

(2003) 12 BOM CK 0044

Bombay High Court (Nagpur Bench)

Case No: Misc. Civil Application No's. 329 and 330 of 2003 in Writ Petition No's. 2387 of 1985 and 137 of 1986

Shikshan Prasarak Mandal and
Others

APPELLANT

Vs

Laxmikant Balkrishna Joshi and
Others

RESPONDENT

Date of Decision: Dec. 2, 2003

Acts Referred:

- Bombay High Court (Appellate Side) Rules, 1960 - Rule 7
- Constitution of India, 1950 - Article 226

Citation: (2004) 3 BomCR 85 : (2004) 102 FLR 805 : (2004) 3 LLJ 474 : (2004) 1 MhLj 619

Hon'ble Judges: S.G. Mahajan, J; P.S. Bramhe, J; D.D. Sinha, J

Bench: Full Bench

Advocate: M.G. Bhangde and V.V. Bhangde, for the Appellant; U.S. Dastane, For non-applicationt No. 1, V.P. Panpalia, For non-applicant No. 3, A.G. Mujumdar, assistant Government Pleader For non-applicant No. 4, R.K. Deshpande, For non-applicant No. 1 and A.G. Mujumdar, Assistant Government Pleader, For non-applicant Nos 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.D. Sinha, J.

Heard Shri Bhangde, learned Counsel for the applicants, Shri Dastane, learned Counsel for the non-applicant No. 1, Shri Panpalia. learned Counsel for the non-applicant No. 3 Shri Mujumdar, learned Assistant Government Pleader for non-applicant No. 4 in Miscellaneous Civil Application No. 329/2003 so also Shri Deshpande learned Counsel for non-applicant No. 1 in Miscellaneous Civil Application No. 330/2003.

2. The Division Bench of this Court consisting of R. K. Batta and J. P. Devadhar, JJ. vide common order dated 16-4-2002 passed in Writ Petition No. 137/1986, Anil Dattatraya Ade v. Presiding Officer, School Tribunal and three others and in Writ Petition No. 2387/1985, Laxmikant Balkrishna Joshi v. Shikshan Prasarak Mandal and five others referred the matter of the Hon"ble Chief Justice for constituting larger Bench. The Hon"ble Chief Justice vide order dated 11-11-2002 was pleased to constitute a Full Bench of three Judges, which was presided over by the Hon"ble Chief Justice. The Full Bench passed judgment on 13-3-2003 (since reported in [Ayodhiraman Vs. Subramaniam, A. Shanmugam and A. Ramalingam,](#)) and decided the questions of law referred to it. The present applicants (original respondents) in the above referred Writ Petition, filed Misc. Civil Application No. 329 of 2003 as well as Misc. Civil Application No. 330 of 2003, inter alia, seeking a review of the Judgment, dated 13-3-2003, of the Full Bench. Mr. Deshpande, learned counsel for non-applicant No. 1, raised a preliminary objection about maintainability of the Misc. Civil Applications for review of the Judgment, dated 13-3-2003, of the Full Bench on the following grounds :--

3. Mr. Deshpande, learned counsel for non-applicant No. 1, contended that power of review is not an inherent power and needs to be conferred by law or statute. It is submitted that there is no provision or statute, which confers such power of review in respect of a decision rendered by the Full Bench and, therefore, the present Misc. Civil Applications for review are not maintainable.

4. Mr. Deshpande, learned counsel, states that the only exception to the above referred principle is the jurisdiction exercised by the High Court under Article 226 of the Constitution. It is contended that in the instant case, Division Bench, vide Order, dated 16-4-2003, directed that the matter be placed before the Hon"ble the Chief Justice in terms of Rule 7 of Chapter-I of the Bombay High Court Appellate Side Rules, 1960, for appropriate orders for two reasons, namely (1) that the earlier decisions do not consider the issue threadbare with reference to various provisions of law, which have a material bearing on the issue in question, and that (2) there are contradictory views. It is submitted that in view of this, the Division Bench considered it appropriate that the issues be referred to the Larger Bench. The exercise undertaken by the Division Bench by referring the above referred issues to the Full Bench was, for settling the legal position arising out of conflicting views expressed by the earlier Division Benches and to decide the question of law having a material bearing on the issue involved in the Writ Petition.

