
(2010) 09 AHC CK 0431

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 34179 of 2010

Smt. Maya Dixit and
Others

APPELLANT

Vs

The State of Uttar
Pradesh and Others

RESPONDENT

Date of Decision: Sept. 13, 2010

Acts Referred:

- Allahabad High Court Rules, 1952 - Rule 1, 12, 13, 14, 14(1)
- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 5
- Constitution of India, 1950 - Article 21, 215, 225

Hon'ble Judges: Ferdino I. Rebello, C.J; V.K. Shukla, J; A.P. Sahi, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Ferdino I. Rebello, C.J.

A learned Division Bench of this Court, hearing the above writ petitions, during the summer vacation, filed for quashing the Government Order dated 31st May, 2010, by which the lease holders of leases for excavating sand have been restrained from using machines for the purposes of excavating sand, and after noting that the impugned Government Order dated 31st May, 2010 was issued in furtherance of an interim order passed by the Lucknow Bench of this Court on 27th May, 2010 in Writ Petition No. 3879 (M/B) of 2010 Pradeep Chaudhary v. State of U.P. and Ors., and after considering some other aspects, was pleased to make a reference by order dated 14.06.2010 in respect of the following three questions for consideration by a larger Bench:

(1) Whether such a blanket Government Order, prohibiting use of machinery, which is against the spirit of Statutory Rules and the final and binding judgments rendered by the Division Benches of this Court at Allahabad, can be issued on the basis of an interim order passed by a Division Bench of Lucknow Bench of this Court at Lucknow, when

there are already three binding, final and unchallenged judgments of the Division Benches and a judgment of learned Single Judge of this Court of Principal Seat at Allahabad on the subject?

(2) Whether the interim order dated 27.5.2010, passed by the Lucknow Bench of this Court, not exercising P.I.L. Jurisdiction, and other interim orders on the basis of which Government Order dated 31.5.2010, imposing complete ban on use of machinery in mining operations on the riverbeds or nearby areas could be issued, when the Division Benches and the learned Single Judge of this Court at Allahabad have not ordered for total prohibition on the use of machines for excavation of sand?

(3) Whether such interim order, which was passed without taking into account a settled legal position and not laying down any law, would be per incuriam where the controversy raised has already been settled by various judicial pronouncements of this Court at Principal Seat of the High Court at Allahabad?

Accordingly, the reference so made has been heard by this Bench.

2. Insofar as the first question is concerned, an order has already been issued by the State Government, in exercise of its powers of subordinate legislation. After such an exercise, whether earlier any learned Bench had passed an order directing such legislation is irrelevant. The exercise of subordinate legislation is an act independent of the judicial direction. A Court in matters pertaining to legislation, whether primary or subordinate, based on material before it, directs an authority to consider the issue as it feels the need for legislation in that area. It is for those entrusted with the duty of enacting legislation under the Constitution or the delegate of the legislature, to exercise their legislative power and undergo that legislative exercise. Once the legislative body proceeds to enact legislation, whether primary or secondary, it is immaterial as to why it enacted the legislation. The legislative body may act in public interest, based on public opinion, the felt need by pressure groups calling on the Government for a need to enact legislation or on observation by a Court, finding a vacuum in a particular area of legislation. This exercise is by the legislative body, in the plenary exercise of its powers. The Courts also, at times, in the area of environment and ecology and other matters involving Article 21 of the Constitution, considering U.N. Conventions, Directive Principles and Fundamental Duties, if can be read into Article 21, also issue directions in the absence of legislation.

We are concerned here with a case where the Government, in exercise of its delegated powers of legislation, has issued the Government Order. In the Order because it has been stated that pursuant to the interim order passed by the Court, the Government has issued the Government Order, is immaterial and irrelevant. The statement would be in the nature of a preamble, as to why legislation has to be enacted. Once that be the case, the issue whether the delegate proceeded to enact subordinate legislation pursuant to an interim order, would be immaterial. All that the Court in such a case can do is to examine

the validity of subordinate legislation on tests as laid down by the Supreme Court in [Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others](#). In our opinion, therefore, the first question, as referred, could not be the subject matter of reference to a larger Bench.

3. The next question is, whether a Bench conferred/assigned a particular work in terms of Chapter V of the Allahabad High Court Rules, can hear matters assigned to another Bench?

