SUPREME COURT OF INDIA

Dr. Manju Varma

Vs

State of Uttar Pradesh and Others

Appeal (Civil) 8290 of 2002

((Mrs.) Ruma Pal and P. Venkatarama Reddi)

17/11/2004

JUDGMENT

MRS. RUMA PAL, J.

The subject matter of challenge in this appeal is an order passed by the Chief Justice of the Allahabad High Court transferring writ petition No.1678(S/B) of 1998 (Dr. Manju Verma Vs. State of U.P. and others) from the Lucknow Bench of the High Court to Allahabad for hearing.

The respondent has raised a preliminary objection that the appeal was not maintainable under Article 136 of the Constitution. According to the respondent, the impugned order was not an "order" passed by a "Court" or a "Tribunal" within the meaning of Article 136, but was an order passed under paragraph 14 of the United Provinces High Courts (Amalgamation) Order 1948 on the administrative side.

It is also submitted that the appropriate remedy of the appellant was under Article 226 of the Constitution. The Respondent has relied upon the decisions of this Court in Konkan Railway Corporation Ltd and Anr. Vs. Rani Construction Pvt. Ltd. Rajasthan High Court Advocate's Association Vs. Union of India 7 and State of Rajasthan Vs. Prakash Chand 5, to contend that the nature of the power conferred and exercised by the Chief Justice under paragraph 14 of the 1948 order was purely administrative.

The appellant has submitted that since the territorial jurisdictions of the High Court Benches at Lucknow and Allahabad are rigidly divided, the power exercised by the Chief Justice under paragraph 14 of the 1948 Order was similar to the powers conferred under Section 24 of the Code of Civil Procedure and Article 139-A of the Constitution. It is submitted that the transfer of the case from one territorial jurisdiction to another territorial jurisdiction has always been considered to be judicial in nature and the functionary exercising such power, a Court or a Tribunal. It is submitted that a litigant as the dominus litis cannot be deprived of the right to choose a forum without being heard. According to the appellant, there was a lis between the appellant and the respondent as to whether the writ petition should be transferred or not.

The Chief Justice in deciding such a lis exercised quasi judicial power and would be a Tribunal for the limited purposes for deciding the transfer of a case. It is contended that the power which was being construed in the Konkan Railway case (supra) was the power of the Chief Justice under Section 11(6) of the Arbitration and Conciliation Act 1996 which only involved the nomination of an Arbitrator to decide a case.

Here there was already a case pending before a competent Court. Another distinction with Section 11(6) of the Arbitration Act is that the appointment could be questioned before the Arbitrator, whereas under Clause 14 of the 1948 Order, the correctness of the Chief Justice's order could not be argued before the Court to which the case was directed to be transferred. Article 136 of the Constitution confers broad powers on this Court to grant special leave to appeal from any order whether an appeal lies from such an order under law or not.

"The article itself is worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by granting of special leave against any kind of judgment or order made by a Court or Tribunal in any cause or matter and the powers could be exercised in spite of the specific provisions for appeal contained in the Constitution or other laws. The Constitution for the best of reasons did not choose to fetter or circumscribe the powers exercisable under this article in any way". * According to The Engineering Mazdoor Sabha & Anr. Vs. The Hind Cycles Ltd.

"It is clear that Art.136 (1) confers very wide powers on this Court and as such, its provisions have to be liberally construed. The constitution-makers thought it necessary to clothe this Court with very wide powers to deal with all orders and adjudications made by Courts and Tribunals in the territory of India in order to ensure fair administration of justice in this country. It is significant that whereas Arts. 133(1) and 134 (1) provide for appeals to this Court against judgments, decrees and final orders passed by the High Courts, no such limitation is prescribed by Art. 136(1). All Courts and all Tribunals in the territory of India except those in Cl.(2) are subject to the appellate jurisdiction of this Court under Art.136(1).

It is also clear that whereas the appellate jurisdiction of this Court under Arts.133 (1) and 134(1) can be invoked only against final orders, no such limitation is imposed by Art. 136(1). In other words, the appellate jurisdiction of this Court under this latter provision can be exercised even against an interlocutory order or decision. Causes or matters covered by Art.136 (1) are all causes and matters

that are brought for adjudication before Courts or Tribunals. The sweep of this provision is thus very wide". *

Thus two conditions must be satisfied for invoking Article 136 (1):-

(1) The proposed appeal must be against a judicial or quasi judicial and not a purely executive or administrative order and;

(2) The determination or order must have been made or passed by any Court or Tribunal in the territory of India.

