KERALA HIGH COURT

Manickam Pillai Subbayya Pillai

Vs.

Assistant Registrar

O.P. No. 395 of 1957

(K. Sankaran A.C.J. and P.T. Raman Nayar, J.)

04.03.1958

JUDGMENT

P.T. Raman Nayar, J.

1. Up to and inclusive of the 31st October, 1956, judges of the High Court of Travencore-Cochin were sitting at Trivandrum and exercising in respect of cases arising in the district of Trivandrum the jurisdiction and powers of a single Judge or a Division Bench of two Judges as determined by the Chief Justice. This was under the proviso added to Section 6 of the Travencore-Cochin High Court Act, V. of 1125 by Central Act, 38 of 1953. The section with the proviso reads as follows :

> "Seat of the High Court.
>
> The High Court of Judicature of the State of Travencore-Cochin shall sit at Ernakulam;
>
> Provided that such Judges of the High Court, not exceeding three in number, as may from time to time be nominated by the Chief Justice, shall sit at Trivandrum and exercise, in respect of cases arising in the district of Trivandrum, the jurisdiction and powers conferred by this Act on a single Judge or a Division Bench of two Judges, as the Chief Justice may determine."

A registry was opened at Trivandrum, in charge of a Joint Registrar, and thereafter all cases arising in the district of Trivandrum were being instituted there.

2. On the 1st of November, 1956, the High Court of Travencore-Cochin stood abolished by reason of Section 50 of the States Reorganisation Act, 1956, and with it went what might be called its Trivandrum Bench. Under Section 51 (1) of the Act, Ernakulam was notified by the President as the principal seat of the new High Court of Kerala which came into being on that date, and the new High Court was functioning exclusively at Ernakulam until the Chief Justice

acting under Section 51 (3) of the Act issued the following notification (marked as Ext. P-2 in this case) :

> "In exercise of the powers conferred by sub-section 3 of Section 51 of the States Reorganization Act of 1956 (Central Act 37 of 1956) the Chief Justice of the High Court of Kerala with the approval of the Governor of Kerala hereby appoints Trivandrum as a place where Judges and Division Courts of the High Court may also sit to dispose of such cases as may from time to time be specified in this behalf by the Chief Justice."

Thereafter judges of the court, nominated by the Chief justice, have been sitting at Trivandrum either singly or as a division court and hearing and disposing of such cases as are from time to time specified by the Chief Justice. Exts. R-2 to R-5 are some of the notifications issued by the Chief justice in this connection. But, all institutions were at the registry at the principal seat of the High Court at Ernakulam, and no Papers were filed at the office at Trivandrum save papers and interlocutory applications connected with, or arising in, the cases specified to be heard and decided at Trivandrum, the Joint Registrar or other officer functioning at Trivandrum being empowered by an office order dated 18-12-1956 (Ext. R-6) to receive such papers and applications.

3. On the 28th September, 1957 the present petitioner presented the civil revision petition, Ext. P-1, against an order (Ext. F) of the Principal Munsiff of Neyyattinkara, to the respondent, an Assistant Registrar of this court, who was at the time in charge of the office at Trivandrum. The respondent returned the civil revision petition with the following endorsement:

> "The notification issued by the Hon'ble The Chief Justice on 12-12-1956 does not authorize me to receive this C. R. P. It is therefore returned".

On 9-10-1957, the petitioner, being aggrieved with the aforesaid return, brought the present petition under article 226 of the Constitution praying for the following reliefs:

> "(a) the issue of a writ of certiorari or other appropriate directions or orders quashing the order or endorsement of the respondent written on Ext. P-1 refusing to receive Exts. P and P-1 and returning the same to the petitioner and,
> (b) "the issue of a writ of mandamus or other appropriate directions or orders compelling the respondent to receive or accept at Trivandrum Exts. P and P-1 as duly filed before the High court of Kerala State sitting at Trivandrum under Section 51 (3) of the States Reorganisation Act."

