
(1994) 03 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 109 of 1994

S.P. Anand

APPELLANT

Vs

Hon'ble Mr. S.K. Jha, Chief Justice

RESPONDENT

Date of Decision : 03-03-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 215, 226
High Court of Madhya Pradesh Rules, 2008 — Rule 10
States Reorganisation Act, 1956 — Section 51

Citation : AIR 1994 MP 195 : (1994) ILR (MP) 7 : (1994) JLJ 459 : (1994) 1
MPJR 279 : (1994) 39 MPLJ 531 : (1994) MPLJ 531

Hon'ble Judges : U.L. Bhat, C.J.; P.P. Naolekar, J.; M.V. Tamaskar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.

Petitioner, a resident of Indore, who describes himself as doing farming etc." has filed this Public Interest Litigation Writ Petition challenging Notification dated 17-7-1992, issued by the then Chief Justice of the M.P. High Court and seeking consequential reliefs.

The present State of Madhya Pradesh was constituted with effect from 1-11-1956 Under/Section 9 of the States Reorganisation Act, 1956 (for short, the Act), and comprises of the territories of the former State of Madhya Pradesh, except a few districts, the territories of the former State of Madhya Bharat, except a part of a Tehsil, a Sub-Division in the then State of Rajasthan, territories of the State of the former States of Bhopal and Vindhya Pradesh. Section 49(1) declared that the High Court of the former State of Madhya Pradesh shall, with effect from the appointed day, be deemed to be the High Court for the new State of Madhya Pradesh. Section 50 abolished the High Court of Madhya Bharat and the Courts of Judicial Commissioners for Bhopal and Vindhya Pradesh. u/s 51(1), the President issued an order appointing Jabalpur to be the Principal Seat of the High Court for

the new State of Madhya Pradesh. By order dated 1-11-1956, the Chief Justice directed that temporary Benches of the High Court will sit at Indore and Gwalior until further orders. Jurisdiction of the Benches were specified by order dated 29-11-1956 issued by the Chief Justice. These Benches were made permanent by two orders issued by the President on 28-11-1968 which also specified the territorial jurisdiction thereof and further stated:

"Provided that the Chief Justice may, for special reasons, order that any case or class of cases arising in any such districts, shall be heard at Jabalpur."

The words "for special reasons" were omitted by order dated "23-6-1971.

By virtue of the aforesaid proviso to the Presidential orders, the Chief Justice issued two separate orders dated 30-11-1968 directing that tax references, petitions under Artcles 226 and 227 of the Constitution pertaining to tax matters, challenging the vires of any Act or Statute or Order or Rule or Regulation made thereunder, petitions under Artcles 226 and 227 of the Constitution directed against orders of specified authorities and pending petitions under Artcles 226 and 227 of the Constitution arising from the districts falling within the jurisdiction of the Indore and Gwalior Benches shall be heard at Jabalpur. These orders were suitably amended on 25-6-1969 so as to allow petitions under Artcles 226 and 227 of the Constitution challenging the vires of any Act or Statute or any Order on Rule made thereunder to be heard by the Benches at Indore and Gwalior. On 24-10-1972, the Chief Justice issued fresh order restoring the position obtaining as per the order dated 30-11-1968. By order dated 3-2-1976, the Chief Justice directed that only petitions under Artcles 226 and 227 of the Constitution challenging the vires of any Act or Statute or any Order or Rule or Regulation made thereunder and any individual cases he may order thereafter, and arising from the districts under the jurisdiction of the Indore and Gwalior Benches, shall be heard at Jabalpur, The order dated 3-2-1976 was challenged, though unsuccessfully, in Abdul Taiyab Abbasbhai Malik and Others Vs. The Union of India (UOI) and Others, decided by Full Bench consisting of five-Judges .

By orders dated 17-7-1992, the then Chief Justice superseded all previous orders and directed that petitions under Artcles 226 and 227 of the Constitution challenging the vires of the State or Central Act or Statute or " any Order or Rule, or Regulation, Notification, Ordinance made by the State or Central Legislature! and any individual cases which may thereafter be ordered and arising from the districts within the jurisdiction of Indore and Gwalior Benches, shall be heard at Jabalpur. By Notification dated 29-9-1992, the then Chief Justice rescinded orders dated 17-7-1992 and restored status quo ante. In other words, the order dated 3-2-1976 has been resurrected. It has to be noticed that the categories of cases referred to in the order dated 17-7-1992 have been heard at Jabalpur almost throughout the existence of the New High Court of Madhya Pradcsh, except during a short period.

We have referred to the decision in Abdul Taiyab's case where the challenge against the vires of the two. Notifications dated 3-2-1976 was repelled. Certain aspects of the Notification have been clarified in *Balkrishna Das v. Harnarayan* 1979 MPLJ 644 (FB): (AIR 1980 MP 43).

A Division Bench, sitting at Indore, has referred this case to Full Bench on the view that the decision in Abdul Taiyab's case requires reconsideration. Learned Judges of the Division Bench indicated that in their opinion, "the case deserves to be heard by a Full Bench of five or more as Hon. the Chief Justice considers fit and proper." The Bench also directed that "Let the papers be laid before Hon. the Chief Justice for constituting an appropriate Bench to hear this petition."

