

RAJASTHAN HIGH COURT

Ram Rakh Vyas

Vs.

Union of India

Civil Special Appeal No. 5 of 1977

(A.P. Sen and M.L. Srimal, JJ.)

28.01.1977

JUDGEMENT

Sen, J.

1. This special appeal filed by Sri Ram Rakh Vyas is directed against the judgment of D. P. Gupta J., dated 19-1-1977 dismissing his writ petition *in limine* by which he challenged the constitution of a permanent Bench of the Rajasthan High Court at Jaipur.

2. The Presidential Order issued on 8-12-1976 reads:

"MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Department of Justice)

NOTIFICATION

New Delhi, the 8th December, 1976.

G.S.R. 911 (E).- The following Order made by the President under sub section (2) of Section 51 of the States Reorganisation Act, 1956 (37 of 1956) is hereby published as required by the sub-section:-

THE HIGH COURT OF RAJASTHAN (ESTABLISHMENT OF A PERMANENT BENCH AT JAIPUR) ORDER, 1976.

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

1. Short title and commencement:- (1) This order may be called the High Court

of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976.

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

3. Establishment of a Permanent Bench of the Rajasthan High Court at Jaipur:- There shall be established a permanent Bench of the High Court of Rajasthan at Jaipur, and such Judges of the High Court of Rajasthan, being not less than five in number, as the Chief Justice of that High Court may, from time to time, nominate, shall sit at Jaipur in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Ajmer, Alwar, Bharatpur, Bundi, Jaipur, Jhalawar, Jhunjhun, Kotah, Sawai Madhopur, Sikar and Tonk:

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

SD/- F. A. AHMED
President.

New Delhi,
December 8, 1976.

4. The consequential order of Hon'ble the Acting Chief Justice dated 23-12- 1976 issued under the High Court of Rajasthan (Establishment of a permanent Bench at Jaipur) Order, 1976 is as follows:

" RAJHIGH COURT, JODHPUR
NOTIFICATION

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

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

(a) all cases arising in the revenue districts of Banswara, Barmer, Bikaner,

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

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

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

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

SD/- Ved Pal Tyagi

CHIEF JUSTICE

23-12-76."

5. The above order was modified on 12-1-1977 by the insertion of a new Explanation reading as below:-

"In the above order for the Explanation the following may be substituted.-

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

SD/- Ved Pal Tyagi

CHIEF JUSTICE

12-1-77."

6. To facilitate the functioning of the High Court Bench at Jaipur from 31-1- 1977, the Acting Chief Justice made three other orders dated 23-12-1976 relating to matters

incidental thereto, which read as follows:-

"To facilitate the functioning of the High Court Bench at Jaipur from January 31, 1977, cases arising in the districts of Ajmer, Alwar, Bundi, Bharatpur, Jaipur, Jhalawar, Jhunjhunu, Kotah, Sawaimadhopur, Sikar and Tonk shall not be listed in Court at Jodhpur for hearing with effect from the 3rd of January, 1977, unless specially ordered to be heard at Jodhpur.

SD/- Ved Pal Tyagi
CHIEF JUSTICE
23-12-76."

"In pursuance of the High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976, it is ordered that all pending cases as per Annexures-A, B and C which have arisen out of the revenue districts of Ajmer, Alwar, Bundi, Bharatpur, Jaipur, Jhalawar, Jhunjhunu, Kotah, Sawai Madhopur, Sikar and Tonk shall stand transferred to the Jaipur Bench with effect from the date the Jaipur Bench is established.

SD/- Ved Pal Tyagi
CHIEF JUSTICE
23-12-76."

"In view of the establishment of a permanent Bench at Jaipur vide the High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976, it is ordered that all part-heard cases which have arisen out of the revenue districts of Ajmer, Alwar, Bundi, Bharatpur, Jaipur, Jhalawar, Jhunjhunu, Kotah, Sawaimadhopur, Sikar and Tonk, shall not be treated as part heard. It is further ordered that if a case or class of cases which has arisen out of any of the revenue districts of Ajmer, Alwar, Bundi, Bharatpur, Jaipur, Jhalawar, Jhunjhunu, Kotah, Sawaimadhopur, Sikar and Tonk, is linked with a case or class of cases arising out of any of the revenue districts of Bhanswara, Barmer, Bikaner, Bhilwara, Chittorgarh, Churu, Doongarpur, Ganganagar, Jaisalmer, Jalore, Jodhpur, Nagaur, Pali, Sirohi and Udaipur, it shall be treated as delinked.

SD/- Ved Pal Tyagi
CHIEF JUSTICE

23-12-76."

