
(1996) 07 AHC CK 0022
In the Allahabad High Court
Case No : Writ Petition No. 2332 of 1993

Sanjay Kumar Srivastava

APPELLANT

Vs

Acting Chief Justice and Others

RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 1, 14, 2, 6
Constitution of India, 1950 — Article 214, 216, 225
Government of India Act, 1915 — Section 100(2), 108, 108(2)
Government of India Act, 1935 — Section 223, 226(1)
High Courts Act, 1861 — Section 13
Uttar Pradesh Public Services (Tribunal Amendment) Act, 1992 — Section 5

Citation : (1996) 07 AHC CK 0022

Hon'ble Judges : S. Saghir Ahmad, J; S. Dikshit, J; J.K. Mathur, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

S. Saghir Ahmad, J.—This petition is directed against the order dated 1.5.1993 passed by Hon''ble the Acting Chief Justice (in short ACJ) by which Writ Petition No. 1619 (MB) of 1993 (Sanjay Kumar Srivastava v. State of U.P. and Ors.) has been referred to the Full Bench for hearing and decision. This order of which a copy has been filed as Annexure-1 reads as under:

Hon''ble S. C. Mathur, A.C.J.

The W.P. shall be heard and decided by the Special Bench of three Hon''ble Judges as follows:

1. Hon''ble S. S. Ahmad, J.
- 2 Hon''ble J. K. Mathur, J.
3. Hon''ble Mrs. Shobha Dikshit, J.

Sd/ S.C. Mathur, J. 1.5.1993

2. The factual background leading to the present petition is that the Petitioner had earlier filed Writ Petition No. 1619 (MB) of 1993 in this Court challenging the appointment of Sri R. Venkataraman I.A.S. who was arrayed as opposite party No. 3 in that petition as Chairman of the U.P. Public Service Tribunal which was constituted afresh through the Government notification dated 31st March, 1993 issued under the U.P. Public Services (Tribunal Amendment) Act, 1992. It may be stated that this Act was also altered with effect from 31st March, 1993 by a subsequent amendment, the Petitioner also challenged the appointment of an other officers belonging to the Indian Administrative Service as members of the U.P. Public Services Tribunal. These five officers have since been as arrayed as opposite parties 4 to 8 in Writ Petition No. 1619 (MB) of 1993.

3. This petition was taken on 2nd April, 1993 by a Division Bench comprising of one of us (Hon"ble J. K. Mathur, J.) and Hon"ble H. N. Tilhari, J. and on that date the Division Bench passed the following order:

Hon"ble J.K. Mathur, J.

Hon"ble H.N. Tilhari, J.

Heard the learned counsel for the parties.

The learned Chief Standing Counsel has accepted notice on behalf of opposite parties. Opposite parties want and are granted time to obtain instructions. This case be put up for orders on 5th April, 1993.

Till that date, no members of the Administrative Service shall be permitted to take over charge of office of the Chairman of the newly created U.P. Public Services Tribunal unless he has already taken over the charge. In case he has taken over charge, then such person shall not perform judicial function till then.

Put up on Monday (5th April, 1993) for further hearing.

Sd/J.K. Mathur, J. Sd/H.N. Tilhari, J. 2.4.1993

On 5.4.1993 when the case was taken up, the opposite parties filed an application for vacation of the interim order with which they also filed a counter-affidavit and an affidavit (supplementary counter-affidavit). The Court passed the following order on 5.4.1993.

Hon"ble J.K. Mathur, J.

Hon"ble H.N. Tilhari, J.

On the request of the learned counsel for the Petitioner, the case shall be put up tomorrow (6.4.1993).

The Petitioner may file rejoinder affidavit. The counter-affidavit and supplementary counter-affidavit having been filed today.

The Petitioner has also filed supplementary affidavit in respect of which opposite

parties may file counter-affidavit tomorrow. The interim order shall continue until further orders..

Sd/J.K. Mathur, J. Sd/H.N. Tilhari, J. 5.4.1993

When the case was taken up on 6.4.1993, the following order was passed:

Put up tomorrow.

The Petitioner will serve opposite party No. 3 outside the Court indicated that the petition will be taken up tomorrow.

Sd/J.K. Mathur, J. Sd/H.N. Tilhari, J. 6.4.1993

In pursuance of the above order by which the Petitioner was requested to serve opposite party No. 3 (Sri R Venkataraman, I.A.S.) outside the Court the Petitioner obtained dasti notices from the office to serve opposite party No. 3.

