

(2010) 03 KAR CK 0203
In the Karnataka High Court
Case No : C.C.C. No. 2020 of 2009

Sri. Balachandra Vigneshwara Dixit

APPELLANT

Vs

Sri. H.S. Srikanta Babu and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Karnataka High Court Rules, 1959 — Rule 3, 5
States Reorganisation Act, 1956 — Section 51, 51 (1), 51 (2)

Citation : (2010) ILR (Kar) 2344 : (2010) 6 KarLJ 395 : (2011) 2 KCCR 1034

Hon'ble Judges : N. Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : Subramanya Jois, for V.G Bhat and J.S. Shetty, for the Appellant;
Ashok Harnahalli, General, for the Respondent

Judgement

N. Kumar, J.—The accused in C.C.C. No. 2020 of 2009 are the Government officials who are accused of willfully disobeying the lawful order passed by this Court. They have filed Misc. W. No. 61344 of 2009 to recall the order dated 27.05.2009 and to hear them regarding dropping of the proceedings against them in the interest of justice.

2. The facts giving raise to these proceedings are as under:

C.C.C. No. 2020 of 2009 is filed by one Balachandra Vigneshwara Dixit, the complainant praying for taking action against the accused for violating the orders dated 12.08.2008,14.08.2008, 02.12.2006 and 19.12.2006 passed in writ petition No. 17580 of 2006. After service of notice, respondents entered appearance and filed their statement of objections, denying the allegations. After hearing the Learned Counsel for the parties, this Court passed an order on 27.5.2009 as under:

Shri Subramanya Jois, Learned Senior Counsel appearing for the appellant submits that the averments contained in the statement of objections filed on behalf of respondents 1 to 5 only affirms the contemptuous act on the part of the

respondents in trying to overreach the interim order dated 12.12.2006 continued on 19.12.2006 in W.P. No. 30609/2008 by the passing of the orders dated 12.08.2008, and therefore, charges will have to be framed against the officers of the State Government who are directly responsible for passing of such orders which virtually amounts to disregard and over-reaching of the order that has been passed by the Court.

It is also submitted that disposal of the writ petition would not make any difference to this position for the reason that the writ petition, in fact, had not really become infructuous but the Learned Government Advocate filed a memo apprising the Court that writ petition has become infructuous in the wake of the order dated 12.08.2008, which itself is an act of contempt.

We find considerable force in this submission. It appears that the order dated 12.08.2008, particularly, insofar as the subject matter of the writ petition namely, Gokarna Shri Mahabaleshwara Temple is concerned, the action taken is more pre-emptive of the Court order and over reaching the Court order, and therefore, we find that there is prima facie material, as at present, to proceed to frame charges against respondent No. 1 - Sri H.S. Srikanta Babu, respondent No. 2 - Sri G.S. Natrayanaswamy, respondent No. 3 - Sri P.Prabhakar and respondent No. 5-Dr. V.S. Chougla.

List the matter for framing of charges against respondent Nos. 1, 2, 3 & 5 on 09.06.2009.

Respondents 1, 2, 3 and 5 to be present before the Court on that day. However, it is optional for the 4th respondent to be present before the Court.

3. The accused filed Misc. W.61090/2009 for recalling the order dated 27.05.2009. By a considered order the Learned Judges found no merit in the application, rejected the said application and in the end of the order it was observed as under:

Even after hearing the Learned Advocate General, we find that the position is not different and charges have to be framed against the accused persons and their response elicited.

However, the Learned Advocate General has pointed out that the connected writ appeal having been listed along with this matter, these two matters and a subsequent related writ petition questioning the legality of the order dated 12.08.2008 and all be taken up together.

Sri Subramanya Jois, Learned Senior Counsel submits that the outcome of the writ appeal will not have any bearing on the contempt proceedings.

Be that as it may, we have examined the merits of the appeal and we have admitted the appeal today. As the Learned Advocate General requested that the writ appeal may be disposed of, we grant his request and the framing of charges against the accused persons is put on hold for the present. However, they are

directed to appear before the Court for the very purpose on 22.06.2009 for framing of charges, however, independent of the writ appeal.

4. On 22.06.2009, the case was adjourned for the purpose of framing of charges to 29.06.2009. From 29.06.2009 it was ordered to be re-listed on 10.07.2009 for framing of charges. On 10.07.2009 the charges were not read over to the accused-respondents for want of time. It was adjourned to 16.07.2009.

5. The Writ Appeal came to be disposed of on 20.06.2009. Misc. W. No. 61344 of 2009 is filed to recall the order dated 27.05.2009. Objections are filed to the said application. When the said application was taken up for consideration, Sri Subramanya Jois, Learned Senior Counsel raised a preliminary objection. He contended that the application is filed for recalling the order dated 27.05.2009. In substance they are seeking review of the order dated 27.5.2009. The said order is passed by a Bench consisting of two Judges. Relying on Rule 5 of the Karnataka High Court Rules, 1959, he contended an application for review shall be posted before the original Bench which passed such order. It is not a case of the said Bench not being available by reason of absence. When they are functioning as Judges of the Karnataka High Court, it could not be said that it is not possible to constitute the said Bench because of their absence and therefore, the law mandates that this application for reconsideration should be listed before the original Bench after constitution by the Learned Chief Justice. He further submitted that Order 47 Rule 5 C.P.C. mandates that an application for review in Court consisting of two or more Judges has to be considered by such Judge or Judges or any of them and no other Judge or Judges of the Court shall hear the same and therefore, he contended in the light of the aforesaid statutory provisions, this Bench is not competent to hear this application for recalling/ review the order.

6. Per contra, Learned Advocate General submitted that the order sought to be recalled is passed by the Circuit Bench sitting at Dharwad. On the day the application for recalling the order was filed at the Circuit Bench at Dharwad, the Judges who passed the said order are not sitting at the Circuit Bench at Dharwad. Though they are sitting at the Principal Bench at Bangalore, as they are absent at the Circuit Bench at Dharwad, in terms of Rule 5, the present Bench is constituted to hear this application according to roster and therefore, there is no substance in the contention of the Learned Senior Counsel for the complainant. Even otherwise, he submitted the Circuit Bench at Dharwad is constituted for the convenience of the litigants of this particular area. If the review petition is to be heard by the very same Judges who are sitting at the Principal Bench at Bangalore, it would cause inconvenience to the litigant public. Otherwise, if the Chief Justice has to constitute the very same Bench and ask that Bench to sit at Circuit Bench at Dharwad and decide this review petition, it creates administrative problems apart from enormous expenses.

Lastly, he submitted though as a rule the applications for review, reconsideration or recalling have to be heard by the same Judges, it is not an invariable rule. In

order to correct a typographical error, unintentional mistakes which have crept in, it is always open to the Bench constituted according to the roster to correct the same.

He further submitted that these are the aspects the Court should bear in mind while deciding the question of jurisdiction, as it would have a serious ramification on matters which may come up before this Court from time to time. A satisfactory and viable solution is to be found out. These problems have arisen probably for the first time because of the constitution of the Circuit Benches at Dharwad and Gulbarga. Therefore, he sought for appropriate order which may be of guidance for future.

7. The Learned Advocates who were present in the Court who were following these proceedings, wanted to make their submission to assist the Court to arrive at a right conclusion as it is going to affect on the future working of the Circuit Bench at Dharwad. Therefore, the Learned members of the Bar were permitted to address their arguments on these legal issues.

8. Sri F.V. Patil, the Learned Counsel submitted that review petitions or applications for reconsideration or recalling are to be heard by the very same Judges who constituted the Bench which passed the original order. But in a given case, if there is no necessity for a conscious application of a judicial mind of a Judge, and what is required to be corrected or reviewed is a typographical error, clerical error or some unintended mistakes, such orders could be passed by any other Bench which did not pass the original order.

9. Sri Veeresh Budihal, Learned Counsel submitted in this regard that there are two full Bench judgments of the Calcutta High Court taking just opposite views and he pressed into service those judgments as they throw some light in deciding this issue.

10. Sri V.R. Datar the Learned Counsel brought to our notice the statutory provisions contained in the High Court Rules. He pointed out a Circular issued by the Learned Chief Justice directing posting of these review petitions before the Benches according to roster and not before the very same Benches which passed the said order would run counter to the statutory provisions.

