

SUPREME COURT OF INDIA

RAJASTHAN HIGH COURT ADVOCATES ASSOCIATION

Vs.

UNION OF INDIA & ORS.

15/12/2000

(R.C.Lahoti, S.V.Patil)

Appeal (crl.) 16698 of 1996

JUDGMENT

R.C. Lahoti, J

The present State of Rajasthan came into being on November 1, 1956 in accordance with the States Reorganisation Act, 1956 (hereinafter the Act) consisting of the territories mentioned in Section 10 thereof. Sub-section (2) of Section 49 mandates a High Court being established for the new State of Rajasthan as from the appointed day, i.e., November 1, 1956. On October 27, 1956, the President of India in exercise of the powers conferred by sub-section (1) of Section 51 of the Act, directed Jodhpur to be the principal seat of the new High Court for the State of Rajasthan. Initially the Chief Justice of the State established a temporary bench of the High Court of Rajasthan at Jaipur but eventually exercising the power conferred by sub-section (2) of Section 51 of the Act the President, on January 31, 1977 issued an Order which reads as under:-

In exercise of the powers conferred by sub- section (2) of Section 51 of the States Reorganisation Act, 1956 (37 of 1956), the President, after consultation with the Governor of Rajasthan and the Chief Justice of the High Court of Rajasthan, is pleased to make the following Order, namely :-

1. Short title and Commencement __ (1). This Order may be called the High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976.

(2) It shall come into force on the 31st day of January, 1977.

2. Establishment of a Permanent Bench of the Rajasthan High Court at Jaipur __ There shall be established a permanent Bench of the High Court of Rajasthan at Jaipur, and such Judges of the High Court of Rajasthan, being not less than five in number, as the Chief Justice of that High Court may, from time to time nominate, shall sit at Jaipur 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 Ajmer, Alwar, Bharatpur, Bundi, Jaipur, Jhalawar, Jhunjhunu, Kotah, Sawai Madhopur, Sikar and Tonk.

Provided that the Chief Justice of that High Court may, in his discretion, order that any case or class of cases arising in any such district shall be heard at Jodhpur.

New Delhi. Sd/- F.A. AHMAD December 8, 1976. President.

On 23rd December, 1976, the then Acting Chief Justice of the High Court of Rajasthan issued the following order carving out jurisdiction between the cases to be heard at Jodhpur principal seat and the Jaipur Bench seat :-

RAJ. HIGH COURT, JODHPUR NOTIFICATION

No. 1/J.B. Dated Dec. 23, 1976.

In pursuance of the High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976, and in exercise of the powers under sub-sec. (2) of S.44 of the Rajasthan High Court Ordinance, 1949, read with Ss.54 and 57 of the States Reorganisation Act, 1956, the Honble the x x x Chief Justice has been pleased to order that with effect from the 31st day of January, 1977 -

(a) all cases arising in the revenue districts of Banswara, Barmer, Bikaner, Bhilwara, Chitorgarh, Churu, Dungarpur, Ganganagar, Jaisalmer, Jalore, Jodhpur, Nagaur, Pali, Sirohi and Udaipur (except such case or class of cases as may by special order be transferred to the Jaipur Bench) shall be disposed of by the Court at Jodhpur, and

(b) all cases arising in the revenue districts of Ajmer, Alwar, Bundi, Bharatpur, Jaipur, Jhalawar, Jhunjhunu, Kotah, Sawai Madhopur, Sikar and Tonk (except such case or class of cases as may by special order be transferred to the Court at Jodhpur) shall be disposed of by the Court at Jaipur.

Provided that a Vacation Judge, whether sitting at Jodhpur or at Jaipur may hear any case irrespective of the district in which it has arisen for the purpose of deciding any matter which in his opinion requires immediate action.

Explanation.- A writ case shall be deemed to arise in the district where the first order pertaining to that case was passed by a Court, Tribunal or Authority irrespective of the district in which the appeal or revision from that order is heard and irrespective also of the fact whether or not there has been any modification or reversal of the order in appeal or revision.

Sd/- Ved Pal Tyagi CHIEF JUSTICE 23-12-76.