5. Mr. Deshpande, learned counsel, vehemently contended that pursuant to the order of reference of the Division Bench, the Hon"ble the Chief Justice has constituted a Full Bench of three Judges for the purpose of deciding the controversy in regard to the point of law on which conflicting decisions of the Division Bench were in the field. It is contended that in such situation, the jurisdiction, which the Full Bench exercises, is an advisory and consultative jurisdiction of a Larger/Special

Bench, which was sought to be invoked, and not under Article 226 of the Constitution of India. It is submitted that the Full Bench exercises jurisdiction, which is not only independent, distinct and separate, but advisory and consultative as well. In order to substantiate the contention, reliance is placed on the Judgments of Supreme Court in case of *Indra Sawhney v. Union of India* and Ors. 1992 Supp. (3) SCC 217 and [Commissioner of Income Tax Vs. Bansi Dhar and Sons](#), .

6. Mr. Deshpande, learned counsel, further contended that it is well settled that the power of review is not an inherent power, but needs to be conferred by law and the only exception to this principle is Article 226 of the Constitution. The jurisdiction of reference, which the Full Bench exercises, is not a jurisdiction under Article 226 of the Constitution, but it is an advisory and consultative jurisdiction. Hence, it does not fall within the exception. There is no power of review conferred upon the Full Bench to review its own judgment rendered to answer the reference. Mr. Deshpande, therefore, states that Misc. Civil Applications for review of the Judgment, dated 13-3-2003, of the Full Bench are not tenable in absence of such provision and are liable to be dismissed as such.

7. Mr. Bhangde, learned counsel for the applicants, states that it is not in dispute that power of review is not an inherent power, but needs to be conferred by law or statute and the only exception to this principle is the jurisdiction exercised by the High Court under Article 226 of the Constitution, where the power of review is inherent. Mr. Bhangde contended that the Full Bench exercised this jurisdiction under Articles 226 and 227 of the Constitution of India, and, therefore, the power of review is inherent in exercise of such jurisdiction. In view of this, the Misc. Civil Applications for review of the Judgment/order passed by the earlier Full Bench are maintainable in law.

8. Mr. Bhangde, learned counsel, contended that Rule 7 of Chapter-I of the Bombay High Court Appellate Side Rules, 1960 is not the source of jurisdiction/power of the Full Bench. It only provides for the procedure/modality, by which the matter can be brought before the Full Bench. The Division Bench, upon noticing conflicting decisions on the point, in question, orders the matter to be placed before, the Hon"ble the Chief Justice, who, in turn, constitutes a Larger Bench to hear and decide the questions/matter referred by the Division Bench.

9. Mr. Bhangde, learned counsel, further states that there is a fundamental distinction between "source of jurisdiction" and "scope of jurisdiction." The "scope of jurisdiction" of Full Bench/Larger Bench is restricted to the Terms of Reference. However, this is not to be confused with the "source of jurisdiction" of Full Bench or Larger Bench. The "source of jurisdiction" of Full Bench/Larger Bench is the same as that of the Division Bench, i.e., Articles 226 and 227 of the Constitution and therefore, the Full Bench necessarily exercises, the jurisdiction under Article 226 of the Constitution.

10. Mr. Bhangde, learned counsel, further argued that even if it is assumed for the sake of arguments that the Full/Larger bench exercises advisory or consultative jurisdiction, still the jurisdiction is exercised under Articles 226 and 227 of the Constitution of India by whatever name such jurisdiction is called. It is submitted that jurisdiction/power under Articles 226 and 227 of the Constitution is attached to the High Court and, therefore, in whatever capacity the High Court decides the matter and whatever jurisdiction it exercises, it cannot be segregated from the inbuilt jurisdiction under Articles 226 and 227 of the Constitution. In order to substantiate this contention, reliance is placed on the judgments of the Apex Court as well as this Court reported in *Hari Shanker Jain v. Sonia Gandhi* (2001)8 SCC 333 and [Raghunath Gambhirshet Vs. Ganpat Motiram and Others](#), .

11. It is contended that when a power to hear a dispute under the Act is conferred on the High Court, then the dispute has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the Charters under which that Court is constituted. Mr. Bhangde, learned counsel, therefore, states that in the instant case the jurisdiction, which the earlier Full Bench has exercised, was under Articles 226 and 227 of the Constitution of India and power of review being inherent, Misc. Civil Applications filed by the applicants for review of the Judgment of the said earlier Full Bench are legally maintainable.

12. We have given our anxious thought to various contentions canvassed by the respective counsel and perused the provisions of law as well as decisions of the Apex Court and this Court, relied on and cited by the respective counsel. At the outset, we must express that it is well settled that the power of review must be conferred by law either specifically or by necessary implication. So far as Section 114 and Rule 1 of Order 47 of the CPC are concerned, they expressly confer a power of review on the Civil Court. The Civil Court can, therefore, exercise this power only under these provisions. It cannot do so even Section 151 of the Civil Procedure Code. It is also not in dispute that there is no power of review conferred upon the Full Bench by any statute or provision to review its own judgment rendered to answer the reference. It is, therefore, evident that in such situation application for review of the judgment of the Full Bench is not maintainable.