7. Sri Milap Chand Bhoot, learned counsel for the appellant who argued the appeal with ability and precision, assailed the validity of the Presidential Order issued under Section 51 (2) of the States Reorganization Act, 1956 (hereinafter referred to as 'the Act') on three grounds namely,- (1) prior consultation with the Chief Justice is a *sine qua non* to the making of an order under Section 51 (2); the holding of consultation with the Acting Chief Justice was no 'consultation' within the meaning of Section 51 (2) of the Act, (2) the President has no power under Section 51 (2) of the Act to curtail the jurisdiction of the principal seat of the High Court at Jodhpur or to divide the High Court into territorial jurisdictions. Nor can exclusive jurisdiction be conferred on the High Court Bench at Jaipur to hear the cases arising in districts falling within its jurisdiction as detailed in the Presidential Order, and (3) the Act being of a transitory nature to meet certain exigencies arising out of the reorganization of States on the appointed date i.e. 1-11- 1956, the exercise of power by the President of India under Section 51 (2) after a lapse of 21 years is a complete nullity. We are afraid, none of these contentions can be accepted.

8. The validity of the order issued by the Hon'ble the Acting Chief Justice defining the respective jurisdictions of the main seat at Jodhpur and the permanent Bench at Jaipur has also been challenged by the learned counsel for the appellant on the following grounds viz.- (1) Unless the High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976 comes into force, the Acting Chief Justice could not have passed any order under its authority. (2) The Acting Chief Justice could not have passed any order for the transfer of pending cases or the cases instituted at the main seat at Jodhpur up to 31-1-1977 under the authority of the Presidential Order, inasmuch as the Presidential Order is clearly prospective in operation. (3) Under the proviso to the Presidential Order, cases falling within the jurisdiction of the Jaipur Bench could be withdrawn to the main seat at Jodhpur and not vice versa. (4) The Acting Chief Justice cannot decide, in his administrative capacity, the fact of jurisdiction for the purpose of allocation of cases to the Jaipur Bench on the basis of cause of action. These contentions cannot, in our opinion, prevail.

8A. By Section 51 (2) of the Act, it is enacted that:-

"51 (2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent Bench or Benches of that High Court at

one or more places within the State other than the principal seat of the High Court and for any matter connected therewith."

The provision in plain terms empowers the President to direct for the establishment of a permanent Bench or Benches of the High Court of a State, after consultation with the Governor of that State and the Chief Justice of the High Court. The word 'President' in the context means the Council of Ministers: *Samsher Singh's case*, AIR 1974 Supreme Court 2192.

9. It will be convenient at this stage to state certain facts. The establishment of a Bench of the High Court at Jaipur is not a new feature. The United States of Rajasthan was inaugurated on 30-3-1949, and started functioning on and from 7-4-1949. The component units were the former State of Rajasthan, the Matsya Union, the Jaipur State, the Jodhpur State, the Bikaner State and the Jaisalmer State. Barsing Jaisalmer each of these units had a High Court of its own. As a result of the formation of the Union, it became necessary to abolish the High Courts in the various integrated units and establish a High Court for the United State of Rajasthan i.e., the old State of Rajasthan. Accordingly, His Highness the Raj Pramukh on 21-6-1949 promulgated an Ordinance called the Rajasthan High Court Ordinance, 1949. In pursuance of sub section (3) of Section 1 of the Ordinance, a Notification dated 25-8-1949 was published in a Gazette Extraordinary announcing that His Highness the Raj Pramukh was pleased to appoint 29-8-1949 to be the date for the inauguration at Jodhpur of the High Court of Judicature for Rajasthan or shortly the Rajasthan High Court, with a direction that the High Court shall also sit simultaneously (i) at Jaipur to dispose of the work arising in the Jaipur and Kota Divisions, and (ii) at Udaipur to dispose of the work arising in the Udaipur Division. The inauguration of the High Court took place at Jodhpur on the appointed day viz., 29-8-1949. Section 3 of the Ordinance provides that the High Court shall consist of a Chief Justice or such number of Judges as the Raj Pramukh may deem it necessary to appoint. Section 10 lays down that the High Court shall sit at Jodhpur and at such place or places, if any, as the Raj Pramukh may from time to time appoint either permanently or for a specified period. Section 7 (1) provides that, if the office of the Chief Justice becomes vacant or if the Chief Justice is by reason of absence, or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by the Raj Pramukh to the vacant office has entered into the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other Judges of the High Court as the Raj Pramukh may think fit for the purpose. The expression 'Chief

Justice' is defined in Section 2 (b) to mean the Chief Justice of the High Court and to include a person appointed to act as a Chief Justice. Section 44 (2) directs that the Chief Justice shall be responsible for the distribution and conduct of the business of the High Court.

