State of Maharashtra

Vs

Narayan Shamrao Puranik and Others

Civil Appeal No. 3379 of 1981

(R. B. Misra, A. P. Sen, E. S. Venkatramiah JJ)

25.10.1982

JUDGMENT

A.P. SEN, J. -

1. This appeal by special leave is directed against the judgment and order of the Bombay High Court dated December 14, 1981. By its judgment the High Court struck down an order dated August 27, 1981 by which the Chief Justice of the Bombay High Court, in exercise of his powers under sub-section (3) of Section 51 of the State Reorganisation Act, 1956 (Act 37 of 1956) (for short 'the Act') with the prior approval of the Governor of Maharashtra, directed that the Judges and Division Courts of the High Court of Bombay shall also sit at Aurangabad with effect from August 27, 1981 for the disposal of cases arising out of the Marathwada region of the State of Maharashtra.

2. By an Order dated May 4, 1982 (See (1982) 2 SCC 440) we allowed the appeal and set aside the judgment of the High Court since it did not appear to us that the impugned order issued by the Chief Justice suffered from any infirmity, legal or constitutional. We now proceed to give our reasons.

3. By virtue of sub-section (1) of Section 49, the High Court of Bombay exercising immediately before the appointed day i.e. November 1, 1956, jurisdiction in relation to the existing State of Bombay, was deemed to be the High Court for the new State of Bombay constituted under sub-section (1) of the Section 8 of the Act. Immediately before the appointed day, i.e. on October 27, 1956, the Central Government while telegraphically communicating to the then Chief Justice (Chagla, C.J.) the issue of a Presidential Order under sub-section (1) of Section 51 of the Act appointing Bombay to be the principal seat of the High Court for the new State of Bombay with effect from November 1, 1956, conveyed that as from that date the High Court shall function only at that place unless the Chief Justice issued an order under sub-section (3) of Section 51 of the Act that temporary Benches may also function at other places. The then Chief Justice was advised that he should issue such notification on the appointed day, i.e. November 1, 1956, for the establishment of Circuit Benches at Nagpur and Rajkot with a view to preserve the continuity of judicial administration, since the High Court of Madhya Pradesh had its principal seat at Nagpur and the High Court of Saurashtra at Rajkot, prior to the appointed day. The then Chief Justice accordingly issued an order under sub-section (3) of Section 51 of the Act with the prior approval of the Governor by which he appointed Nagpur and Rajkot to be places at which the Judges and Division Courts of the Bombay High Court would also sit with effect from November 1, 1956. The two Benches at Nagpur and Rajkot continued to function till May 1, 1960 when the bilingual State of Bombay was bifurcated into two separate States - the State of Maharashtra and the State of Gujarat - by the Bombay Reorganisation Act, 1960 (11 of 1960).

4. Prior to the constitution of the States Reorganisation Commission in December 1953, leaders of political parties from the Marathi-speaking areas in the Vidarbha and Marathwada regions and of the then State of Bombay signed an agreement or an agreement or pact called the Nagpur Pact on September 23, 1953 which formed a basis for joint representation to the States Reorganisation Commission and was the basis for the formation of Maharashtra as a new State for the Marathi-speaking people of the former State of Bombay, the Vidarbha region of the former State of Madhya Pradesh, and the Marathwada region of the erstwhile State of Hyderabad. Clause (7) of the Nagpur Pact provides that the provision with regard to the establishment of a permanent Bench of the High Court at Nagpur shall apply mutatis mutandis to the Marathwada region.

5. It appears that due continued demand of the people of Marathwada region for the establishment of a permanent Bench of the High Court at Aurangabad under sub-section (2) of Section 51 of the Act, the State Government first took up the issue with the then Chief Justice (Kantawala, C.J.) in 1977. On March 22, 1978, the State Legislative Assembly passed a unanimous resolution supporting a demand for the establishment of a permanent Bench of the High Court at Aurangabad to the effect :

> With a view to save huge expenses and to reduce the inconvenience of the people of the Marathwada and Pune regions in connection with legal proceedings, this Assembly recommends to the Government to make a request to the President to establish a permanent Bench of the Bombay High Court having jurisdiction in Marathwada and Pune regions, one at Aurangabad and the other at Pune.

The said demand for the constitution of a permanent Bench of the High Court at Aurangabad was supported by the State Bar Council of Maharashtra, Advocates' Association of Western India, Several Bar Associations and people in general. It is necessary here to mention that the resolution as originally moved made a demand for the setting up of a permanent Bench of the High Court of Bombay at Aurangabad for the Marathwada region, and there was no reference to Pune which was added by way of amendment. Initially, the State Government made a recommendation to the Central Government in 1978 for the establishment of two permanent Benches under sub-section (2) of Section 51 of the Act, one at Aurangabad and the other at Pune, but later in 1981 confined its recommendation to Aurangabad alone.

