

(1958) 04 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 2885 of 1957

Union of India (UOI)

APPELLANT

Vs

Chheda Lal Ram Autar and Others

RESPONDENT

Date of Decision : 22-04-1958

Acts Referred:

Citation : AIR 1958 All 652 : (1958) 28 AWR 510

Hon'ble Judges : O.H. Mootham, C.J.;R. Dayal, J;A.P. Srivastava, J

Bench : Full Bench

Advocate : J. Swarup and Har Govind Dayal, Amicus Curiae, for the Appellant;
G.N. Varma and S.B. Chaudhari, for the Respondent

Final Decision : Disposed Of

Judgement

O.H. Mootham, C.J.—This is an unusual application made in the following circumstances:

2. On 22-12-1956, a decree in a civil suit was passed against the Union of India by the Civil Judge of Barabanki. The District of Bara-banki is an area in Oudh over which a Bench of this Court sitting at Lucknow exercises, by virtue of Clause 14 of the United Provinces High Courts (Amalgamation) Order, 1948, and a direction made by the Chief Justice thereunder, the jurisdiction and power for the time being vested in the High Court, and in the ordinary course the memorandum of appeal which the applicant proposed to prefer against the judgment of the Civil Judge of Barabanki would have been filed before that Bench. By inadvertence the memorandum of appeal was presented to the Court at Allahabad, and the Joint Registrar directed notice of the appeal to issue to the respondents.

Upon the mistake being discovered the appellant filed the application which is now before us in which he prays that this Court may be pleased to declare that the memorandum of appeal was rightly filed at Allahabad or, in the event of the Court taking the view that the memorandum of appeal should have been filed

before the Bench at Lucknow, the Court may be pleased "to give such directions as may be necessary". The application is opposed by the respondents on whose behalf it is urged that this Court sitting at Allahabad has no jurisdiction to entertain the appeal and that the present application must be dismissed.

3. The answer to the question we have to consider turns upon the interpretation of Clause 14 of the Amalgamation Order. That clause provides that the High Court, and the Judges and Division Courts thereof, shall sit at Allahabad or at such other place in the Uttar Pradesh as the Chief Justice may with the approval of the Governor appoint. Then follow two provisos which read thus :

"Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice otherwise directs, such Judges of the new High Courts, not less than two in number, as the Chief Justice may from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court.

Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad."

Now under the first proviso two Judges of the Court (unless the Governor with the concurrence of the Chief Justice otherwise directs) must sit at Lucknow for the purpose of exercising in respect of certain cases arising in Oudh "the jurisdiction and power for the time being vested in the new High Court"; and it is necessary to determine whether the jurisdiction and power exercised by such Judges (to whom it is convenient to refer as the Lucknow Bench) is to the exclusion of the jurisdiction and power exercised by the Court sitting at Allahabad or at such other places as may be appointed, for if the answer to that question be in the affirmative it is difficult to see how the Court at Allahabad can entertain an appeal from a Court which is within the territorial jurisdiction of the Lucknow Bench.

4. There is authority for the view that the jurisdiction of the Lucknow Bench is of an exclusive character. In *Saghir Ahmad Vs. Rex*, an application was made to the Court at Allahabad u/s 491 of the Code of Criminal Procedure by a person resident in Kheri who had been detained on the orders of the Provincial Government under the U. P. Maintenance of Public Order (Temporary) Act, 1947. Mr. Justice Bindbasni Prasad upheld a preliminary objection that the application should have been made to the Lucknow Bench on the ground that "it is the Bench of the High Court at Lucknow which alone can exercise the jurisdiction and powers of this Court in respect of cases arising in Avadh." He accordingly held that the application could not be entertained at Allahabad and directed that it be returned to counsel for presentation to the Bench at Lucknow.

A similar view was taken by *Hola Ram Vs. State*, and by *Basheshwar Nath Vs. State*. In each of these cases an application was made to the Court at Allahabad u/s 526 of the Code of Criminal Procedure for the transfer of a criminal case

pending before a Magistrate in Oudh to a Magistrate at Allahabad. In each case the application was dismissed on the ground that the Court had no power to entertain it.

