

MADHYA PRADESH HIGH COURT

Abdul Taiyab

Vs.

Union of India

Misc. Petn. No. 240 of 1976

(S.M.N. Raina, G.L. Oza, S.R. Vyas, S.S. Sharma and J.P. Bajpai, JJ.)

23.08.1976

JUDGMENT

Raina, J. (Minority view)

1. The petitioners, who are advocates practicing in the High Court of Madhya Pradesh at Jabalpur, have filed this petition under Articles 226 and 227 of the Constitution challenging, *inter alia* the orders of Hon'ble the Chief justice of the High Court of Madhya Pradesh (hereinafter referred to as 'the Chief Justice'), dated 5-2-1976.

2. This petition raises an important question of jurisdiction of the High Court at its principal seat vis-a-vis the jurisdiction of the Benches at Indore and Gwalior. The present State of Madhya Pradesh was constituted under Section 9 of the States Reorganization Act, 1956 (hereinafter referred to as 'the Act') with effect from the appointed day, that is, 1-11-1956, comprising of-

- (a) The territories of the former State of Madhya Pradesh, except the districts of Nagpur, Chanda, Bhandara, Akola Amravati, Yeotmal, Wardha and Buldana;
- (b) the territories of the former State of Madhya Bharat, except Sunel tappa of Bhanpura tahsil of Mandsaur district;
- (c) Sironj sub-division of Kotah district in the then State of Rajasthan;
- (d) the territories of the former State of Bhopal; and
- (e) the territories of the former State of Vindhya Pradesh.

3. Under Sub-section (1) of Section 49 of the Act, it is declared that: 'the High Court exercising jurisdiction in relation to the existing State of Madhya Pradesh', that is, the former State of Madhya Pradesh, 'shall as from the appointed day be deemed to be the

High Court for the new State of Madhya Pradesh', that is, the present State of Madhya Pradesh. Under Section 50 of the Act, the High Court of Madhya Bharat and the Courts of Judicial Commissioners for Bhopal and Vindhya Pradesh were abolished with effect from 1-11-1956. Under Sub-section (1) of Section 51 of the Act, the President issued an order, dated 30th October 1956, appointing Jabalpur to be the principal seat of the High Court for the new State of Madhya Pradesh vide Annexure-'C'. In exercise of his powers under Sub-section (3) of Section 51 of the Act the Chief Justice issued an order, dated 1st November 1956, whereby it was directed that temporary Benches of the High Court of Madhya Pradesh will sit at 'Indore and Gwalior until further orders vide Annexure-'D'. By another order, dated 29th November 1956, the Chief justice was pleased to direct that the jurisdictions of the Indore and Gwalior Benches temporarily constituted at those places shall be as they were immediately before the appointed day with slight modifications as indicated therein vide Annexure-'E'.

4. The aforesaid temporary Benches continued to function till 1968 when they were made permanent by the President in exercise of his powers under subs. (2) of Section 51 of the Act by orders, dated 28th November 1968 (Annexures-1 and 2 to the Return of the Registrar). These orders are reproduced below:

"In exercise of the powers conferred by Sub-section (2) of Section 51 of the States Reorganization Act, 1956 (37 of 1956), I, Zakir Husain, President of India, after consultation with the Governor of Madhya Pradesh and the Chief Justice of the High Court of Madhya Pradesh, hereby establish a permanent Bench of the Madhya Pradesh High Court at Gwalior and further direct that such Judges of the High Court of Madhya Pradesh, being not less than two in number, as the Chief Justice. may from time to time nominate. shall sit at Gwalior in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the revenue districts of Gwalior, Shivpuri, Datia, Guna, Vidisha (Bhilsa) Bhind and Morena:

Provided that the Chief Justice may, for special reasons, order that any case or class of cases arising in any such district shall be heard at Jabalpur."

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"In exercise of the powers conferred by Sub-section (2) of Section 51 of the States Reorganization organization Act, 1956 (37 of 1956), I, Zakir Husain, President of India. after consultation with the Governor of Madhya Pradesh and

the Chief Justice of the High Court of Madhya Pradesh, hereby establish a permanent Bench of the Madhya Pradesh High Court at Indore and further direct that such Judges of the High Court of Madhya Pradesh, being not less than four in number, as the Chief Justice may from time to time nominate, shall sit at Indore in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the revenue districts of Indore, Ujjain, Dewas, Dhar, Jhabua, Ratlam, Mandsaur, West Nimar (Khargone), Shajapur and Rajgarh:

Provided that the Chief Justice may, for special reasons, order that any case or class of cases arising in any such district shall be heard at Jabalpur."

5. In exercise of the powers conferred on the Chief Justice by the proviso to the aforesaid orders the then Chief Justice issued two separate orders dated 30-11-1968 vide Annexures-5 and 6 to the Return of the Registrar, whereby it was directed that the following cases arising from the Revenue districts falling within the jurisdiction of the Gwalior and Indore Benches shall be heard at Jabalpur.

"1. Income-tax, Wealth-tax, Expenditure Tax, Gift Tax, Estate Duty, Sales-tax and other tax references.

2. All petitions under Articles 226 and/or 227 of the Constitution pertaining to tax matters.

3. All petitions under Articles 226 and/or 227 of the Constitution challenging the vires of any Act or statute or any order or Rule or Regulation made under any Act or statute.

4. All petitions under Articles 226 and/or 227 of the Constitution directed against any order or decision of the State Transport Appellate Authority or State Transport Authority or Transport Commissioner or any Regional Transport Authority constituted under the Motor Vehicles Act, 1939.

5. All petitions under Articles 226 and/or 227 of the Constitution arising from the aforesaid revenue districts and pending for hearing and disposal at Jabalpur. on the date of this order.

Sd/- P. V. Dixit
Chief Justice
30-11-1968."

6. Subsequently by orders dated 25-6-1969 (Annexures-7 and 8 to the Return of the Registrar), issued by the Chief Justice in exercise of his powers under the aforesaid proviso, earlier orders dated 30-11-1968 were suitably amended, so as to allow petitions under Articles 226 and 227 of the Constitution of India challenging the vires of any Act or statute or any order or rule made under any statute to be heard by the Benches at Gwalior and Indore.

7. In 1971, by orders, dated 23rd June, 1971, (Annexures-3 and 4 to the Return of the Registrar) the proviso to the earlier orders of the President, dated 28th November, 1968 was amended by omitting the words "for special reasons" so as to enlarge the powers of the Chief Justice to order that any case or class of cases arising within the districts assigned to the temporary Benches may be heard at Jabalpur, even in the absence of any special reasons.

8. On 24-10-1972 the Chief Justice issued fresh orders in exercise of his powers under the aforesaid proviso in supersession of all previous orders vide Annexures-9 and 10 to the Return of the Registrar. In these orders the following cases arising from the revenue districts within the jurisdiction of two Benches were directed to be ordinarily heard at Jabalpur except such of them as may be notified to be heard at the Gwalior Bench or Indore Bench as the case may be :

"(1) Income-tax, Wealth-tax, Expenditure-tax, Gift-tax, Estate Duty sales-tax and other tax references.

(2) All Petitions under Articles 226 and/or 227 of the Constitution pertaining to tax matters.

(3) All petitions under Articles 226 and/or 227 of the Constitution directed against any order or decision of the State Transport Appellate Authority or State Transport Authority or Transport Commissioner or any Regional Transport Authority constituted under the Motor Vehicles Act, 1939.

(4) All petitions under Articles 226 and/or 227 of the Constitution arising from the aforesaid revenue districts and pending for hearing and disposal at Jabalpur on the date of this order.

Sd/- P. K. Tare

Chief Justice

24-10-1972."

9. On 3-2-1976 the present Chief Justice issued the following order (Annexure 11 to the Return of the Registrar) in respect of the Bench at Gwalior:

"In exercise of the powers conferred on me by the proviso to the Notification No. 16/20/68-Judl. III, dated November 28, 1968 issued by the President under Section 51(2) of the States Reorganization Act, 1956 (No. 37 of 1956) establishing a permanent Bench of the Madhya Pradesh High Court at Gwalior; And in supersession of all previous orders so far issued in exercise of the powers under the aforesaid proviso,

I hereby order that with effect from February 5, 1976 till further orders only the following cases arising from the revenue districts of Gwalior, Shivpuri, Datia, Guna, Vidisha (Bhelsa), Bhind and Morena, except those cases for which I may otherwise order, shall be heard at Jabalpur:

(1) All petitions under Articles 226/227 of the Constitution .challenging the vires of any Act or statute or any order or rule or regulation made under any Act or statute,

(2) All individual cases which I may hereafter order to be heard at Jabalpur." An exactly similar order was issued on that very day in respect of the Indore Bench vide Annexure-12 to the Return of the Registrar. These orders of the Chief justice are the subject-matter of this petition.

10. The aforesaid orders of the Chief Justice have been challenged in this petition both on grounds of propriety as well as legality thereof. At the hearing however, the question of propriety was not pressed and the arguments were confined only to the legality of the orders. The legality of the orders has been challenged on the following grounds:

(1) Sub-sections (2) and (3) of Section 51 of the Act are *ultra vires* as the subject-matter thereof falls within the exclusive legislative competence of the State Legislature and not of the Parliament which enacted the Act.

(2) By the establishment of permanent Benches at Indore and Gwalior and conferring exclusive jurisdiction on them with reference to particular areas, the High 'Court has been split up into three parts which is in contravention of Article 214 of the Constitution.

(3) The jurisdiction of the High Court at its principal seat, i. e., at Jabalpur,

cannot be curtailed and restricted to any particular area of the State so as to make it a Bench only.

(4) The effect of the orders in question is to deprive the High Court at Jabalpur of its jurisdiction to hear pending cases which, arose within the districts assigned to the Benches, but were instituted at Jabalpur and, therefore, the orders are, in any case, illegal to that extent.

(5) References under the Income-tax Act, the Wealth-tax Act, the Expenditure-tax Act and other similar enactments lie only to the High Court, which means that the High Court at its principal seat and, therefore, they cannot be heard by the Benches at Gwalior and Indore.

(6) The powers of the Chief justice to issue orders under the proviso to the Presidential orders (Annexures-1 and 2 to the Return of the Registrar) stood exhausted when exercised for the first time and, therefore, he was not competent to issue the orders in question.

11. The contention of the petitioners is that the orders in question are detrimental to the establishment of the High Court as the highest judicial institution in the State and to the development of the her, and they have adversely affected the petitioners. They have, therefore, filed this petition challenging the orders of the President establishing permanent Benches at Indore and Gwalior as well as the orders of the Chief Justice, dated 5-2-1976, and prayed that the said orders be quashed. They have also prayed that the respondents be restrained from transferring any case, which is pending at Jabalpur, to Indore or Gwalior Bench in pursuance of the impugned orders of the Chief Justice.

12. There are six respondents in this case, viz., We Union of India, The State of Madhya Pradesh, the Chief Justice, the Registrar of the High Court and the Additional Registrars of the High Court in charge of the Indore, and Gwalior Benches. The State of Madhya Pradesh has not filed any return in this case and Sri M. V. Tamaskar, learned Government Advocate, submitted in writing that he had no instructions from the Government in regard to this case. Thus the State of Madhya Pradesh is unrepresented. The Union of India has, in its return, fully supported the validity of the impugned orders and has also challenged the *locus standi* of the petitioners to file this petition.

13. The Registrar has filed the return fully supporting the validity of the impugned orders. It is submitted that the Paramount consideration for passing the impugned

orders (Annexures-11 and 12) by the Chief Justice was to provide facility and convenience to the litigants. Other respondents did not file any return.

14. This petition was first put up before a Division Bench in the usual course. The Division Bench, while admitting the petition for hearing, gave the following directions:

"Having regard to the importance of the question involved in this petition, we are of opinion that the case should be heard by a Full Bench.

The papers shall be laid before Hon'ble the Chief Justice for constituting a Full Bench to hear the petition in the month of April 1976."

In pursuance of these directions the case was laid before the Chief Justice for constituting a Bench and accordingly this Bench was constituted for hearing this petition.

15. Sri Y. S. Dharmadhikari, learned counsel for the petitioners, submitted an application dated 25-3-1976 praying that a direction be given for a Full Bench consisting of all the Judges of this Court to be Constituted for the hearing of this case looking to the importance of the matter involved. While addressing this Bench in support of the application he raised certain fundamental questions of importance, which do not find any mention in the application, so as to question the jurisdiction of this Bench to hear this case. He was permitted to urge these matters before this Bench in the interests of justice. His main contentions may be summarized as under:

(i) Petitions under Article 226 of the Constitution are exclusively governed by special rules framed by the High Court in exercise of its powers under Article 225 of the Constitution which came into force on the 15th day of October 1951. The other High Court Rules, which were Previously framed, are not applicable to writ petition.

(ii) The order of the Division Bench must be construed as a judicial direction for constituting a Bench of all the judges of this Court and, therefore, this Bench of five Judges is not competent to hear this petition.

(iii) The Chief Justice, in the circumstances of the case. had no authority to constitute a Bench of five Judges as the rules in Chap, I of the High Court Rules are not applicable to writ petitions.

16. The application was rejected by us after hearing on 5-4-1976 for reasons to be recorded later while dealing with the petition on merits. We, therefore, proceed to record the reasons now.

17. Though Sri Dharmadhikari was at pains to take us through the entire history of this High Court and the High Court of Judicature at Nagpur from its very inception, it is needless to refer to it in detail for the purposes of this application. The argument in substance was that the High Court of Judicature at Nagpur became from the appointed day, that is, 1-11-1956, the High Court for the new State of Madhya Pradesh under Sub-section (1) of Section 49 of the Act. The Nagpur High Court had made certain rules to regulate its procedure in exercise of its powers under Clause 27 of the Letters Patent as well as in exercise of the power, conferred on it by Section 223 of the Government of India Act, 1915. The said rules, which are contained in Chapters I to VII of the High Court Rules, are not applicable to writ petitions under Article 226 of the Constitution because this was a new jurisdiction conferred on the High Court after the Constitution of India came into force. It was contended that the jurisdiction conferred on the High Court under Article 226 of the Constitution is an extraordinary jurisdiction and, therefore, no rules regulating the exercise of this jurisdiction could be framed under the Letters Patent or the relevant provisions of the Government of India Act, 1915 or 1935.

18. It was further pointed out that the Nagpur High Court had framed certain rules in exercise of its powers under Article 225 of the Constitution read with Clause 27 of the Letters Patent for petitions under Article 226 of the Constitution by Notification No. 8224, dated 25th September 1951 and these rules alone regulate the Proceedings of the High Court in regard to such petitions. Rule 4 of these Rules reads as under:

"Such petitions shall be heard by a Civil Division Bench provided that during Vacation, when no Division Bench is sitting, they may be heard by a single Bench, unless the presiding Judge is of the opinion that the matter is not urgent or is of such importance that it should be heard by a Division Bench."

19. Sri Dharmadhikari urged that since under the aforesaid Rules such petitions can be heard only by a Civil Division Bench, the constitution of a larger Bench can only be governed by an order of such Bench. It could not be constituted by the Chief Justice in

exercise of his powers under Rules 7 and 8 of Chapter I of the High Court Rules which, according to the learned counsel, are not applicable to writ petitions. He further urged that the words "Full Bench" used by the Division Bench in its order, dated 4-3-1976, must be construed as "Full Court" and, therefore, only the Full Court is competent to hear this petition and not this Bench. We find no merit in this contention and the arguments advanced in support thereof appear to be based on a misapprehension of the legal position.

20. When the Nagpur High Court was constituted under the Letters Patent, it was empowered under Clause 27 to make rules in regard to all cases which it was competent to try. Similarly, under Sections 106 and 108 of the Government of India Act, 1915 and Section 223 of the Government of India Act, 1935, the High Court was empowered to frame rules in regard to all proceedings before it. The fact that jurisdiction in regard to writ petitions was conferred on the High Court after the rules were framed would not automatically make all the rules previously framed inapplicable to such petitions although it became necessary to make certain supplementary rules to regulate the proceedings in respect thereof. There is no merit in the argument that the power vested in the High Court under sub-section (1) of Section 108 of the Government of India Act, 1915, which was preserved and continued by Section 223 of the Government of India Act, 1935, was a limited one and could only be exercised in respect of such jurisdiction as the High Court possessed on the date when the Act of 1915 came into force or on the date when the rules were framed. The power to frame rules was conferred on the High Court in order to enable it to regulate the exercise of its jurisdiction, including such jurisdiction as may be vested in it from time to time. The word "vested in the Court" in Sub-section (1) of Section 108 of the Government of India Act, 1915 cannot be narrowly construed so as to mean "now vested in the Court". Dealing with this question in *N.S. Thread Co. v. James Chadwick and Brothers*,¹ their Lordships of the SC held as under:-

"Section 108 of the Government of India Act, 1915 conferred power on the High Court which that Court could exercise from time to time with reference to its jurisdiction whether existing at the coming into force of the Government of India Act, 1915 or whether conferred on it by any subsequent legislation." It is, therefore, clear that the rules framed by the High Court in order to regulate the exercise of its jurisdiction would govern every aspect of such jurisdiction as may be vested in it from time to time unless they are inconsistent with statutory

rules or provisions relating to the exercise of such jurisdiction.

21. It is true that the old rules were found lacking in certain respects so far as the exercise of writ jurisdiction was concerned and, therefore, new rules were framed by the High Court in the year 1951. These rules would, no doubt, prevail over the earlier rules but the earlier rules would continue to remain applicable to writ petitions to the extent they are not inconsistent with the new rules. In fact, if we carefully scrutinize the new rules, it would be clear that they are supplemental in nature and it would not be possible to deal with petitions under Article 226 of the Constitution solely on the basis of the new rules. There is no provision in the new rules as to how a case has to be dealt with when there is a difference of opinion between the Judges constituting the Division Bench. Similarly, there is nothing in the new rules to show what course the Division Bench should adopt if it wants an earlier Division Bench decision or a Full Bench decision to be reconsidered. It is quite evident that it was not considered necessary to make any such provision in the new rules because they were already contained in Rule 11 and 12 of Chapter I. We, therefore, hold that the new rules are merely supplemental to the earlier rules which are applicable to writ petitions in so far they have not been superseded by the new rules and are not inconsistent with them.

22. We also find no substance in the contention that the Division Bench, when it directed that the papers be laid before the Chief Justice for constituting a Full Bench, meant thereby the Full Court. A Full Bench, according to Rule 7 of the Chapter I of the High Court Rules, means a Bench consisting of three or more Judges. It appears to us that the Division Bench used the expression 'Full Bench' in the sense it is used in Rule 7 of Chapter I. So far as we know, neither in the history of the Nagpur High Court nor of this Court a Full Bench consisting of more than five Judges was ever constituted to hear any case. It is, therefore preposterous to suggest that the Division Bench while referring the matter to a Full Bench, intended that it should be heard by the Full Court.

23. It is no doubt true that the reference made by the Division Bench does not strictly fall within the purview of Rule 12 of Chapter I because the case has not been referred in order to reconsider an earlier decision of this Court. But it falls within the purview of Rule 4 of Chapter I which reads as under:

"4. Save as provided by law or by these rules or by special orders of the Chief

Justice, all matter shall be heard and disposed of by a Bench of two Judges."

It appears to us that the Division Bench, looking to the importance of the case, invited the Chief Justice to constitute a Full Bench under Rule 4 to hear the case and in pursuance of this reference the Chief Justice was pleased to constitute this Bench under Rule 7 and 8 of Chapter I. Apart from this, as held by their Lordships of the SC in *Pramathanath v. Saroj Ranjan*,² the Chief Justice has inherent power to constitute a larger Bench in special circumstances and, therefore even if the matter was not covered by any rule the Division Bench could invoke this jurisdiction of the Chief Justice to constitute a larger Bench looking to the importance of the case. Thus, irrespective of the consideration whether the reference to the Chief Justice was governed by any particular rule or not, it is clear to us that the Chief Justice was competent to constitute this Bench and the objection raised by the petitioners regarding its constitution is baseless.

24. It has been brought to our notice that the Chief Justice, when this application was placed before him, had given a direction that in case this Bench considered the matter so important as to be heard by a larger Bench, he would constitute a larger Bench. We do not, however, find it necessary to refer the matter to the Chief Justice for constituting a larger Bench, because in our view this Bench is competent to deal with all material questions involved in this controversy.

25. Before we proceed to deal with this case on merits, we consider it proper to advert to the criticism of the conduct of the State Government in regard to this case which was leveled by Sri S.D. Sanghi, learned counsel for the High Court Bar Association, Indore. In the instant case, as has already been pointed out above, the State Government, though made a party to this case, neither filed a return nor instructed any counsel to argue the case on its behalf. Sri M. V. Tamaskar, who appeared for the State, merely reported no instructions. Sri Sanghi urged that this Court was handicapped as the State Government did not take any definite stand with regard to this case and made no effort to support the relevant provisions of the States Reorganization Act and the impugned order of the Chief Justice. In this connection he invited our attention to certain observations of the SC in *B. Banerjee v. Anita Pan*,³ in regard to the unhelpful attitude of the State Government in respect of a piece of social legislation.

26. We have given our anxious consideration to this matter and we are of the view that the attitude adopted by the State Government in regard to this case does not call for any adverse comments for the following reasons. In the first place, the parties affected by the order of the Chief Justice are motor operators and tax-payers who cannot be said to be poor litigants needing special sympathies of the Government. Apart from this, the High Court Bar Associations of the two major integrating units of this State, viz., Mahakoshal region and Madhya Bharat region, have viewed the order of the Chief Justice from a regional angle, and the pleadings as originally presented to this court reflected an emotional approach to the whole problem and the language used at places smacked of a controversy of a regional nature. It appears to us that it was for this reason that the State Government considered it proper to adopt a neutral attitude and left it to the petitioners and the Bar Associations concerned to have the controversy settled by this Bench. The attitude adopted by the Government is in line with that of the Chief Justice who also neither filed a return nor engaged any counsel to argue the case. The Registrar filed a return just to indicate the reasons for the issuance of the impugned order by the Chief Justice in order to show that it was bona fide. The Additional Registrars did not file any return; and no counsel was engaged for the Registrar and the Additional Registrars.

27. The High Court Bar Associations of Jabalpur, Indore and Gwalior, being vitally interested in the issues involved in this case, the cream of the Bar at all the three places gathered to put up their respective cases before this Bench. Learned counsel for the respective Bar Associations argued with great ability and lucidity and we must say that we did not at all feel handicapped in dealing with the case, in the absence of the Government Advocate or the Advocate General to put up the case on behalf of the State Government. We would here like to place on record our appreciation of the cordial and dignified manner in which the learned counsel for the different Bar Associations put up their respective cases and we also highly commend their readiness to withdraw all remarks from the pleadings which were pointed out to be offensive by the other side. The pleadings were voluntarily amended by the parties concerned so as to delete all remarks considered offensive by the other side. We had thus the privilege of listening to a high level debate of academic character without any kind of bitterness or unpleasantness.

28. So far as the Union Government is concerned, the case was ably argued by Sri R. P. Sinha, Advocate.

29. Before proceeding to deal with the controversy on merits, we wish to address ourselves to the question whether the petitioners have *locus standi* to file this petition under Article 226 of the Constitution. Sri S. D. Sanghi, learned counsel for the High Court Bar Association, Indore and Sri H. G. Mishra, learned counsel for the High Court Bar Association, Gwalior frankly conceded that they did not wish to press the question and invited this Court to decide the petition on merits in view of the various questions of vital importance to the litigants as well as the members of the legal profession of this State as a whole, raised in this case. It is, however, necessary to deal with this question, because it was pressed by Sri R. P. Sinha, learned counsel for the Union of India with some force and one of the interveners, namely, Sri R. C. Pandey.