On 12th January, 1977 the learned Acting Chief Justice issued yet another order substituting a new explanation now forming part of the order dated December 23, 1976, which reads as under :-

In the above order for the Explanation the following maybe substituted. -

Explanation - A writ case shall be deemed to arise in the district where the cause of action for issuing the first order pertaining to that case passed by a Court, tribunal or authority has arisen irrespective of the district in which the appeal or revision from that order is heard and irrespective also of the fact whether or not there has been any modification or reversal of the order in appeal or revision.

Sd/- Ved Pal Tyagi CHIEF JUSTICE 12-1-77.

The validity of the Presidential Order dated December 8, 1976 as also of the abovesaid orders of the Acting Chief Justice was put in issue on very many grounds but the same was turned down by a

Division Bench of the High Court of Rajasthan. (See Ram Rakh Vs. Union of India & Ors. - AIR 1977 Rajasthan 243). Briefly it may be stated that the grounds on which challenge was laid to the order of the Acting Chief Justice were : (1) Unless the High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976 comes into force, the Acting Chief Justice could not have passed any order under its authority; (2) The Acting Chief Justice could not have passed any order for the transfer of pending cases or the cases instituted at the main seat at Jodhpur upto 31-1-1977 under the authority of the Presidential Order, inasmuch as the Presidential Order is clearly prospective in operation; (3) Under the proviso to the Presidential Order, cases falling within the jurisdiction of the Jaipur Bench could be withdrawn to the main seat at Jodhpur and not vice versa; (4) The Acting Chief Justice cannot decide, in his administrative capacity, the fact of jurisdiction for the purpose of allocation of cases to the Jaipur Bench on the basis of cause of action.

A perusal of the decision of the Division Bench in Ram Rakhs case (supra) goes to show that in para 7, having set out the four grounds of challenge to the validity of the order issued by the Acting Chief Justice, the Division Bench has observed "these contentions cannot, in our opinion, prevail. However, a perusal of para 29 of the report goes to show that contentions numbers 2 and 3 were taken up by the Division Bench for consideration as two principal grounds while the contention no.4 with which we are concerned here(in view of the submissions made at the Bar) was not dealt with and disposed of by the Division Bench. It appears that the Division Bench (vide para 37 of the report) formed an opinion that the appellant before it was an advocate practising at Jodhpur and nothing was brought to the notice of the Division Bench to show if he was a person aggrieved.

In the present writ petition filed before the High Court very many grounds of challenge were raised and also argued but we would be dealing with only one inasmuch as the learned counsel for the parties conceded at the Bar that this was the only issue surviving for consideration and which deserves to be dealt by this court.

It was submitted before the High Court of Rajasthan that the explanation inserted in the order of the Acting Chief Justice dated December 23, 1976 by the subsequent order dated January 12, 1977 was ultra vires the powers of the Chief Justice. The States Reorganisation Act, the Presidential Order and no other provision of law authorises the Chief Justice to define where a cause of action in a writ case would be deemed to have arisen so as to determine where it would be filed. The High Court in its impugned order has upheld the plea so raised and directed the explanation abovesaid to be struck down. Feeling aggrieved, the Rajasthan High Court Advocates Association, Jodhpur has filed this appeal by special leave.

The order of the Chief Justice, whereto is appended the impugned explanation, refers to the Presidential Order, sub-section (2) of Section 44 of the Rajasthan High Court Ordinance, 1949 and Sections 54 and 57 of the States Reorganisation Act, 1956 as the sources of power exercised in issuing the notification. We will deal with each one of the three.

The Presidential Order having established a permanent bench of the High Court of Rajasthan at Jaipur and having appointed the minimum number of judges as would sit at Jaipur proceeded to declare that the permanent bench seat at Jaipur shall exercise the jurisdiction and power for the time being vested in the High Court in respect of cases arising in the districts, 11 in number, as mentioned therein. A discretionary jurisdiction is also conferred on the Chief Justice of the High Court to order that any case or class of cases arising in any district forming part of territorial jurisdiction of the permanent bench at Jaipur shall be heard at Jodhpur (principal seat). The Presidential Order is clear. The jurisdiction allocated to the permanent bench at Jaipur is by

reference to territory covered by the 11 specified districts. The proviso appended to para 2 of the Presidential Order speaks of any case or class of cases but therefrom too a power in the Chief Justice to define cause of action cannot be spelled out.