The decision in Engineering Mazdoor Sabha notices that the designation of an act as quasi judicial or as purely executive depends on the facts and circumstances of each case. But generally speaking if there is a contest between two contending parties and a statutory authority is required to adjudicate upon the competing contentions then the act is a quasi judicial one [See Indian National Congress (I) Vs. Institute of Social Welfare & Ors]. In Jaswant Sugar Mills Ltd. v. Lakshmi Chand : : three characteristics of a judicial order have been indicated.

"1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

2) it declares rights or imposes upon parties obligations affecting their civil rights; and

3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact". * (p.682)

We can now consider whether the impugned order can be described as quasi-judicial prior to 1948, the High Court at Allahabad and the Chief Court in Oudh exercised jurisdiction over the different territories. Historically, the territories within the jurisdiction of the Oudh Chief Court were the 12 districts of Lucknow, Fatehpur, Sultanpur, Rai Bareilly, Pratapgarh, Bara Banki, Gonda, Bahraich, Solapur, Kheri, Hardoi and Unnao. By the United Provinces High Courts (Amalgamation) 1948 Order from 26th July, 1948, the High Court in Allahabad and the Chief Court in Oudh were amalgamated to constitute one High Court by the name of the High Court of Judicature at Allahabad. Under paragraph 7 of the Order the new High Court was vested with all such original appellate and other jurisdiction, as under the law in force immediately before 26th July, 1948 was exercisable in respect of any part of that Province by either of the "existing High Courts".

The phrase "existing High Courts" has been defined in paragraph 2(1) of the Amalgamation Order

to mean the High Courts referred to in Section 219 of the Government of India Act, 1935 as the High Court in Allahabad and the Chief Court in Oudh. Clause 14 of the 1948 Order which is required to be interpreted by us reads:-

"The new High Court, and the judges and division courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces appoint:

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice, otherwise directs, such judges of the new High Court 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." *

This paragraph has already been the subject of interpretation in Sri Nasiruddin Vs. State Transport Appellate Tribunal, . This Court held that the power of the Chief Justice to direct what areas in Oudh are within the exclusive jurisdiction of Judges of the Lucknow Bench meant that areas once determined would continue to hold good. It was further held that under the first proviso to paragraph 14 of the 1948 Order, Lucknow was the seat in respect of causes of action arising in the Oudh areas.

It was held that the second part of the first proviso to paragraph 14 showed that once a direction was given including certain areas in Oudh there was no power or discretion which could be again exercised to change the areas from time to time.

It was held that if a cause of action arose wholly or in part at a place within specified Oudh areas, the Lucknow Bench would have the jurisdiction and if the cause of action arose wholly within the specified Oudh areas then the Lucknow Bench would have exclusive jurisdiction in such a matter. This Court went on to say:-

"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 in part within specified areas in Oudh and part 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." *

With this interpretation of clause 14, it is clear that the Benches of Lucknow and Allahabad although part of one High Court, exercise distinct and exclusive jurisdiction over demarcated territories. The decision in Nasirudin also makes it clear that it was open to a litigant to invoke the jurisdiction of any one of the Benches, if part of the cause of action had arisen within the territorial jurisdiction of both.

It would be instructive in this context to compare the power of transfer of litigation from one jurisdiction to another under Section 24 of the Code of Civil Procedure. Section 24 allows the High Courts or the district Courts either on the application of any of the parties after notice and hearing or of its own motion without such notice to inter alia transfer any suit/appeal or other proceedings, pending in any court subordinate to it for trial or disposal to any other court subordinate to it and competent to try and dispose of the same. Similar power has been granted under the Letters Patent to Chartered High Courts to withdraw proceedings from any Court within its jurisdiction to itself. Thus clause 13 of the Letters Patent 1865 in relation to the Calcutta High Court provides:-

"And we do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have power to remove, and to try and determine, as a Court of extraordinary original Jurisdiction, any suit being falling within the jurisdiction of any Court, whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court." *

Again, this Court has been empowered under Article 139A of the Constitution to transfer proceedings from one High Court to another, either on its own motion or on an application made either by the Attorney General of India or by a party to any such case.