10. After the inauguration of the Constitution on 26-1-1950, the old State of Rajasthan became a part 'B' State. The new State of Rajasthan comprising of the territories mentioned in Section 10 of the States Reorganization Act was constituted on 1-11-1956 i.e. on the appointed day. Section 49 (2) provides that, as from the appointed day, there shall be established a High Court for the new State of Rajasthan. Section 50 (1) of the Act provides that, as from the appointed day the High Courts of all the existing Part 'B' States i.e., including the State of Rajasthan shall cease to function and stand abolished. By a Presidential Order dated 27-10-1956 issued under Section 50 (1) of the Act, it was directed that the principal seat of the High Court for the new State of Rajasthan shall be at Jodhpur. After the appointed day the Chief Justice in exercise of his powers under Section 51 (3) established a temporary Bench at Jaipur w.e.f. 1-11-1956. Subsequently, the Chief Justice by his order dated 14-7-1958, abolished the Jaipur Bench. We need not go into the reason for the abolition of the Jaipur Bench. It, however, appears that the question of establishing a permanent Bench was under consideration of the Central Government for quite some time. Eventually, in exercise of the powers conferred by sub section (2) of Section 51 of the Act, the President, after consultation with the Governor of Rajasthan, and the Chief Justice of the High Court of Rajasthan, issued the High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976, for the establishment of a permanent Bench of the Rajasthan High Court at Jaipur, which is to come into force on 31-1-1977.

11. We are satisfied that the Presidential Order does not suffer from any infirmity. The appellant has nowhere averred in the writ petition that the Presidential Order was issued without consultation with the Chief Justice. The impugned notification *ex facie* states that the Presidential Order was issued after such consultation. We are afraid, the Court cannot go behind the impugned notification, in the absence of any such averment. That apart, the words 'after consultation with' in Section 51 (2) of the Act, makes the requirements directory. The language of Section 51 (2) of the Ad is more or less the same as in Article 320 (3) of the Constitution. There was a conflict of judicial opinion whether Article 320 (3) (c) was mandatory. In *State of U. P. v. Manbodhan Lal Srivastava*,¹ the Supreme Court resolved the conflict and held that Article 320 (3) was

directory. It has been held in numerous decisions that a provision that A shall act after consultation with B does not mean that A is bound to follow the advice of B. A controversy arose about the interpretation of Article 124 (2), regarding the appointment of the Chief Justice of India in *P. L. Lakhanpal v. Ajit Nath Ray*,² The words 'after consultation with such of the Judges of the Supreme Court and of the High Courts..... as the President may deem necessary for the purpose' confer wide discretionary powers. The President must first determine it whether he considers it necessary to consult any Judge or Judges of the Supreme Court, etc. From this wide discretionary powers, the proviso carves out a limitation, namely, that in the appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted. In dealing with the question, it is observed in Seervai's Constitutional Law, 2nd Edn., Vol. II, p. 1379, the consultation provided for in sub section (3) is discretionary, for the words are 'may deem necessary', whereas the consultation in the proviso is obligatory, for the words are 'shall always be consulted'. The learned author then observes:

'Article 126 provides:

"When the office of the Chief Justice of India is vacant or when the Chief Justice is by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

No consultation with the Chief Justice who is absent or engaged in any other work is provided for. Article 124 (2) may also be compared with Article 320, for that Article provides for consultation with the Public Service Commission and makes such consultation obligatory (sic) though if by mistake or inadvertence consultation does not take place, it would not render the action of the Government void."

12. There can be no doubt that the Presidential Order was strictly in conformity with Section 51 (2) of the Act and is therefore not invalid. Even if it be regarded that consultation with the Chief Justice under Section 51 (2) is obligatory, that requirement has Clearly been met.

13. The contention that the holding of consultation with the Acting Chief Justice was no 'consultation' within the meaning of Section 51 (2) of the Act, can hardly be accepted. In support of the contention, learned counsel for the appellant relied on

Bishan Chand v. Chattur Sen,³ There the then Chief Justice was elevated to the Supreme Court and therefore the office of the Chief Justice fell vacant. The question was whether the High Court was validly constituted. In repelling the argument, the Court held that in spite of the office of the Chief Justice being vacant, there was no invalidity in the constitution of the High Court, stating:-

"The High Court continues to consist of a Chief Justice and other Judges in spite of the fact that for the time being, the office of Chief Justice is vacant. If the contentions made by the learned counsel were to be accepted, the result would be, that as soon as the office of Chief Justice of a High Court gets vacant or as soon as by reason of his absence or otherwise the Chief Justice of a High Court is unable to perform the duties of his office, such a High Court would cease to be properly constituted as required by Article 216 of the Constitution. It is not possible to hold that such a result was contemplated."

Thus the decision is of no avail to the appellant.