30. While dealing with the question of *locus standi* in writ petitions under Article 226 of the Constitution, their Lordships of the SC made the following observations in *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal*, ⁴ in paragraph 5 which are pertinent:

"The Article in terms does not describe the classes of persons entitled to apply there under; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right..... The right that can be enforced under Article 226, also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

31. When this question again came up for consideration before the SC in *Venkateshwara Rao v. Govt. of Andhra Pradesh*, ⁵ their Lordships, after adverting to the observations made in the *Calcutta Gas Co. (Prop) Ltd. v. State of West Bengal AIR 1962 SC 1044* (supra), observed as under in paragraph 8:-

"This Court held in the decision cited supra that 'ordinarily' the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest; it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression 'ordinarily' indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or

even fiduciary interest in the subject- matter thereof."

32. It is, therefore, clear that a person who has been prejudicially affected by an act or omission of an authority can invoke the jurisdiction of this Court under Article 226 of the Constitution even though he has no proprietary or even fiduciary interest in the subject-matter thereof. In certain circumstances even strangers are entitled to file a writ petition where public interest demands intervention of the Court. In *S. Sinha v. M/s. S. Lal and Co.* ⁶ their Lordships while considering the case of strangers, referred to the English Judicial Practice in the matter in paragraph 10 in the following terms:

"In England also the Courts have taken the view that when the application is made by a party or by a person aggrieved the Court will intervene *ex debito justitiae*, in justice to the applicant, and when it is made by a stranger the Court considers whether the public interest demands its intervention. In either case it is a matter which rests ultimately in the discretion of the Court."

33. The whole question was examined in detail by the SC in a very recent decision in *J. M. Desai v. Roshan Kumar*, ⁷ In that case their Lordships, while considering the question of *locus standi* in the context of *certiorari* jurisdiction, observed in paragraph 12 that the expression 'aggrieved 'person' denotes an elastic, and to an extent, and elusive concept. Their Lordships further observed as under in the same paragraph in regard to the expression 'aggrieved person':

"It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."

Their Lordships referred to the following three categories of persons who may invoke the jurisdiction of this nature by a writ petition :

- (i) Person aggrieved,
- (ii) stranger, and
- (iii) busybody or meddlesome interloper.

34. While holding that the applications of such busybodies should be rejected at the threshold, their Lordships added that the distinction between the first and the second categories of applicants, though real, is not always well demarcated. Ordinarily, a person, who has suffered a legal wrong or injury in the sense that his interest recognized by law 'has been prejudicially and directly affected by the act or omission of the authority complained of', has a right to approach the Court. In other words, a person having a legal grievance is entitled to exercise such a right. In the case of strangers their Lordships added a note of caution in paragraph 49 in the following words :

"While a procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a 'stranger' unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interest."

35. We may now proceed to examine the position of the petitioners in the light of the aforesaid principles. The petitioners are admittedly Advocates practicing in the High Court at Jabalpur. As Advocates they belong to the only recognized class of persons entitled to practice law under Section 29 of the Advocates Act, 1961. Their right to practice means the right to assist the citizen in the enforcement of his fundamental and other rights in a Court of law. We may here quote the following observations of their Lordships of the SC in *In re Under Article 143 of the Constitution of India*, AIR 1965 SC 745 at p. 787 para 132:

"It is hardly necessary to emphasize that in the enforcement of fundamental rights guaranteed to the citizens the legal profession plays a very important and vital role, and so, just in the right of the Judicature to deal with matters brought before them under Article 226 or Article 32 cannot be subjected to the powers and privileges of the House under Article 194 (3), so the rights of the citizens to move the judicature and the rights of the advocates to assist that process must remain uncontrolled by Article 194 (3). That is one integrated scheme for enforcing the fundamental rights and for sustaining the rule of law in this country."

36. The members of the legal profession have to play a crucial role in the enforcement of the rule of law and are, therefore, naturally interested in matters pertaining to the

jurisdiction of the Courts, to entertain petitions for the vindication of fundamental and other rights. In the instant case the principal issue involved in the controversy before us is whether Jabalpur, being the principal seat of the High Court, every, person, whose case arises within any part of the territories of the entire state, is entitled to invoke the jurisdiction of the High Court at Jabalpur. Connected with this right of the parties is the fight of the petitioners to assist the parties as advocates in the enforcement of such right, It is, therefore, obvious that the petitioners are vitally interested in the matter and fall within the category 'persons aggrieved'. It has also been brought to our notice that in a number of cases, which are being moved to Gwalior or Indore in pursuance of the impugned orders of the Chief Justice, some of the Petitioners are engaged as counsel. The Registrar has filed a list of such cases vide Annexures-19 and 20. The name of Sri D. M. Dharmadhikari, one of the petitioners, appears against cases mentioned in items Nos. 3, 8, 15 and 38 in Annexure-19 and items Nos. 16, 68 and 86 in Annexure-20. Similarly, the name of Sri A.T.A. Malik, petitioner No. 1, appears against item No. 31 and that of Ku. Kanti Rao, petitioner No. 6 against items Nos. 24, 38 and 66, in Annexure-19. It is obvious that transfer of these cases to the Benches at Gwalior and Indore 'may not only cause inconvenience to the counsel but may even result in financial loss to them because, if the parties are not prepared to pay extra charges for their visits to Gwalior and Indore in connection with the cases, the lawyers at Gwalior and Indore may be engaged and thus the petitioners may lose the brief and the remaining part of their fees.

37. It, therefore, appears to us that the petitioners fall within the category of 'aggrieved person' in the light of the decisions of the SC quoted above. Even if the petitioners are to be treated as strangers, there can be no doubt that the matter is of such public interest that they are entitled to intervene. The very fact that distinguished lawyers from all over the State have gathered to assist this court in dealing with questions of importance vital to the jurisdiction of the High Court in all its aspects shows that the members of the Bar practicing in this Court are interested in the matter and as such are entitled to approach this court for resolving the controversy. We, therefore, do not find any merit in the contention that the petitioners have no *locus standi* to present this petition.

38. On behalf of the respondents it has also been urged that this petition is liable to be thrown out on the ground of delay because the Act was enacted in 1956 and the permanent Benches were constituted in 1968. It is no doubt true that the petitioners

have challenged the vires of the provisions of sub-sections (2) and (3) of Section 51 of the Act and have also challenged the constitution of permanent Benches; but they are mainly aggrieved by the orders of the Chief Justice dated 5-2-1976 (Annexures-11 and 12 to the Return of the Registrar) and the action being taken by the Registrar to transfer certain pending cases in pursuance thereof. As this petition is directed mainly against the orders of the Chief Justice dated 5-2-1976, it is clear that it was promptly filed without any delay. Sri Y. S. Dharmadhikari, learned counsel for the petitioners submitted that the interest of the petitioners are very much adversely affected by the aforesaid orders and that they would not have filed this petition, if the position as it obtained prior to the passing of the said orders was allowed to continue. It appears from the record that the representatives of the High Court Bar Association, Jabalpur had approached the Chief Justice for revoking the impugned orders and there was a discussion on 16-2-1976 Vide Minutes of Discussion (Annexure-16 to the Return of the Registrar): When they failed to persuade the Chief Justice to revoke the impugned orders they filed this petition. It is no doubt true that the validity of the Presidential orders (Annexures-1 and 2 to the Return of the Registrar) and the vires of Sub-sections (2) and (3) of Section 51 of the Act have also been challenged; but that is only with a view to assail the orders of the Chief Justice by which the petitioners are aggrieved.

39. A person need not challenge a particular statutory provision until he is actually affected by it. In fact he has no right to challenge it unless he is in some way hurt by it. The petitioners, it seems, were satisfied with the constitution of permanent Benches, the Presidential orders and the orders of the Chief Justice issued from time to time before the impugned orders. They felt aggrieved when the impugned orders were passed and action was being taken in pursuance thereof to transfer pending cases to Indore and Gwalior as it gave rise to an impression that the jurisdiction of the High Court at its principal seat at Jabalpur was being curtailed so as to reduce it to the position as a Bench at Indore or Gwalior. Thus, as pointed out above they approached this Court promptly and there is no question of delay in this case.

40. The next point for consideration is whether the provisions of Section 51 of the Act are ultra vires. Sri Y.S. Dharmadhikari, learned counsel for the petitioners made it clear at the outset that he assailed the validity of the provisions of the said section only as a last resort. but since the question has been raised 'and argued at some length, we propose to deal with it before considering other points raised before us.

41. The main argument of Sri Y. S. Dharmadhikari, which was supported and elaborated by Sri Gulab Gupta appearing for the High Court Bar Association, Jabalpur, is that the constitution of permanent Benches is a matter falling exclusively within the State List and as such the Parliament had no jurisdiction to legislate on the subject. In order to appreciate the argument, it is necessary to refer to the various entries in the three Lists in the Seventh Schedule of the Constitution having a bearing on the subject. The relevant entries are reproduce below:

"List - Union List.

77. Constitution, organization, jurisdiction and powers of the SC (including contempt of such Court), and the fees taken therein; persons entitled to practice before the Supreme Court.

78. Constitution and organization (including vacations) of the High Courts except provisions as to officers and servants of High Court; persons entitled to practice before the 'High Court'.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list; admiralty jurisdiction.

List II - State List.

3. Administration of justice, constitution and organisation of all courts, except the SC and the High Court; office and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list.

List III - Concurrent List.

46. Jurisdiction and power of all courts, except the Supreme Court, with respect to any of the matters in this List."

42. The contention of Sri Dharmadhikari, learned counsel for the petitioners is that under entry 78 of the list I, the Parliament is competent to legislate only in respect of 'constitution and organization of the High Courts' and not its jurisdiction and powers except in relation to any of the matters in List I vide Entry 95. He referred in this connection to the language of Entry 77 which empowers the Parliament to legislate in respect of Constitution, organization, jurisdiction as well as powers of the Supreme Court. He urged that since the words 'jurisdiction and powers' of the High Courts' are omitted from Entry 78, it follows that the power to legislate in respect of general jurisdiction and powers of the High Court was not assigned to the Parliament except in

respect of the matters falling within List I for which special provision is made in Entry 95 of List I. According to him, the State Legislature alone is competent to legislate in respect of the general jurisdiction and powers of the High Court under the head "Administration of Justice" in Entry 3 of the State List. He, therefore, urged that Sub-section (2) and subs. (3) of Section 1 of the Act in so far as they deal with the jurisdiction and powers of the Benches of the High Court are *ultra vires* and, therefore, the President in exercise of his powers under Sub-section (2) of Section 51 was not competent to make any provision regarding jurisdiction of the Benches of the High Court which falls within the purview of 'Administration of Justice'.

43. In support of his arguments, Sri Dharmadhikari, relied to a large extent on the decision of the SC in *State of Bombay v. Narottamdas*,⁸ and the decision of the Calcutta High Court in *Amarendra Nath v. Bikash Chandra*,⁹ wherein the aforesaid decision of the SC was considered and discussed in detail and it was held that the State Legislature alone is competent to invest the High Court with general jurisdiction and powers in all matters civil and criminal. It is, therefore, necessary to scrutinize these two decisions carefully.

44. So far as the decision of the SC in *State of Bombay v. Narottamdas* (AIR 1951 SC 69) (supra) is concerned, it dealt with a somewhat similar matter under the Government of India Act, 1935. Under the said Act the scheme of distribution of legislative powers between the Centre and the Provinces was somewhat different as indicated below:

"Entry 53, List I.

'Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this List.....'

Entries 1 and 2, List II-

'1. the administration of justice, constitution and organisation of all Courts except the Federal Court.....'

'2. Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this list.....'

Entry 15, List III-

'Jurisdiction and powers of all Courts except the Federal Court, with respect to any of

the matters in this List.' As would appear from the relevant Entries in the Provincial List quoted above, 'administration of justice' as well as 'Constitution and organization of all Courts except the Federal Court' fell within the purview of Entries 1 and 2 of List II (Provincial List). Thus, 'Constitution and organization of the High Court as well as the administration of justice in such Court' were within the exclusive jurisdiction of the Provincial Legislature. Entry 53 of List I - Central List - merely dealt with special jurisdiction and powers of Courts, except the Federal Court, only with respect to any of the matters in that list. It did not include within its scope the jurisdiction and powers of the High Court in general. Under the Constitution, on the other hand, 'Constitution and organization' of the High Court are included in Entry 78 of List I (Union List) while the expression "Jurisdiction and powers of the High Court" does not find mention in any of the Lists. Keeping in view this deviation in the Legislative scheme under the Constitution, we have to see how far the decision of the SC in the Bombay case (*supra*) is helpful to us.

45. Although all the five Hon'ble Judges, who constituted the Bench, recorded separate judgments, the majority view as culled there from appears to be that the expressions 'administration of justice' and "Constitution and organization' were wide enough to hold within their purview the jurisdiction and powers of the High Court in general. We may incidentally mention that the Calcutta High Court also, after analyzing the judgment of the Supreme Court, took the same view as is apparent from the following observations in paragraph 23 at page 542.

"What the learned Judges have held is that the words 'administration of justice' and 'constitution and organization' of Courts include the concept of jurisdiction and powers. It has not been clearly held that if the words 'constitution and organization' stood alone, the result would have been the same."

46. After stating the majority view of the Supreme Court, the learned Single Judge of the Calcutta High Court, in *Amrendra Nath v. Bikash Chandra AIR 1957 Calcutta 534*) (*supra*), discussed the various Entries in the legislative Lists, around arrived at the conclusion that the State Legislature alone can invest the High Court with general jurisdiction and powers as the matter falls within the purview of the expression 'administration of justice'. With respect, we are unable to agree with this view of the learned Judge for the following reasons. There can be no doubt that the expression

'administration of justice' is wide enough to cover general jurisdiction and powers of the High Court under Entry 3 of the State List; but the expression 'constitution and organization' of the High Court in Entry 78 of the Union List, cannot be so construed as to exclude every aspect of the jurisdiction and powers of the High Court.

47. Since the 'constitution and organisation' of the High Courts fall within the legislative sphere of the Parliament, it logically follows that the Parliament must have power to specify the territories over which the High Courts so constituted will exercise jurisdiction and the organization of such Courts necessarily includes the formation of Benches at various places. As observed by Mahajan, J. (as he then was) in *State of Bombay v. Narottamdas* (AIR 1951 SC 69) (supra) in paragraph 49, a Court without powers and jurisdiction would be an anomaly. We may here quote the following observation of Mahajan, J. in the said paragraph in this connection:

"It is a fundamental principle of the construction of a constitution that everything necessary for the exercise of powers is included in the grant of power. Everything necessary for effective execution of power of legislation must, therefore, be taken to be conferred by the constitution with that power."

48. Thus the power to constitute and organise Courts must necessarily include the power to invest such Courts with general jurisdiction over a particular territory and to provide for the manner in which such jurisdiction would be exercised. The meaning of the word 'organize' as given in Black's Law Dictionary, Fourth Edition, at page 1251 is as follows:

"Organize- to establish or furnish with organs; to systematize; to put into working order; to arrange in order for the normal exercise of its appropriate functions."

Thus organization of an institution implies not only its establishment; but also that it should' be furnished with necessary organs to enable it to discharge its appropriate functions.

49. It is, therefore, clear that the expression 'constitution and organisation' is an expression of wide connotation holding within its ambit not merely the constitution of High Court but its establishment at a particular place with the requisite jurisdiction and powers to enable it to function as a full-fledged High Court for a particular

territory. Incidentally, a part of the matter may be covered by the Entry 'administration of justice' falling within the State List but that would not make any difference to the power of the Parliament to make provision for all matters which fall within the purview of Entry 78 of the Union List.

50. We may here also briefly refer to the theory of pith and substance in regard to the distribution of legislative powers between the State and the Union. The various Entries in the three Lists are pot powers of legislation; but they indicate the fields of Legislation. The power to legislate is conferred by Article 246 of the Constitution as well as certain other Articles thereof. The Entries are designed to define and delimit the respective areas of legislative competence of the Union and the State Legislatures.

51. In *Chaturbhai v. Union of India*¹⁰ their Lordships laid down that it is within the competence of the Central Legislature to provide for matters which may otherwise fall within the competence of the Provincial Legislature if they are necessarily incidental to effective legislation by the Central Legislature on a subject of legislation expressly within its power. Their Lordships further held that it is a fundamental principle of the constitutional law that everything necessary to the exercise of the power is included in the grant thereof. In a later case *Harakchand v. Union of India*,¹¹ their Lordships reiterated the rules of interpretation of the Entries in the legislative Lists referred to above and emphasized that it is the duty of the Court to reconcile the Entries and bring about a harmonious construction.

52. We have pointed out above that the expression 'constitution and organisation' in Entry 78 of the Union List is wide enough to include the jurisdiction and powers of the High Court with which it is necessary to clothe the High Court to enable it to function as an effective judicial organ of the State throughout its territories. Looked from this point of view, the provisions of Section 51 of the Act, which provide for constitution of temporary and permanent Benches, fall within the purview of Entry 78 of the Union List and as such they are within the competence of the Union Legislature and they cannot be declared to be *ultra vires* merely on the ground that they also incidentally fall within the purview of the Entry 3 in the State List pertaining to "administration of justice".

53. There is another aspect of the matter. The States Reorganization Act was enacted by the Parliament in exercise of its powers under Articles 3 and 4 of the Constitution.

Article 3 empowers the Parliament to reorganize the States; and Article 4 empowers the Parliament to amend the first and fourth schedules to the Constitution and make supplemental, incidental and consequential provisions. There can be no doubt that the power to reorganize the States includes the power to reorganize the three principal organs of the State, viz., the executive, Legislature and the judiciary. In other words, it includes the power to constitute and organize a High Court for a new State constituted under the scheme of reorganization. As held by their Lordships of the SC in *Mangal Singh v. Union of India*,¹² the expression "supplemental, incidental and consequential provisions" is wide enough to include provisions relating to the setting up of the legislative, executive and judicial organs of the State essential to the effective administration of that State under the Constitution and other related matters. Their Lordships, however, added that the power to make such supplemental, incidental or consequential provision is not to override the constitutional scheme vide paragraph 6.

54. Sri Dharmadhikari argued that the distribution of legislative powers between the Union and the State effected by the Constitution by the three Lists in the Seventh Schedule, being a part of the constitutional scheme and also a part of the basic structure of the Constitution, the Parliament was not competent to legislate in respect of a matter falling strictly within the State List, in exercise of its powers under Articles 3 and 4 of the constitution. This argument was in continuation of the argument that the Jurisdiction and powers of the High Court fall exclusively within the expression 'administration of justice' in Entry 3 of the State List. We do not find any merit in this argument for two reasons.

55. In the first place, we have already held above that the expression "constitution and organization" in Entry 78 of the Union List is wide enough to empower the Parliament to invest the High Court with general jurisdiction over a specified territory to enable it to function effectively as a High Court. Secondly the question of trenching upon the legislative field of the State can arise only after the State is formed. As held in *Mangal Singh's case* (supra), the expression "supplemental, incidental and consequential provisions" includes provisions relating to the setting up of the legislative, executive and judicial organs of the State essential to the effective State administration under the Constitution. Thus, the setting up of a High Court as a live judicial organ of the State competent to discharge its judicial functions in relation to the territories of the State necessarily falls within the purview of the aforesaid expression and the question of encroachment upon the State List cannot arise because that question can only arise

after the State fully equipped with the three organs is formed and put into operation.

56. We may here incidentally refer to the provisions of Section 69 of the Act which reads as follows:

"Nothing in this part shall affect the application to the High Court for a new State of any provisions of the Constitution, and this part shall have effect subject to any provision that may be made on or after the appointed day with respect to that High Court by any Legislature or other authority having power to make such provision."

This provision clearly indicates that the Parliament had no intention to encroach upon the powers of the State Legislature in regard to the jurisdiction and power of the High Court and that it only made such provisions in this connection as were absolutely necessary to enable the High Court to function as an effective judicial organ of the State at its inception.

57. Thus, from every point of view it appears to us that the provisions of Section 51 of the Act are *intra vires* and there is no merit in the contention that any part thereof was beyond the competence of the Parliament and as such *ultra vires*.

58. Sri Dharmadhikari questioned the vires of Sub-section (2) of Section 51 of the Act also on the ground that it amounted to excessive delegation, inasmuch as the constitution of permanent Benches was an essential legislative function of the Parliament itself and it could not be entrusted to the President. There can be no doubt that the Legislature cannot delegate its essential functions; but as held by their Lordships of the SC in *Khambhalia Municipality v. Gujarat State*,¹³ in paragraph 7-

"An essential legislative function consists in the determination of a policy and its formulation as a binding rule of conduct. Having laid down the legislative policy, the legislature may confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy."

If we examine the scheme of the Act in the light of the aforesaid principles, it would appear that having constituted a High Court for the new State of Madhya Pradesh under Section 49 of the Act and conferred jurisdiction on it, under Section 52 of the

Act, the Parliament left it to the various high authorities to determine where the principal seat of the High Court should be located and places where temporary or permanent Benches of the High Court may function. We have already noticed that provisions similar to Sub-section (3) of Section 51 of the Act exist in almost all the Letters Patent or the Acts under which the various High Courts have been constituted and in exercise of the power conferred by such provisions it was left to the Chief Justice with the concurrence of the Governor to determine the place or places where the Judges or Division Courts of the High Court concerned may sit to dispose of cases. By permanent Benches, as we shall presently consider, the Parliament apparently meant a permanent arrangement whereby at least a specified number of Judges may sit for disposal of cases of certain areas contiguous to the place of sitting for the convenience of the litigants. Where the Benches should sit and how many Judges should sit at a particular place are merely details to be determined by the authorities concerned for implementation of the policy indicated in the Act. We, therefore, hold that Section 51 does not suffer from the vice of excessive delegation.

59. We now come to the next question which is, in fact the real and substantial issue in this case. The point for consideration is whether the permanent Benches constituted by the President at Gwalior and Indore by orders issued under Sub-section (2) of Section 51 of the Act vide (Annexures-1 and 2 to the return of the Registrar), have exclusive jurisdiction in respect of cases arising in the districts assigned to them, in the sense that a case arising within any of the aforesaid districts cannot be instituted or heard by a Bench of the High Court at its principal seat, namely, Jabalpur, unless it falls within the class of cases which, according to the order of the Chief Justice under the proviso to the Presidential order is to be heard at Jabalpur. In other words the question is whether in exercise of his powers under Sub-section (2) of Section 51 of the Act, the President was competent to carve out a separate and exclusive territory for each at the permanent Benches so as to curtail all the territorial jurisdiction of the High Court sitting at Jabalpur, its principal seat and whether under the Presidential orders (Annexures-1 and 2 to the return of the Registrar) such exclusive territory was actually carved out.

60. In order to deal with the aforesaid questions, it is necessary to refer to the provisions of Section 51 of the Act which reads as under:

"51. Principal seat and other places of sitting of High Courts for new State-

- (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 matters connected therewith.
- (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."

61. It would be both logical and purposeful to examine each part of this section carefully. Sub-section (1) lays down that the principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint. As we have already noticed above, in exercise of the powers conferred on the President by this notification, Jabalpur was declared to be the principal seat of the High Court of Madhya Pradesh vide notification dated 27th October, 1956 (Annexure-C).

62. The expression 'principal seat' has not been defined in the Act. It is, therefore, necessary to consider what it means and implies. The ordinary meaning of the word 'principal' is chief, leading; most important or considerable; primary; original highest in rank, character or importance or degree vide BLACK'S LAW DICTIONARY; Fourth Edition at p. 1355. As observed by Mukherjee, J. in paragraph 68 in *State of Bombay v. Narottamdas* (AIR 1951 SC 69) (supra), the word 'Court means a place where justice is judicially administered'. The principal seat of a High Court would, therefore, mean the chief or primary place where justice can be administered by the High Court to a needy party which seeks to invoke its jurisdiction.