6. The State Government thereafter took a cabinet decision in January 1981 to establish a permanent Bench of the High Court at Aurangabad and this was conveyed by the Secretary to the Government of Maharashtra, Law and Judiciary Department, communicated by his letter dated February 3, 1981 to the Registrar and he was requested, with the permission of the Chief Justice, to submit proposals regarding accommodation for the court and residential bungalows for the judges, staff, furniture etc. necessary for setting up the Bench. As a result of this communication, the Chief Justice wrote to the Chief Minister on February 26, 1981 signifying his consent to the establishment of a permanent Bench at Aurangabad. After adverting to the fact that his predecessors had opposed such a move and had indicated, amongst other things, that such a step involved, as it does, breaking up of the integrity of the institution and the Bar, which would necessarily impair the quality and quantity of the disposals, he nonetheless went on to say :

> As against that I am personally aware of the difficulties to which the litigant public of Marathwada is subjected to, in regard to their causes in this High Court since the Marathwada area became a part of the Bombay State with effect from November 1, 1956, resulting virtually in the stifling of the genuine litigation therefrom.

> Grievances on this count are many and genuine to my knowledge. Establishment and continued existence of the Benches in the High Courts of Madhya Pradesh, Uttar Pradesh, Bihar, Kerala, and a Bench at Nagpur in our own State, make it difficult for them to believe that their claim for a Bench alone is liable to be ignored because of any such view of the Law Commission or the Jurists. This only goes to deepen the bitterness and sense of injustice that is prevalent among them.

7. It however became evident by the middle of June 1981 that the Central Government would take time in reaching a decision on the proposal for the establishment of a permanent Bench under sub-section (2) of Section 51 of the Act at Aurangabad as the question involved a much larger issue, viz. the principles to be adopted and the criterion laid down for the establishment of permanent Benches of High Courts generally. This meant that there would be inevitable delay in securing concurrence of the Central Government and the issuance of a Presidential Notification under sub-section (2) of Section 51 of the Act. On June 19, 1981, the State Government accordingly to a cabinet decision that pending the establishment of a permanent Bench under sub-section (2) of Section 51 of the Act at Aurangabad for the Marathwada region, resort be had to the provisions of sub-section (3) thereof. On June 20, 1981, Secretary to the Government of Maharashtra, Law and Judiciary Department wrote to the Registrar stating that there was a possibility of the delay in securing concurrence of the Central Government and the issuance of a notification by the President under sub-section (2) of Section 51 of the Act for the establishment of a permanent Bench at Aurangabad and in order to tide over the difficulty, the provisions of sub-section (3) of Section 51 of the Act may be resorted to and he therefore requested the Chief Justice to favour the Government with his views in the matter at an early date. On July 5, 1981, the Law Secretary waited on the Chief Justice in that connection. On July 7, 1981 the Chief Justice wrote a letter to the Chief Minister in which he stated that the Law Secretary had conveyed to him the decision of the State Government to have a Circuit Bench at Aurangabad under sub-section (3) of Section 51 pending the decision of the Central Government to establish a permanent Bench there under sub-section (2) of Section 51 of the Act. The Chief Justice then added :

> I agree that some such step is necessary in view of the preparations made by the Government at huge costs and the mounting expectations of the people there.

Rest of the letter deals with the problem of finding residential accommodation for the Judges, staff, increase in strength of Judges etc.

8. On July 20, 1981, the Law Secretary addressed a letter to the Registrar requesting him to forward, with the permission of the Chief Justice, proposal as is required under sub-section (3) of Section 51 for the setting up of a Bench at Aurangabad. In reply to the same, the Registrar by his letter dated July 24, 1981 conveyed that the Chief Justice agreed with the suggestion of the State Government that action had to be taken under sub-section (3) of Section 51 of the Act for which the approval of the Governor was necessary and he enclosed a copy of the draft order which the Chief Justice proposed to issue under sub-section (3) of Section 51 of the Act. On August 10, 1981, the Law Secretary conveyed to the Registrar the approval of the Governor. On August 27, 1981, the Chief Justice issued an order under sub-section (3) of Section 51 of the Act to the effect :

> In exercise of the powers conferred by sub-section (3) of Section 51 of the State Reorganisation Act, 1956 (37 of 1956) and all other powers enabling him in this behalf, the Hon'ble the Chief Justice, with the approval of the Governor of Maharashtra, is pleased to appoint Aurangabad as a place at which the Hon'ble

Judges and Division Courts of the High Court of Judicature at Bombay may also sit.