Rule 1 of Chapter V of the Allahabad High Court Rules, reads as under:

1. Constitution of Benches.- Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

4. The issue, whether a Bench allotted a particular assignment can hear matters allotted to another Bench, in our opinion, need not be gone into at length, as the same has been extensively covered by a judgment of a learned Division Bench of this Court in [Y.C. Simhadri, Vice Chancellor, B.H.U. and Others Vs. Deen Bandhu Pathak](#). We may gainfully reproduce paragraphs 16, 17 and 18 which read as under:

16. Thus, the following principles emerge from the foregoing discussions:

(1) The administrative control of the High Court vests in the Chief Justice alone and it is his prerogative to distribute business of the High Court both judicial and administrative.

(2) The Chief Justice alone has the right and power to decide how the Benches of the High Court are to be constituted : which Judge is to sit alone and which cases he can and is required to hear as also which Judges shall constitute a Division Bench and what work those Benches shall do.

(3) The puisne Judges can only do that work which is allotted to them by the Chief Justice or under his directions. No Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice.

(4) Any order which a Bench or a single Judge may choose to make a case that is not placed before them or him by the Chief Justice or in accordance with his direction is an order without jurisdiction and void.

(5) Contempt jurisdiction is an independent jurisdiction of original nature whether emanating from the Contempt of Courts Act or under Article 215 of the Constitution of India.

(6) For exercising the jurisdiction under Article 215 of the Constitution of India, the procedure prescribed by law has to be followed.

17. It appears that on 26.3.2001, when the learned Judge passed the said order, he was allotted and assigned the determination with regard to the following matters by the Chief Justice as appears from the printed cause list:

Fresh writs in educational matters (except service writs) for orders, admission and hearing and all single Judge writ-C for order, admission and hearing including bunch cases.

The learned Judge on the face of the record, therefore, had no determination assigned to him by the Chief Justice with regard to the matters relating to contempt and the said jurisdiction had been assigned to another Hon"ble single Judge.

18. In view of the rule as already noted that the power to constitute Benches and allotment of work to the learned Judges vests absolutely in the Chief Justice and the Rules 1, 6 and 17 of Chapter V and Rule 2 of Chapter VIII of the Allahabad High Court Rules also clearly provide for the same. In that view of the matter, the order passed by the learned single Judge in the instant case appears to us to be without jurisdiction and void.

We may also reproduce the following two paragraphs:

24. In the instant case, admittedly, the question of jurisdiction is involved and, as such, the order falls within the meaning of "judgment" under the relevant clause of Rule 5 of Chapter VIII of the High Court Rules and accordingly appears to us to be appealable.

25. In the instant case, since the order passed by the learned single Judge was beyond his competence or Jurisdiction to pass such order, it is void and non-est and is accordingly appealable. The appellant being Vice Chancellor of the Banaras Hindu University, who is holding a responsible position, issue of notice by the order impugned, which is without jurisdiction, has adversely affected his rights and the rights of the appellant having been adversely affected, the appeal appears to be maintainable.

We approve the law laid down in Prof. Y.C. Simhadri (Supra).

5. Let us also look at some other aspects, as in spite of above and several other judgments, the issues have been raised once again. The issue of tied up and part-heard cases had come up for consideration, before a learned Division Bench of this Court in the case of Ram Prasad and Anr. v. State of U.P. and Ors. Civil Misc. Writ Petition No. 50748 of 2007 wherein, the learned Bench was considering a letter written by the then Chief Justice, and not an order by the Chief Justice in exercise of his powers of constituting Bench. The learned Bench, by its order dated 02.11.2007, however, was pleased to refer seven questions to be heard by a larger Bench. The matter, it appears, was placed before the learned Chief Justice. The questions referred for consideration were:

- 1 Whether the matters, which have been nominated by Hon"ble the Chief Justice, are to be heard by a Bench presided by a particular Hon"ble Judge will be heard by that Hon"ble Judge till he sits in that jurisdiction and thereafter he has to release the matter or he shall continue to hear the matter, irrespective of change of the roster?
2. Whether any matter, which is assigned to a Bench, shall continue with the same Bench till the stage of admission of the matter irrespective of the change in the roster?
3. Whether any matter, which is assigned, nominated or otherwise is heard substantially by a Bench at the admission stage, the matter would be heard by the same Bench, which has heard it substantially, or, after the change in the roster, the matter has to be released by the Bench to be heard by the Bench having jurisdiction as per the changed roster?
4. Whether, where the matter is nominated or assigned to a Bench, the Bench can simply say that the matter may be listed before another Bench and such matter would be heard by another Bench or the Bench shall have to send the matter to Hon"ble the Chief Justice for fresh nomination of a Bench?
5. Whether instructions contained in the aforementioned letter dated 24.10.2007 to the effect that "one can understand retaining of a matter, which is admitted, is being heard finally and has been substantially heard and would be concluded in a hearing or two" applies only to "admitted cases" which are being heard finally by the Bench or it also applies to hearing of a matter where affidavits have been exchanged at the "admission stage", the matter is being finally heard by the Bench, as the prevailing practice in Allahabad High Court is that the cases are being decided finally at the "admission stage itself". Whether the Bench hearing matters at the "admission stage" finally even where substantial hearing has taken place has to release the matter after the change of the roster or it is to be heard by the same Bench?
6. Whether the provisions contained in Chapter VI Rules 13 & 14 and Chapter VI Rule 7 of the Allahabad High Court Rules, 1952 have to be followed by the Benches?