13. Another aspect in the instant case, which is crucial and important to decide the controversy in issue, is whether the Full Bench, while deciding the questions of reference made by the Division Bench, exercises jurisdiction under Article 226 of the Constitution of India, since this is the only exception to the general rule wherein jurisdiction of review takes its colour from its original jurisdiction in which the judgment was rendered. In other words, the power of review is inherent in exercise of jurisdiction by the High Court under Article 226 of the Constitution.

14. In order to understand and decide which jurisdiction the Full Bench exercises while answering the questions referred to it for decision. It is necessary to consider the procedure enumerated under Rule 7 of Chapter-I of the Bombay High Court

Appellate Side Rules. Rule 7 contemplates that when any Judge of this Court a Single Bench/ Division Bench who, either on application of the parties, or otherwise, forms a view that the matter can be more advantageously heard by Bench of two or more Judges, is empowered to make an order of reference and pursuant to such order of reference, the Hon"ble the Chief Justice is required to constitute an appropriate Bench to decide and settle legal questions referred to it in the order or reference. In other words, if a Single Judge of High Court, who does "not agree with the earlier view taken by the Division Bench, has authority to say so, and by invoking powers under Rule 7 of Chapter-I of the Bombay High Court Appellate Side Rules, 1960, he can pass an order giving his opinion for placing the matter before the Hon"ble the Chief Justice who shall make an order thereon as he shall think fit.

15. In the instant case, the Division Bench passed an order, dated 16th April, 2002, by invoking a power under Rule 7 of Chapter-I of the Bombay High Court Appellate Side Rules in view of the contradictory views expressed by the earlier Division Benches of this Court in regard to the applicability of the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to the Polytechnic Institutes, which are technical institutes, and referred the following two questions for consideration of the Larger Bench :--"

(1) Whether the employees of Pharmacy Institution are governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977?

(2) Whether the amendment by Maharashtra Act 32 of 1990 introduced on 6-12-1990 to the provisions of the said Act is declaratory in nature so as to have retrospective operation?"

The Hon"ble the Chief Justice constituted a Full/Larger Bench of three Judges, which has resolved the inconsistency by answering these questions vide judgment, dated 13th March, 2003 [since reported in [Anil Dattatraya Ade Vs. Presiding Officer, School Tribunal, Geetadevi Khandelwal Institute of Pharmacy and State of Maharashtra,](#)

16. It is pertinent to note that the power of the High Court under Articles 226 and 227 is supervisory in nature and the main purpose of this power is to enable the High Court to keep various authorities within the bounds of their powers and to ensure that the authorities take decisions and act according to law and in accordance with the principles of natural justice, whenever applicable. The Apex Court, in case of [Shama Prashant Raje Vs. Ganpatrao and Others,](#) , has described the nature of High Court's jurisdiction under Article 226 thus :--

"Undoubtedly in the proceeding under Articles 226 and 227 of the Constitution, the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of High Court, therefore, is supervisory and not appellate. Consequently, Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision

impugned and decide what is proper view to be taken or order to be made."

Similarly, the power of the High Court under Article 226 of the Constitution is not limited to the issue of Writs falling under particular writs, such as Certiorari, Mandamus etc., but the power is general to issue any direction to the parties viz., for enforcement of fundamental rights as well for other purposes. In the instant case, the original petitioner in Writ Petition No. 2387 of 1995 (where the order of reference is made) invoked the power of this Court under Article 226 of the Constitution for quashing and setting aside the order of appointment of respondent No. 5 issued by the respondent-Management and sought interim direction against the respondent-Management to appoint him as a Headmaster of the Institution and, therefore, the power of this Court under Article 226 of the constitution obviously is invoked to ensure that the decision of the Management in regard to appointment of a Headmaster must be according to the provisions of law, which are attracted and applicable in this regard. The Division Bench, which had passed the order of reference, had finally disposed of the Writ Petition by applying the law laid down by the Full Bench to the facts of the case, in its original jurisdiction under Article 226 of the Constitution. The power/jurisdiction under Article 226 cannot get transferred or extended to the Larger Bench merely because the reference is made by the Division Bench on certain legal issues to the Larger Bench. The jurisdiction/power under Article 226 is invoked by the petitioner to consider the validity of order of appointment of respondent as a Headmaster in view of the law applicable in this regard and for no other purpose. This aspect can only be gone into by the Division Bench alone, since the same is not a part of the issues which are referred to the Larger Bench vide Order, dated 16th April, 2002, passed by the Division Bench. The Larger Bench was called upon to answer and resolve the inconsistency on the legal point referred to the Full Bench by the Division Bench. The power of the Full Bench was not invoked to consider and decide the grievance of the petitioner, which was made in the Writ Petition either by the petitioner, or by the Division Bench which has passed the order of reference and, therefore, by necessary implication, the power/jurisdiction which the Larger Bench has exercised cannot be said to be under Article 226 of the Constitution of India and it remained with the Division Bench and was exercised by Division Bench by disposing of the Writ Petition finally keeping in view the law laid down by the Full Bench. It is, therefore, evident that the power/jurisdiction under Article 226 of the Constitution, which was invoked by the petitioner, remained with the Division Bench all through and the Writ Petition is finally disposed of by the Division Bench itself in exercise of its original jurisdiction under Article 226.