63. If we care to go into the history of the constitution of various High Courts in India, one thing would be clear that even during the British period, whenever a High Court was established by Letters Patent under Section 1 of the High Courts Act or the Charter Act, 1861, or under Section 113 of the Government of India Act, 1915, or Section 229 of the Government of India Act, 1935, the High Court was erected and established at a particular place mentioned in the Letters Patent. Under the Letters Patent for the High Court of Calcutta, dated 28th December, 1865, the High Court was

erected and established at Fort William in Bengal. Under the Letters Patent for the High Court of Madras and Bombay the High Courts were erected and established at Madras and Bombay respectively. We may now turn to the Letters Patent of the High Court of Judicature at Nagpur which, under Section 49 of the Act, became the High Court of Madhya Pradesh with effect from 1-11-1956. Under Clause 1 of the Letters Patent, the High Court was erected and established at Nagpur. The expression 'erect and establish' in relation to a High Court, in our view meant nothing more than to indicate that the place where it was established was to be the principal seat of the High Court where any party could invoke the jurisdiction of the High Court, irrespective of the consideration in which part of the territory, over which the High Court exercised jurisdiction, the case or the cause of action of such party arose. The High Court is a creature of law and, just as its powers and jurisdiction are regulated by law, the place or places where it is competent to exercise its jurisdiction are also regulated by law. It is therefore, 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 the place 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. In case one of them is declared to be the principal seat, it must naturally mean the place where the High Court is competent to transact every kind of business arising from any part of the territories within its jurisdiction. In *Manickam v. Assistant Registrar*,¹⁴ while dealing with subs. (1) of Section 51 of the Act, their Lordships observed as under in paragraph 8 in regard to 'principal seat':

"The principal seat of the High Court under .S. 51 (1) of the Act is the place where the High Court as a whole functions in all its capacities. We High Court as such is located there."

64. Although the expression 'principal seat' was not defined in any of the enactments pertaining to High Court and it was aim not used in the Letters Patents of the various High Courts constituted under the High Court Act 1861, the Government of India Act, 1915 or the Government of India Act, 1935, it was not unknown to law. We find reference to the expression in Sub-section (3) of Section 230 in the Government of India Act, 1935. It appears to us that the expression 'principal seat' was not used in the Letters Patent because the High Court was erected and established at a particular place

which was thus automatically declared to be the principal seat of the High Court; and it is obvious that it was in this sense that it was used in Section 230, Government of India Act, 1935. Thus, it is clear that the principal seat is the place where the High Court is competent to exercise its plenary jurisdiction in regard to any case or any party, irrespective of the consideration in which part of the territories within its jurisdiction the case arose. In other words, it is the place where any party can approach the High Court to invoke its jurisdiction regardless of the place where the case arose within its territorial jurisdiction.

65. Since under Section 52 of the Act, the High Court of Madhya Pradesh is invested with jurisdiction over every part of the territories included within the State, it logically follows that the High Court is competent to administer justice at its principal seat, that is at Jabalpur, to a party who seeks to invoke its jurisdiction, irrespective of the consideration in which part of the territories comprised within the State of Madhya Pradesh the case arose or the cause of action of such party arose. There can hardly be any doubt that this was the position which obtained on the 1st day of November 1956 when the new State of Madhya Pradesh was born and the High court of Judicature at Nagpur became the High Court for the new State of Madhya Pradesh by the legal fiction under Section 49 of the Act. We have now to see if the action of the President and other authorities in regard to the constitution of temporary and permanent Benches under Sub-section (2) and Sub-section (3) of Section 51 of the Act altered the position, so as to carve out an exclusive jurisdiction for the permanent Benches at Gwalior and Indore and to curtail the jurisdiction of the High Court while sitting at Jabalpur, its principal seat.

66. We may first address ourselves to the constitution of temporary Benches at Gwalior and Indore under Sub-section (3) of Section 51 of the Act. By a notification issued on the 1st November, 1956 (Annexure-D) the Chief Justice with the approval of the Governor of Madhya Pradesh directed that temporary Benches of the High Court of Madhya Pradesh will also sit temporarily at Gwalior and Indore. By another notification issued by the Chief Justice, on 29th November 1956, vide Annexure-E, the jurisdictions of the Gwalior and Indore Benches which were temporarily constituted under the notification (Annexure-D), were declared to be the same as they were immediately before the appointed day, that is, 1-11-1956, with certain minor modifications as indicated. It is these two notifications which governed the existence as well as the jurisdiction of the two Benches from 1956 to 2-8-11-1968, that is, for a

little over twelve years. We may now examine the legal implications of the two notifications to find out what was the position obtaining during the period these two temporary Benches continued and functioned.

67. It would be here pertinent to note that a provision similar to the one contained in Sub-section (3) of Section 51 of the Act is to be found in almost all the Letters Patent of the different High Courts under which it is open to the authorities mentioned therein to direct that one or more judges of the High Courts may sit at places other than the principal seat in order to exercise jurisdiction and powers in relation to a particular class of cases. We may particularly take note of Clause 33 of the Letters Patent of the High Court of Judicature at Nagpur which reads as under:

"33. Special commission and circuit. And we do further ordain that wherever it appears to the Governor in Council of the Central Provinces, subject to the control of the Governor General in Council, convenient that the jurisdiction and power by these our Letters Patent, or by or under the Government of India Act, vested in the High Court of judicature at Nagpur should be exercised in any place within the jurisdiction of any Court 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, one or more Judges of the Court shall visit such place or places accordingly."

So far as we know no action was taken under the aforesaid clause. No Judge or Division Bench of the High Court sat at any place other than at Nagpur. The practice of Judges of a particular High Court sitting at places other than its principal seat was almost unknown till it became a practical necessity on account of the reorganization of States. The question however, is what are the logical and legal consequences of such a practice.

68. The aforesaid question came up for consideration "before the Kerala High Court in *Manickam v. Assistant Registrar*¹⁵ That case is of some interest because the State of Kerala was also constituted under the same Act under which the present State of Madhya Pradesh was constituted and Ernakulam was notified by the President to be the principal seat of the High Court of Kerala under Sub-section (1) of Section 51 of the Act. The High Court of Kerala functioned exclusively at Ernakulam until the Chief Justice, acting under Sub-section (3) of Section 51 of the Act directed with the

approval of the Governor of Kerala that the Judges and Division Courts of the High Court may also sit at Trivendrum to dispose of such cases as may from time to time be specified in this behalf by him.

69. A question having arisen as to the jurisdiction of the temporary Bench sitting at Trivendrum under Section 51 (3) of the Act, the Kerala High Court held that the Trivendrum Bench was not the High Court of Kerala; and a single Judge or a Division Court sitting at Trivendrum under Sub-section (3) of Section 51 of the Act was in precisely the same position as a single Judge or Division Court sitting in the several Court-rooms of the High Court at its principal seat in Ernakulam. In other words the Bench could only hear and dispose of such cases as were directed to be posted before it by the Chief Justice; it could not do anything else and in particular could not receive cases. No other case was cited at the Bar in which a contrary view may have been taken in regard to the temporary Benches constituted under Sub-section (3) of Section 51 of the Act or under any of similar provisions in the Letters Patent of the various High Courts or the Acts constituting a High Court. The view taken by the learned Judges of the Kerala High Court on this point appears to us to be correct and, in fact, it was not questioned before us on any particular ground which may require consideration.

70. From the language of Sub-section (3) of Section 51 of the Act it is clear that it merely provides that the Judges and Division Courts of the High Court may also sit at such other place or places in the State as the Chief Justice may, with the approval of the Governor, appoint. The seat of the High Court is to be distinguished from a place where the Judges and Division Courts of the High Court may sit to dispose of certain cases. The importance of the seat consists in the fact that it is a place where a party can approach the High Court for seeking a particular relief. It is a place where the High Court's jurisdiction can be invoked; whereas the appointment of a place where the Judges or Division Courts of the High Court may sit to dispose of cases merely signifies a place where a Bench of the High Court may temporarily function to hear and dispose of cases which have been properly instituted at the seat of the High Court. It is, therefore, clear that the constitution of a temporary Bench at a particular place merely enables such Bench to administer justice in regard to such cases as may be assigned to it by the Chief Justice for disposal at such place.

71. It is, no doubt, true that by notification (Annexure-E) the Chief Justice directed

that the jurisdiction of Gwalior and Indore Benches shall be such as they were immediately before the appointed day; but that merely means that they were to deal with cases arising out of the districts over which they were exercising jurisdiction before 1-11-1956. Sub-section (3) of Section 51 of the Act in terms does not provide for the assignment of a territorial jurisdiction to a temporary Bench constituted there under; and, therefore, the notification (Annexure-E) can be merely construed as indicating the nature of cases to be dealt with by the temporary Benches at Gwalior and Indore. This is also clear from the fact that the notification does not purport to have been issued under Sub-section (3) of Section 51 of the Act. It was issued by the Chief Justice under his special and inherent powers under the Letters Patent to assign cases to different Benches. The Chief Justice was not competent to assign any exclusive territorial jurisdiction to the Benches, particular so as to affect, in any way, the territorial jurisdiction of the High Court sitting at its principal seat, viz., at Jabalpur and, therefore, the notification (Annexure-E) cannot be construed in that manner.

72. It has been brought to our notice that after the constitution of the temporary Benches, cases arising out of the districts within their respective jurisdiction were also being instituted there. Strictly speaking this would be irregular in view of the decision of the Kerala High Court in *Manickam v. Assistant Registrar*, AIR 1958 Kerala 188 (supra); but that question is of no consequence here. All that is clear is that the jurisdiction of the High Court to deal with any case, arising in any part of the territories of Madhya Pradesh, at Jabalpur could not, in any way, be affected or curtailed by the constitution of the temporary Benches. The temporary Benches were more or less what are known as 'circuit courts' and their existence was of a temporary nature, inasmuch as they could cease to function if the Chief Justice did not nominate any Judge for sitting at such places, and they were competent to deal with only such cases as were assigned to them by the Chief Justice at his pleasure.

73. There can be no doubt that merely because a Bench of a High Court may sit at a particular place other than its principal seat for the convenience of the litigants of a particular area it would not, in any way, curtail the jurisdiction of the High Court at its principal seat.

74. It is thus quite clear to us that up to 1968 the legal position was that there were temporary Benches at Gwalior and Indore which were dealing with cases arising out of certain districts assigned to them; but that did not in any way, affect or curtail the

jurisdiction of the High Court at its principal seat to deal with cases arising within the aforesaid districts. This legal position was not at all questioned and was, in fact, fully recognized in practice. Then came the stage when the permanent Benches came to be constituted under Sub-section (2) of Section 51 of the Act by the President by notifications issued simultaneously on the 28th November, 1968 vide Annexures-1 and 2 to the return of the Registrar. By these notifications it was directed that not less than the number of Judges specified therein, as may be nominated by the Chief Justice from time to time shall sit at Gwalior and Indore in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the revenue districts mentioned therein.

75. On a plain reading of the notifications it would appear that their object was two-fold. In the first place it was to declare that at least a certain number of Judges shall be sitting at these places all the time. Secondly, it was to provide that the Benches will be competent to exercise jurisdiction in relation to cases arising within the districts specified therein. It would be here pertinent to note that it was not at all obligatory on the President to specify and demarcate the jurisdiction of each Bench. It appears that the districts were specified in order to show that the Benches were constituted for the convenience of the litigants of particular districts. The constitution of permanent Benches also implies that the place where such Benches have been established are places for the sittings of the High Court other than the principal seat for exercising jurisdiction in respect of cases arising within the specified districts - and as such it was open to the litigants to approach a particular Bench if his case arose within one of the districts assigned to the Bench.

76. A question was raised whether the President was competent under subs. (2) of Section 51 of the Act to determine the territorial jurisdiction of the Benches. The said sub-section empowers the President to establish permanent Benches and also to provide for any matters connected therewith. The expression "any matters connected therewith" is wide enough to include the territorial jurisdiction of the Benches. The power to constitute an authority also includes the power to specify the purpose for which it is constituted within the framework of the law under which it is constituted. We, therefore, hold that the President was competent to specify the districts over which the permanent Benches would exercise jurisdiction.

77. Since the President has specified the districts over which each of the permanent

Benches can exercise jurisdiction, it is clear that their jurisdiction is confined to the cases arising within the specified districts and they are not competent to hear and decide cases arising in areas other than those comprised within the districts assigned to them. The question whether a permanent Bench at Gwalior or Indore constituted under Section 51 (2) of the Act is competent to hear a case arising in a revenue district other than one assigned to such Bench came up for consideration before a Full Bench of this court in *Gulabchand v. Rukmanidevi*,¹⁶ The Full Bench observed in paragraph 3 as under:

"It would appear that there is nothing in this notification which precludes for the time being a permanent Bench at Indore for hearing cases other than those indicated in the notification."

No definite opinion was, however expressed on the point referred because the case could be disposed of on other grounds. The aforesaid observations may therefore, be treated as merely casual and not the duly considered opinion of the Bench.

78. In *Ali Mohammad v. Board of Revenue*,¹⁷ a Division Bench of this Court held that Judges sitting at Gwalior could not exercise jurisdiction and powers of the High Court in respect of the case arising out of the districts mentioned in the Presidential order. This view appears to be correct because the power to constitute permanent Benches conferred on the President under Sub-section (2) of Section 51 of the Act, necessarily includes the power to specify the purposes for which the Bench is constituted. The position might have been different if the President had not specified the districts over which each of the permanent Benches was to exercise jurisdiction. But since the districts have been specified, it clearly meant that the Benches were constituted for the purpose of hearing cases arising out of such districts only and not others. The Allahabad High court on construction of Paragraph 14 of Amalgamation Order, the language of which is similar to that of the Presidential Orders (Annexures-1 and 2 to the return of the Registrar), has consistently held in number of cases the jurisdiction of Lucknow Bench is limited to Oudh area only *M. A. Jail v. Rex*,¹⁸ *India of India v. Chheda Lal Ram Autar*,¹⁹ *Boodan v. Asstt. Custodian General Evacuee Property*.²⁰ *Uma Shanker Hari Nandan Ahir v. The State*²¹ and *Nirmal Dass Khaturia v. The State Transport (Appellate) Tribunal, U. P. Lucknow*,²² their Lordships of the SC in Nasiruddin's case.

79. We need not deal with this matter any further because the proposition that the jurisdiction of the permanent Benches is confined to the cases arising within the districts assigned to them was not questioned before us by the learned counsel for the respondents whose main contention was that the jurisdiction of the High Court at Jabalpur was similarly confined to the areas comprised within the State of Madhya Pradesh excluding the specified districts.

80. We now proceed to deal with the most important question in this case, viz., whether the constitution of the permanent Benches and the assignment of particular districts to them automatically resulted in the curtailment of jurisdiction of the High Court to deal with cases arising within the said districts while sitting at Jabalpur. On a plain reading of Sub-section (2) of Section 51 of the Act it would appear that it does not empower the President to make any provision regarding the jurisdiction or business of the High Court at its principal seat. Subsection (1) of the section merely empowers him to declare the principal seat of the High Court; and once that is done, there is no provision in the Act empowering him to regulate the territorial jurisdiction of the High Court at such seat.

81. Under Sub-section (2) of Section 51 of the Act, the President has been empowered merely to establish permanent Benches and to provide for matters connected therewith. The expression 'matters connected therewith' must be construed to mean only such matters as pertain to the Benches and not to the High Court as such. In exercise of his powers under the said sub-section the President may provide for the territorial jurisdiction of the Benches or allocation of the business to the Benches. But he has no power under that section to make any provision affecting the jurisdiction of the High Court at its principal seat or for regulating the business of the High Court. It has been suggested that the assignment of districts to the Benches virtually amounts to allocation of business to the Benches by the President and it automatically restricts the nature of business which can be transacted by the High Court at its principal seat. But this contention is not tenable because under Sub-section (2) of Section 51 of the Act all that the President can provide is the nature of the business which the Benches would be competent to transact and not the nature of the business which the High Court would be competent to transact at its principal seat. It is for the Chief Justice to allocate business by a roster under the Rules and since the President has no power under the said sub-section to allocate the business of the High Court, the power of the

Chief Justice to allocate the business of the High Court under the High Court Rules remains unaffected except that only cases arising out of the district assigned to the Benches can be allotted to them.

82. Even in the notification, issued by the President under Sub-section (2) of Section 51 of the Act vide Annexures-1 and 2 to the return of the Registrar, there is no reference to the principal seat or the areas over which the High Court, while sitting at its principal seat, can exercise jurisdiction. Thus, on the face of the aforesaid orders, there is nothing to indicate that the territorial jurisdiction specified therein was exclusive so as to exclude such districts from the jurisdiction of the High Court at its principal seat. Sri S. D. Sanghi, who led the arguments on behalf of the High Court Bar Associations at Gwalior and Indore frankly conceded this position; but he urged that in view of the decision of the SC in *Nasiruddin v. S. T. A. Tribunal*,²³ the two notifications must be so construed as to exclude the cases arising within the district assigned to the permanent Benches from the jurisdiction of the High Court while sitting at Jabalpur.

83. So far as Nasiruddin's case (AIR 1976 SC 331) is concerned, we must bear in mind the following observations of Bhagwati J. in *Additional District Magistrate, Jabalpur v. S. Shukla*,²⁴ in paragraph 546 :

"Moreover, it must be remembered that when we are considering the observations of a high judicial authority like this Court, the greatest possible care must be taken to relate the observations of a Judge to the precise issues before him and to confine such observations, even though expressed in broad terms in the general compass of the question before him, unless he makes it clear that he intended his remarks to have a wider ambit."

In Nasiruddin's case it was held that the Lucknow Bench exercised exclusive jurisdiction in regard to Oudh area and that the High Court at Allahabad was not competent to exercise jurisdiction in respect of cases arising within the Oudh area except where such a case was directed to be heard at Allahabad by the Chief Justice under the second proviso to paragraph 14 of the United Provinces High Courts (Amalgamation) Order, 1948. It is, therefore, necessary to examine the decision of their Lordships in the said case carefully.

84. If the Lucknow Bench had been constituted as a permanent Bench under sub- s. (2) of Section 51 of the Act or under similar statutory provision with the same background, perhaps, there would have been no difficulty in treating Nasiruddin's case (AIR 1976 SC 331) as an authority for the view that the permanent Benches at Gwalior and Indore exercise exclusive jurisdiction in relation to the districts assigned to them and that the jurisdiction of the High Court, while sitting at Jabalpur, is curtailed to that extent But that is not so. Sri Dharmadhikari was at pains to point out various distinguishing features of that case in order to show that it could not be treated as an authority so far as this case is concerned.

85. Before proceeding to deal with the legal issues that arose in that case for consideration, first by the Allahabad High Court and then by the Supreme Court, it is necessary to take into consideration, the various statutory provisions under which the Lucknow Bench came to be constituted. One of the most distinguishing features of Nasiruddin's case (AIR 1976 SC 331) is that the Allahabad High Court came into existence by amalgamation of the two pre- existing High Courts, viz., the former Allahabad High Court and the Chief Court of Oudh under Sub-section (1) of Section 229 of the Government of India Act, 1935 which expressly provided for amalgamation in the following terms:

"His Majesty, if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty, may by letters Patent constitute a High Court for that Province or any part thereof or reconstitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those Courts."

86. From the language of the aforesaid sub-section it is clear that amalgamation of two High Courts was treated distinct from constitution of a new High Court or reconstitution of an existing High Court. 'Amalgamation' means 'union of two different elements, such as Corporations or other legal institutions, so as to form a homogeneous whole or new body' vide Black's law Dictionary, Fourth Edition, at p. 194. There being a union of two bodies in the case of amalgamation, it necessarily implies that each of the two bodies is treated at par up to the stage of amalgamation and, therefore, the new body, should, as far as possible, function in such a manner as to bring about as little change in the pre-existing set-up as possible. As would appear

from the preamble of the United Provinces High Courts (Amalgamation) Order, 1948 (hereinafter referred to as the 'Amalgamation Order'), the said order was made by the Governor-General in exercise of his power under Section 229 of the Government of India Act, 1935 On an address being presented to the Governor of the Province by both the Chambers of the Legislature of the United Provinces to amalgamate the High Court in Allahabad and the Chief Court in Oudh. Since the dominant purpose of making the order was to amalgamate the two Courts, it would be necessary to keep in view this important factor pertaining to the constitution of the new High Court, while construing the various provisions of the Amalgamation Order.

87. It is important to note in this connection that the High Court of Madhya Pradesh was not brought about by any amalgamation of High Courts of the various integrating units, viz., Mahakoshal region of the old State of Madhya Pradesh, Madhya Bharat, Vindhya Pradesh and Bhopal. Each of them had a separate High Court or the Judicial Commissioner's Court as the highest Court within the State. The High Court of Judicature at Nagpur was the High Court for the Mahakoshal region; the High Court of Madhya Bharat was the High Court for the Madhya Bharat region; while there was a Judicial Commissioner's Court in each of the other two regions, viz. Vindhya Pradesh and Bhopal. The High Court of Madhya Pradesh was functioning at Nagpur, the High Court of Madhya Bharat was functioning in two separate Benches at Gwalior and Indore, while the Judicial Commissioner's Courts were functioning at Rewa and Bhopal, Section 49 of the Act provided that the High Court of Judicature at Nagpur shall, with effect from 1st November 1956, be deemed to be the High Court of Madhya Pradesh; and under Section 50 of the Act, the High Court of Madhya Bharat and the Judicial Commissioner's Court at Bhopal and Rewa were abolished. It is, therefore, clear that the High Court of new State of Madhya Pradesh was not constituted by amalgamation of two or more High Courts. This, in our view, has a very important bearing on the construction of the provisions of Section 51 of the Act.

88. It was vigorously urged before us that the expression 'permanent Bench' as used in Sub-section (2) of Section 51 of the Act must necessarily imply an exclusive jurisdiction for such Bench so as to preserve and retain the same benefits for the litigants of the areas which they enjoyed before the appointed day, that is, 1-11-1956. There can be no doubt that convenience of the litigants must have been present in the mind of the Parliament while enacting Section 51 of the Act; and it is obvious that the provisions of sub-sections (2) and (3) of Section 51 were enacted for that purpose. But

it was not at all necessary to provide exclusive territorial jurisdiction for the Benches for the sake of convenience of the litigants. From the point of view of their convenience concurrent jurisdiction of the High Court at its principal seat in regard to the districts assigned to the Benches is much more beneficial to the litigants than the exclusive jurisdiction as claimed by the learned counsel for the High Court Bar Associations, Indore and Gwalior. This can be explained by a few illustrations.

89. It has been our experience that sometimes no Judge is available at Gwalior during the vacation. It would be a great inconvenience to the litigants if they cannot approach the High Court at its principal seat to seek immediate relief, such as, bail, an injunction or a stay order. Similarly, when there is a full Court meeting at Jabalpur, there is usually no Judge available either at Indore or at Gwalior. During this period parties, whose cases arise in the districts assigned to the Benches, would suffer great hardship and even irreparable loss if they cannot immediately approach the High Court at its principal seat, viz., Jabalpur. It has been suggested that such inconvenience to the litigants can be avoided by the Chief Justice by making a suitable order under the proviso to the Presidential Orders (Annexures-1 and 2 to the Registrar's return), but that would not obviate the difficulty because as has been held by their Lordships in Nasiruddin's case, (AIR 1976 SC 331) the proviso is only applicable to cases which are instituted at places where the Benches sit. It would, therefore, be necessary for the parties to present their petitions, first at Gwalior or Indore, as the case may be, and then such cases may be transferred to Jabalpur for being heard and decided. This is bound to involve delay. In any case, what we wish to emphasise is that the exclusive jurisdiction does not, in any way, advance the interests of the litigants. On the contrary, it is prejudicial to their interests.

90. Further, it is clear from the provisions of Section 51 of the Act that it was not the intention of the Parliament to Judicial Administration in the various integrating units, otherwise there would have been an express provision regarding permanent Benches at Gwalior and Indore. We find no mention of Gwalior or Indore in the section and the constitution of a Bench. or Benches was left entirely to the discretion of the authorities concerned, keeping in view the interests of the litigants and other considerations germane to judicial administration, by the High Court.

