

Supreme Court of India

State Of Maharashtra vs Narayan Shamrao Puranik And Ors. on 4 May, 1982

Equivalent citations: AIR 1982 SC 1198, 1982 (1) SCALE 443, (1982) 2 SCC 440, 1982 (14) UJ 368 SC

Bench: A Sen, E Venkataramiah, R Misra

ORDER

1. Having given the matter our anxious consideration, we are of the opinion that Notification No. P-6303/81 dated August 27, 1981 issued by the Chief Justice of the Bombay High Court in exercise of his powers under Sub-section (3) of Section 51 of the States Reorganisation Act, 1956 (Act No. XXXVII of 1956) (for short 'the Act'), with the prior approval of the Governor of Maharashtra, by which he appointed Aurangabad as a place at which the Judges and Division Courts of the Bombay High Court shall also sit w.e.f. August 27, 1981, does not suffer from any infirmity, legal or constitutional.

2. We are unable to agree with the view taken by the High Court "that the High Court of Bombay was not the High Court for the new State of Bombay within the meaning of Sub-section (1) of Section 49 of the Act and that, therefore, the provisions of Section 51 thereof were non est. The Bombay High Court owes its principal seat at Bombay to the Presidential Order issued under Sub-section (1) of Section 51 of the Act. The expression "new State" occurring in Sub-section (1) of Section 49 of the Act is defined in Section 2(i) to mean "a State formed under the provisions of Part II." The State of Bombay was a new State formed under Section 8 of the Act, which occurs in Part II. The Bombay Reorganisation Act, 1960 (Act No. XI of 1960), which brought about a bifurcation of the erstwhile State of Bombay into the State of Maharashtra and the newly formed State of Gujarat provides, inter alia, by Sub-section (1) of Section 28 that, as from the appointed day, there shall be a separate High Court for the State of Gujarat and that the High Court of Bombay shall become the High Court for the State of Maharashtra. Sub-section (2) of Section 28 of that Act provides that the principal seat of the Gujarat High Court shall be at such place as the President may, by notified order, appoint. It is significant that the Bombay Reorganisation Act, 1960 contains no similar provision with regard to the principal seat of the Bombay High Court. That being so, the continued existence of the principal seat of the Bombay High Court at Bombay is still governed by Sub-section (1) of Section 51 of the Act. This conclusion of ours is reinforced by the opening words of Section 41 which provides for the setting up of a permanent bench of the Bombay High Court at Nagpur "Without prejudice to the provisions of Section 51 of the States Reorganisation Act, 1956." That shows that while enacting Section 41 for the Constitution of a permanent bench at Nagpur, Parliament accepted the continued existence of Section 51 of the Act in relation to the Bombay High Court. When there is continued existence of Sub-section (1) of Section 51 of the Act in relation to the principal seat of the High Court for a new State, a fortiori, there is, to an equal degree, the continued existence of the provisions contained in Sub-sections (2) and (3) of Section 51 for the establishment of a permanent bench or benches of the High Court of a new State by the President or the appointment by the Chief Justice of the sittings of the Judges and Division Courts of the High Court at any such supplementary, Parliament may deem other place or places for that State, that is, at places other than the place where the principal seat of the High Court of a new State, is located. This is also clear from the provisions of Section 69 of the Act which in terms provides that Part v. which contains Section 51

shall have effect subject to any provision that may be made, on or after the appointed day with respect to the High Court of a new State, by the Legislature or any other authority having power to make such provision.

3. In our judgment, the High Court is in error in reaching the conclusion that the powers of the President to establish a permanent bench or benches of the High Court of a new State at one or more places within the State, other than the principal seat of that High Court, under Sub-section (2) of Section 51 of the Act or those of the Chief Justice of the High Court under Sub-section (3) thereof to direct that the Judges and Division Courts of that High Court may also sit at such other place or places in that State, can no longer be exercised due to lapse of time. The provisions of Sub-sections (2) and (3) of Section 51 of the Act are supplemental or incidental to the provisions made by Parliament under Articles 3 and 4 of the Constitution. Article 3 of the Constitution enables Parliament to make a law for the formation of a new State. The Act 20 is a law under Article 3 for reorganisation of states. Article 4 of the Constitution provides that the law referred to in Article 3 may contain incidental and consequential provisions, as necessary." We find it impossible to agree with the High Court that the Act, being transitory in nature, the exercise of the power by the President under Sub-section (2) of Section 51 of the Act after a lapse of 26 years or the appointment by the Chief Justice of the High Court of a new State for the sittings of the Judges and Division Courts of such High Court under Sub-section (3) of Section 51 would be a complete nullity. These powers continue to exist by reason of Part v. of the Act, unless Parliament by law otherwise directs. The Act is a permanent piece of legislation on the statute book. Section 14 of the General Clauses Act, 1897 provides that, where, by any Central Act or Regulation, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion arises.

4. The power of the President under Sub-section (2) of Section 51 of the Act, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, pertains to the establishment of a permanent bench or benches of that High Court of a new State at one or more places within the State other than the place where the principal seat of the High Court is located and for any matters connected therewith. The President has to act on the advice of the Council of Ministers as ordained by Article 74 of the Constitution. The establishment of a permanent bench or benches for the High Court of a new State by a Presidential Order issued under Sub-section (2) of Section 51 of the Act has to be in consultation with the Governor of that State and the Chief Justice. In contrast, the power to appoint the sittings of the Judges and Division Courts of the High Court for a new State at places other than the place of the principal seat, is in the unquestioned domain of the Chief Justice, the only condition being that he must act with the approval of the Governor. It is basically an internal matter pertaining to the High Court. The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provision contained in Sub-section (3) of Section 51 of the Act, but inheres in him in the very nature of things. The opinion of the Chief Justice to appoint the seat of the High Court of a new State at a place other than the principal seat under Sub-section (3) of Section 51 of the Act must therefore normally prevail because it is for the more convenient transaction of judicial business. There is no territorial bifurcation of the Bombay High Court merely because the Chief Justice by the impugned order issued under Sub-section (3) of Section 51 of the

Act directed that the Judges and Division Courts shall also sit at Aurangabad. The Chief Justice acted with the best of intentions within the scope of his powers. We see no substance in the High Court's conclusion that the Notification issued by the Chief Justice is a colourable exercise of power.

5. In that view, we allow the appeal preferred by the State of Maharashtra, set aside the judgment of the Bombay High Court dated December 14, 1981 and direct that the sittings of the High Court of Judicature at Bombay may be held and continue to be held at Aurangabad, in accordance with the aforesaid Notification issued by the Chief Justice of the Bombay High Court, with full and normal powers to entertain and dispose of all matters arising out of the Marathwada region, that is to say, the area comprising the districts of Aurangabad, Bhir, Jalna Nanded, Qsmanabad and Parbani. All cases pertaining to that region and pending as on this day at the main seat of the High Court, that is, at Bombay shall have to be dealt with and disposed of as the Chief Justice of the High Court may direct, consistently with the terms of the Notification dated August 27, 1981 issued by him.

6. The writ petition filed by the respondent No. 1 herein in the Bombay High Court is dismissed. There shall be no order as to costs.

7. Fuller reasons for this decisions will follow later.