17. Another aspect, which is relevant in this regard, is that Full Bench always decides the question/questions which is/are referred to it and it does not decide the issues which are not referred to it. Whenever the questions of law are referred to the Full Bench, the Full Bench is neither required to decide the other issues involved in the Writ Petition, nor is required to express its opinion in respect of same and since the

original jurisdiction under Article 226 of the Constitution remains with the Division Bench, it finally decides the controversy in the Writ Petition in exercise of its original jurisdiction under Article 226 of the Constitution by applying the law laid down by the Full Bench to the facts and circumstances involved in the Writ Petition. That the jurisdiction the Full Bench exercises is advisory and consultative and not the original jurisdiction under Article 226.

18. The observations of the Constitution Bench of the Apex Court in case of [Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.](#), are relevant in this regard and read thus :--

"None of the impugned Government memorandum provide for reservation in promotions. Hence, the question does not fall for consideration at all and any opinion expressed by this Court on the said point would be obiter. As has been rightly contended by Shri Parasaran, it is settled by the decision of this Court that the constitutional questions are decided only if they arise for determination on the facts and are absolutely necessary to be decided. The Court does not decide questions which do not arise. The tradition is both wise and advisable."

The sum and substance of the above referred observations of the Apex Court is that the decision is always rendered by the Court only on the questions which-fall for its consideration and it does not decide questions which do not arise for such consideration. On the backdrop of this analogy, it can safely be inferred that the Full Bench always renders its judgment only on the questions, legal or otherwise, which are referred to it by the Single Bench or Division Bench and the decision rendered by such Full Bench is restricted only in respect of those questions and, therefore, the jurisdiction it exercises in deciding inconsistency on the point of law is undoubtedly distinct and separate in nature and advisory, or consultative in character and is not akin to jurisdiction under Article 226 of the Constitution. Therefore, the contention canvassed by Shri Deshpande, learned counsel for non-applicant No. 1 in this regard has substance and is acceptable.

19. In the decision of the Apex Court is cases of [Commissioner of Income Tax Vs. Bansi Dhar and Sons](#), relied on and cited by Shri Deshpande, the question involved was regarding jurisdiction of the High Court to grant stay or pass interim orders in pending Reference u/s 66 of the Income Tax Act, 1922 and Section 256 of the Income Tax Act, 1961. The Apex Court in Para 40 of its Judgment has observed thus:--

"40. It has to be borne in mind that in answering questions or disposing of references either u/s 66 of 1922 Act or Section 256 of 1961 Act, the High Courts do not exercise any jurisdiction conferred upon them by the CPC or the Charters or by the Acts establishing respective High Courts, hi respect of certain matters, jurisdictions exercised by the High Court, must be kept separate from the concept of inherent powers or incidental powers in exercising jurisdiction u/s 66 of 1922 Act or

Section 256 of 1961 Act. Section 66 of Income Tax Act of 1922 or Section 256 of Income Tax Act of 1961 is a special jurisdiction of a limited nature conferred not by the CPC or by the Charters or by the special Acts constituting such High Courts but by the special provisions of Income Tax Act, 1922 or 1961 for limited purpose of obtaining High Court's opinion on questions of law. In giving that opinion properly if any question of incidental or ancillary power arises such as giving an opportunity or restoring a reference dismissed without hearing or giving some additional time to file paper book, such powers inhered to the jurisdiction conferred upon it. But such incidental powers cannot be so construed as to confer the power of stay of recovery of taxes pending a reference which lie in the domain of an appellate authority. Therefore, the concept of granting stay in a reference *ex debito justitiae* does not arise. That concept might arise in case of the appellate authority exercising its power to grant stay where there is no express provision. *Ex debito justitiae* is to do justice between the parties."

