted in its ambit and, as observed by Mahajan J. in *N.S. Thread Co. v. James Chadwick & Bros*, had got to be conferred upon the High Court in such widest terms in the very nature of things. The making of rules by the High Court for the exercise of its several jurisdictions is for the purpose of administration of justice and, in the exercise of its power, the High Court is empowered to assign matters to single Judges or Division Benches as it may deem fit for the purpose of due and proper administration of justice." It is impossible to say that the High Court can decide once and for all times which matters will be decided by a single Judge and by a Division Bench or Division Court. That will have to be decided from time to time as circumstances may change and especially so as far as the applications under Article 227, or Article 227 read with Article 226, are concerned. At the time, when the jurisdiction under Articles 226 and 227 was conferred for the first time

upon the High Court by the Constitution, the High Court thought it fit to make a rule directing that matters arising under this jurisdiction which was conferred upon it by the Constitution for the first time, should be dealt with by a Division Bench as several new and complicated points were likely to arise until certain principles governing such matters get properly settled. The High Court advisedly, therefore, made a rule that all such matters should be decided by a Division Bench. When the rule came to be changed in July 1964, there can be no doubt whatsoever that the rule was changed in the context of the changed circumstances between the time the jurisdiction was first conferred and the time when the change was thought desirable. The High Court has now thought it fit that it is no more necessary for the Division Bench to deal with such matters" and the matters can as well be disposed of by a single Judge. The power to make rules granted to the High Court, ever since it has come to be established, has been always contemplated to be exercised by the High Court as it deems fit from time to time. In the exercise of the powers, in our opinion, it is implied in the very nature of things that the power should also be exercised, if necessary, so as to have retrospective operation. The argument, therefore, that the High Court cannot make a rule having retrospective operation, cannot be sustained.

16. With regard to the other branch of the argument relating to this point, the rule made by the High Court, as we have already pointed out is a rule of procedure in which there can be no vested rights. It was not possible for the petitioners or any litigant to say that it could have a vested right to have his proceeding, after it had reached the High Court, heard by a particular number of Judges. His substantive right is to go in appeal to the High Court. How his appeal would be dealt with will depend upon the practice and procedure of the High Court which may vary from time to time. No complaint possibly, therefore, could be made by the litigants that their right to have the appeal decided by a Division Bench which existed at the time when they entered the High Court, or when the Us out of which the proceeding in the High Court had resulted, had commenced, because there was no such vested right in the party at any time. The other argument is that the rule has the effect of taking away the vested rights under Article 133 of the Constitution. In our opinion, no vested rights under Article 183 have been taken away. We are, in that respect, in complete agreement with the view expressed by the Special Bench of the Patna High Court in *Mahendra v. Darsan*. Dealing with the similar argument, the learned Judges of the Patna High Court observed:

Such a rule cannot be said to have affected the right of appeal given, under Article 133 of the Constitution of India read with Sections 109 & 110, Civil P.C. Leave to appeal to the Supreme Court is granted either when the case fulfils the requirements of Section 110 of the CPC or when it is otherwise a fit case for appeal to the Supreme Court. In either case, the petitioner has to apply for a certificate and has to satisfy the Court that the requisite conditions are fulfilled. The right is thus a limited right,.... The right is to ask for a certificate, that the appeal fulfils the requirements of Section 109 or Section 110 of the Code of Civil

Procedure, but the right is only given in such cases as are heard in the High Court by two or more Judges: There is no such right in a case which is heard by a Single Judge, there being a different right of appeal with regard to Single Judge decisions under Clause 10 of the Letters Patent. If it is conceded that no party has a vested right to be heard by two or more Judges in the High Court it follows as a necessary corollary that a change of Rules with regard to the powers of a single Judge does not affect the right of appeal given by the Statute. That right still remains the same as before. All that happens is that the statutory prohibition u/s 111 of the Code of Civil Procedure, now Clause (3) of Article 133 of the Constitution comes into operation.

17. A similar view has also been taken by a Division Bench of this Court in First Appeal No. 32 of 1962. We are aware that there is a conflict of views on this point, and a contrary decision has been taken by the Full Bench of the Punjab High Court in *Gordhan Das-Baldev Das v. G.-G.-In-Council* AIR [1952] P&H 103. There is also a decision from the Nagpur High Court in *Radhakisan v. Shridhar* AIR [1950] Nag. 177. Having regard, however, to the Division Bench decision of this Court and the decision of the Patna High Court in *Mahendra v. Darsan* with which we find ourselves in agreement, we are of the opinion that the contention raised by Mr. Natu that the rule framed by the High Court is invalid in so far as it affects proceedings in respect of which the Us has commenced prior to the date on which the rule comes into operation, because in respect of such matters, it affects the vested rights of the litigants under Article 133 of the Constitution, cannot be sustained.

18. The next point urged before us is that the rule contravenes Article 14 of the Constitution and is, therefore, void. In our opinion, the point, is utterly devoid of any substance. The argument in this connection is advanced on two grounds. It is said that while all decisions under the Tenancy Acts of any authority are brought under the purview of the new rule, so far as some other Local Acts are concerned, not all decisions but only decisions of the Maharashtra Revenue Tribunal under the said Acts are, governed by the rule. We do not understand how any ground of discrimination can be urged on this basis. It is well set-tied that if there is any reasonable or clear classification, an attack on the ground of discrimination under Article 14 cannot be available. Different treatment of matters arising out of different Acts dealing with different subjects cannot give rise to any challenge on the ground of discrimination, nor can the fact that the application from the different Acts decided by different authorities ultimately reach the High Court under its jurisdiction under Article 227 require all such matters to be treated alike by the High Court in their disposal. The second argument is that under certain provisions of some of the Acts from which matters go to the Maharashtra Revenue Tribunal, under the same provisions, matters also go to the Commissioner and whereas matters dealt with by the Revenue Tribunal are brought under the rule, those that do not go to the Revenue Tribunal but to some other authority are not brought under the rule. It is contended that while matters, which after going to the Revenue Tribunal, come to the High Court on