When the case was taken up the next day, i.e., on 7.4.1993, the following order was passed:

Put up tomorrow for further hearing.

Sd/J.K. Mathur, J. 7.4.1993

This order was signed only by Hon"ble J. K. Mathur and not by Hon"ble H. N. Tilhari. J.

On 8.4.1993, the following orders was passed:

Put up tomorrow for further hearing.

Sd/J.K. Mathur, J. Sd/H.N. Tilhari, J. 8.4.1993

On 9.4.1993 the following order was passed:

Put up on Monday (12.4.1993) for further arguments.

Sd/J.K. Mathur, J. Sd/H.N. Tilhari, J. 9.4.1993

On 12.4.1993 the following order was passed:

We have heard learned Advocate General on his application for vacation of stay order. Put up tomorrow.

This order is also signed by only Hon"ble J. K. Mathur, J. and Hon"ble H. N. Tilhari, J. has not signed the order-sheet.

On the same day namely on 12.4.1993 an application for amendment (C. M. Application No. 10469 (W) of 1993) was filed by the Petitioner. It was allowed on the same day by the following order:

This is an application for amendment moved on behalf of the Petitioner. The Petitioner seeks to implead five more persons as opposite parties. The application is not approved. The application Is allowed. The opposite parties including the

newly added ones may file counter-affidavit. The learned counsel for the Petitioner undertakes to serve newly added opposite parties outside the Court. The office shall provide necessary process to the learned counsel for the Petitioner today.

The case shall be put up tomorrow.

Sd/J.K. Mathur, J. Sd/H.N. Tilhari, J. 12.4.1993

Since in the above order a direction was given to the office to issue necessary process to the learned counsel for the Petitioner for service on opposite parties 4 to 8, the office issued dasti notices on 13.4.1993 as per endorsement made on the order-sheet.

On 13.4.1993 the Division Bench passed the following order but strangely, perhaps by an oversight the order is not signed by any of the learned Judges.

Hon"ble J.K. Mathur, J.

Hon"ble H.N. Tilhari, J.

Heard counsel for the Petitioner on the application for the vacation of stay.

Learned counsel for the appeal petition wants and is granted seven days time to file counter-affidavit. The Petitioner shall in co-operate the newly impleaded opposite parties may also file a counter-affidavit within seven days.

Rejoinder affidavit may be filed within a week thereafter. The case shall now be listed on 3.5.1993.

On 19.4.1993, the Hon"ble J. K. Mathur, J. pronounced the order on the application of the State of U.P. for vacating the stay order refusing to vary or recall the order dated 2.4.1993 and the application for vacation of the interim order dated 2.4.1993 was rejected.

On 1.5.1993, C. Misc. Application No. 13964 (W) of 1993 was filed by the Chief Standing Counsel before the Hon"ble Acting Chief Justice to constitute a Bench of more than two Hon"ble Judges to hear and decide the writ petition on merits the application was allowed by Hon"ble the Acting Chief Justice on the same date by the order contained in Annexure-1 and it is this order against which the present petition has been filed.

4. Learned counsel Sri K. S. Bajpai, appearing for the Petitioner, who himself is a practising Advocate of this Court, has contended that Writ Petition No. 1619 (MB) of 1993 was a part-heard matter of the Division Bench comprising of Hon"ble J. K. Mathur, J. and Hon"ble H. N. Tilhari, J. and, therefore, it was not open to Hon"ble the Acting Chief Justice to constitute a Full Bench of three Judges for the hearing of the case and that too after dropping one of the Judges (Hon"ble H. N. Tilhari, J.)(who had already heard the matter in part) from the Full Bench. It is further contended that the order passed by Hon"ble the Acting Chief Justice was an ex parte order and the present Petitioner was not heard. It is also contended

that Hon"ble the Acting Chief Justice has passed the order at Allahabad on the application of the Chief Standing Counsel without properly calling for the record of the case which was all along at Lucknow, so as to satisfy himself that an important question did really arise in the case necessitating the constitution of a Bench of three Judges for the hearing of the case. It is also contended that Hon"ble the Acting Chief Justice has issued the impugned order at the behest of the Advocate General who was appearing as Counsel for the State of Uttar Pradesh in Writ Petition No. 1619 (MB) of 1993 and therefore, the order besides being arbitrary was also mala fide.

