
(1997) 11 CAL CK 0025
In the Calcutta High Court
Case No : Appeal No. 3546 of 1996

Siliguri Bar Association

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 24-11-1997

Acts Referred:

Constitution of India, 1950 — Article 166, 225, 77, Entry 78

Citation : (1999) 1 ILR (Cal) 250

Hon'ble Judges : Prabha Shankar Mishra, C.J.;N.A. Chowdhury, J

Bench : Division Bench

Advocate : A.P. Chatterjee and Ratna Bhattacharya, for the Appellant;T.C. Dutta, for State and Kanan K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Shankar Mishra, C.J.—The instant appeal under Clause 15 of the Letters Patent and the application for stay therein have arisen from the judgment of the learned single Judge in CO. No. 22,387 (W) of 1995.

2. Two writ petitions, one filed by the Darjeeling Bar Association and others on the Original Side and the other filed by the Siliguri Bar Association and others on the Appellate Side of the Court have been heard together and disposed of by a common judgment by a learned single Judge of this Court.

3. It appears from the narration of the facts of the case in the impugned judgment as well as the contentions of the learned Advocate for the Appellants herein that a proposal has been mooted for the establishment of a circuit Bench of the Calcutta High Court in North Bengal. Darjeeling Bar Association as well as Siliguri Bar Association having come to know of the move to establish a circuit Bench of the High Court in North Bengal at Jalpaiguri at some stage of the process of consultation made demands staking claim for such a Bench at their respective headquarters and not in the district of Jalpaiguri. It seems some representations started coming to the Chief Justice of the Court and the Chief

Justice of India, the Government of the State and the Central Government and finally, the two writ petitions came up questioning the process by which it was proposed to have a circuit or permanent Bench in the district of Jalpaiguri. All relevant contentions and such facts which the learned single Judge has thought are necessary are stated in the impugned judgment.

However, learned single Judge has concluded against the Petitioners' proceedings in the writ petitions holding as follows:

...What is revealed from the above facts is that neither the Chief Minister nor the Chief Justice acted unilaterally in the matter of their own accord, but on the basis of repeated requests made by the Central Government through the Ministry of Law, Justice and Company Affairs to suggest the location of the proposed Circuit Bench, since there was general agreement regarding the need to set up such a Bench for the Northern districts of West Bengal.

It cannot, therefore, be said, as urged on behalf of the Siliguri Bar Association, that the constitution of the Judges' Committee and the report submitted by it, was without jurisdiction.

4. Having regard to Entry-78 of List-I of Schedule VII to the Constitution there can be no room for doubt that it is the Parliament alone which can legislate with regard to the establishment of the proposed Circuit Bench and it is the Central Government which can take a final decision as to its location. But there is nothing to prevent the Central Government from asking for and acting on the advice of the State authorities, who would be more familiar with local conditions, including geo-graphical considerations, and would be required to provide the infrastructural facilities and arrange for the day to day administration of the Courts to be set up. In fact, it would be quite logical and in the fitness of things for the Central Government to request the State authorities to suggest the location of the proposed Circuit Bench after which a final decision could be taken by the Central Government in that regard.

5. The Central Government is not bound to accept the recommendations made by the State authorities, but it would be prudent on its part to obtain the views of the State authorities before taking a decision in the matter.

6. In the perspective of the facts as narrated hereinbefore, I am unable to accept the submissions made on behalf of the Siliguri Bar Association that the report of the Judges' Committee and the recommendations made thereon cannot be taken into consideration by the Central Government while deciding upon the location of the proposal Circuit Bench for North Bengal.

7. As to the submissions made on behalf of the Darjeeling Bar Association that its members had not been consulted by the Judges' Committee for the purpose of making its report, an explanation has been provided for in the report itself. It has been indicated in the report that the Special Committee would visit Jalpaiguri and Siliguri only, inasmuch as, the other districts of North Bengal had opted for

either of the two places.

8. It may also be mentioned at this juncture that in making its report, the Judges' Committee appears to have taken into consideration the recommendations and suggestions of the Jaswant Singh Commission's report.

9. I am inclined to agree with Mr. Kanan Ghosh's submissions that the entire matter is only at a fact finding stage and till a final decision is taken in the matter, the writ Petitioners in both the writ applications cannot have an actionable grievance. Moreover, whether it will act on the recommendations of the State authorities, including the High Court, is for the Union Government to decide.

10. It is also for the Union Government to decide as to whether a Circuit or permanent Bench of the High Court for North Bengal should at all be set up and also decide on its location and no mandatory direction can be given to it by the Court in that regard.

11. I, therefore, find no reason to interfere with the process initiated by the Union Government for establishing the Circuit or Permanent Bench of the Calcutta High Court in North Bengal, in keeping with Entry-78 of List-I of Schedule VII to the Constitution, which, in my view, includes the constitution of the Judges' Committee by the Chief Justice for recommending the venue for establishing such Bench, at the request of the Chief Minister of West Bengal.

