(1996) 05 AHC CK 0173

Allahabad High Court

Case No: Civil Miscellaneous Application No''s. 25042 and 30311 of 1996

A.H. Ansari and Others		APPELLANT
	Vs	
Hon''ble Judges of High Court of Judicature		RESPONDENT

Date of Decision: May 17, 1996

Acts Referred:

- Constitution of India, 1950 - Article 136, 225, 226, 227, 228

Hon'ble Judges: Ravi S. Dhavan, J; A.B. Srivastava, J

Bench: Division Bench

Advocate: B.D. Mandhyan, for the Appellant; None, for the Respondent

Judgement

Ravi S. Dhavan and A.B. Srivastava, JJ.

There was no occasion for this Division of the Court to enter an order in these proceedings but for the fact that the registry has placed before the Court an application No. 30311 of 1996 presented by one Jawahar Ram Gupta and Mirazuddin Jafri. both Upper Division Assistants of the High Court of Judicature at Allahabad, drawing the Court''s attention to certain circumstances narrated in the application supported with an affidavit and seeking, in effect, two prayers from the Court---one prayer is, only for a change in cause title, the other prayer calls upon the Court to proceed with the matter of the contempt and the writ petition in accordance with law. From where this order will ultimately end, let the Court place on record that the question of proceeding with the contempt proceedings or the case, with the sanctity of the Court proceedings under cloud, at present, does not arise.

2. In this regard the Court refers to but is not repeating its order of 22 April, 1996.

3. But the Court wonders how a historian will view the situation 100 years from today and where the circumstances will leave the High Court of Judicature at Allahabad and whether it will continue to remain as Court of Record.

4. Petty manipulative tactics at the High Court of Judicature at Allahabad draw it into a pit forcing it to function without the dignity of the Court of Record. A man on the street, a layman, a young lawyer yet to perceive the concept of a Court of Record, let alone a superior Court of Record, asks one question.

5. The question is : "Can one Division of the High Court issue a writ to another? Can a High Court Judge issue a writ to a High Court Judge, when all are discharging their judicial functions? Can a Division of two or more Judges issue a writ to a Division of two or less Judges? Does the Constitution of India permit this? Can all this happen at a High Court?

6. This cannot happen and must never be permitted to happen. How such a state has come to pass, is the answer which this Court is giving, as it has been called upon do so by the application before the Court, the contents of which are hereinafter reproduced:

1. That in the above matter Your Lordships Hon''ble R. S. Dhawan and Hon''ble A. B. Srivastava, JJ., taking cognizance of contempt on the face of the Court, issued summons to the contemnors on 18.4.96 in attempting to manoeuvre the record of the case and had fixed 22.4.96 for personal appearance of the contemnors in Your Lordship Court.

2. That on 20.4.96 Sri G. K. Verma, Addl. Registrar and Sri T. M. Khan O.S.D., made an application to Hon''ble Chief Justice at his residence and that on such application moved ex parte and without the record, Hon''ble Chief Justice on 21.4.96 referred the contempt matter to three Hon''ble Judges, to assemble on 22.4.96 at 10.00 a.m. and that the said Bench assembled on 22.4.96 at 10.00 a.m. and in an ex parte proceeding without presence of record, issued a writ of prohibition, suspending the order dated 18.4.96 and the proceedings of contempt in Your Lordships Court.

3. That the counsel representing the aforesaid contemnors, informed about the writ of prohibition to Your Lordships orally and that the order of Hon''ble Chief Justice or the Full Bench, was not communicated on record.

4. That it is respectfully submitted that Hon''ble Chief Justice, had no jurisdiction to transfer a part of the proceedings in a pending and nominated matter, in which day to day hearing was proceeding and contempt notice has been issued, to be transferred to another Division of the High Court. Such power is unknown to the Rules of the Court and the Constitution of India.

5. That an application was moved before Hon''ble Chief Justice to recall the order, on which after hearing, the orders have been reserved.

6. That in the aforesaid circumstances Your Lordships were pleased to pass a detailed order on 22.4.96, which by itself records the entire proceedings and nothing more be added on record.

