

**Garden Reach Shipbuilders and Engineers Limited
v.
GRSE Limited Workmens Union & Ors.**

(Civil Appeal No. 3243 of 2025)

25 February 2025

[Dipankar Datta and Rajesh Bindal, JJ.]

Issue for Consideration

Whether judicial discipline and propriety were maintained, in the light of r.26 of the Appellate Side Rules of the High Court at Calcutta, 1966 in relation to applications u/Art.226 and the powers of the Hon'ble Chief Justice of the High Court as the master of the roster.

Headnotes[†]

Judicial discipline and propriety – Principles of – Appellate Side Rules of the High Court at Calcutta, 1966 – r.26 – Letters Patent – cl.15 – Intra-court appeal – Adjudication by bench of High Court without allocation by Chief Justice – Validity – Writ petition filed in the High Court pertaining to compassionate appointment to the writ petitioners – Single Judge of the High Court delisted the writ petition awaiting a decision of this Court on the reference made to a larger bench with liberty to mention after the reference is answered – Single Judge, despite referring to the decision of the Supreme Court that had settled the issue as regards the policy for compassionate appointment, refrained from proceeding with hearing of the writ petition on the specious ground of the pending reference – Intra-court appeal before the appellate court-Division Bench against the order of delisting, on the suggestion of the parties for disposal of the writ by the appellate court – Order passed by the predecessor Division Bench, pursuant thereto records of the writ petition were placed before the Division Bench that passed the impugned order – Challenge to:

Held: Chief Justice of the High Court, being the *primus inter pares*, has been vested with the power and authority to set the roster and such roster is final and binding on all the 'Companion Justices' of the said court – Any order which a bench, comprising of two judges or a single judge, may choose to make in a case

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that is not placed before them/him by the Chief Justice of the High Court or in accordance with His Lordship's directions, is without jurisdiction – Adjudication, beyond allocation, is void and such adjudication has to be considered a nullity – On facts, even if an intra-court appeal was maintainable against the order of delisting, at the highest, intervention to the limited extent of requesting the Single Judge to decide the writ petition in accordance with law was open and permissible – Single Judge not having referred the writ petition to a bench of two Judges for hearing, the predecessor Division Bench was not correct in accepting the suggestion of the parties and agreeing to hear the writ petition without having any authorization from the Chief Justice in this behalf – Consent does not confer jurisdiction – Judicial order based on consent of the parties, is against the Writ Rules and seeks to unsettle and even override the determination made by the Chief Justice, could not have vested jurisdiction in the appellate court to hear the pending writ petition – As per the roster set by the Chief Justice, determination was not given either to the predecessor Division Bench or to the Division Bench to hear writ petitions under 'Service (Group VI)' of the Classification List, but to the Single Benches on the relevant dates – Thus, neither the predecessor Division Bench nor the Division Bench of the High Court could have assumed jurisdiction to hear the writ petition – Order by the predecessor Division Bench and the impugned order without jurisdiction – Impugned order set aside – Matter remanded to the High Court – Constitution of India – Arts.225, 226. [Paras 7-10]

Case Law Cited

Campaign for Judicial Accountability and Reforms v. Union of India [2017] 12 SCR 331 : (2018) 1 SCC 196 – followed.

Sohan Lal Baid v. State of West Bengal, AIR 1990 Calcutta 168 – approved.

State of Rajasthan v. Prakash Chand [1997] 6 Supp. SCR 1 : (1998) 1 SCC 1 – relied on.

State Bank of India v. Sheo Shankar Tewari [2019] 3 SCR 718 : (2019) 5 SCC 600; *N.C. Santhosh v. State of Karnataka* [2020] 3 SCR 1177 : (2020) 7 SCC 617; *Shah Babulal Khimji v. Jayaben D. Kania* [1982] 1 SCR 187 : (1981) 4 SCC 8 – referred to.

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List of Acts

Constitution of India; Appellate Side Rules of the High Court at Calcutta, 1966.

List of Keywords

Intra-court appeal; Letters Patent; Delisting of writ petition; Judicial discipline and propriety; Master of the roster; Chief Justice of the High Court; Consent does not confer jurisdiction; Adjudication beyond allocation; Companion judges; *Primus inter pares*; Compassionate appointment; Judicial order; Consent of the parties; Roster set by the Chief Justice; 'Service (Group VI)' of the Classification List; Chief Justice of the High Court, being *primus inter pares*.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3243 of 2025

From the Judgment and Order dated 04.09.2024 of the High Court at Calcutta in MAT No. 850 of 2022

Appearances for Parties

Advs. for the Appellant:

Ranjit Kumar, Brijender Chahar, Nidhesh Gupta, Ranjay De, Sr. Advs., Ranjan Kumar Pandey, Sandeep Bisht, Yati Ranjan, Akash Dixit, Ms. Swati Bansal.