5. The Advocate General appearing on behalf of one of the opposite parties has, on the other hand, contended that the order dated 1.5.1983 passed by Hon"ble the Acting Chief Justice constituting a Bench of three Judges for hearing and disposal of the Writ Petition No. 1619 (MB) of 1993 was properly passed on the application of the State and, in the particular circumstances of the case, it could not be said that the opportunity of hearing to the Petitioner was denied. It is contended that the impugned order is neither mala fide nor arbitrary and is well within the scope and jurisdiction of the powers of Hon"ble the Acting Chief Justice as defined under law.

6. Article 214 of the Constitution provides that there shall be a High Court for each State. Article 216 provides that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

Article 217 provides for appointment and conditions of the office of a Judge of High Court. It provides, inter alia, that every Judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

Article 223 of the Constitution makes provision for the appointment of Acting Chief Justice from amongst other Judges of the High Court.

Article 229 of the Constitution lays down that the officers and servants of a High Court shall be appointed by the Chief Justice or by such other Judge or officer as he may direct.

7. From the constitutional provisions referred to above, it will be seen that there is vital and remarkable difference between the Chief Justice of the High Court and other Judges of that Court notwithstanding the distinct status and position of the Chief Justice he as a Judicial functionary is like any other Judge of the Court.

8. In the instant case we are not concerned with the functioning of the Chief Justice on the judicial side but it is the action, namely, the order referring the case to a larger bench, which is the subject-matter of adjudication before us.

9. Article 225 of the Constitution provides as under:

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 Court shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

The first part of the Article, that is, the part without the proviso, is the relevant part for our purposes. Under Article 225 of the Constitution, the jurisdiction of an existing High Court and the respective powers of the Judges thereto in relation to the administration of justice in the Court, including any power to make Rules of Court and to regulate sitting of the Court and of members thereto sitting alone or in Division Courts has not undergone any change and the position with regard to the above matters has been preserved by providing that it shall be the same as it was immediately before the commencement of the Constitution.

10. Article 225 corresponds to Section 223 of the Government of India Act, 1935 except the "Proviso" which in its present form, was introduced by Constitution (Forty Fourth Amendment) Act, 1978 with effect from 20th June, 1979.

11. Section 226(1) of the Government of India Act, 1935 provided that no High Court shall have any original Jurisdiction in any matter concerning revenue or the collection thereof according to the usage, practice or the law for the time being in force. This was akin to the provisions contained in Section 100(2) of the Government of India Act, 1915.

12. On the enforcement of the Constitution, a provision with regard to matters concerning revenue was made in the "proviso" to Article 225 but the original proviso was deleted by the Constitution (Forty Second Amendment) Act, 1976 with effect from 1.2.1977 but the proviso, as pointed out above, was introduced, in its present form by the Constitution (Forty Fourth Amendment) Act, 1978.

Though Article 225 operates subject to other "provisions of the Constitution" and the law made by an appropriate Legislature", it contains the "Rule of Preservation". It preserves:

- (i) jurisdiction of the High Court;
- (ii) law administered in the High Court;
- (iii) powers of Judges in relation to administration of Justice;

(iv) power to make Rules of Court;

(v) power to regulate the sittings of the Court,

and of Judges sitting alone or in Division Courts by providing specifically that they shall be the same as immediately before the commencement of the Constitution.

13. The position as it existed immediately before the commencement of the Constitution is indicated in Section 223 of the Government of India Act, 1935 which in its turn, preserved the powers of the Judges and the power to make rules and regulate sittings of the Court as were available u/s 108 of the Government of India Act, 1915 which is quoted below:

Section 108.--Exercise of jurisdiction by Single Judges of Division Courts.-

(i) 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.

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

14. The High Court is a multi-member constitutional body. It consists of several Judges who sit, hear and dispose of cases of different nature and class so as to dispense Justice, according to law, to persons (litigants) who come to them for being protected from tyranny and oppression, arbitrary action and statutory violations. The field of Civil and criminal litigation is by itself a vast field covering many jurisdictions including constitutional, company, testamentary, matrimonial and taxation (etc.) jurisdiction. In view of the vastness of Jurisdiction and diversity of litigative fields, it is well nigh impossible for one case being heard by all Judges sitting together. It was because of the above impracticability that it was provided in the Letters Patent of different High Courts of Judicature that any function which is required to be performed by the High Court in exercise of its original or appellate jurisdiction may be performed by any Judge sitting single or in Division Bench appointed or constituted for such purposes in pursuance of Section 108 of the Government of India Act, 1915. Section 108, therefore, stood incorporated in the Letters Patent by reference. The power available to the High Court originally u/s 108 of the Government of India Act, 1915 was preserved under the 1935 Act and then under the Constitution with the result that the High Court still has the power of making rules to regulate its sittings and providing, inter alia, whether a case will be heard by a Judge sitting alone or by Division Court comprising of two or more Judges.