11. Sri B.P. Hiremath Learned Counsel who is also the President of the Advocates' Association of the Circuit Bench, Dharwad, submitting on behalf of the members of the Bar contended the Circuit Bench is constituted by virtue of the power conferred on the Chief Justice u/s 51(3) in consultation with the Governor of Karnataka in order to see that the litigants of this area are benefitted. Accordingly, by virtue of the power conferred on it, the High Court is on circuit sitting at Dharwad. There is only one High Court and the Circuit Bench at Dharwad is the High Court of Karnataka and the allocation of the work at this Circuit Bench is regulated by the Circulars and the Notifications issued by the Learned Chief Justice in respect of which he has the absolute power. There are a catena of decisions which have declared that the Learned Chief Justice has the

unbridled power in the matter of allocation of work, preparation of roster and issuing directions for the Benches to sit at a place other than the Principal Bench at Bangalore and therefore, he submits the legal issue involved is to be considered in this background, keeping in mind the object with which the Circuit Bench is constituted, the benefit which has accrued to the litigants who fall within the jurisdiction of the Circuit Bench and therefore, he submitted if two interpretations are possible the one which is favourable to the litigants and the smooth functioning of the Circuit Bench is to be upheld. He also pointed out that a Division Bench of this Court already has laid down parameters based on the Notifications issued earlier on the recommendation of the Full Court in the case of E. Ram Mohan Chowdry v. Registrar General, High Court of Karnataka AIR 2008 Kar 195, which is also of assistance in deciding the issue involved.

12. Sri R.L. Patil, Learned Counsel pointed out that the Circulars which are issued from time to time regulating the work, roster and other matters connected with the functioning of the Circuit Benches run counter to the statutory provisions. He also submitted, in the aforesaid Division Bench the question which arose for consideration was whether the power of the Chief Justice under Sub-section (b) (1) of Section 51 of the Act includes the power to establish a Bench or Benches at such place or places and to specify the territorial jurisdiction of such Benches and to transfer the pending cases to such Circuit Benches and to permit the filing of a new case at such Circuit Benches. When what was involved in the said proceedings was the power of the Chief Justice and the legality of the Notifications issued by him, the longstanding practice of this Court is that such question should have been decided by a Bench consisting of Judges other than the Learned Chief Justice. In that view of the matter, he submitted the said judgment requires to be considered in the light of the well-settled legal position over several decades.

13. In the light of the aforesaid submissions, having regard to the nature of the prayer made in Misc. W. No. 61344 of 2009 and the preliminary objection regarding our jurisdiction to decide the said application, the following points arise for consideration:

(i) Whether the "absence" of the Judges from the Circuit Bench at Dharwad would constitute absence referred to in Rule 5 of the Karnataka High Court Rules, 1959 so as to enable the Learned Chief Justice to direct the petition/application for review/ reconsideration or recalling of an order, to be posted as per roster existing in the Circuit Bench?

(ii) When the Judges who pass the order are very much part of the Bench of the High Court of Karnataka and sitting at the Principal Bench is it not possible for the litigant to approach the Principal Bench for hearing of the review petition when the Learned Chief Justice could constitute a Bench of the very same Judges who are very much part of the Bench and who are available to him for the constitution of the Bench?

POINT No. 1:

14. What is review?

(1) A review is not the same thing as or a substitute for an appeal. The primary intention of a review is, re-hearing of a matter by the same Judge or forum under certain conditions, while an appeal is re-hearing of the matter by another (higher) forum. An application for review does not of necessity, by mere fact of it being filed, reopens questions decided by order or decisions sought to be reviewed. Those matters are re-opened only after the application for review is accepted. Thus, the power of review is a restricted power which authorises the Court or the Tribunal which passed the judgment, sought to be reviewed, to re-examine the judgment, not with the object of substituting it with a fresh judgment or order, but in order to correct it, if some material on record which ought to have been considered has been overlooked or some fresh material which has come to light and which earlier, despite efforts, was not within the knowledge of the party seeking review. A prayer for review is a prayer for judicial re-examination of the case in certain specified facts and/or circumstances. It is a re-examination of a proceeding already concluded. Review is of two types. (a) Procedural and (b) substantive. Every Court or Tribunal has an inherent power of procedural review. Article 226 of the Constitution of India has conferred a plenary power upon the High court to exercise the jurisdiction thereunder, a power to review is implied in the said provision itself. Power of review inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or correct grave or palpable errors committed by it.

15. Sections 152 and 153A of Code of Civil Procedure, 1908 [hereinafter referred as "CPC"] are different from the provisions of review contained in Section 114, Order 47, Rule 1 of CPC. They deal with different powers. In fact, a review under Order 47, Rule 1 and amendment u/s 152 are totally different concepts. In the case of a review, the correctness of the judgment, decree or order is in question, while in the case of an amendment of decree, the correctness of the judgment is assumed and the jurisdiction is for bringing the decree in conformity with the judgment. Again where a review is allowed, the case has to be reheard on merits but not if an amendment is allowed. In the case of review, a fresh decree is passed while in the case of an amendment the same decree is to be amended.

STATUTORY PROVISIONS

Order XLI Rule 5 of the Code of Civil Procedure:

Application for review in Court consisting of two or more Judges-Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and "is not or are not precluded by absence" or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the same application, and no

other Judge or Judges of the Court shall hear the same.

(2) This rule means nothing more than this. That is, where the Judge or Judges or any one of the Judges who passed the decree or made the order, a review of which is applied for, continues or continue to be attached to the court at the time when the application for a review is presented, such Judge or Judges alone shall hear the application and no other Judge or Judges of the Court shall hear the same. The intention of the Legislature was that if an error apparent on the face of the record is sought to be pointed out then Rule 5 provides that the Judge or Judges who had fallen into the alleged error should have an opportunity to reconsider it.

(3) The prohibition against a Judge or Judges who had not participated in the judgment or order sought to be reviewed from hearing an application for review is limited to a case where the Judge or Judges who passed the decree or made the order is or are available to hear the same when it comes up for hearing. If they would be available within six months from the date of presentation of the application for review, no other Judge or Judges can hear it. Where a provision in a statute is mandatory and the mandate has been issued in a clear and strong language, the duty of the Court is merely to give effect to that mandate irrespective of all considerations, as to the consequences resulting from the adoption of such a course. It is not for the Court to speculate on the wisdom of the policy underlying the enactment of such a provision. Where the provisions in a statute are imperative, Courts would not be justified in disregarding them on equitable grounds.

(4) In *Maharaja Maheshwar Singh v. Bengal Government* 1859 (7) Moor Ind App 283, the judicial committee held as under:

We do not say that there might not be cases in which a review might take place before another and a different Judge; because death or some other unexpected and unavoidable cause might prevent the Judge who made the decision from reviewing it; but we do say that such exceptions are allowable only *ex necessitate*. We do say that in all practicable cases the same Judge ought to review; and that for the attainment of that object, expedition in the presenting a period for the review is indispensable, and the only practicable course for attaining that end by accelerating the hearing of the review before accident or unexpected events shall have removed the original Judge. Looking at all these circumstance, we should naturally expect to meet in the Regulations upon this subject such provisions as would prevent the evils necessarily incidental to delay and procrastination.

(5) The Supreme Court in the case of *Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others*, held as under:

...the review petitions are not by way of appeals before the superior Court but they are by way of requests to the same Court which decided the matter, for persuading it to recall or reconsider its own decision on grounds which are legally

permissible for reviewing such orders. As laid down by Order 47 Rule 5 CPC as far as possible the same two Learned Judges or more Judges who decided the original proceedings have to hear the review petition arising from their own judgment. Thus in substance a review amounts to reconsideration of its own decisions by the very same Court. When the Court sits to review its own order, it obviously is not sitting in appeal over its judgment but is seeking to have a fresh look at its own judgment of course within the limits of review powers, but still invoking for that limited purpose the very same jurisdiction which it exercised earlier. It is axiomatic that if a Division Bench of two Learned Judges deciding the appeal had exercised appellate powers and when its decision is sought to be reviewed it can be said to be required to reconsider its own decision within the limits of review jurisdiction but still in exercise of the same appellate jurisdiction which it earlier exercised. Similarly when a decision rendered in exercise of original jurisdiction by a Bench of two Learned Judges is sought to be reviewed, the Learned Judges exercising review jurisdiction subject to the limitations inhering such an exercise, can be said to be called upon to reconsider their decision earlier rendered in exercise of the very same original jurisdiction. In that review jurisdiction takes colour from the nature of the jurisdiction exercised by the Court at the time when the main judgment sought to be reviewed, was rendered. Review jurisdiction, therefore, cannot be said to be some independent jurisdiction sought to be exercised by the Court dehors the nature of the jurisdiction exercised by it when the judgment sought to be reviewed was rendered by it.