4. The contention urged on behalf of the petitioner is that once action is taken under Section 51 (3) of the States Reorganisation Act, the judges and division courts sitting at the appointed place, in this case Trivandrum, constitute the High Court for the State concerned sitting at that place,

and that the restriction - if it is a restriction - contained in the last clause of the Chief justice's notification, Ext. P-2, namely, in the words "to dispose of such cases as may from time to time be specified in this behalf by the Chief justice, "which words do not find place in the section itself, is ultra vires and of no effect.
The Trivandrum Bench, if it may be so called, sitting under Section 51 (3) of the Act has all the powers and jurisdiction of the High Court including the power to receive cases, or what is popularly known as filing powers, and these powers are unaffected by the clause in question. On the other hand, the contention of the learned Advocate-General who appears for the respondent is that the clause to which exception is taken neither adds to nor subtracts from the content of Section 51 (3) of the States Reorganization Act, (which of course is something which the Chief Justice' cannot do) but only sets out the true scope of that provision. The position would have been the same had that clause been omitted and had the Chief justice's notification adhered rigidly to the language of the section. The judges and division courts sitting at Trivandrum, what we might conveniently though perhaps not quite accurately call the Trivandrum Bench, could still have sat only to dispose of such cases as may from time to time be specified in that behalf by the Chief Justice; that bench could not have received cases.

5. We consider that the respondent's contention is well founded and has to be accepted. It goes without saying that subject to such limitations as may be placed by law, the power to receive cases on which it is called upon to adjudicate inheres in every court. The revision petition in question under Section 115 of the Civil Procedure Code, is to the High Court and, although no express provision is made in that behalf, a revision petition like a plaint or a memorandum of appeal must be presented to the court concerned or to such officer (functioning, of course, at the same place) as it appoints in this behalf. (See Order 4 rule 1 and Order 41 rule 1 C. P. C).
We shall ignore the fact that the presentation in this case was to the respondent who is only an officer of the court and who, it is not disputed, has not been appointed to receive papers on behalf of the court and, since the act of receiving a paper is a mere ministerial act, assume that, as argued on behalf of the petitioner, the presentation was to the bench at Trivandrum. The question then is whether presentation before the Bench is presentation before the High Court; in other words, whether as contended on behalf of the petitioner, the bench at Trivandrum is the High Court of Kerala sitting at Trivandrum.

6. That the Trivandrum Bench is not the High Court of Kerala is apparent from a mere perusal of Section 51 (3) of the States Reorganisation Act which states that 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. It is the judges and division courts of the High Court of Kerala and not the High Court itself that sits at Trivandrum. Article 216 of the Constitution lays down that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. It is therefore the Chief Justice and the other Judges that together constitute the High Court, and what powers may be exercised on behalf of the court by any judge or a division court thereof is determined by the

law governing these matters. The use of the term "division courts" in Section 51 (3) of the Act can by no means imply that a division court is the High Court itself. The term means nothing more than the term, "Division Bench" used in Section 31 and in the proviso to Section 6 of the Travencore-Cochin High Court Act, and is obviously used in the same sense as in clause 36 of the Letters Patent of the Chartered High Courts, and in Section 15 of the Travencore-Cochin High Court Act (c. f. section 21 thereof) and in article 225 of the Constitution, namely, to mean a court or bench composed of more than one judge but not the whole court. A judge sitting singly is as much a court as a division court, and whether a single judge or division court can act for the High Court, so as to make their acts the acts of the High Court, will depend on the law regulating their respective powers.