91. A unified High Court at one place has various obvious advantages and the provision for temporary or permanent Benches at places other than the principal seat

of the High Court has been made apparently on account of historical as well as political compulsions. The principle of 'justice at the door of the litigant' is a useful principle at the base of the judicial administration. The application of this principle to the superior courts, such as the High Court, is neither feasible nor desirable. It may be here mentioned that the SC has been functioning solely at New Delhi, even though under Article 130 of the Constitution it can sit at other places as well.

92. Moreover, it cannot also be said that the intention of the Parliament or the President was that the facility available to the litigants of approaching the highest Court in the various integrating units immediately before the reorganization of States should be preserved intact even after 1-11-1956. If such had been the intention, permanent Benches would have been also established at Bhopal and Rewa. But the fact remains that although reorganization of States took place about twenty years back, no Bench is functioning either at Bhopal or at Rewa. Even at Gwalior and Indore temporary Benches were functioning till 1968 when permanent Benches were constituted under the orders of the President. As we have seen above, the constitution of temporary Benches did not and could not affect the plenary jurisdiction of the High Court at its principal seat to deal with cases arising in any part of the territories of Madhya Pradesh and it appears to us that this position remained unaltered by the constitution of permanent Benches. The Presidential orders relating to the permanent Benches had the effect of merely putting the arrangement in regard to the temporary Benches on a permanent footing with suitable provisions for the purpose.

93. It is of some significance that even though the provisions of Sub-section (3) of Section 51 of the Act override the provisions of Sub-section (1) and (2) of the section by use of the words "notwithstanding anything contained in sub-sections (1) and (2)" these words do not appear in Sub-section (2) of Section 51. It is, therefore, clear that any action taken under Sub-section (2) of Section 51 cannot affect the territorial jurisdiction of the High Court at its principal seat. If we are to hold that on the constitution of the permanent Benches the High Court was deprived of its jurisdiction to deal with cases arising in the districts assigned to these Benches, it would rob the principal seat of its meaning and significance and, therefore, such a construction of the Presidential orders is wholly repugnant to Sub-section (1) of Section 51 of the Act.

94. It has already been stated above that neither Sub-section (2) of Section 51 of the Act nor the Presidential orders refer to the territorial jurisdiction of the High Court at

its principal seat and, in our view, there is absolutely no justification for construing the Presidential orders so as to curtail the jurisdiction of the High Court at its principal seat. It has, however, been vigorously canvassed before us that the matter is concluded by the decision of their Lordships in Nasiruddin's case (supra) and, therefore, it is not open to us to take a contrary view.

95. As held by Lord Halsbury in *Quinn v. Leathem*,²⁵ a case is only an authority for what it actually decides. Under Article 141 of the Constitution the law declared by the SC is binding on all Courts in India and, therefore, it is necessary for us to find out what was the ratio of the decision in Nasiruddin's case (AIR 1976 SC 331) and whether any question arising in this case is concluded by that decision. In order to appreciate the ratio of that decision and to find out to what extent the matters in issue in this case are concluded there, by, it would be desirable to refer briefly to the statutory provisions bearing on the question in issue in that case and the various decisions of the Allahabad High Court on those questions culminating in the decision of the Supreme Court.

96. It has been already noticed that the decision in Nasiruddin's case, (AIR 1976 SC 331) rested on the construction of various provisions of the Amalgamation Order. The following observations of their Lordships in paragraph 28 in the said case are pertinent to show that the question of amalgamation was treated as a prominent feature of that case having an important bearing on the decision thereof.

"The order describes the High Court as the new High Court. The two High Courts have amalgamated in the new High Court..... The order aimed at giving status to Oudh Chief Commissioner's Court as that of the High Court."

We have already noticed that the High Court of Madhya Pradesh was not brought into existence as a result of amalgamation. In fact other High Courts were abolished in this case. This is a very important distinguishing feature of this case as compared to Nasiruddin's case (AIR 1976 SC 331). Moreover, in this case we are concerned with the construction of the Presidential Order (Annexures-1 and 2 to the Registrar's return). There is no doubt a certain amount of similarity between the language of the Presidential Orders and that of paragraph 14 of the Amalgamation Order; but the point for consideration is whether this similarity is by itself sufficient to lead to a similar conclusion as was reached in Nasiruddin's case (AIR 1976 SC 331). For this purpose

it would be necessary to compare the two provisions closely.

97. Before we proceed to compare the two provisions, we must bear in mind the following rule of construction which was laid down by their Lordships of the SC in *Ramnarain v. The State of U. P.*,²⁶ in paragraph 10:

"It is no sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The meaning of words and expressions used in an Act must take their color from the context in which they appear."

98. It is, therefore, clear that the words used in a statute cannot be construed divorced from their context. The context in which the Amalgamation Order was passed, was entirely different. As has been already pointed out, there were two Courts, viz., the High Court of Allahabad and the Chief Court of Oudh exercising exclusive jurisdiction within certain areas of the same State and on an address being presented by both the Chambers of the Legislature, the said two Courts were amalgamated into one. Here, it is not a case of amalgamation at all. The High Court of Madhya Bharat and the Judicial Commissioner's Court of Rewa and Bhopal were abolished and the High Court of Judicature at Nagpur was installed as the High Court of the new State of Madhya Pradesh. We may now compare the scheme of the Amalgamation Order with that of the Act.

99. Paragraph 3 of the Amalgamation Order merely states that as from the appointed day, that is, 26th July 1948, the High Court of Allahabad and the Chief Court of Oudh shall be amalgamated in one High Court and be known by the name of High Court of Judicature at Allahabad. We find no mention in the entire Order regarding the principal seat of the High Court. This shows that the use of the expression 'principal seat' was purposely avoided because it was a case of amalgamation of two Courts. Paragraph 14 of the Amalgamation Order, which is very material for the purposes of this case, reads as under:

"14. 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, appointed: 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."

As would appear from the aforesaid paragraph, it merely provided that the new High Court and the Judges and Division Courts thereof shall sit at Allahabad or at such other place in the United Provinces as the Chief Justice may, with the approval of the Governor, appoint. The first proviso to the paragraph, however, laid down that not less than two Judges 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 within such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court. Thus, under the first proviso, a permanent Bench of at least two Judges at Lucknow was constituted in order to exercise the jurisdiction and power of the High Court in respect of cases arising within such areas in Oudh as the Chief Justice may direct.

100. We have already noticed that under Sub-section (1) of Section 51 of the Act, the President was required to fix the principal seat of the High Court and under Sub-section (2) of the section it was left to the President to provide for the establishment of a permanent Bench or Benches at one or more places within the State than the principal seat and for any other matters connected therewith. Thus, the salient points of distinction between the Act and the Amalgamation Order are as under:

- (1) There was no provision for the principal seat of the High Court in the Amalgamation Order.
- (2) No permanent Bench was constituted under the Act; whereas Lucknow Bench was constituted under the Amalgamation Order itself, leaving it to the Chief Justice to nominate Judges, not less than two in number, to sit at Lucknow and to determine the area over which the Bench would exercise jurisdiction.

101. We may now turn to the various decisions on the nature of jurisdiction of the Lucknow Bench and that of the Allahabad High Court while sitting at Allahabad, as it

would be helpful in fully comprehending the decision of the SC in Nasiruddin's case (AIR 1976 SC 331).

102. In *Union of India v. Chheda Lal Ram Autar*,²⁷ it was held by a Full Bench of the Allahabad High Court as under:

- "(1) The new High Court is one and indivisible.
- (2) The Judges sitting at Lucknow can deal only with cases arising in Oudh.
- (3) The rest of the High Court, which is not sitting at Lucknow, is to deal ordinarily with the cases arising outside Oudh, but continues to have the power and jurisdiction which can be exercised throughout the State including the area of Oudh. That power has not been taken away."

103. The correctness of the aforesaid decision, particularly in regard to the conclusion that the High Court at Allahabad was competent to hear cases arising in Oudh area, was doubted by one of the Judges sitting in the Full Bench in *Umashanker v. The State*²⁸ The matter then again came up for consideration before a Full Bench of the Allahabad High Court consisting of five Judges in *Nirmaldass Khaturia v. The State Transport (Appellate) Tribunal*,²⁹ The Full Bench by a majority of four to one, inter alia, held in that case as under:

"The principal and permanent seat of the High Court is at Allahabad.

** **

A case arising within the Oudh area should be presented at Lucknow and not at Allahabad and that such a case could not be heard at Allahabad unless the Chief justice, in exercise of his power under the second proviso to paragraph 14 of the Amalgamation Order directed that it should be heard at Allahabad."

S.N. Dwivedi, J. recorded a dissenting judgment. In Nasiruddin's case (AIR 1976 SC 331) their Lordships did not accept the conclusion of the Allahabad High Court that the principal and permanent seat of the High Court was at Allahabad but upheld the conclusion of that Court that the jurisdiction of the Lucknow Bench was exclusive and the Allahabad High Court, while sitting at Allahabad, could not entertain and decide a case arising within the Oudh area. Their Lordships also did not accept certain other conclusions of the High Court but we are not concerned with them at present.

104. Sri Sanghi tried to make a distinction between the permanent seat and the principal seat and argued that their Lordships, while holding that Allahabad was not the permanent seat of the High Court, by implication approved the conclusion of the majority that Allahabad was the principal seat of the High Court. We are not at all impressed by this argument. It appears to us that their Lordships did not accept the conclusion of the Allahabad High Court that Allahabad was the permanent and principal seat of the High Court. It further appears to us that the conclusion of their Lordships that Allahabad was not the principal seat of the High Court very much weighed with them in coming to the conclusion that Lucknow Bench exercised exclusive territorial jurisdiction over the Oudh area. Since in the case before us it is beyond question that Jabalpur is the principal seat of the High Court, the ratio of the decision in Nasiruddin's case (AIR 1976 SC 331) is not applicable to it.

105. As would appear from paragraph 22 of the majority Judgment in *Nirmal Dass v. S. T. Tribunal* (AIR 1972 Allahabad 200) (FB) (supra), one of the considerations, which heavily weighed with the learned Judges in coming to the conclusion that Lucknow Bench exercised exclusive territorial jurisdiction over the Oudh area, was that the second proviso to paragraph 14 of the Amalgamation Order conferred on the Chief Justice power to direct that any case or class of cases arising in Oudh area shall be heard at Allahabad. Pathak J. (as he then was), who wrote the majority judgment, observed as under:

"The positive language in which the second proviso is expressed is significant. Not only does it imply that those cases will not be heard at Lucknow it states in positive terms that they will be heard at Allahabad Language in that positive form was necessary to confer power upon the Judges at Allahabad to hear those cases. If the Judges at Allahabad had already possessed that power, it would have been sufficient to state merely that those cases would not be heard at Lucknow."

Since the aforesaid reasoning of the Allahabad High Court seems to have been accepted by their Lordships in Paragraph 19 of the judgment in Nasiruddin's case (AIR 1976 SC 331) it is necessary to consider how far it is applicable to the present case.

106. It is, no doubt, true that the proviso to the Presidential Orders (Annexures-1 and 2

to the Registrar's return) is similar to the second proviso to paragraph 14 of the Amalgamation Order; but the two cannot be equated for the following reasons. A proviso to a substantive provision in a statute may control the operation thereof; but an order issued by an authority in exercise of the power conferred by a substantive provision in a statute cannot, in our view, control the operation of the substantive provision itself or curtail the ambit or legal effect thereof. It is a settled rule of law that a delegate can function within the scope of delegation and in no case, can he act beyond its scope or act in excess of the jurisdiction conferred on him. A delegate can, in no case, exercise his powers so as to override the provisions of the Act under which the power is delegated to him.

107. We may here refer to the decision of their Lordships of the SC in *Hukumchand v. Union of India*,³⁰ in which it was emphasized that authority vested with the power of making subordinate legislation has to act within his power and it cannot transgress the same. It is, therefore, clear that the President while exercising his power under sub- s. (2) of Section 51 of the Act was not competent to carve out an exclusive jurisdiction for the permanent Benches at Gwalior and Indore so as to curtail the jurisdiction of the High Court at Jabalpur, its principal seat which was notified under Sub-section (1) of Section 51 of the Act. It appears to us that the object of the proviso to the Presidential Orders was to enable the Chief Justice to remove certain cases from the jurisdiction of the permanent Benches for hearing and disposal at Jabalpur. The Chief Justice may be having that power independent of the proviso; but that is another matter. Sometimes a proviso is made *ex abundanti cautela* to make the position clear as held by their Lordships in *O. M. P. Works (P) Ltd. v. B. K. Thakoor*³¹ in paragraph 13. In no case can the proviso to the Presidential Orders be so construed as to take away the jurisdiction of the High Court at its principal seat in regard to cases arising in the districts assigned to the Benches, which is vested in it by the provisions of the Act itself.

108. Again, we may point out that the ratio of Nasiruddin's case (AIR 1976 SC 331) so far as exclusive jurisdiction of Lucknow Bench is concerned appears in paragraph 32 of the decision in the following terms:

"The first proviso to paragraph 14 of the Order specifies the instrumentality through which the jurisdiction vested in the new High Court will be exercised in respect of cases arising in Oudh."

From the language of the aforesaid proviso their Lordships inferred that the Amalgamation Order constituted the Lucknow Bench as the only instrument through which the High Court could exercise jurisdiction over the Oudh area. Turning to the Act, we find that no such instrument is provided therein for exercising jurisdiction over the districts assigned to the permanent Benches at Gwalior and Indore under the Presidential Orders of 1968.

109. If permanent Benches at Gwalior and Indore had been constituted by the statute itself by making an express provision for them in Sub-section (2) of Section 51 of the Act in the same terms as in paragraph 14 of the Amalgamation Order, the position might have been different; but that is not so.

110. It is a cardinal principle of construction of statutes that for determining the intention of the Legislature it must be read as a whole. "It is the most natural and genuine exposition of a statute," observed Lord Coke, to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers: [1 Inst. 381 (b)]. Dealing with this principle of construction, their Lordships of the SC observed as under in *Poppatlal v. State of Madras*,³²

"It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself."

111. It seems that applying the aforesaid principle in Nasiruddin's case (AIR 1976 SC 331) their Lordships took into consideration the language of the entire Amalgamation Order, including paragraph 14, particularly the first and second provisos thereof, for coming to the conclusion that Lucknow Bench was constituted under the Order to exercise exclusive jurisdiction over the Oudh area. Here, in the instant case, neither the permanent Benches at Gwalior and Indore find any mention in the Act nor is there any provision similar to the first and the second provisos to paragraph 14 of the Amalgamation Order. On the contrary, under Sub-section (1) of Section 51 of the Act, Jabalpur has been declared as the principal seat of the High Court; and there is no provision in the Act itself which may be construed to carve out an exclusive jurisdiction for the permanent Benches at Gwalior and Indore. The said Benches were

constituted by the President in 1968, in exercise of the powers conferred on him by Sub-section (2) of Section 51 of the Act, by orders Annexures-1 and 2 to the return of the Registrar. The language of these orders, no doubt, bears a striking similarity to that of the first and second provisos to paragraph 14 of the Amalgamation Order; but it has to be borne in mind that they cannot be treated as part of the Act itself and, therefore, the principle of harmonious construction cannot be extended so as to take them into consideration for determining the legislative intent.

112. We have already said above that a permanent Bench does not imply a Bench with an exclusive jurisdiction and, therefore merely because the President was empowered to constitute permanent Benches, it does not mean that he was competent to assign exclusive jurisdiction to them. It is, no doubt, true that under Sub-section (2) of Section 51 of the Act the President was also empowered to provide for matters connected therewith and in exercise of this power it was open to him to lay down that the Benches shall exercise jurisdiction in respect of cases arising within the districts specified in the orders (Annexures-1 and 2 to the Registrar's return). This was only to indicate the purpose for which the permanent Benches were constituted. It, therefore, follows that the Benches cannot exercise jurisdiction in regard to cases arising from the district not assigned to them by the President. But, merely because certain districts were assigned to the Benches, does not mean that the jurisdiction of the High Court to deal with cases arising from such districts at the principal seat is excluded thereby.

113. It has been urged on behalf of the petitioners that the conferment of exclusive territorial jurisdiction on the Benches would amount to splitting up of the High Court in contravention of Article 214 of the Constitution and in support of this contention reliance was placed on the decision of the Allahabad High Court in *Union of India v. Chhedalal*³³ Such an argument was, however, not accepted for very good reason in the latter Full Bench case of the Allahabad High Court, viz., Nirmaldass's case (AIR 1972 Allahabad 200) (FB) (supra) and we entirely agree with the view expressed therein that carving out an exclusive jurisdiction for a permanent Bench would not amount to splitting up of the High Court nor would it, in any way, offend Article 214 of the Constitution; but that is another matter. What is material is whether the Act contemplates constitution of permanent Benches so as to curtail the jurisdiction of the High Court sitting at its principal seat.

114. Sri Sanghi argued that there was no curtailment of jurisdiction because the High Court, wherever it sits, is competent to exercise its plenary power throughout the territory of Madhya Pradesh. There can be no doubt that under the Rules, jurisdiction of the High Court is exercised by one or more Judges in respect of cases assigned to them by the Chief Justice and this jurisdiction is plenary in every respect, including territorial jurisdiction in the sense that a Bench sitting at Gwalior or Indore is competent to exercise the entire jurisdiction vested in the High Court over every part of the territory of the State, though only in relation to cases arising within the districts assigned to them. Similarly, a Bench of the High Court at its principal seat can exercise jurisdiction over the entire territory in respect of case put up before it. But the question is whether a Bench of the High Court sitting at Jabalpur is competent to entertain a case arising within any of the districts assigned to the Benches at Gwalior and Indore. In case it is not competent to entertain or hear a case it would amount to the jurisdiction of the High Court at its principal seat being truncated and curtailed. It cannot be said that by curtailing the jurisdiction of the High Court at its principal seat in the aforesaid manner, its jurisdiction is unaffected.

115. The word 'Jurisdiction' has two aspects: one, from the point of view of the Court to entertain a particular case; and the other, from the point of view of the litigant to approach the High Court and invoke its jurisdiction. If the High Court cannot entertain a case at Jabalpur, it is obvious that its jurisdiction is curtailed to that extent and we must arrive at the same conclusion if it is held that a party, whose case arises within any of the districts assigned to the Benches is not competent to invoke the jurisdiction of the High Court at Jabalpur.

116. While dealing with the question what is meant by jurisdiction, their Lordships of the SC in *Official Trustee, West Bengal v. Sachindra Nath Chatterjee*,³⁴ quoted with approval the following observations of Mukherjee, Acting C. J., in *Hirday Nath Roy v. Ramchandra Barna Sarma*,³⁵

"Thus, the jurisdiction may have to be considered with reference to place, value and nature of the subject-matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary or matrimonial causes, acquisition of lands for public purposes, record of rights as between landlords and tenants. This classification into territorial jurisdiction, pecuniary

jurisdiction and jurisdiction of the subject-matter is obviously of a fundamental character."

117. The basic concept of a High Court is that it exercises plenary jurisdiction over every aspect of the matter, territorial or otherwise, wherever it sits and a Bench of the High Court sitting anywhere is competent to deal with any case which may be assigned to it by the Chief Justice. This, in our view, was the position so long as two temporary Benches were functioning at Gwalior and Indore. If, in exercise of his powers under Sub-section (2) of Section 51 of the Act, the President, while constituting permanent Benches at Indore and Gwalior, had merely provided that at least a particular number of Judges would be sitting there all the time without assigning any districts to them, these Benches would have been competent to entertain any case irrespective of the consideration from where it arose. But, since the President has laid down that these permanent Benches are constituted in order to exercise jurisdiction in respect of cases arising from certain specified districts, we are constrained to hold that the jurisdiction of these Benches is limited to cases arising within those districts. It is also clear that a party, whose case arises within any of the aforesaid districts alone can approach the Benches directly where they are located; and a person, whose case arises in other districts, is not competent to approach them. But the position of the High Court sitting at Jabalpur is entirely different. Jabalpur being the principal seat of the High Court, any party irrespective of the consideration whether his case arises within any of the districts assigned to the Benches or not, is competent to approach the High Court at its principal seat.

118. Thus after carefully perusing and studying the judgment of their Lordships in Nasiruddin's case (AIR 1976 SC 331), we find that although on certain points to which we shall presently refer the decision is binding, the question whether the permanent Benches at Gwalior and Indore have exclusive jurisdiction over the cases arising out of the districts assigned to them, is not concluded by the said decision, which is distinguishable for the following reasons:-

(1) Jabalpur is the principal seat of the High Court under sub-s, (1) of Section 51 of the Act whereas, according to the decision of their Lordships Allahabad was not the principal seat of the High Court.

(2) The Amalgamation Order, which came up for consideration before their Lordships, brought about an amalgamation of two High Courts under Section 229 of the Government of India Act, 1935 while the Madhya Pradesh High

court is not constituted by amalgamation of two or more High Courts.

(3) Provision for the Lucknow Bench was made in the Amalgamation Order itself under which the new High Court was constituted. The first and second provisos to para. 14 of the said order were thus part of the organic statute which provided for the constitution of the new High Court as well as the Lucknow Bench. The permanent Benches at Indore and Gwalior were constituted under order issued by the President in exercise of the powers conferred on him by Sub-section (2) of Section 51 of the Act and as such the Presidential order cannot be equated with the provision of paragraph 14 of the Amalgamation Order for the purpose of construing the provisions of Section 51 and other sections of the Act.

(4) In Madhya Pradesh, the permanent Benches came to be constituted nearly twelve years after the passing of the States Reorganization Act and till then temporary Benches functioned at Indore and Gwalior without, in any way, curtailing the territorial jurisdiction of the High Court at its principal seat. It appears that the Presidential Orders (Annexures-1 and 2 to the Registrar's return) merely put the temporary Benches on a permanent basis without affecting the jurisdiction of the High Court at its principal seat.

119. We, therefore, hold that the High Court, while sitting at Jabalpur, is competent to exercise jurisdiction in respect of any case arising in any part of the territory of Madhya Pradesh without any qualification of specification; while the permanent Benches at Indore and Gwalior are competent to exercise jurisdiction only in respect of cases arising within the districts assigned to them under the Presidential Orders.

120. We may now deal with some of the arguments of the learned counsel for the petitioners which are directly against the impugned orders of the Chief Justice, dated 5-2-1976.

121. It was urged by Sri Y. S. Dharmadhikari, counsel for the petitioners, as well as by Sri Gulab Gupta on behalf of the High Court Bar Association, Jabalpur, that the power conferred on the Chief Judge by the proviso to the Presidential Orders (Annexures-1 and 2 to the return of the Registrar) could be exercised only once and not from time to time and that it was exhausted when it was exercised for the first time. We do not find any merit in this argument.

122. Section 14 of the General Clauses Act lays down that wherever by any Central Act or Regulation made after the commencement of the Act any power is conferred, then, unless a different intention appears, that power may be exercised from time to time as occasion requires. It is true that the power conferred on the Chief Justice by the proviso to the Presidential Orders is not under a Central Act or Regulation but under an order of the President issued by him in exercise of the powers conferred on him by Sub-section (2) of Section 51 of the Act. This would, however, make no difference; and in our view, the principle underlying Section 14 of the General Clauses Act would be applicable to the proviso even though the section is not applicable in terms. We may here quote the following observations of their Lordships of the SC in *National Sewing Thread Co. Ltd. v. Janaes Chadwick and Bros.* ³⁶ in regard to the construction of Charters of the different High Courts issued under statutory powers;

"Assuming however, but not conceding, that strictly speaking the provisions of the Interpretation Act and the General Clauses Act do not for any reason apply, we see no justification for holding that the principles of construction enunciated in those provisions have no application for construing these charters."