The final conclusions arrived at by the Apex Court are reflected in Para 42, which read thus :--

"42. Therefore, in our opinion it cannot be said that the High Court has inherent power or incidental power in the matter of a reference pending before it to grant stay of realisation or to grant injunction. That must remain within the jurisdiction of the appellate authority and pendency of a reference does not detract from that jurisdiction of the appellate authority."

20. It is, no doubt, true that in substance the ratio laid down by the Apex Court in the above referred judgment may not have much bearing in respect of the issue involved in the matter in hand. However, the analogy that the jurisdiction of the Appellate Authority always remains with the said authority during the pendency of the reference to the High Court and it does not detract from that jurisdiction may be relevant for the limited purpose to show that when the issue is referred to the Full Bench to have a decision on the same, it is not necessary that the jurisdiction under Article 226 of the Constitution is also either extended or shifted to the Full Bench. It is, no doubt, true that the power under Article 226 is conferred on the High Court and, therefore, whenever it is invoked, it cannot be refused by the High Court if the issue is relevant or incidental to the proceedings which are before the Single Bench or Division Bench wherein the power under Article 226 is invoked. Invoking a power of the High Court under Article 226 is distinct and separate aspect than exercise of power/jurisdiction by the High Court under Article 226 of the Constitution. In order to understand this aspect, we may give a hypothetical example, such as if the High Court, i.e., learned Single Judge is hearing the civil revisions and if in such proceedings a challenge is raised to the validity of the provisions of some Act or Rules, which is/are relevant to the controversy in issue, in such situation, the learned Single Judge may not be able to dismiss such contention on the ground that the jurisdiction which he is exercising is u/s 115, Civil Procedure Code, and not under

Article 226 of the Constitution, since the power under Article 226 vests in the High Court. This view is fortified by the Apex Court in case of [Hari Shankar Jain Vs. Sonia Gandhi](#). One of the questions, which fell for consideration of the Apex Court, in case of Hari Shankar Jain (cited supra) was reflected in Para 4, which reads thus:--

"(1) Whether a designated Election Judge of the High Court can entertain and decide a plea relating to validity of any law?"

The Apex Court in Para 9 observed thus :--

"We are, therefore, of the opinion that the designated Election Judge while hearing an election petition can exercise the jurisdiction vesting in the High Court, accepting such limits on its power as can be spelled out expressly or by necessary implication from the provisions of RPA, 1951 to examine the validity of any law or rule or order. There is nothing in RPA, 1951 which may take away jurisdiction of the High Court to adjudicate upon the validity of any law which comes up for its consideration to decide the election petition."

In para 10, the Apex Court has finally concluded thus :--

"10. The learned designated Election Judge was not, therefore, right in laying down as a wide and general proposition of law, that in an election petition question of validity of a statute cannot be gone into at all."

We have already expressed that when the power under Article 226 of the Constitution is invoked by the litigant by filing a Writ Petition or in a particular proceeding, which is going on before a particular Judge exercising jurisdiction/power under some other Act or statute, the exercise of such power under Article 226 cannot be refused merely on the ground that a particular Judge of the High Court, at the relevant time, is exercising power under some other Act or statute, because the power under Article 226 is conferred on the High Court and the same is vested in the High Court and, therefore, it is evident that for the purpose of exercise of power or jurisdiction under Article 226, such power must be invoked by a citizen/petitioner, and in absence thereof, it will not be possible to exercise the same. In the instant case, the power/jurisdiction under Article 226 is invoked by the petitioner in the Writ Petition before the Division Bench for certain reliefs. The Division Bench, vide order, dated 16th April, 2002, referred the only question of law to the Larger Bench in view of the inconsistent decision rendered by this Court, retaining the original jurisdiction under Article 226 with itself. It is, therefore, evident that in the case in hand, neither the petitioner, nor the Division Bench can be said to have invoked jurisdiction of Full Bench under Article 226 to decide the controversy involved in the Writ Petition, and in absence thereof, question of exercising jurisdiction/power under Article 226 of the Constitution by the Full Bench does not arise. On the other hand, the Full Bench is only called upon to give an advice and resolve the legal inconsistency, so that the Division Bench in original jurisdiction under Article 226 of the Constitution can dispose of the Writ Petition by applying the

law laid down by the Apex Court to the facts contained in the Writ Petition and, therefore, by necessary implication, the jurisdiction, which the Full Bench exercises, is distinct and separate than the jurisdiction under Article 226 of the Constitution and is only advisory and consultative. We are unable to understand as to how the ratio laid down by the Apex Court in case of Hari Shankar Jain (cited supra) supports the contention advanced by learned counsel for the applicants Mr. Bhangde, particularly when the analogy in the said judgment of the Apex Court is based in the context which is totally different than the controversy in issue. In the instant case, we have already expressed that power of the Full Bench under Article 226 of the Constitution is not invoked at all and, therefore, question of refusing such exercise by the Full Bench does not arise as in case of Hari Shankar Jain (cited supra) and at the same time, for the reasons stated hereinabove, the power which the Full Bench has exercised, is also not under Article 226 of the Constitution.