7. That law so far as the High Court of Kerala is concerned is to be found in the Travencore-Cochin High Court Act, V of 1125, which by reason of Section 54 of the States Reorganization Act applies to regulate the practice and procedure of the High Court of Kerala. Sections 20 and 21 of that Act enumerate the powers of a single Judge and a Division Bench respectively, and the powers enumerated do not include the power to receive cases. Under Section 15 of the Act, the Chief Justice-determines which judge in each case shall sit alone and which of the judges shall constitute the several division courts. Under Section 16 the administrative control of the High Court is vested in the Chief Justice and under Section 30, the conduct of the business in the High Court is regulated by him. It is the Chief Justice that, in exercise of these powers, settles what are known as the sitting list and the cause list; in other words, that determines the constitution of the several benches, single judge or division court, and directs what cases shall be posted before each bench. The single judges and division courts of the High Court whether sitting at Ernakulam or at Trivandrum, can exercise only the powers conferred on them by Sections 20 and 21 of the Travencore-Cochin High Court Act. They can only dispose of such cases as may from time to time be specified by the Chief Justice; and this is all that the notification, Ext. P-2, says with regard to the judges and division courts sitting at Trivandrum.

8. Turning once again to the language used in Section 51 (3) of the States Reorganization Act, we might observe that the words, "Judge" and "division courts" are ordinarily used to denote that part of the machinery of the High Court that is engaged in actual adjudication, and to exclude that part which merely receives, namely, the registry. The principal seat of the High Court under Section 51 (1) of the Act is the place where the High Court as a whole functions in all its capacities. The High Court as such is located there, and though the word "sit" can be used in relation to a court to denote its location (see article 130 of the Constitution and Section 6 of the Travencore-Cochin High Court Act and the marginal notes thereto) it is ordinarily used, especially in' connection with "judge" or "division Court" to denote sitting for the purpose of hearing cases. Once again it must be emphasized that it is the judges and division courts of the High Court that sit at Trivandrum under Section 51 (3); not the High Court itself.

9. The argument that the old Trivandrum Bench constituted under the proviso to Section 6 of the

Travencore-Cochin High Court Act. was receiving cases arising in the district of Trivandrum and that by reason of Sections 52 and 54 of the States Reorganization Act, the present bench sitting under Section 51 (3) of that Act must be deemed to be a revival of the old bench with the power to receive cases (the only difference being that there is no longer the limitation that the cases must arise from the district of Trivandrum) can hardly bear examination. Section 52 only means that the new High Court of Kerala shall have in respect of the Travencore-Cochin area the same jurisdiction as was exercised by the old High Court of Travencore-Cochin, and in respect of the Malabar area the same jurisdiction as was exercised by the High Court of Madras. It has nothing to do with the powers of any bench of the High Court. What Section 54 lays down is that, subject to the provisions of the part in which it appears (namely Part V of the Act), the law previously in force with respect to the practice and procedure of the Travencore-Cochin High Court shall, with necessary modifications, apply in relation to the Kerala High Court. The law relating to the Trivandrum Bench of the Travencore-Cochin High Court namely, the proviso to Section 8 of the T. C. High Court Act stands replaced so far as the present Trivandrum Bench is concerned by Section 51 (3) of the States Reorganization Act under which that bench sits. The interpretation that was placed on the proviso to Section 6 of the Travencore-Cochin High Court Act, and the practice and procedure following that interpretation, cannot therefore apply to the present bench. What we have to construe is Section 51 (3) of States Reorganization Act, and that construction must be the same whether the appointed place of sitting be Trivandrum or Kasargod.

10. Whether the interpretation that was placed on the proviso to Section 6 of the Travencore-Cochin High Court Act, namely that it authorized a separate registry at Trivandrum with power to receive all cases arising in the district of Trivandrum, was a correct interpretation is itself open to question, and it might well be argued that under that provision the Trivandrum Bench had only the jurisdiction and powers conferred by the Travencore-Cochin High Court Act on a single judge or a division bench as the case may be with the further limitation that they could only hear and dispose of cases arising in the district of Trivandrum. But whatever interpretation may be placed on that provision standing by itself, it is only necessary to read Section 51 of the States Reorganization Act as a whole and compare and contrast its three sub-sections to see that sub-section 3 thereof cannot, despite the similarity of language, bear the interpretation that was placed on the Proviso to Section 6 of the Travencore-Cochin High Court Act.