(6) A Full Bench of the Calcutta High Court in the case of Ratanlal Nahata Vs. Nandita Bose, had an occasion to consider several questions including the question whether Order 47 Rule 5 of CPC is mandatory and there is no discretion in a civil proceeding except for the hearing of review application by the Learned Judge who was a party to the earlier proceedings and who is available. It was held that, the Hon'ble Chief Justice has an unfettered jurisdiction in the matter of constitution of Benches in all matters including a review application. As a matter of propriety, a Judge who is still attached to the Court should be made a party to hear the review application unless exceptional situation arises which may in the opinion of the Hon'ble the Chief Justice would be subversive to imparting justice to a litigation keeping in view the principle that justice is not only to be done but manifestly seem to be done. The said Full Bench was presided by the Learned Chief Justice of the Calcutta High Court.

(7) After referring to the law laid down by the Apex Court in the case of High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another, where it was held 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. 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 and the Chief Justice has full authority and power to distribute the work to the Judges and to regulate their jurisdiction and sittings.

The Learned Chief Justice in his judgment has observed as under:

As master of the roster, the Chief Justice is expected to know the implication of a review, and reference or any other matter of significance including proper hearing of a case by a Judge or more than one Judges of the Court constituting a Bench. In exceptional cases when there is a chance of injustice to a litigant notwithstanding the procedure under Order 47, Rule 5 of the CPC the review application can be placed before a Judge or a Bench of more than one Judge as constituted by the Chief Justice but it would be in conformity with the procedure and judicial discipline that:

1. Order 47 Rule 5 of the CPC although ipso facto has no application in relation to a writ proceeding or a proceeding on the Original Side of this Court as well as in proceedings that arises on the Appellate Side, the procedure in principle in Order 47 Rule 5 should be followed and:
2. In a case where merely one of the Learned Judges attached to the Bench is available, he may issue rule but the matter on merit must be heard by a Division Bench of two Judges or such number of Judges as the Hon"ble Chief Justice may constitute and:
3. It would be proper, even though the Chief Justice may have unfettered jurisdiction in the matter of constitution of Benches including for a review application that the Judge who is still attached to the Court and was a party to the Judgment under review is associated with the Bench of two or such number of Judges as the reference is answered accordingly.

(8) However, subsequently yet another Full Bench of the Calcutta High Court in the case of K.N. Mishra Vs. Union of India (UOI) and Others, was called upon to decide the question similar to the one decided by earlier Full Bench with reference to the jurisdiction of the Circuit Bench at Port Blair to decide review petitions. The question was, whether in a Circuit Bench at Port Blair an application for review of an order passed by a Bench sitting in writ jurisdiction can be entertained by a succeeding Circuit Bench consisting of different Judges from those of the previous one in the absence of any special assignment of the Hon"ble Chief Justice when the Judges of the previous Bench are still functioning as the Judges of the Calcutta High Court? Referring to the earlier Full Bench judgment it was held that in the subsequent case they are faced with a situation which is different from the situation that had been considered by the Full Bench in Ratan Lal Nahat's case. In that case they are called upon to consider the provisions of Order 47 Rule 5 of CPC not in relation to Chapter X of the Appellate Side Rules or Chapter XXXI of the Original Side Rules, but in relation to Chapter XVIII of the Appellate Side Rules dealing with matters pertaining to the Andaman and Nicobar Islands. Rule 3 of Chapter XVIII of the Appellate Side Rules as amended on 22nd November 1991, read as follows:

3. All cases including applications under Articles 226 and 227 of the Constitution of India shall be initiated in the Islands and heard by the Circuit Bench.

Interpreting the said provision it was held as under:

...the intention of the said Rule appears to be that all matters pertaining to the islands should be initiated and disposed of in the Islands by the Circuit Bench visiting the Islands on being appointed by the Chief Justice from time to time. In our view, the expression "Circuit Bench " mentioned in Rule 3 would not necessarily mean the same set of Judges who initially hears a matter which is afterwards the subject matter of a review application. "Circuit Bench " has been defined in Rule 1(b) to mean a Bench consisting of one or more Judges holding Court in the Islands. If the intention of Rule 3 is that all cases pertaining to the Islands should be initiated and heard in the Islands by the Circuit Bench, it would become entirely impractical to apply the principles of Order 47 Rule 5 of the CPC which would entail the review application being heard by the same Judges who initially heard the matter which, in fact, could delay the hearing of the review application indefinitely, since according to normal practice Judges visit the Islands on Circuit by rotation and a set of Judges who sit on a Circuit Bench may not be available to sit on the Circuit within the same year.

The aforesaid situation necessarily implies that it may not always be possible for the Bench hearing a review application to pass a final verdict on the review application by stating what the order on the main application should be. The limited time available to a Circuit Bench in deciding a review application may require to review application to be heard by one Bench and the main matter to be heard by another Bench, notwithstanding the fact that the Judges comprising the First Bench may be available in Calcutta. What is relevant is their unavailability in the Islands to give effect to the principles of Order 47 Rule 5 of the Code of Civil Procedure.

Therefore, they proceeded to hold that, in the special circumstances prevailing in the Andaman and Nicobar Islands and in particular, Rule 3 of Chapter XVIII of the Rules provided for initiation of proceedings in the Islands, an application for review of an order passed by a Bench sitting in writ jurisdiction can be heard and decided by a succeeding Circuit Bench consisting of a different set of Judges even without any special assignment of the Hon'ble Chief Justice, notwithstanding the fact that the Judges of the previous Bench are still functioning as Judges of the Calcutta High Court. In the instant case there is no such statutory provision, providing for initiation of proceedings at the Circuit Benches, as such the said judgment has no application to the facts of this case.

16. The Karnataka High Court has framed the High Court of Karnataka (Contempt of Court Proceeding) Rules, 1981. Rule 20 of the said rules reads as under:

20. Application of the High Court of Karnataka Rules 1959: In matters not specifically provided for in these rules, the procedure prescribed in the High Court of Karnataka Rules, 1959 as amended from time to time, shall mutatis mutandis apply to the proceedings under these rules.

Rule 5 of Chapter III of Karnataka High Court Rules, 1959 reads as under:

Every petition or application for review, reconsideration or correction of a judgment, decree, order or sentence shall be posted before the original Bench which pronounced, made or passed such judgment, decree, order or sentence or if the Judge or any of the Judges who constituted the said Bench is not available by reason of death, retirement or absence, before any other Bench constituted in the same manner as the original Bench.

A reading of the above provision makes it clear that every petition or application for review, reconsideration or correction of a judgment, decree, order or sentence shall be posted before the original Bench which pronounced or made or passed such judgment, decree or order. The only exception carved out to this rule is, if the Judge or any of the Judges who constituted the said Bench is not available by reason of death, retirement or absence, then such proceedings shall be posted before any other Bench constituted in the same manner as the original Bench.

17. In the instant case, we are not concerned with the Bench being not available by reason of death or retirement. We are concerned with the Bench being not available by reason of "absence". Therefore, it is necessary to find out the context in which the word "absence" is used in this provision and the legal effect of the same.

18. In the case of Prof. S.N. Hegde and Anr. v. Lokayukta, Bangalore and Ors. ILR 2004 Kar 2892, in a similar situation regarding the meaning of the word "absence", it has been held as under:

49. In construing the meaning of the word "owing to absence", it is to be remembered, that many words of common use in English language have more than one meaning. It is not infrequent that a word having one meaning in its ordinary employment has a materially different or modified meaning in its legal use. The word absence is a fair example. It is held that one may be absent, though actually present, as where a Judge though on the Bench, does not sit in the cause. It has also been held to mean not present. It has been held, too, as not meaning out of the State only. "Absence " and "disability " are words which, from their use in the statutes may have two different meanings. The Legislature has not defined the sense in which either of them is to be construed. "Disability" is a word of scarcely less ambiguity, as generally used in common parlance, than "absence ". It is a difficult task, if not impossible one, to lay down a rule that could apply to all cases defining the meaning of "absence ". The word "absence " used in the statute providing that on the absence of a public servant, constitutional functionary, Judge or an elected representative, another functionary shall act in their place means not merely physical absence of the said functionary from the city, but such an absence as renders him incapable for the time being of performing the act that may be in question, which act must present such a necessity for immediate attention as to require it to be executed.