9. The High Court has set aside the impugned notification issued by the Chief Justice under sub-section (3) of Section 51 of the Act on the following grounds namely : (1) The impugned order issued by the Chief Justice under sub-section (3) of Section 51 of the Act was not directly connected with or related to problems arising out of the reorganisation of the States i.e. there is no nexus between the purpose and objects of the Act and the setting up of Aurangabad as a venue for additional seat of the High Court, (2) the provisions of the Act and in particular of Section 51 were not intended to be operative indefinitely and they were meant to be exercised either immediately or within a reasonable time and therefore the exercise of the power by the Chief Justice under sub-section (3) of Section 51 of the Act appointing Aurangabad as a place where the Judges and Division Courts of the High Court may also sit after a lapse of 26 years is constitutionally impermissible, (3) the State of Maharashtra was not a new State within the meaning of Section 51 read with Section 2(1) of the Act after the bifurcation of the bilingual State of Bombay into the State of Maharashtra and the newly constituted State of Gujarat under Section 3 of the Bombay Reorganisation Act, 1960 and therefore the power of the President of India to establish a permanent Bench or Benches of the High Court under sub-section (2) of Section 51 of the Act and that of the Chief Justice to appoint with the prior approval of the Governor a place or places where the Judges and the Division Courts of the High Court may also sit under sub-section (3) thereof, can no longer be exercised, (4) the power conferred on the Chief Justice under sub-section (3) of Section 51 of the Act to appoint a place or places where the Judges or the Division Courts of the High Court may also sit, does not include a power to establish a Bench or Benches at such places, and he had no power or authority under sub-section (3) of Section 51 of the Act to issue administrative directions for the filing or institution of proceedings at such a place and (5) the impugned notification issued by the Chief Justice under sub-section (3) of Section 51 of the Act was a colourable exercise of power and therefore liable to be struck down. We are afraid, the High Court has proceeded on wholly wrong premises.

10. Section 51 of the Act provides as follows :

> 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.
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> (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.
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> (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.

11. Three questions arise for consideration in this appeal : (1) Whether the power of the President under sub-section (2) of Section 51 of the Act or that of the Chief Justice of the High Court under sub-section (3) of Section 51 of the Act, can no longer be exercised due to lapse of time. (2) Whether the exercise of power by the Chief Justice under sub-section (3) of Section 51 of the Act

appointing Aurangabad to be a place at which the Judges and Division Courts of the High Court shall also sit is co-related to the reorgnisation of the States, or has no nexus with the object and purposes sought to be achieved by the Act and is only a part of the demand for decentralisation of the administration of justice in general. (3) Whether the power of the Chief Justice under sub-section (3) of Section 51 of the Act does not include a power to establish a Bench or Benches at such place or places carving out territorial jurisdiction for such Benches and authorising the filing or institution of proceedings at such places.

12. It is difficult to agree with the High Court that the High Court of Bombay is not the High Court of a new State within the meaning of sub-section (1) of Section 49 of the Act, merely because the bilingual State of Bombay was bifurcated into two separate States of Maharashtra and Gujarat under Section 3 of the Bombay Reorganisation Act 1960. Nor do we see any valid basis for the view taken by the High Court that the power of the President to establish a permanent Bench or Benches of the High Court under sub-section (2) of Section 51 of the Act or that of the Chief Justice to appoint, with the approval of the Governor, a place or places where the Judges and Division Courts may also sit under sub-section (3) of Section 51 of the Act, can no longer be exercised, in relation to the High Court of Bombay. It was rightly not disputed before us that the High Court of Bombay was the High Court for the new State of Bombay within the meaning of sub-section (1) of Section 49 of the Act and therefore the provisions of Section 51 of the Act are still applicable. That must be so because the High Court of Bombay owes its principal seat at Bombay to the Presidential Order issued under sub-section (1) of Section 51 of the Act. The expression 'new State' occurring in sub-section (1) of Section 49 of the Act is defined in Section 2(i) to mean "a State formed under the provisions of Part II". The State of Bombay was a new State formed under Section 8 of the Act, which occurs in Part II. The Bombay Reorganisation Act, 1960 (11 of 1960) which reconstituted the erstwhile State of Bombay into the State of Maharashtra and the State of Gujarat provides, inter alia, by sub-section (1) of Section 28 that, as from the appointed day, i.e. May 1, 1960, there shall be a separate High Court for the State of Gujrat and that the High Court of Bombay shall become the High Court for the State of Maharashtra. Sub-section (2) of Section 28 of that Act provides that the principal seat of the Gujarat High Court shall be at such place as the President may, by notified order, appoint. It is rather significant that the Bombay Reorganisation Act, 1960 contains so similar provision with regard to the principal seat of the High Court of Bombay. That being so, the continued existence of the principal seat of the Bombay High Court at Bombay is still governed by sub-section (1) of Section 51 of the Act. This conclusion of ours is reinforced by the opening words of Section 41 of that Act which provides for the setting up of a permanent Bench of the Bombay High Court at Nagpur, and it reads :

41. Permanent Bench of Bombay High Court at Nagpur. - Without prejudice to the provisions of Section 51 of the States Reorganisation Act, 1956, such Judges of the High Court at Bombay, being not less than three in number, as the Chief Justice may from time to time nominate, shall sit at Nagpur in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara, Chanda and Rajpura :

> Provided that the Chief Justice may, in his discretion, order that any case arising in any such district shall be heard at Bombay.