15. It is a matter of history that the power to make rules was not conferred on the High Court for the first time by Section 108 of the Government of India Act, 1915. This power was available to the High Court by virtue of Section 13, Indian High Courts Act of 1861 (See : AIR 1953 SC 354).

16. In *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, the range and ambit of the power conferred on the High Court by Section 108 of the Government of India Act, 1915 was indicated by the Supreme Court as under:

The section is an enabling enactment and confers power on the High Courts of making rules for the exercise of their jurisdiction by single Judges or by Division Courts. The power conferred by the Section is not circumscribed in any manner whatever and the nature of the power is such that it had to be conferred by the use of words of the widest amplitude ...the power that was conferred on the High Court by Section 108 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 real timed with great vigour by these statutes. The High Court still enjoys 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 Judges of the High Court.

17. In *Farzand Vs. Mohan Singh and Others*, it has been held that Article 225 leaves it to the High Court to frame Rules laying down the functions which would be performed by whole Court, that is, by all the Judges and which one by committees consisting of less number of Judges or even by individual Judge.

18. The present Allahabad High Court is a combination of two Courts, the High Court of Judicature at Allahabad and the Oudh Chief Court which were both amalgamated under one Court by the U.P. High Court Amalgamation Order, 1948.

19. In 1952, in exercise of powers conferred by Article 225 of the Constitution and all other powers enabling it in that behalf, the Allahabad High Court has made Rules known as the "Rules of Court, 1952" which came into force on the fifteenth day of September, 1952.

As is provided under Chapter I, Rule 2, these Rules apply to proceedings and matters in the High Court commenced on, or subsequent to, that date as also to the proceeding "pending" on that date.

Rule 5 of Chapter I provides that the existing Rules of Court and the Rules of the Chief Court of Oudh at Lucknow and all other existing rules and orders dealing with matters covered by Rules of Court, 1952 shall stand repealed.

Chapter V of the Rules of the Court specifies the jurisdiction of Judges sitting alone or in Division Courts. Rule 1 of Chapter V is quoted below:

Constitution of Benches.--Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

The above provisions would indicate that the Judges shall do such work as is allotted to them by the Chief Justice. They shall sit alone or in Division Courts

that may be constituted from time to time by the Chief Justice.

20. Rule 2 of Chapter V enumerates the nature of cases which can be heard and disposed of by a Judge sitting single. Proviso to Rule 2 of Chapter V provides as under:

(a) the Chief Justice may direct that any case or class of cases which may be heard by a Judge sitting alone shall be heard by a Bench of two or more Judges (or that any case or class of cases which may be heard by a Bench of two or more Judges by a Judge sitting alone);

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

Under proviso (a) quoted above, it is within the exclusive jurisdiction of the Chief Justice to direct that any case which is otherwise cognizable by a Judge sitting alone shall be heard and disposed of by two or more Judges or any case which is otherwise cognizable by a Bench of two or more Judges will be heard by a Judge sitting alone. The powers given to the Chief Justice in this regard are absolute and admit of no conception. The Rule, therefore, clearly contemplates a situation where the Chief Justice may in his discretion direct that the case which is otherwise to be heard and disposed of by a Judge sitting alone, shall be heard by two or more Judges.

Under Clause (b) to the proviso quoted above, a Judge sitting alone may, if he thinks fit, refer a case which is otherwise cognizable by a Judge sitting alone for "decision" to a larger Bench as he may refer only a question of law arising in that case for decision to a larger Bench.

21. In *State Vs. Devi Dayal*, a Division Bench of this Court considered the scope and powers of the Chief Justice under Rule 1 of Chapter V of the Rules of Court and laid down as under:

...It is clear to me, on a careful consideration of the constitutional position, that it is only the Chief Justice who has the right and the power to decide which Judge is to sit alone and which cases such Judge can decide. Further, it is again for the Chief Justice to determine which Judges shall constitute Division Benches and what work those Benches shall do. Under the rules of this Court, the rule that I have quoted above, it is for the Chief Justice to allot work to Judges and Judges can do only such work as is allotted to them.