50. In *Re: An Act concerning Alcoholic Beverages* 31.A2d 837, 841 : 130 NJI 123, it was held, the word "absence" as used in constitutional provision that in case of Governor's absence from State the powers and duties of the office shall devolve on the President of the Senate until the Governor shall return does not mean the absence from the state by the Governor for any purpose or for any period of time however short, but means an absence such as will injuriously affect public interest as distinguished from a mere temporary absence.

51. In *Nolan v. Representative Council of City of New Port*, it was held that the Municipal Charter provision that chairman of board of aldermen shall perform duties of mayor or in case of "absence" or inability of mayor to act did not authorize chairman of board to perform mayors duties in case of a vacancy in that office created by mayor's death, since quoted word connotes that a person is in being but not present in some particular place and not that he has died.

19. The need or occasion for the Chief Justice to exercise the power under Rule 5 arises only when the "original Bench is not available by reason of death, retirement or absence". Only then the Chief Justice gets the power under Rule 5 to constitute a Bench in the same manner as the original Bench. Therefore, the word "not available" assumes significance. Only if a Judge retires, dies or is incapable of discharging the duties for any reason, it could be said that a Judge is "not available". The absence of a Judge should render him not available to the Chief Justice to constitute a Bench. Only when a Judge is not able to discharge his judicial functions, it can be said that he is "not available" to the Chief Justice to constitute the Bench. A Judge may be very much present at a place, but not able to discharge the judicial functions. Therefore, the absence is not from the place; the absence of a Judge should result in the non-availability of the Judge to constitute the Bench and utilise his services. A Judge who was sitting at a Circuit Bench is asked to sit at another Circuit Bench or the Principal Bench; he is only not present at the place where he was sitting earlier according to roster. With the change of the roster, he is asked to sit at another Circuit Bench or the Principal Bench. Therefore, it cannot be said that the Judge is absent at the earlier Circuit Bench where he was sitting earlier. The word "absence" is an act which should be attributed to the Judge. His act should result in absence rendering him not available to the Chief Justice to constitute the Bench. When a High Court has more than one place of sitting, and the Chief Justice arranges the roster, naturally a Judge cannot sit at more than one place at a time. It cannot be said that he is absent at the place he is not sitting. The absence should be from sitting at all the Benches of the High Court, and further not available to the Chief Justice to constitute a Bench. The word "absence" used in the statute means not merely physical absence of the Judge at a place, but such absence as renders him incapable for the time being of performing the act, namely judicial functions, which act/disability must present such necessity for immediate attention as to require it to be executed. It means, an "absence" as such will injuriously affect public interest as distinguished from a mere temporary absence. It connotes that a Judge is in being but not present to discharge his judicial function. If a Judge

who was discharging his judicial functions according to roster prescribed by the Chief Justice at a place, is asked to sit and discharge the judicial function according to the subsequent roster prescribed by the Chief Justice at a different place, it would not result in his "absence" at the earlier place. The Judge is not the cause for absence. He continues to discharge the judicial function. He is not absent from the Bench. He continues to be a member of the Bench. He is available to the Chief Justice to constitute a Bench. Therefore, it cannot be said that he is not available by reason of "absence" from constituting the original Bench.

20. The circular issued providing for review petitions being posted as per roster existing in the Circuit Bench reads as under:

High Court of Karnataka, Circuit Bench, Dharwad, Dt. 29.12.2008

NOTIFICATION-HCE: CBD:01/2008

It is hereby notified that review petitions relating to Judgments, Decree, Order or sentence pronounced, made or passed by the Division Bench or Single Bench in respect of Circuit Bench, Dharwad, will be posted as per the roster existing in the Circuit Bench, Dharwad

By Order of Hon'ble Chief Justice Sd/- (B.A. PATIL) Addl. Registrar General

21. Review of an order or decree is statutorily provided. Once there is a provision in the statute, the power of review is governed by the said provision. The power of the Chief Justice to arrange roster has nothing to do with the power of review. The power of review and the power to arrange roster operates in two independent exclusive fields. When the statute also provides for the constitution of Benches and Judges to decide the review petition, it has to be done accordingly. The Chief Justice has to arrange the roster in conformity with the statutory provisions. When the field is covered by a statute, the question of Chief Justice exercising his unbridled power of arranging roster contrary to the same would not arise. His power is to be exercised only when the area is not covered by any statutory provision. Once the area is covered by a statutory provision, the Chief Justice also has to exercise his power in accordance with the statutory provision, giving effect to the letter and spirit of the said statutory provision. No discretion is conferred in this regard on the Chief Justice. In this context, it is necessary to bear in mind the words of wisdom by the learned Chief Justice, Mr. Prabhaskar Mishra:

As master of the roster, the Chief Justice is expected to know the implication of a review and reference or any other matter of significance including proper hearing of a case by a Judge or more than one Judges of the Court constituting a Bench. In exceptional cases when there is a chance of injustice to a litigant notwithstanding the procedure under Order 47, Rule 5 of the CPC the review application can be placed before a Judge or a Bench of more than one Judge as constituted by the Chief Justice but it would be in conformity with the procedure

and judicial discipline...

Underlining by us

Therefore, Review petitions have to be assigned by the Chief Justice in conformity with the procedure, in particular according to statutory provisions as contained in Rule 5 of Chapter III of the Karnataka High Court Rules and judicial discipline, as enunciated by the Hon"ble Supreme Court in the case of RELIANCE INDUSTRIES LIMITED. The review petitions shall be heard by the original Bench which has passed the order which is sought to be reviewed, unless the Bench is not available by reason of death, retirement, or absence. The said circular does not make any reference to the reason for constituting a different Bench at all. The circular dated 29.12.2008 directing review petitions to be posted as per the roster existing in the Circuit Bench is contrary to Rule 5 of Chapter III of the Karnataka High Court Rules. Ignoring the statutory provision, if he arranges the roster contrary to law, it has no legal effect, arrangement of roster being an administrative action, such action is amenable to writ jurisdiction of the High Court. Therefore, the general circular as issued by way of Notification No. HCE/CBD/01/2008 is ultra vires and void and cannot be given effect to. It has no force of law.

22. The fallout of such circular and the consequences flowing therefrom cannot be lost sight of. Each term of the Circuit Benches is normally for six weeks. A pernicious practice has developed at these Circuit Benches where after the Bench which has pronounced the order, has moved over to the Principal Bench or other Circuit Bench, applications are filed for review of the orders passed by the said Bench routinely. The review petitions are entertained, dealt with like appeals against the orders passed by the original Bench and in many cases, judgments are reversed. If this trend is allowed to continue, the efficacy of the judicial system would be destroyed. One of the hallmarks of judicial system is certainty of decisions, and that would be lost. The review jurisdiction is converted into appellate jurisdiction intra Court appeal, within the High Court itself. It would not augur well for the system. It is because of that it is said, a review petition has to be heard by the very same Judge/Judges constituting the original Bench. It is the error committed by them that is to be rectified by them only and not by other Judges, as the jurisdiction to be exercised is that of review jurisdiction and not appellate jurisdiction. This is an aspect which the Learned Chief Justice has to bear in mind and to see that review provisions are not misused or abused as an appellate provision.

POINT No. (2):

23. If the Judges who were members of the original Bench which decided the matter is not sitting at the Circuit Bench and they are discharging their duties at the Principal Bench, is it not possible to constitute the original Bench there to decide the review petition? It was contended that the matters which arose for consideration or which arise for consideration at the Circuit Benches cannot be

decided by the Principal Bench. In support of that contention, they relied on the judgment of the Division Bench of this Court in the case of E. Ram Mohan Chowdry v. Registrar General, High Court of Karnataka (Supra). Therefore, the question for consideration is:

Whether the Principal Bench is precluded from hearing matters arising at Circuit Benches at Dharwad and Gulbarga?

In order to appreciate this contention, it is necessary to look into the brief history of the constitution of the High Court of Karnataka, High Court of Mysore and the Chief Court of Mysore.