13. The legislative intent is clear and explicit by the use of the words "without prejudice to the provisions of Section 51 of the States Reorganisation Act, 1956". The legislature presupposed the continued existence of Section 51 of the Act in relation to the High Court of Bombay. That shows

that while enacting Section 41 of the Act, Parliament retained the power of the President of India both under sub-section (1) and sub-section (2) of Section 51 of the Act and that of the Chief Justice under sub-section (3) thereof. If there is continued existence of sub-section (1) of Section 51 of the Act in relation to the principal seat of the High Court for a new State, a fortiori, there is, to an equal degree, the continued existence of the provisions contained in sub-sections (2) and (3) of Section 51 of the Act. This is also clear from the provisions of Section 69 of the Act which in terms provides that Part V which contains Section 51 of the Act shall have effect subject to any provision that may be made, on or after the appointed day with respect to the High Court of a new State, by the legislature or any other authority having power to make such provision.

14. Nor can we subscribe to the proposition that the power of the President under sub-section (2) of Section 51 of the Act, or that of the Chief Justice of the High Court of a new State under sub-section (3) of that Section, can no longer be exercised due to lapse of time. The High Court is of the view that the provisions of the Act and in particular of Section 51 were meant to be exercised either immediately or within a reasonable time of the reorganisation of the States and therefore the exercise of the power by the Chief Justice under sub-section (3) of Section 51 of the Act appointing Aurangabad as a place where the Judges and Divisional Courts of the High Court may also sit, after a lapse of 26 years, is constitutionally impermissible. Any other view, according to the High Court, is bound to give rise to a very anomalous situation as in nine out of 16 States not affected by the Act, the creation of a permanent Bench of a High Court must be by an Act of Parliament while in seven new States formed under the Act, the same could be achieved by a Presidential Notification under sub-section (2) of Section 51 of the Act. Furthermore, in States where the High Courts were established by Letters Patent, the powers conferred on the Chief Justices of the High Courts qua sittings of Single Judges and Division Courts can be exercised only with legislative sanction whereas under sub-section (3) of Section 51 it can be done by the Chief Justices of the High Court for a new State, with the approval of the Governor of that State. Such a construction of the provisions of Section 51 of the Act would, according to the High Court, results in creating discrimination between the States. The reasoning of the High Court that the Act being of transitory nature, the exercise of the power of the President under sub-section (2) of Section 51 of the Act, or of the Chief Justice under sub-section (3) thereof, after a lapse of 26 years, would be a complete nullity, does not impress us at all. The provisions of sub-section (2) and (3) of Section 51 of the Act are supplemental or incidental to the provisions made by Parliament under Articles 3 and 4 of the Constitution. Article 3 of the Constitution enables Parliament to make a law for the formation of a new State. The Act is a law under Article 3 for the reorganisation of the States. Article 4 of the Constitution provides that the law referred to in Article 3 may contain "such supplemental, incidental and consequential provisions as Parliament may deem necessary". Under the scheme of the Act, these powers continue to exist by reason of Part V of the Act unless Parliament by law otherwise directs. The power of the President under sub-section (2) of Section 51 of the Act, and that of the Chief Justice of the High Court under sub-section (3) thereof are intended and meant to be exercised from time to time as occasion arises, as there is in intention to the contrary manifested in the Act within the meaning of Section 14 of the General Clauses Act. The High Court has assumed that the provisions of sub-sections (2) and (3) of Section 51 of the Act have 'ebbed out' by lapse of time. This assumption is plainly contrary to the meaning and effect of Section 69 of the Act which in terms provides that Part V which contains Section 51 of the Act, shall have effect subject to any provision that may be made on or after the appointed day with respect to the High Court of any State, by the legislature or any other authority having power to make such provision.

15. It is a matter of common knowledge that Parliament considered it necessary to reorganise the existing States in India and to provide for it and other matters connected therewith and with that end

in view, the States Reorganisation Act, 1956 was enacted. As a result of reorganisation, boundaries of various States changed. Some of the States merged into other States in its entirety, while some States got split and certain parts thereof merged into one State and other parts into another. These provisions were bound to give rise, and did give rise, to various complex problems. These problems are bound to arise from time to time. The Act is a permanent piece of legislation on the statute-book. Section 14 of the General Clauses Act, 1897 provides that, where, by any Central Act or Regulation, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion arises. The Section embodies a uniform rule of construction. That the power may be exercised from time to time when occasion arises unless a contrary intention appears is therefore well settled. A statute can be abrogated only by express or implied repeal. It cannot fall into desuetude or become inoperative through obsolescence or by lapse of time. In R v. London County Council (LR (1931) 2 KB 215 (CA)), Scrutton, L.J. put the matter thus :

> The doctrine that, because a certain number of people do not like an Act and because a good many people disobey it, the Act is therefore 'obsolescent, and no one need pay any attention to it, is a very dangerous proposition to hold in any constitutional country. So long as an Act is on the statute-book, the way to get rid of it is to repeal or alter it in Parliament, not for subordinate bodies, who are bound to obey the law, to take upon themselves to disobey an Act of Parliament.