7. That the orders of Hon''ble Chief Justice, transferring the matter to another Division of the Court has shaken the faith of the Petitioners in the system of administration of Justice.

8. That the applicant has been advised to state that as held by Your Lordships in the order dated 22.4.96 the Hon''ble Chief Justice has no power to transfer a part of proceedings to another Division of the Court and that therefore there is no impediment in Your Lordships powers vested by Constitution unto Your Lordships to proceed with the matter in accordance with law.

9. That since the Sunday order of Hon''ble Chief Justice dated 21.4.96 and the order of Full Bench dated 22.4.96 amounts to a writ issued by one Division to another Division of the Court, there is virtually a conflict between the contemnors and the Hon''ble Judges and that therefore it is appropriate and in the interest of justice that the cause title of the matter be described as Sri G. K. Verma, Addl. Registrar (Protocol) High Court, Sri A. H. Ansari, Addl. Registrar, High Court and Sri T. M. Khan O.S.D., High Court v. Hon''ble Judges of the High Court of Judicature at Allahabad.

10. That it is therefore expedient and in the interest of Justice that this Hon''ble Court may be pleased to:

PRAYER

It is, therefore, most respectfully prayed that this Hon''ble Court may be pleased to:

(a) permit the Petitioner to change the Cause Title of the contempt matter as Sri G.K. Verma, Addl Registrar (Protocol) and Ors. v. Hon''ble Judges of the High Court of Judicature at Allahabad;

(b) proceed with the contempt matter and the writ petition in accordance with law ; and

(c) pass any other or further order as this Hon''ble Court may deem fit and proper in the circumstances of the Court.

7. It is the concern of this Division of the Court that It should not make a mistake of issuing a writ, order or direction to another Division of this High Court whether constituted by a Hon''ble Judge or of two or more Hon''ble Judges. If the mistake were to happen the High Court in its Constitutional concept would be shattered.

8. The facts which brought about this situation are on record. The glaring circumstances are that these issues have emerged from within the Judicature and no outsider can be blamed for it. An attempt to dislodge a case from a Court by making an unsolicited note between two dates of listing, an activity in the Registrar''s Secretariat or office or the Record Room of the Court, precipitated the issue. Tampering with judicial records invited proceedings for contempt in facie curiae against the staff of the Registrar''s office, called to answer their misdemeanours. The Registrar High Court, is a Respondent, a litigant to the cause.

9. This Division''s jurisdiction to proceed with the case or cases or inquire into them by proceedings has been questioned. By whom? The lieutenants of the Registrar High Court, thus, in effect, the Registrar himself, who otherwise is a party Respondent. Was the case listed before this Court? Yes, along with two others In which the High Court is the opposite party, also. Notwithstanding overt activities between two dates, and the period of adjournment in between, the case was ultimately assigned to this Division, as were the other two cases, by the Hon''ble the Chief Justice. The fact of the matter is that the assignment so made by the Hon''ble Chief Justice, was not accepted by the officers of the Registrar, High Court. They are litigants. It is their belief that the High Court cannot question their covert activities. So they petitioned the Hon''ble Chief Justice, as applicants, for a writ against the Division seized with the cases. The writ emanated in two forms (a) as a writ of detachment of proceedings separating and transferring a contempt proceeding from one Division to another or one set of Judges to another ; so to speak. A circumstance of transferring a contempt ex facie curiae from one Judge to another, (b) from the Division to which the contempt case was transferred by the writ of the Hon''ble the Chief Justice, emanated a consequential writ, order and directions to this Division to put in abeyance, in effect, to forbear from proceeding with the contempt case. This, was in no uncertain terms a writ of prohibition from one Division to another.

10. Are there two High Courts? The genesis was this Court''s inquiry into the interference with the administration of justice. The Court''s authority to inquire is questioned by the subordinates of High Court. The complete narration of circumstances is in the proceedings recorded in the order of 22 April, 1996, on the authority of the Court to inquire into contemptuous circumstances that obstruct public justice and consequently enter judgment.