The nature and extent of power conferred on the President by Section 51 of the Act came up for the consideration of this Court in State of Maharashtra Vs. Narayan Shamrao Puranik & Ors., AIR 1983 SC 46. It was held:

It is clear upon the terms of S.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 State 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.

[underlining by us]

The establishment of a permanent Bench at Jaipur and defining its territorial jurisdiction brought out a bifurcation of State of Rajasthan into two for the purpose of division of territorial jurisdiction of the High Court between the principal seat and the permanent Bench seat. The Chief Justice of the State cannot, thereafter, artificially or indirectly take away the jurisdiction belonging to one and confer it on the other. Conferring a discretion on the Chief Justice to order any case or class of cases arising in any district within the territorial jurisdiction of permanent Bench at Jaipur shall be heard at Jodhpur cannot spell out a power to define where the cause of action shall be deemed to have arisen in a writ case.

Section 44 of Rajasthan High Court Ordinance 1949 provides as under: 44. Distribution of business and administrative control __ (1) The High Court may, by its own rules, provide as it thinks fit for the exercise by one or more Judges, or by Division Courts constituted by two or more Judges of the High Court, of its original and appellate jurisdiction.

(2) The Chief Justice shall be responsible for the distribution and conduct of the business of the High Court, and shall determine which Judge in each case will sit alone and which Judges of the Court will constitute a Bench.

(3) The administrative control of the High Court shall vest in the Chief Justice who may exercise it in such manner and after such consultation with the other Judges as he may think fit or may delegate such of his functions as he deems fit to any other Judges of the High Court.

Sub-section (2) abovesaid has to be read along with sub-section (1). It entrusts the Chief Justice with responsibility for distribution and conduct of the business of the High Court and to determine which Judge shall sit singly and which in a Bench. The responsibility entrusted carries with it, as a necessary concomitant, the power needed in the Chief Justice to effectively fulfil the responsibility. The provision is what is popularly called, a power to frame a roster. This provision too does not vest

the Chief Justice with power to enact an explanation as is in question. Roster is framed generally by identifying particular subject matter or nature of cases which will be listed for hearing before different Benches consistently with the rules of business of the Court. Thereafter listing of cases is to be done by the Registrar in a routine. Power to frame a roster vests the Chief Justice with an administrative control over the distribution of judicial work of the Court. It has nothing to do with how a Judge would then judicially function in dealing with a case listed before him as per roster. A writ case when listed before a Judge for hearing as per roster may be heard or refused to be heard by him depending on his opinion formed on the judicial side on the question whether the cause of action in that case arises within the territorial jurisdiction of the bench seat or not. Whether or not a case arises in a district lying within the jurisdiction of bench seat __ is a question to be decided judicially, in case to case, and not by an administrative order of the Chief Justice made generally.

Section 54 of the Act speaks of practice and procedure in the High Court. Section 57 speaks of powers of the Chief Justice, Single Judges and Division Courts of the High Court and provides that the laws in force immediately before the appointed day relating to such powers and with respect to matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court for a new State. None of the two provisions can spell out any legislative power having been conferred on the Chief Justice to define cause of action.

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 4-Judges Bench of this Court in *Nasiruddin Vs. State Transport Appellate Tribunal - AIR 1976 SC 331*. It was in the context of division of territorial jurisdiction between Allahabad and Lucknow benches in Uttar Pradesh. This Court held :-

. 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 then 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 part 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 part 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.

[underlining by us]

The abovesaid view of the law has been reiterated by this Court recently in U.P. Rashtriya Chini Mill Adhikari Parishad Vs. State of U.P., (1995) 4 SCC 738, Pr.14.

The expression cause of action has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in cause of action. It has to be left to be determined in each individual case as to where the cause of action arises. The Chief Justice of the 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 may arise 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 the 11 specified districts and the High Court at Jodhpur 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 pre-fixed 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 Jodhpur 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 and then exercising the jurisdiction under Article 226 of the Constitution.

For the foregoing reasons we do not find any fault with the findings arrived at by the High Court. The appeal is dismissed. No order as to the costs.