123. In Nasiruddin's case (AIR 1976 SC 331) their Lordships held that the power of the Chief Justice to demarcate the area for Lucknow Bench could not be exercised from time to time and was exhausted on its very first exercise; but that was evidently for different reasons looking to the language of the first proviso to paragraph 14 of the Amalgamation Order, That proviso conferred two powers on the Chief Justice. The first was to nominate the Benches at Lucknow; while the second was to demarcate the areas for the Lucknow Bench. In relation to the exercise of the first power, the expression 'from time to time' was used; while this expression was missing in relation to the exercise of the second power and it was for this reason that their Lordships concluded that while the power to nominate the Judges could be exercised from time to time, the power to demarcate the area could not be so exercised. Even the language of Section 14 of the General Clauses Act, 1897 makes it clear that the principle laid down in it is applicable only where a different intention does not appear. Since a different intention was clearly indicated by the language of the first proviso to paragraph 14 of the Amalgamation Order, their Lordships held that the power to demarcate the area could not be exercised by the Chief justice from time to time, Here, the position is different. The expression 'from time to time' does not Occur in the

Presidential Orders at all and, therefore, the principle underlying Clause 14 of the General Clauses Act must apply, unless we can infer a different intention from the provisions of the orders or otherwise. We find no such intention expressed in the orders or in the statute itself. In fact, from the very nature of the power conferred on the Chief Justice under the proviso it can legitimately be inferred that it is meant to be exercised from time to time. We may here incidentally mention that no such contention was even raised in the Allahabad case in respect of the power of the Chief Justice Under the Second proviso to paragraph 14 of the Amalgamation Order. We, therefore, find no merit in this contention and have no hesitation in rejecting it.

124. Another point urged by Sri Dharmadhikari was that references under the Income-tax Act, Wealth-tax Act, the Expenditure Tax Act, the Gift-tax Act the Estate Duty Act; the Madhya Pradesh General Sales-tax Act, the central Sales- tax Act, the stamp Act and other tax references are made by statutory tribunals to the High Court under the relevant provisions of the various enactments. As such references are from a tribunal to the High Court, they cannot be said to arise in a particular area or district and as such they can be entertained by the High Court only at its principal seat. In our view, the question whether a particular case arises in a particular district or not can properly be examined with due regard to the facts and circumstances of the case itself; and it would not be possible to deal with it hypothetically in this petition.

125. The expression 'in respect of cases arising in such areas in Oudh' occurring in the first proviso to the Amalgamation Order came up for consideration before the SC in Nasiruddin's case (AIR 1976 SC 331) and their Lordships held as under :

"(1) The 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 of Oudh.

(2) If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified area, it would be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad.

(3) A criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code."

Their Lordships have thus laid down in clear terms where a civil case, a writ petition or a criminal case shall be deemed to arise within the meaning of the aforesaid expression and that wholly concluded the matter.

126. It is, no doubt, true that the question of reference under the Income-tax Act, the Wealth-tax Act and other tax reference was not expressly considered by their Lordships but it is clear that all such references do arise out of cases before statutory tribunals. Thus, for purposes of such references it would be necessary to find out where the case arose which gave rise to the reference and that, in our view, would be the determining factor for purposes of the expression 'cases arising' in the districts specified in the Presidential orders. We find no merit in the contention that such references do not fall within the expression 'cases arising' within a particular district and as such the Presidential Order is not applicable to them at all and they must necessarily be instituted at the principal seat of the High Court. We may illustrate this by a concrete example in respect of a reference under the Income-tax Act.

127. Under Section 256 of the Income-tax Act the assessee or the Commissioner is competent to make an application to the Appellate Tribunal to refer to the High Court any question of law arising out of an order passed by such Tribunal under Section 254 of the said Act in appeal. If the Tribunal refused to make a reference, the assessee or the Commissioner can approach the High Court; and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it to the High Court for consideration. It is true that such a reference would be by the Appellate Tribunal to the High Court; but it is not a hypothetical reference. It is a reference arising out of a case decided in appeal by the Appellate Tribunal. It would not be difficult to ascertain where such a case arises in the light of the decision in Nasiruddin's case (AIR 1976 SC 331); and the reference must be treated accordingly as having arisen at such place as also at the place where the Appellate Tribunal is located. We do not consider it necessary to examine at length references under other tax enactments as the position is more or less similar.

128. We do not, therefore, find any substance in the contention that such references are outside the scope of the Presidential Orders (Annexures-1 and 2 to the return of the Registrar).

129. On behalf of the petitioners arguments were addressed to us to show that it would be proper to hear tax cases and transport matters, as has been done in the past, at Jabalpur, even though such cases may arise within the districts assigned to the permanent Benches, for the sake of uniformity of decisions. It was pointed out in this connection that the principal seat of the High Court being located at Jabalpur, the Chief Justice mostly sits at Jabalpur and, therefore, he would be always available for presiding over the Bench dealing with such cases. No doubt, there was a past practice in this connection and up to 1972 tax cases and transport cases were mostly heard at Jabalpur. In 1972, the then Chief Justice passed an order, dated 24-10-1972 (Annexure-9 to return of the Registrar) whereby it was directed that some of such cases, as may be notified to be heard at Gwalior or Indore when the Chief Justice is on tour there, be heard at Gwalior or Indore, as the case may be. In pursuance of the said order, some tax matters and transport matters were heard by the Chief Justice at Gwalior and Indore. The question whether it is necessary that the Chief Justice should be a member of the Bench hearing such cases or not is entirely within the discretion of the Chief Justice and so also is the question whether such cases should be heard exclusively at Jabalpur or not. The Chief Justice holds a key position as well as a pre-eminent position in the administration of justice within the State; and such matters must be left to his good sense. We do not think it would be proper for this Bench to express any opinion in the matter which does not involve legal issue.

130. To sum up, our conclusions are as under :

- (1) Sub-sections (2) and (3) of Section 51 of the Act are intra vires, being within the legislative competence of the Parliament.
- (2) The establishment of permanent Benches by the President at Indore and Gwalior in exercise of his power under Sub-section (2) of Section 51 of the Act is perfectly legal.
- (3) The President was not competent under Sub-section (2) of Section 51 of the Act to carve out an exclusive territorial jurisdiction for the permanent Benches and the Presidential Orders (Annexures-1 and 2 to the return of the Registrar) also do not bear any such construction.
- (4) The Benches at Gwalior and Indore exercise concurrent but not exclusive jurisdiction over the districts assigned to them under the Presidential Orders (Annexures-1 and 2 to the return of the Registrar). They are competent to hear

all cases including tax references arising within the aforesaid districts but they are not competent to hear cases arising outside the districts assigned to them.

(5) Normally the cases arising within the specified districts are expected to be instituted at Gwalior or Indore as the case may be; but it is open to a party whose case arises within any of such districts to institute his case at Jabalpur. Jabalpur being the principal seat of the High Court any case arising in any part of the State of Madhya Pradesh can be instituted there and a Judge or Division Court of the High Court sitting at Jabalpur is competent to hear such cases.

(6) The Benches at Gwalior and Indore are competent to exercise the plenary jurisdiction of the High Court in regard to each and every case which arises within the districts assigned to them in the Presidential Orders and while dealing with such cases their jurisdiction to issue writs and orders will be co-extensive with that of the High Court at its principal seat at Jabalpur.

131. In view of the aforesaid conclusions, we do not find any infirmity in the impugned orders of the Chief Justice, dated 5-2-1976 (Annexures-11 and 12 to the return of the Registrar).

132. The next question for consideration is about the pending cases at Jabalpur. We do not find on record any order of the Chief Justice directing such cases to be transferred either to the Gwalior Bench or to the Indore Bench. From the return of the Registrar and the lists (Annexures-19, 20, 21 and 22 thereto) it appears that these cases are being transferred by him under an impression that it is necessary for him to do so in compliance with the orders of the Chief Justice dated 5-2-1976 (Annexures-11 and 12 to the return of the Registrar) as they cannot be heard at Jabalpur. Sri Sanghi submitted that such of these cases, in which a part of the cause of action has arisen in any place outside the specified districts can be heard at Jabalpur while the other cases, which have arisen within the districts assigned to the Benches can be heard either at Gwalior or at Indore, as the case may be, and not at Jabalpur because, according to him, the Benches have exclusive territorial jurisdiction over the districts assigned to them. We have not accepted the contention of Sri Sanghi that the Benches have exclusive jurisdiction over the specified districts. It is, therefore, clear that there is no impediment to all these cases being heard at Jabalpur, because the Bench sitting at Jabalpur would be competent to hear and decide them.

133. The proviso to the Presidential order, under which the impugned orders

(Annexures-11 and 12 to the return of the Registrar) have been issued by the Chief Justice, is applicable only to cases which have been instituted at Gwalior or Indore, as held by their Lordships in Nasiruddin's case (AIR 1976 SC 331), we may here quote the following observations of their Lordships in paragraph 37 of the case:

"The Chief Justice has power under the second proviso to paragraph 14 of the Order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow."

Since the language of the proviso to the Presidential Orders (Annexures-1 and 2) is almost similar to that of the second proviso to paragraph 14 of the U. P. High Court (Amalgamation) Order, 1948, it is clear that the proviso to the Presidential Order is applicable to cases which are instituted at Gwalior or Indore and not to cases which are instituted at Jabalpur. Moreover, since the proviso to the Presidential Order confers power on the Chief Justice to direct that particular case or class of cases, which are instituted at Gwalior or at Indore, shall be heard at Jabalpur, it is obvious that the power can be exercised only to exclude the jurisdiction of the Benches in regard to such case or class of cases. It cannot be exercised so as to direct that certain cases, which have already been instituted at Jabalpur and are pending at Jabalpur, shall not be heard at Jabalpur.

134. It may be that the Chief Justice, in his extraordinary and inherent powers, is competent to assign to the Benches such of the pending cases as have arisen from the districts assigned to them but there is no order of the Chief Justice to this effect. Moreover, such power must necessarily be exercised consciously with due regard to the norms for the exercise thereof. At present it appears to us that the Registrar is under an erroneous impression that in view of the orders of the Chief Justice, dated 5-2-1976 (Annexures-11 and 12 to the return of the Registrar) tax and transport cases which are pending at Jabalpur cannot be heard at Jabalpur. Such interpretation, in our view, is wholly misconceived and incorrect. In our view, the orders of the Chief Justice, as they stand, must be construed to mean that with effect from the date of the orders only petitions under Articles 226 and 227 of the Constitution challenging the vires of any Act or statute or any order or rule or regulation made under any Act or statute arising out of the districts assigned to the Benches shall be heard at Jabalpur. All other cases arising from the said districts can be heard at the seat of the Benches

themselves. Thus, the orders are applicable to cases which may be instituted after the date of their issue at Gwalior or Indore and not to cases pending at Jabalpur on that date.

135. We, therefore, hold that the orders of the Chief Justice, dated 5-2-1976 (Annexures-11 and 12 to the return of the Registrar), as they stand, are valid but they do not affect cases arising from the districts assigned to the Benches, which were pending at Jabalpur on the date of their issue.

136. The petition is, therefore, partly allowed and it is hereby directed that pending cases, as per lists (Annexures-19, 20, 21 and 22 to the return of the Registrar) shall not be transferred to Gwalior or Indore so long as there is no order of the Chief Justice in this behalf in exercise of his inherent powers. Rest of claim is dismissed.

137. We make no order as to costs of this petition in the circumstances of the cases.

P. S.

Having perused the opinion of my learned brother Oza, J. I would like to add a few words in connection with the observations made by him in paragraph 58 (present paragraph 195) thereof. I entirely agree with by learned Brother that where the Chief Justice passes an order transferring a case or cases to a particular Bench it must be presumed that he did so consciously and with due regard to the norms for the exercise of his power of transfer. But there is no order of the Chief Justice that the cases specified in the lists Annexures-19, 20, 21 and 22 should be transferred to the Benches at Gwalior and Indore. At least no such order has been placed on record or was brought to my notice. As pointed out by me in paragraph 132 of my opinion, it appears that the Registrar is taking action to transfer these cases under an impression that it is necessary for him to do so in compliance with the orders of the Chief Justice dated 5-2-1976 (Annexures-11 and 12 of the Registrar's return). The said orders of the Chief Justice cannot, however, be construed as orders transferring these cases. Even if it is held that the Benches exercise exclusive jurisdiction in regard to cases arising within the districts assigned to them these cases must be listed before the Benches at Jabalpur unless, otherwise expressly directed by the Chief Justice, and it would be for such Benches to say whether these cases can be heard at Jabalpur or not. If it is decided that they cannot be heard at Jabalpur it would be for such Benches to pass appropriate orders in regard to their transfer to the Benches for hearing and disposal. The Registrar on his own authority is not at all competent to transfer the cases which have

been instituted at Jabalpur and are pending for hearing and disposal here. It cannot be assumed that the Chief Justice has passed an order transferring such cases to the Benches at Gwalior/Indore in the absence of any express order to this effect. It was this aspect of the case which I intended to emphasize in paragraph 134 of my opinion.

ORDER

138. OZA, J. (Majority view):- This petition has been filed by the petitioners who are enrolled as Advocates by the Bar Council of Madhya Pradesh and claim to be practicing at Jabalpur which is the seat of the High Court. They claim to have a right to practice in the High Court.

139. By this petition the petitioners are challenging the order passed by Hon'ble the Chief Justice dated 5th February 1976 under the Proviso to the Notifications dated 28th November 1968 by which the President of India notified the establishment of permanent Benches at Indore and Gwalior and also prescribed the jurisdiction for these Benches of the High Court. According to the petitioners, this High Court is the successor to the High Court of Judicature at Nagpur in accordance with Section 49 of the States Reorganization Act, 1956. The petitioners have in detail stated as to how this High Court was established by Letters Patent dated January 2, 1936, under Section 219 of the Government of India Act, 1915. It is also stated that under Clauses 33 and 34 of the Letters Patent it could even be provided for sitting of the Judges at places other than Nagpur.

140. On the coming into force of the Constitution in 1950, under Article 214 as initially enacted, it is contended, every State shall have one High Court; and under Article 214 sub-Clause (2) the High Court at Nagpur became the High Court of the State of Madhya Pradesh. It is also alleged that under Article 215 the said High Court of Nagpur was also the Court of Record and that High Court also got jurisdiction under Article 226 of the Constitution. The petitioners alleged the history behind the Reorganization of States and also matters regarding the allotment of various offices in different parts of the State on the basis of alleged political understanding. They also alleged that Jabalpur was recommended by the States Reorganization Commission to be the capital of the new State. It may be noticed that as regards the allegations about political understanding reached by various leaders, there is hardly anything on record on the basis of which it could be accepted. Apart from it, to certain extent, these facts

have been disputed and in our opinion it is also not necessary to go into that question excepting the fact that after the States Reorganization Act the High Court of the new State was established under Section 49 thereof and the President by Notification dated 27th October 1956 notified that the principal seat of the High Court of Madhya Pradesh will be at Jabalpur. It is also alleged that on 1st November 1956 the High Court was inaugurated at Jabalpur and immediately after inauguration Hon'ble the Chief Justice, by his order dated 1st November 1956, exercising powers under Sub-section (3) of Section 51 of the States Reorganization Act, established temporary Benches at Indore and Gwalior until further orders; and by a subsequent order the Chief Justice demarcated the jurisdiction of the temporary Benches at Indore and Gwalior by saying that "it shall be as it was immediately before the appointed day". That order further indicated that Gwalior Bench was given additional jurisdiction regarding Sironj sub-division which was part of Rajasthan and under the Act came into the State of Madhya Pradesh, and the Indore Bench was given jurisdiction in respect of the cases arising from the territories comprised in the erstwhile State of Bhopal.

141. It is alleged by the petitioners that in spite of the fact that temporary Benches were formed at Indore and Gwalior in respect of cases arising in the districts attached to these Benches, the principal seat exercised jurisdiction throughout the State. It is also alleged that all matters pertaining to taxation such as references under the Income-tax Act, Wealth-tax Act and other Central Enactments and Sales-tax Act were instituted and heard at Jabalpur. According to the petitioners this arrangement continued when the Chief Justice by orders dated 1st September 1960 directed that all petitions under Articles 226 and 227 of the Constitution challenging any decision of the Transport Appellate Authority shall be filed and heard at Jabalpur. It is alleged that by orders dated 25th May 1962 the Chief Justice further directed that from 1st July 1962 no petition under Articles 226, 227 and 228 of the Constitution shall be filed, heard or disposed of by the Gwalior Bench and all such petitions shall be transferred to Jabalpur and shall be heard and disposed of there.

142. In 1968 the President of India issued two orders exercising powers under Section 51 (2) of the States Reorganization Act, dated 28th November 1968, establishing Permanent Benches at Indore and Gwalior. In this order it is also indicated that the Bench at Indore shall exercise jurisdiction and powers for the time being vested in the High Court of Madhya Pradesh in respect of cases arising in the revenue districts of

Indore, Ujjain, Dewas, Dhar, Jhabua, Ratlam, Mandsaur, West Nimar (Khargone), Shajapur and Rajgarh. By a similar order, while establishing permanent Bench at Gwalior, it was directed that the Bench at Gwalior shall exercise jurisdiction and powers vested in the High Court of Madhya Pradesh in respect of cases arising in the Revenue districts of Gwalior, Shivpuri, Datiya, Guna, Vidisha, Bhind and Morena. In both these orders of the President there is a proviso authorizing the Chief Justice to order any case or class of cases arising in those districts to be heard and disposed of at Jabalpur; and in exercise of powers under this proviso, the Chief Justice made two separate orders dated 30th November 1968 regarding the two Benches directing that-

- (1) references under the Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act, Estate Duty Act, Sales-tax Act and other tax references,
- (2) all petitions under Article 226 or 227 of the Constitution pertaining to tax matters,
- (3) all petitions under the Constitution challenging the vires of any Act or Statutory Instrument,
- (4) all petitions under the Constitution arising out of the orders of the Transport Authorities, and
- (5) all petitions under the Constitution arising from the revenue districts attached to Indore and Gwalior Benches which were pending at Jabalpur on the date of the order,

shall be heard and disposed of at Jabalpur. According to the petitioners, therefore, although permanent Benches were established at the two places- Indore and Gwalior - yet by the orders of the Chief Justice cases falling in the categories stated above continued to be instituted and heard at Jabalpur; and according to the petitioners it, therefore, did not substantially affect the jurisdiction of the main seat of the High Court at Jabalpur.

143. By orders of the Chief Justice dated 25th June 1969, the order of the Chief Justice dated 30th November 1968 was further modified and item (3) quoted above was deleted with the effect that the petitions under Articles 226 and 227 challenging the vires of any Act or Statutory Instrument could be heard at Indore or Gwalior. But according to the petitioners, even by this modification no substantial difference occurred and it is alleged that the arrangement continued upto the 4th of February 1976 and, according to the petitioners, cases of importance arising out of the orders of

the State Tribunals or the State Government were being instituted and heard at Jabalpur. It is also alleged that on this basis it was recognized that the main seat of the High Court at Jabalpur was the High Court of Madhya Pradesh exercising jurisdiction and powers with reference to all cases concerning tax matters and transport matters.

144. It is stated that although originally the territory of Bhopal was attached to the Indore Bench, but subsequently, in 1960-61 it was attached to Jabalpur. It is also alleged that because of these orders the main seat of the High Court at Jabalpur was exercising jurisdiction over the whole State and the entire population of the State had adjusted itself to this position. It is also alleged that the High Court of Madhya Pradesh thus was established at Jabalpur. It is further alleged that later by orders of the Chief Justice dated 24th October 1972, it was ordered that the tax and transport matters which were being heard at Jabalpur may also be heard by the Chief Justice at Indore and Gwalior on the notified dates after intimation to the Bench Registry whenever Hon'ble the Chief Justice was on tour at these two places. It is further alleged that these orders were passed by the Chief Justice. Sri P. K. Tare, and on his retirement on 10th October 1975, the present Chief Justice took oath of the office on 11th October 1975.

145. The petitioners have also referred to the speech of the present Chief Justice on 7-11-1975 delivered on the occasion of ovation at Gwalior wherein he assured that the Bench at Gwalior will be treated fairly. The petitioners allege that thereafter by the impugned order dated 5th February 1976 passed by the Chief Justice these cases, the categories of which have been stated above, can now be heard at the respective Benches from where the cases arise, excepting the petitions under Articles 226 and 227 wherein the vires of any Act is being challenged. It is also alleged by the petitioners that tax references and other matters arising from the decisions of the State and Central Tribunals could not be said to have arisen from a particular district and therefore could not be heard at the respective Benches of Indore and Gwalior.

146. According to the petitioners, Article 214 of the Constitution contemplates only one High Court for each State and by establishment of permanent Benches under Orders of the President the High Court has been split up into three; and therefore, the order of the President is *ultra vires* Article 214. According to the petitioners, the High Court being the Court of Record under Article 215 has jurisdiction to punish its own contempt and it is alleged by the petitioners that it is only the High Court of Madhya

Pradesh sitting at Jabalpur which has power to punish its own contempt, being the principal seat.

147. The petitioners have at length indicated the manner in which the various references under the various Acts are referred to this Court and contend that the jurisdiction of the principal seat could not be curtailed or restricted.

148. It is also alleged that under Section 51 of the States Reorganization Act when the principal seat of the High Court was notified to be at Jabalpur the President of India was not competent to establish permanent Benches conferring exclusive jurisdiction with reference to the territories. It is also alleged that the phrase "for any matters connected therewith" did not authorize the President to create exclusive jurisdiction with reference to part of the territory. It is alleged that the proviso to the President's Order is also without authority. It is also alleged that the powers under Sections 51 (1) and 51 (2) of the Act could be exercised by the President simultaneously and not one after another with a long lapse of time in between. It is also alleged that under the proviso to the Orders of the President, the Chief Justice having passed orders the powers vested in the Chief Justice were exhausted and no further orders could be passed in that regard. It is also alleged by the petitioners that as a result of the orders passed by Chief Justice dated 5th February 1976, an alarming situation has been created and it is alleged that as a result thereof the apprehension is that the dignity of the High Court will be affected.

149. In this petition the petitioners joined the Union of India the State of Madhya Pradesh, Hon'ble the Chief Justice, Registrar of the High Court and the Additional Registrars of the Benches at Indore and Gwalior. Out of them, Union of India has filed return and the Registrar of the High Court has also filed the return. The State Government has chosen not to file any return and other respondents have also not filed any returns. However, as notice was issued to the High Court Bar Associations at Indore, Gwalior and Jabalpur, they have also come forward to file their returns.

150. In the return filed by the Union of India it is contended that the orders were passed by the President under Section 51 (2) of the States Reorganization Act and these orders were passed having regard to the convenience of the litigating Public in the Gwalior and Indore regions. It is also contended that the petitioners have filed this petition challenging the Notification of the President after a lapse of time and therefore

the petitioners are guilty of laches. An objection to the right of the petitioners to file this petition was also raised in the return filed by the Union of India. It was also contended that by the impugned orders passed by the Chief Justice the jurisdiction of the High Court is not curtailed at all and according to this return the order of the Chief Justice is valid under the proviso to the President's Notifications constituting permanent Benches at Indore and Gwalior. It is also contended that the establishment of permanent Benches with conferral of exclusive jurisdiction with regard to the territories indicated in the President's Notifications is not in any manner contrary to the provisions contained in Article 214 of the Constitution. It is contended that the two Benches and the principal seat together is the High Court of Madhya Pradesh; and when it sits at more than one place, it is only all such places put together which could be said to be the High Court of the State. It is also contended that for matters connected therewith Section 51 (2) of the States Reorganization Act is wide enough to authorize the President to issue notifications as issued with regard to the two Benches. In this return the political understandings and the agreements arrived at between the respective leaders as alleged by the petitioners is also denied.

151. In the return filed by the High Court Bar Association, Jabalpur, while supporting the petitioners, it is further contended that S .51 (2) of the States Reorganization Act itself is *ultra vires* of the Constitution as it refers to the matter of "Administration of Justice" which falls in List II of the Seventh Schedule and is a State subject and not within any one of the items contained in List I. During the course of the hearing even the petitioners by an application sought to amend the petition and add this as one of the grounds of attack.