11. One incident somewhat similar to this situation arose at the Bombay High Court. The Hon''ble Mr. Justice V.M. Tarkunde was conducting a trail and he gave an oral order, to the effect, that in the proceeding in a matter relating to libel would not be published by a leading weekly of Bombay. The corRespondent finding himself uncomfortable with the oral direction which went as a writ, went to the Division Bench to procure a writ to restrain His Lordship the Hon''ble Mr. Justice V.M. Tarkunde, that his injunction though oral may remain in abeyance on a direction by their Lordships Mr. Justice S.P. Kotval and Mr. Justice B.D. Naresh Shridhar Mirajkar Vs. His Lordship the Honourable Mr. Justice Tarkunde, . The Bombay High Court in a very elaborate judgment reflected on the very fundamental of the structure and pattern of the High Court sitting in Divisions all as one Court of Record. The theme of the judgment is that the very suggestion that a Division of a High Court may issue a writ to another Division was a situation well nigh impossible ; an exercise which the Constitution of India does not permit. Certain passages from this judgment of the Bombay High Court, need to be reflected upon again after thirty years. This thought provoking classic judgment drawing from settled principles and precedents

of the High Court and House of Lords and our Supreme Court is an orientation on the subject of the characteristic of the High Court functioning with its Divisions. The passages are reproduced:

When this matter came up for admission before Mody and Gokhale, JJ., they felt that it was necessary to ascertain at least prima facie that the petition was competent against the sole Respondent. They, therefore, invited the learned Advocate General to address them on the question whether the Division Bench could in the circumstances have jurisdiction to issue a writ against the Respondent, a Judge of this Court.

After hearing the learned Advocate General amicus curiae and Mr. Chart on behalf of the Petitioner, we are satisfied that in this case this Court can have no jurisdiction to issue a writ in respect of the order passed by Mr. Justice Tarkunde nor any writ against him. We may briefly state our reasons as follows:

The principal argument has been that in respect of an order passed even by a single Judge of the High Court in his Judicial capacity, no other Bench of the same Court can issue a writ having regard to the powers under Aricles 225, 226 and 227 of the Constitution. Article 225 lays down generally the jurisdiction of the High Court and it says that subject to the provisions of the Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred by the Constitution.

the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court...sitting alone or in Division Court, shall be the same as immediately before the commencement of this Constitution.

Thus the powers of the Judges in relation to the administration of justice in the High Court and the law to be administered, remain the same as before the Constitution save and except that it is modified by any provision of the Constitution or by legislation by an appropriate Legislature.

...

...After the Constitution the respective powers of the Judges in relation to the administration of justice remain the same as before the Constitution--and in all their pristine plenitude. Those powers are of course subject to and may be modified by any provision of the Constitution or by any law made by the appropriate Legislature duly empowered by the Constitution which now includes the Letters Patent. Any Judge of the Bombay High Court no less than a Division Bench or Full Bench of the High Court may, therefore, perform all the judicial functions of that Court in exercise of its original as well as Appellate jurisdiction. The Judicial decision of a single Judge, whether given in the exercise of original or Appellate jurisdiction would be a decision of the High Court as much as any similar decision given by two or more

Judges sitting together.

In the due performance of his judicial function, therefore, a single Judge is no whit inferior to any other Judge or Judges. Sitting as he was in exercise of the Original Jurisdiction of this Court, Mr. Justice Tarkunde was, undoubtedly, functioning Judicially and as the High Court and the question that arises is whether a Division Bench or any two or more Judges of the High Court can lawfully interfere with that function.

...

The plenary words of Article 226 are "Every High Court shall have power..." and we have already shown mat Mr. Justice Tarkunde sitting on the Original side was as much as the High Court as any two or more Judges thereof sitting together as a Divisional Bench or a Full Bench. The power thus exercised is in any case that of the High Court. Now there is nothing in Article 228 to suggest that one and the same High Court can issue rule or writs against itself nor it seems, should we hold so, unless we are forced to that conclusion by the clearest and most compelling language. Such a principle would impart dangerous want of finality to the decisions of this Court and render the law uncertain. We shall show a little later when we come to consider the nature of writs mentioned in Article 226, that the same conclusion will also follow from a consideration of the scope and extent of the writ of certiorari which alone is involved in the present case.