24. In the Princely State of Mysore, the High Court was called as the Chief Court of Mysore and was presided by Chief Judge. By Act 12/1930 for the words "Chief Court of Mysore, Chief Court and Chief Judge", the words "High Court of Mysore, High Court and Chief Justice" respectively were substituted. His Highness the Maharaja of Mysore enacted the Mysore High Court Act, 1884. It provided for the administration of justice. The Princely State of Mysore after independence was a Part B State. Even after independence in the State of Mysore, the Mysore High Court Act, 1884 was in force. The Indian Parliament enacted the States Reorganisation Act, 1956 [hereinafter for short referred to as "the Act"] providing for reorganisation of the States of India. Accordingly, the States were reorganised. Part V of the said Act deals with High Courts. Sub-section (2) of Section 49 of the Act declares that, as from the appointed day, i.e. 1.11.1956, there shall be established a High Court for each of the new States of Kerala, Mysore and Rajasthan. Consequently, Section 50 of the Act deals with abolition of certain Courts. It provides that, as from the appointed day, the High Courts of all the existing Part B States except Jammu and Kashmir, and the Courts of the Judicial Commissioners for Ajmer, Bhopal, Kutch and Vindhya Pradesh shall cease to function and are hereby abolished. Consequent upon the abolition of the High Court of the former State of Mysore by Section 50 of the Act and the establishment of a new High Court for the new State, Sections 52, 54 and 57 of the Act govern the jurisdiction, practice and procedure and the powers of the Judges of the new High Court. u/s 52, the High Court has, in respect of the different areas of the State such original, appellate or other jurisdiction, which under the laws in force before 1st November 1956, the High Courts of Bombay, Hyderabad, Madras and Mysore had in the areas concerned. By virtue of Section 54, the provisions of the Mysore High Court Act, 1884, are applicable in respect of the practice and procedure in relation to the High Court of the new State, and by virtue of Section 57, the provisions of the said Act are applicable in respect of the powers of the Chief Justice, single Judges and Division Courts and matters ancillary to the exercise of those powers. u/s 69 of the States Reorganisation Act, the provisions referred to above will have effect subject to any provision that may be made with respect to the High Court by any Legislature or other authority having power to make such provision.

25. The Government of India suggested the enactment of a law by the State

Legislature so that the State High Court can exercise the same powers and jurisdiction in respect of the whole of the new State. Accordingly, a Bill was prepared in consultation with the High Court. The recommendations of the Law Commission have also been considered. Provision has been made in the Bill specifying the cases to be heard by a single Judge and by a Bench of two Judges. In respect of decisions of a single Judge in the exercise of original jurisdiction, an appeal to a Bench of two Judges has been provided for. Thus, the Karnataka High Court Act, 1961 came to be enacted by the Karnataka State Legislature which received the assent of the President on the 25th day of December 1961. It was first published in the Karnataka Gazette on 1.2.1962. Section 14 of the Karnataka High Court Act, 1961 repealed Sections 11, 12, 13, 14, 15, 16, 16-A, 16-B, 20 and 22 of the Mysore High Court Act, 1884 (Mysore Act 1 of 1884). However, the remaining provisions of the Act are still in force.

26. Section 51 of the Act of 1956 which deals with principal seat and other places of sitting of High Courts for new States reads as under:

51. Principal seat and other places of sitting of High Courts for new States.-

(1) The principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint.

(2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent Bench or Benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), the judges and Division Courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint.

Section 52 of the said Act deals with jurisdiction of High Courts for new States which reads as under:

52. Jurisdiction of High Courts for new States.- The High Court for a new State shall have, in respect of any part of the territories included in that new State, all such original, appellate and other jurisdiction as under the law in force immediately before the appointed day, is exercisable in respect of that part of the said territories by any High Court or Judicial Commissioner's Court for an existing State.

Section 54 deals with practice and procedure which reads as under:

54. Practice and procedure.- Subject to the provisions of this Part, the law in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, with necessary modifications, apply in relation to the High Court for a new State, and

accordingly, the High Court for the new State shall have all such powers to make rules and orders with respect to practice and procedure as are, immediately before the appointed day, exercisable by the High Court for the corresponding State.

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, until varied or revoked by rules or orders made by the High Court for a new State, apply with the necessary modifications in relation to practice and procedure in the High Court for the new State as if made by that Court.

Section 69 reads as under:

69. Savings. Nothing in this Part shall affect the application to the High Court for a new State of any provisions of the Constitution, and this Part shall have effect subject to any provision that may be made on or after the appointed day with respect to that High Court by any Legislature or other authority having power to make such provision.

27. A reading of Section 51 of the Act of 1956 shows the principal Bench of the High Court shall be at such place as the President may notify. The principal seat of the High Court of Karnataka is at Bangalore. Benches which are constituted at Dharwad and Gulbarga are not permanent benches constituted u/s 51(2) of the Act. Therefore, in pursuance of the power conferred on the Chief Justice by virtue of Sub-section (3) of Section 51, the Chief Justice has arranged for sitting of the Judges and division courts of the High Court at Dharwad and Gulbarga with the approval of the Government. These are called "Circuit Benches". For the entire state of Karnataka, there is only one High Court. The jurisdiction of the High Court extends throughout the territories of Karnataka.

28. These provisions came up for consideration by the Supreme Court in the case of State of Maharashtra Vs. Narayan Shamrao Puranik and Others, wherein it is held as under:

The establishment of a permanent Bench or Benches for the High Court of a new State by a Presidential Order issued under Sub-section (2) of Section 51 of the Act has to be in consultation with the Governor of that State and the Chief Justice. In contrast, the power to appoint the sittings of the Judges and Division Courts of the High Court for a new State at places other than the place of the principal seat, is in the unquestioned domain of the Chief Justice, the only condition being that he must act with the approval of the Governor. It is basically an internal matter pertaining to the High "Court. The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provision contained in sub-Section (3) of Section 51 of the Act, but inheres in him in the very nature of things. The opinion of the Chief Justice to appoint the seat of the High Court of new State at a place other than the principal seat under sub-

Section (3) of Section 51 of the Act must therefore normally prevail because it is for the more convenient transaction of judicial business. There is no territorial bifurcation of the Bombay High Court merely because the Chief Justice by the impugned order issued under Sub-section (3) of Section 51 of the Act directed that the Judge and Division Courts shall also sit at Aurangabad. The Chief Justice acted with the best of intentions within the scope of his powers. We see no substance in the High Court's conclusion that the Notification issued by the Chief Justice is a colourable exercise of power.

In that view, we allow the appeal preferred by the State of Maharashtra, set aside the judgment of the Bombay High Court dated December 14, 1981 and direct that the sittings of the High Court of Judicature of Bombay may be held and continue to be held at Aurangabad, in Bombay High Court, with full and normal powers to entertain and dispose of all matters arising out of the Marathwada region, that is to say the area comprising the districts of Aurangabad, Bhir, Jalna, Nanded, Osmanabad and Parbani. All cases pertaining to that region and pending as on this day at the main seat of the High Court, that is, at Bombay shall have to be dealt with the disposed of as the Chief Justice of the High Court may direct, consistently with the terms of the Notification dated August 27, 1981 issued by him.

In the case of *E. Ram Mohan Chowdry v. Registrar General, High Court Of Karnataka* 2008 AIR Kar 156 (DB), it is held as under:

5. Considering the contentions urged by the Learned Counsel, the point that arises for our consideration is:

Whether the power of the Chief Justice under Sub-section (3) of Section 51 of the Act includes the power to establish a Bench or Benches at Such, place or places and to specify the territorial jurisdiction of such Circuit Benches and to transfer the pending cases to such Circuit Benches and to permit filing of new cases at such Circuit Benches?

The said question is answered in the following manner:

Hence, it is apparent that, by virtue of the power conferred on the Chief Justice under Sub-section (3) of Section 51 of the Act, the Chief Justice can establish a Bench or Benches, at such place or places where the Judges and Division Courts may sit and that he has the power and authority to issue administrative directions for the filing of cases or institution of proceedings at such place or places. By that process, there will be no territorial bifurcation of the High Court of Karnataka, merely because of the arrangement made in terms of the impugned Notification. Hon''ble Supreme Court in the case of *State of Rajasthan Vs. Prakash Chand and Others*, has held that, the Hon''ble Chief Justice of the High Court has the prerogative to distribute the business of the High Court, both judicial and administrative, that the Chief Justice is the Master of the Roster and that he alone has the right and power to decide how the Benches of the High Court are to be constituted, which judge has to sit along and which cases he can

and as required to hear and also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In exercise of the said prerogative, right and power, if the Chief Justice of the High Court of Karnataka has directed that cases arising from certain districts shall be heard and decided by the Judges sitting at a particular Circuit Bench, it cannot be held to be wrong or illegal. There is nothing wrong in specifying the new cases arising from certain districts shall be filed at the particular circuit Bench, as those cases are to be heard and decided by the Judges sitting at that Circuit Bench. Such an arrangement is for administrative convenience and the advantage of the litigants. After all, the Courts are for the benefit of the litigant public and hence their convenience should be the paramount consideration. The impugned Notification is a positive and concrete step to achieve the goal of providing easy and less-expensive access to justice.