152. In the returns filed by the Bar Associations at Gwalior and Indore, they have challenged the contentions advanced by the petitioners in their petition. It was contended that the States Reorganization Act was enacted under the powers conferred on the Parliament under Articles 2 and 3 of the Constitution and therefore it is not necessary for it to be subject to the three Lists in the seventh Schedule as Article 4 of the Constitution clearly provided that the Parliament in the process of reconstitution of States can also pass laws which may be supplemental, incidental and consequential to such reorganization. It is also contended that the President validly exercised the powers delegated to him by Section 51 of the Act. It is also contended that apart from it, Entry 78 in List I, coupled with 95, confers adequate powers on the Central Legislature to enact with regard to the constitution and reorganization of a High Court

and the constitution of permanent Benches is nothing but a process of the constitution and reorganization of a High Court. It is also contended that the language of the President's Notification is similar to the United Provinces High Courts (Amalgamation) Order, 1948, establishing the High Court of Allahabad and the questions raised by the petitioners are now concluded by the decision of the SC reported in *Nasiruddin v. State Transport Appellate Tribunal*³⁷

153. In the return filed by the High Court Bar Association Gwalior, an objection has also been noised about the maintainability of the petition on the ground that petitioners have no locus stand to file the present petition and consequently the petition is not maintainable as no statutory right of the petitioners is said to have been infringed by the impugned order passed by the President or by the Chief Justice.

154. At the hearing, the questions raised were:

- (1) Is Section 51 (2) of the States Reorganization Act itself *ultra vires* as Parliament had no legislative authority to legislate on matters covered under "Administration of Justice", Item 3 List II of the Seventh Schedule of the Constitution?
- (2) Is the President's Notification *ultra vires* because while exercising delegated functions, the function of legislative policy could not be delegated; and therefore the Notification issued by the President is *ultra vires*?
- (3) If the President's Notification confers exclusive territorial jurisdiction on the respective Benches, could it be said to be *ultra vires* in respect of Article 214 of the Constitution and Item 3 of List II in the Seventh Schedule of the Constitution?
- (4) Did the President's Notification constituting permanent Benches at Indore and Gwalior confer exclusive jurisdiction on these Benches in respect of the territories mentioned in the two Notifications?
- (5) Whether under the President's Notification the Chief Justice having exercised powers under the proviso, the powers under the proviso were exhausted and the Chief Justice had no authority when he issued the impugned orders dated 5-2-1976?
- (6) Whether in consequence of the orders passed by the Chief Justice on 5-2-1976 the cases, list of which has been filed along with the return of the Registrar, could be transferred from Jabalpur to the respective Benches?

- (7) Whether the petitioners have any *locus standi* to file the petition as Advocates of this Court claiming to have a right of practice?
- (8) Is the petition filed after undue delay?

155. It was contended that if Section 51 (2) of the States Reorganization Act contemplated establishment of permanent Benches in respect of particular territories, conferring exclusive jurisdiction to these Benches, it would be beyond the powers of the Central Legislature as it would be covered by Item 3, List II (State) of the Seventh Schedule of the Constitution. According to learned counsel for the petitioners, and the learned counsel appearing for the Jabalpur Bar Association, under the Government of India Act, 1935, the State List was one comprehensive containing both, the constitution and organization of the High Court as well as the Administration of Justice, and therefore, the State Legislature alone was competent to enact in matters pertaining to constitution and conferral of jurisdiction on the High Courts. Learned counsel, therefore, showed the various State Acts about conferral of jurisdiction and the manner of exercise of jurisdiction by the respective High Courts. It is contended, therefore, that under the constitution this list has been split up into two; the constitution and organization of the High Court has been included in Item 78 of List I whereas Administration of Justice has been incorporated in Item 3 of List II of the Seventh Schedule of the Constitution. Therefore, it was contended that after the present Constitution came into force in 1950 any law conferring jurisdiction on the High Court could only be enacted by the State Legislature and in this connection learned counsel referred to the decisions reported in *Amarendra Nath Roy Chowdhury v. Bikash Chandra Ghose*,³⁸ *Pramatha Nath Mitter v. Hon'ble the Chief Justice*,³⁹ and *Shivrudrappa v. Kapurchand Meghaji*,⁴⁰ These cases pertain to the exclusion of the jurisdiction of the High Court in certain Civil cases by the enactment of the Civil Courts Act and in these contexts it was considered that such an Act could only be passed by the State Legislature. In fact, these cases, and many others referred to by counsel, are of no assistance in the present case as it cannot be doubted that jurisdiction could be conferred under the local Acts of a State on the High Court and could also be withdrawn as all those matters would be covered under Item 3 (Administration of Justice) List II of the Seventh Schedule of the Constitution. But what is purported to be done under Section 51 (2) of the States Reorganization Act is not conferral of jurisdiction under any special enactment of the State but it is pertaining to the constitution and reorganization of the High Court itself. It could not be disputed that the States Reorganizations Act was passed by the Parliament

exercising powers under Articles 2 and 3 of the Constitution, which run:

"2. Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

3. Parliament may by law

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name at any State;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the boundaries of any State or States specified in Part A or Part B of the first Schedule or the name or names of any such State or States, the views of the Legislature of the State, or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President."

156. When the Parliament was authorized under these Articles to pass a law for the formation of a new State either by the process of integration of two or more States or a State and part of the other State, by increasing of the area of a State, or diminishing the area of a State, it could easily be understood that in the process of integration before a Legislature of such a new State was properly constituted no law pertaining to the matters enumerated in List II could be passed. And in the process of organization of the State it may become necessary to provide for the establishment of the various organs of the State and it may be that the legislative authority for doing so may vest under List II with the State Legislature. In order to meet this contingency it appears that Article 4 of the Constitution was enacted:

"4. (1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of Article 368."

This Article, therefore, clearly provides that when the Parliament by law constitutes a new State, it can also make provisions for such supplemental, incidental and consequential provisions as the Parliament may deem necessary. And sub-Clause (2) of this Article clearly provides that such law shall not be deemed to be an amendment of this Constitution for the purpose of Article 368, which clearly indicated that such incidental provisions as are contemplated under sub-Clause (1) of Article 4 shall not be subject to the restrictions that are contemplated in Article 268 for amendment of the Constitution. Consequently, it could not be disputed that when the Parliament, exercising powers under Articles 2 and 3 enacts a law for the organization of States, it could provide for the organization of the respective organs of the State including the High Court.

157. In *Mangal Singh v. Union of India*,⁴¹ their Lordships observed:

"The law so made may also make supplemental, incidental and consequential provisions which would include provisions relating to the setting up of the legislative, executive and judicial organs of the State essential to the effective State administration under the Constitution, expenditure and distribution of revenue, apportionment of assets and liabilities, provisions as to services, application and adaptation of laws, transfer of proceedings and other related matters. On the plain words of Article 4, there is no warrant for the contention advanced by counsel for the appellants that the supplemental, incidental and consequential provisions, which by virtue of Article 4 the Parliament is competent to make, must be supplemental, incidental or consequential to the amendment of the First or the Fourth Schedule. The argument that if it be assumed that the Parliament is invested with this wide power it may conceivably exercise power to abolish the legislative and judicial organs of the State altogether is also without substance. We do not think that any such power is contemplated by Article 4. Power with which the Parliament is invested by Articles 2 and 3, is power to admit, establish or form new States which conform to the democratic pattern envisaged by the Constitution; and the power which the Parliament may exercise by law is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the

Constitution, and is not power to override the constitutional scheme. No State can, therefore, be formed, admitted or set up by law under Article 4 by the Parliament which has not effective legislative, executive and judicial organs." These observations have been further noted with approval in *Kesavananda Bharati v. State of Kerala*,⁴²

"Counsel for the petitioners has relied on *Mangal Singh v. Union of India*⁴³ The Punjab Reorganizations Act, 1966 was enacted with the object of reorganizing the State of Punjab. Its constitutionality was questioned in this Court. The argument of the respondent that a law made under Arts 2, 3 and 4 may also make supplemental, incidental and consequential provisions which shall include provisions relating to the setting up of the legislative, executive and judicial organs of the State was countered by the appellant with the argument that such a wide power Parliament might conceivably exercise to abolish the legislative and judicial organs of the State altogether. Rejecting the counter-argument Shah J. said :

'We do not think that any such power is contemplated by Article 4. Power with which the Parliament is invested by Articles 2 and 3 is power to admit, establish or form new States which conform to the democratic pattern envisaged by the Constitution and the power which the Parliament may exercise by law is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the Constitution and is not power to override the constitutional scheme. No State can therefore be formed, admitted or set up by law under Article 4 by the Parliament which has no effective legislative, executive and judicial organs."

158. It is no doubt true that their Lordships considered in this decision the limits of the powers of the Parliament under Articles 2 and 3 and the limitation placed has been stated by their Lordships in these words :

"Parliament, while making a law under Articles 2, 3 and 4, cannot make radical changes in the legislative, executive and judicial administration of a State, for its law-making power is subject to Chapters II, III and V of Part VI."

It, therefore, clearly follows that the limitation contemplated by their Lordships of the SC in *Kesavananda Bharati's* case (supra) only goes to the extent that while forming a

new State Parliament has to pass a law forming a State as contemplated under the Constitution with its executive, legislative and judicial authority vesting in the different organs contemplated in Chapters II, III and V of Part VI of the Constitution. It, therefore, cannot be inferred that the legislative power of the Parliament under Articles 2, 3 and 4 would be subject to the distribution of legislative powers under the Seventh Schedule of the Constitution, apparently because when the new State is in the process of formation, the legislature of the State cannot be constituted to exercise the functions which may be necessary and therefore Article 4 clearly contemplated that the Parliament while enacting a law for the organization of a new State may also provide for the matters supplemental, incidental and consequential including the provisions for organization of the respective organs of the State as observed by their Lordships in Mangal Singh's case (supra).

159. Apart from the powers the Parliament could exercise under Articles 2, 3 and 4 of the Constitution Entry 78 in List I of the Seventh Schedule reads:

"78. Constitution and organization of the High Court except provisions as to Officers and servants of High Courts; persons entitled to practise before the High 'Courts."

Apparently, under this entry the Parliament had the authority to legislate about the constitution and the organization of the High Court in view of this entry read with Entry 95. The word 'organize' used in this entry would include "providing for the sitting of the High Court at one or more places and the jurisdiction that the Judges of that High Court shall exercise sitting at such places." The word 'organize' according to Black's Dictionary means:

"To establish or furnish with organs; to systematize; to put into working order; to arrange in order for the normal exercise of its appropriate functions." This clearly goes to show that Entry 78 read with Entry 95 in List I of the Seventh Schedule confers powers on the Parliament to provide for the organisation and constitution of a High Court. In *G. N. Verma v. Hargovind Dayal*,⁴⁴ also it has been observed that the constitution of the High Court would fall within the ambit of Entry 78.

160. Section 49 of the States Reorganizations Act provides for the constitution of the

High Court for the new States-Section 50 provides for abolition of certain courts. And Section 51 provides for the principal seat and other places of sitting of the High Court of the new State Apparently, therefore, these provisions contained in Chapter 5 of the States Reorganizations Act pertain to the constitution and organization of the High Court. It could not be said that the Parliament had no authority to enact these provisions.

161. It was contended that what was delegated to the President under Section 51 (2) of the States Reorganizations Act was a matter of legislative policy and therefore it was for the Parliament alone to have legislated about it and to that extent the delegation is bad in law. On this basis it was contended that the notifications issued by the President dated 28th November 1968 constituting permanent Benches at Indore and Gwalior are ultra vires. Section 51 of the States Reorganizations Act provides for the establishment of the principal seat and other places of sitting of the High Court for the new States:

"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.

(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.

(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." The scheme of this section clearly indicates the policy of the Legislature and it is clear that it was laid down in the Act itself that the High Court may sit at more than one place. What was contemplated was that one of such places shall be the principal seat and there may be other places where permanent Benches may be situated. And apart from this, there may also be places where Division Courts of the High Court may sit. The scheme of this section, therefore, clearly goes to show that the legislative policy was clearly enacted in this section. What was left to the President or the Chief Justice under sub-sections (2) and (3) was to work out the details and fix the places where the principal seat of the High Court will be situated and places

where the permanent Benches would function. Sub-section (3) left it to the Chief Justice to order for sitting of the Division Courts at such other places as the Chief Justice may with the approval of the Governor appoint, It cannot, therefore, be contended that the question of establishment of the Benches which was a matter of policy was left by the Parliament to the delegate authority, i. e. the President. In fact, the sitting of the High Court at more than one place was clearly contemplated in the provisions of the Act itself. What was left to the President was only to fix the places. The contention advanced therefore is of no substance.

162. It was contended before us that the President, by providing for permanent Benches at Indore and Gwalior, could not prescribe exclusive jurisdiction of these Benches, as providing for the exclusive jurisdiction would amount to curtailment of the jurisdiction of the High Court at its principal seat and to that extent it will be in contravention of Article 214 of the Constitution. In support of this contention learned counsel for the petitioner at length referred to the history of the establishment of the High Court at Nagpur by the Letters Patent and also to the various Letters Patents of the different High Courts. An attempt was made to emphasize that 'High Court' means the High Court attached to a place and it was in this context that it was contended that when the High Court of the new State was established at Jabalpur which was a successor to the High Court at Nagpur, it enjoyed the jurisdiction over the whole State merely because of the fact that it was established at Jabalpur. Consequently, by providing exclusive jurisdiction for the Benches the jurisdiction of the High Court is curtailed and it amounts to establishment of more than one High Court for a State which would run contrary to Article 214 of the Constitution.

163. This contention advanced is based on the misconception that 'High Court' means the High Court, the building and the seat and it is because of this that great emphasis was laid by learned counsel for the petitioners on the language used in the Letters Patent, namely, "... have thought fit to erect and establish." Emphasis was laid on the phrase 'erect', probably to emphasize the construction of the building where the High Court shall sit. The word 'erect' means according to Black's Law Dictionary-

"Erect - One of the formal words of incorporation in royal charters. We do, incorporate, erect, ordain, name, constitute and establish", 'Construct' is synonymous with 'erect.'

This makes it clear that this phrase 'erect' has been used in the sense of incorporation and has not much to do with the building alone, but with the organization of the High Court as such. In other words, it will mean 'organization or constitution' of the High Court.

164. This argument advanced by learned counsel for the petitioners also hadicated that an attempt was made to suggest that 'High Court' means High Court sitting in a building. But in fact, the High Court cannot be made synonymous with the building or the place. Article 216 of the Constitution talks of "constitution of High Courts".

"216. Constitution of High Courts. 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."

This clearly goes to show that "High Court" means the Chief Justice and such other Judges of the High Court as the President may from time to time appoint. Apparently, therefore, the contention that the High 'Court of Madhya Pradesh means the High Court sitting at Jabalpur is a mere misconception; "High Court of Madhya Pradesh" only means the Chief Justice and such other Judges as may be appointed by the President to the said High Court. The place of sitting may be one or more, may be principal or otherwise; but it does not mean that the High Court means only the High Court sitting at the principal seat.

165. If the argument of learned counsel for the petitioners is to be accepted, it would mean that the Judges of the High Court sitting at the principal seat alone would be the High Court and those sitting at the Benches would be something else than the High Court. Repeatedly, questions were put to learned counsel who wanted to support such a contention; but they had no answer. They could not contend that the Chief Justice and the Judges, if they sit outside the principal seat of the High Court, will not be the High Court but will be something else than the High Court. Apparently, the argument is merely a misconception that the High Court sitting at Jabalpur is the High Court of Madhya Pradesh and therefore the Judges sitting there have inherent jurisdiction to hear cases from all over the State. In fact the High Court of Madhya Pradesh means, as Article 216 of the Constitution provides, the Chief Justice and the Judges of this Court; and this High Court, that means the Chief Justice and Judges of this Court,

have no doubt jurisdiction to hear cases from all over the State. The place of sitting is provided for the convenience of the litigating public and therefore sitting at different places they may hear cases from the respective districts only. The long history, reference to which was made by both the sides, of the organization of various High Courts in India, goes to show that it was always in the mind of those who constituted these High Courts, that in the context of geographical situation of this country it would be difficult to conceive of only one place of sitting of the High Court for any State as they were or as they are in this country; and the history clearly reveals that starting with the provisions for sitting of Judges in circuit to dispose of cases from certain areas it has ultimately culminated into the constitution of Benches, permanent as contemplated under the States Reorganizations Act, and ultimately the establishment of permanent Benches under other Acts as is clear from the Bombay Reorganization Act, 1960.

166. In this context, it would be significant to consider the language used in the United Provinces High Courts (Amalgamation) Order, 1948 (hereinafter referred to as "the Amalgamation Order") which has been the subject-matter of a series of decisions of the Allahabad High Court and which ultimately has been considered by the SC in *Nasiruddin v. S. T. A. Tribunal*⁴⁵ This decision reversed the decision of the Full Bench of the Allahabad High Court reported in *Nirmal Dass v. S. T. Tribunal*⁴⁶ 14 of the Amalgamation Order reads:

"14. 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. "

The proviso to this paragraph is more or less similar to the President's Notifications constituting permanent Benches of this Court. The Notifications read :

"Government of India Ministry of Home Affairs, New Delhi, the 28th November, 1968.

NOTIFICATION

The following Order made by the President is published for general information:

ORDER

In exercise of the powers conferred by Sub-section (2) of Section 51 of the States Reorganization Act, 1956 (37 of 1956), I, Zakir Hussain, President of India, after consultation with the Governor of Madhya Pradesh and the Chief Justice of the High Court of Madhya Pradesh, hereby establish a permanent Bench of the Madhya Pradesh High Court at Gwalior and further direct that such being not less than two in number, as the Chief Justice may from time to time nominate, shall sit at Gwalior in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the revenue districts of Gwalior, Shivpuri, Datia, Guna, Vidisha (Bhilsa), Bind and Morena:

Provided that the Chief justice may, for special reasons, order that any case or class of cases arising in any such district shall be heard at Jabalpur.

Zakir Hussain

President.

New Delhi,

November 18, 1968.

"Government of India,

Ministry of Home Affairs,

New Delhi, the 28th Nov. 1968.

NOTIFICATION

The following Order made by the President is published for general information.

ORDER.

In exercise of the powers conferred by Sub-section (2) of Section 51 of the States Reorganization Act, 1956 (37 of 1956). I, Zakir Hussain, President of India, after consultation with the Governor of Madhya Pradesh and the Chief Justice of the High Court of Madhya Pradesh, here by establish a permanent Bench of the Madhya Pradesh High Court at Indore and further direct that such Judges of the High Court of Madhya Pradesh, being not less than four in number, as the Chief Justice may from time to time nominate, shall sit at Indore in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the revenue districts of Indore, Ujjain, Dewas, Dhar, Jhabua, Ratlam, Mandsaur, West Nimar (Khargone), Shajapur and Rajgarh: Provided that the Chief Justice may, for special reasons, order that any case or class of cases arising in any such district shall be heard at Jabalpur.

Zakir Hussain

President."

New Delhi,

November 18, 1968.

167. The proviso to Paragraph 14 (or Article 14) of the Amalgamation Order was considered by the Full Bench of the Allahabad High Court and has now been finally interpreted by their Lordships of the SC in Nasiruddin's case (AIR 1976 SC 331). The Full Bench of the Allahabad High Court, in Nirmal Dass's case (AIR 1972 Allahabad 200) (FB) considered the question about exclusive or concurrent jurisdiction at Allahabad and observed:

"Besides the express language of Article 14, there are other considerations also which persuade us to that conclusion. In the division of work among the Judges at Allahabad and at Lucknow, there will generally be a Judge or a Division Bench at each of the two seats entrusted contemporaneously with work of identical jurisdiction. If the Judges at Allahabad have concurrent jurisdiction with the Judges at Lucknow in respect of cases from the same areas, then in the matter of filing and arguing fresh petitions and appeals a litigant from those areas is put in a position where he can choose his Judge. That is a situation which arises where in the same court more than one Judge or Division Bench exercises identical jurisdiction, identical in point of pecuniary valuation,

subject-matter and territorial limits and other controlling criteria. The litigant will be in a position to decide whether he should file his case before the Judge at Allahabad or the Judge at Lucknow. It is a situation which, in our opinion, should not be ordinarily encouraged. To permit a litigant as a general rule to choose his Judge from among Judges in the same court would tend to introduce confusion in the working of the court.

It would give rise to an unseemly reflection on individual Judges, thus impairing the reputation of the judicial system, and, therefore, endangering its effectiveness. Whether a case should be heard at Lucknow or at Allahabad has been advisedly left by the Amalgamation Order to responsible authority and not to the litigant. All cases from the specified Oudh areas are intended to be heard at Lucknow. Any variation or exception to that rule has been left immediately to the Chief Justice, and ultimately in the last resort to the Governor who can abolish the seat at Lucknow altogether. The judicial organization is constituted by considerations of public policy and public interest. Its form and features, its present variants and potential change are matters entrusted to public functionaries. The self interest of an individual litigant is wholly antithetical to the primacy of those considerations." The Full Bench in this judgment considered the view expressed by Mootham C. J. and A. P. Srivastava J, in *Union of India v. M/s. Chheda Lal Ram Autar*⁴⁷ and observed:

"Now, with profound respect to Mootham C. J. and A. P. Srivastava, J., we are unable to subscribe to the view that if cases arising in the Oudh areas are to be heard at Lucknow alone it would in effect result in splitting up the High Court into two Courts. From the provisions of the Amalgamation Order already set out, it is clear that there is only one High Court with one seal, one Chief Justice and a single body of Judges, and a single code of rules and orders relating to practice and procedure which, except for a few transitional provisions operates in respect of the entire Court. The jurisdiction defined by Article 7 vests in the entire body of Judges. It is a jurisdiction enjoyed by every Judge of the High Court and extends to all cases throughout the territories of the State. Where that jurisdiction will be exercised is a matter determined under Article 14. It may be exercised at Allahabad or it may be exercised at Lucknow or at any other place appointed by the Chief Justice under Article 14. But wherever exercised it is exercised by a Judge, who equally with all the other Judges, represents the High Court.

The Judges at Lucknow are part of the same High Court as those at Allahabad.

Whether the Judge sits at Allahabad or at Lucknow, he remains a Judge of the same High Court. A Judge sitting at Lucknow may sit at Allahabad and vice versa. It is only the work entrusted to him at the two places which will differ. A Judge of the High Court at Lucknow will hear cases arising in the specified areas of Oudh except cases transferred to Allahabad, while a Judge at Allahabad will exercise jurisdiction in respect of all remaining cases. The writ of the High Court runs throughout the territories of the State, and the law laid down whether by the Judges at Lucknow or the Judges at Allahabad is binding on all throughout the State, the Judges and the lay public alike."

168. It may be noticed that the view which prevailed with Mootham C. J. and A. P. Srivastava J., was exactly what the learned counsel for the petitioners contended before us. Now this question has ultimately been set at rest by the SC in Nasiruddin's case (supra). Their Lordships in this decision have first quoted the five questions that were referred to the Full Bench of the Allahabad High Court :

- "(1) Can a case falling within the jurisdiction of the Lucknow Bench of this court be presented at Allahabad?
- (2) Can the Judges sitting at Allahabad summarily dismiss a case presented at Allahabad pertaining to the jurisdiction of the Lucknow Bench?
- (3) Can a case pertaining to the jurisdiction of Lucknow Bench, presented and entertained at Allahabad, be decided finally by the Judges sitting at Allahabad, without there being an order as contemplated by the second proviso to Article 14 of the U. P. High Court (Amalgamation) Order, 1948?
- (4) what is the meaning of the expression 'in respect of cases arising in such areas in Oudh' used in first proviso to Article 14 of the High Court (Amalgamation) Order, 1948? Has this expression reference to the place where the case originated or to the place of the sitting of the last Court or authority whose decree or order is being challenged in the proceedings before the High Court?
- (5) Whether this writ petition can be entertained, heard and decided by the Judges sitting at Lucknow?"

and thereafter reproduced the answers given to those respective questions by the Full Bench of the Allahabad High Court:

"(1) A case falling within the jurisdiction of Judges at Lucknow should be presented at Lucknow and not at Allahabad.