14. In *Emperor v. Sohrai Koeri*,⁴ news was received of the death of Sir Courtney-Terrell C. J., which took place in England, after the hearing of a criminal appeal before a Division Bench was concluded and judgment reserved. An objection was taken that there being no Chief Justice, the High Court was not properly constituted and therefore the Bench ceased to have jurisdiction. In repelling the objection, Chatterji J. adverted to Section 220 of the Government of India Act, 1935, which was *in pari materia* with Article 223, and observed:

"Thus the contingency of the office of Chief Justice remaining vacant for some time is expressly recognized and provided for. In the case of a vacancy caused by death, some time must necessarily elapse before a new appointment is made. It will be preposterous to hold that during that interval there is no properly constituted High Court. The vacancy in any office implies that the office exists. Vacancy must be distinguished from abolition of the office. When a Chief Justice dies, the office does not die with him but still continues. It only remains vacant until it is filled up.

In my opinion, so long as the office is not abolished the constitution remains unbroken and unchanged. The only effect of the vacancy in the office of Chief Justice, so long as it continues, is that there will be nobody to perform his duties unless the Governor-General appoints some one of the other Judges to do the same." We are in respectful

agreement with these observations.

15. The Constitution-makers did not leave a hiatus. There can be no Union without the President (Article 52). There can be no Supreme Court without the Chief Justice of India (Article 124 (1)). There can be no High Court without a Chief Justice (Article 216). The framers of the Constitution envisaged that there can be a vacancy in the office of the President, the Chief Justice of India or the Chief Justice of a High Court, by reason of absence or otherwise, i.e., by death or illness or leave. They, therefore, provided for these exigencies. Article 65 provides that, in the event of occurring of a vacancy in the office of the President by reason of death, resignation, removal or otherwise, the Vice-President shall act as President until the date on which a new President is elected. Similarly, Article 126 provides that, when the office of the Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of his office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose. Likewise, Article 223 provides for the appointment of Acting Chief Justice of a High Court.

16. Article 223 of the Constitution enacts:

"223. Appointment of Acting Chief Justice. When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose." The provision in plain terms provides that the acting Chief Justice shall perform the duties of the office of the Chief Justice. The Chief Justice of a High Court has multifarious duties. He holds administrative charge over the subordinate judiciary. He is the master of the roster and is responsible for the distribution and conduct of the business of the High Court. Under Article 219, he is to administer oath of office to a newly appointed Judge of the High Court under authorization from the Governor. By Article 229, he is the appointing authority of the officers and servants of the High Court. The consultation envisaged under Section 51(2) of the Act is but one of the duties of the office of the Chief Justice. When Article 223 enjoins that when the office of the Chief Justice of a High Court is vacant, the duties of the office shall be performed by the acting Chief Justice, it follows that the consultation must be with the acting Chief Justice for the time being. Thus it

cannot be said that the consultation with the acting Chief Justice amounted to a non-compliance of the requirements of Section 51 (2) of the Act.

17. When a statute confers a power or imposes a duty, then unless a contrary intention appears, the power may be exercised and duty performed from time to time as occasion arises, and when the power is conferred or the duty is imposed on the holder of the office as such, it may be exercised or performed by the holder for the time being. We are, therefore, inclined to think that the expression 'Chief Justice' in Section 51 (2) of the Act embraces within its ambit an acting Chief Justice.

18. In re Pre-audience of the Acting Advocate General, AIR 1932 Bombay 71 (FB), a question arose whether an acting Advocate General had the right of general pre-audience at the Bar. Mr. Coltman appeared for the Bar Association and Sir Chimanlal Setalvad for the Bar Council. Sir John Beaumont, C. J., delivering the judgment of the Full Bench, observed:

"If the effect of the Act be, upon the construction given to it by Mr. Coltman, to take away from the acting Advocate General all rights to pre-audience, whether in respect of Crown business or any other business, that rather disposes one to think that Mr. Coltman's construction is wrong and that the expression 'Advocate General' in the proviso to Section 8 (4) indicates the person for the time being lawfully exercising the office of Advocate General, and does not refer to the Particular individual who has been appointed by Letters Patent.

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"Mr. Coltman says that if the legislature had intended the expression 'Advocate General' to include an acting Advocate General, it would have used apt words to give effect to that intention, and he refers us to other Acts, particularly the Post Office Act and the Administrator General's Act, in which that intention is given effect to. But the argument, I think, is a double-edged weapon, because it may be said with force that the legislature must have known at the time when it passed the Bar Councils Act, that there was power under the Government of India Act to appoint an acting Advocate General, and if it had thought that there was any doubt about what the acting Advocate General's rights were under the Act, it would have provided for the matter in the definition clause. The fact that it has not done so rather suggests that the legislature thought that the expression 'Advocate General' as used throughout the Act would by itself include an acting

Advocate General."

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"In my judgment, upon the true construction of the Act read as a whole, the expression 'Advocate General' is used as meaning the person for the time being legally entitled to exercise the powers of the Advocate General. If that is so, then he is given a right of preaudience in all cases....."

In that view, their Lordships held that the acting Advocate General was entitled to a right of pre-audience over all other Advocates in respect of every business whether for the Crown or of a private nature.