It may be that the orders passed under the first two provisions are not appealable as a matter of right, but nonetheless they remain judicial orders and susceptible of correction under Art. 136. The mere fact that the power has been vested in the Chief Justice under paragraph 14 of the Amalgamation Order and not in the Court would not detract from the nature of the power exercised.

The power of transfer from one territorial jurisdiction is distinct from the power of the Chief Justice to frame a roster to determine the distribution of judicial work in the High Court. In the latter case it is an intra jurisdictional as opposed to an inter jurisdictional act. [See: State of Rajasthan v. Prakash Chand (Supra); Rajasthan High Court Advocates Association v . Union of India (supra)]. It is also distinct from the power of the Chief Justice or his designate to appoint an arbitrator under S.11 (6) of the Arbitration & Conciliation Act, 1996. Under that section "the only function of the Chief Justice or his designate under Section 11 is to fill the gap left by a party to the arbitration agreement or by the two arbitrators appointed by the parties and nominate an arbitrator". *

While exercising this discretion there is no need to serve notice on any party and a rule providing for notice upon the party to the arbitration agreement to show cause why the nomination of an arbitrator as requested should not be made, is bad. The only purpose for which a notice may be given would be to inform a party of such appointment or for assistance of the Chief Justice or his designate to nominate an arbitrator. No lis exists nor is decided.

There was nothing executive in the procedure followed in this case. The respondent had applied to the Chief Justice under paragraph 14 for a transfer of the appellant's writ petition from Lucknow to Allahabad. The Chief Justice heard the parties and by a detailed and reasoned order directed such transfer.

There can in the circumstances be no doubt that the order of the Chief Justice was, if not judicial, at least quasi judicial.

The next question is whether the Chief Justice could be said to have acted as a "Court" or as a "Tribunal". In Durga Shankar Mehta Vs. Thakur Raghuraj Singh & Ors. 1954 SCR 272 this Court declared:- "the expression "Tribunal" as used in article 136 does not mean the same thing as "Court" but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions.

The only Courts or Tribunals, which are expressly exempted from the purview of article 136, are those which are established by or under any law relating to the Armed Forces as laid down in clause (2) of the article.

In Indian National Congress (I) Vs. Institute of Social Welfare and Ors.   this Court posits:-

"Where there is a lis or two contesting parties making rival claims and the statutory authority under the statutory provision is required to decide such a dispute, in the absence of any other attributes of a quasi-judicial authority, such a statutory authority is quasi-judicial authority." *

In ordering the transfer of the case under the 1948 Amalgamation Order, the Chief Justice was determining the plea of the respondent and the objection of the appellant to the transfer of the appellant's writ petition. He could not allow the plea without hearing the affected party and without determining on objective criteria and upon investigation whether the case was (a) transferable and (b) should be transferred. His decision would affect the right of the appellant to choose her 'forum conveniens'. He was therefore acting as an adjudicating body empowered by the Constitution to discharge judicial functions. We would accordingly hold that the Chief Justice while exercising jurisdiction under paragraph 14 of the 1948 Order, acts as a judicial authority with all the attributes of a Court and his order is therefore amenable to correction under Article 136. The preliminary objection of the respondent is therefore rejected.

Coming to the merits - the appellant's writ petition had been filed on 12th November 1998 (W.P. No. 1678 of 1998) and related to the seniority list of the Readers in Obstetrics and Gynecology in the State Medical Colleges. The appellant sought for promotion from the date her juniors, Dr. Sandhya Aggarwal and Dr. Gauri Ganguli, were given promotion. Dr. Gauri Ganguli was added as the respondent No.6 to the appellant's writ petition in 1999. Hearing of the writ petition was concluded and judgment was reserved by a Bench of two Judges in December 1999. Subsequently, the matter was released because of the personal embarrassment faced by one of the Judges who had heard the matter. It was again heard by another Bench inconclusively because one of the Judges was transferred. During this period, pleadings were complete.

The matter then appeared in the list of two learned Judges on 10th July 2001. An application was filed for adjournment by the respondent No. 6. The application was rejected by a reasoned order. The order records that while the appellant's petition had been taken up for hearing several months back and arguments had commenced, the matter had been adjourned on several occasions to accommodate the respondent No. 6 and her counsel.