(2) However, if such a case is presented at Allahabad, the Judges at Allahabad cannot summarily dismiss it only for that reason. The case should be returned nor filing before the Judges at Lucknow and where the case has been mistakenly or inadvertently entertained at Allahabad, a direction should be made to the High Court Office to transmit the papers of the case to Lucknow.

(3) A case pertaining to the jurisdiction of the Judges at Lucknow and presented before the Judges at Allahabad cannot be decided by the Judges at Allahabad in the absence of an order contemplated by the second proviso to Article 14 of the Amalgamation Order, 1948.

(4) The expression 'in respect of cases arising in such areas in Oudh' used in the first proviso to Article 14 of the High Court (Amalgamation) Order, 1948, refers to legal proceedings, including civil cases, criminal cases, petitions under Articles 226, 227 and 228 of the Constitution and petitions under Articles 132, 133 and 134 of the Constitution instituted before the Judges sitting at Lucknow and having their origin, in the sense explained in the majority judgment in such areas in Oudh as the Chief Justice may direct. The expression 'arising in such areas in Oudh' refers to the place where the case originated in the sense explained in the majority judgment and not to the place of sitting of the last court or authority whose decree or order is being challenged in the proceeding before the High Court.

(5) The Lucknow Bench have no jurisdiction to hear writ petition No. 750 of 1964 which gave rise to writ petition No. 3294 of 1970."

169. The answer given by the Full Bench of the Allahabad High Court to the first three questions has been accepted and it would be worthwhile to quote the answers of the Full Bench to these three questions, quoted by their Lordships of the SC themselves in paragraph 13 :

"(1) A case falling within the jurisdiction of Judges at Lucknow should be presented at Lucknow and not at Allahabad.

(2) However, if such a case is presented at Allahabad, the Judges at Allahabad cannot summarily dismiss it only for that reason. The case should be returned for filing before the Judges at Lucknow and where the case has been mistakenly or inadvertently entertained at Allahabad, a direction should be made to the

High Court Office to transmit the papers of the case to Lucknow.

(3) A case pertaining to the jurisdiction of the Judges at Lucknow and presented before the Judges at Allahabad cannot be decided by the Judges at Allahabad in the absence of an order contemplated by the second proviso to Article 14 of the Amalgamation Order, 1948."

170. A vigorous attempt was made by learned counsel for the petitioner to find an escape from the view expressed in this decision by their Lordships of the SC and it must be said that learned counsel for the petitioners frankly conceded that if the distinction that he is trying to draw is not accepted this judgment concludes the questions raised by the petitioners and the petitioners have no case. It would, therefore, be significant to examine the points of distinction that were attempted to be made by learned counsel for the petitioner in order to escape the effect of the SC decision.

171. It was contended that the judgment of their Lordships of the SC flows on the basis that there is no principal seat of the High Court under the U. P. High Court (Amalgamation) Order. The Full Bench of the Allahabad High Court in Nirmaldass's case (supra) while considering this question had observed:

"The seat of the Court is the place where it transacts its business and maintains its office and records. When the court sits at more than one place, one of those places is appointed as its principal seat. That is the place where the essential control over its business is exercised.

At this point, one important controversy may be disposed of. Where is the principal seat of the new High Court situated? Article 14, in its main provision, declares that the new High Court shall sit 'at Allahabad or such other places' as may be appointed by the Chief Justice with the approval of the Governor. Besides this, the first proviso requires that some Judges will sit at Lucknow. Therefore, the High Court sits at Allahabad, at Lucknow and at other places appointed by the Chief Justice. It sits at all these places. But, its seat at Allahabad is a permanent seat. That follows not only from its description in Article 3, namely, the High Court of Judicature at Allahabad. It follows also from the necessary implications involved in the second proviso to Article 14.

Under that proviso the Chief Justice has power to order that a case or class of cases which would ordinarily be heard at Lucknow should be heard at

Allahabad instead. He has no power to transfer those cases to any other place, not even to places appointed by him under the main provision or Article 14. As regards Lucknow, as we shall presently show, it was never intended to be a permanent seat. That leaves Allahabad as the one identifiable permanent seat and, therefore, the principal seat of the High Court. The word 'or' in the main provision of Article 14 must, in our opinion, be construed as 'and'."

This will clearly show that the Full Bench of the Allahabad High Court, when it considered this question and felt that Allahabad was a permanent seat, still, it was not assuming that the High Court means the principal seat as the contention of the learned counsel for the petitioners has been. Apart from it, what the Allahabad High Court felt was that Allahabad was the permanent seat and nothing more than that: and in fact, no argument about concurrent Jurisdiction could be evolved on that basis as it is clear that although the learned Judges of the Allahabad High Court in the Full Bench decision in the passage quoted above accepted Allahabad to be a permanent seat of the High Court, still, as quoted above, they did not accept the view of Mootham C. J. and A. P. Srivastava J., and clearly stated that the jurisdiction that a Judge of the High Court exercises is restricted only when he sits at a particular place. While sitting at Lucknow, he exercises jurisdiction from the erstwhile territory of Oudh and while sitting at Allahabad the same Judge may exercise jurisdiction for the rest of the cases. It is, therefore, plain that even the Full Bench of the Allahabad High Court, accepting Allahabad to be the permanent seat, did not accept the view of Mootham C. J. and A. P. Srivastava J. which appears to be the inspiration of the argument advanced by learned counsel for the petitioners. However, their Lordships of the Supreme Court, as regards the question of the seat of the High court, only observed that the view taken by the Allahabad High Court that Allahabad is the permanent seat is not correct. Their Lordships observed:

"The conclusion as well as the reasoning of the High Court that the permanent seat of the High Court is at Allahabad is not quite sound. The order states that the High Court shall sit as the new High Court and the Judges and Division Bench 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. The word 'or' cannot be read as 'and'. If the precise words used are plain and unambiguous, they are bound to be construed in their

ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain the Court would not make any alteration." and ultimately their Lordships concluded,-

"To sum up, our conclusions are as follows: First, there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the Order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third, the Chief Justice has power under the second proviso to Paragraph 14 of the Order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word 'heard' confers powers on the Chief Justice to order that any case or class of cases arising in Oudh areas shall be instituted or filed at Allahabad instead of Lucknow is wrong. The word 'heard' means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the Order be directed to be heard at Allahabad. Fourth, 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. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That

will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provisions regarding jurisdiction it may arise in either place.

Application under Article 226 will similarly lie either at Lucknow 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.

The answers given by the High Court to the first three questions are correct save as modified by our conclusions aforesaid.

The answer given by the High Court to the fourth question is set aside. The meaning of cases arising in Oudh areas will be found out by appropriate, courts in the light of this judgment."

172. On behalf of the petitioners it was contended that the decision in Nasiruddin's case (AIR 1976 SC 331) cannot be of any assistance in interpreting the President's Order in the present case as it was contended that the words of the President's Notifications have to be read in (its) context. It was also contended that the United Provinces High Courts (Amalgamation) Order was an order amalgamating the two High Courts and therefore the interpretation put on that order could not be of much assistance in interpreting the President's Order notifying the permanent Benches of this Court. On the other hand, learned counsel appearing for the High Court Bar Associations of Indore and Gwalior contended that not only the language of the Amalgamation Order is similar to the President's Order read with Section 51 (2) of the States Reorganization Act, but even the context is identical. They contended that the Amalgamation Order dealt with a situation where one existing High Court of Allahabad and another the Chief Court of Oudh, were merged and one new High Court of Allahabad was constituted. Similarly, on the reorganization of the present State of Madhya Pradesh, the High Court of Nagpur which was the High Court for part of the present State has been merged with the High Court of Madhya Bharat - a Part B State and the Judicial Commissioners' Courts at Rewa and Bhopal and a new High Court, that is the High Court of Madhya Pradesh has been formed. It was also contended that the Amalgamation Order as well as the President's Order constituting permanent Benches have been enacted to meet identical situations; and in this context it was therefore contended that the interpretation put by their Lordships of the SC on the United Provinces High Courts (Amalgamation) Order would directly apply to the

President's Order constituting the permanent Benches at Indore and Gwalior. It was further contended that even the provisions of the Bombay Reorganization Act, 1960 could also be looked into in aid of interpretation although it is a subsequent statute; but it was also enacted to meet a similar situation and the language of Section 41 of the Bombay Reorganization Act 1960 could also be read in aid.

173. The rule of interpretation has been stated by Maxwell in the Interpretation of Statutes (Tenth Edn.) in these words:

"Probably, the rule as to the exposition of one Act by the language of another is satisfactorily and most comprehensively laid down in the broad statement of Lord Mansfield, that;

'Where there are different statutes in *pari materia*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system and as explanatory to each other'." (P. 33).

The learned author has also stated the principles about a later legislation by saying:

"Not only may the later Act be construed by the light of the earlier, but it sometimes furnishes a legislative interpretation of the earlier, if it is in *pari materia* and the provisions of the earlier Act are ambiguous." (P. 35).

174. Sri G. P. Singh in his Principles of Statutory Interpretation (2nd Edn.) has stated the rule about statutes in *pari materia* by saying:

"It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in *pari materia*, i. e., statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including 'other statutes in *pari materia*'." (Pp. 161, 162).

The learned author then quoted the passage of Lord Mansfield already referred to above. The learned author has also examined what the phrase '*pari materia*' would mean:

"The meaning of the phrase *pari materia* has been explained in an American

case in the following words: 'Statutes are in *pari materia*' which relate to the same person or thing, or to the same class of persons or things. The word *pari* must not be confounded with the word *similis*. It is used in opposition to it-intimating not likeness merely, but identity. It is a phrase applicable to public statutes or general laws made at different times and in reference to the same subject." The learned author further examined the merits of the application of this rule by saying:

"The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject; it permits the raising of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes; and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in any earlier statute."

Craies in his work on Statute Law (Fifteenth Edn.) has observed:

"It has been held that where the Legislature has given to words a statutory definition in one statute, and has used the same words in a similar connection in a later statute dealing with the same subject-matter, it may be presumed, in the absence of any context indicating a contrary intention, that the same meaning attaches to the words in the later as is given to them in the earlier statute." (P. 133).

175. It, therefore, cannot be doubted that if the language used in the Amalgamation order is in *pari materia* with the language of the President's Order read with Section 51 (2) of the States Reorganization Act, and both have been enacted to meet similar situations and with regard to a similar subject, and if their context also appears to be similar, there is no reason why the two cannot be interpreted in the like manner.

176. It cannot be doubted that the Amalgamation Order 1948 was passed with the purpose of integrating the existing highest courts in United Provinces, one, the High Court of Allahabad and another, the Chief Court of Oudh. The purpose behind the Amalgamation Order apparently, therefore, was the integration of the High Court into one. But it appears that it was still in the mind of the authorities that the facility which

was available to the people in the Oudh area was to be maintained and it was in this context that the Amalgamation Order was passed. As stated by their Lordships of the SC in Nasiruddin's case (supra):

"The sum and substance as well as the spirit of the Order is that under the first proviso to Paragraph 14 Lucknow becomes the seat in respect of cases arising in areas in Oudh. There is no other provision except paragraph 14 in the Order as to what the areas in Oudh are or will be. Historically, the territories with 12 Districts of Lucknow, Faizabad, Sultanpur, Rai Bareli, Pratap Garh, Barabanki, Gonda, Baharaich, Sitapur, Kheri, Hardoi and Unnao, were brought under the then British Crown within the jurisdiction of the Court of the Judicial Commissioner of Oudh at Lucknow. This was under Government of India Order dated 4th February, 1856. (See: Laws of Non-Regulations Provinces 1863 by Lord G. Campbell, Judicial Commissioner, Oudh). In 1925 Oudh Courts Act was passed by the Uttar Pradesh Legislature. The Chief Court of Oudh with one Chief Justice and four Puisne Judges was established replacing the Judicial Commissioner's Court. In 1937 by the Government of India (Adaptation of Indian Laws) Order, 1937 it was provided that the Chief Court of Oudh shall consist of Chief Justice and such other Judges as may be appointed under the Government of India Act, 1935. Later, two more additional Judges were appointed. In this background the Order of 1948 came into existence and the new High Court was established with its seats at Allahabad and Lucknow. It, therefore, follows that when the Order came into existence, it was for the Chief Justice to direct the areas in Oudh, which would be within the jurisdiction of the Lucknow Bench."

It cannot be doubted that whether it is called the "Amalgamation Order" or the "Reorganization Act," the object of the provisions about High Courts in the States Reorganization Act and the Amalgamation Order are more or less the same. As their Lordships observed, due to historical reasons the facility which was available to the people of the Oudh area of having a Chief Court of Oudh at Lucknow was to be maintained and therefore the Amalgamation Order made provision for sitting of the High Court at Lucknow as well. If we examine the historical development of our High Court and its Benches in Madhya Pradesh, it would also appear that it was desired that although the High Court may be integrated into one but still, the facility which was available to the people of Madhya Bharat region of having a High Court sitting at

Gwalior and Indore should remain available to them. It appears, it was for this reason that when on 1st November 1956 the High Court of the new State was inaugurated, the first order that the Chief Justice passed was for establishment of Benches at Indore and Gwalior.

177. An attempt was made to contend that this Order of the Chief Justice could not be said to be an order under Section 51(3) of the States Reorganization Act. The order dated 1st November 1956 reads:

"No. 1/56. In exercise of the powers conferred by Sub-section (3) of Section 51 of the States Reorganization Act, 1956 (No. 37 of 1956) and with the approval of the Governor of Madhya Pradesh, the Honourable the Chief Justice of the Madhya Pradesh High Court is pleased to direct that temporary Benches of the High Court of Madhya Pradesh will also, sit temporarily at Indore and Gwalior until further orders."

Apparently, under Section 51(3) the Chief Justice could establish Benches. It is also clear that on the 1st November 1956 or before that the High Court was sitting at these two places exercising jurisdiction in a particular area and the order dated 1st November 1956 passed by the Chief Justice goes to show that although an integrated High Court was constituted under the scheme of the States Reorganization Act, still the sitting of the High Court at these two places was accepted from the very first day. By a later order the Chief Justice further modified the area over which these Benches exercised jurisdiction by adding some portion of the territory which was not within the Madhya Bharat State, to either of the Benches, like addition of Bhopal to Indore and Sironj to Gwalior. It was contended that if the scheme of the Reorganization Act was to maintain the Courts at respective places, then Bhopal and Rewa would also have got Benches of the High Court. But this argument itself defeats the logic which is proposed to be advanced. Apparently, what was thought of was only to continue the sitting of the High Court at places where there was a High Court historically but not at places where there was judicial Commissioner's Court. It is also significant that these Benches continued to function till the President's Notifications gave them the status of Permanent Benches and there is nothing to indicate that so far as the jurisdiction exercised by the Judges sitting at these Benches is concerned, no material change took place by the President's Notifications. This also clearly indicates that at no point of time Jabalpur, which was notified to be the principal seat, had jurisdiction over the

whole area of the State and it is because of this difficulty that learned counsel appearing for the petitioners contended that some time must have elapsed after the inauguration of the High Court and issuance of the Chief Justice's Order constituting temporary Benches at Gwalior and Indore. What that "some time" was could not be made clear. Apparently, the High Court was inaugurated on 1st November 1956 and the Order issued by the Chief Justice constituting temporary Benches at Indore and Gwalior also is of 1st November 1956 and it is numbered as the 1st order passed by the Chief Justice. That clearly goes to show that after the inauguration of the High Court, the first order that the Chief Justice passed was to continue the sitting of the High Court at Indore and Gwalior where a High Court actually sat up to that date. Therefore, it clearly goes to show that as intended in the amalgamation Order at Allahabad, the facility available to the people of Oudh of a Chief Court at Lucknow was intended to be continued, similarly, under the scheme of the States Reorganization Act it was intended that the facility of having a High Court at Indore and Gwalior which was available to the people of these areas from before was maintained and it was in pursuance of that that immediately temporary benches were constituted which ultimately were made permanent by the President's Notifications in 1968.

178. The Scheme of the States Reorganization Act and the idea of continuing the facility of a High Court at places (where) there was a High Court before especially in the context of the convenience of the people, has further been demonstrated by Parliament in the Bombay Reorganization Act, 1960. Section 41 of that Act provides:

"41. Permanent Bench of Bombay High Court at Nagpur.- Without prejudice to the provisions of Section 51 of the States Reorganization 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 Rajura:

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

The language of this section apparently is more or less similar to the President's Notifications constituting the Permanent Benches. In fact, in Section 41 in the title they have used the words "Permanent Bench of Bombay High Court at Nagpur". It has

to be noticed that the learned counsel for the petitioners could not contend that Section 41 of the Bombay Reorganization Act, 1960 does not confer exclusive jurisdiction of the Nagpur Bench over the areas stated therein. It is therefore clear that what was intended under the scheme of the States Reorganization Act and was brought out by the process of delegated legislation by way of an order of the Chief Justice constituting temporary Benches and by way of an order of the President notifying the Permanent Benches. has in a later Act been clearly demonstrated by Providing it in the Act itself with a specific provision.

179. The language of the Notifications constituting Permanent Benches as also the language of Section 41 of the Bombay Act, wherein by a proviso the Chief Justice has been authorized to transfer some cases for hearing at the principal seat, itself goes to show that it contemplates that without that proviso the cases arising out of those areas could not be heard at the principal seat. This also goes to show that the constitution of permanent Benches contemplated exclusive jurisdiction with the Benches in respect of areas indicated in the President's Order.

180. A Division Bench of this Court consisting of Raina J. and myself, in *Ali Mohammad v. Board of Revenue*,⁴⁸ observed;

"The question about the constitutionality of the President's order was also raised. In *Gulabchand v. Rukmani Devi*,⁴⁹ before the Full Bench there was a conflict of opinion on this question between the Judges constituting the Division Bench which had referred the matter to the Full Bench. But the Full Bench did not ultimately go into the question of the vires of the President's order; in view of powers of the President under Section 51 of the States Reorganization Act, 1956. Section 51 (2) of that Act confers powers on the President to establish permanent Benches of the High Court. It also empowers the President to provide for any matters connected therewith. Section 51 (2) is as under;

"(2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for the 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.' The phrase 'any matters connected therewith' is apparently wide enough to confer on the President the power to provide for the jurisdiction of permanent Benches. In these circumstances, it

cannot be said that the President did not have the power to provide for the jurisdiction of the respective Benches constituted by his notified order. Consequently, the Judges of the High Court sitting at Gwalior can exercise jurisdiction and powers of the High Court in respect of cases arising out of the districts mentioned in the order and, therefore, the present petition cannot be heard at Gwalior."

181. In the above-noted case, while considering the question of jurisdiction of the Judges of the Madhya Pradesh High Court it was observed ;

"It was also contended that the President's order does not limit the jurisdiction and power of the Judges who are Judges of the Madhya Pradesh High Court; it only regulates the hearing at the Benches constituted under the order, The language in the order in specific words does not state that the Judges sitting at Gwalior will not have jurisdiction or power of the Madhya Pradesh High Court in matters arising out of the districts other than those mentioned in the order. But clearly it goes to show that the Judges sitting at Gwalior will exercise jurisdiction and power pertaining to matters in respect of cases arising in the districts mentioned in the order. It is no doubt true that the Chief Justice has powers to fix roster and place cases before the various Benches. But the order clearly indicates that the Judges nominated by the Chief Justice to sit at Gwalior shall exercise jurisdiction and power as indicated in the order. This clearly shows that while sitting at Gwalior the Judges have no jurisdiction to hear and decide cases which do not fall within the ambit of the President's Order."

This decision, therefore, clearly rules that the President's notification constituting a permanent Bench at Gwalior carved out exclusive jurisdiction to be exercised by the Judges of this Court while sitting at Gwalior.

182. An attempt was made to draw a distinction on the basis of the phrase "amalgamation order" and "constitution of a new High Court". In fact, even under the Amalgamation Order although the High Court of Allahabad and the Chief Court of Oudh were amalgamated, but a new High Court was formed, which was the High Court of Allahabad; and therefore, merely because the phrase "amalgamation" has been used and in the States Reorganization Act the phrase "High Court for the new State" has been used, in Section 49, no distinction could be drawn, apparently because

the subject, the purpose and the context are identical. It is significant that the High Court of the new State under the States Reorganization Act was conferred jurisdiction over the territories which also formed part of the State; but still, Section 52 only used the words "High Court" and not "High Court at its principal seat" :

"52. Jurisdiction of High Courts for new States.- The High Court for a new State shall have, in respect of any part of the territories included in that new State, all such original, appellate and other jurisdiction as under the law in force immediately before the appointed day, is exercisable in respect of that part of the said territories by any High Court or Judicial Commissioner's Court for an existing State".

And the "High Court" admittedly would mean as Article 215 of the Constitution provides, the Chief Justice and Judges of the Court, and not the place where it sits, admittedly, because Section 51 of the States Reorganization Act itself contemplated the sitting of the High Court at more than one place. It is, therefore, clear that in view of the scheme of the States Reorganization Act and in view of the context, it could not be doubted that the provisions of the States Reorganization Act contemplated the sitting of the High Court at different places with jurisdiction exercised by the Judges while sitting at those places in respect of areas allotted to those places for that purpose.

183. An argument was also advanced that the purpose behind the establishment of the Benches was the convenience of the litigating population in the context of the geographical situation of the State, and it was contended that the concurrent jurisdiction will be more convenient. The argument is fallacious. If the convenience of the litigants is to be seen, the concurrent jurisdiction will leave it to the choice of one of the parties to drag the other litigant to any distant place out of the three places in the High Court and may make it impossible for the opposite party to reach the High Court. In fact, as discussed earlier, what was in view, which appears from the historical background, is the convenience of the litigating public from the respective areas in the context of the facility of a High Court which they were having historically and it was intended that that facility in the light of convenience should be available to them; and it was this which appears to be the context in which the scheme of the States Reorganization Act has been worked out. In this view of the matter, therefore, if all the constituent parts of the scheme of the States Reorganization Act, the object and the purpose, are examined and compared with the constituent parts of the Amalgamation

Order, its object and purpose, it appears that no distinction can be drawn. In *Popatlal Shah v. State of Madras*, it was observed:

"It is a settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase or sentence to be considered in the light of the general purpose and object of the Act itself."

184. Learned counsel appearing for the High Court Bar Association Indore, Sri S.D. Sanghi, contended that there is no curtailment of jurisdiction so far as the High Court is concerned. What has been provided by the President is only the jurisdiction attached to the place where the Judges sit. It is not correct to say that Sri Sanghi accepted that there is not exclusive territorial jurisdiction conferred by the notification of permanent Benches by the President. In fact, the whole argument of learned Counsel has been that the Benches have been conferred with exclusive jurisdiction pertaining to the territories stated in the President's Notifications and that Nasiruddin's case concludes the matter,

185. It was also contended that even if the petition fails as regards the validity of the orders of the Chief Justice, still, the cases (tax matters and transport matters) which have been instituted at Jabalpur under orders of the earlier Chief Justices and which according to the return of the Registrar are going to be transferred to the respective Benches could not be so transferred. It was contended that they have been validly instituted at Jabalpur and they cannot therefore be transferred as the proviso to the President's Notification constituting Benches does not confer any power on the Chief Justice to transfer a case from Jabalpur to Indore or Gwalior; it only empowers the Chief Justice to order that any particular case instituted at Gwalior or Indore could be heard at Jabalpur.

186. The contention that the cases instituted at Jabalpur could not be transferred to Indore and Gwalior itself is a misconception. There is no question of "transfer" of cases from Jabalpur to Indore or Gwalior. If, under the orders passed by the then Chief Justice these cases have been instituted at Jabalpur, those orders of the Chief Justice are no longer in force as the order passed by the Chief Justice dated 5-2-1976 supersedes all those orders. And, therefore, the only question will be as to where those cases could be listed for hearing; and that will have to be decided in the light of the

President's Notifications constituting permanent Benches, the Chief Justice's Order dated 5-2-1976 and the view this Full Bench has taken. It, therefore, cannot be contended that a case pending at Jabalpur could not be sent to Indore or Gwalior because the President's Order contemplated the cases arising from particular districts to be heard at a particular Bench alone as has already been discussed. Apart from it, the question cannot be gone into in the present petition as those cases are not listed before us for hearing and it will not be possible for us to go into each one of those cases when in fact they are not listed before us and the parties are also not before us. We can only say that in view of the view taken in this petition the Registry will list the cases before appropriate Benches which have jurisdiction to hear those cases in view of the order passed by the Chief Justice dated 5-2-1976.