19. By parity of reasoning, the expression 'Chief justice' in Section 51 (2), in our view, must, in the context, include the acting Chief Justice for the time being lawfully exercising the duties of the office of the Chief Justice. That construction of ours is borne out by the definition of the expression 'Chief Justice' in Section 2 (b) of the Rajasthan High Court Ordinance, 1949, which reads:

"2 (b) 'Chief Justice' means the Chief Justice of the High Court and includes a person appointed to act as Chief Justice."

20. The consultation with the acting Chief Justice was in compliance with the requirements of Section 51 (2) of the Act and, therefore, the Presidential Order is not invalidated thereby.

21. In *Ajaib Singh v. Gurbachan Singh*,⁵ which is the main sheet-anchor of the appellant's case, the facts were these: The order of detention passed under Rule 30 (1) (b) of the Defense of India Rules, 1962 was passed by Sri Lall Singh as District Magistrate, Amritsar. At that time, he was Additional District Magistrate of Amritsar and had been, inter alia, invested under Section 10 (2) of the Cri. P. C. with all the powers of a District Magistrate under the Code or under any other law for the time being in force. Further, when the order of transfer of Sri Bhalla, the District Magistrate, was made, instructions were issued that Sri Bhalla should hand over charge to Sri Lall Singh, who would hold current charge of the post of District Magistrate, Amritsar till further orders. No order was passed under Section 10 (1) of the Code appointing either Sri Lall Singh or any other officer as District Magistrate, Amritsar. The order of detention was challenged on the ground notwithstanding the

fact that Sri Lall Singh as Additional District Magistrate was entrusted under Section 10 (2) of the Criminal Procedure Code with all the powers under the Code and also under any other law for the time being in force, he was the District Magistrate and, therefore, not entitled to pass any order of detention. In reply, learned Advocate General for the State of Punjab contended, firstly, that Sri Lall Singh having been invested with all the powers of a District Magistrate under the Code, he would have the power to detain persons under the law contained in a notification delegating the power of detention to all District Magistrates and, secondly, Sri Lall Singh was holding charge of the current duties of the office of the District Magistrate and, therefore, he was, in fact and in law, the District Magistrate of Amritsar. Their Lordships struck down the order of detention as being invalid, stating:

"But even if an Additional District Magistrate has been appointed with all the powers under the Code or under any other law for the time being in force, he is still not the District Magistrate unless the Government appoints him as such under Section 10 (1) of the Code. Further, Section 11 of the code envisages the contingency of the office of the District Magistrate becoming vacant. It provides that where this contingency arises, any officer succeeding temporarily to the chief executive administration of the district shall, pending the order of the Government, exercise all the powers and perform all the duties respectively conferred and imposed by the code on the District Magistrate. But even if an officer is exercising the powers of the District Magistrate on there being a vacancy in the office of the District Magistrate he is still not the District Magistrate until he is appointed as such under Section 10 (1) of the Code."

22. To the same effect is the decision of the Supreme Court in *Hari Chand v. Batala Engineering Co.*,⁶

23. There is a distinction between a person who is appointed to officiate on a higher post and a person who is appointed. to be in charge of the current duties of that post. In *Satna Central Co-op. and Land Mortgage Bank Ltd. v. Puranlal Agarwal*,⁷ one of us (Sen J.) sitting with G. P. Singh J. had occasion to bring out this difference and observed, following the decision in *Ram Ratan v. State*,⁸ that a person who is merely appointed to be in charge of the current duties of a higher post without being clothed with that rank as in the case of an officiating appointment, can only exercise administrative or financial powers vested in the incumbent but not statutory powers of

that post. That view was upheld in *Girja Shanker Shukla v. Sub-Divisional Officer, Harda*,⁹ Verma J., delivering the judgment of the Full Bench, observed:

"In my view, the distinction between an officer holding a particular post and an officer holding the current charge of that post is much greater than that between an officer holding a particular post and another officer invested with all the powers attached to that post. An order appointing a particular officer to hold current charge of a duty is an administrative order intended to clothe such a person with all the administrative powers which have no statutory basis. An officer appointed to hold the current charge of the duties of a higher post cannot exercise the statutory powers attached to that post unless there is a statutory provision to this effect.

In view of the above position, the general agreement expressed by Sen J. in *Satna Central Co-op. and Land Mortgage Bank Ltd. v. Puranlal Agarwal (supra)* that the law enunciated in Ram Ratan's case (*supra*) was correct."

The decision in Ajaib Singh's case (*supra*) on which strong reliance is placed by the appellant is clearly distinguishable because their Lordships were dealing with a person who is placed only 'in current charge of the duties of a post' and they held that he does not thereby hold that rank. There is no question of the acting Chief Justice by virtue of his appointment as such by the President under Article 223 being placed 'in current charge of the duties'. On the contrary, Article 223, in terms, provides that by reason of such appointment the acting Chief Justice shall perform the duties of the office of the Chief Justice.