29. From the aforesaid decisions, it is clear that the law on this point is well settled. It is the prerogative of the Chief Justice to distribute business of the High Court, both judicial and administrative. The power to make roster exclusively vests in the Chief Justice. The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provision contained in Sub-section (3) of Section 51 of the Act, but inheres in him in the very nature of things. The power to regulate the sittings of the Judges and Division Courts of the High Court at places other than the place of the principal seat is in the unquestioned domain of the Chief Justice, the only condition is that he must act with the approval of the Governor. It is basically an internal matter pertaining to the High Court. When he arranges sittings of the High Court at a place other than the place of the principal seat and assigns work of a particular area of the State it does not amount to territorial bifurcation of the High Court. It is for the Chief Justice to allot work to judges and judges can do only such work as is allotted to them. Any order made by a judge in a case that is not placed before him by the Chief Justice or in accordance with his directions, is an order without jurisdiction. The Chief Justice alone can determine the jurisdiction of various judges of the court. He alone can assign work to a judge and to decide 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 work in a Co-ordinated manner.

30. It is in this background we have to see what is the Notification issued by the Chief Justice at the time of arranging the work of the Circuit Benches of the Karnataka High Court. The said circular reads as under:

No. RPS. 117/2004

HIGH COURT OF KARNATAKA BANGALORE DATED 4th JUNE, 2008

NOTIFICATION

In exercise of the powers u/s 51(3) of the State Re-organisation Act 1956 and with the approval of His Excellency the Governor of Karnataka, the Hon'ble Chief

Justice, High Court of Karnataka, vide Notification dated 19.10.2004, was pleased to notify sittings of Judges and Division Courts of the High Court of Karnataka at Dharwad and Gulbarga. It was stated in the Notification dated 19-10-2004 that the date of sitting will be notified later.

The Full Court of High Court of Karnataka, vide Resolution dated 03-06-2008, has resolved to commence sitting of Judges and Division Courts at the Circuit Benches at Dharwad and Gulbarga on 07-07-2008. The Full Court has also resolved that cases arising from the Districts of Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada - Karwar and Koppal will be heard and decided at the Circuit Bench at Dharwad and cases arising from the Districts of Bidar, Bijapur, Gulbarga and Raichur will be heard and decided at the Circuit Bench at Gulbarga. It has been further resolved that pending cases from the above mentioned districts will be transferred to the respective Circuit Bench before 07.07.2008 and that filing of new cases at the Circuit Benches will be permitted from 07.07.2008.

In the above circumstances, the Hon"ble Chief Justice High Court of Karnataka has been pleased to order that sitting of Judges and Division Courts at the Circuit Benches at Dharwad and Gulbarga will commence on 07-07-2008; that cases arising from the districts of Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada -Karwar and Koppal will be heard and decided at the Circuit Bench at Dharwad; that cases arising from the Districts of Bidar, Bijapur, Gulbarga and Raichur will be heard and decided at the Circuit Bench at Gulbarga; that pending cases from the above mentioned districts will be transferred to the respective Circuit Bench before 07.07.2008 and that filing of new cases at the Circuit Benches will be permitted from 07.07.2008.

By Order of the Hon"ble Chief Justice Sd/-4/6/08 (R.B. BUDIHAL) REGISTRAR GENERAL

To The Compiler, Karnataka Gazette, Bangalore (in duplicate) for favour of publication in the next issue of Gazette in Part-II, Section 2.

A perusal of the aforesaid notification makes it clear the Learned Chief Justice has made three provisions for arrangement of work. Firstly, the cases arising from the Districts Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada-Karwar and Koppal will be heard and decided at the Circuit Bench at Dharwad and cases arising from the Districts of Bidar, Bijapur, Gulbarga and Raichur will be heard and decided at the Circuit Bench at Gulbarga. Secondly, the pending cases from the above mentioned Districts are transferred to the respective Circuit Bench before 7.7.2008. Thirdly, filing of new cases at the Circuit Benches was also permitted from 7.7.2008. This is an arrangement made by the Chief Justice for hearing of the pending cases and the hearing of the cases to be filed in future. This is well within his jurisdiction. It is nothing but arranging a roster. These Circuit Benches are constituted by virtue of the power conferred on the Learned Chief Justice by Sub-section (3) of Section 51 of the Act. The

Apex Court in the case of NARAYAN SHAMRAO PURANIK has categorically held that there is no territorial bifurcation of the Bombay High Court, merely because the Chief Justice by the impugned order issued under Sub-section (3) of Section 51 of the Act, directed that a Judge and Division Courts shall also sit at Aurangabad. Arranging the work, making provision for hearing of cases arising from those Districts and constitution of Benches is the prerogative of the Chief Justice. The jurisdiction of these Courts to hear matters are statutorily regulated by Section 51 of the Act as well as the constitutional provisions. When the field is covered by the statute and the Constitution, the question of Chief Justice exercising his power in those areas would not arise. It does not vest any power in the Chief Justice to decide the jurisdiction of the Principal Bench or the Circuit Bench which he has constituted. Though the Circuit Benches are constituted at Dharwad and Gulbarga, in so far as the filing of the cases are concerned, in the normal course it ought to have been filed at Bangalore, the Principal Bench. It would result in inconvenience to the litigants from the aforesaid Districts. Therefore, a provision is made for filing of new cases at the Circuit Benches. The word used is "permitted". Without this permission the litigant could not have filed the new cases at the office of the High Court at Circuit Benches. As the whole object of constituting the Circuit Benches is for the benefit of the litigants of the aforesaid Districts, if they were not permitted to file new cases at the places where the Circuit Benches are constituted, certainly the purpose of constitution of the Circuit Benches would have been defeated. The word "permitted" shows because of the order of the Chief Justice as contained in the circular a litigant could file his case at the Circuit Benches. However, the litigants of those Districts are not prevented from filing their case before the Principal Bench nor the Principal Benches' jurisdiction to decide such case is taken away by the said order of the Chief Justice.

31. This jurisdiction of a judge to hear a case according to roster prescribed by the Chief Justice should not be confused with the jurisdiction of the High Court to decide the case on merits, including the question of territorial jurisdiction, which are governed by Article 226 of the Constitution and other statutory provisions.

32. In this context, it is necessary to have a look at Article 226 of the Constitution. Article 226 reads as under:

Power of the High Court to issue certain writs:

(1) Notwithstanding anything in Article 32, every High Court shall have power throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, ORDERS OR WRITS TO

ANY Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action wholly or in part arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

Prior to introduction to Article 226(2) by way of constitutional amendment, the Supreme Court interpreting Article 226(1) in the case of Election Commission, India Vs. Saka Venkata Subba Rao and, (para 6) observed:

A two-fold limitation Was placed on the High Courts upon the exercise of their power under Article 226. In the first place, the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction ". That is to say, the writs issued by the court cannot run beyond territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court has power to issue such writ, must be "within these territories ", which clearly implies that there must be amenable to. its jurisdiction either by residence or location within those territories.

33. A Constitution Bench of the Supreme Court in the case of Lt. Col. Khajoor Singh Vs. The Union of India and Another, held:

It is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction.

34. In the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , the Supreme Court held as under:

When an order, however, is passed by a Court or Tribunal or an executive authority, whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate/ revisional authority is constituted at another, a writ petition would be maintainable at both places as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

Although in view of Section 141 of CPC the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of CPC and Clause (2) of Article 226 being in pari materia, the decisions of the Supreme Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. In the aforesaid Naveenchandra N. Majithia's CASE (Supra), the Supreme Court observed that the collocation of the words "cause of action wholly or ion part

arises" seems to have been lifted from Section 20 CPC which section also deals with the jurisdictional aspect of the Courts. The judicial pronouncements accorded almost a uniform interpretation to the said compendious expression equally applies while interpreting Sub-clause (2) of Article 226.

35. The Supreme Court in the case of Navinchandra N. Majithia Vs. State of Maharashtra and Others, held that:

The power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which "the cause of action, wholly or in part, arises " and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment by which Clause (2) is inserted is thus aimed at widening the width of the area for reaching the writs issued by different High Courts."

From the provision in Clause (2) of Article 226, it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filling the same arose, wholly or in part, within the territorial jurisdiction of that court.