11. Section 51 of the States Reorganization Act runs as follows ;

> "Principal seat and other places of sitting of High Courts for new States. (1) The principal seat of the High Court for a new State shall be at such place as the president may, by notified order, appoint.
>
> (2) The President may, after consultation, with the Governor of a new State and the Chief justice of the High Court for that State, by notified order, provide for the establishment of a permanent bench or benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matter connected therewith.
>
> (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the judges

and divsion 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."

12. The heading of the section itself shows that the other places of sitting of the High Court are something different from its principal seat. The High Court as a whole functions at its principal seat which is determined by the President by notified order. But the High Court may also sit at other places; but for what purposes, and subject to what limitations, has to be gathered from sub-sections 2 and 3 which provide for such sitting, under sub-section 2 the President may, after consultation with the Governor and the Chief justice by notified order provide for the establishment of a permanent bench or benches of the 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. Obviously what this sub-section contemplates is that so long as the notified order is in force, a bench or benches shall always sit at the places concerned, and provision for a separate registry with a separate territorial jurisdiction so that cases arising out of a particular area could be received there, would be one of the matters connected therewith which would come within the scope of the notified order contemplated by the sub-section. (And in this connection we might observe that the carrying out of such a separate jurisdiction with a separate registry is, like the location of the principal seat and other places of sitting of a High Court, a matter falling within entry 78 of the Union list, "Constitution and Organization of the High Courts." Parliament alone can make law in regard to these matters, and the law Parliament has made is to be found in Section 51 of the States Reorganization Act. It would thus appear that no power exists outside that section for regulating these matters). If we turn now to sub-section 3, we find that the place appointed by the Chief Justice with the approval of the Governor is merely a place where the judges and division courts of the High Court may also sit. It is not the seat of the High Court, nor is a permanent bench established there; but judges and division courts may sit there also in addition to the places notified under sub-sections (1) and (2). What they may or may not do while sitting there is left to be governed by the law regulating their powers and jurisdiction, in the present case, the Travencore-Cochin High Court Act. Unlike sub-section 2 which enables the President to provide for any matter connected with the establishment of a permanent bench at a place other than the principal seat, there is nothing authorising the Chief Justice to make similar provision for the judges and division courts sitting at such other place appointed under sub-section 3. It seems to us clear that all that sub-section 3 does is to authorize the Chief Justice, when the exigencies of a situation so require to ask judges and division courts to sit at the place appointed instead of the court rooms assigned to them at the principal seat. They can do nothing more while sitting at the other place than what they can do while sitting in the court rooms at the principal seat, namely, hear and dispose of such cases as the Chief Justice may specify in that behalf. The other place is nothing more than a projection of the court rooms at the principal seat. If a permanent bench with a separate registry is required then the President must act under sub-section 2. But if all that is required is an occasional bench when occasion demands, no different from the several benches at the principal seat excepting that it sits elsewhere, the Chief Justice may act under sub-section 3 after obtaining the approval of the Governor.