Rule 6 of Chapter V of the Allahabad High Court Rules is the Rule pertaining to reference to a larger Bench, which reads as under:

6. Reference to a larger Bench.- The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein.

The matter, it appears, was considered on the administrative side by the learned Chief Justice. The learned Chief Justice on the administrative side considered the following judgments:

- (i) [State of Maharashtra Vs. Narayan Shamrao Puranik and Others,](#)
- (ii) [Sohan Lal Baid Vs. State of West Bengal and others,](#)
- (iii) [Inder Mani and Others Vs. Matheshwari Prasad and Others,](#)
- (iv) Sanjay Kumar Srivastava v. Acting Chief Justice and Ors. 1996 AWC 644;
- (v) [State of Rajasthan Vs. Prakash Chand and Others,](#)
- (vi) [R. Rathinam Vs. State by DSP, District Crime Branch Madurai District, Madurai and Another,](#) and
- (vii) [Jasbir Singh Vs. State of Punjab,](#)

6. We may gainfully refer to these judgments to understand the correct position in law. In State of Maharashtra v. Narayan (supra), the Supreme Court held as follows:

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 which flows not only from the provisions contained in Sub-section (3) of Section 51 of the Act, but inheres in him in the very nature of things.

6.A. In Sohan Lal (supra), the Calcutta High Court on a review of the constitutional and statutory provisions held as follows:

The power and jurisdiction to take cognizance of and to hear specified categories or classes of cases and to adjudicate and exercise any judicial power in respect of them is derived only from the determination made by the Chief Justice in exercise of his constitutional, statutory and inherent powers and from no other source.

7. In Inder Mani v. Matheshwari Prasad (supra), a learned Judge of this Court who was to sit in a Division Bench, sat singly and disposed of a writ petition. The Apex Court noted the Registrar's Affidavit and then observed as under:

...It was most improper on his part to disregard the administrative directions given by the Chief Justice of the High Court and to sit singly to take up matters that he thought he should take up. Even if he was originally shown as sitting singly on 22.12.1995, when the Bench was reconstituted and he was so informed, he was required to sit in a Division Bench on that day and was bound to carry out this direction. If there was any difficulty, it was his duty to go to the Chief Justice and explain the situation so that the Chief Justice could then give appropriate directions in that connection. But he could not have, on his own, disregarded the directions given by the Chief Justice and chosen to sit singly. We deprecate this behaviour which totally undermines judicial discipline and proper functioning of the High Court.

8. In *Sanjay Kumar Srivastava v. Acting Chief Justice (supra)*, a writ petition was pending before a Division Bench of this Court for admission. The matter had been adjourned for about seven dates. An interim order had been passed and an application to vacate the interim order was rejected by that Division Bench. On an application being made on behalf of the State, the then Acting Chief Justice withdrew that petition from the said Division Bench and referred it to a Larger Bench. That order of the Acting Chief Justice was challenged by the petitioner. This second petition was placed before a Bench consisting of three Judges. This Larger Bench upheld the decision of the Acting Chief Justice. Amongst others, it was submitted before the Full Bench that the earlier writ petition had become *Article heard* before that Bench and it was not permissible to the Acting Chief Justice to withdraw the same and to refer it to another Bench.

The Full Bench went through the relevant provisions of the Constitution of India compared it with the earlier provisions of Government of India Act, 1935 and also looked into the Government of India Act of 1915, as well as the relevant provisions of the Allahabad High Court Rules, 1952 and the earlier judgments of the Supreme Court as well as of this Court. In paragraph 19 of the judgment, the Court specifically referred to and quoted Rule 1 of Chapter V of the High Court Rules, which reads as follows:

Constitution of Benches.- Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

The Court proceeded to observe as under in paragraph 24:

24. In view of the above, it is clear that the Chief Justice enjoys a special status not only under Constitution but also under Rules of Court, 1952 made in exercise of powers conferred by Article 225 of the Constitution. The Chief Justice alone can determine jurisdiction of various Judges of the Court. He alone can assign work to a Judge sitting alone and to the Judges sitting in Division Bench or to Judges sitting in Full Bench. He alone has the jurisdiction to decide which case will be heard by a Judge sitting alone or which case will be heard by two or more Judges.