5. In *M.A. Jalil Vs. Rex*, , two applications in revision against an order of the Sessions Judge of Bareilly dismissing two appeals were filed at Allahabad. The acting Chief Justice on application being made to him directed that they be transferred to the Lucknow Bench for hearing. An objection taken before the Lucknow Bench that it had no jurisdiction to hear the applications was upheld on the ground that that Bench could exercise jurisdiction only in respect of cases arising in such areas in Oudh as the Chief Justice directs and that this was not such a case. In the course of its judgment the Bench (Misra and Kaul, JJ.) said :

"Our reading of the Article" -- that is Clause 14 --is that in the scheme of the High Courts Amalgamation Order the new High Court is to consist of, so to say, two divisions, one division consisting of such Judges of the new High Court not less than two in number, as the Chief Justice may from time to time nominate, sitting at Lucknow in order to exercise jurisdiction and power vested in the new High Court in respect of cases arising in such areas in Oudh as the Chief Justice may direct and the other division consisting of the rest of the judges of the High Court sitting at Allahabad exercising jurisdiction and power for the time being vested in the Court in respect of the whole of the United Provinces, except such areas in Oudh in respect of which jurisdiction and power is exercised by the first mentioned division."

6. In the first three of these cases the question we are now considering was not argued & in each of them it appears it has been assumed that the jurisdiction exercised by the Lucknow Bench was, in effect, a jurisdiction carved out of the jurisdiction which would otherwise be exercised by the Court sitting at Allahabad. In *M. A. Jalil's* case (D) the point did not directly arise as the question which that Court had to consider was a different one, namely the extent of the jurisdiction of the Lucknow Bench.

7. The question is one of very considerable importance and we are indebted to the Standing Counsel at Allahabad and Sri Har Govind Dayal Srivastava of the Lucknow Bar, who appeared as *amicus curiae* for the assistance they have given us.

8. I am of opinion that the jurisdiction of the Court at Allahabad extends over the whole of the Uttar Pradesh and that the view taken in *M.A. Jalil v. Rex* (D) that it is restricted to those parts of the State over which the Lucknow Bench for the time being does not exercise jurisdiction is not correct.

9. The High Court of Judicature at Allahabad is the High Court for the Uttar Pradesh, and every Judge and Division Bench of the Court exercises the jurisdiction and powers of the Court over the entire State in respect of any matter which properly comes before him or it. In the case of the Lucknow Bench there is a restriction on the matters in respect of which it can exercise the

jurisdiction of the Court; they must arise in such areas in Oudh as the Chief Justice may direct. So much is clear and is not in dispute. But it does not follow that the Court at Allahabad is restricted with regard to the cases in respect of which it exercises jurisdiction to such cases as arise elsewhere in the Uttar Pradesh.

The first proviso to Clause 14 is concerned with the jurisdiction of the Lucknow Bench; the important words are not that it shall exercise the jurisdiction and powers for the time being vested in the Court but that it shall exercise its jurisdiction and powers in respect of a restricted class of cases, namely those arising "in such areas in Oudh as the Chief Justice may direct." The fact that in respect of such cases the Lucknow Bench exercises the jurisdiction and powers of the Court does not mean, in my opinion, that no other judge or Bench can exercise that jurisdiction.

Suppose that the Chief Justice, with the approval of the Governor, appoints Meerut as the place where a Bench of the Court will sit. The jurisdiction of that Bench will be precisely the same as that of the remainder of the Court at Allahabad. If that be found in practice inconvenient and the Chief Justice with the approval of the Governor, restricts the jurisdiction of the Bench to cases arising within the district of Meerut, I see no reason why ipso facto the jurisdiction of the remainder of the Court should be, to that extent curtailed.

10. The conception of the Court sitting in two divisions with mutually exclusive jurisdiction and powers means, in substance, that there are in the State two High Courts, and this runs counter to Article 214 of the Constitution.

11. u/s 21 of the Bengal, Agra and Assam Civil Courts Act an appeal lies from a decree or order of the Civil Judge (in a case such as the present) "to the High Court." This High Court sits at Allahabad and at Lucknow and an appellant whose appeal is in respect of a case arising in an area in Oudh over which the Lucknow Bench has jurisdiction will ordinarily present his memorandum of appeal to that Bench; but if he elects to present it to the Court at Allahabad that Court cannot, in my opinion, decline to entertain it.

12. I would hold that the memorandum of appeal in the present case has been properly filed at Allahabad.

R. Dayal, J.

13. I agree with the opinion of My Lord the Chief Justice that this memorandum of appeal has been properly filed at Allahabad, and would like to add a short note in support of that opinion.

14. The jurisdiction of the new High Court by the name of the High Court of Judicature at Allahabad constituted under Art 3 of the United Provinces High Courts (Amalgamation) Order, 1948, is laid down by Article 7 thereof which reads thus:

"7(1). The new High Court shall have, in respect of the whole of the United Provinces, all such original appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of any part of that Province by either of the existing High Courts.