13. It seems to us that whatever meaning subjection 3 of Section 51 of the States Reorganization Act might have been capable of bearing had it stood by itself, in antithesis with sub-sections 1 and 2 it is capable only of this interpretation. Surely the legislature must have meant the different sub-sections for different purposes. Different authorities could not have been empowered to act in different ways to achieve the same result. Yet if the interpretation placed by the petitioner on sub-section 3, namely, that the bench at Trivandrum is the High Court of Kerala (and nothing less) were correct, it would mean that Trivandrum would, to all intents and purposes, be a principal seat of. the High Court and that the Chief Justice could acting under sub-section 3, establish a principal seat for the High Court, a matter which is exclusively within the province of the President under sub-section (1). It would also mean-and learned counsel for the petitioner has not flinched at this result- that a bench sitting at Trivandrum or, for that matter at Kasargjod, under sub-section 3 could receive and dispose of cases from all over the State so that an appeal from a subordinate court in Kasargod could be instituted at Trivandrum and vice versa. The result seems to us startling enough to point to the unsoundness of the position. Such a construction would also render sub-section 2 completely futile and meaningless. For, what the President could do under that sub-section would be something less than what the Chief Justice could do under sub-section 3. The President has to consult the Governor and the Chief Justice before he can establish a permanent bench under sub-section 2; and he can do this only by a notified order. And, it is said -although we cannot say that we agree - that once he does this, he cannot undo it. Parliament alone, it is said, could do that, and Section 21 of the General Clauses Act cannot apply to empower the President to rescind his order since, under the express terms of sub-section (2) a bench established under that provision is a permanent bench. In contrast with this, according to the construction which the petitioner would have us place on sub-section (3), the Chief Justice can, after obtaining the approval of the Governor with regard to the particular place, direct the High Court itself to sit at that place and do all that it can do at its principal seat. He can have the High Court functioning at that other place for as long as he pleases, and he can, at will, stop it from functioning there by withdrawing all the judges. If that be the scope of sub-section 3, one might well wonder why Parliament should have thought it necessary to enact sub-section (2) giving the President the much smaller power of establishing a permanent bench.

14. The position taken by the petitioner is an impossible position for it could never have been the intention that in respect of the same matter the Chief Justice should be invested with concurrent (nay overriding) powers with the President. The word "notwithstanding" in sub-section (3) cannot mean, as suggested on behalf of the petitioner, that the Chief Justice can override the President. What it means is that notwithstanding sub-sections (1) and (2) and the appointment of a principal seat for the High Court or the establishment a Permanent bench thereof at some other place under these provisions, judges and division courts may in addition to sitting at those places sit also at such other place as the Chief Justice may appoint.

15. We have no doubt that the true construction of the several sub-sections of Section 51 of the

States Reorganization Act and in particular, of sub-section (3), is the construction that we have indicated. A single judge or a division court sitting at Trivandrum under sub-section 3 is in precisely the same position as a single judge or a division court sitting in the several court rooms of the High Court at its principal seat in Ernakulam, In other words, the Trivandrum Bench can only hear and dispose of such cases as are directed to be posted before it by the Chief Justice. It cannot do anything else on behalf of the High Court and, in particular, it cannot receive cases. This, it seems to us is a harmonious construction involving no repugnancy between the three sub-sections. To place the construction which the petitioner would have us place on sub-section 3 would be to invite repugnancy and to make the assumption that Parliament did not know what it had said in sub-sections 1 and 2 when it proceeded to enact sub-section 3.

16. In construing a statute we are not bound to forget its history or the background against which it was enacted. Considering these factors-and in this connection, clause 33 of the draft States Reorganization Bill, for which the Joint Select Committee substituted the present Section 51, is revealing - there can be little doubt that sub-section (3) of Section 51 was mainly designed to provide for the disposal of cases pending before certain High Courts and benches which under the provisions of the Act were to cease to function at particular places. The Chief Justice, acting under sub-section (3) could arrange for the disposal of the cases at those very places in case the President did not think it fit to establish permanent benches there under sub-section (2).

17. In our view the bench sitting at Trivandrum under Section 51 (3) of the State Reorganization Act has no power to receive cases; the notification Ext. P-2, is silent on the point, and, if we may say so, properly so; and the respondent was right in declining to receive Ext. P-l and in returning it to the petitioner with the endorsement complained against.

18. In the view we have taken we think it unnecessary to consider the objection raised by the respondent that he is only a subordinate officer of this court obeying, and bound to obey, the directions of the court and that a writ or order against him would be virtually a writ or order against the court itself.

19. The petition fails and is dismissed with costs. Advocate's fee Rs. 150.

Petition dismissed.