24. In *Montreal Street Rly. Co. v. Normandin*,¹⁰ the Privy Council observed that non-compliance with the requirements of a section which is directory, would not render an appointment otherwise regularly and validly made ineffective or inoperative. Any other view would entail general inconvenience and injustice to persons who have no control over those entrusted with the duty of making recommendations. The same view was taken by the Federal Court in *Biswanath Khimka v. Emperor*,¹¹ Their Lordships of the Supreme Court in the *State of U. P. v. Manbodhanlal Srivastava (supra)* have followed these decisions and laid down that the absence of consultation or any irregularity in consultation should not afford a person a cause of action in a Court of Law, or entitle him to relief under the special powers of a High Court under Article 226. To use their Lordships' words, 'it is not a right which could be recognized and enforced by a writ.' The first contention, therefore, fails.

25. The next contention that the President has no power under Section 51 (2) of the Act to curtail the jurisdiction of the principal seat of the High Court at Jodhpur or to divide the High Court into two territorial jurisdictions, cannot also be accepted. Nor can it be accepted that the President could not by issuing the Presidential order confer exclusive jurisdiction on the High Court Bench at Jaipur to hear the cases arising in the districts falling within its jurisdiction. These contentions are wholly devoid of substance. The curtailment of the territorial jurisdiction of the main seat of a High Court is a necessary concomitant to the establishment of a permanent Bench, under Section 51 (2) of the Act. This was brought out by the Kerala High Court in *Manikam Pillai v. Asst. Registrar, High Court, Kerala*,¹² while contrasting Section 51 (3) with Section 51 (2). The Full Bench of the Madhya Pradesh High Court in *A.T. Abbas Bhai v. Union of India*,¹³ in its majority decision, has also taken the same view. It must follow as a necessary corollary that having provided for the establishment of a permanent Bench, there must be the demarcation of the jurisdiction of the Bench in relation to the main seat. That is a matter incidental thereto.

26. Article 3 of the Constitution enables the Parliament to make law for the formation of new States. The Act is a legislation under Article 3 for reorganization of States. Article 4 of the Constitution provides that any law referred to in Article 3, shall contain 'such supplementary, incidental and consequential provisions, as the Parliament may deem necessary'. The provision for abolition of the High Court of Rajasthan by Section 50 (1) and for establishment of a High Court for the new State under Section 49 (2) was consequential upon the formation of the new State of Rajasthan under Section 10 of the Act comprising of the old State of Rajasthan together with the territories mentioned therein, including the erstwhile State of Ajmer which was a part 'C' State. The establishment of a principal seat under Section 51 (1) and the formation of a permanent Bench under Section 51 (2) by Presidential Orders are matters incidental thereto. The President by a 'notified order' issued under Section 51 (2) could make provision for any matters connected therewith. The words 'for any matters connected therewith' clearly confer power on the President to define the territorial jurisdiction of the permanent Bench in relation to the main seat as also for the conferment of the exclusive jurisdiction to the permanent Bench to hear cases arising in districts falling within its jurisdiction. The second contention must also, therefore fail.

27. The contention that the Act being of a transitory nature, the exercise of the power

by the President under Section 51 (2) after a lapse of 21 years is a complete nullity, does not impress us at all. It is pointed out that when the new State of Rajasthan was formed on the appointed day, the principal seat of the High Court was established at Jodhpur by the Presidential Order dated 27-10-1956 issued under Section 51 (1) of the Act. On the establishment of the main seat at Jodhpur, the Chief Justice in exercise of his powers under Section 51 (3), formed a temporary Bench at Jaipur. However, it is said that in view of the recommendation of the Law Commission for the abolition of Benches and unification of High Courts, the Chief Justice by his order dated 14-7-1958 abolished the Jaipur Bench. In such circumstances, it is urged that the President must be presumed to have refused the establishment of a permanent Bench at Jaipur or at any other place. Under Section 51 (2) it is said, the President is not given any power to exercise its functions from time to time. So, the exercise of that power after the lapse of 21 years is without jurisdiction. We are afraid, this line of reasoning cannot be accepted.