It is not, in my view, open to a Judge to make an order which could be called an appropriate order, unless and until the case in which he makes the order has been placed before him for orders either by the Chief Justice or in accordance with his directions. Any order which a Bench or a single Judge may choose to make in a case that is not placed before them or him by the Chief Justice or in accordance with his directions is an order which, in my opinion, if made, is without Jurisdiction.

These observations are contained in the judgment passed by B. Mukherji, J.

There is a separate but concerning judgment of H. P. Asthana, J. in which it is observed as under:

Rule 1, Chapter V of the Rules of this Court, provides that Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

It will appear from a perusal of the above provisions that the High Court as a whole consisting of the Chief Justice and his companion Judges has got the Jurisdiction to entertain any case either on the original side or on the appellate or on the revisional side for decision and that the other Judges can hear only those matters which have been allotted to them by the Chief Justice or under his directions. It, therefore, follows that the Judges do not have any general jurisdiction over all the cases which the High Court as a whole is competent to hear and that their jurisdiction is limited only to such cases as are allotted to them by the Chief Justice or under his directions.

22. A Full Bench of this court in Maharaja Dharmendra Prasad Singh and Another Vs. State of Uttar Pradesh and Others, laid down as under:

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

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

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

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

23. This Court in Puran Chand and Anr. v. Abdullah and Anr. AIR 1938 All 606 (607) held that u/s 108(2) of the Government of India Act, 1915, Chief Justice alone can arrange for the sittings of the Court and it is not within the competence of any Bench of the Court to give any direction to the Chief Justice in this regards.

24. In view of the above, it is clear that the Chief Justice enjoys a special status not only under Constitution but also under Rules of Court, 1952 made in exercise of powers conferred by Article 225 of the Constitution. The Chief Justice alone can determine jurisdiction of various Judges of the Court. He alone can assign

work to a Judge sitting alone and to the Judges sitting in Division Bench or to Judges sitting in Full Bench. He alone has the Jurisdiction to decide which case will be heard by a Judge sitting alone or which case will be heard by two or more Judges.

The conferment of this power exclusively on the Chief Justice is necessary so that various courts comprising of the Judges sitting alone or in Division Bench, etcetra, work in a co-ordinated manner and the jurisdiction of one court is not over-lapped by other court. If the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the Court would collapse and the judicial functioning of the Court would cease by generation of internal strife on account of hankering for a particular Jurisdiction or a particular case. The nucleus for proper functioning of the Court is the "self and "judicial" discipline of Judges which is sought to be achieved by Rules of Court by placing in the hands of the Chief Justice full authority and power to distribute work to the Judges and to regulate their jurisdiction and sittings.

25. Learned Counsel for the Petitioner contended that since Writ Petition No. 1619 (MB) of 1993 was the part-heard matter of a Division Bench, it was not open to the Chief Justice to refer the case to a Full Bench for hearing and decision. It is contended that once the hearing has started, jurisdiction to refer the case or the question involved therein vests in the Judges hearing the case and not in the Chief Justice. It is further contended that if the power to make reference to a larger bench was conceded to the Chief Justice, even the case where hearing has started and the matter has become part-heard, the Chief Justice can, at his will, disturb the course of hearing in the case and interfere with the functioning of the Judges by suddenly making reference to a larger bench for hearing and decision on the ground that the question involved in the case was important and requires a decision of a larger Bench.

26. Chapter V, Rule 6 of the Rules of Court under which Chief Justice can exercise his jurisdiction to constitute a Bench of two or more Judges to decide the case is quoted below:

The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question of law formulated by a Bench hearing a case. In the latter event, the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein.

The first sentence of Rule 6 quoted above consists of two parts:

- (i) The Chief Justice may constitute a Bench of two or more Judges to decide the case.
- (ii) The Chief Justice may constitute a Bench of two or more Judges to decide

any question of law formulated by a Bench hearing the case.

So far as the first part of Rule 6 is concerned, the Chief Justice has unfettered power to constitute a Bench of two or more Judges to decide the case. It would be within the discretion of the Chief Justice and within his exclusive domain and Jurisdiction to constitute a Bench of two or more Judges to decide the case. A Bench of two or more Judges has also to be constituted by the Chief Justice if a question is formulated by a Bench hearing the case for decision by two or more Judges.