So far as Article 227 of the Constitution is concerned, it gives power to every High Court "of superintendance over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction". The power is one of Superintendance and, in our opinion, by its very nature, is a power over subordinate Courts and Tribunals within the territories in which the High Court exercise jurisdiction. Article 227 does not indicate that a single Judge of a High Court, as we have shown functioning Judicially as the High Court, can be corrected by the same High Court or by any two or more Judges of the same High Court in exercise of its power of superintendance. In fact, sub-article (1) of Article 227 uses the words "every High Court" in contra-distinction with "all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction". It can hardly be urged that in the words "all Courts and Tribunals throughout the territories in relation to which it exercises Jurisdiction" would also be included the High Court itself. Neither Article 226 nor Article 227 therefore, leads to the conclusion that two or more Judges of one and the same High Court can either exercise superintendance over the judicial functions of a single Judge of that Court whether sitting on the original or Appellate side, or correct him in any way so long as he is exercising judicial function.

...

Another distinction is that the Courts of superior Jurisdiction are Courts which alone have the Jurisdiction to decide finally a question whether they have Jurisdiction or

not in a particular matter.

Bearing this distinction in mind and having regard to the constitutional provisions to which we have already referred, it is clear that a single Judge sitting on the original side is in no sense a Court inferior to the High Court or any two or more Judges of the High Court.

...

In the present case, the Order which Mr. Justice Tarkunde passed was without doubt a judicial order, and if at all we have the jurisdiction to interfere with it, the appropriate writ would be a writ of certiorari. Now, in regard to that writ, the High Court in England has consistently refused to exercise its Jurisdiction to issue it where the order is passed by a single Judge of the High Court. The decision is to be found in Rex v. Justices of C.C.C. London County Council, Ex parte. (1925) 2 KB 43. That was an extraordinary case. By the Central Criminal Court Act, 1834, the salaries and expenses of the Central Criminal Court were ordered to be paid as to a certain proportion of them by the treasurer of the county of London. An order was made by the Central Criminal Court that any taxes demanded by the Inland Revenue authorities in respect of an honorarium payable to Sir Herbert Austin a clerk of that Court shall be paid by the public bodies by which the salaries of the Court''s officials are payable. It was against that order that the King''s Bench Division was moved to issue a writ of certiorari. At page 53 of the Report Lord Hewart Chief Justice discussed the position of the Judges of the Central Criminal Court under the said Act and observed:
...That then is the Court to which it Is urged that a writ of certiorari should be issued by this Court. In other words, it is said that the well known remedy for removing into the King''s Bench Division an order made by an inferior court is a remedy which is applicable to the Central Criminal Court. In my opinion, not only is there no authority for that proposition, but all the authority which one can find is in the opposite direction.

After discussing the several authorities the learned Chief Justice went on to State (p. 58):

With regard to the main question in the case it only remains to add that various inquiries, no doubt of little historical interest, have been stirred in argument. I shall not enter into these inquiries because, with due respect, they seem to me to throw little light upon the immediate question. I think it right, however, to remark that a clear distinction is to be drawn between two matters, on the one hand the removal, by means of certiorari, of indictment or presentments in order to bring about what may be called the domestic or internal arrangement or rearrangement of business, and on the other hand the removal for the purpose of quashing it of an order which has been made by a superior Court. In other words, in my opinion, the statutes and decisions in regard to mere change of venue are not upon the same plan with a

proposal to bring from a superior Court an order which has been made by that Court for the purpose of quashing it. In the one case the superior Court is making for good reason a useful redisposition of its business : in the other case the superior court is invited to quash that which itself has done, and the process involves the rather ludicrous position that it cause upon Judges to show cause to themselves why they should not be directed to remove so that it may be quashed, something which they themselves had determined. In my opinion the beginning of the truth about this matter is to distinguish the things which ought to be distinguished. There is no authority for the proposition with which those who seek to support this order nisi must begin--namely, that in a case of this kind there Is Jurisdiction in this Court to issue a writ of certiorari.