187. The situation discussed above brings out a real question which although during the course of the arguments learned counsel did not insist for decision except learned counsel appearing for the Union of India; and that is the question of the *locus standi* of the petitioners to file the present petition. Learned counsel appearing for the High Court Bar Associations of Indore and Gwalior, did not insist on the decision of this question because according to them questions of legal importance having been raised and argued at length they desired that the questions may be decided rather than the petition be disposed of on a short ground about *locus standi* of the petitioners to file the Present petition. But it does not mean that having decided the important questions raised in this petition, the question of *locus standi* need not be gone into, especially for the reason that ultimately it may involve a situation where it may not be possible for this Court to pass appropriate orders as indicated above.

188. These petitioners claim to be the enrolled advocates who are practising at Jabalpur. When this question of *locus standi* was debated it was pointed out that some of these petitioners happen to be counsel appearing in some of those cases which are in the process of sifting in the Registry as a consequence of the orders of the Chief Justice. But admittedly, none of the petitioners has any case of his own which is going to be affected by the orders of the Chief Justice. It was seriously contended that the petitioners are Advocates practising at Jabalpur and it was contended that they are interested in maintaining the dignity of this Court. Admittedly, an Advocate enrolled is expected to be interested in maintaining the dignity of this Court without bothering about its places of sitting. Unfortunately, the petition having been filed by some of the advocates practising at Jabalpur, it has ultimately resulted in a debate between the

three prominent Bar Associations of the State, all of which, we have no hesitation in holding, are keenly interested in maintaining the dignity of this Court and the Status and dignity of the profession. Admittedly, this is a petition under Article 226 of the Constitution and it cannot be doubted that a petitioner can only file a petition under Article 226 of the Constitution if he has any right to be protected under the Constitution or any other statutory right. In the recent decision of the SC in *Additional District Magistrate, Jabalpur v. Shivkant Shukla*,⁵¹ the matter has been debated at the highest level and it cannot be doubted that a petition under Article 226 cannot be entertained so long as the petitioner is not able to suggest a right which may either be under the constitution or a statutory right, protection of which he seeks in a petition under Article 226.

189. It was seriously contended that an Advocate practicing in the High Court has a right to practice as it is not in dispute. But it could not be pointed out that an advocate practicing in the High Court has any right to insist on the hearing of his case at a particular place. No law or rule was referred to by learned counsel to suggest that the right of an advocate to practice gives him also a right to practice at a particular place. If there was any such right, the scheme of the States Reorganization Act could not have worked and it would have been contended that the Advocate practicing at Nagpur and appearing in cases from the Mahakosal region had a statutory substantive right to argue those cases at Nagpur alone and the cases could not therefore be shifted to Jabalpur. It cannot, therefore, be doubted that an advocate no doubt has a right to practice, but no right to contend that the case in which he appears, or he happens to appear, must be heard at a particular place. It is also significant that an advocate who is practicing in the High Court at a particular place cannot contend that particular types of cases must be instituted at that particular place and no statutory right could be canvassed for such a relief. Learned counsel appearing before us referred to certain decisions of their Lordships of the SC where the question of the right of the petitioner has been considered. In *Calcutta Gas Company v. State of West Bengal*,⁵² their Lordships of the SC observed:

"Article 226 in terms does not describe the classes of persons entitled to apply there under; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226. The legal right that can be enforced under Article 226, like Article

32, must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified." It clearly lays down that the right which could be enforced under Article 226 shall be the personal or individual right of the petitioner. It has been observed that in petitions like habeas corpus or quo warranto the rule may be relaxed. It is well known that in such cases even a third person having interest in the affected person may move the Court. But the rule clearly lays down that a petitioner must show a right which he seeks to enforce, Even where in a petition like habeas corpus or quo warranto this rule is relaxed, the petitioner may be a third person; but he has to show right of the person aggrieved which is being affected and he seeks to protect it. In *G. Venkateswara Rao v. Government of Andhra Pradesh*⁵³ this question has further been discussed. In the recent decision reported in *Jasbhai Motibhai v. Roshan Kumar*,⁵⁴ the question of *locus standi* has been dealt with in greater detail. In that case their Lordships were examining the issue of a writ of *certiorari* and in that context considered the phrase "aggrieved person";

"According to most English decisions in order to have the *locus standi* to invoke *certiorari* jurisdictions, the petitioner should be an "aggrieved person" and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of *certiorari* as a matter of course. but if he does not fulfill that character, and is "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question. Who is an "aggrieved person" ? And what are the qualifications requisite for such a status. The expression "aggrieved person" denotes an elastic and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes not a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests

have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary *locus standi* or 'standing' to invoke *certiorari* jurisdiction."

Their Lordships quoted a passage from in *Re. Sidebotham*, (1880) 14 Ch D 458 at p. 465 :

"The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something."

(underlining mine).

190. It may be pertinent to note that an Advocate practicing at Jabalpur may have a grievance that because of the Chief Justice's order tax matters and transport petitions which were being heard at Jabalpur may not now be heard at Jabalpur and therefore a possibility of getting these briefs is lost; but he could not be said to be a "person aggrieved". Their Lordships, discussing the earlier decisions in the above-noted case observed:

"This court has laid down in a number of decisions that in order to have the *locus standi* to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest therein in the petitioner is necessary to give him a *locus standi* in the matter."

191. In this decision their Lordships considered the persons who could be said to be aggrieved persons and divided them into three categories:

"It will be seen that in the context of *locus standi* to apply for a writ of

certiorari an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold".

As regards the third category their Lordships have clearly indicated that petitions by such persons must be thrown out just at the inception. As regards the first two categories, that is "person aggrieved" and "stranger", it is observed that there may be at times some difficulty in demarcating the line of distinction and in order to draw that distinction their Lordships laid down certain tests:

"To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognized by law, has been prejudicially and directly affected by the act or commission of the authority, complained of? Is he a person who has suffered a legal grievance a person 'against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public. Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute in the context of which the scope of the words 'person aggrieved' is being considered, a social welfare

measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?"

If these tests are applied in the present case, it cannot be doubted that these petitioners could not fall in any one of the categories where it can be said that they are persons aggrieved who could file the petition. It would be useful to state that in the case which their Lordships of the SC were considering, the proprietor of a cinema theatre holding a license for exhibiting cinematograph films sought to invoke the jurisdiction against a no objection certificate granted under Rule 6 of the Bombay Cinema Rules, 1954 by the District Magistrate in favor of a rival in the trade; and in this context, applying the tests laid down, their Lordships held:

"Now let us apply these tests to the case in hand. The Act and the Rules with which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression 'person aggrieved' must receive a strict construction. Did the appellant have a legal right under the statutory provisions or under the general law which has been subjected to or threatened with injury ? The answer in the circumstances of the case must necessarily be in the negative."

Apparently, this goes to show that so long as petitioners do not show that they have a legal right which has been infringed or have an interest recognized by law which has been prejudicially and directly affected, they could not come and file a petition challenging the order of an authority. It is therefore, clear that the present petitioners had no *locus standi* to file the present petition.

192. Learned counsel appearing for the High Court Bar Association Indore, made a grievance about the stand taken by the State Government. In this petition the State Government was arrayed as one of the respondents and have chosen not to file a return. The Government Advocate who was present on the first date of hearing was asked as to whether he wants to appear in this petition on behalf of the State. But the learned Government Advocate frankly stated that he has instructions not to support or oppose the petition. He was asked to give in writing and ultimately the Government

Advocate submitted in writing that he has no instructions the result being that the State Government neither filed a return nor a counsel for the State Government appeared to assist this Court during the hearing of this petition. Learned counsel for the High Court Bar Association Indore, referring to certain authorities contended that such a stand taken by the State Government was not proper. The question as to what the State Government should do in a particular case is a matter within the jurisdiction of the State Government to decide. The questions may involve matters of policy and it is not within our jurisdiction to examine the correctness or otherwise of the policy decisions taken by the Government. We are also not possessed of any means to keep into the minds of those concerned with the Government to find out the reasons for a particular decision and it is not relevant for our purpose to try to find out the reasons for a particular decision. But we may only observe that except for the counsel appearing for the Union of India, none of the respondents were represented at the time of hearing and it is in this context that in our opinion the three High Court Bar Associations, Jabalpur, Indore and Gwalior, deserved to be noticed. They rendered all assistance which this Court needed in deciding this petition. It may also be stated that although the controversy was such which arrayed the three Bar Associations against each other, but still, the learned counsel appearing for them maintained the high standard and dignity of the profession and rightly gave up all such matters which may have not been in good taste and assisted the Court objectively.

193. I have had the opportunity to read the judgment of my learned brother and I may mention that on some of the points on which I entirely agree with the views expressed by him I have chosen not to state them in my opinion, like the question about the hearing of this petition by the full Court and the question about exhaustion of powers of the Chief Justice under the Proviso to the President's Notification constituting Permanent Benches.

194. In the light of the discussion above, therefore, in my opinion, Section 51 (2) of the States Reorganization Act could not be said to be *ultra vires*. Nor could it be said that the President's Notification constituting Permanent Benches is *ultra vires*. The President's Notification confers exclusive territorial jurisdiction on the respective Benches and it is not in contravention of Article 214 of the Constitution or Item 3 in List II of the Seventh Schedule of the Constitution. It, therefore, could not be said that it is *ultra vires* on any one of the grounds alleged by the petitioners. The power that could be exercised by the Chief Justice under the Proviso to the President's

Notification is not exhausted and the Chief Justice, exercising these powers, has validly issued the impugned Order dated 5-2-1976. In pursuance of the orders of the Chief Justice dated 5-2-1976, there is no question of transfer of cases; but it cannot be doubted that the Registry would list the cases in the light of the orders passed by the Chief Justice dated 5-2-1976 and the opinion expressed by this Full Bench, before appropriate Benches. In my opinion, the petitioners have no *locus standi* to file the present petition also. However, it could not be dismissed only on the ground of delay.

195. As regards the power of the Chief Justice, it cannot be doubted that the Chief Justice has power to fix rosters and assign cases for hearing before appropriate Benches. However, I do not think it necessary to state that the Chief Justice has to exercise those powers consciously and with due regard to the norms for the exercise thereof. In my opinion, when the Chief Justice exercises powers, it is always exercised consciously. At the same time, it is unnecessary to mention that he will exercise such powers only after the norms are followed. I may state that the powers are conferred on the high office of the Chief Justice of a State and it is not necessary for us to state how he is expected to exercise those powers as it is always presumed that the powers are exercised in accordance with law.

196. In the light of the discussion above, in my opinion, the petition is without any substance and deserves to be dismissed outright. Consequently, the petition is dismissed. Parties are directed to bear their own costs.

197. S. S. Sharma, J.

(Majority view) :- I agree with Oza, J.

198. Bajpai, J.

(Minority view) :- I had the advantage of reading the order made by my learned brother Sri Raina, J. and also the order made by my learned brother Sri Oza J. My conclusions with reasons for the same are as below:

199. According to me no such question of concurrent or exclusive jurisdiction at all arises because it is one and the same High Court which functions either at the principal seat or at the respective permanent Benches established at Indore and

Gwalior in accordance with the provisions of Sub-section (2), Section 51 of the States Reorganization Act. The Benches either functioning at the principal seat of Jabalpur or at Indore or Gwalior exercise the same jurisdiction which is for the time being vested in the High Court of M. P. The jurisdiction of the High Court flows from the provisions of Article 214 of the Constitution of India and the same jurisdiction has been also referred in Section 52 of the States Reorganization Act. This jurisdiction is not conferred on the permanent Benches or the Principal seat by treating them as different Courts. According to me the order made by the President allocating cases arising out of particular districts in exercise of powers conferred by Section 51, Sub-section (2) of the States Reorganization Act makes statutory allocation of business i. e. the allotment of cases or class of cases to the Benches functioning at Indore and Gwalior. By virtue of the provisions made in the Presidential Order issued in exercise of powers under Section 51 (2) of the Act, the aforesaid Benches established at Indore and Gwalior attract the cases or class of cases allotted to them. Thus, it relates to the manner of exercise of jurisdiction of the High Court through the instrumentality of Benches functioning at those places and has nothing to do with the question of jurisdiction of the High Court. In this view of the matter, there being only one Court where is the scope to say that the jurisdiction of the High Court is curtailed by establishing the Benches ! Such a contention presupposes the existence of two Courts exercising jurisdiction, which is not so. For instance, if certain cases are allotted to a particular Bench functioning at the principal seat of Jabalpur according to the roster prepared by Hon'ble the Chief Justice, can it be said that it affects or curtails the jurisdiction of the High Court, because by such allotment the jurisdiction of any other similar Bench of Judges functioning at Jabalpur will not attract those cases, which have been allotted to one particular Bench or can it be said that by such allotment of work one High Court has been split into as many High Courts as there are Benches exercising jurisdiction in respect of the cases allotted to them.

200. The distribution of work never affects inherent jurisdiction because it is nothing but only the manner prescribed for exercise of jurisdiction. Had it been a case of lack of inherent jurisdiction, even the proviso in question added to the order issued by the President of India, could not make it possible for Hon'ble the Chief Justice to direct that any case or class of cases arising from the districts allotted to the permanent Bench may be heard at the principal seat at Jabalpur. It is possible only because jurisdiction of the High Court extending to the whole of the State is in no manner affected or curtailed by establishing permanent Benches and by allotting certain cases or class of cases arising out of particular districts to them.

201. However, I would like to make it clear that when the manner for exercise of jurisdiction has been prescribed the same has to be exercised in the said manner so long as it is in force and it cannot be claimed by the litigants that it should not be exercised in accordance with the manner prescribed, but should be exercised otherwise according to their choice and wishes. The litigants cannot say that despite allocation of cases or class of cases having been made by the Presidential Order to the respective Benches at Indore and Gwalior, they can insist for the institution of cases at any seat of the High Court and claim that the same should be heard at such places even in the absence of necessary order or direction made by Hon'ble the Chief Justice permitting such hearing as contemplated by the proviso to the Presidential Order.

202. For the reasons stated above, I am of the opinion that there is no force in the contention that the jurisdiction of the High Court is affected or curtailed by establishing the permanent Benches and allotting certain cases or class of cases to them. Under these circumstances, there is no question of any contravention of the provisions of Article 214 or any other Article of the Constitution. The provisions made in Sub-section (2) of Section 51, thus cannot be said to be ultra vires. The enactment relating to Reorganization of States derives competence not only from the List I in the Seventh Schedule of the Constitution, but also from Articles 3 and 4 of the same. Even otherwise the language used in Entry No. 78 of List I in the Seventh Schedule as "Constitution and Organization of High Courts" permits the Parliament to legislate not only in respect of the Constitution at the High Court, but also regarding its organization. According to me, the term "Organization" is wide enough to provide for establishing permanent Benches and making a statutory allocation of work by allotting certain cases or class of cases arising from certain districts to the respective Benches.

203. On the question of relief claimed by the petitioners regarding cases instituted and pending at Jabalpur and said to be arising out of those districts, which have been allotted to the respective Benches, it is apparent that when the earlier orders passed by the Chief Justice of High Court from time to time in exercise of the powers derived from the proviso to the Presidential Order, were in force, such cases were instituted at Jabalpur without any objection because the meaning of the term "heard" as laid down by their Lordships of the SC in *Nasiruddin v. S. T. A. Tribunal*,⁵⁵ was not there and the term "heard" was construed and understood even to include the stage of institution

also. Similar was the construction put by the Allahabad High Court in *Nirmaldas v. S. T. A.*,⁵⁶ But now the correctness of institution will have to be examined in the light of observations made by their Lordships of the SC in this respect in Nasiruddin's case.

204. As I have already expressed that the Court being the same and there being no lack of inherent jurisdiction, the cases which are said to arise from the districts allotted to the respective Benches and have been instituted at Jabalpur according to the meaning of the term "heard" as construed and understood prior to the decision of the Supreme Court, there was no question of irregularity in such institutions then. Such cases cannot be treated as not presented to the High Court. At the most, it could be said to be irregular as they were mistakenly instituted and entertained against the manner prescribed for exercising the jurisdiction of the High Court by the Presidential Order at the Principal seat instead of the respective Benches.

205. Their Lordships of the SC have also explained the meaning and scope of the term "cases arising out of districts" in the case cited above. As observed by their Lordships, when the cause of action in part arises in the specified districts allotted to the respective Benches and part of the cause of action arises outside the specified districts it will be open to the litigants to frame the case appropriately so that it may be filed either at the respective Benches or at the principal seat. This aspect will have to be examined in respect of the cases which are already pending at Jabalpur and have been instituted and entertained according to the meaning of the term "heard" as understood prior to the decision of the Supreme Court. Similarly, the cases on criminal side, which have been instituted at Jabalpur and are pending, will have to be examined by taking into consideration as to where the offence has been committed and the effect of other provisions of the Criminal P. C. in that respect. If on examination, it is found that the cases instituted and pending at Jabalpur do not disclose even a part of cause of action in districts which have not been allotted to the Benches, they will be treated as mistakenly instituted and entertained and direction may be given to the Registry to transmit such cases to the respective Benches which attract such cases according to the allocation of districts by the Presidential Order. But without making such examination, these cases cannot be transmitted to the respective Benches in pursuance of the order passed by the Hon'ble the Chief Justice in exercise of powers derived from the proviso appended to the Presidential Order. This position has been specifically made clear by the observations made by their Lordships of the SC in Nasiruddin's case (supra). Accordingly the Chief Justice has no power under these

circumstances to direct in his discretion such cases or class of cases which have been instituted at Jabalpur for being heard at Indore or Gwalior. Since in the present case, it has been specifically admitted by the Registrar of the High Court that all the cases mentioned in the lists (Annexs. R-19 to R-22) are being transmitted to the respective Benches in compliance with the order passed by the Chief Justice in exercise of the powers derived from the proviso, it is not necessary to deal with the question whether the Chief Justice has power otherwise to direct hearing of the cases instituted at Jabalpur for being heard at Indore or Gwalior. However, it has been observed by my learned brother Rajna J. that there is such inherent power with the Chief Justice to direct hearing of the cases at any Bench or the Principal seat irrespective of their institution at a particular seat. For the purposes of this case, since no other order is in existence and the transmission of the cases is not claimed to be in pursuance of any such order, I do not feel it necessary to deal with this question further and express any opinion.

206. However, it is apparent that the cases, which are found rightly instituted at Jabalpur cannot be directed to be heard at Indore or Gwalior in exercise of powers derived from the proviso to the Presidential Order. I am, therefore, of the view that this aspect will have to be examined in each case and then only any direction can be made to the Registry for transmitting the cases to Indore or Gwalior if it is found that they have been mistakenly instituted or entertained. This was the course of action decided by the High Court of Allahabad in *Nirmaldas v. S. T. A.*,⁵⁷ and the same was confirmed by the SC in appeal. Similar course will have to be adopted here also. I have already observed that there is no case of lack of inherent jurisdiction and the allocation of districts is nothing but prescribing the manner of exercise of jurisdiction, there will be nothing illegal, if the cases instituted at Jabalpur are placed before the appropriate Benches functioning at Jabalpur according to the roster for deciding whether the cases have been mistakenly instituted and entertained and if it is found that they could not be instituted at Jabalpur according to the interpretation of the term "cases arising out of" made by the Supreme Court, necessary directions will have to be given to the Registry to transmit such cases to the respective Benches. Unless this is decided, it will not be just and proper to transmit all the cases to Indore and Gwalior without examining the actual position about the correctness of the institution. It will also save unnecessary waste of time in again sending back the cases from Indore and Gwalior if it is found that they were rightly instituted and entertained at Jabalpur.

207. As regards the question about *locus standi* of the petitioners, I agree with my learned brother Raina, J. and with all respect to my learned brother Oza J. I find myself unable to agree with him on this point. From the perusal of the orders made by my learned brother Raina, J. and brother Oza J., it is evident that there is no difference of opinion in respect of other points and the petitioners have been held not entitled to any relief, except regarding pending cases, by my learned brother Raina, J. also. I am also of the view that petition is liable to be dismissed, in respect of all other reliefs.

208. Consequently, the petitioners are entitled to relief in respect of the pending cases only to the extent indicated in paragraphs 7 and 8 (present paras. 205 and 206) above and the petition accordingly deserves to be partly allowed. There will be no order as to costs. Parties will bear their own costs.

209. **Vyas, J.** (Majority view) :- I had the advantage of reading the order prepared by my learned brother Raina J., as also the order prepared by my learned brother Oza J. They have agreed on some conclusions on the various questions raised in this case but have not agreed on the remaining question. With all respect for Raina, J. I am unable to agree with him on all the conclusions.

210. The facts leading to this petition have been discussed in detail both by Raina J., as also by Oza J. and it is, therefore, not necessary for me to repeat them. They have given their own reasons for the conclusions drawn and the views expressed on the various questions raised in this case. It is, therefore, not necessary to repeat them.

211. I entirely agree with Oza J. in the order prepared by him and am also of the opinion that for the reasons given and the view taken by Oza J., this petition should be dismissed as proposed by him.

212. By the Court : In accordance with the decision of the majority, the petition is hereby dismissed. We make no order as to costs of this petition. Security amount shall be refunded to the petitioners.

Petition dismissed.

Cases Referred.

1. AIR 1953 SC 357
2. AIR 1962 SC 876
3. AIR 1975 SC 1146
4. AIR 1962 SC 1044
5. AIR 1966 SC 828
6. AIR 1973 SC 2720
7. AIR 1976 SC 578
8. AIR 1951 SC 69
9. AIR 1957 Cal 534
10. AIR 1960 SC 424
11. AIR 1970 SC 1453
12. AIR 1967 SC 944
13. AIR 1967 SC 1048
14. AIR 1958 Kerala 188
15. (AIR 1958 Kerala 188)
16. 1970 MPLJ 794
17. M. P. NO. 166 of 1973, decided on 23-1-1973 (MP)
18. AIR 1952 All 550
19. AIR 1958 All 652 (FB)
20. AIR 1959 All 722
21. AIR 1971 All 96 (FB)
22. AIR 1972 All
23. AIR 1976 SC 331
24. AIR 1976 SC 1207
25. 1901 AC 495
26. AIR 1957 SC 18
27. (AIR 1958 All 652)
28. (AIR 1971 All 96)
29. (AIR 1972 All 200) (FB)
30. AIR 1972 SC 2427
31. AIR 1961 SC 573
32. AIR 1953 SC 274
33. (AIR 1958 All 652) (FB)
34. AIR 1969 SC 823
35. ILR 48 Cal 138 (FB)
36. AIR 1953 SC 357 at p. 360

37. (AIR 1976 SC 331)
38. AIR 1957 Cal 534
39. AIR 1961 Cal 545 (SB)
40. AIR 1965 Mys76
41. AIR 1967 SC 944
42. AIR 1973 SC 1461
43. (AIR 1967 SC 944)
44. AIR 1975 All 52
45. (AIR 1976 SC 331)
46. (AIR 1972 All 200) (FB). Paragraph
47. (AIR 1958 All 652) (FB)
48. Misc. Petn. No. 166 of 1973 decided (Gwalior) on 23-1-1973
49. 1970 Jab LJ 821 (FB)
50. (AIR 1953 SC 274)
51. AIR 1976 SC 1207
52. AIR 1962 SC 1044
53. AIR 1966 SC 828
54. AIR 1976 SC 578
55. (AIR 1976 SC 331)
56. (AIR 1972 All 200) (FB)
57. (AIR 1972 All 200) (FB)