27. Learned counsel for the Petitioner has vehemently argued that since the case had already become a part-heard matter of the Hon'ble Judges constituting the Division Bench, it was not open to the Chief Justice to refer the case for hearing and decision by a larger Bench. This requires us to consider the question whether the Writ Petition No. 1619 (MB) of 1993 ever became a part-heard matter of the Hon'ble Judges constituting the Bench.

28. The order-sheet beginning from the date (2nd April, 1993) on which writ petition was filed and the date 1.5.93 on which the impugned order was passed by the Chief Justice has already been reproduced above. The Division Bench which took up Writ Petition No. 1619 (MB) of 1993 on 2nd April, 1993 was constituted especially for that date (2nd April, 1993) to consider the left over fresh petitions of 1.4.1993 filed in another Court.

29. As pointed out earlier, the writ petition was taken up by the Division Bench on 2.4.1993 and on that date while allowing time to the Chief Standing Counsel to obtain instructions, the Division Bench passed an interim order fixing 5.4.1993 for further hearing. On 5.4.1993, the interim order which was time bound order, was directed to continue until further orders.

30. It will be noticed that opposite party No. 3 (R. Venkataraman) who was arrayed as opposite party by name in his personal capacity was not represented by the Chief Standing Counsel and on 6.4.1993, when the case was taken up an order was passed that the Petitioner will serve opposite party No. 3 outside the Court indicating to him that the case will be taken up on the next date (7.4.1993) on 7.4.1993 and 8.4.1993, the Court passed an order that the case will be taken up on the next date for further hearing. On 9.4.1993, an order was passed that the case will be put up on 12.4.1993 for further arguments.

On 12.4.1993, the Petitioner himself moved an application for amendment seeking to add 5 more persons as opposite parties by name. These five persons were members of the Indian Administrative Service and were appointed as members of the Tribunal. The application for amendment was allowed and these five officers were directed to be impleaded as opposite party Nos. 4 to 8 on whom notices were to be served by the Petitioner's Counsel outside the Court and the office was directed to provide necessary process. The case was directed to come up on the next date (13.4.1993). Significantly, the Counsel for the Petitioner obtained dasti notices for 13.4.1993 for service on opposite parties on

13.4.1993 and not on 12.4.1993. On 13.4.1993, an order was passed that the Counsel for the opposite parties wanted time to file counter-affidavit and for that purpose, 7 days time was allowed and it was also provided that newly impleaded opposite parties may also file counter-affidavit within 7 days. The case was directed to be listed on 13.5.1993.

31. The facts stated above would show that on 6.4.1993, an order was passed by the Court that the opposite party No. 3 shall be served by dasti notices outside the Court and five other officers who were added as opposite party Nos. 4 to 8 were also directed to be served outside the Court by an order passed on 12.4.1993. It will be thus seen that upto 13.4.1993 opposite party Nos. 4 to 8 who were the Members of the Tribunal and were arrayed as opposite parties in their personal capacity had not been served. It would also be significant to note that although the Court had directed that the case will come up for further hearing vide orders dated 2.4.1993, 7.4.1993, 8.4.1993 and 9.4.1993, the hearing of the writ petition had at no time started before that Division Bench on the merits of the case as all the opposite parties were neither served nor represented before the Division Bench.

On 13.4.1993, while directing that the case shall be listed on 3.5.1993, the Court itself did not indicate that it was the tied up or part-heard matter as the Hon"ble Judges had themselves allowed time to the newly impleaded opposite parties to file counter-affidavit. The case, therefore, never became tied up with the Division Bench nor it became a part-heard matter of that Bench.

32. It will be seen that a counter-affidavit, supplementary counter-affidavit and application for vacation of stay orders passed on 2.4.1993 had already been filed on behalf of the State of U.P. and the Advocate General had put in appearance in the case and had also argued the interim matter. As far as the interim matter is concerned, the arguments on the application for vacating the interim order filed on behalf of the opposite parties continued before that Division Bench and it was for the limited purpose that the Division Bench treated it as a part-heard matter. Once the complete arguments were heard on the application for interim relief as also on the application for vacating the interim order, they (Hon"ble Judges) did not say that the case would come before them as a case heard by them in part.

33. On 13.4.1993, while fixing the case for 3.5.1993, the Hon"ble Judges allowed time to the newly impleaded opposite parties to file counter-affidavit and did not say that the case would come up before them as their part-heard case or for further hearing. Apart from the factual position discussed above which indicates that the writ petition was not the part-heard matter of the Division Bench, legally also the case did not become tied up or part-heard matter of that Division Bench.