It was noted that the respondent No. 6 had filed a writ petition on 4th July 2001 in connection with her appointment to the post of Reader in the Department of Obstetrics and Gynecology and obtained an interim order without impleading the present appellant as a party. It was also noted that the hearing of the appellant's writ petition had been fixed with the consent of the parties. After further discussion, the Court was of the view that the application for adjournment was a device to get the case adjourned so that the respondent No. 6 could get an appointment order issued in her favour in her writ petition.

Having rejected the respondent's No. 6 application for adjournment, the matter was directed to be proceeded with. It was then that the respondent No. 6 filed the application for transfer of the appellant's writ application from Lucknow to Allahabad. When the appellant's writ application was taken up for hearing on 25th July 2001 an order was passed by the Division Bench to the following effect:

"Supplementary counter affidavit on behalf of respondent No. 6 filed today be placed on record. Heard learned counsel for the petitioner and learned counsel for the opposite parties. Arguments concluded. Judgment is reserved." *

Six months later on 23rd January 2002 the Chief Justice of the High Court allowed the respondent No.6's application for transfer. Before considering the reasons given by the Chief Justice for allowing the transfer it is necessary to delineate the ambit of his power under paragraph 14 of the Order.

The first proviso of paragraph 14 which confers the power of transfer on the Chief Justice allows the Chief Justice to provide that in respect of such cases, namely, those which arise in areas in Oudh, shall be heard at Allahabad. The proviso assumes first, that the case or class of cases to be transferred by the Chief Justice from Lucknow to Alllahabad are those which the Lucknow Bench

would otherwise have the jurisdiction to entertain; and second that the power of transfer must be exercised for the purpose of having the matter heard at Allahabad. If the matter has already been heard, then the Chief Justice would not have power to transfer the case from Lucknow to Allahabad.

One of the reasons for allowing the transfer was that the writ petition filed before the Lucknow Bench by respondent No. 6 being Writ Petition No. 1945 of 2000 relating to the same issue had been rejected by the High Court on the ground that the Lucknow Bench had no jurisdiction to entertain the petition and that accordingly a writ petition had been filed by the respondent No.6 at Allahabad. There was, according to the impugned order, no reason to take a different stand in the writ petition filed by the appellant when the consequential effect of both the writ petitions was the same.

The factual assumption underlying this reason is incorrect. It is true that the respondent No. 6 had filed a writ petition in 2000 before the Lucknow Bench (W. P. No. 1945 (S/B) of 2000). It is also true that an order had been passed by the Lucknow Bench holding that it had no jurisdiction to entertain the writ petition and that the writ petition should have been filed at Allahabad.

What has been overlooked is that the respondent No. 6 has challenged this order by way of civil revision and the civil revision petition is still pending. Independent of this, a second writ petition (W.P. No. 23879 of 2001) was filed by respondent No. 6 in the High Court in Allahabad in 2001. This writ petition pertains to the issuance of an appointment order to the respondent No. 6 as a Reader as noted by us earlier.

The legal basis of this reason for transfer of the appellant's writ petition is also erroneous. It needs to be emphasized that the power under paragraph 14 envisages transfer of a case or class of cases where the Lucknow Bench otherwise has jurisdiction to decide the matter. **Whether the Lucknow Bench had/had no jurisdiction was not only an issue to be decided judicially in the appellant's writ petition but also an issue which would, if answered in the negative, cut at the root of the Chief Justice's power under paragraph 14 of the Order since paragraph 14 confers the power in the Chief Justice to transfer cases only in respect of any case or class of cases otherwise within the jurisdiction of the Lucknow Bench to Allahabad.**

The second reason for transfer was that the appellant and the respondent No.6, as well the U.P. Public Service Commission were at Allahabad. But the **State Government which issued the impugned order and against which the mandamus was prayed for by the appellant is in Lucknow. In the circumstances, the mere fact that the respondent No. 6 and the appellant were both in Allahabad should not have weighed with the Chief Justice in depriving the appellant of her right as dominus litis.**

The third and final reason which persuaded the Chief Justice to order the transfer is equally insupportable. The reason was that the hearing of the appellant's petition was not concluded. This reason is contrary to the express language of the order of the Division Bench dated 25th July 2001. Merely because an application was made by the respondent No. 6 for recalling the order before the

Lucknow Bench, did not mean that the order dated 25th July 2001 ceased to operate.

We therefore set aside the order of the Learned Chief Justice directing transfer of the appellant's writ petition and leave the matter to the Lucknow Bench which heard the matter to proceed with it in such manner as it may think fit.

The appeal is accordingly allowed without any order as to costs.