Another decision which lays down the same principle is to be found in Skinner v. North Allerton County Court Judge (1899) AC 439, 440. There the order impugned was an order passed in the exercise of bankruptcy jurisdiction by a County Court Judge. But the Bankruptcy Act of 1863, gave the County Court Judge sitting in bankruptcy the powers of the High Court. Against a warrant issued by the County Court Judge a writ of certiorari was asked for. It was alleged that the warrant was in form wrong and liable to be quashed. The Lord Chancellor Lord Haldane affirmed the refusal of the writ holding (p. 441):

Now. this County court Judge was sitting in bankruptcy, and the confusion which is imported into it is that because, as I will assume for the moment, the Judge issued a warrant which in form was wrong, but could have been put right, therefore. it could have been put right, not in the Court in which it was issued, but in the High Court. The absurdity of that is that the statute itself has made the county court the High Court for this purpose. You might just as well argue that a warrant, defective in form, issued by the Court of Queen''s Bench could be set right by certiorari. Of course that is absurd. This is the High Court for this purpose. If the warrant was ever so bad, it was issued by a bankruptcy Judge in respect of bankruptcy proceedings which were before him, of which he was ceased--a warrant which he had perfect Jurisdiction to issue. If there was any irregularity or inaccuracy in point of form in the warrant that did issue, that could be put right by proper proceedings, but the proper proceedings would be in that Court itself, and not proceedings by certiorari in the Court of Queen''s Bench.

The same principle applies--contrary to common belief--even to the writ of habeas corpus. Until the Judicature Acts were passed in 1873 in England an exception so to say was made to this principle in the matter of issuing of the writ of habeas corpus and an applicant could apply successively to the several Judges of the same High Court for a writ, but since the Judicature Act of 1873 the Courts of Queen''s Bench Division and the Court Chancery no longer exist as separate courts. There is but one Supreme Court to which all Judges are appointed and they are then assigned to do the business of the court in a particular Division. A comparatively recent decision of

Hastings (No. 3), In re. (1959) 1 Ch. 368, illustrate the principle. Hastings had already applied twice for the issue of a writ of habeas corpus to the Court of the Queen''s Bench Division. He applied a third time for the issue of a similar writ in his favour to the Chancery Division. The application was negatived on the ground that there was no such writ available once the Queen''s Bench Division had declined to grant the writ. Vaisey J., laid down the principle in language which is at once memorable and instructive. At page 337 of the Report he said:

...The mistake the applicant or his advisers made was to assume that the Chancery Division is a separate entity, a separate Court, and that either by single Judges or by a Divisional Court it can deal with the matter afresh.

The applicant used an expression which he must suppose to be flattering to us who are sitting here. He said in his affidavit that he had decided to come for a ''complete hearing before a hitherto unconnected and impartial bench, and this I seek in the Chancery Court''. The number of misconceptions which are bound up in that sentence is almost beyond reckoning. To begin with, while I hope it is an impartial bench. It is certainly not an independent bench. Indeed, as Lord Parker has ruled with. I think, perfect accuracy, as soon as the Divisional Court of the Queen''s Bench Division has come to its conclusion there is an end of the matter, and, as I observed yesterday, it always has to be remembered that our orders are not orders of any particular Division or any particular Divisional Court ; our orders are orders of the High Court. How we. Judges of the High Court, could be heard to override, overrule, or otherwise interfere with a judgment which was the result of the hearing by the Divisional Court, or how we could be heard to say that the conclusion of that High Court, and its order--an order of our own court, the only court which exists, the High Court of Justice--was wrong, and that something else should be done, is beyond my comprehension."

...

Applying these principles, therefore, this petition for a writ against Mr. Justice Tarkunde must fail.