34. Rule 14 of Chapter V of the Rules of Court provides as under:

Rule 14. (1) A case partly heard by a Bench shall ordinarily be laid before the same Bench for disposal. A case in which a Bench has merely directed notice to issue to the opposite party or passed an ex parte order shall not be deemed to

be a case partly heard by such Bench.

(2) When a criminal revision has been admitted on the question of severity of sentence only, it shall ordinarily be heard by the Bench admitting it.

The provision of Sub-rule (1) would indicate that even a case which is partly heard by a Division Bench is not necessarily to be laid before that Bench. The use of word "ordinarily" itself indicates that there can be a departure from the normal practice of listing a part-heard case before the same Bench. The word "ordinarily" means in a large majority of cases but not "invariably".

35. The word "ordinarily" is utilised to indicate that although in normal course a thing will be done in a particular manner, in special circumstances a departure from normal course of action is permissible under law. Normally, therefore, a case which has been partly-heard by a Bench shall be laid before that Bench but in special circumstances, the Chief Justice who, as pointed out above, has exclusive jurisdiction of distributing work to Judges, can depart from the normal course and list the case before some other Judge. This would be permissible where the Judges or one of them constituting the Bench are not available. There may be variety of reasons for the non-availability of those Judges. In that situation, particularly in the interest of immediate decision of the case, the Chief Justice can list the case before any other Bench for hearing and disposal.

36. The other part of Sub-rule (1) lays down in clear terms that the case in which the Bench has merely issued notice to the opposite party or had passed an ex parte order shall not be deemed to be a case partly-heard by that Bench. This provision has been made to specify that a case does not become part-heard merely by passing of interim order. It also lays down that if notices are directed to be issued to the opposite party, the case does not become part-heard case of that Bench. The consequences are obvious. If the Division Bench which has merely passed an ex parte order or directed notice to be issued to the opposite party locate it as a part heard case or passes an order that it will come up before that Bench for "further hearing" or as a "part-heard" or as a "tied up" case, the order would be in violation of the Rules of Court and, therefore, a nullity. Such an order would be without jurisdiction and would not confer any jurisdiction on the Bench concerned to proceed with that case unless the case is listed before them again under the orders of the Chief Justice. In a situation where any order has been passed indicating such a case on the order-sheet or on the main writ petition to be a part-heard or tied up case, the Chief Justice inspite of that order would retain his jurisdiction to list it before the appropriate Bench for hearing as the order limiting the case to be a part-heard or tied up would be in violation of the Rules of Court and would not bind the hands of the Chief Justice from listing that case as a "seen" case before any other Bench rather than as a "tied up" case before that very Bench.

37. In any case since we have found it as a fact that the case never became part-heard of the Division Bench referred to above, the Chief Justice was justified in

passing the order that the case would be heard and disposed of by a Bench of more than two Judges.

38. It was next contended that the impugned order is liable to be set aside on the ground that an opportunity of hearing was not given to the Petitioner.

39. From the facts set out above, it would be seen that the Chief Standing Counsel before moving the application had given notice to the Petitioner's Counsel and had also served a copy of this application on him. Since the Chief Justice had already left for Allahabad, the Chief Standing Counsel had withdrawn the notice but on 1.5.1993, the Chief Standing Counsel had informed the Petitioner's Counsel that he will be proceeding to Allahabad on that date for making the application before Hon''ble the Acting Chief Justice for constituting the larger Bench to hear and dispose of the case. This is not disputed in the rejoinder-affidavit filed on behalf of the Petitioner that the Chief Standing Counsel had informed Sri Shaidd Kumar Srivastava (Petitioner's Counsel) that he will move the application for constitution of larger Bench before the Acting Chief Justice. Rather the facts were admitted in paragraphs 3 and 4 of the rejoinder-affidavit dated 13.9.1993. The contention of the Petitioner that the Chief Standing Counsel had taken back the application on 27.8.1993 from his counsel and, therefore, he was not aware of the contents, cannot be accepted as the Petitioner himself has filed a photostat copy of that application as Annexure to the writ petition which bears signature of the Chief Standing Counsel. In this application, the question of law has been clearly stated and the decisions relevant on the question including certain Supreme Court decisions have also been clearly mentioned in para 8 of the application.