The conferment of this power exclusively on the Chief Justice is necessary so that various courts comprising of the Judges sitting alone or in Division Bench, etcetra, work in a co-ordinated manner and the jurisdiction of one court is not over-lapped by other court. If the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the Court would collapse and the judicial functioning of the Court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case. The nucleus for proper functioning of the Court is the "self" and "judicial" discipline of Judges which is sought to be achieved by Rules of Court by placing in the hands of the Chief Justice full authority and power to distribute work to the Judges and to regulate their jurisdiction and sittings.

It was canvassed before the Full Bench that the earlier petition had become part heard before the earlier Division Bench and that it was not open to the Chief Justice to refer it to a Larger Bench. The Court went into the question as to whether the earlier writ petition had ever become part heard. On the facts of the case, having gone through the order sheet of various dates, the Court held that the writ petition was not part heard and legally also the case did not become part heard or tied-up matter of that Bench.

The Court then went into the question as to when matters become part heard and whether even a supposedly part heard matter could be withdrawn by the Chief Justice. In paragraph 34 of the judgment, the Court specifically quoted Rule 14 of Chapter V, which is on tied-up cases and which reads as follows:

14. Tied up cases. - (1) A case partly heard by a Bench shall ordinarily be laid before the same Bench for disposal. A case in which a Bench has merely directed notice to issue to the opposite party or passed an ex parte order shall not be deemed to be a case partly heard by such Bench.

(2) When a criminal revision has been admitted on the question of severity of sentence only, it shall ordinarily be heard by the Bench admitting it.

Thereafter the Court observed:

The provision of Sub-rule (1) would indicate that even a case which is partly heard by a Division Bench is not necessarily to be laid before that Bench. The use of word "ordinarily" itself indicates that there can be a departure from the normal practice of listing a part-heard case before the same Bench. The word "ordinarily" means in a large majority of cases but not "invariably."

In paragraph 35 of the judgment, the Court observed as under:

The word "ordinarily" is utilized to indicate that although in normal course a thing will be done in a particular manner, in special circumstances a departure from normal course of action is permissible under law. Normally, therefore, a case which has been partly heard by a Bench shall be laid before that Bench but in special circumstances, the Chief Justice who, as pointed out above, has exclusive jurisdiction of distributing work to Judges, can depart from the normal course and list the case before some other Judge.

Going into the question as to whether a pre-admission matter can be said to have become part heard, in paragraph 36 of the judgment, the Court held as follows:

36. The other part of Sub-rule (1) lays down in clear terms that the case in which the Bench has merely issued notice to the opposite party or had passed an ex parte order shall not be deemed to be a case partly heard by that Bench. This provision has been made to specify that a case does not become part heard merely by passing of interim order. It also lays down that if notices are directed to be issued to the opposite party, the

case does not become part heard case of that Bench. The consequences are obvious. If the Division Bench which has merely passed an ex parte order or directed notice to be issued to the opposite party locate it as a part heard case or passes an order that it will come up before that Bench for "further hearing" or as a "part heard" or as a "tied-up" case, the order would be in violation of the Rules of Court and, therefore, a nullity. Such an order would be without jurisdiction and would not confer any jurisdiction on the Bench concerned to proceed with that case unless the case is listed before them again under the orders of the Chief Justice. In a situation where any order has been passed indicating such a case on the order-sheet or on the main writ petition to be a part heard or tied up case, the Chief Justice in spite of that order would retain his jurisdiction to list it before the appropriate Bench for hearing as the order limiting the case to be a part heard or tied up would be in violation of the Rules of Court and would not bind the hands of the Chief Justice from listing that case as a "seen" case before any other Bench rather than as a "tied up" case before that very Bench.

9. In *State of Rajasthan v. Prakash Chand* (supra), a matter earlier heard by a Single Judge was subsequently placed before a Division Bench under the order of the Chief Justice of the Rajasthan High Court. The Division Bench disposed of that petition as it had become infructuous when it was placed before it. The Single Judge then directed the Registry to place that petition before him and subsequently issued a notice of contempt to the Chief Justice of that Court since he had earlier withdrawn the matter from his Bench. This was allegedly on the ground that it had become part heard before him and the withdrawal constituted contempt of Court. This order was carried to the Supreme Court. The Supreme Court referred to Rule 54 of Chapter V of the High Court Judicature at Rajasthan Rules, 1952. This Rule is identical to Rule 1 of Chapter V of the Allahabad High Court Rules. After a careful reading of the said Rule, the Court observed in paragraph 10 as follows:

10. A careful reading of the aforesaid provisions of the Ordinance and Rule 54 (supra) shows that the administrative control of the High Court vests in the Chief Justice of the High Court alone and that it is his prerogative to distribute business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work only as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice.