21. The power under Rule 7 is distinct and separate than one under Article 226 of the Constitution and can generally be invoked for the limited purpose to resolve the inconsistency on the point of law. The Division Bench, therefore, refers the matter to the Larger Bench only for the limited purpose to have a final legal opinion to end the inconsistency and, therefore, by necessary implication, the subject matter on which the Full Bench is required to adjudicate and decide being distinct and separate, cannot be equated with the subject matter in the writ petition, which the Division Bench has to adjudicate and decide under the original jurisdiction under Article 226 of the Constitution by applying the law laid down by the Full Bench to the facts and circumstances involved in the said writ petition. Therefore, on the backdrop of these aspects, by necessary implication, the jurisdiction which the Full Bench exercises is advisory and consultative, which is separate and distinct than one under Article 226 of the Constitution. It is, therefore, implicit that the source of jurisdiction of the Full Bench cannot be the same as that of Division Bench and, therefore, the argument of Mr. Bhangde in this regard is misconceived.

22. Similarly, the contention of learned counsel Shri Bhangde that even if it is assumed for the sake of argument that the Full/Larger Bench exercises advisory/consultative jurisdiction, still the jurisdiction is exercised under Articles 226 and 227 of the Constitution is also misconceived for the reason that merely because High Court is conferred with the jurisdiction under Article 226 of the Constitution, it cannot be presumed to have exercised the same without invoking it. The High Court is conferred with various jurisdictions under various laws and statutes, such as Code of Civil Procedure, Code of Criminal Procedure, Representation of People Act, 1951, Company law, matrimonial law, etc. including one under Article 226 of the Constitution and is required to exercise the same as and when it is invoked by the party and not otherwise. The observations made and law laid down by the Apex Court in the case of Hari Shankar Jain (cited supra) are relevant. The Apex Court opined that the designated Election Judge of the High Court hearing an election petition can exercise jurisdiction under Article 226 of the Constitution, if such power

is invoked in the election dispute before the designated Election Judge of the High Court though exercising powers under the Representation of People Act, 1951. The legal proposition which emerges in this regard, is that whenever power/jurisdiction, which is vested in the High Court and is invoked, it cannot be denied merely because same is invoked in the proceedings where High Court is exercising jurisdiction under different Act, if it is relevant and incidental to the cause of action in the said proceedings. The Apex Court, therefore, in case of Hari Shankar Jain (cited supra) recorded its final conclusion in para 34, which reads thus :

"To sum up, we are of the opinion that a plea that a returned candidate is not a citizen of India and hence not qualified, or is disqualified for being a candidate in the election can be raised in an election petition before the High Court in spite of the returned candidate holding a certificate of citizenship by registration u/s 5(1)(c) of the Citizenship Act. A plea as to constitutional validity of any law can, in appropriate cases, as dealt with hereinabove, also be raised and heard in an election petition where it is necessary to decide the election dispute."

23. We are unable to understand as to how the law laid down by the Apex Court in the case of Hari Shankar Jain (cited supra) supports the contention of learned Counsel Shri Bhangde in the facts and circumstances of the present case and as to how advisory/consultative jurisdiction exercised by the Full Bench can be treated at par with that of the original jurisdiction exercised by the Division Bench under Article 226 of the Constitution particularly when same is not invoked and is ultimately exercised by the Division Bench while disposing of the writ petition.

24. In the case of [Raghunath Gambhirshet Vs. Ganpat Motiram and Others](#), the question, which fell for consideration of this Court, was whether the Tribunal has jurisdiction to review its own order. It was not in dispute that under the Bombay Revenue Tribunal Act (12 of 1939), Bombay Revenue Tribunal was set up and its powers and functions were defined in Section 4 of the said Act, Similarly, Section 7 of the Act, in terms, expressly conferred upon the Tribunal power of review. The contention, which was advanced in the said case before the Division Bench, was that Section 7 is limited by Section 4 and the power of review is only conferred upon the Tribunal, which exercises the powers and functions mentioned in Section 4 and, therefore, though the Legislature, at a later point of time, conferred revisional powers upon the Revenue Tribunal, u/s 76 the Legislature did not confer upon the Tribunal the power to review its own decision rendered in exercise of these revisional powers u/s 76 and it was not open to the Tribunal to fall back upon Section 7 in order to find jurisdiction to review its own decision. On the backdrop of this controversy, the Division Bench in case of Raghunath Gambhirshet (cited supra) in Para 2 observed thus :--

