Supreme Court of India
U.P. Rashtriya Chinni Mills ... vs State Of U.P. And Others on 2 July, 1995
Equivalent citations: AIR 1995 SC 2148, JT 1995 (5) SC 474, (1995) 2 MLJ 93 SC, 1995 (4) SCALE 265, (1995) 4 SCC 738, 1995 Supp 1 SCR 733
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Bench: K Singh, N Venkatachala
ORDER Kuldip Singh, J.

1. This interlocutory application has been filed by the High Court of Judicature at Allahabad through its Registrar in the Special leave petition arising from the judgment and order dated September 23, 1994 of High Court of Allahabad (Lucknow Bench) in U.P. Rashtriya Chini Mill Adhikari Parishad v. State of U.P. and Ors. (Writ Petition No. 35951 of 1994. The special leave petition was disposed of by this Court on December 2, 1994 with the following order:

In view of the Full Bench judgment of the Allahabad High Court this special leave petition has become infructuous. The special leave petition is disposed of as such.

2. The judgment in Chini Mill's case is by the Bench consisting of B.M. Lall and S.R. Singh, JJ. The question of law decided by the Bench in Chini Mill's case was later on reconsidered by a Full Bench of the High Court which came to the conclusion that the judgment of the Division Bench in Chini Mill's case was contrary to the law laid down by this Court in Nasiruddin v. STA Tribunal and as such was not correctly decided. It was in this background - Chini Mill's case having been overruled by the Full Bench of the same court - that this Court did not go into the merits of the special leave petition and disposed of the same as having become infructuous.

3. The jurisprudence governing court-functioning in this country makes a judgment, delivered by a judge or a Bench comprising of more than one judges, the judgment of the court and not of the person holding the judicial office. The judgment holds good till it is set aside or its correctness is doubted by the High Court. Once the correctness of a judgment is doubted by the higher court the judgment and longer remains the law of the land and is treated as non-est. Judicial propriety demands that the Judge/judges whose judgment has been rendered non-est by the higher court should not bring their personal ego into the matter and should bow before the law laid down by the higher court. The facts and circumstances highlighted in this application given the impression that the Registry of the High Court is in a state of helplessness and there is a functional - crisis on the issue of interpretation of Clause 14 of the High Court (Amalgamation) Order, 1948. The registry is being asked to comply with the "General Directions" given by the Bench in Chini Mills' case despite the fact that the said case has been overruled by the Full Bench of the same court. We, therefore, grant permission to the High Court to file special leave petition in this Court against the judgment of the Division Bench in Chini Mill's. We treat this interlocutory application as special leave petition and we grant special leave in the matter.

4. The question before the Lucknow Bench of the High Court was whether the Bench at Lucknow or the High Court at Allahabad had the territorial jurisdiction to entertain the writ petition under Article 226 of the Constitution of India. The answer to the said question further depended on the

interpretation of the expression "in respect of case arising in such areas in Oudh" occurring in first proviso to Article 14 of the High Court (Amalgamation) Order, 1948 (hereinafter called Amalgamation Order).

5. The High Court came to the conclusion that in the facts of the Chini Mill's case the Lucknow Bench had no jurisdiction to entertain the writ petition. According to the Division Bench of the High Court the writ petition could only be filed in the High Court at Allahabad.

6. Historically, the territories with 12 districts of Lucknow, Faizabad, Sultanpur, Rai Bareli, Pratap Garh, Barabanki, Gonda, Baharaich, Sitapur, Kheri, Hardoi, and Unnao were brought under the then British crown within the jurisdiction of the Court of the Judicial Commissioner Oudh at Lucknow. This was done under the Government Order dated February 4, 1856 read with the Oudh Civil Courts Act, 1879. In 1925 Oudh Courts Act was passed by the Uttar Pradesh Legislature. The Chief Court of Oudh with one Chief Justice and four puisne judges was established replacing the Judicial Commissioner's Court. In 1937 by the Government of India (Adaptation of Indian Laws) Order, 1937, it was provided that the Chief Court of Oudh shall consist of Chief Justice and such other judges as may be appointed under the Government of India Act, 1935. It was in this background that the Governor General made the Amalgamation Order. The said order came into force on July 19, 1948.