The Supreme Court then referred to the judgments of various High Courts and of the Supreme Court with approval. In paragraph 12 of the judgment, the Supreme Court quoted with approval the following observations of a Division Bench of this Court (Per:

Mukerji, J.) in [State Vs. Devi Dayal](#),

It is clear to me, on a careful consideration of the constitutional position, that it is only the Chief Justice who has the right and the power to decide which Judge is to sit alone and which cases such Judge can decide; further it is again for the Chief Justice to determine which Judges shall constitute Division Benches and what work those Benches shall do. Under the rules of this Court, the rule that I have quoted above, it is for the Chief Justice to allot work to Judges and Judges can do only such work as is allotted to them...

It also quoted with approval the concurring opinion of H.P. Asthana, J. in that matter to the following effect:

Rule 1, Chapter V, of the Rules of this Court, provides that Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

It will appear from a perusal of the above provisions that the High Court as a whole consisting of the Chief Justice and his companion Judges has got the jurisdiction to entertain any case either on the original or on the appellate or on the revisional side for decision and that the other Judges can hear only those matters which have been allotted to them by the Chief Justice or under his directions. It, therefore, follows that the Judges do not have any general jurisdiction over all the cases which the High Court as a whole is competent to hear and that their jurisdiction is limited only to such cases as are allotted to them by the Chief Justice or under his directions.

In paragraph 13, the Supreme Court quoted with approval the following observations of a Full Bench of Rajasthan High Court in *Niranjan Singh v. State of Rajasthan* AIR 1974 Raj. 171:

It is therefore the responsibility of the Chief Justice to constitute the Division Courts of Benches. The Judges are required to sit alone or in the Division Benches and, in either case, do such work as may be allotted to them by order of the Chief Justice or in accordance with his direction. This power to allot the work to the Judges cannot be taken away, in face of the clear provision of Rule 54, merely because a date of hearing has been fixed in a case by a particular Bench.

...There is nothing in the rule to justify the argument that such a case should always be treated as "tied up" with a Bench simply because it has once fixed the date of its hearing or that with the exception of a case in which a Bench has directed the issue of notice to the opposite party or passed an ex parte order all other cases should be deemed to be part heard. On the other hand, the use of the word "ordinarily" goes to show that if there are extraordinary reasons, even a part heard case may not be laid before the same Bench for disposal. So far as the second sentence of Rule 66(1) is concerned, it is really in the nature of an illustration or an explanation.

In paragraph 16 of the judgment, it referred to a judgment of the Supreme Court in *Inder Mani v. Matheshwari Prasad* (supra), in which the Supreme Court has held as follows:

It is the prerogative of the Chief Justice to constitute benches of his High Court and to allocate work to such benches. Judicial discipline requires that the puisne Judges of the High Court comply with directions given in this regard by their Chief Justice. In fact it is their duty to do so. Individual puisne Judges cannot pick and choose the matters they will hear or decide nor can they decide whether to sit singly or in a Division Bench....

In paragraph 18, the Supreme Court noted and quoted Rule 66 of the Rajasthan High Court Rules, which is on tied-up cases, which is identical to Rule 14 of Chapter V of the Allahabad High Court Rules on tied-up cases. It also quoted Rule 74 of the Rajasthan High Court Rules on part heard cases, which is identical to Rule 7 of Chapter VI of the Allahabad High Court Rules on part heard cases. It held in paragraph 19 as follows:

Under Rule 74 (supra) a case which remains part heard at the end of the day, is ordinarily required to be heard by the Judge concerned or the Judges sitting next and is to be placed first after miscellaneous cases in the next list but that does not imply that the Chief Justice does not have the power or jurisdiction to transfer even a part heard case, in the peculiar facts and circumstances of a case, from a single Judge to a Division Bench in exercise of the jurisdiction vested in the Chief Justice under proviso (a) to Rule 55(xi) (supra).

The Supreme Court then referred to paras 21 and 22 of the judgment of the Full Bench of this Court in the case of *Sanjay Kumar Srivastava* (supra). It specifically quoted with approval the above quoted paragraph 24 from the judgment in *Sanjay Kumar Srivastava* (supra) and then held in paragraph 23 as follows:

23. The above opinion appeals to us and we agree with it. Therefore, from a review of the statutory provisions and the cases on the subject as rightly decided by various High Courts, to which reference has been made by us, it follows that no Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from it can be permitted. If every Judge of a High Court starts picking and choosing cases for disposal by him, the discipline in the High Court would be the casualty and the administration of justice would suffer. No legal system can permit machinery of the Court to collapse. The Chief Justice has the authority and the jurisdiction to refer even a part heard case to a Division Bench for its disposal in accordance with law where the Rules so demand. It is a complete fallacy to assume that a part heard case can under no circumstances be withdrawn from the Bench and referred to a larger Bench, even where the Rules make it essential for such a case to be heard by a larger Bench.