"In our opinion that is not the proper interpretation to put upon Section 4 and Section 7 of Act 12 of 1939. That Act sets up a new Tribunal and Section 7 confers upon that Tribunal generally certain power, viz., the power and jurisdiction to review

its own decisions. Section 4 defines its functions and so long as this Act stood on the statute book, the only functions which the Tribunal could discharge were the functions mentioned in Section 4, and in discharging those functions, it could exercise the power of review conferred upon it u/s 7. But when the Tenancy Act was passed, further functions were allocated to the Tribunal, and one of those functions was the power to act as a revisional body in certain tenancy matters specified in the Tenancy Act. But when the functions of the Tribunal were increased, the Tribunal still had the power to review its decisions conferred upon it u/s 7. The power to review conferred upon it u/s 7 was not limited to the exercise of the functions enumerated in Section 4 but that power attached to the Tribunal as such and it could always be exercised by the Tribunal, whatever powers might be conferred upon it from time to time. Therefore, the power to review is the power that attaches to the Tribunal as such irrespective of what jurisdiction may be conferred upon it from time to time by the Legislature. Therefore, it would not be correct to say that as Section 76, Tenancy Act conferred a new power upon the Tribunal that power had to be exercised without the power of review conferred upon it u/s 7."

25. The above referred observations made by this Court in Para 2 of its judgment clearly reveal that power of review was conferred on the Tribunal u/s 7 of the Act and, therefore, merely because the jurisdiction of the Tribunal was increased by conferring on it revisional powers u/s 76, it was not possible, to restrict the power of review to Section 7 only in respect of powers and functions of the Tribunal as defined in Section 4 of the Act and the Division Bench, therefore, held that when the Tribunal exercises its revisional power u/s 76, the Tribunal has power to review its decision. There is no quarrel with the proposition of law laid down by this Court in the above referred judgment. However, the analogy is based on the scheme of provisions of Tenancy Act, where the power of review of its own order already existed in the Tribunal vide Section 7 of the Act and the question was whether it was restricted only in respect of the powers and functions the Tribunal exercised as defined in Section 4 or the same can also be extended to the revisional jurisdiction which was conferred on the Tribunal by the Legislature at the later point of time vide Section 76, which becomes one of the functions and powers of the Tribunal and, therefore, Their Lordships have held that Tribunal is entitled to review its own order passed u/s 76 of the Act. In the case in hand, there is a clear line of demarcation between the jurisdictions Division Bench exercises and the Full Bench exercises while answering the questions of reference on the point of law. These powers and jurisdictions are distinct and separate and are exercised by the High Court in altogether different fields - one is under Article 226 of the Constitution and the other is in advisory/consultative jurisdiction. It is, no doubt, true that High Court is entitled to review its order, which is passed in exercise of power/jurisdiction under Article 226 of the Constitution, since power of review is in-built therein. However, the same cannot be extended in respect of the orders passed by the High Court under any other power or jurisdiction unless it is specifically provided and conferred

on the High Court under the said law or statute. In other words, we cannot generalize the power of review and cannot extend it to the orders passed by the High Court under power or jurisdiction other than under Article 226 of the Constitution. If it is not provided, nor conferred on the High Court under the said Act or statute, merely because the same is inherent in respect of the orders passed by the High Court under Article 226 of the Constitution. It is well settled that power of review is the creature of statute and, therefore, unless it is specifically conferred on the Court by the statute, it cannot be invoked, with the only exception the order passed by the High Court under Article 226 of the Constitution. Therefore, power of review cannot be generalized or extended in respect of the orders passed by the High Court under the jurisdiction other than Article 226 of the Constitution. We are, therefore, of the view that the law laid down by this Court in the case of Raghunath Gambhirshet (cited supra) is not of much help to the applicants.

26. When specific questions of law are referred to the Full Bench for its decision, it is bound to give its verdict on those questions. In a situation like this, the Full Bench is only called upon to settle the legal issue referred to it and, therefore, the power the Full Bench exercises in such circumstances is advisory. However, when the entire case is referred to the Full Bench by the Division Bench, the Full Bench will have to decide the whole case in the light of the answers to the questions referred to it and on consideration of the evidence on record, will have to finally dispose of the Writ Petition. Such situation is almost not possible, since the Division Bench normally is required to refer the matters to the Full Bench when there is an inconsistent view expressed by the decisions of this Court on the point of law, and not otherwise.