As to the theory of desuetude, Allen in his Law in the Making, 5th Edn., p. 454 observes :

Age cannot wither an Act of Parliament, and at no time, so far as I am aware, has it ever been admitted in our jurisprudence that a statute might become inoperative through obsolescence.

The learned author mentions that there was at one time a theory which, in the name of 'non-observance', came very near to the doctrine of desuetude, that if a statute had been in existence for any considerable period without ever being put into operation, it may be of little or no effect. The rule concerning desuetude has always met with such general disfavour that it seems hardly profitable to discuss it further. It cannot be said that sub-section (2) or (3) of Section 51 of the Act can be regarded as obsolescent. The opening words of Section 41 of the Bombay Reorganisation Act, 1960 manifest a clear legislative intention to preserve the continued existence of the provisions contained in Section 51 of the Act. It was as recent as December 8, 1976 that the President issued a notification under sub-section (2) of Section 51 of the Act for the establishment of a permanent Bench of the Rajasthan High Court at Jaipur. The High Court is therefore not right in observing that the provisions of Section 51 of the Act were not intended to be operative indefinitely and they were meant to be exercised either immediately or within a reasonable time, or that the powers of the President or the Chief Justice thereunder can no longer be exercised in relation to the High Court of Bombay.

16. The conclusion reached by the High Court that the impugned notification issued by the Chief Justice under sub-section (3) of Section 51 of the Act was not directly connected with the reorganisation of the States, or had no nexus with the objects and purposes sought to be achieved by the Act but was only as part of the demand for decentralisation of the administration of justice in general, can only be justified as a necessary corollary flowing from its views expressed on other aspects of the matter. The creation of 14 new States by Part II of the Act based on a linguistic basis virtually led to the redrawing of the political map of India as a whole. Even after the reorganisation of the States in 1956, the political map of India continued to change owing to the growing pressure

of political considerations and circumstances. The formation of the linguistic State of Bombay constituted under Section 8 of the Act became the source of struggle between the Gujarati and Marathi-speaking people as a result of which the State of Bombay was further bifurcated in 1960. These political changes necessarily affected the constitution and structure of the High Court. Under the Constitution, Parliament alone has the legislative competence to make a law relating to the subject under Entry 78 of List I of the Seventh Schedule which reads :

> 78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

17. Under the scheme of the Act, it would appear that having constituted a High Court for the new State of Bombay under sub-section (1) of Section 49 of the Act and conferred jurisdiction on it under Section 52 in relation to the territories of the new State, Parliament left it to the various high constitutional functionaries designated in the three sub-section of Section 51 of the Act to determine the place where the principal seat of the High Court should be located and places where permanent Bench or Benches of the High Court may be established, or where the Judges and Division Courts of the High Court may also sit. On the reorganisation of the States as from the appointed day, i.e. November 1, 1956, the territories of the new State of Bombay formed under Section 8 of the Act and with it the jurisdiction of the High Court was considerably extended. The merger of the new territories of the Vidarbha region of the former State of Madhya Pradesh and the Marathwada region of the erstwhile State of Hyderabad together with the Saurashtra region of the newly constituted State of Gujarat was an additional source of strength of the High Court. It becomes necessary for the more convenient transaction of judicial business to establish, as from the appointed day, two Benches of the High Court at Nagpur and Rajkot to deal with matters arising from Vidarbha and Saurashtra regions respectively. The formation of the separate State of Gujarat in 1960 under Section 3 of the Bombay Reorganisation Act, 1960 resulted in severance of ties not only with the Saurashtra region but also with the Gujarat districts over which the High Court had exercised jurisdiction for about a century. The High Court of Bombay therefore underwent a major transformation in 1956 when the bilingual State of Bombay was formed under Section 8 of the Act and then again in 1960 when with the formation of a separate State of Gujarat under Section 3 of the Bombay Reorganisation Act, the residuary State of Bombay was to be known as the State of Maharashtra. Nagpur which ceased to be the seat of the High Court of the new State of Madhya Pradesh, was given a Bench by an order issued by the then Chief Justice of the High Court under sub-section (3) of Section 51 of the Act. The arrangement was made permanent by Section 41 of that Act which provided for the establishment of a permanent Bench at Nagpur to deal with cases arising out of the Vidarbha region. It was a solemn assurance given to the people of the Marathwada region of the erstwhile State of Hyderabad by Clause (7) of the Nagpur Pact that the provision with regard to the establishment of a permanent Bench at Nagpur shall also apply mutandis to the Marathwada region.

