

Raghubar Dayal and Another Vs The State of U.P. and Others

Court: Allahabad High Court

Date of Decision: June 16, 1972

Acts Referred: Allahabad High Court Rules, 1952 " Rule 1, 10
Constitution of India, 1950 " Article 226

Citation: AIR 1973 All 84 : (1972) 42 AWR 572

Hon'ble Judges: N.D. Ojha, J

Bench: Single Bench

Advocate: S.D. Dubey, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.D. Ojha, J.

The petitioner filed a writ petition in this Court which was dismissed summarily on June 13, 1972. Now, the petitioner has

filed the present application for recalling the aforesaid order on the ground that the vacation Judge sitting singly has no power to dismiss a writ

petition summarily.

2. I have heard learned Counsel for the petitioner but I am unable to agree with the submissions made by him. It has been contended by the

learned Counsel for the petitioner that under Chapter V, Rule 10 of the Rules of the Court the Vacation Judge sitting singly is entitled to receive a

civil miscellaneous writ petition, but is not entitled to dismiss it in view of the provisions contained in Chapter XXII, Rule 1, or the Rules of the

Court, which lays down that an application for a direction or order or writ under Article 226 of the Constitution shall be made to the Division

Bench appointed to receive applications or, on any day on which no such Bench is sitting, to the Judge appointed to receive applications in civil

matters. It further provides that in the latter event the Judge shall direct that the application of laid before a Division Bench for orders. It has been

contended that if a Division Bench appointed to receive applications under Article 226 is not sitting, the Judge appointed to receive applications hi

civil matters can only entertain a writ petition and has to direct it to be laid before a Division Bench for orders. It was argued that since during the

vacation no Division Bench appointed to receive applications under Article 226 is sitting, the Vacation Judge can after entertaining a writ petition

only direct it to be laid before a Bench for orders.

3. Chapter XXII, Rule 1 envisages a Judge appointed to receive applications in civil matters. During the vacation no judge is appointed to receive

applications in civil matters. Chapter V, Rule 10 reads thus:

(1) Criminal work shall continue to be dealt with during the vacation by such Judges as may be appointed for the purpose by that Chief Justice.

They may also exercise the original and appellate jurisdiction vested in the court in any miscellaneous matter or any civil matter connected with,

relating to or arising out of, the execution of a decree, which may in their opinion, require immediate attention.

Such jurisdiction may be exercised even in cases which are under the Rules cognizable by two or more Judges, unless the case is required by any

other law to be heard by more than one Judge.

(2) Subject to any general or special order of the Chief Justice, Vacation Judges shall, in the absence of the Chief Justice, exercise jurisdiction at

Allahabad or Lucknow, as the case may be, in connection with the arrangement of Benches, listing of cases and other like matters.

4. Paragraph 1 of Sub-clause (1) of Rule 10 of Chapter V lays down that criminal work shall continue to be dealt with during the vacation by such

Judges as may be appointed for the purpose by the Chief Justice. During the vacation appointment is made of Vacation Judges by the Chief Justice

for the purpose of dealing with criminal work. Under the second paragraph of Rule 10 Sub-clause (1) a discretion has been given to the Vacation

Judge to exercise the original and appellate jurisdiction vested in the Court in any miscellaneous matter. The High Court in dealing with writ

petitions exercises original jurisdiction and there is no doubt that a writ petition comes within the definition of a miscellaneous matter. Therefore,

even though the Vacation Judge is not appointed for entertaining a writ petition a discretion has been left with him to entertain a writ petition.

Entertaining a writ petition necessarily involves the power to hear and decide such a writ petition. Paragraph 3 of Clause (1) of Rule 10 of Chapter

V empowers a Vacation Judge sitting singly to exercise jurisdiction even in cases which are under the Rules cognizable by two or more Judges,

unless by any other law the case is required to be heard by more than one Judge. No other law to the contrary has been brought to my notice. In

my opinion, therefore, the requirement of chapter XXII, Rule 1 that the Judge appointed to receive applications in civil matter shall only receive a

writ petition and shall, thereafter direct it to be laid before a Division Bench, does not apply to a Vacation Judge.

5. In this view of the matter there is no substance in the contention raised by the learned counsel for the petitioner.

6. No other point has been praised. This petition is accordingly dismissed.