28. It is a matter of common knowledge that the Parliament in its wisdom considered it necessary to reorganize the existing States in India and to provide for it and other matters connected therewith and with that end in view the States Reorganization Act, 1956 was enacted. As a result of reorganization, boundaries of various States changed. Some of the States merged into other States in its entirety, while some States got split and certain parts thereof merged into one State and other parts into another State. These problems were bound to give rise, and did give rise, to various complex problems. These problems are bound to arise from time to time. The Act is a permanent Act on the statute book. Section 14 of the General Clauses Act provides that, where, by any Central Act or Regulation, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion arises. The section embodies a well-known rule of construction. That the power may be exercised from time to time when occasion arises unless a contrary intention appears is, therefore, well settled. (*See National Sewing Thread Co. v. James C.*¹⁴ and *Express Newspaper (Pvt.) Ltd. v. Union of India*,¹⁵

29. It is futile to contend that the President could not have issued the Presidential Order under Section 51 (2) for the establishment of a permanent Bench at Jaipur, when the earlier temporary Bench at Jaipur was abolished by the Chief Justice by his order dated 14-7-1958. That was but a temporary Bench formed by the Chief Justice in exercise of his powers under Section 51 (3). There was thus no occasion for the

President to exercise his powers under Section 51 (2). The third contention must, therefore, fail.

30. That takes us to the alleged invalidity of the various orders issued by the Hon'ble the acting Chief Justice. The two principal grounds taken are:

- (1) That the acting Chief Justice could not have passed any order for the transfer of pending cases instituted at the main seat at Jodhpur up to 31-1- 1977 to the Jaipur Bench under the authority of the Presidential Order inasmuch as the Presidential Order is clearly prospective in operation, and
- (2) That under the proviso to the Presidential Order cases falling within the jurisdiction of the Jaipur Bench could be withdrawn at Jodhpur and not vice-versa.

Neither of these contentions has, in our opinion, any force.

31. Learned counsel for the appellant placed strong reliance on the observations of the Madhya Pradesh High Court in *Gulabchand Kapurchand Jain v. Rukmanidevi*,¹⁶ that the words 'arising in the districts of' are prospective in nature. The Presidential Order, therefore, it is said, creates the permanent Bench at Jaipur for the purpose of hearing cases to be instituted at Jaipur after its establishment i.e. after 31-1-1977. In *Gulabchand Kapurchand's* case (supra) Pandey, J. while interpreting an identical expression appearing in two Presidential Orders dated 28-11-1968 issued under Section 51 (2) of the Act, creating permanent Benches of the High Court of Madhya Pradesh at Indore and Gwalior, observed:

"The expression 'in respect of cases arising in the Revenue Districts of' used in the notifications is merely a compendious description of the cases to which the notifications apply prospectively. It would thus appear that the notifications are prospective in operation....."

32. With respect, we are unable to accept the construction placed by the Madhya Pradesh High Court on the words 'arising in the districts of'. The words 'arising in' must, in the context, mean 'pertaining to the districts of' or 'arising from'. Any other meaning given to these words would result in a construction *reductio ad absurdum*. If a provision in a remedial statute is reasonably capable of two constructions, that

construction should be preferred which furthers the policy of the Act and is more beneficial to those in whose interest the Act may have been passed; and the doubt, if any, should be resolved in their favor.

33. That apart, the decision in Gulabchand Kapurchand's case (AIR 1971 Madhya Pradesh 40) (FB) (supra) is clearly distinguishable on facts. There, the question arose whether a case relating to the Gwalior region which had been transferred by the Chief Justice to the Indore Bench, prior to the issue of the two notifications under Section 51 (2) establishing permanent Benches at these places, could be heard at the Indore Bench. It appears that the case was transferred from Gwalior because none of the two Judges constituting the Division Bench could hear it. In repelling the contention that the Indore Bench had no jurisdiction to hear the case which had already been transferred prior to the issue of the notifications under Section 51 (1), the Madhya Pradesh High Court observed:

"In the light of the principle of construction of statute just mentioned, we have carefully considered the language employed in the two notifications and we do not find therein anything to indicate that they were intended to be retrospective in the sense that all contrary orders passed earlier by the Chief Justice in the exercise of his undoubted powers were thereby rendered retroactively ineffective."

This case, therefore, has no application to the facts and circumstances of the present case.

34. It is wrong to attribute to the proviso of the Presidential Order a meaning which is not intended. The proviso carves out an exception from the main enacting part. It declares that notwithstanding the establishment of a permanent Bench at Jaipur, the Chief Justice shall have the power to direct that any case or class of cases arising in any of the districts falling within the jurisdiction of the Jaipur Bench, shall be heard at the main seat at Jodhpur. The proviso, therefore, reaffirms the pre-existing power of the Chief Justice for distribution of the business of the High Court under Section 44 (2) of the Rajasthan High Court Ordinance, 1949, which reads:

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

The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court. This is a power which flows not only from the provision contained in Section 44 (2) but inheres in the nature of things. In *Niranjan Singh v. State of Rajasthan*¹⁷ the Full Bench has affirmed such powers in the Chief Justice, flowing from Rule 54 of the Rajasthan High Court Rules, 1952.