We have indicated above that, in our opinion, the order which Mr. Justice Tarkunde passed was a purely Judicial order to which if at all a writ would be attracted it would be a writ of certiorari. We would here make it clear that whatever we have said in the foregoing discussion, we have said only in relation to a Judicial order. We notice that in Rex v. Justices of the Central Criminal Court it could have been held that the order was an administrative order in the notes of arguments of the Attorney General Sir Douglas Hogg at p. 47 of the Report it does appear that the point was raised but the learned Chief Justice did not rest his decision on the short point that it was an administrative order and therefore a writ of certiorari would not lie but on the ground that the Judges of the Central Criminal Court were themselves the Supreme Court of England. A fortiori that judgment would apply where the order is

a judicial order as in the present case.

...

It was finally urged by Mr. Chari "ad misericordiam" that if the view which we have taken is to prevail, then the unfortunate Petitioner will be left without remedy and that were he to go to a higher Court it would not be an equally convenient or cheap remedy and that would work great hardship upon him. In the first place. in determining a question of jurisdiction such as has arisen in this application, hardship or otherwise of a case can hardly be material. But we do not think that the Petitioner is entirely without a remedy and even as convenient and cheap a remedy as is available under Article 226. We think he can still apply to the learned Judge who decided the matter for a review of his own order if he so chooses. He has also a remedy by way of an application for special leave to the Supreme Court under Article 136 of the Constitution.

We are clearly of the opinion that there is no jurisdiction in this Court to issue any writ against the Respondents in respect of the Order impugned in this petition. The petition is summarily dismissed. We record our appreciation of the valuable assistance we have received from the learned Advocate General appearing as "amicus curiae''.

12. The court is totally conscious of the fact that a Division of this Court has virtually issued a writ to this Court. The only feature in the record is that though a writ has been felt, it has not been seen in writing. When a Division of this Court issues a writ, then, this Court forbears to proceed further in the matter. This Court has already given the settled case law in such situations which has built up over the years. If this was not enough, learned Counsel for the Petitioners who made the application today, has placed before us a copy of the application which was moved before the Hon''ble Full Bench, today. This Court is making no comment on the contents of the application as the system never accepted that the court will be called upon to respond to a misplaced application seeking issuing of a writ from one Division to another. While in other cases noted in the matter of Naresh Shridhar Mirajkar (supra), the situation was saved that when the court which were asked to issue writ, declined to do so. In Allahabad High Court, the writs have already emanated from a Division of this Court to another Division. These are facts on record, which will remain on record. We have no answer to the question of how the sanctity to the proceedings will return. All we know is that the machinery which structured the High Court, has collapsed.

13. In these circumstances, it would be Judicially appropriate that as long as the writ remains, this Court should not be seen in conflict in proceeding with this case. This Division Bench is conscious of a decision of the Supreme Court that the High Court as a Superior Court of Record has to enter judgment on a cause which is placed before it. This Division Bench is also conscious of its obligation that it will not issue a

writ to another Division of this Court, whether it is constituted of a learned Single Judge or two or more Hon''ble Judges. If a writ is issued to a Division of this Court, which speaks for the High Court itself, it will play havoc in the public Justice system.

14. Insofar as the cause title of the contempt proceedings is concerned, for every precedent cited and noticed in this order and for that matter of the order of the Bombay High Court, logically the cause title can be no other except those of the applicants who were summoned with their names versus the Hon''ble Judges of the High Court of Judicature at Allahabad and this shall be the cause title hereinafter.

15. As this Court has already expressed in its order of 22 April, last, and at the outset of this order, it reiterates that Judicial propriety calls upon this Division of the High Court, notwithstanding whatever may have happened and whoever may have occasioned it, to be in restraint until the duration or session of the Full Bench. U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others, . The prayer to proceed with the case, whatever be the issues, cannot: be acceded to at present, under the circumstances.

16. As the record is with the Registrar, the Bench Secretary is under a direction to enter these proceedings on the order sheet. The order sheet thereafter along with this order shall join the record with the Registrar.