18. There has been a long-standing demand ever since the formation of the bilingual State of Bombay under Section 8 of the Act for the establishment of a permanent Bench of the Bombay High Court at Aurangabad under sub-section (2) of Section 51 of the Act for the disposal of cases arising out of the Marathwada region of the State of Maharashtra and the matter is still under the active consideration of the Central Government. Pending the decision of the Central Government regarding the establishment of a permanent Bench of the High Court under sub-section (2) of Section 51 of the Act at Aurangabad for the Marathwada region, the Chief Justice of the Bombay High Court issued the impugned order, for the establishment of a Bench at Aurangabad with effect

from August 27, 1981.

19. The only other point to be considered, and this was the point principally stressed in this appeal, is whether the power conferred on the Chief Justice under sub-section (3) of Section 51 of the Act to appoint a place or places where the Judges and Divisional Courts may also sit, does not include a power to establish a Bench or Benches at such place or places, nor that he had any power or authority thereunder to issue administrative directions for the filing or institution of proceedings at such a place. There is quite some discussion in the judgment of the High Court on the distinction between the 'sittings' of the Judges and Division Courts and the 'seat' of the High Court and after going into the history of the constitution of the various High Courts in India and the letters patent constituting such High Courts, the High Court holds that the exercise of the power by the Chief Justice under sub-section (3) of Section 51 of the Act is bad in law as it brings about a territorial bifurcation of the High Court. According to the High Court, the Judges and Division Courts at Aurangabad were competent to hear and decide cases arising out of the districts of the Marathwada region assigned to them by the Chief Justice, but the Chief Justice had no power or authority under sub-section (3) of Section 51 of the Act to issue administrative directions for the filing or institution of proceedings at such a place. The judgment of the High Court mainly rests on the decision of the Kerala High Court in Manickam Pillai Subbayya Pillai v. Assistant Registrar, High Court, Kerala, Trivandrum (AIR 1958 Ker 183 : ILR 1958 Ker 629 : 1958 Ker LJ 280) and the minority view of Raina, J. in Abdul Taiyab Abbasbhai Malik v. Union of India (AIR 1977 MP 116 : 1976 Jab LJ 706 : 1976 MP LJ 767), following the Kerala view.

20. It is not necessary for our purposes to go into the distinction sought to be drawn between the 'sittings' of the Judges and Division Courts at a place and the 'seat' of the High Court. It is difficult to comprehend how the Chief Justice can arrange for the sittings of the Judges and Division Courts at a particular place unless there is a seat at that place. It may be true in the juristic sense that the seat of the High Court must mean "the principal seat of such High Court", i.e. the place where the High Court is competent to transact every kind of business from any part of the territories within its jurisdiction. It is impossible to conceive of a High Court without a seat being assigned to it. The place where it would sit to administer justice or, in other words, where its jurisdiction can be invoked is an essential and indispensable feature of the legal institution, known as a court. Where there is only one seat of the High Court, it must necessarily have all the attributes of the principal seat. But where the High Court has more than one seat, one of them may or may not be the principal seat according to the legislative scheme. It is both sound reason and common sense to say that the High Court of Bombay is located at its principal seat at Bombay, but it also has a seat at the permanent Bench at Nagpur. When the Chief Justice makes an order in terms of sub-section (3) of Section 51 of the Act that Judges and Division Courts of the High Court shall also sit at such other places, the High Court in the generic sense has also a seat at such other places. We may draw some analogy from the provisions of Article 130 of the Constitution which reads :

> 130. The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

21. It is necessary to emphasise that besides administering justice, the High Court has the administrative control over the subordinate judiciary in a State. The High Court must necessarily carry on its administrative functions from the principal seat, i.e. the place where the High Court transacts every kind of business in all its capacities. The High Court as such is located there, but it may have more than one seat for transaction of judicial business. The constitution and structure of

the High Court depends on the statute creating it. The decision in Nasiruddin v. State Transport Appellate Tribunal ((1976) 1 SCR 505 : (1975) 2 SCC 671 : AIR 1976 SC 331) is not directly in point as it turned on the construction of the provisions of the U.P. High Courts (Amalgamation) Order, 1948. It is however an authority for the proposition that after the amalgamation of the High Court of Allahabad and the Chief Court of Oudh, the two High Courts ceased to exist and became Benches of the newly constituted High Court by the name of the High Court of Judicature at Allahabad. Further, the Court held that a case 'instituted' at a particular Bench had to be 'heard' at that Bench. It recognised that there can be two seats of the High Court without a principal seat.

22. It must here be mentioned that provisions similar to sub-section (3) of Section 51 of the Act existed in almost all the Letters Patent or the Acts under which the various High Courts have been constituted. While introducing the Bill of 1861 in the British Parliament for the establishment of the High Courts for the Bengal Division of the Presidency of Fort William and also at Madras and Bombay, Sir Charles Wood, Secretary of State for India, laid stress on the advantage of the judges of the new courts going on circuit to try criminal cases. He said :

> Now according to the provisions of this Bill, the Judges of the Supreme Court may be sent on circuit throughout the country.... It may be impossible in a country like India to bring justice to every man's door, but at all events the system now proposed will bring it far nearer than at present.