10. In *R. Rathinam v. State* (supra) also, the Supreme Court considered the powers of the Chief Justice and in paragraph 10 reiterated the proposition in *State of Rajasthan v. Prakash Chand* (supra) to the following effect:

The Chief Justice is the master of the roster. He alone has the right and the power to decide how the Benches of the High Court are to be constituted; which Judge is to sit alone and which cases he can and is required to hear and also as which Judges shall constitute a Division Bench and what work those Benches shall do.

11. The question again came up before the Supreme Court in *Jasbir Singh v. State of Punjab* (supra). In paragraph 19, the Court held as follows:

...It may also be remembered that normally a High Court Judge passes orders on matters assigned by the Chief Justice and this Court in *State of Rajasthan v. Prakash Chand* (supra) deprecated the practice of the Single Judge directing the listing of certain part heard cases before him without there being any orders of the Hon"ble the Chief Justice of the High Court. It is the prerogative of the Chief Justice to assign business of the High Court both on judicial and administrative sides. The Chief Justice alone has the power to decide as to how the Benches of the High Court are to be constituted. That necessarily means that it is not within the competence of any Single or Division Bench of the High Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice.

Considering that the issues are answered by the Full Bench or Division Bench judgments of this Court and of the Supreme Court and as all the questions referred for consideration are answered by the judgments, the learned Chief Justice apparently declined to make a reference.

12. Our attention has been drawn to another judgment of this Court in the case of *Rajesh Chandra Gupta and Ors. v. State of U.P. and Anr.* Special Appeal No. 578 of 2010, decided 29.04.2010, wherein, considering Rules 12 and 13 of Chapter V, and Rule 7 of Chapter VI in the matter of part-heard cases, the learned Division Bench was pleased to hold that the learned Judge who had heard the application for restoration could not have heard the matter, on the ground that the learned Judge who had passed the order was not available. We make it clear that Rule 12 of Chapter V confers the power of substantive review and not procedural review as the power of procedural review is inherent in every Court or Tribunal, whereas substantive review has to be conferred. (See [Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others](#),

Rule 7 of Chapter VI of the Allahabad High Court Rules speaks about a matter being part-heard. The proviso thereto provides that for some reason, if a part-heard case cannot be heard for more than two months on account of the absence of any Judge or Judges constituting the Bench, the Chief Justice may order such part-heard case to be laid before any other Judge or Judges to be heard afresh. A careful reading of the rule will

show that to be during the assignment. No doubt, this rule would indicate that the part-heard matters be heard by the same Bench or Benches, which had heard the matter, but that can only be if that Bench is available. Once the Bench is "broken up" it cannot assemble to hear a matter, with which it is not assigned work, unless the Chief Justice by a special order or general order, by an order directs that such matters may be heard by a Bench or the High Court rules so provide.

13. The issue pertaining to tied-up and part-heard cases was also considered by another Division Bench of this Court in the case of [Awadh Naresh Sharma Vs. State of U.P. and Others](#), wherein the learned Division Bench presided over by the then Chief Justice in paragraph 17, observed as under:

17. In this paragraph the Apex Court has clearly held that no Judge or Bench can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from it can be permitted.

14. Similar view seems to be reflected in the case of Sanjay Mohan v. State of U.P. and Ors. 2008 (2) ADJ 397 (DB), wherein similar observations were made, as reflected in paragraph 17, which reads as under:

17. The law laid down in these judgments clearly establishes that the learned Single Judge could not have directed the Registry to continue the matter to be placed before him as the roster had been changed. Even if he was to say that the matter was part heard, in view of the law laid down by the Full Bench which is affirmed by the Apex Court: such a direction or order would be in violation of the Rules of Court and, therefore, nullity. Any case at pre-admission stage cannot be treated as part heard or tied up and such a direction contrary to the roster is not within the competence of any Single or Division Bench of the High Court as has also been held in the case of Jasbir Singh (supra).