Advs. for the Respondents:

Soumya Majumdar, Sr. Adv., Swarnendu Chatterjee, Nilay Sengupta, Sujit Banerjee, Ms. Deepakshi Garg, Ms. Harshita Rawat, Shreekant Neelappa Terdal.

Judgment / Order of the Supreme Court

Judgment

1. Leave granted.
2. This appeal is directed against the judgment and order dated September 04, 2024¹ passed by an Hon'ble Division Bench² of

1 impugned order

2 Division Bench

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the High Court of Judicature at Calcutta.³ In course of deciding an intra-court appeal⁴ filed under clause 15 of the Letters Patent by the respondents in this appeal,⁵ their writ petition⁶ was allowed, the order impugned in the writ petition set aside and directions were issued to the appellant-Garden Reach Shipbuilders and Engineers Limited⁷ to appoint 48 (forty-eight) of the 51 (fifty-one) writ petitioners on compassionate ground.

3. Having regard to the order we propose to pass, it is not considered necessary to delve deep into the facts giving rise to the writ petition.
4. Suffice it to note, the subject matter of the writ petition concerned refusal to offer compassionate appointment by GRSE Ltd. to the writ petitioners. A learned Single Judge⁸ of the High Court by an order dated February 21, 2022 (under challenge in the intra-court appeal) had de-listed the writ petition awaiting a decision of this Court on the reference made to a larger bench in **State Bank of India v. Sheo Shankar Tewari**,⁹ with liberty to mention after the reference is answered. The Single Judge had referred to the decision of a bench of three-Judges in **N.C. Santhosh v. State of Karnataka**.¹⁰ We are inclined to observe that the said decision, at the relevant time, had settled the issue as regards the policy that would apply in considering applications for compassionate appointment, yet, the Single Judge refrained from proceeding with hearing of the writ petition on the specious ground of the pending reference. Although the Single Judge may not have been entirely right in de-listing the writ petition on the stated ground and ought to have proceeded with consideration of the writ petition finally, giving due regard to the law then prevailing, rights of the parties were not determined and no judgment was rendered if seen within the prism of clause 15 of the Letters Patent; thus, it is debatable as to whether an intra-court

3 High Court

4 MAT 850 of 2022

5 writ petitioners

6 WPA No.13605 of 2016

7 GRSE Ltd.

8 Single Judge

9 (2019) 5 SCC 600

10 Civil Appeal Nos. 9280-81 of 2014, since reported in (2020) 7 SCC 617

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appeal could have at all been maintained before the appellate court against the order of de-listing in view of the decision of this Court in **Shah Babulal Khimji v. Jayaben D. Kania**.¹¹ At any rate, even if an intra-court appeal was maintainable against the order of de-listing, the writ petition not having been heard finally and on it being de-listed by the Single Judge with liberty to mention after the reference is answered by this Court, at the highest, intervention to the limited extent of requesting the Single Judge to decide the writ petition in accordance with law was open and permissible. However, it has intrigued us to no end as to how the writ petition could be heard by the Division Bench.

5. At this stage, our attention has been invited by Mr. Soumya Majumdar, learned senior counsel appearing for the writ petitioners to an order dated March 11, 2024 passed by another Division Bench¹² which was then seized of the intra-court appeal. It was pointed out that before such bench, learned senior counsel appearing for GRSE Ltd. had agreed to the suggestion of counsel for the writ petitioners to disposal of the writ petition by the appellate court and it is pursuant thereto that the records of the writ petition were placed before the Division Bench which ultimately, upon a contested hearing, proceeded to pass the impugned order finally disposing of the intra-court appeal as well as the writ petition in favour of the writ petitioners. It is, therefore, submitted that GRSE Ltd. having also agreed to consideration and disposal of the writ petition by the appellate court, this Court may not take too technical a view of the matter and decide the appeal on its merits.
6. This appeal involves a serious question as to whether judicial discipline and propriety, in the light of Rule 26 of the Rules framed by the High Court at Calcutta under Article 225 of the Constitution of India in relation to applications under Article 226 thereof and the powers of the Hon'ble the Chief Justice of the High Court¹³ as the master of the roster, were maintained. Rule 26, to the extent relevant, reads as follows:

11 (1981) 4 SCC 8

12 predecessor Division Bench

13 Chief Justice

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“26. ***

A Judge, for the reasons recorded, at the hearing or at any subsequent stage of the proceeding may make it returnable before a Division Bench or may while hearing the Rule, refer the same to the Division Bench for hearing.