27. We cannot turn the Nelson's eye to the relevant developments, which had taken place after the judgment of the Full Bench, dated 13-3-2003, rendering finality to the proceedings concluded by the Division Benches by finally disposing of those Writ Petitions in view of the law laid down by the Full Bench. The Division Bench, after a decision, dated 13th March, 2003, of the Full Bench and in view of the law laid down by the Full Bench allowed the Writ Petition No. 137 of 1986, [Anil Dattatraya Ade Vs. Presiding Officer, School Tribunal and Others](#), in exercise of its original jurisdiction under Article 226 of the Constitution, and directed reinstatement of the petitioner with back wages. Similarly, the Division Bench, having regard to the law laid down by the Full Bench, also dismissed Writ Petition No. 2387 of 1985, Laxman Balkrishna Joshi v. Shikshan Prasarak Mandal and five others, in exercise of its original jurisdiction under Article 226 of the Constitution, which was invoked by the petitioner in the petition. It is also not in dispute that the petitioner Balkrishna Joshi filed a SLP before the Apex Court against the Judgment of the Division Bench, in Writ Petition No. 2387 of 1985 which is still pending before the Apex Court. Similarly, the present applicants (original respondents in Writ Petition No, 137 of 1986) have also filed a Miscellaneous Civil Application, inter alia, seeking review of the judgment of the Division Bench, wherein the Division Bench has ordered reinstatement and backwages of the petitioner. It is, therefore, evident that the Division Benches,

keeping in view the law laid down by the Full Bench, in exercise of their power under Article 226 of the Constitution, which was invoked by the petitioners in those respective writ petitions, finally disposed of those Writ Petitions and rendered finality to the litigation. It is, therefore, implicit that the Full Bench, in its advisory/consultative jurisdiction, only answered the questions of law referred to it by the Division Bench and neither adjudicated upon the cause of actions in the respective Writ Petitions, nor expressed any opinion in this regard, since that was not the point of reference and, therefore, by necessary implication it can be safely held that the power of the Full Bench under Article 226 was neither invoked, nor exercised by the Full Bench, and is admittedly exercised by the respective Division Benches after the decision of the Full Bench. If we, at this stage, permit the applicants to once again reopen the legal issue concluded by the Full Bench in these Miscellaneous Review Applications, by necessary implication, we will be rendering the decisions of the Division Benches invalid whereby the Writ petitions were finally disposed of in exercise of power/jurisdiction under Article 226 of the Constitution in the light of the law laid down by the then Full Bench, and it would further result in invalidating the actions taken by the authorities pursuant to the directions given by the Division Benches in their respective decisions and, therefore, such exercise, at this stage, in our considered view, is uncalled for.

28. Under Article 142 of the Constitution, the Supreme Court has inherent power to do complete justice between the parties and though there is no such specific power conferred on the High Court by the Constitution, that does not deter the High Court, in a given case for adequate reason and in order to do complete justice, to exercise such power or jurisdiction by moulding the relief claimed in the petition. Power to do complete justice is inherent in every Court. However, this power is not as wide as that of the Supreme Court under Article 142 of the Constitution. Similarly, there is no specific power or advisory jurisdiction conferred on the High Court, such as Article 143 of the Constitution, which confers advisory jurisdiction on the Apex Court. However, the jurisdiction the Full Bench exercises while answering the question of law under reference is very much akin to that of the advisory jurisdiction exercised by the Supreme Court. However, the context, in which High Court exercises advisory jurisdiction, is distinct and separate and in altogether different situations and circumstances.

29. Before we part with the order, we would like to express that we cannot afford to ignore the contemporary situation faced by our system of Administration of Justice because of the enormous pendency of cases in various Courts of our country. We are also aware that the Apex Court, Executive and the Legislature are actively involved in finding out remedies and procedures which would not only curtail unreasonable procedural delay, but give finality to the litigation at its earliest and, therefore, if it is legally possible and statutorily permissible, the interpretation, which will give rise to multiplicity of litigation, should be avoided. The observations made by Justice Krishna Iyer in this regard are relevant, which read thus:--

"Early limitative finality is an utter unreality. Appeals, remands, revisions and reviews offer tantalizing opportunities for dilatory holidaying. Precipitous ,procrastinatory and procrustean justicing process often mar people"s confidence in courts."

For the reasons recorded hereinabove, the preliminary objection raised by Mr. R. K. Deshpande, learned counsel for respondent No. 1, about the maintainability of the Misc. Civil Applications for review of the judgment of the Full Bench, dated 13th March, 2003, is upheld and, therefore, the Misc. Civil Applications are dismissed as not maintainable.