an application under Article 227 of the Constitution, will be treated under the new rule as liable to be disposed of by a single Judge, similar matters, which go to the other authorities under the said Act and thereafter enter the High Court on an application under Article 227, will be treated differently by being disposed of by a Division Bench. This, it is urged, constitutes discrimination under Article 14 of the Constitution. We do not think that the contention is tenable. Even though the matters, which arise under the same provisions are similar, at their inception they are processed differently before they reach the High Court. The provisions of the various Acts, which permit these different processes and different channeling of the matters before they reach the High Court, have not been challenged and must, therefore, be regarded as good and valid law. The different processes to which the cases have been subjected will be a sufficient reason to regard them as requiring different treatment when they come to the High Court. Thus while cases which have proceeded through the channel of the Revenue Tribunal have the advantage of the decision of the members of the Revenue Tribunal and the procedure prescribed by the Revenue Tribunal, the matters, which have been dealt with by the other authorities, have not that advantage. It cannot be denied that the manner in which the matter comes to be treated in its earlier processes will be a relevant matter to be considered how it should be treated at subsequent stages. Thus, for instance, a monetary claim may, at the initial stage, be tried as a small cause suit if the Judge trying it is invested with the necessary Small Cause Court powers. A similar claim may also have to be treated by a Judge as a regular suit where he has not the requisite Small Cause Court powers. In one case, the claim having been tried as a small cause claim, no appeal will lie to the superior Court and the remedy available will be by way of a revision under the Small Cause Courts Act. In the other case, there will be a regular appeal to the District Court. It cannot be argued that because of this different treatment of similar claims resulting in different consequences, there is discrimination which offends against Article 14 of the Constitution. It is obvious that, where the claim is allowed to be treated as a small cause claim, adequate care is taken to see that a person, who is allowed to try it as a small cause, has the necessary suitability and experience. The fact that the matter has been treated by a Judge, who has been considered as sufficiently suitable and experienced to treat it as a small cause, has given the matter a character which does not require to be taken further in appeal to the District Court. On the other hand, when the claim is considered by a Judge who has not been given the necessary powers which imply that he has not the necessary suitability and experience to try it as a small cause matter, it is thought advisable that the matter should be decided as a regular suit and the right of appeal to the District Court should be given to the litigant. It would thus be seen that the further different treatment of similar claims is based on the reasonable basis and, therefore, involves no discrimination. In making the rule; the matters which come to the High Court from the decisions of the Revenue Tribunal should be disposed of by a single Judge due regard has been given to the earlier stages through which these matters have passed. In our opinion, therefore, the

argument urged under Article 14 of the Constitution also fails.

19. Coming now to the last point which relates to the construction of the rule framed, what is urged is that Rule 15-A provides that all matters, which are specified in the said rule, will be heard and finally disposed of by a single Judge. The words ""heard and finally disposed of"" contemplate the preliminary hearing by way of admission and the final hearing at the time of the disposal. Under Rule 15-A, therefore, what is contemplated is that the hearing at both stages will be done by a single Judge. Paragraph 2 of the notification provides for coming into operation of this rule as from a certain date and the applicability of the rule to the pending matters. What is stated in para. 2 is that the new rule will come into effect from, July 15, 1964, and will apply to all applications which will be heard on and after that date. The contention is that having regard to the use of the word "heard" in Rule 15-A and having regard to the meaning which it has under the rule, that word must be understood as having the same meaning even in para. 2 and, therefore, what is meant by the word "heard" in para. 2 is "heard for the purpose of admission." In other words, the new rule is made applicable to all such matters which come for preliminary hearing on or after July 15, 1964, and cannot apply to matters which have already been heard for admission before that date. In our opinion, the argument advanced requires the word "heard" to be understood as meaning "heard for the first time". We do not think that any such restricted meaning of the word "heard" is intended in making the rule. "Heard," in our opinion, would mean "heard at any time in the process of hearing until the matter is finally disposed of". A matter before it is finally disposed of may come for hearing a number of times. After the rule comes into operation, all matters governed by the rule are directed to come for hearing before a single Judge. The mere circumstance, that a matter has been heard for admission by a Division Bench, will not make it a matter which is not thereafter capable of being heard by a single Judge if it is actually within the list of matters which is capable of being disposed of by a single Judge. Undoubtedly, if a matter is before a Division Bench and has been part-heard by the Division Bench, the Division Bench no doubt, will be entitled to retain the matter before it and dispose of it itself without sending it to the file of the single Judge, because matters in the list of a single Judge are also capable of being disposed of by a Division Bench, the rule empowering a single Judge to dispose of the matters being only an enabling one. There is, however, nothing to prevent a Division Bench even in matter which it has heard for sometime to send it to the file of a single Judge if it finds that the matter is capable of being disposed of by a single Judge. We do not, therefore, think that the fact that the matter has been heard for admission by a Division Bench will require it to be retained as a Division Bench matter or that the rule has intended that, such matters should not be disposed of by a single Judge. In our opinion, therefore, under the rule as it is framed, all matters such as are specified in the said rule will be liable to be heard and disposed of by a single Judge on or after July 15, 1964.

20. In the result, therefore, all the contentions, which have been raised by the

petitioners challenging the validity of the rule, fail and the- applications, therefore, must be dismissed. We accordingly discharge the rule issued on these applications. There will be no order as to costs.