15. It is, thus, true that there appears to be some conflict in the view taken in Rajesh Chandra Gupta (supra) and Awadh Naresh Sharma (supra) on one side and Sanjay Mohan (supra) on the other, but considering the Full Bench judgment in Sanjay Kumar Srivastava (supra) and the judgment of the Supreme Court earlier noted, the judgment in Rajesh Chandra Gupta (supra), did not reflect the correct law, which has been properly stated in Awadh Naresh Sharma (supra) and Sanjay Mohan (supra). Apart from that, what the learned Bench in Rajesh Chandra Gupta (supra) was considering, was the dismissal of a restoration application for non-prosecution, in other words, procedural review. That was, therefore, not a case of substantive review, for the learned Judges to have taken the view, which has been taken. That it was substantive review becomes clear from Rule 12 which refers to Rule 5 of Order XLVII of the Code of Civil Procedure. A Judge exercising civil jurisdiction has the inherent power to exercise the power of procedural review, which will include the power to recall an order dismissing the matter for default. In fact the Explanation to Rule 12 makes it clear that procedural review can be

exercised by another Judge in a case covered by Rule 17, which includes a Judge sitting at Allahabad or Lucknow or vice-versa.

16. We may now refer to some of the judgments, which were pending before the learned Division Bench. We have not checked the records to find out whether the P.I.L. work was assigned to that Bench, if the direction can be treated as P.I.L. In Writ Petition No. 1580 (M/B) of 2009 Noor Mohammad v. State of U.P. and Ors., the learned Division Bench noted photographic evidence placed before it, which indicated use of heavy machines for excavation of sand on the river bank being done to a depth of more than three meters, which was prohibited by the Government Circulars. When the matter next came up on 06.03.2009, the learned Bench was pleased to observe as under:

During the course of hearing, attention of this Court has been invited towards certain photographs filed with the writ petition. A supplementary affidavit was also filed to bring on record some recent photographs, which indicates that heavy machines have been used and excavation has been done to the depth of more than three meters, which have been prohibited by government circulars. Accordingly, on 3.3.2009, we proceeded to frame the following questions for adjudication of the controversy keeping in view the public interest, which are as under:

(1) Whether all over the State heavy machines have been used during mining operation or for excavation of sand by the contractors and whether using of heavy machines including JVC Machines have been prohibited by law?

(2) Whether the State Government and the Contractors involved in the mining work by using the heavy machines have violated any judgements of this Court as well as Hon"ble the Supreme Court coupled with circulars, orders and statutory provisions and on account of such violation this Court may pass appropriate orders to secure the ecological balance as well as to enforce some punitive measures?

(3) Whether on account of use of heavy machines during mining operation, damage has been caused to the rivers of the State including Ganga, Yamuna and Gomti as well as other places where the mining operations have been carried out? In case yes, then what remedial measure should be adopted to check such damages to maintain the ecological balance and environment?

After framing of the aforesaid questions, we impleaded the various authorities of the Union of India related with the mining works as well as other State authorities as respondent Nos. 9 to 14 in the instant writ petition.

It was also brought to the attention of the learned Bench that on the report being submitted by the Mining Officer, in order to maintain ecological balance and protection of the environment, action was being taken.

The attention of the learned Bench was also invited to an order passed by a learned Single Judge in Writ Petition No. 5361 (M/S) of 2008, whereby a Committee was constituted and the Committee had submitted a report in respect of district Bijnor. The learned Division Bench, while proceeding to appoint a Committee placed reliance upon another Division Bench judgment, and found that the State Government has failed to discharge its statutory as well as constitutional obligation to protect the environment by regulating mining operation like in Bijnor and, accordingly, appointed the Committee.

Earlier, another Division Bench in respect of the same subject matter, i.e. Writ Petition No. 1580 (M/B) of 2009, had noted the pleas by the respondents that the mining operations are being carried on by using JCB machines by the intervener in the petition. Thereafter, in another writ petition, being Writ Petition 3879 of 2010 Pradeep Chaudhary and Anr. v. State of U.P. through its Principal Secretary, Geology & Mining, the Court noted the report of district Saharanpur, which indicated the damage caused to the river course and, consequently, damage to environment which would disturb the ecological balance. The Court also noted that there is an option to the State Government to stop the use of heavy machines but that has not been done. The Court, then, noting the order passed in Writ Petition No. 1580 (M/B) of 2009, directed the State Government to ensure that in the State of U.P. no heavy machine is used by the lessees involved in the mining work at river bed for excavation of sand/morang till the matter is finally adjudicated by this Court.