23. When we examine the constitution of the various High Courts in India, one thing is clear that whenever a High Court was established by Letters Patent under Section 1 of the Indian High Courts Act, 1861 called the Charter Act, or under Section 113 of the Government of India Act, 1935, the High Court was erected and established at a particular place mentioned in the Letters Patent. Section 1 of the Charter Act provided that it shall be lawful for Her Majesty, by Letters Patent under the great seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William at Bengal for the Bengal Division of the Presidency of the Fort William, and by like Letters Patent, to erect and establish like High Courts at Madras and Bombay for these Presidencies respectively. In pursuance of these provisions by Letters Patent issued by Her Majesty in 1862, the Charactered High Courts of Calcutta, Madras and Bombay were established. In virtue of the powers conferred by Section 16 of the Act the Crown by Letters Patent established in 1866 at Agra a High Court of Judicature for North-Western Provinces for the Presidency of Fort William, to be called a High Court of Judicature for North Western Provinces. The seat of the High Court for the North-Western Provinces was shifted from Agra to Allahabad in 1869 and its designation was altered to the High Court of Judicature at Allahabad by Supplementary Letters Patent issued in 1919 in pursuance of Section 101(5) of the Government of India Act, 1915. The expression 'erect and establish' in relation to a High Court meant nothing more than to indicate the establishment of the High Court at a particular place where the High Court was competent to transact every kind of business arising from any part of the territory within its jurisdiction.

24. Clause 31 of the Letter Patent for the High Court of Calcutta provides for "exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court" and it reads as follows :

> And we do further ordain that whenever it shall appear to the Governor-General-in-Council convenient that the jurisdiction and power by these our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at Fort William in Bengal, should be exercised in any place within the jurisdiction of any Court now

> subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

The Letters Patent for the High Courts of Madras and Bombay are mutatis mutandis in almost the same terms. Clause 311 of these Letters Patent similarly provided for "exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court". It would appear therefrom that the power to direct that the High Court shall sit at a place or places other than the usual place of sitting of these High Courts was a power of the Governor-General-Council, and the proceedings in cases before the said High Courts at such place or places were to be regulated by any law relating thereto which had been or might be made by competent legislative authority for India.

25. It is clear upon the terms of Section 51 of the Act that undoubtedly the President has the power under sub-section (1) to appoint the principal seat of the High Court for a new State. Likewise, the power of the president under sub-section (2) thereof, "after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, pertains to the establishment of a permanent Bench or Benches of that High Court of a new States at one or more places within the State other than the place where the principal seat of the High Court is located and for any matters connected therewith" clearly confer power on the President to define the territorial jurisdiction of the permanent Bench in relation to the principal seat as also for the conferment of exclusive jurisdiction to such permanent Bench to hear cases arising in districts falling within its jurisdiction. The creation of a permanent Bench under sub-section (2) of Section 51 of the Act must therefore bring about a territorial bifurcation of the High Court. Under sub-section (1) and sub-section (2) of Section 51 of the Act the President has to act on the advice of the Council of Ministers as ordained by Article 74(1) of the Constitution. In both the matters the decision lies with the Central Government. In contrast, the power of the Chief Justice to appoint under sub-section (3) of Section 51 of the Act 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 or the permanent Bench 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. 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 for a 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. The non obstante clause contained in sub-section (3) of Section 51 gives an overriding effect to the power of the Chief Justice. There is no territorial bifurcation of the High Court merely because the Chief Justice directs under sub-section (3) of Section 51 of the Act that the Judges and Division Courts shall also sit at such other places as he may, with the approval of the Governor, appoint. It must accordingly be held that there was no territorial bifurcation of the Bombay High Court merely because the Chief Justice by the impugned notification issued under sub-section (3) of Section 51 of the Act directed that the Judges and Division Courts shall also sit at Aurangabad. The Judges and Division Courts at Aurangabad are part of the same High Court as those at the principal seat at Bombay and they exercise jurisdiction as Judges of the High Court of Bombay at Aurangabad. The Chief Justice acted within the scope of his powers. We see no substance in the charge that the impugned notification issued by the Chief Justice under sub-section (3) of Section 51 of the Act was a colourable exercise of power.