12. The two writ applications are, accordingly, disposed of with the aforesaid observations. Since it is really for the Union Government to make a decision in the matter, it is hoped that the Union Government will take such decision at an early date so that the matter is resolved once and for all.

13. The instant appeal by the Siliguri Bar Association and its office bearers, in our view, is fit to be rejected for more than one reason. Association of advocates is always expected to crave for the implementation of laws and all concerned acting on and abiding by the laws of the land. Advocates forming Association in the district Court level cannot claim any independent interest as advocates of the district which is not common with the people of the district. The issue whether if there would be a circuit Bench of the Court in North Bengal, it should be located in one or the other district, is not of the interest of the advocates as a profession who are enrolled by the State Bar Council and who are free to practice at any place in the State and elsewhere in the country provided that in any other State, they are required to appear along with an advocate of that State.

14. Many of the grievances are based on misapprehensions as to the procedure which is ordinarily adopted in the process of consultation which any Government, whether Central or the State, holds with the High Court of any State. In all cases where the Constitution demands consultation with the High Court for any decision to be taken by any of the Governments, or any other law demands, and even in other cases where the Governments desire to consult the High Court, if

communications are made at the level of the Secretaries in the Government in the concerned departments, they are addressed in the form of a letter to the concerned Registrar of the Court and if consultation is desired with the Judges of the Court, the concerned Minister or the Prime Minister or the Chief Minister communicates personally in writing to the Chief Justice of the Court or to any other Judge who by law is authorised to speak on behalf of the Court. One of the contentions very seriously urged in the instant proceeding is that the process of consultation was started by the D.O. letter addressed by the Minister, Law and Justice to the then Chief Justice of this Court and when the Chief Justice of the Court thought that the State Government had to initiate any proposal in this behalf and so said in his reply communication to the Minister, Law and Justice, the Chief Minister of the State sent communication to him on the subject. It is urged when the Union of India has to express itself in the name of the President of India, any consultation in this behalf would have been initiated only by the President or the person authorised on his behalf under the Rules of business as contemplated, under Article 77 of the Constitution of India and similarly when the State Government was required to have consultation by the Governor of the State or by the person authorised by him in this behalf, as contemplated under Article 166 of the Constitution of India. These, in our view, obviously are mistaken contentions based on misapprehensions by persons who are not informed of the procedure hitherto applied to matters of consultation between the Governments and the High Court.

15. A mere statement that the Minister, Law and Justice, was not authorised by the President to represent the Union of India and the Chief Minister of the State was not authorised to represent the State Government, is contemplated under the abovementioned provisions of the Constitution, is not enough for the Court to entertain any petition questioning the process of consultation. When the Petitioners have alleged that the Minister or the Chief Minister was not authorised, they are required to state with reference to such Rules that the President in the case of Central Government and the Governor in the case of the State Government has not authorised the Minister, Law and Justice or the Chief Minister of the State, as the case may be.

16. Petitioners-Appellants herein, for the above reasons have no locus standi and they have also no ground at this stage of the consultation to raise any dispute. Governments, it seems, have felt concerned about the distance of the main seat of the Court at Calcutta from North Bengal areas and this Court, when requested by the Minister, Law and Justice and the Chief Minister of the State, has made substantial exercises to decide upon the location of the Bench of the Court. Only because some Bar Associations have objections mainly for their own personal reasons, what has been proposed in public interest, should not be forestalled. In course of the hearing of the appeal, Mr. Chatterjee, learned Advocate has indicated that the Union of India is likely to exercise its executive power and decide soon about the establishment of a Bench of the Court in the district of Jalpaiguri. We do not express ourselves finally on the question whether a Bench

of the Court can be created by an executive order of the Government and a territorial jurisdiction for it can be fixed by such executive order.

Moreover, executive orders of the Government cannot decide upon the constitution of the Benches and the number of Judges to sit in circuit and the manner in which the circuit Court will function. In our view, all these have to be decided when any such occasion comes up and as apprehended by Mr. Chatterjee, learned Advocate, a Circuit Bench is created by an executive order. Article 225 of the Constitution of India, until law made by the Parliament, continues the Letters Patent under which the Calcutta High Court has been created which enjoins for the purposes of authorising the Judges to sit in any place by way of circuit or special commission provides, inter alia, that when a decision is required to be taken by Governor General in Council (read for the same President of India) that there should be circuit or commission of the Court to sit at places other than the place of sitting of the High Court, it has to be required by any law relating thereto which has been or may be made by competent Legislative authority for India.

17. For the reasons aforementioned, we find no merit in the appeal. The appeal is dismissed. Consequently, the application for stay is also dismissed.

Nure Alam Chowdhury, J.

I agree.