(2) The new High Court shall also have in respect of any area outside the United Provinces all such original, appellate and other jurisdiction as under the law in force immediately before the appointed day is exercisable in respect of that area by the High Court in Allahabad."

There can therefore arise no question of the territorial division between the High Court at Allahabad and its Bench at Lucknow. The Bench at Lucknow has the same powers as the Benches of the High Court at Allahabad so far as the question of pure jurisdiction is concerned.

15. Article 14 of the Amalgamation Order has nothing to do with the question of jurisdiction. It deals only with the place of sitting of the new High Court, its Judges and division courts and provides that they will sit at Allahabad. To this general provision there are two exceptions. One is that they can sit at any other place appointed by the Chief Justice with the approval of the Governor of the State. The other is that at least two Judges must sit at Lucknow. The object of this particular provision for at least two Judges sitting at Lucknow is that they dispose of the cases within such areas in Oudh as the Chief Justice directs.

16. The presentation of an appeal is to the new High Court be it the presentation at Allahabad or at Lucknow and according to the practice of this Court an appeal is presented before such single Bench or Division Bench as is provided for the purpose by the Chief Justice in the Cause List. The presentation of an appeal before any other Bench can be a mere irregularity but cannot amount to a presentation to a Court having no jurisdiction to entertain it.

17. It may be mentioned that we have not been referred to any such order of the Chief Justice which directs that the appeals in respect of cases arising in such areas in Oudh whose cases are ordinarily disposed of by the Lucknow Bench be presented before the Bench at Lucknow. Of course, such appeals are presented there before the Bench authorised to receive them.

A.P. Srivastava, J.

18. I have had the advantage of reading the judgment which the Hon'ble the Chief Justice is just going to deliver, and I am in respectful agreement with the conclusion at which he has arrived. In view of the importance of the question involved, however, I would like to add a few words of my own.

19. It is contended on behalf of the respondents (and Sri Har Govind Dayal Srivastava supports him on the point) that the Lucknow Bench has exclusive jurisdiction to deal with the cases arising in Oudh and the remainder of the Court at Allahabad cannot deal with those cases in any manner. It has to confine its attention to cases arising outside the area of Oudh. Learned counsel traced the

history of the Allahabad High Court and the Oudh Chief Court up to the date of the Amalgamation Order of 1948 and urged that as Oudh always had the privilege of having its highest Court of appeal located within its territories, the legislature when it enacted the Amalgamation Order intended that privilege to continue.

That is why it was provided in Clause 14 of the Amalgamation Order that at least two Judges shall sit at Lucknow in order to exercise the jurisdiction and power of the High Court in respect of cases arising in the areas of Oudh. It is urged that the necessary implication of this provision is that the Judges sitting at Lucknow alone can deal with the cases arising in Oudh, and no other Judge of the High Court can have anything to do with those cases.

20. The contention is not easy to accept and in putting it forward learned counsel appears to have ignored not only the purpose of the amalgamation but also the provisions of Article 214 of the Constitution. Before 1948 the Chief Court of Oudh constituted the highest Court of appeal for that area and the High Court at Allahabad had jurisdiction over the rest of the province. Both the Chambers of the legislature of the United Provinces then presented addresses to the Governor praying for the amalgamation of the two Courts and as a result the two Courts were amalgamated and constituted into one High Court by the name of the High Court of Judicature at Allahabad (vide Clause 3 of the Amalgamation Order). Had Clause 14 of the Amalgamation Order not been there, the immediate effect of the amalgamation would have been that all cases relating to Oudh could have been filed, heard and dealt with by the Court at Allahabad, because that was the principal place of sitting of the new Court.

For providing convenience to the residents of Oudh, however, the first proviso to Clause 14 was enacted, and it was laid down in it that at least two of the Judges of the new High Court shall sit at Lucknow in order to exercise, in respect of cases arising in such areas in Oudh as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court. Subsequently when the Constitution was adopted, Article 214 clearly provided that for the entire State of Uttar Pradesh there could be only one High Court and that was to be the High Court of Allahabad which was exercising jurisdiction in relation to the province before the commencement of the Constitution.

Had it been the intention that the Bench contemplated by the first Proviso to Clause 14 of the Amalgamation Order would function exactly like the former Chief Court of Oudh and would have the same exclusive jurisdiction over the area of Oudh, no amalgamation would have been made at all, and in any case when the constitution was enacted, it would have been provided that at least for the State of Uttar Pradesh in effect there would be two High Courts. We cannot in the circumstances get away from the fundamental position that for the entire State including the area of Oudh, there is a single High Court that the Judges who sit at Lucknow form only a Bench of that High Court.