26. As to the scope and effect of sub-section (3) of Section 51 of the Act, the question came up for consideration before Chagla, C.J. and Badkas J. in Seth Manji Dana v. C.I.T., Bombay (Civil Appeal No. 995 of 1957, decided on July 22, 1958 (Bom)). This was an application by which the validity of Rule 254 of the Appellate Side Rules was challenged insofar as it provided that all income tax references presented at Nagpur should be heard at the principal seat of the High Court at Bombay, and the contention was that the result of this rule was that it excluded income tax references from the jurisdiction of the High Court functioning at Nagpur. In repelling the contention, Chagla, C.J. observed :

> Legally, the position is quite clear. Under Section 51(3) of the State Reorganisation Act, the Judges sitting at Nagpur constitute a part of the High Court of Bombay. They are as much a part of the High Court of Bombay, and if we might say so distinguished part of the High Court of Bombay, as if they were sitting under the same roof under which Judges function in Bombay. All that happens is that the Chief Justice, under the powers given to him under the Letters Patent distributes the work to various Judges and various Divisional Benches, and acting under that power he distributes certain work to the Judges sitting at Nagpur.

He then continued :

> All that Rule 254 does is to permit as a matter of convenience certain matters to be presented at Nagpur to the Deputy Registrar. If Rule 254 had not been enacted, all matters would have to be presented at Bombay and then the Chief Justice would have distributed those matters to different Judges, whether sitting in Bombay or at Nagpur. It is our of regard and consideration for the people of Vidarbha and for their convenience that this rule is enacted, so that litigants should not be put to the inconvenience of going to Bombay to present certain matters. Therefore, this particular rule has nothing whatever to do either with Section 51(3) of the States Reorganisation Act or with the Constitution.

With regard to Rule 254, he went on to say :

> Now, having disposed of the legal aspect of the matter, we turn to the practical aspect, and let us consider whether this rule inconveniences the people at Nagpur. If it does, it would certainly call for an amendment of that rule. Now, there is particular reason why all Income Tax References should be heard in Bombay and that reason is this. The High Court of Bombay for many years, rightly or wrongly, has followed a particular policy with regard to Income Tax References and that policy is that the same Bench should hear Income Tax References, so that there should be a continuity with regard to the decisions given on these References. I know that other High Courts have referred to this policy with praise because they have realised that the result of this policy has been that Income Tax Law has been laid down in a manner which has received commendation from various sources. The other reason is and we hope we are not mistaken in saying so that the number of Income Tax References from Nagpur are very few. If the number was large, undoubtedly a very strong case would be made out for these cases to be heard at Nagpur.

He then concluded :

> After all, Courts exist for the convenience of the litigants and not in order to maintain any particular system of law or any particular system of administration. Whenever a Court finds that a particular rule does not serve the convenience of litigants, the Court should be always prepared to change the rule.

The ratio to be deduced from the decision of Chagla, C.J. is that the Judges and Division Courts sitting at Nagpur were functioning as if they were the Judges and Division Courts of the High Court at Bombay.

27. In Manickam Pillai case ((1972) 2 SCR 318 : (1972) 4 SCC 664 : AIR 1972 SC 187), the Kerala High Court held that the curtailment of the territorial jurisdiction of the main seat of the High Court of a new State is a necessary concomitant to the establishment of a permanent Bench under sub-section (2) of Section 51 of the Act while contrasting sub-section (3) with sub-section (2). There, a question arose whether the temporary Bench of the High Court of Kerala with its principal seat at Ernakulam created by the Chief Justice at Trivandrum by an order issued under sub-section (3) of Section 51 of the Act was not the High Court of Kerala, and the Judges and Division Courts sitting at Trivandrum were precisely in the same position as Judges and Division Courts sitting in the several court-rooms of the High Court at its principal seat in Ernakulam. In other words, the contention was that the Judges and Division Courts sitting at Trivandrum could only hear and dispose of such cases as were directed to be posted before them by the Chief Justice but no new case could be instituted there. Raman Nayar, J. (as he then was) speaking for the Court held that the Trivandrum Bench was not the High Court of Kerala and the Judges and Division Courts sitting at Trivandrum could hear and dispose of only such cases as may be assigned to them. With respect, we are of the opinion that the view expressed by Chagla, C.J. in Manji Dana case ((1969) 3 SCR 603 : (1969) 3 SCC 238 : AIR 1969 SC 1201), is to be preferred. Chagla, C.J. rightly observes that the Judges and Division Courts at a temporary Bench established under sub-section (3) of Section 51 of the Act function as Judges and Division Courts of the High Court at the principal seat, and while so sitting at such a temporary Bench they may exercise the jurisdiction and power of the High Court itself in relation to all the matters entrusted to them.

28. In the result, the appeal must succeed and is allowed. The judgment and order passed by the High Court is set aside and the writ petition filed by respondent 1 is dismissed. In terms of the Order passed by us on May 4, 1982 ((1982) 2 SCC 440), we direct that in accordance with the notification issued by the Chief Justice of the High Court of Bombay dated August 27, 1981, the sittings of the Judges and Division Courts may be held and continue to be held at Aurangabad 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 May 4, 1982 at the main seat of the High Court at Bombay shall be dealt with and disposed of as the Chief Justice of the High Court may direct, consistently with the terms of the aforesaid notification dated August 27, 1981.

29. There shall be no order as to costs.

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