40. In view of the fact that the photostat copy of the application was all along in possession of the Petitioner, who has also filed a copy of that application as Annexure to the writ petition, it cannot be contended that because copy of the application was taken back from his counsel on 27.8.1993, he was not aware of the contents. An analysis of the above facts clearly brings out that the Petitioner's counsel was informed by the Chief Standing Counsel that the application would be moved before Hon''ble the Acting Chief Justice at Allahabad on 1st May, 1993. A copy of this application was also given to the Petitioner. If the Petitioner himself did not proceed to Allahabad so as to contest the application or to make his submissions before Hon''ble the Acting Chief Justice, he cannot raise any complaint about the infraction of the Rules of natural justice or to say that an opportunity of hearing was not given to him by Hon''ble the Acting Chief Justice. The inactivity of the Petitioner and his counsel cannot be made a ground to contend that an opportunity of hearing was not given. It is, in fact, a case where opportunity of hearing was not availed of.

41. It was next contended that the record of the case was available at Lucknow, and, therefore, the impugned order is bad on account of non-application of mind by Hon''ble the Acting Chief Justice. This contention is also to be rejected.

The application (Annexure 4) moved by the Chief Standing counsel before Hon''ble the Acting Chief Justice is a detailed application setting out the question of law involved in the case. It is not contended by the Petitioner's counsel that the question of law indicated in the application (Annexure 4) did not arise or that the authorities referred to in that application were not relevant. Hon''ble the Acting Chief Justice had after considering the application passed an order for hearing of the case by a larger Bench. It cannot, therefore, be contended that the order was bad for the non-application of mind.

42. The contention that the impugned order does not contain reason is also to be rejected as the Chief Justice under the Rules of the Court has the exclusive Jurisdiction to refer any case for hearing and disposal by Bench of more than two Judges. In order to constitute a Bench of two or more Judges to decide the case, the Chief Justice is under no obligation to set out the reasons.

43. It is a matter of internal administration of listing of a case and distribution of work to different Judges of the Court. The arguments of the learned Counsel that the application of the Chief Standing Counsel was not maintainable on the ground that there was no provision under Rule 6 for constitution of a special Bench on an application of a party to the proceedings is also to be rejected as fallacious.

Under Rule Chapter V of the Rules of Court, it can well be brought to the notice of the Chief Justice through an application or even otherwise that there was a case which is required to be heard by a larger Bench on account of an important question of law being involved in the case or because of the conflicting decisions on the point in issue in that case. If the Chief Justice takes cognizance of an application laid before him under Rule 6 of Chapter V of the Rules of Court and constitutes a Bench of two or more Judges to decide the case, he cannot be said to have acted in violation of any statutory provision.

The application of the Chief Standing Counsel was, therefore, clearly maintainable under Chapter V, Rule 6 of the Rules of Court.

44. The last argument that the order was passed by Hon''ble the Acting Chief Justice at the behest of the Advocate General is devoid of any merits.

In the first instance, the application for Constitution of a larger Bench was moved by the Chief Standing Counsel on the instructions of the State Government as set out in the counter-affidavit filed on behalf of the Government. The Chief Standing Counsel himself had appeared before Hon''ble the Acting Chief Justice and argued the application. The Advocate General had neither presented the application before Hon''ble the Acting Chief Justice nor had he appeared and argued the application on 1st May, 1993 before Hon''ble the Acting Chief Justice.

Secondly, the Advocate General was counsel in the case and if, he appeared before Hon''ble the Acting Chief Justice on ground the matter which actually is not correct, Hon''ble the Acting Chief Justice cannot be said to have acted at the

behest of the Advocate General.

It may also be mentioned that the pleading with regard to the allegation that the order was passed at the behest of the Advocate General in a one sentence pleading contained in paragraph 1 of the writ petition which is quoted below:

That the present writ petition is decided against the illegal and without Jurisdiction reference made by the Acting Chief Justice at the behest of the Advocate General U.P. Govt., the matter to the special Bench. A photostat copy of the said reference is being filed as Annexure this writ petition.

This paragraph has been denied in para of the counter-affidavit filed on behalf of the State of Uttar Pradesh, in that para as also in subsequent paragraphs of the counter-affidavit factual position has been set out. The rejoinder affidavit filed on behalf of the Petitioner is also silent with regard to reply of the State of Uttar Pradesh that the order was not passed at the behest of the Advocate General. As pointed, out earlier, this contention of the Petitioner is devoid of any merits and is to be rejected.

45. No other question was argued before us.

46. In view of the above, the writ petition is dismissed. There will no order as to costs.