I find it difficult to accept the argument that though in name there is one High Court for the entire State, in effect two different Courts still continue, one for Oudh and the other for the rest of the State. Some stress was laid on the fact that in the first proviso to Clause 14 of the Amalgamation Order, it is stated that the Judges sitting at Lucknow shall exercise the jurisdiction and power for the time being vested in the new High Court in respect of cases arising in Oudh and it was urged that, that showed that the power and jurisdiction which the Lucknow Bench was to exercise was the full power and jurisdiction which the High Court possessed and the same had been carved out of the totality of power and jurisdiction possessed by the new High Court so that the remainder of the Court had lost the power and jurisdiction which the proviso conferred on the Lucknow Bench.

It is, however, obvious that every Judge of the High Court when he deals with any case exercises all the powers and jurisdiction of the High Court so far as that case is concerned. The High Court acts through that Judge and the Judge represents the High Court in full. It is only in this sense that the Bench of the Court sitting at Lucknow exercises all the powers and jurisdiction possessed by the High Court in respect of the cases with which it deals. The Lucknow Bench is not a subordinate body of the High Court and it could not, therefore, be provided that in respect of the cases arising in Oudh, with which it was to deal, it was to exercise not the full power and jurisdiction of the new High Court, but only a limited portion of that power and jurisdiction.

From the fact that the Lucknow Bench exercises the jurisdiction and power for the time being vested in the new High Court in respect of cases arising in Oudh, therefore, it does not follow necessarily that the power and jurisdiction it exercises is exclusive or the remainder of the High Court has been deprived of the power and jurisdiction to deal with those cases.

21. This is made clear by the second proviso to Clause 14 according to which the Chief Justice has been empowered to direct that any case or class of cases arising in the area of Oudh shall be heard at Allahabad. If the jurisdiction and power of the High Court in respect of the cases arising in Oudh had been taken away from the remainder of the High Court and had been vested exclusively in the Lucknow Bench, the Chief Justice could not have been authorized to direct that an Oudh case shall be heard at Allahabad. Under the main part of Clause 14 with the concurrence of the Chief Justice and the Governor a Bench of the High Court or even the whole Court can sit at any other place in the State as may be appointed, e.g., at Meerut or at Agra.

The Bench which sits at Agra or Meerut will exercise all the powers which are vested in the High Court for the time being in respect of the cases with which it deals, but it cannot on that account be said that it will have exclusive jurisdiction over the districts of Meerut or Agra and that the rest of the High Court will lose that jurisdiction. The first proviso to Clause 14 appears to have been enacted only to make it sure for the convenience of the litigants of Oudh that a Bench of

the new High Court shall sit at Lucknow and be available to those litigants for dealing with the cases arising in that area. To interpret the proviso as if it bifurcates the High Court into two mutually exclusive compartments, one dealing with the cases in Oudh and the other dealing with the cases arising in the rest of the State appears to be entirely unjustified.

22. If correctly interpreted the propositions that follow from Clauses 3 and 14 of the Amalgamation Order appear to be these:

(1) The new High Court is one and indivisible.

(2) The new High Court can sit at Allahabad or such other places as may be appointed by the Chief Justice and the Governor, but at least two Judges of the High Court must sit at Lucknow.

(3) The Judges sitting at Lucknow can deal only with cases arising in Oudh. Sitting there they cannot deal with the cases arising outside Oudh but in respect of cases arising in Oudh they can exercise all the power and jurisdiction which is vested in the High Court for the time being.

(4) The rest of the High Court which is not sitting at Lucknow is to deal ordinarily with the cases arising outside Oudh. but continues to have the power and jurisdiction which can be exercised throughout the State including the area of Oudh, That power has not been taken away.

(5) That even while a Bench of the High Court is sitting at Lucknow to deal with Oudh cases, the Chief Justice may direct a particular case or a particular class of cases arising in Oudh to be heard at Allahabad.

23. It follows from the above propositions that, though the appellant's case arose in the district of Barabanki over which the Lucknow Bench had jurisdiction, the appeal lay to the High Court at Allahabad. If therefore the appellant presented his appeal to the Court at Allahabad, it cannot be said that the appeal was presented to an authority which could not entertain it. The appeal cannot therefore be ordered to be returned for presentation to proper Court Nor can it be dismissed as improperly presented. In fact under the second proviso to Clause 14 of the Amalgamation Order the Hon. the Chief Justice can even direct that the appeal be heard at Allahabad.

24. BY THE COURT: We hold that the memorandum of appeal in the present case has been properly filed at Allahabad.