17. From the law as earlier quoted, it would be clear that the Division Bench assigned with a particular work can only do the work assigned and cannot do the work assigned to another Division Bench even in respect of earlier matter which it was hearing when the Chief Justice had assigned work to that Bench to take up the matter. After the assignment has changed, unless specifically ordered the previous Bench cannot hear the matter. Even in respect of tied up matters, in terms of the rule quoted above, the matter may ordinarily be laid before the same Bench for disposal. The expression "ordinarily" would mean that the authority empowered to assigning matters must exercise that power to place the matter before the Bench, which earlier had heard the matter. This can be done in individual cases or by a general order. This rule is based on the principle that a Bench having substantially heard the matter and spent valuable judicial time, must be allowed to ordinarily hear and dispose of the matter. This power, therefore, could only be exercised by the Chief Justice who constitutes the Benches and not by the Registry of the Court, nor can a Bench hold that it can proceed with the matter as a part heard matter.

17.A. The order of the learned Bench in Noor Mohammad (supra) dated 06.03.2009 was the subject matter of an SLP, which was disposed of on 06.04.2009 and a further clarification was issued on 28.08.2009, which reads as under:

An application has been filed seeking clarification of our order dated 6.4.2009. By the said order the SLP filed by the petitioner was dismissed. While dismissing the SLP, we did not hold that the matter before the High Court was a PIL. We only stated that if the writ

petition had been converted into a PIL by the impugned order, the Registry will do the needful by placing the matter before appropriate Bench dealing with PILs as per rules and guidelines. If the order of the High Court did not convert the writ petition into a PIL then obviously the said observation will not apply. If there was any doubt regarding posting, the matter ought to be placed before learned Chief Justice of the High Court. With the said observation, I.A. No. 3 is disposed of.

Thus, this would make it clear that even if a Bench was hearing a matter assigned to it as per the assignment and if in the course of hearing it proceeds to consider reliefs not sought in the petition, but which will fall within the PIL jurisdiction, then the Bench is bound to direct the Registry to place the matter before the learned Chief Justice for appropriate directions or before the appropriate P.I.L Bench. In other words, if that Bench is not assigned PIL work, it cannot proceed to hear the matter.

18. The question, therefore, would be whether the Bench which earlier heard the matter had jurisdiction to hear the matter. This cannot be the subject matter of a reference considering the judgment of this Court, which has already decided the controversy and in respect of which a dispute does not arise. The remedy for a person aggrieved by such an order, if any, is to prefer an appeal. Such an appeal would be maintainable by applying the law declared by the Supreme Court in the case of [Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others](#), and as explained in Special Appeal No. 1395 of 2010 *The ING Vysya Bank Ltd. v. Shamken Spinners Ltd. and Ors.* decided on 8th September, 2010. In our opinion, therefore, the reference on the second question is also not maintainable.

19. Insofar as the 3rd question is concerned, it is now settled law that an interim order does not decide the issue in the petition finally. Interim orders are normally based on a prima facie finding. No ratio decidendi can be culled out from an interim order. An issue of a conflict between two judgments of coordinate Benches can only arise if there is a conflict in the ratio decidendi of judgments of the coordinate Benches. If a learned Bench has passed an interim order which, according to the party, could not have been passed, the remedy for such a party would be to take recourse to the remedy of law which it may have. The issue whether the same has been settled by a Bench of the Court sitting at Lucknow or the principal seat at Allahabad is immaterial. A learned Bench can only refer a matter if it finds that there is a conflict between the ratio of judgments by two Benches of coordinate jurisdiction or if it finds that it cannot agree with the view taken by another Coordinate Bench. In our opinion, therefore, the third question as raised also could not have been referred.

20. We are surprised at the stage at which the reference was made. Normally a reference is made after hearing the parties on merits and the learned Bench arrived at a conclusion that it does not agree with the view taken by another coordinate Bench, which has earlier decided the law. In this case, a strange procedure has been followed. Interim relief was first granted, the matter was not finally heard, and without considering the merits of the

matter, a reference has been made. In our opinion, this was a strange procedure. We express, therefore, our anguish at the manner in which this reference is made. We may also note that the interim order dated 06.03.2009 passed in Noor Mohammad (supra), was the subject matter of SLP to the Supreme Court. The learned Court did not interfere with that order. The SLP was dismissed on 06.04.2009 and further clarification was issued on 28.08.2009. The effect was that use of heavy machinery was banned. In spite of that the interim relief was granted without considering the normal tests for granting an injunction.

21. The learned Counsel has sought to take us through the merits of the matter. In view of the fact that the reference itself is not maintainable, we do not propose to examine the matter on merit and leave it to the parties to take appropriate steps which in law they may be entitled to.

22. Considering the importance of the issue on environment and ecology, though the challenge is to a Government Order, we request the learned Bench assigned to hear the matter to dispose the same at the earliest, more so when interim orders have been granted in favour of the petitioners without striking down the subordinate legislation, if it could be struck down.

23. Reference is disposed of accordingly.

24. Registry to place the petitions before the appropriate Bench.