Explaining the meaning of the word "cause of action " in the aforesaid judgment, the Supreme Court held that "cause of action " is a phenomenon well understood in legal parlance. The collocation of the words "cause of action wholly or in part arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which Section also deals with the jurisdictional aspect of the courts. As per that Section the suit could be instituted in a court within the legal limits of whose jurisdiction the "cause of action wholly or in part arises". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean the bundle of facts which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.

In legal parlance, the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal: a group of operative facts giving rise to one or more basis for suing; a factual situation that entitles one person to obtain a remedy in court from another person.

36. Interpreting Article 226(2), the Supreme Court in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, at page 713 : 1994 AIR SCW 3287 held that:

Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction

notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued, is not within the said territories. Explaining the meaning of the word "cause of action", it was held that the expression "cause of action" means the bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. Therefore, in determining the objection of lack of territorial jurisdiction, the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. The territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial.

37. The Supreme Court in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, held that:

The High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. Each and every fact pleaded, ipso facto do not lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned.

The Supreme Court in the case of National Textile Corporation Ltd. v. Haribox Swalram observed that: "cause of action as understood in civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. It is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. Each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis or dispute involved in the case.

Therefore, the law is well settled. Article 226(1) firstly confers power on the High Court to issue writs throughout the territories in relation to which it exercises jurisdiction, i.e. to say the writs issued by the Court cannot run beyond territories subject to its jurisdiction. Secondly, the person or authority against whom the said writ is issued should be within the state or territories over which the said High Court has jurisdiction. In other words, the person or authority must be residing or located within those territories. After the 15th Amendment to the Constitution, by introduction of Clause (2) of Article 226, power is conferred on the High Courts to exercise jurisdiction beyond the territories of the state over which it has jurisdiction. Such a power is conferred subject to the fulfillment of one condition that the cause of action for issue of such writ should wholly or in part arise within the jurisdiction of the state over which it has jurisdiction.

38. The jurisdiction of the High Court is dependent on the cause of action, wholly or in part, arising within its jurisdiction. The said jurisdiction is conferred on the High Court by the Constitution of India and statutes passed by the Parliament or State Legislature. The expression "cause of action" is well known. The expression "cause of action" means the bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Every fact, which if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. It is a bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. In legal parlance, the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a tribunal; a group of operative facts giving rise to one or more basis for suing; a factual situation that entitles one person to obtain a remedy in the Court from another person. Each and every fact pleaded in the writ petition does not ipso facto lead to a conclusion that those facts give rise to a cause of action which the Court's territorial jurisdiction unless those facts pleaded with the lis or dispute involved in the case. The facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. The territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averment made in the petition being immaterial. To confer jurisdiction on a Court even if a part of the cause of action arises within its jurisdiction, it is sufficient. It is purely a question of fact. The litigant has the right to go to a Court where part of cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. When cause of action arises partly in one specified area and partly outside the specified areas the litigant will have the choice to institute proceedings either at the Court where cause of action arisen partly or outside. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action or not. This finding is to be recorded on the judicial side by the judge hearing the matter, after looking into the material placed before him and the proceedings of the parties. This cannot be decided by the Chief Justice on the administrative side, without hearing the parties, or by the High Court office looking into the cause title, the address mentioned therein or the impugned order.

39. In the case of Rajasthan High Court Advocates Association v. Union of India AIR 2001 SC 416, the Apex Court dealing specifically with similar matter held as under:

The expression similar to the one "in respect of cases arising in the districts of" as used in para 2 of the Presidential order came up for the consideration of a Four-Judges Bench of this Court in Sri Nasiruddin Vs. State Transport Appellate Tribunal, . It was in the context of division of territorial jurisdiction between Allahabad and Lucknow Benches in Uttar Pradesh. This Court held (paras 36, 37

and 38):

...the expression "cause of action " in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow there Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action " is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where apart of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by apart of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action

"the expression "cause of action " with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad."

Applications under Article 226 will similarly lie either at Lucknow now or at Allahabad as the applicant will allege that the whole of cause of action or part of the cause of action arose at Lucknow within the specified areas of Oudh or part of the cause of action arose at a place outside the specified Oudh areas.

The Chief Justice of High Court has not been conferred with the legislative competence to define cause of action or to declare where it would be deemed to have arisen so as to lay down artificial or deeming test for determining territorial jurisdiction over an individual case or class of cases. The permanent Bench at Jaipur has been established by the Presidential Order issued under Sub-section (2) of Section 51 of the Act. The territorial jurisdiction of the permanent Bench at Jaipur is to be exercised in respect of the cases arising in the specified districts.

Whether the case arises from one of the specified districts or not so as to determine the jurisdictional competence to hear by reference to territory bifurcated between the principal seat and the bench seat, shall be an issue to be decided in an individual case by the Judge or Judges hearing the matter if a question arises in that regard. The impugned explanation appended to the order of the Chief Justice dated 23rd December 1976 runs counter to the Presidential order and in a sense it is an inroad into the jurisdiction of the Judges hearing a particular case or cases, pre-empting a decision to be given in the facts of individual case, whether it can be said to have arisen in the territory of a particular district. The High Court is right in taking the view which it has done.

It was submitted at the end by the Learned Counsel for the appellant that the Division Bench of the High Court in its impugned order has observed that the permanent Bench at Jaipur shall have "exclusive jurisdiction" to hear the cases arising out of 11 specified districts and the High Court at Jodhapur shall not have jurisdiction to hear those cases which fall within the territorial jurisdiction of Jaipur Bench. He submitted that the use of word "exclusive" prefixed to "jurisdiction " is uncalled for. We find no substance in this contention as well. The purpose of the Presidential order is to carve out and define territorial jurisdiction between the principal seat at Jodhapur and the permanent Bench seat at Jaipur. The cases are to be heard accordingly unless the Chief Justice may exercise in his discretion the power vested in him by the proviso to para 2 of the Presidential order. Clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court. Although the said clauses do not deal with principal seat or permanent Bench of any High Court but in our opinion, there is no reason why the principle underlying thereunder cannot be applied to the functioning of the bifurcated territorial jurisdiction between the principal seat and permanent Bench seat of any High Court. In case of a dispute arising whether an individual case or cases should be filed and heard at Jodhpur or Jaipur, the same has to be found out by applying the test -from which district the case arises, that is, in which district the cause of action can be said to have arisen then exercising the jurisdiction under Article 226 of the Constitution.

40. Therefore, it is clear, the residence or location of a person affected by an order cannot be the only criterion to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories, and the residence/location of the person affected in such cases would have no relevance on the question of the High Court's jurisdiction. It may be that the original order was in favour of the person applying for writ; in such cases an adverse appellate order might be the cause of action. If the cause of action arises wholly or in part at a place within the specified areas, then such Bench would have jurisdiction. If the cause of action arises partly within the specified areas, it would be open to the litigant who is the dominus litis, to choose the forum according to his convenience. A litigant has the right to go to Court where a part of the cause of action arises. As rightly held in the judgment in the case of E. Rammohan Chowdry, after all, Courts are for the benefits of the

litigant public, and hence their convenience should be of paramount importance. The impugned Notification is a positive and concrete step to achieve the goal of easy and less expensive access to justice. If a litigant from Dharwad/Gulbarga chooses to approach the Principal Bench as according to him it is convenient, convenience being of paramount consideration, the principal Bench at Bangalore cannot ask him to go to the Circuit Benches either at Dharwad or Gulbarga, as the jurisdiction to decide any matter arising within the jurisdiction of the State of Karnataka lies with the Principal Bench at Bangalore, notwithstanding the constitution of the Circuit Benches at Dharwad and Gulbarga. It is for the litigant to decide the convenience. Others have no say in the matter including the Chief Justice.