***”

7. The Single Judge not having referred the writ petition to a bench of two Judges for hearing, the predecessor Division Bench was not quite correct in accepting the suggestion of the parties and agreeing to hear the writ petition without having any authorization from the Chief Justice in this behalf,¹⁴ and more particularly bearing in mind the well-settled principle that ‘consent does not confer jurisdiction’. A judicial order based on consent of the parties, which is in the teeth of the Writ Rules and seeks to unsettle and even override the determination made by the Chief Justice, could not have vested jurisdiction in the appellate court to hear the pending writ petition. As a sequitur, the Division Bench which passed the impugned order could not have assumed unto itself the jurisdiction to decide the writ petition based on the earlier order dated March 11, 2024. The Division Bench, without feeling bound by the said order, could and did have the jurisdiction to decline to hear the writ petition in the absence of any determination. We presently consider it expedient to advert to this aspect of the matter.
8. The cause-list of the predecessor Division Bench dated March 11, 2024 would reveal that it had, *inter alia*, the determination to hear “APPEAL FROM ORDER RELATING TO SERVICE (GROUP VI) INCLUDING APPLICATIONS CONNECTED THERETO [EXCLUDING ...]”. We have further noticed from the cause-lists of August 16, 2024 (the date on which the writ petition, after hearing, was reserved for judgment) and September 4, 2024 (the date when the writ petition was allowed by the impugned order) that the Division Bench had the same determination, i.e., to hear, *inter alia*, “APPEAL FROM ORDER RELATING TO SERVICE (GROUP VI) INCLUDING APPLICATIONS CONNECTED THERETO [EXCLUDING ...]”. Moreover, as per the roster set by the Chief Justice, determination was not given either to the predecessor Division Bench or to the

14 determination, as is commonly referred to in the High Court

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Division Bench to hear writ petitions under ‘Service (Group VI)’ of the Classification List appended to the Writ Rules. We have also noticed that determination to hear writ petitions relating to Group VI, as made by the Chief Justice, was given to single benches on the relevant dates. On the face of such determination, neither the predecessor Division Bench nor the Division Bench of the High Court could have assumed jurisdiction to hear the writ petition premised on the legal position that they had jurisdiction to hear appeals from orders passed on writ petitions relating to Group VI.

9. In the light of the law laid down by the High Court itself¹⁵ in **Sohan Lal Baid v. State of West Bengal**,¹⁶ as approved by a three-Judge Bench of this Court in **State of Rajasthan v. Prakash Chand**¹⁷ which has subsequently been approved by a Constitution Bench in **Campaign for Judicial Accountability and Reforms v. Union of India**,¹⁸ as well as Rule 26 (supra), we hold that any order which a bench - comprising of two judges or a single judge - may choose to make in a case that is not placed before them/him by the Chief Justice of the High Court or in accordance with His Lordship’s directions, such an order is without jurisdiction. In other words, an adjudication, beyond allocation, is void and such adjudication has to be considered a nullity. It needs no emphasis that the Chief Justice of the High Court, being the *primus inter pares*, has been vested with the power and authority to set the roster, as articulated in **Sohan Lal Baid** (supra), and such roster is final and binding on all the ‘Companion Justices’ of the said court. Plainly, therefore, the order dated March 11, 2024 and the impugned order are without jurisdiction.
10. On this limited ground, but without examining the merits of the rival claims, the impugned order is liable to be and is, accordingly, set aside. We order a remand, with the result that the writ petition shall stand revived on the file of the High Court. We request the Chief Justice of the High Court to assign the writ petition to an appropriate bench for its consideration and disposal, as early as possible, but preferably within six months from today, considering that the respondents have

15 authoritatively speaking through Hon’ble P.D. Desai, C.J. (as the Chief Justice then was)

16 AIR 1990 Calcutta 168

17 (1998) 1 SCC 1

18 (2018) 1 SCC 196

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been waiting for their turn for compassionate appointment and the appellants have their own reasons for not proceeding with making such appointment resulting in a delayed determination.

11. We, however, record the statement of Mr. Nidhesh Gupta, learned senior counsel appearing for GRSE Ltd. that till such time the writ petition is disposed of by the appropriate Bench of the High Court to which it is assigned by the Chief Justice, no appointment shall be made so as to render the writ petition infructuous. That would take care of the anxiety of the writ petitioners of being non-suited, if appointments were made to defeat their rights. Hence, we refrain from making any interim order to be operative during the pendency of the writ petition or to extend the ad-interim order dated August 1, 2016, passed on such writ petition.
12. The appeal is, accordingly, allowed on the aforesaid terms. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Nidhi Jain