35. That view of ours stands fortified by the observations of the Madhya Pradesh High Court in *Gulabchand Kapurchand's case*, (AIR 1971 Madhya Pradesh 40) (FB) (*supra*), to the effect:

"It would appear that there is nothing in this notification which precludes the Judges constituting for the time being the permanent Bench at Indore from hearing cases other than those indicated in the notification. For example, if a case which should ordinarily be heard at the main seat of the High Court, is directed by the Chief Justice to be heard by the permanent Bench at Indore, the notification cannot stand in the way of the Bench hearing it. In other words, the notification purports to provide that the power and jurisdiction in regard to certain cases therein specified would be exercisable, unless the Chief Justice acting under the proviso otherwise directs by the permanent Bench sitting at Indore. But it is silent about the power and jurisdiction of that Bench in regard to all other cases and those must, therefore, be regarded as remaining unaffected and unimpaired."

36. We must, however, observe that the learned single Judge was not right in holding that cases 'instituted' at the Jaipur Bench after 31-1-1977 shall be 'heard' only at the Jaipur Bench. This is contrary to the proviso to the Presidential Order. The learned single Judge appears to have, in reaching that conclusion, followed the decision of their Lordships of the Supreme Court in *Nasiruddin v. State Transport Appellate Tribunal*,¹⁸ Their Lordships' decision in *Nasiruddin's case*, *supra* is clearly distinguishable. There, their Lordships were concerned with amalgamation of two High Courts. After the amalgamation, the two High Courts ceased to exist and became Benches of the newly constituted High Court. In those circumstances, their Lordships held that a case 'instituted' at a particular Bench had to be 'heard' at that Bench. Here, there is creation of a permanent Bench by a Presidential Order issued under Section 51 (2). The matter falls to be determined by the terms of the Presidential Order which by the proviso enables the withdrawal of a case or class of cases from the permanent

Bench at Jaipur to the main seat at Jodhpur.

37. With respect to the other orders, issued by the Hon'ble the acting Chief Justice, their validity is beyond question. No doubt, the Presidential Order comes into force on 31-1-1977 as provided for by sub-Clause (2) of clause (1). Clause (2) provides that there shall be established a permanent Bench of the Rajasthan High Court at Jaipur and such Judges of the Rajasthan High Court, being not less than five in number, as the Chief Justice of the High Court may nominate, shall sit at Jaipur. The permanent Bench at Jaipur is to be inaugurated on 31-1-1977. The formation of a permanent Bench at Jaipur consisting of five Judges within a period of one month was a formidable task. The Chief Justice, therefore, in the undoubted exercise of his powers of allocation of business under Section 44 (2) of the Rajasthan High Court Ordinance, 1949 could pass the various orders in question. It goes without saying that if the permanent Bench at Jaipur had to function from 31-1-1977, the cases pertaining to the districts falling within its jurisdiction could not be possibly listed after 31-1-1977. These cases after all had to be separated for being transferred to the Jaipur Bench. He was also right in directing that these cases shall be transferred to the Jaipur Bench after the date of its establishment. We, therefore, find no force in the argument that the acting Chief Justice could not have taken these steps.

38. The appellant is not a person aggrieved and has, therefore, no *locus standi* to maintain the writ petition. He is an advocate practising at Jodhpur. Nothing has been brought to our notice to show which of his cases have been transferred to the Jaipur Bench. Even if that be so, he as an Advocate is entitled to appear at the Jaipur Bench and argue the cases. The appellant is not a litigant and, therefore, is not a person interested in the creation of the Jaipur Bench which has been formed for the convenience of the general litigant public.

39. Furthermore, the pecuniary interest as an Advocate, if any, cannot override the larger interest of the general public for whose benefit the permanent Bench at Jaipur has been created.

40. The President of India is not amenable to the writ jurisdiction of the High Court under Article 361 of the Constitution. Clause (1) of Article 361 covers not only the powers and duties of the President under the Constitution but also the exercise and performance of the powers and duties conferred on the President *qua* President by any Act or the Rules made there under. The writ petition filed by the appellant against the

President of India, is therefore, not maintainable.

41. The writ petition was, however, maintainable against the Central Government under the 2nd proviso to Article 361 (1). But for reasons already adumbrated, the appellant was not entitled to any relief in the writ petition.

42. The result, therefore, is that the special appeal fails and is dismissed.

Appeal dismissed.

Cases Referred.

1. AIR 1957 SC 912
2. AIR 1975 Del 66 (FB)
3. AIR 1967 All 506
4. AIR 1938 Pat 550
5. AIR 1965 SC 1619
6. AIR 1969 SC 483
7. 1969 MPLJ 879
8. AIR 1964 Mad Pra 114
9. AIR 1973 Mad Pra 104 (FB)
10. LR, (1917) AC 170
11. AIR 1945 FC 67
12. AIR 1958 Ker 188
13. 1976 Jab LJ 706 (FB)
14. AIR 1953 SC 357
15. AIR 1958 SC 578
16. AIR 1971 Mad Pra 40 (FB)
17. 1974 Raj LW 277 (FB)
18. AIR 1976 SC 331