41. The Chief Justice of High Court has not been conferred with the legislative competence to define cause of action or to declare where it would be deemed to have arisen so as to lay down artificial or deeming test for determining territorial jurisdiction over an individual case or class of cases. By constitution of a Circuit Bench, the Principal Bench does not lose its jurisdiction to decide matters arising in the entire State. When the Circuit Benches are constituted and the Chief Justice decides what matters the Circuit Benches would decide, it is only to enable the litigant who fall within the area of such Circuit Bench to have the benefit of hearing of the case nearer to his place of residence. It is the convenience of the litigant which is the paramount consideration. By constitution of such Circuit Benches the litigant is not prevented from approaching the Principal Bench. If he so chooses to do, the choice is of the litigant. If the Chief Justice were to hold a litigant has no right to approach the Principal Bench, it amounts to territorial bifurcation of the High Court for which he has no power. The circular dated 4.6.2008 only enables the Circuit Benches to decide the matters as specified therein. But for the circular, the Circuit Benches could not have entertained the matter specified therein. In substance, the said circular is nothing but a roster prescribed by the Chief Justice arranging work at the Circuit Benches. It does not define the jurisdiction of the High Court sitting in circuit. By that circular, the High Court at the principal bench has not lost its territorial jurisdiction to decide a matter arising within the territorial jurisdiction of those districts. The Chief Justice in the said circular rightly has not stated from 7.7.2008 the principal bench of the High Court has no jurisdiction to decide a matter arising from those districts which are assigned to the Circuit Benches. He is aware of the settled legal position, that he has no such jurisdiction, and consciously he has not so stated therein. Therefore, one cannot read into the circular, the words which are not mentioned therein. In the judgment of the Division Bench in the case of E. Ram Mohan Chowdry, all that has been said is:

If the Chief Justice of the High Court of Karnataka has directed that cases arising from certain districts shall be heard and decided by the Judges sitting at a particular Circuit Bench, it cannot held to be wrong or illegal. There is nothing wrong in specifying the new cases arising from certain districts shall be filed at the particular circuit Bench, as those cases are to be heard and decided by the

Judges sitting at that Circuit Bench. Such an arrangement is for administrative convenience and for the advantage of litigants. After all, the Courts are for the benefit of the litigant public and hence their convenience should be the paramount consideration. The impugned Notification is a positive and concrete step to achieve the goal of providing easy and less expensive access to justice.

42. A careful reading of the aforesaid judgment makes it clear, nowhere in the said judgment it is stated that the Principal Bench at Bangalore has no jurisdiction to decide the case arising from the districts which are now assigned to the Circuit Benches of Dharwad and Gulbarga. Here, it is pertinent to note, even after the constitution of Circuit Benches of Dharwad and Gulbarga and after issue of the circular dated 4.6.2008, matters relating to company cases, election matters, green-bench matters, public interest litigation and others are being heard and decided by the Principal Bench, though they arise from those districts which are assigned to the Circuit Benches of Dharwad and Gulbarga, and the cause of action also arose within the territorial jurisdiction of those districts. It only demonstrates that the Full Court and Chief Justice while passing the aforesaid circular, and the Division Bench while passing the judgment in the aforesaid case, were conscious that the Chief Justice has no jurisdiction to decide the jurisdiction of cases arising within the state of Karnataka. All that has been done is, by way of roster, sitting of the judges is arranged and certain categories of cases are assigned to them for hearing.

43. The Chief Justice cannot decide the jurisdiction, territorial or otherwise, of the High Court or even Circuit Benches, or permanent benches, by an administrative order. It is beyond his competence. Jurisdiction is conferred by statute; it cannot be taken away by administrative orders. If a particular Court has no jurisdiction under the statute, the Chief Justice cannot confer jurisdiction. If a question arises whether a particular Court has jurisdiction or not to decide a matter, that has to be decided by the very Court, similarly, the question of cause of action. Law does not vest with the Chief Justice the power to decide the said question which is to be decided on the judicial side. The Chief Justice as well as High Court office has no power or jurisdiction to decide the territorial jurisdiction of Principal and Circuit Benches. It is a judicial function to be decided by the Judge on the judicial side. Similarly, the territorial jurisdiction of a Court is dependent on the cause of action arising within its jurisdiction. The Chief Justice cannot decide the dispute regarding cause of action on the administrative side. He has no such power. It is for the Judge sitting on the judicial side to decide the said dispute. The High Court office after scrutiny of the papers, can make a note and bring it to the notice of the Judge and it is for the Judge to decide the said question. Therefore, misinterpreting this circular and the aforesaid judgment, the High Court office cannot refuse to post a matter before a judge, whether at the Principal Bench or at the Circuit Benches of Dharwad and Gulbarga. It is open to them to raise an office objection and place it before the Court dealing with the subject according to roster and leave it to the judge to decide the jurisdiction and to decide such matters. The circular dated 4.6.2008 do not prohibit posting of

the case before a judge. The office cannot refuse to list the matter before a judge according to roster where the case is filed. The office has no such power.

44. If the Notification issued by the Learned Chief Justice were to be interpreted as taking away the jurisdiction of the Principal Bench to hear disputes arising within the jurisdiction of Dharwad/ Gulbarga Circuit Benches, then it amounts to territorial bifurcation of the State of Karnataka for which he has no power. Being conscious of this legal position, what has been said in the circular is, litigants are permitted to file cases hereafter in the Circuit Benches at Dharwad/ Gulbarga as it is convenient to them. Similarly, cases which were pending in the Principal Bench, for the sake of convenience of the litigants residing within the jurisdiction of Circuit Benches at Dharwad/ Gulbarga, are transferred and heard. The same is achieved by the Learned Chief Justice by arranging roster in such a manner that the cases arising from those districts which are now assigned to the Circuit Benches, are heard at those Benches for the convenience of the litigants. It has nothing to do with the jurisdiction of the Court to decide a dispute arising within the jurisdiction of the two Circuit Benches. If a litigant were to feel that it is convenient for him to approach the Principal Bench at Bangalore, the said petition cannot be refused to be entertained on the ground that the Principal Bench has no territorial jurisdiction to decide the said dispute as the cause of action arose within those districts which are assigned to the Circuit Benches at Dharwad/Gulbarga, or on the ground that parties to the proceeding are residents of those areas.

45. In this context, if a review petition is filed and the judges who passed the order are not sitting at the Circuit Benches, then it is open to the parties to file a review petition either at the Circuit Bench where the original order was passed, or at the Principal Bench. Then it is open to the Chief Justice to constitute the bench in accordance with Rules, arrange roster and have the said review petition heard and decided either at the Circuit Bench or at the Principal Bench. The party had the opportunity of full hearing of the case. If the order is against him, without availing the remedy of appeal, if he wants to avail the remedy of review, he cannot plead that his convenience alone should be taken into consideration in arranging hearing of the review petition. If he is really aggrieved, wants review, it should not be difficult for him even to appear before the Principal Bench and argue his case for review.

46. In that view of the matter, the contention that a review petition cannot be heard by the Principal Bench at Bangalore when the original order is passed at the Circuit Benches at Dharwad/Gulbarga, is without any substance. It would be better if those review petitions are also heard at the Circuit Benches, and that is possible only when the original Bench which passed the order, is functioning in the Circuit Benches. If the original Bench is not functioning in those Circuit Benches, and if there is difficulty to constitute such Bench for the purpose of hearing the review petition, it is open to the Learned Chief Justice to constitute the Bench at the Principal Bench at Bangalore, and the parties can prosecute the

same at Bangalore.

47. However, cases involving correction of typographical errors, mistakes, clerical errors and similar matters stand on a different footing. When such applications are made, it cannot be construed as an application/petition filed for review of the order. Even the applications filed for setting aside *ex parte* orders like dismissal for default cannot be construed as an application for review. In all these cases, the request is not to reverse a decision arrived at after hearing the parties, and conscious application of judicial mind, on the ground that there is an error committed by the Judge. The error is that of the party, the staff and the unintended mistake which might have crept in even on account of the Judge. The request is not to annul a decision rendered on merits. No conscious application of mind on merits of the dispute is required. It is to give effect to the order passed already those corrections, amendments are required. In the case of dismissal for default one more opportunity is sought to argue the case. In all, these cases no review of the order is sought. Therefore, matters could be dealt with by the Judges sitting according to roster and the very same judges who passed the original order need not hear them. Therefore, the law applicable to review petition is not attracted to these type of petitions. The members of the Bar and the litigant public is not put to any inconvenience on that score.

48. In the result, we pass the following:

(i) The circular dated 29.12.2008 issued, directing that the review petitions relating to judgments, decree, order or sentence pronounced, made or passed by the Division Bench or Single Bench in respect of Circuit Bench at Dharwad, be posted as per roster existing at the Circuit Bench at Dharwad, is *ultra vires* Rule 5 of Chapter III of The Karnataka High Court Rules, 1959, and accordingly it is hereby quashed.

(ii) This review petition (Misc. W. No. 61344 of 2009 filed for recalling the order dated 27-05-2009) shall be placed before the Bench which passed the order sought to be reviewed, as this Bench has no jurisdiction to hear and decide the review petition.

(iii) The Hon'ble Chief Justice shall constitute the Bench to hear the review petition (Misc. W. No. 61344 of 2009 filed for recalling the order dated 27-05-2009) in accordance with Rule 5 of The Karnataka High Court Rules, 1959.