We do not think that it is appropriate for a Division Bench to indicate what should be the strength of Full Bench which the Chief Justice may be called upon to constitute. If, the intention is that strength of the Bench should be larger than five which is the strength of the Full Bench which decided Abdul Taiyab's case, then the Division Bench could, if admissible, have sought for a Full Bench of Seven-Judges; but that has not been done in this case. It would have been more appropriate for the Division Bench to indicate that the earlier Full Bench decision may require reconsideration and that the case maybe heard by "Larger Bench" or "Full Bench" and to leave it to the Chief Justice to decide on the strength of the Full Bench. If Full Bench of Seven-Judges is constituted and the Bench sees no reason to differ from the earlier Full Bench, decision, this reference would be a wholly futile exercise involving waste of judicial time. A Full Bench of three or five-Judges could consider the case and if satisfied, could leave it to the Chief Justice to constitute Bench of seven-Judges. The Chief Justice constituted Full Bench of three-Judges to see whether it was necessary to constitute a larger Bench for reconsidering the decision in Malik's case.

Notice was given to the petitioner to the effect that the Full Bench will hear the case today. We are told that he has endorsed that the time given to him was too short. In view of the importance of the question involved, we thought it quite inappropriate to adjourn the case. If the petitioner was keen on conducting this "Public Interest Litigation", he would have been present in Court today or would have engaged counsel to address arguments. He has not adopted either of these courses.

The Notification dated 17-7-1992 impugned in the case is not in force. It is possible that the petitioner is not aware that the Notification dated 17-7-1992 has been rescinded and the status quo ante has been restored by a subsequent Notification. The status quo ante is as reflected in the Notification dated 5-2-1976. The change is not very substantial. The validity of the Notification has been upheld by a Full Bench of this Court in Abdul Taiyab's case. The Division Bench, in the reference order, indicated that the particular aspect raised by the petitioner has not been considered by the Full Bench, namely, that the President who himself is a delegate of the legislature, cannot delegate his authority to the Chief Justice, that the proviso to the Presidential order is ultra vires and,

therefore, the Notification of the Chief Justice that particular type of cases arising from the districts under the jurisdiction of Indore Bench should be heard by the Court at Jabalpur is without legal authority.

The President is empowered by Section 51 of the Act to provide for establishment of permanent Bench or Benches and "for any matters connected therewith." This would mean that the President himself could provide in detail for various connected matters with the establishment of Permanent Bench. It would also mean that the President may make provision for any matters connected with the Bench by authorising, if such authorisation is necessary, the Chief Justice to pass appropriate orders. The scheme of Section 51 of the Act confers on the President the power to provide for matters connected with Permanent Bench; this must include the power to authorise the Chief Justice to pass appropriate orders in relation to such matters. The legislature could not have contemplated that as and when necessary, the President should pass orders regarding category of cases or the cases to be heard at Jabalpur, for such orders could properly be passed only by the Chief Justice. It is clear that in "providing for any matter connected thereto" the President has power to authorise the Chief Justice to pass appropriate orders in relation to such matters as occasions require. Assuming that power of the President is delegated power, the Act contemplates the President delegating to the Chief Justice the power to provide for "any matters connected" with Permanent Bench. It cannot, therefore, be said that the Chief Justice had no legal authority to issue impugned Notifications or the Notifications preceding or succeeding thereto.

Petitioner has indicated that interest of litigant public and public, interest would suffer if constitutional matters involving vires of statutes et cetera are to be heard only at the Principal Seat at Jabalpur. We have no doubt that the successive Chief Justices have considered all relevant matters "including any hardship which may be caused to the litigants and advantage which may be gained by ensuring that such matters are heard only at the Principal Seat, before passing the orders. We are unable to agree that the impugned arrangement by which certain types of cases | which otherwise could be heard at the two Benches at Indore and Gwalior, should be heard at the Principal Seat at Jabalpur is unreasonable or arbitrary or contrary to public interest or illegal. On the other hand, we find that it subserves public interest in a large measure and the public interest so served over-weighs any inconvenience which may be caused to the litigant public in the districts within the jurisdiction of two permanent Benches. Writ petition deserves to be dismissed. Reference to a larger Full Bench is quite unnecessary. The decision in Abdul Taiyab's case is correct and has held the field I over the years.

The petitioner has filed quite a large number of "Public Interest Writ Petitions" at the Indore Bench. In those petitions, as in this petition, he did not pay Court-fee and did not seek exemption from payment of Court-fee. The Registry of Indore Bench should have returned and not registered the writ petition. The petition is

full of averments which are not relevant to the challenge against the Notification issued by the former Chief Justice. Some of the averments are couched in undignified and inappropriate language. It would have been sufficient to implead the Registrar of the High Court as the respondent in the petition. If petitioner felt that it was necessary to implead the Chief Justice, he could have done so by designation. The Chief Justice has been impleaded by name. The petition is absolutely frivolous and vexatious and has resulted in considerable wastage of judicial time. We deem it necessary to direct petitioner to pay costs.

The petition is dismissed. Petitioner is directed to pay a sum of Rs. 1,000.00 (one thousand) as costs to the State Government.