7. Clause 3 of the Amalgamation Order provided that as from the appointed day, namely, July 26, 1948, the High Court in Allahabad and the Chief Court in Oudh would be amalgamated and would constitute one High Court by the name of the High Court of Judicature at Allahabad. The judges of the existing High Courts, namely, the Allahabad High Court and the Oudh Chief Court became Judges of the new High Court. The Chief Justice of the existing High Court became the Chief Justice of the new High Court. Clause 14 of the Amalgamation order is as under :

The new High Court and the judges and diversion courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may with the approval of the Governor of the United Provinces, appoint :

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice otherwise directs such judges of the new High Court, not less than two in number, as the Chief Courts may from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court :

Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad.

8. It would be useful to mention at this stage that the precise question which was before B.M. Lall and S.R. Singh, JJ. In Chini Mill's case was also pending consideration in S.A. 86 of 1994 before a Bench of the AllahabadHigh Court consisting of S.R. Sharma and Shobha Dixit, JJ. The Bench by its order dated September 5, 1994 referred the question to a Full Bench of three judges. It is thus

obvious that on September 23, 1994 when B.M. Lall and S.R. Singh, JJ. delivered the judgment in Chini Mill's case the matter was pending consideration before a Full Bench of the High Court. Needless to say that the appropriate course for the Division Bench would have been to await the decision of the Full Bench which finally delivered its judgment on November 15, 1994 over-ruling the Division Bench in Chini Mill's case.

9. Before the High Court a notification/Order issued by the Uttar Pradesh Government at Lucknow, whereunder it was decided to sell six sugar factories, was challenged by way of a writ petition. One of the sugar mills was situated within the Oudh area whereas the remaining five mills were situated outside the Oudh area. The contention raised before the Lucknow Bench was that the sale in terms of the notification, if finilised,. would be given effect at the places where the mills are situated and since five out of the six mills were situated outside Oudh area the Lucknow Bench had no jurisdiction to take cognizance, entertain and decide the writ petition in respect of the five mills in terms of clause 14 of the Amalgamation Order. The Division Bench of the High Court accepted the contention. B.M. Lall, J. who primarily spoke for the Bench interpreted the relevant expression in clause 14 of the Amalgamation Order in the following words:

Thus in this context if entire provision of Clause 14 is read together, the true intent ingrained in the expression appears to be that the Judges shall sit at Lucknow in order to exercise power and jurisdiction vested in the High Court in respect of cases "pertaining to" Oudh area alone and; not pertaining to the area outside the Oudh area. By no stretch of imagination, it can be assumed that the Judges while sitting at Lucknow can exercise power and jurisdiction in respect of any area outside the Oudh area.

10. The learned Judge supported the conclusions reached by the Bench on the following reasoning :

The theory of 'cause of action' originates from the CPC which is of general character and is, therefore, a general law. In the present case, the theory of 'exercise of jurisdiction revolving on the place of sitting' originates from the amalgamation Order 1948 which is of special character and is therefore in the shape of special law. It applies to a limited contingency i.e. where the case falls within the territorial jurisdiction of one High Court and the Judges sit at two places in order to exercise jurisdiction of the High Court.

Thus where the controversy pertains to the territorial jurisdiction of two different High Court, certainly the theory of 'cause of action' in the shape of Sub-clause (2) of Article 226 of the Constitution of India comes into play with full force but where the controversy pertains to the exercise of jurisdiction of one High Court as is in the present case, the theory of 'exercise of jurisdiction revolving on the place of sitting' comes into play.

Both the theories have got different fields to operate but at the appropriate occasion, the theory having characteristic of Special law will have overriding effect in preference to theory having characterstic of general law, is the well settled position of law... as far as the theory of cause of action attracting jurisdiction of Lucknow Bench even in the cases pertaining to those districts which are situated outside the Oudh area is concerned, Nasiruddin's case (supra) is of no avail to the

petitioners in view of the change in law with effect from 1.2.1977 (adding Explanation to Section 141 C.P.C.) and in view of the dictum laid down by the Apex court in the recent pronouncements in Oil and Natural Gas Commission's case (supra) and Navodaya Vidayalaya Samiti's case (supra).

11. The Division Bench of the High Court declined to follow the interpretation given to the very same expression by this Court in Nasiruddin's case on the following reasoning :

As stated above, with the commencement of Explanation added to Section 141 C.P.C. With effect from 1.2.1977, since the application of the provisions of C.P.C. including Sections 15 to 20 C.P.C. have been excluded in the writ proceedings hence assuming partly cause of action arose at Lucknow by virtue of revisional or appellant forums being located at Lucknow, such case will not be deemed to have arisen in Oudh area rather will be deemed to have arisen in the districts where the lis originated. Thus the submissions made by Sri Umesh Chandra in this regard have no legs to stand after 1.2.1977 and the aid taken by Sri Chandra from Nasiruddin's case (supra) is otiose and is of no avail to the petitioners.

