Ram Sahai Vs The Deputy Director of Consolidation, U.P., Lucknow Camp at Pratapgarh and Others

Civil Miscellaneous Writ No''s. 2438, 2997, 3823, 3932, 4933, 4936, 5382, 5414, 6954, 8823, 8824, 8827, 8652, 8653, 8654, 8717, 8739, 8764 to 8768, 8770, 8821, 8822, 9167, 9191, 9193, 9195, 9196 and 9198 of 1971

Court: Allahabad High Court

Date of Decision: Jan. 20, 1972

Acts Referred:
Uttar Pradesh High Courts (Amalgamation) Order, 1948 â€" Article 14

Citation: AIR 1972 All 359 : (1972) 42 AWR 63 : (1972) RD 105

Hon'ble Judges: Gopi Nath, J; B.N. Lokur, J

Bench: Division Bench

Advocate: G.N. Verma and Brij Bhushan, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Lokur, J.
These petitions under Article 226 of the Constitution are listed for admission. All of them are cases arising within the jurisdiction

of the Judges sitting at Lucknow as determined under the first proviso to Article 14 of the U. P. High Courts (Amalgamation) Order, 1948,

hereinafter referred to as ""the Amalgamation Order"". In view of the Full Bench decision in Nirmal Dass Khaturia and Others Vs. The State

Transport (Appellate) Tribunal, U.P., Lucknow and Others, a preliminary question arises whether these cases can be entertained and heard at

Allahabad. The Full Bench, on a consideration of the provisions of Article 14 of the Amalgamation Order, expressed the view inter alia, by a

majority of four to one, as follows-

(1) A case falling within the jurisdiction of the 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 of 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.

In the light of this opinion, these petitions cannot be entertained and heard at Allahabad unless there is an order by the Chief Justice under the

second proviso to Article 14 of the Amalgamation Order. The learned counsel for the petitioners urged that there is such an order and the petitions

can be heard and decided at Allahabad. Our attention in this connection has been drawn to order No. 813/1b-39, dated 15/17th January, 1951

which reads as follows:

In exercise of the powers conferred by Article 14 of the United Provinces High Courts (Amalgamation) Order, 1948 and in partial modification of

the Court''s Notifications Nos. 6103, dated July 26, 1948, and No. 1182/1b-39, dated February 11, 1950, as amended up to date, the Chief

Justice is pleased to direct that with effect from the 15th January, 1951, all applications for issue of directions, orders or writs under Article 226 of

the Constitution of India, arising out of matters within the territorial jurisdiction of the Luck-now Bench, can be filed either at Lucknow or at

Allahabad.'''' Order No. 1182/lb-39, dated February 11, 1950. modified by this order, is as follows:--

In exercise of the powers conferred by Article 14 of the Uttar Pradesh High Court''s (Amalgamation) Order, 1948, and in partial modification of

the Court''s notification No. 6103, dated July 26, 1948 as amended up to date the Chief Justice is pleased to direct that with effect from the 20th

February, 1950, all applications for issue of directions, orders or writs under Article 226 of the Constitution of India, other than writs in the nature

of habeas corpus, shall be presented at Allahabad.'''' While the order dated January 15/17, 1951, enables a party to file a petition under Article 226

of the Constitution either at Lucknow or at Allahabad, the order dated February 11, 1950, requires all such petitions to be presented at Allahabad.

We do not propose to enter at this stage into the validity or otherwise of either order and we remain content with saying that both these orders

permit filing or presentation of the present petitions at Allahabad and, accordingly, these petitions are properly instituted at Allahabad,

2. A question arises whether the expression ''''filed'''' employed in the order dated January 15/17, 1951, and the expression ''''presented'''' used in the

order dated February 11, 1950, would merely mean institution or also mean, hearing. Both the orders are relatable to the second proviso to

Article 14 of the Amalgamation Order and the two expressions have to be construed in the context of that proviso. When so construed, it appears

to us that the two expressions ought to be under-stood in the extended sense of institution, hearing and decision; for, the purpose of enabling or

requiring the petitions to be filed at Allahabad is unquestionably for hearing and deciding them. Any narrow and literal interpretation of the two

expressions would defeat the purpose of the orders.

3. Accordingly, we hold that these petitions can be entertained and heard at Allahabad. The petitions may now be heard on merits for admission.