12. We are of the view that the Division Bench of the High Court fell into patent error in holding that the interpretation placed by this Court on clause 14 of the Amalgamation Order had ceased to be operative after the incorporation of the explanation to Section 141 of the CPC. This Court in Nasiruddin's case did not rely on the provisions of the Code of Civil procedure. In fact this Court did not even notice any of the provisions of the CPC. The Division Bench of the High Court took shelter behind the Explanation to Section 141 of the CPC without any jurisdiction. It created an argument when none existed. We have no hesitation in holding that the reasoning of the High Court in not following the law laid down by this Court in Nasirrudin's case was wholly perverse.

13. This Court in Nasiruddin's case speaking through A.N. Ray, dealt with the relevant expression used in Clause 14 of the Amalgamation Order in the following words :

The meaning of the expression "in respect of cases arising in such areas Oudh" in the first proviso to paragraph 14 of the Order was answered by the High Court that with regard to applications under Article 226 the same will be "a case arising within the areas in Oudh" only if the right of the petitioner in such an application arose first at a place within an area in Oudh. The implication according to the High Court is that if the right of the petitioner arose first at any place outside any area in Oudh and if the subsequent orders either in the revisional or appellate stage were passed by an authority within an area in Oudh than in such cases the Lucknow Bench would not have any jurisdiction. The factor which weighed heavily with the High Court is that in most cases where an appeal or revision would lie to the State Government, the impugned order would be made at Lucknow and on that view practically all writ petitions would arise at Lucknow.

The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow than Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour

of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well-known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The Choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Luck-now. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action.

14. While reaching the above conclusion this Court kept in view the plain language of Clause 14 of the Amalgamation Order. No provision of the CPC was noticed, referred to or taken into consideration directly or indirectly the territorial jurisdiction of a Court and the "cause of action" are interlinked. To decide the question of territorial jurisdiction it is necessary to find out the place where the "cause of action" arose. We, with respect, reiterate that the law laid down by a Four-Judge Bench of this Court in Nasiruddin's case holds goods even today despite the incorporation of a Explanation to Section 141 to the CPC.

15. There is no dispute that the Amalgamation Order is a special law which must prevail over the general law. This Court interpreted the relevant expression in Clause 14 and did not take any support from any general law. The discussion by the Division Bench of the High Court by evolving the so called theory of "exercise of jurisdiction revolving on the place of sitting" as compared to the theory of "cause of action" is wholly misconceived and has no legal basis whatsoever. This part of the High Court judgment is mentioned to be rejected.

16. Mr. Satish Chandra, learned senior advocate appearing for the appellant has contended that even on the reasoning of the Division Bench Judgment itself the conclusions reached by the Bench are erroneous. We see force in the contention. The Division Bench of the High Court relying upon the judgment of the Rajasthan High Court Ram Rakh Vyas v. Union of India (1977) Rajasthan 243 (the judgment delivered by A.P. Sen, J. as the learned Judge then was), came to the conclusion that the words "arising in" in the context, mean "pertaining to the districts of or "arising from". It is not disputed that in the present case the order/notification and the advertisement were issued by the State Government at Lucknow. Without there being an order/notification by the Government there could be no cause of action at all. The Petitioner got aggrieved only from the order/notification which "arose" from lucknow. The grievance of the petitioner "arose" at Lucknow which is within the Oudh area and as such on the plain reading of the relevant provisions of Clause 14 of the Amalgamation Order, the Bench at Lucknow had the jurisdiction to deal with the matter.

17. We have been informed that review petition 136/94 against the impugned judgment is also pending before the High Court. Apart from the an application to withdraw writ petition No. 35951 of

1994 is also pending before the High Court. We are informed that the withdrawal application was initially allowed by a Bench at Lucknow and later on the arguments were heard in the said application once again at Allahabad by the Bench consisting of B.M. Lall and S.R. Singh, JJ. and the judgment is reserved. We have further been informed that writ petition No. 4158 of 1994 Satish Mishra v. Registrar High Court arising out of the same proceedings - is also pending before the High Court. Since we are setting aside the impugned judgment delivered by B.M. Lal and S.R. Singh, JJ. in Chini Mill's case in toto, all these proceedings which are pending before the High Court would be rendered infructuous.

18. We allow the appeal, set aside the judgment of the High Court dated September 23, 1994 in writ petition No. 35951 of 1994. The writ Petition before the High Court shall stand dismissed. No costs.